

SEPARATION AGREEMENT  
BY AND BETWEEN  
GENERAL GROWTH PROPERTIES, INC.  
AND  
SPINCO, INC.  
Dated [• ], 2010

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## SEPARATION AGREEMENT

This SEPARATION AGREEMENT (this “Agreement”), dated as of [• ], 2010, is by and between General Growth Properties, Inc., a Delaware corporation (“GGP”), and Spinco, Inc., a Delaware corporation (“Spinco”). Capitalized terms used herein shall have the meanings assigned to them in Article I hereof or as otherwise expressly set forth herein.

### RECITALS

WHEREAS, the board of directors of GGP has determined that it is in the best interests of GGP and its shareholders to create a new publicly traded company which shall operate the Spinco Business;

WHEREAS, Spinco has been incorporated solely for these purposes and has not engaged in activities except in preparation for its corporate restructuring and the distribution of its stock;

WHEREAS, the board of directors of GGP and the board of directors of Spinco have approved the transfer of the Spinco Assets to Spinco and its Subsidiaries and the assumption by Spinco and certain of its Subsidiaries of the Spinco Liabilities, all as more fully described in this Agreement and the other Transaction Documents;

WHEREAS, pursuant to the terms of the Order, the Bankruptcy Court approved the distribution of shares of the common stock, no par value per share, of Spinco (the “Spinco Common Stock”) to the holders of issued and outstanding units of GGP LP as of the close of business on the Record Date;

WHEREAS, pursuant to the terms of the Order, the Bankruptcy Court has further approved the distribution of Spinco Common Stock to the holders of issued and outstanding common shares, \$0.01 par value per share, of GGP (the “GGP Common Shares”) as of the close of business on the Record Date, on the basis of 0.0983 shares of Spinco Common Stock for every one (1) GGP Common Share; provided, however, that no fractional shares shall be issued (the “Distribution”);

WHEREAS, GGP and Spinco have prepared, and Spinco has filed with the SEC, the Form 10, including the information statement contained therein, and which sets forth disclosure concerning Spinco and the Distribution;

WHEREAS, commencing on April 16, 2009 and continuing thereafter, GGP and certain of its Subsidiaries filed voluntary petitions for relief under chapter 11 of title 11 of the United States Code in the United States Bankruptcy Court for the Southern District of New York (the “Bankruptcy Court”), Case No. 09-11977 (ALG) (collectively, the (“Bankruptcy Cases”));

WHEREAS, the Distribution will be implemented in connection with the Joint Plan of Reorganization under Chapter 11 of the Bankruptcy Code by GGP and certain of its Subsidiaries filed with the United States Bankruptcy Court for the Southern District of New

York on [• ], as it may be subsequently amended and supplemented, as approved by the Bankruptcy Court (the “Plan”) and;

WHEREAS, for U.S. federal income tax purposes, certain steps of the Restructuring and the Distribution are intended to qualify for tax-free treatment under Sections 351, 355, 368(a) and related provisions of the Code;

WHEREAS, GGP has received a private letter ruling from the IRS to the effect that, among other things, (i) certain steps of the Restructuring and the Distribution, taken together, qualify as a transaction (a) that is described in Sections 355(a) and 368(a)(1)(G) of the Code, (b) in which the Spinco Common Stock distributed is “qualified property” under Section 361(c) of the Code and (c) in which the holders of GGP Common Shares recognize no income or gain for U.S. federal income tax purposes under Section 355 of the Code, and (ii) certain other steps of the Spinoff Plan qualify as transactions that are described in Sections 355(a) and 368(a)(1)(G) of the Code (the “Private Letter Ruling”);

WHEREAS, this Agreement is intended to be a “plan of reorganization” within the meaning of Treas. Reg. 1.368-2(g); and

WHEREAS, it is appropriate and desirable to set forth the principal corporate transactions required to effect the Restructuring and the Distribution and to set forth certain other agreements that will, following the Distribution, govern certain matters relating to the Restructuring and the Distribution and the relationship of GGP, Spinco and their respective Subsidiaries.

NOW, THEREFORE, in consideration of the premises and the representations, warranties, covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the parties hereby agree as follows:

## ARTICLE I

### DEFINITIONS

1.1 Certain Definitions. For purposes of this Agreement, the following terms shall have the meanings specified in this Section 1.1:

“Action” means any demand, action, claim, dispute, suit, countersuit, arbitration, inquiry, subpoena, proceeding or investigation of any nature (whether criminal, civil, legislative, administrative, regulatory, prosecutorial or otherwise) by or before any federal, state, local, foreign or international Governmental Authority or any arbitration or mediation tribunal.

“Affiliate” (including, with a correlative meaning, “affiliated”) means, when used with respect to a specified Person, a Person that directly or indirectly, through one (1) or more intermediaries, controls, is controlled by or is under common control with such specified Person. For the purpose of this definition, “control” (including with correlative meanings, “controlled by” and “under common control with”), when used with respect to any specified Person shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the

management and policies of such Person, whether through the ownership of voting securities or other interests, by Contract, agreement, obligation, promise, arrangement or otherwise. It is expressly agreed that, from and after the Effective Time and for purposes of this Agreement and the other Transaction Documents, no member of the Spinco Group shall be deemed to be an Affiliate of any member of the GGP Group, and no member of the GGP Group shall be deemed to be an Affiliate of any member of the Spinco Group.

“Ala Moana Condominium Declaration” means a Declaration of Condominium Property Regime of 1555 Kapiolani Condominium in substantially the form attached hereto as Exhibit A-1 to be recorded concurrently with the execution of the Ala Moana Development Agreement.

“Ala Moana Development Agreement” means the Development Agreement in substantially the form attached hereto as Exhibit A-2 to be entered into by Kapiolani Retail LLC and Kapiolani Residential, LLC on or prior to the Plan Effective Date.

“Ancillary Documents” means the Tax Matters Agreement, the Transition Services Agreement, the Employee Matters Agreement, the Employee Leasing Agreement, the Real Estate Agreements, the Transfer Documents, the Subleases, the Surety Bond Indemnity Agreement and the Assumption Agreement.

“Approvals or Notifications” means any consents, waivers, approvals, permits or authorizations to be obtained from, notices, registrations or reports to be submitted to, or other filings to be made with, any third Person, including any Governmental Authority.

“Arizona 2 Promissory Note” means the Promissory Note in substantially the form attached hereto as Exhibit B to be made by GGP LP on or prior to the Plan Effective Date.

“Assets” means, with respect to any Person, the assets, properties, claims and rights (including goodwill) held by or in the name of such Person, wherever located (including in the possession of vendors or other third Persons or elsewhere), of every kind, character and description, whether real, personal or mixed, tangible, intangible or contingent, known or unknown, in each case whether or not recorded or reflected or required to be recorded or reflected on the books and records or financial statements of such Person, including the following:

(a) all accounting and other books, records and files whether in paper, microfilm, microfiche, computer tape or disc, magnetic tape, electronic or any other form;

(b) all apparatus, computers and other electronic data processing and communications equipment, fixtures, machinery, equipment, furniture, office equipment, automobiles, trucks, motor vehicles and other transportation equipment and other tangible personal property;

(c) all inventories of materials, parts, raw materials, components, supplies, work-in-process and finished goods and products;



(d) all interests in real property of whatever nature, including easements, whether as owner, mortgagee or holder of a Security Interest in real property, lessor, sublessor, lessee, sublessee, licensor, licensee or otherwise;

(e) (i) all interests in any capital stock or other equity interests of any Subsidiary or any other Person, (ii) all bonds, notes, debentures or other securities issued by any Subsidiary or any other Person, (iii) all loans, advances or other extensions of credit or capital contributions to any Subsidiary or any other Person and (iv) all other investments in securities of any Person;

(f) all license agreements, leases of personal property, open purchase orders for raw materials, supplies, parts or services and other Contracts, agreements or commitments;

(g) all written (including in electronic form) or oral technical information, data, specifications, research and development information, engineering drawings and specifications, operating and maintenance manuals, and materials and analyses prepared by consultants and other third Persons;

(h) all Intellectual Property and Technology;

(i) all Software;

(j) all cost information, sales and pricing data, customer prospect lists, supplier records, customer and supplier lists, customer and vendor data, correspondence and lists, product data and literature, artwork, design, formulations and specifications, quality records and reports and other books, records, studies, surveys, reports, plans and documents;

(k) all prepaid expenses, trade accounts and other accounts and notes receivable;

(l) all rights under Contracts, agreements and entitlements, all claims or rights against any Person arising from the ownership of any Asset or otherwise, all rights in connection with any bids or offers and all claims, choses in action or similar rights, whether accrued or contingent;

(m) all rights under insurance policies and all rights in the nature of insurance, indemnification or contribution;

(n) all licenses, permits, approvals and authorizations which have been issued by any Governmental Authority; and

(o) all interest rate, currency, commodity or other swap, collar, cap or other hedging or similar agreements or arrangements.

“Assumption Agreement” means the Assumption Agreement in substantially the form attached hereto as Exhibit C to be entered into by GGP and Spinco on or prior to the Plan Effective Date.

“Code” means the Internal Revenue Code of 1986, as amended.

“Columbia Development Agreement” means the Development Agreement and Memorandum of Intent in substantially the form attached hereto as Exhibit D to be entered into by GGP LP and Spinco on or prior to the Plan Effective Date.

“Contract” means any contract, agreement, indenture, note, bond, mortgage, loan, instrument, lease, license, commitment or other arrangement, understanding, undertaking, commitment or obligation, whether written or oral.

“Cornerstone Investment Agreement” means the Amended and Restated Cornerstone Investment Agreement, effective as of March 31, 2010, by and between GGP and REP Investments LLC, as it may be further amended.

“Disclosure Statement” means the disclosure statement in respect of the Plan, including all exhibits and schedules thereto, as it may be amended, supplemented or otherwise modified from time to time, and as approved by the Bankruptcy Court in accordance with Section 1125 of the Bankruptcy Code.

“Distribution Agent” means The Bank of New York Mellon Corporation (and/or its affiliates).

“Effective Time” means the time at which the Distribution occurs as provided in the Order.

“Employee Leasing Agreement” means the Employee Leasing Agreement in substantially the form attached hereto as Exhibit E, to be entered into by and between GGP and Spinco or a Subsidiary thereof on or prior to the Plan Effective Date.

“Employee Matters Agreement” means the Employee Matters Agreement in substantially the form attached hereto as Exhibit F, to be entered into by and between GGP and Spinco or a Subsidiary thereof on or prior to the Plan Effective Date.

“Environmental Law” means any applicable Law relating to pollution, protection or restoration of or prevention of harm to the environment or natural resources, including the use, handling, transportation, treatment, storage, disposal, release or discharge of Hazardous Materials.

“Exchange Act” means the United States Securities Exchange Act of 1934, as amended, and the rules and regulations of the SEC thereunder, all as the same shall be in effect at the time that reference is made.

“Fairholme Investment Agreement” means the Amended and Restated Stock Purchase Agreement, effective as of March 31, 2010, by and between GGP and The Fairholme Fund, a series of Fairholme Funds, Inc., and Fairholme Focused Income Fund, a series of Fairholme Funds, Inc., as it may be further amended.

“Fashion Show Core Principles” means the Fashion Show Air Rights – Core Principles in substantially the form attached hereto as Exhibit G to be entered into by GGP LP and Spinco on or prior to the Plan Effective Date.

“Force Majeure” means, with respect to a party, an event beyond the reasonable control of such party (or any Person acting on its behalf), and includes acts of God, storms, floods, riots, fires, sabotage, civil commotion or civil unrest, interference by civil or military authorities, acts of war (declared or undeclared) or armed hostilities or other national or international calamity or one (1) or more acts of terrorism or failure of energy sources or distribution facilities. Notwithstanding the foregoing, the receipt by a party of an unsolicited takeover offer or other acquisition proposal, even if unforeseen or unavoidable, and such party’s response thereto shall not be deemed an event of Force Majeure.

“Form 10” means the registration statement on Form 10 filed by Spinco with the SEC on August 25, 2010 to effect the registration of Spinco Common Stock pursuant to the Exchange Act in connection with the listing of Spinco’s common stock on the New York Stock Exchange, as such registration statement may be amended or supplemented from time to time.

“GGP Business” means the businesses and operations conducted immediately prior to the Effective Time by any member of the GGP Group that are not included in the Spinco Business.

“GGP Disclosure Documents” means any registration statement filed with the SEC in the name of any member of the GGP Group as registrant, and any prospectus, offering memorandum, offering circular or similar disclosure document, whether or not filed with the SEC or any other Governmental Authority, that is prepared in connection with any such registration statement.

“GGP Group” means GGP and each of its direct and indirect Subsidiaries immediately following implementation of the Spinoff Plan, expressly excluding the Spinco Group.

“GGP Intellectual Property” means (i) the GGP Name and GGP Marks and (ii) all other Intellectual Property that is owned by any member of the GGP Group immediately after the Effective Time.

“GGP LP” means GGP Limited Partnership, a Delaware limited partnership.

“GGP Name and GGP Marks” means the names, marks, trade dress, logos, monograms, domain names and other source or business identifiers of GGP or any of its Subsidiaries using or containing “GGP” (in block letters or otherwise), “GGP” either alone or in combination with other words or elements and all names, marks, trade dress, logos, monograms, domain names and other source or business identifiers confusingly similar to or embodying any of the foregoing either alone or in combination with other words or elements, together with the goodwill associated with any of the foregoing.

“GGP Software” means all Software that is owned by any member of the GGP Group immediately after the Effective Time.

“GGP Technology” means all Technology that is owned by any member of the GGP Group immediately after the Effective Time.

“Governmental Authority” means any nation or government, any state, municipality or other political subdivision thereof, and any entity, body, agency, commission, department, board, bureau, court, tribunal or other instrumentality, whether federal, state, local, domestic, foreign or multinational, exercising executive, legislative, judicial, regulatory, administrative or other similar functions of, or pertaining to, government and any executive official thereof.

“Group” means the GGP Group or the Spinco Group, as the context requires.

“Hazardous Materials” means any chemical, material, substance, waste, classified, regulated or otherwise classified as “hazardous,” “toxic,” “pollutant” or “contaminant,” or words of similar meaning or effect or any other material, substance or waste, that could result in liability under, or that is prohibited, limited or regulated by or pursuant to, any Environmental Law, and any natural or artificial substance (whether solid, liquid or gas, noise, ion, vapor or electromagnetic) which could cause harm to the environment, including petroleum, petroleum products and byproducts, asbestos and asbestos-containing materials, urea formaldehyde foam insulation, electronic, medical or infectious wastes, polychlorinated biphenyls, radon gas, radioactive substances, chlorofluorocarbons and all other ozone-depleting substances.

“Information” means information, whether or not patentable or copyrightable, in written, oral, electronic or other tangible or intangible forms, stored in any medium, including studies, reports, records, books, Contracts, instruments, surveys, discoveries, ideas, concepts, know-how, techniques, designs, specifications, drawings, blueprints, diagrams, models, prototypes, samples, flow charts, data, computer data, disks, diskettes, tapes, computer programs or other software, marketing plans, customer names, communications by or to attorneys (including attorney-client privileged communications), memoranda and other materials prepared by attorneys or under their direction (including attorney work product), and other technical, financial, employee or business information or data.

“Insurance Policies” means the insurance policies written by insurance carriers, including any self-insurance arrangements, pursuant to which Spinco or one (1) or more of its Subsidiaries (or their respective officers or directors) will be insured parties after the Effective Time.

“Insurance Proceeds” means those monies (i) received by an insured from an insurance carrier, (ii) paid by an insurance carrier on behalf of the insured or (iii) received (including by way of set off) from any third Person in the nature of insurance, contribution or indemnification in respect of any Liability; in any such case net of any applicable premium adjustments (including reserves and retrospectively rated premium adjustments) and net of any costs or expenses incurred in the collection thereof.

“Intellectual Property” means all of the following whether arising under the Laws of the United States or of any other foreign or multinational jurisdiction: (i) patents, patent

applications (including patents issued thereon) and statutory invention registrations, including reissues, divisions, continuations, continuations in part, substitutions, renewals, extensions and reexaminations of any of the foregoing, and all rights in any of the foregoing provided by international treaties or conventions, (ii) trademarks, service marks, trade names, service names, trade dress, logos and other source or business identifiers, including all goodwill associated with any of the foregoing, and any and all common law rights in and to any of the foregoing, registrations and applications for registration of any of the foregoing, all rights in and to any of the foregoing provided by international treaties or conventions, and all reissues, extensions and renewals of any of the foregoing, (iii) Internet domain names, (iv) copyrightable works, copyrights, moral rights, mask work rights, database rights and design rights, in each case, other than Software, whether or not registered, and all registrations and applications for registration of any of the foregoing, and all rights in and to any of the foregoing provided by international treaties or conventions, (v) confidential and proprietary information, including trade secrets, invention disclosures, processes and know-how, in each case, other than Software, and (vi) intellectual property rights arising from or in respect of any Technology.

“Investment Agreements” means the Cornerstone Investment Agreement, Fairholme Investment Agreement and Pershing Investment Agreement.

“IP Application” means any application for the registration, issuance or perfection of any intellectual property rights, including patent applications, copyright applications and trademark applications.

“IRS” means the United States Internal Revenue Service.

“Law” means any national, supranational, federal, state, provincial, local or similar law (including common law), statute, code, order, ordinance, rule, regulation, treaty (including any income tax treaty), license, permit, authorization, approval, consent, decree, injunction, binding judicial or administrative interpretation or other requirement, in each case, enacted, promulgated, issued or entered by a Governmental Authority.

“Liabilities” means any and all debts, guarantees, liabilities, costs, expenses, interest and obligations, whether accrued or fixed, absolute or contingent, matured or unmatured, reserved or unreserved, or determined or determinable (now or in the future), including those arising under any Law, claim (including any third Person product liability claim), demand, Action, whether asserted or unasserted, or order, writ, judgment, injunction, decree, stipulation, determination or award entered by or with any Governmental Authority and those arising under any Contract, agreement, obligation, indenture, instrument, lease, promise, arrangement, release, warranty, commitment or undertaking, or any fines, damages or equitable relief that is imposed, in each case, including all costs and expenses relating thereto.

“Order” means the order of the Bankruptcy Court approving the Distribution.

“Pershing Investment Agreement” means the Amended and Restated Stock Purchase Agreement, effective as of March 31, 2010, by and between GGP and Pershing Square Capital Management, L.P. on behalf of Pershing Square, L.P., Pershing Square II, L.P., Pershing

Square International, Ltd. and Pershing Square International V, Ltd., as it may be further amended.

“Person” means any individual, corporation, partnership, firm, joint venture, association, joint-stock company, trust, unincorporated organization, limited liability company, Governmental Authority or other entity.

“Plan Effective Date” means the date on which distributions to holders of claims and equity interests commences pursuant to the Plan, or such other time as determined by GGP in accordance with Section 3.3.

“Pre-GGP Insurance Policies” means third-party insurance policies held by GGP or its Subsidiaries that are in effect immediately after the Effective Time that satisfy each of the following conditions: (i) such insurance policy was acquired directly or indirectly by GGP as a result of GGP's acquisition of the holder of such insurance policy, and (ii) at the time of such acquisition, the business of the holder of such insurance policy related to some or all of the businesses comprising the Spinco Business.

“Real Estate Agreements” means the Ala Moana Condominium Declaration, the Ala Moana Development Agreement, the Arizona 2 Promissory Note, the Columbia Development Agreement and the Fashion Show Core Principles.

“Record Date” means [• ], 2010.

“Registration Rights Agreement” means the Registration Rights Agreement in substantially the form attached hereto as Exhibit H, to be entered into by and between certain purchasers to be named therein and Spinco, as of the Effective Time.

“Restructuring” means the transfer of the Spinco Assets to Spinco and its Subsidiaries and the assumption of the Spinco Liabilities by Spinco and its Subsidiaries, and the transfer of certain Excluded Assets to GGP and its Subsidiaries and the assumption by GGP and its Subsidiaries of certain Excluded Liabilities, all as more fully described in this Agreement and the other Transaction Documents and including the steps set forth in the Spinoff Plan and the Plan.

“SEC” means the United States Securities and Exchange Commission.

“Securities Act” means the United States Securities Act of 1933, as amended, and the rules and regulations of the SEC thereunder, all as the same shall be in effect at the time that reference is made.

“Security Interest” means any mortgage, security interest, pledge, lien, charge, claim, option, right to acquire, voting or other restriction, right-of-way, covenant, condition, easement, encroachment, restriction on transfer, or other encumbrance of any other nature.

“Software” means any and all (i) computer programs, including any and all software implementation of algorithms, models and methodologies, whether in source code, object code, human readable form or other form, (ii) databases and compilations, including any

and all data and collections of data, whether machine readable or otherwise, (iii) descriptions, flow charts and other work products used to design, plan, organize and develop any of the foregoing, screens, user interfaces, report formats, firmware, development tools, templates, menus, buttons and icons, and (iv) documentation, including user manuals and other training documentation, relating to any of the foregoing.

“Spinco Balance Sheet” means Spinco’s unaudited pro forma condensed combined balance sheet in Item 2 of the Form 10.

“Spinco Business” means the management, operation and development of the properties and assets described in Item 1 of the Form 10, as conducted by any member of the Spinco Group immediately prior to the Effective Time.

“Spinco Contracts” means the following Contracts, to the extent in effect immediately prior to the Effective Time:

(a) any Contracts to which one or more members of the Spinco Group is a party; provided that no members of the GGP Group are also party to such Contracts;

(b) any Contracts that relate exclusively to the Spinco Business; and

(c) any Contract that is otherwise expressly contemplated pursuant to this Agreement or any of the other Transaction Documents to be assigned to Spinco or any member of the Spinco Group.

“Spinco Disclosure Documents” means any registration statement (including the Form 10) filed with the SEC in the name of any member of the Spinco Group as registrant, and any prospectus, offering memorandum, offering circular or similar disclosure document, whether or not filed with the SEC or any other Governmental Authority, that is prepared in connection with any such registration statement.

“Spinco Employees” means all Business Employees (as defined in the Employee Matters Agreement) and all Leased Employees (as defined in the Employee Leasing Agreement).

“Spinco Group” means Spinco and each of its direct and indirect Subsidiaries immediately following implementation of the Spinoff Plan.

“Stockholders Agreements” means the letters substantially in the forms attached hereto as Exhibits I-1 – I-3, to be entered into by and between Spinco and each of REP Investments LLC (and/or its affiliates), The Fairholme Fund (and/or its affiliates) and Pershing Square Capital Management, L.P. (and/or its affiliates) on or prior to the Plan Effective Date.

“Subleases” means the subleases substantially in the forms attached hereto as Exhibits J-1 – J-3, to be entered into by and between GGP (and/or a Subsidiary thereof) and Spinco (and/or a Subsidiary thereof) on or prior to the Plan Effective Date.

“Subsidiary” or “subsidiary” means, with respect to any Person, any corporation, limited liability company, joint venture or partnership of which such Person (i) beneficially

owns, either directly or indirectly, more than fifty percent (50%) of (A) the total combined voting power of all classes of voting securities of such Person, (B) the total combined equity interests or (C) the capital or profit interests, in the case of a partnership, or (ii) otherwise has the power to vote, either directly or indirectly, sufficient securities, or the contractual right, to elect a majority of the board of directors or similar governing body or the managing partner or managing member.

“Surety Bond Indemnity Agreement” means the Surety Bond Indemnity Agreement, in substantially the form attached hereto as Exhibit K, to be entered into by and between GGP and Spinco on or prior to the Plan Effective Date.

“Tax” has the meaning set forth in the Tax Matters Agreement.

“Tax Attributes” has the meaning set forth in the Tax Matters Agreement.

“Tax Matters Agreement” means the Tax Matters Agreement, in substantially the form attached hereto as Exhibit L, to be entered into by and between GGP and Spinco on or prior to the Plan Effective Date.

“Technology” means all technology, designs, formulae, algorithms, procedures, methods, discoveries, processes, techniques, ideas, know-how, research and development, technical data, tools, materials, specifications, processes, inventions (whether patentable or unpatentable and whether or not reduced to practice) apparatus, creations, improvements, works of authorship in any media, confidential, proprietary or non-public information, and other similar materials, and all recordings, graphs, drawings, reports, analyses and other writings, and other tangible embodiments of the foregoing in any form whether or not listed herein, in each case, other than Software.

“Transaction Documents” means this Agreement, the Ancillary Documents, the Registration Rights Agreement, the Warrant and Registration Rights Agreement and the Stockholders Agreements.

“Transactions” means, collectively, (i) the Restructuring, (ii) the Distribution, and (iii) all other transactions contemplated by this Agreement or any other Transaction Document.

“Transition Services Agreement” means the Transition Services Agreement in substantially the form attached hereto as Exhibit M, to be entered into by and between GGP and Spinco, and/or any of their respective Subsidiaries, on or prior to the Plan Effective Date.

“Warrant and Registration Rights Agreement” means the Warrant and Registration Rights Agreement in substantially the form attached hereto as Exhibit N, to be entered into by and between Spinco and Mellon Investor Services LLC, as of the Effective Time.

1.2 Other Terms. For purposes of this Agreement, the following terms have the meanings set forth in the sections indicated.



<b><u>Term</u></b>	<b><u>Section</u></b>
Agreement	Preamble
Amended and Restated Bylaws	3.1(c)
Amended and Restated Certificate of Incorporation	3.1(c)
Assumed Actions	6.5(a)
Bankruptcy Cases	Recitals
Bankruptcy Closing	7.1(a)
Bankruptcy Court	Recitals
CPR	7.3(a)
CPR Arbitration Rules	7.3(a)
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## ARTICLE II

### THE RESTRUCTURING

#### 2.1 Transfer of Assets; Assumption of Liabilities.

(a) Prior to the Distribution, in accordance with the plan and structure set forth on Schedule 2.1(a) (such plan and structure being referred to herein as the “Spinoff Plan”) and to the extent not previously effected pursuant to the steps of the Spinoff Plan that have been completed prior to the date hereof:

(i) GGP shall, and shall cause its applicable Subsidiaries to, assign, transfer, convey and deliver to Spinco or certain of Spinco’s Subsidiaries designated by Spinco, and Spinco or such Subsidiaries shall accept from GGP and its applicable Subsidiaries, all of GGP’s and such Subsidiaries’ respective direct or indirect right, title and interest in and to all Spinco Assets existing immediately prior to the Distribution in accordance with Schedule 2.1(a);

(ii) Spinco and certain of its Subsidiaries designated by Spinco shall accept, assume and agree faithfully to perform, discharge and fulfill all the Spinco Liabilities in accordance with their respective terms. Spinco and such Subsidiaries shall be responsible for all Spinco Liabilities, regardless of when or where such Spinco Liabilities arose or arise, or whether the facts on which they are based occurred prior to or subsequent to the Plan Effective Date, regardless of where or against whom such Spinco Liabilities are asserted or determined (including any Spinco Liabilities arising out of claims made by GGP’s or Spinco’s respective directors, officers, employees, agents or Subsidiaries against any member of the GGP Group or the Spinco Group) or whether asserted or determined prior to the date hereof, and, except as set forth in Section 2.3(b)(iii), regardless of whether arising from or alleged to arise from negligence, recklessness, violation of Law, fraud or misrepresentation by any member of the GGP Group or the Spinco Group, or any of their respective directors, officers, employees, agents or Subsidiaries;

(iii) GGP shall cause its applicable Subsidiaries to assign, transfer, convey and deliver to certain of its other Subsidiaries designated by GGP, and such other Subsidiaries shall accept from such applicable Subsidiaries, such applicable Subsidiaries’ respective right, title and interest in and to any Excluded Assets specified by GGP to be so assigned, transferred, conveyed and delivered, all as more fully set forth in the Spinoff Plan; and

(iv) GGP shall and shall cause GGP LP, as a Subsidiary of GGP, to accept and assume as designated by GGP, and agree faithfully to perform, discharge and fulfill certain Excluded Liabilities specified by GGP, and GGP and such Subsidiary shall be responsible for all Excluded Liabilities, regardless of when or where such Excluded Liabilities arose or arise, or whether the facts on which they are based occurred prior to or subsequent to the Plan Effective Date, regardless of where or against whom such Excluded Liabilities are

asserted or determined (including any such Excluded Liabilities arising out of claims made by GGP's or Spinco's respective directors, officers, employees, agents, Subsidiaries or Subsidiaries against any member of the GGP Group or the Spinco Group) or whether asserted or determined prior to the date hereof, and regardless of whether arising from or alleged to arise from negligence, recklessness, violation of Law, fraud or misrepresentation by any member of the GGP Group or the Spinco Group, or any of their respective directors, officers, employees, agents or Subsidiaries.

(b) In furtherance of the assignment, transfer, conveyance and delivery of the Assets and the assumption of the Liabilities in accordance with Section 2.1(a), on the date that such Assets are assigned, transferred, conveyed or delivered or such Liabilities are assumed (i) GGP and Spinco, as applicable, shall execute and deliver, and shall cause their respective Subsidiaries to execute and deliver, such bills of sale, quitclaim deeds, stock powers, certificates of title, assignments of partnership interests, assignments of Contracts and other instruments of transfer, conveyance and assignment as and to the extent reasonably necessary to evidence the transfer, conveyance and assignment of all right, title and interest in and to such Assets to the applicable transferee thereof provided in the Spinoff Plan, and (ii) GGP and Spinco shall execute and deliver, and shall cause their respective Subsidiaries to execute and deliver, such assumptions of Contracts and other instruments of assumption as and to the extent necessary to evidence the valid and effective assumption of such Liabilities by the applicable assignee thereof provided in the Spinoff Plan. All of the foregoing documents contemplated by this Section 2.1(b) shall be referred to collectively herein as the "Transfer Documents."

(c) Spinco hereby waives compliance by each and every member of the GGP Group with the requirements and provisions of any "bulk-sale" or "bulk-transfer" Laws of any jurisdiction that may otherwise be applicable with respect to the transfer or sale of any or all of the Spinco Assets to any member of the Spinco Group.

(d) GGP hereby waives compliance by each and every member of the Spinco Group with the requirements and provisions of any "bulk-sale" or "bulk-transfer" Laws of any jurisdiction that may otherwise be applicable with respect to the transfer or sale of any or all of the Excluded Assets to any member of the GGP Group.

## 2.2 Spinco Assets.

(a) For purposes of this Agreement, "Spinco Assets" shall mean (without duplication) the following Assets (except to the extent they constitute Excluded Assets):

(i) all Assets owned by any member of the Spinco Group immediately prior to the Effective Time, wherever such Assets may be located;

(ii) any cash and cash equivalents in the Spinco Accounts as of the Effective Time, subject to Section 2.8(g);

(iii) any cash proceeds received directly or indirectly by GGP in respect of any sales of real property in the Summerlin master planned community in Clark County, Nevada to the extent such sales are closed by GGP or any of its then current Subsidiaries during

the period beginning on September 7, 2010 and ending immediately prior to the Effective Time (net of any out-of-pocket costs, fees and expenses incurred in connection therewith);

(iv) all Spinco Contracts;

(v) subject to Section 6.3, any rights or claims of any member of the Spinco Group under any of the Insurance Policies, including any rights or claims thereunder arising after the Effective Time in respect of any Insurance Policies;

(vi) any and all Assets reflected as Assets of Spinco and its Subsidiaries in the Spinco Balance Sheet, subject to any dispositions of such Assets subsequent to the date of the Spinco Balance Sheet;

(vii) any and all other Assets that are expressly provided by this Agreement, the Plan, the Spinoff Plan or any other Transaction Document as Assets to be transferred to Spinco or any other member of the Spinco Group; and

(viii) any and all Assets, other than Intellectual Property, Software and Technology, owned or held immediately prior to the Effective Time by GGP or any of its Subsidiaries that are used exclusively in the Spinco Business (the intention of this clause (viii) is only to rectify any inadvertent omission of transfer or conveyance of any Assets that, had the parties given specific consideration to such Asset as of the date hereof, would have otherwise been classified as a Spinco Asset; no Asset shall be deemed to be a Spinco Asset solely as a result of this clause (viii) if such Asset is within the category or type of Asset expressly covered by the terms of another Transaction Document unless the party claiming entitlement to such Asset can establish that the omission of the transfer or conveyance of such Asset was inadvertent, and no Asset shall be deemed a Spinco Asset solely as a result of this clause (viii) unless a claim with respect thereto is made by Spinco on or prior to the second (2nd) anniversary of the Plan Effective Date).

(b) For the purposes of this Agreement, “Excluded Assets” shall mean (without duplication):

(i) the GGP Intellectual Property, GGP Software and the GGP Technology;

(ii) any cash and cash equivalents (other than cash and cash equivalents specified in Section 2.2(a)(ii) and Section 2.2(a)(iii));

(iii) any and all Assets that are expressly contemplated by this Agreement, the Plan, the Spinoff Plan or any other Transaction Document as Assets to be retained by GGP or any other member of the GGP Group;

(iv) any and all other Assets owned by any member of the GGP Group immediately prior to the Effective Time, wherever such Assets may be located (other than Spinco Assets); and

(v) any and all Assets owned or held immediately prior to the Effective Time by GGP or any of its Subsidiaries that are not used exclusively in the Spinco Business (the intention of this clause (v) is only to rectify any inadvertent transfer or conveyance of any Assets that, had the parties given specific consideration to such Asset as of the date hereof, would have otherwise been classified as an Excluded Asset; no Asset shall be deemed to be an Excluded Asset solely as a result of this clause (v) if such Asset is within the category or type of Asset expressly covered by the terms of another Transaction Document unless the party claiming entitlement to such Asset can establish that the transfer or conveyance of such Asset was inadvertent, and no Asset shall be deemed an Excluded Asset solely as a result of this clause (v) unless a claim with respect thereto is made by GGP on or prior to the second (2nd) anniversary of the Plan Effective Date).

### 2.3 Spinco Liabilities.

(a) For the purposes of this Agreement, “Spinco Liabilities” shall mean (without duplication) the following Liabilities (except to the extent they constitute Excluded Liabilities):

(i) any and all Liabilities of any member of the Spinco Group;

(ii) all Liabilities reflected as liabilities or obligations of Spinco or its Subsidiaries in the Spinco Balance Sheet, subject to any discharge of such Liabilities subsequent to the date of the Spinco Balance Sheet;

(iii) all other Liabilities that are expressly provided by this Agreement, the Plan, the Spinoff Plan or any other Transaction Document as Liabilities to be assumed by Spinco or any other member of the Spinco Group and all agreements or obligations of any member of the Spinco Group under this Agreement or any of the other Transaction Documents;

(iv) except as expressly provided in the Plan or this Agreement, all Liabilities to the extent relating to, arising out of or resulting from:

(A) the operation of the Spinco Business, as conducted at any time before, at or after the Effective Time (including any Liability relating to, arising out of or resulting from any act or omission by any director, officer, employee, agent or representative (whether or not such act or failure to act is or was within such Person’s authority));

(B) the operation of any business conducted by any member of the Spinco Group at any time before, at or after the Effective Time (including any Liability relating to, arising out of or resulting from any act or failure to act by any director, officer, employee, agent or representative (whether or not such act or failure to act is or was within such Person’s authority));

(C) any Spinco Assets (including any Liability relating to, arising out of or resulting from any Spinco Contracts); and

(D) any Liability relating to the protection or restoration of, or prevention of harm to, the environment or natural resources, the protection of human and

occupational health and safety, or otherwise arising under Environmental Laws or relating to Hazardous Materials arising out of (i) the operation of the Spinco Business, as conducted at any time before, at or after, the Effective Time, (ii) any of the Spinco Assets, including any other businesses, operations or properties associated with the Spinco Assets (including any businesses, operations or properties for which a current or future owner or operator of the Spinco Assets or the Spinco Business may be alleged to be responsible as a matter of Law, contract or otherwise due to such ownership or operation of the Spinco Assets or Spinco Business), in any such case, whether arising before, at or after the Effective Time or (iii) the operation of any business conducted by any member of the Spinco Group at any time before, at or after the Effective Time; and

(v) all Liabilities arising out of any claim made by any Spinco Employee arising in the course of such employee's employment against any member of the GGP Group or the Spinco Group, regardless of whether such claim arises prior to or after the Effective Time.

(b) For the purposes of this Agreement, "Excluded Liabilities" shall mean (without duplication):

(i) any and all Liabilities that are expressly contemplated by this Agreement, the Plan, the Spinoff Plan or any other Transaction Document as Liabilities to be retained or assumed by GGP or any other member of the GGP Group, and all agreements and obligations of any member of the GGP Group under this Agreement or any of the other Transaction Documents;

(ii) any and all Liabilities of a member of the GGP Group to the extent relating to, arising out of or resulting from any Excluded Assets;

(iii) any and all liabilities arising from a knowing violation of Law, intentional fraud or intentional misrepresentation by any member of the GGP Group or any of their respective directors, officers, employees or agents (other than any individual who at the time of such act was acting in his or her capacity as a director, officer, employee or agent of any member of the Spinco Group or on behalf of the Spinco Business);

(iv) all Liabilities arising out of any claim made by any employee of any member of the GGP Group other than a Spinco Employee arising in the course of such employee's employment against any member of the GGP Group or the Spinco Group, regardless of whether such claim arises prior to or after the Effective Time; and

(v) any and all Liabilities of any members of the GGP Group that are not Spinco Liabilities.

#### 2.4 Approvals and Notifications of Spinco Assets and Liabilities.

(a) If and to the extent that the valid, complete and perfected transfer or assignment to the Spinco Group of any Spinco Assets or assumption by the Spinco Group of any Spinco Liabilities would be a violation of applicable Law or require any Approvals or Notifications in connection with the Restructuring, or the Distribution, that has not been obtained

or made by the Effective Time then, unless the parties hereto mutually shall otherwise determine, the transfer or assignment to the Spinco Group of such Spinco Assets or the assumption by the Spinco Group of such Spinco Liabilities, as the case may be, shall be automatically deemed deferred and any such purported transfer, assignment or assumption shall be null and void until such time as all legal impediments are removed or such Approvals or Notifications have been obtained or made in accordance with this Section 2.4 hereof. Notwithstanding the foregoing, any such Spinco Assets or Spinco Liabilities shall continue to constitute Spinco Assets and Spinco Liabilities for all other purposes of this Agreement.

(b) If any transfer or assignment of any Spinco Asset or any assumption of any Spinco Liabilities intended to be transferred, assigned or assumed hereunder, as the case may be, is not consummated on or prior to the Plan Effective Date, whether as a result of the provisions of Section 2.4(a) or for any other reason, then, insofar as reasonably possible, the member of the GGP Group retaining such Spinco Asset or such Spinco Liability, as the case may be, shall thereafter hold such Spinco Asset or Spinco Liability, as the case may be, for the use and benefit of the member of the Spinco Group entitled thereto (at the expense of the member of the Spinco Group entitled thereto). In addition, the member of the GGP Group retaining such Spinco Asset or such Spinco Liability shall, insofar as reasonably possible and to the extent permitted by applicable Law, treat such Spinco Asset or Spinco Liability in the ordinary course of business in accordance with past practice and take such other actions as may be reasonably requested (pursuant to Section 2.5(b) and otherwise) by the member of the Spinco Group to whom such Spinco Asset is to be transferred or assigned, or which will assume such Spinco Liability, as the case may be, in order to place such member of the Spinco Group in a substantially similar position as if such Spinco Asset or Spinco Liability had been transferred, assigned or assumed as contemplated hereby and so that all the benefits and burdens relating to such Spinco Asset or Spinco Liability, as the case may be, including use, risk of loss, potential for gain, and dominion, control and command over such Spinco Asset or Spinco Liability, as the case may be, is to inure from and after the Effective Time to the Spinco Group.

(c) If and when the Approvals or Notifications, the absence of which caused the deferral of transfer or assignment of any Spinco Asset or the deferral of assumption of any Spinco Liability pursuant to Section 2.4(a), are obtained or made, and, if and when any other legal impediments for the transfer or assignment of any Spinco Asset or the assumption of any Spinco Liability have been removed, the transfer or assignment of the applicable Spinco Asset or the assumption of the applicable Spinco Liability, as the case may be, shall be effected in accordance with the terms of this Agreement and/or the applicable Transaction Document.

(d) The reasonable out-of-pocket costs and expenses associated with any such transfers or assignments of Spinco Assets or assumption of Spinco Liabilities, including reasonable attorneys' fees and all recording or similar fees, shall be borne by GGP until the six month anniversary of the date of the Distribution, and thereafter by Spinco.<sup>1</sup>

## 2.5 Transfer of Non-Transferred Assets; Assumption of Non-Transferred Liabilities.

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<sup>1</sup> Pursuant to an amendment to the Cornerstone Investment Agreement, a reserve amount of \$1 million will be added to the GGO Note Amount (as defined in the Cornerstone Investment Agreement), and on the six month anniversary of the date of the Distribution the GGO Note Amount will be reduced to the extent such costs and expenses are less than \$1 million (and further reduced for accrued interest thereon).

(a) If at any time or from time to time following the Effective Time, any party hereto (or any member of such party's respective Group), shall receive or otherwise possess any Asset or Liability (including any Intellectual Property or Technology) that is allocated to any other Person pursuant to this Agreement or any other Transaction Document, such Person (or any member of such party's respective Group, the "Transferor Party") shall promptly transfer, or cause to be transferred, such Asset (each, a "Non-Transferred Asset") or Liability (each, a "Non-Transferred Liability"), as the case may be, to the Person (or any member of such party's respective Group, the "Transferee Party") entitled to such Non-Transferred Asset or responsible for such Non-Transferred Liability, as the case may be, and the Transferee Party entitled to such Non-Transferred Asset or responsible for such Non-Transferred Liability shall accept such Non-Transferred Asset or accept, assume and agree faithfully to perform, discharge such Non-Transferred Liability, as applicable.

(b) In furtherance of the assignment, transfer, conveyance and delivery of Non-Transferred Assets and the assumption of Non-Transferred Liabilities set forth in this Section 2.5, (i) the Transferor Party shall execute and deliver such bills of sale, quitclaim deeds, stock powers, certificates of title, assignments of contract and other instruments of transfer, conveyance and assignment as and to the extent necessary to evidence the transfer, conveyance and assignment of all of the Transferee Party's right, title and interest in and to the Non-Transferred Assets, and (ii) the Transferee Party shall execute and deliver such assumptions of contract and other instruments of assumption as and to the extent necessary to evidence the valid and effective assumption of the Non-Transferred Liabilities.

(c) To the extent that the transfer or assignment of any Non-Transferred Assets or the assumption of any Non-Transferred Liabilities requires any Approvals or Notifications, the parties shall use their commercially reasonable efforts to obtain or make such Approvals or Notifications as soon as reasonably practicable; provided, however, that, except to the extent expressly provided in any of the other Transaction Documents, no member of the GGP Group or Spinco Group shall be obligated to contribute capital or pay any consideration in any form (including providing any letter of credit, guaranty or other financial accommodation) to any Person in order to obtain or make such Approvals or Notifications.

(d) If and to the extent that the valid, complete and perfected transfer or assignment to the Transferee Party of any Non-Transferred Assets or the assumption by the Transferee Party of any Non-Transferred Liabilities would be a violation of applicable Law or require any material Approval or Notification that has not been made or obtained on or before the Plan Effective Date, then, unless the parties hereto mutually shall otherwise determine, the transfer or assignment to the Transferee Party of such Non-Transferred Assets or the assumption by the Transferee Party of such Non-Transferred Liabilities shall be automatically deemed deferred and any such purported transfer, assignment or assumption shall be null and void until such time as all legal impediments are removed or such Approvals or Notifications have been obtained or made. Notwithstanding the foregoing, any such Non-Transferred Assets that are Excluded Assets or Non-Transferred Liabilities that are Excluded Liabilities shall continue to constitute Excluded Assets or Excluded Liabilities for all other purposes of this Agreement, and any such Non-Transferred Assets that are Spinco Assets or Non-Transferred Liabilities that are Spinco Liabilities shall continue to constitute Spinco Assets or Spinco Liabilities for all other purposes of this Agreement.



(e) If any transfer or assignment of any Non-Transferred Asset under this Section 2.5, is not consummated on or prior to the Plan Effective Date, whether as a result of the provisions of Section 2.5(d) or for any other reason, then, insofar as reasonably possible, the Transferor Party retaining such Non-Transferred Asset, shall thereafter hold such Non-Transferred Asset for the use and benefit of the Transferee Party entitled thereto (at the expense of the member of the Transferee Party entitled thereto). In addition, the Transferor Party retaining such Non-Transferred Asset shall, insofar as reasonably possible and to the extent permitted by applicable Law, treat such Non-Transferred Asset in the ordinary course of business in accordance with past practice and take such other actions as may be reasonably requested by the Transferee Party to whom such Non-Transferred Asset is to be transferred or assigned, in order to place such Transferee Party in a substantially similar position as if such Non-Transferred Asset had been transferred as contemplated hereby and so that all the benefits and burdens relating to such Non-Transferred Asset, including use, risk of loss, potential for gain, and dominion, control and command over such Non-Transferred Asset, is to inure from and after the Effective Time to the Transferee Party.

(f) If and when the Approvals or Notifications, the absence of which caused the deferral of transfer or assignment of any Non-Transferred Asset or the deferral of assumption of any Non-Transferred Liability, are obtained or made, and, if and when any other legal impediments for the transfer or assignment of any Non-Transferred Assets or the assumption of any Non-Transferred Liabilities have been removed, the transfer or assignment of the applicable Non-Transferred Asset or the assumption of the applicable Non-Transferred Liability, as the case may be, shall be effected in accordance with the terms of this Agreement and/or the applicable Transaction Document.

(g) The reasonable out-of-pocket costs and expenses associated with any such transfers or assignments of Non-Transferred Assets or assumption of Non-Transferred Liabilities, including reasonable attorneys' fees and all recording or similar fees, shall be borne by the party that would have been responsible for such costs and expenses if the transfer, assignment or assumption had occurred at or prior to the Effective Time.

## 2.6 Novation of Liabilities.

(a) Each of GGP and Spinco, at the request of the other, shall use its commercially reasonable efforts to obtain, or to cause to be obtained, as soon as reasonably practicable, any consent, substitution, approval or amendment required to novate or assign all obligations under agreements, leases, licenses and other obligations or Liabilities that constitute Excluded Liabilities or Spinco Liabilities, as applicable, or to obtain in writing the unconditional release of all parties to such arrangements other than any member of the GGP Group or the Spinco Group, as applicable (the "Released Party"), so that, in any such case, the members of the GGP Group or the Spinco Group, as applicable (the "Responsible Party") will be solely responsible for such Liabilities; provided, however, that, except as otherwise expressly provided in any of the other Transaction Documents, neither GGP nor Spinco shall be obligated to contribute any capital or pay any consideration in any form (including providing any letter of credit, guaranty or other financial accommodation) to any third Person from whom any such consent, substitution, approval, amendment or release is requested.

(b) If the Released Party is unable to obtain, or to cause to be obtained, any such required consent, substitution, approval, amendment or release, the Released Party shall continue to be bound by such agreement, lease, license or other obligation or Liability and, unless not permitted by the terms thereof or by Law, the Responsible Party shall, as agent or subcontractor for the Released Party, pay, perform and discharge fully all the obligations or other Liabilities of the Released Party thereunder from and after the Effective Time. The Responsible Party shall indemnify the Released Party and any other members of its respective Group and each of their respective directors, officers and employees, and each of the heirs, executors, successors and assigns of any of the foregoing and hold each of them harmless against any Liabilities arising in connection therewith; provided, that pursuant hereto the Responsible Party shall have no obligation to indemnify any Person that has engaged in any knowing violation of Law, fraud or misrepresentation in connection therewith. The Released Party shall cause each member of its respective Group, without further consideration, to pay and remit, or cause to be paid or remitted, to the Responsible Party or its designee promptly all money, rights and other consideration received by it or any member of its respective Group in respect of the document, agreement, Contract, obligation or Liability that gave rise to such performance (unless any such consideration is an Asset expressly allocated to the Released Party pursuant to this Agreement). If and when any such consent, substitution, approval, amendment or release shall be obtained or the obligations under such agreement, lease, license or other obligations or Liabilities shall otherwise become assignable or able to be novated, the Released Party shall promptly assign, or cause to be assigned, all its obligations and other Liabilities thereunder or any obligations of any member of its respective Group without payment of further consideration and the Responsible Party, without the payment of any further consideration, shall, or shall cause another member of its respective Group to, assume such obligations.

## 2.7 Termination of Agreements and Arrangements.

(a) Except as set forth in Section 2.7(b), in furtherance of the releases and other provisions of Section 5.1, Spinco and each member of the Spinco Group, on the one hand, and GGP and each member of the GGP Group, on the other hand, hereby terminate, effective as of the Effective Time, any and all agreements, arrangements, commitments or understandings, whether or not in writing, solely between or among Spinco and/or any member of the Spinco Group, on the one hand, and GGP and/or any member of the GGP Group, on the other hand, effective as of the Effective Time; provided, however, to the extent that termination of any such agreement, arrangement, commitment or understanding is inconsistent with any other Transaction Document, such termination shall be determined pursuant to the applicable Transaction Document. Notwithstanding the foregoing, the Groups shall settle all intercompany receivables and payables as of the Effective Time, and after the Effective Time neither Group shall owe any further amounts to the other Group in respect of such intercompany receivables and payables. No such terminated agreement, arrangement, commitment or understanding (including any provision thereof which purports to survive termination) shall be of any further force or effect after the Effective Time (or, to the extent contemplated by the proviso to the immediately preceding sentence, after the effective date of the applicable Transaction Document). Each party shall, at the reasonable request of any other party, take, or cause to be taken, such other actions as may be necessary to effect the foregoing.

(b) The provisions of Section 2.7(a) shall not apply to any of the following agreements, arrangements, commitments or understandings (or to any of the provisions thereof):

(i) this Agreement and the other Transaction Documents (and each other agreement or instrument expressly contemplated by this Agreement or any other Transaction Document to be entered into or continued by any of the parties hereto or any of the members of their respective Groups);

(ii) any agreements, arrangements, commitments or understandings to which any Person other than the parties hereto and their respective wholly-owned Subsidiaries is a party (it being understood that (A) directors' qualifying shares, preferred or similar interests or shares issued by entities issuing such shares to satisfy REIT qualification requirements or the Code, will be disregarded for purposes of determining whether a Subsidiary is wholly owned and (B) to the extent that the rights and obligations of the parties and the members of their respective Groups under any such agreements, arrangements, commitments or understandings constitute Spinco Assets or Spinco Liabilities, they shall be assigned pursuant to Section 2.1); and

(iii) any other agreements, arrangements, commitments or understandings that this Agreement, the Plan, the Spinoff Plan or any other Transaction Document expressly contemplates will survive the Plan Effective Date.

## 2.8 Bank Accounts; Cash Balances.

Except as may be set forth in the Transition Services Agreement:

(a) GGP and Spinco each agrees to take, or cause the respective members of their respective Groups to take, to be effective at the Effective Time (or such earlier time as GGP and Spinco may agree), all actions necessary to amend all Spinco Contracts governing each bank and brokerage account owned by Spinco or any other member of the Spinco Group (collectively, the “Spinco Accounts”), so that such Spinco Accounts, if currently linked (whether by automatic withdrawal, automatic deposit or any other authorization to transfer funds from or to, hereinafter “linked”) to any bank or brokerage account owned by GGP or any other member of the GGP Group (collectively, the “GGP Accounts”), are de-linked from the GGP Accounts effective on the Effective Date.

(b) GGP and Spinco each agrees to take, or cause the respective members of their respective Groups to take, to be effective at the Effective Time (or such earlier time as GGP and Spinco may agree), all actions necessary to amend all Spinco Contracts governing the GGP Accounts so that such GGP Accounts, if currently linked to a Spinco Account, are de-linked from the Spinco Accounts.

(c) It is intended that, following consummation of the actions contemplated by Sections 2.8(a) and 2.8(b), there will continue to be in place a centralized cash management process pursuant to which the Spinco Accounts will be managed centrally and funds collected will be transferred into one (1) or more centralized accounts maintained by Spinco.

(d) It is intended that, following consummation of the actions contemplated by Sections 2.8(a) and 2.8(b), there will continue to be in place a centralized cash management process pursuant to which the GGP Accounts will be managed centrally and funds collected will be transferred into one (1) or more centralized accounts maintained by GGP.

(e) With respect to any outstanding checks issued by GGP, Spinco, or any of their respective Subsidiaries prior to the Effective Time, such outstanding checks shall be honored following the Effective Time by the Person or Group owning the account on which the check is drawn with prompt reimbursement from the Person or Group that issued such check, if applicable, in each case subject to the express provisions in the Plan or the Investment Agreements regarding payment of claims.

(f) As between GGP and Spinco (and the members of their respective Groups) all payments and reimbursements received after the Effective Time by either party (or member of its Group) in the ordinary course of business that relate to a business, Asset or Liability of the other party (or member of its Group), shall be held by such party in trust for the use and benefit of the party entitled thereto and, promptly upon receipt by such party of any such payment or reimbursement, such party shall pay over, or shall cause the applicable member of its Group to pay over to the other party the amount of such payment or reimbursement without right of set-off.

(g) Each of GGP and Spinco agrees that, prior to the Effective Time, GGP or any other member of the GGP Group may withdraw any and all cash or cash equivalents (other than the cash proceeds specified in Section 2.2(a)(iii)) from the Spinco Accounts for the benefit of GGP or any other member of the GGP Group; provided, however, that neither GGP nor any other member of the GGP Group shall be entitled to withdraw any cash or cash equivalents from any Spinco Account if, and to the extent that, the amount of such cash or cash equivalents is necessary to cover any checks or wires made from or against (or to be made from or against) a Spinco Account as of, or prior to, the Effective Time and which has not been paid or withdrawn as of the Effective Time.

**2.9 Disclaimer of Representations and Warranties.** EACH OF GGP (ON BEHALF OF ITSELF AND EACH MEMBER OF THE GGP GROUP) AND SPINCO (ON BEHALF OF ITSELF AND EACH MEMBER OF THE SPINCO GROUP) UNDERSTANDS AND AGREES THAT, EXCEPT AS EXPRESSLY SET FORTH HEREIN OR IN ANY OTHER TRANSACTION DOCUMENT, NO PARTY TO THIS AGREEMENT, ANY OTHER TRANSACTION DOCUMENT OR ANY OTHER AGREEMENT OR DOCUMENT CONTEMPLATED BY THIS AGREEMENT, OR OTHERWISE, IS REPRESENTING OR WARRANTING TO ANY OTHER PARTY HERETO OR THERETO IN ANY WAY AS TO THE ASSETS, BUSINESSES OR LIABILITIES TRANSFERRED OR ASSUMED AS CONTEMPLATED HEREBY OR THEREBY, AS TO ANY APPROVALS OR NOTIFICATIONS REQUIRED IN CONNECTION HERewith OR THEREWITH, AS TO THE VALUE OR FREEDOM FROM ANY SECURITY INTERESTS OF, OR ANY OTHER MATTER CONCERNING, ANY ASSETS OF SUCH PARTY, OR AS TO THE ABSENCE OF ANY DEFENSES OR RIGHT OF SETOFF OR FREEDOM FROM COUNTERCLAIM WITH RESPECT TO ANY ACTION OR OTHER ASSET, INCLUDING ANY ACCOUNTS RECEIVABLE, OF ANY PARTY, OR AS TO THE LEGAL SUFFICIENCY OF ANY

ASSIGNMENT, DOCUMENT, CERTIFICATE OR INSTRUMENT DELIVERED HEREUNDER TO CONVEY TITLE TO ANY ASSET OR THING OF VALUE UPON THE EXECUTION, DELIVERY AND FILING HEREOF OR THEREOF. EXCEPT AS MAY EXPRESSLY BE SET FORTH IN THIS AGREEMENT OR IN ANY TRANSACTION DOCUMENT, ALL SUCH ASSETS ARE BEING TRANSFERRED ON AN “AS IS,” “WHERE IS” BASIS (AND, IN THE CASE OF ANY REAL PROPERTY, BY MEANS OF A QUITCLAIM OR SIMILAR FORM DEED OR CONVEYANCE) AND THE RESPECTIVE TRANSFEREES SHALL BEAR THE ECONOMIC AND LEGAL RISKS THAT (I) ANY CONVEYANCE SHALL PROVE TO BE INSUFFICIENT TO VEST IN THE TRANSFEREE GOOD TITLE, FREE AND CLEAR OF ANY SECURITY INTEREST, AND (II) ANY NECESSARY APPROVALS OR NOTIFICATIONS ARE NOT OBTAINED OR MADE OR THAT ANY REQUIREMENTS OF LAWS OR JUDGMENTS ARE NOT COMPLIED WITH.

### ARTICLE III

#### THE DISTRIBUTION

3.1 Actions on or Prior to the Plan Effective Date. Prior to the Distribution, the following shall occur:

(a) *Listing.* Spinco shall prepare, file and pursue an application to permit listing of the Spinco Common Stock on the New York Stock Exchange.

(b) *Bankruptcy.* The Bankruptcy Court shall have entered an order confirming the Plan and there shall not be a stay or injunction (or similar prohibition) in effect with respect to such order.

(c) *Amended and Restated Certificate of Incorporation and Amended and Restated Bylaws.* (i) GGP and Spinco shall each take all necessary action that may be required to provide for the adoption by Spinco of the Amended and Restated Certificate of Incorporation of Spinco in substantially the form attached to the Plan (the “Amended and Restated Certificate of Incorporation”), and the Amended and Restated Bylaws of Spinco in substantially the form attached to the Plan (the “Amended and Restated Bylaws”) and (ii) Spinco shall file the Amended and Restated Certificate of Incorporation of Spinco with the Secretary of State of the State of Delaware.

(d) *The Distribution Agent.* GGP shall enter into a distribution agent agreement with the Distribution Agent or otherwise provide instructions to the Distribution Agent regarding the Distribution.

(e) *Stock-Based Employee Benefit Plans.* At or prior to the Effective Time, GGP and Spinco shall take all actions as may be necessary to approve the stock-based employee benefit plans of Spinco in order to satisfy the requirements of Rule 16b-3 under the Exchange Act and the applicable rules and regulations of the New York Stock Exchange.

3.2 Conditions Precedent to Distribution. In no event shall the Distribution occur unless each of the following conditions shall have been satisfied (or waived by GGP, in whole or in part, in its sole discretion):

- (a) the Restructuring shall have been completed in accordance with the Plan;
- (b) the Plan Effective Date shall have occurred;
- (c) the Private Letter Ruling shall have been received and shall not have been revoked or modified in any material respect;
- (d) the Form 10 filed with the SEC shall have been declared effective by the SEC, no stop order suspending the effectiveness of the Form 10 shall be in effect, no proceedings for such purpose shall be pending before or threatened by the SEC;
- (e) the Spinco Common Stock to be delivered in the Distribution shall have been approved for listing on the New York Stock Exchange, subject to official notice of issuance;
- (f) each of the other Transaction Documents shall have been duly executed and delivered by the parties thereto;
- (g) no order, injunction or decree issued by any court of competent jurisdiction or other legal restraint or prohibition preventing consummation of the Distribution or any of the transactions related thereto, including the Restructuring, shall be in effect;
- (h) prior to the Distribution, all of GGP's representatives or designees shall have resigned or been removed as officers from all members of the Spinco Group, and all of Spinco's representatives or designees shall have resigned or been removed as officers from all members of the GGP Group;
- (i) the designees of REP Investments LLC (or its affiliates) and Pershing Square Capital Management, L.P. (or its affiliates), as set forth in the Cornerstone Investment Agreement and the Pershing Investment Agreement, shall have been appointed to the to the board of directors of Spinco; and
- (j) no event or development shall have occurred or exist that, in the judgment of the board of directors of GGP, in its sole discretion, makes it inadvisable to effect the Restructuring, the Distribution or the other transactions contemplated hereby.

Each of the foregoing conditions is for the sole benefit of GGP and shall not give rise to or create any duty on the part of GGP or its board of directors to waive or not to waive any such condition or to effect the Restructuring and the Distribution, or in any way limit GGP's rights of termination set forth in this Agreement. Any determination made by GGP prior to the Distribution concerning the satisfaction or waiver of any or all of the conditions set forth in this Section 3.2 shall be conclusive and binding on the parties.

### 3.3 The Distribution.

- (a) Subject to the terms and conditions set forth in this Agreement and the Plan, (i) on or prior to the Plan Effective Date, GGP shall deliver to the Distribution Agent for the benefit of holders of record of GGP Common Shares on the Record Date, book-entry transfer

authorizations for such number of the issued and outstanding shares of Spinco Common Stock necessary to effect the Distribution, (ii) the Distribution shall be effective at the Effective Time and (iii) GGP shall instruct the Distribution Agent to distribute, on or as soon as practicable after the Effective Time, to each holder of record of GGP Common Shares as of the Record Date, by means of a pro rata distribution, 0.0983 shares of Spinco Common Stock for every one (1) GGP Common Share; provided, however, that no fractional shares shall be issued. Following the Plan Effective Date, Spinco agrees to provide all book-entry transfer authorizations for shares of Spinco Common Stock that GGP or the Distribution Agent shall require (after giving effect to Section 3.4) in order to effect the Distribution.

(b) Notwithstanding anything to the contrary contained in this Agreement, GGP shall, in its sole and absolute discretion, determine the Plan Effective Date and all terms of the Distribution, including the form, structure and terms of any transactions and/or offerings to effect the Distribution and the timing of and conditions to the consummation thereof. In addition, GGP may at any time and from time to time until the completion of the Distribution decide to abandon the Distribution or modify or change the terms of the Distribution, including by accelerating or delaying the timing of the consummation of all or part of the Distribution.

(c) The parties agree that this Agreement constitutes a “plan of reorganization” within the meaning of Treasury Regulation Section 1.368-2(g).

(d) The parties agree that the steps of the Spinoff Plan shall be effected in the order and manner prescribed in the Spinoff Plan and the occurrence of each step shall be conditioned upon the completion of the preceding step.

3.4 GGP Authorization of Agreement. GGP has all requisite power, authority and legal capacity to execute and deliver this Agreement and each other Transaction Document to be executed by GGP in connection with the consummation of Distribution, and to consummate the transactions contemplated hereby and thereby. The execution, delivery and performance of this Agreement and each of the Transaction Documents, and the consummation of the transactions contemplated hereby and thereby, have been duly authorized and approved by all required action on the part of GGP. This Agreement has been, and each of the Transaction Documents will be at or prior to the Closing, duly and validly executed and delivered by GGP and (assuming due authorization, execution and delivery by Spinco) this Agreement constitutes, and each of the Transaction Documents when so executed and delivered will constitute, legal, valid and binding obligations of GGP, enforceable against GGP in accordance with its terms.

## ARTICLE IV

### ACCESS TO INFORMATION

#### 4.1 Agreement for Exchange of Information; Archives.

(a) After the Effective Time (or such earlier time as the parties may agree) and until the fifth (5th) anniversary of the date of this Agreement, each of GGP and Spinco, on behalf of its respective Group, agrees to provide, or cause to be provided, to the other Group, as soon as reasonably practicable after written request therefor, any Information in the possession or

under the control of such respective Group which the requesting party reasonably needs (i) to comply with reporting, disclosure, filing or other requirements imposed on the requesting party (including under applicable securities Laws) by a Governmental Authority having jurisdiction over the requesting party, (ii) to carry out its human resources functions or to establish, assume or administer its benefit plans or payroll functions, (iii) in order to satisfy audit, accounting or other similar requirements (except as otherwise provided in Section 4.1(d)), or (iv) to comply with its obligations under this Agreement or any other Transaction Document; provided, however, that in the event that any party determines that any such provision of Information could be commercially detrimental, violate any Law or agreement, or waive any attorney-client privilege, the parties shall take all reasonable measures to permit the compliance with such obligations in a manner that avoids any such harm or consequence.

(b) After the Effective Time (or such earlier time as the parties may agree) and until the fifth (5th) anniversary of the date of this Agreement, (i) Spinco and its authorized accountants, counsel and other designated representatives shall have access during regular business hours (as in effect from time to time) to the documents and objects of historic significance that relate to the Spinco Business that are located in archives retained or maintained by any member of the GGP Group, and (ii) Spinco may obtain copies (but not originals unless it is a Spinco Asset) of documents for bona fide business purposes and may obtain objects for exhibition purposes for commercially reasonable periods of time if required for such bona fide business purposes; provided, that Spinco shall cause any such objects to be returned promptly in the same condition in which they were delivered to Spinco and Spinco shall comply with any rules, procedures or other requirements, and shall be subject to any restrictions (including prohibitions on removal of specified objects), that are then applicable to GGP; provided, further, that, notwithstanding any provisions of this Section 4.1(b), any request for Information or access to Representatives in connection with any Third Party Claims shall be subject to Section 4.7. Nothing herein shall be deemed to restrict the access of any member of the GGP Group to any such documents or objects or to impose any liability on any member of the GGP Group if any such documents or objects are not maintained or preserved by GGP.

(c) After the Effective Time (or such earlier time as the parties may agree) and until the fifth (5th) anniversary of the date of this Agreement, (i) GGP and its authorized accountants, counsel and other designated representatives shall have access during regular business hours (as in effect from time to time) to the documents and objects of historic significance that relate to the GGP Business that are located in archives retained or maintained by any member of the Spinco Group and (ii) GGP may obtain copies (but not originals unless it is not a Spinco Asset) of documents for bona fide business purposes and may obtain objects for exhibition purposes for commercially reasonable periods of time if required for such bona fide business purposes; provided, that GGP shall cause any such objects to be returned promptly in the same condition in which they were delivered to GGP and GGP shall comply with any rules, procedures or other requirements, and shall be subject to any restrictions (including prohibitions on removal of specified objects), that are then applicable to Spinco; provided, further, that, notwithstanding any provisions of this Section 4.1(c), any request for Information or access to Representatives in connection with any Third Party Claims shall be subject to Section 4.7. Nothing herein shall be deemed to restrict the access of any member of the Spinco Group to any such documents or objects or to impose any liability on any member of the Spinco Group if any such documents or objects are not maintained or preserved by Spinco.



(d) Without limiting the generality of the foregoing, until the second (2nd) Spinco fiscal year end occurring after the Effective Time (and for a reasonable period of time afterwards as required for each of GGP and Spinco to prepare consolidated financial statements or complete a financial statement audit for the fiscal year during which the Plan Effective Date occurs), each of GGP and Spinco shall use its commercially reasonable efforts to cooperate with the other party's Information requests to enable (i) the other party to meet its timetable for dissemination of its earnings releases, financial statements and management's assessment of the effectiveness of its disclosure controls and procedures and its internal control over financial reporting in accordance with Items 307 and 308, respectively, of Regulation S-K, and (ii) the other party's accountants to timely complete their review of the quarterly financial statements and audit of the annual financial statements, including, to the extent applicable to such party, its auditor's audit of its internal control over financial reporting and management's assessment thereof in accordance with Section 404 of the Sarbanes-Oxley Act of 2002 and the SEC's and Public Company Accounting Oversight Board's rules and auditing standards thereunder.

4.2 Ownership of Information. Any Information owned by one Group that is provided to a requesting party pursuant to Section 4.1 shall be deemed to remain the property of the providing party, except where such Information is an Asset of the requesting party pursuant to the provisions of this Agreement or any other Transaction Document. Unless specifically set forth herein, nothing contained in this Agreement shall be construed as granting or conferring rights of license or otherwise in any Information requested or provided pursuant to Section 4.1.

4.3 Compensation for Providing Information. The party requesting Information agrees to reimburse the other party for the reasonable out-of-pocket costs and expenses, if any, of creating, gathering and copying such Information (including any costs and expenses incurred in any review of Information for purposes of protecting the privileged Information of the providing party or in connection with the restoration of backup tapes for purposes of providing the requested Information), to the extent that such costs are incurred in connection with such other party's provision of Information in response to the requesting party.

4.4 Record Retention.

(a) To facilitate the possible exchange of Information pursuant to this Article IV and other provisions of this Agreement after the Effective Time, the parties agree to use their commercially reasonable efforts to retain all Information in their respective possession or control in accordance with the policies or ordinary course practices of GGP or Spinco, as applicable, in effect on the Plan Effective Date (including any Information that is subject to a "Litigation Hold" issued by either party prior to the Plan Effective Date) or such other policies or practices as may be reasonably adopted by the appropriate party after the Effective Time.

(b) Except in accordance with its, or its applicable Subsidiaries', policies and ordinary course practices, no party will destroy, or permit any of its Subsidiaries to destroy, any Information that would, in accordance with such policies or ordinary course practices, be archived or otherwise filed in a centralized filing system by such party or its applicable Subsidiaries; provided, however, that (i) in the case of any Information relating to employee benefits, no party will destroy, or permit any of its Subsidiaries to destroy, any such Information until the expiration of the applicable statute of limitations (giving effect to any extensions

thereof), (ii) in the case of any Information relating to a pending or threatened Action (including any pending or threatened investigation by a Governmental Authority) that is known to the members of the Group in possession of such Information, the parties shall comply with the requirements of the applicable “Litigation Hold” (provided, that, with respect to any pending or threatened Action arising after the Plan Effective Date, the requirements of this clause (ii) shall apply only to the extent that whichever member of the GGP Group or the Spinco Group that is in possession of such Information has been notified in writing pursuant to a “Litigation Hold” by the other party of such pending or threatened Action) and (iii) no party will destroy, or permit any of its Subsidiaries to destroy, any Information required to be retained by applicable Law.

(c) In the event of either party’s or any of its Subsidiaries’ inadvertent failure to comply with its applicable document retention policies as required under this Section 4.4, such party shall be liable to the other party solely for the amount of any monetary fines or penalties imposed or levied against such other party by a Governmental Authority (which fines or penalties shall not include any Liabilities asserted in connection with the claims underlying the applicable Action, other than fines or penalties resulting from any claim of spoliation) as a result of such other party’s inability to produce Information caused by such inadvertent failure and, notwithstanding Sections 5.2 and 5.3, shall not be liable to such other party for any other Liabilities.

4.5 Liability. No party shall have any liability to any other party in the event that any Information exchanged or provided pursuant to this Agreement which is an estimate or forecast, or which is based on an estimate or forecast, is found to be inaccurate in the absence of willful misconduct by the party providing such Information.

#### 4.6 Other Agreements Providing for Exchange of Information.

(a) The rights and obligations granted under this Article IV are subject to any specific limitations, qualifications or additional provisions on the sharing, exchange, retention or confidential treatment of Information set forth in any other Transaction Document.

(b) Any party that receives, pursuant to a request for Information in accordance with this Article IV, Information that is not relevant to its request shall (i) either destroy such Information or return it to the providing party and (ii) deliver to the providing party a certificate certifying that such Information was destroyed or returned, as the case may be, which certificate shall be signed by an officer of the requesting party holding the title of vice president or above.

(c) When any Information provided by one Group to the other (other than Information provided pursuant to Section 4.4) is no longer needed for the purposes contemplated by this Agreement or any other Transaction Document and is no longer required to be retained by applicable Law, the receiving party will promptly after request of the other party either return to the other party all Information in a tangible form (including all copies thereof and all notes, extracts or summaries based thereon) or certify to the other party that it has destroyed such Information (and such copies thereof and such notes, extracts or summaries based thereon).

(d) The parties agree to comply with the requirements of the Health Insurance Portability and Accountability Act of 1996, as amended, in connection with the sharing of Information pursuant to this Article IV, including by entering into any business associate agreements that may be required for such compliance.

#### 4.7 Production of Witnesses; Records; Cooperation.

(a) After the Effective Time (or such earlier time as the parties may agree), except in the case of an adversarial Action by one party against another party, each party hereto shall use its commercially reasonable efforts to make available to each other party, upon written request, the former, current and future directors, officers, employees, other personnel and agents of the members of its respective Group as witnesses and any books, records or other documents within its control or which it otherwise has the ability to make available, to the extent that any such person (giving consideration to business demands of such directors, officers, employees, other personnel and agents) or books, records or other documents may reasonably be required in connection with any Action or IP Application in which the requesting party may from time to time be involved, regardless of whether such Action or IP Application is a matter with respect to which indemnification may be sought hereunder. The requesting party shall bear all out-of-pocket costs and expenses in connection therewith.

(b) If an Indemnifying Party chooses to defend or to seek to compromise or settle any Third Party Claim, the Indemnified Party shall use commercially reasonable efforts to make available to such Indemnifying Party, upon written request, the former, current and future directors, officers, employees, other personnel and agents of the members of its respective Group as witnesses and any books, records or other documents within its control or which it otherwise has the ability to make available, to the extent that any such persons (giving consideration to business demands of such directors, officers, employees, other personnel and agents) or books, records or other documents may reasonably be required in connection with such defense, settlement or compromise, or the prosecution, evaluation or pursuit thereof, as the case may be, and shall otherwise cooperate in such defense, settlement or compromise, or such prosecution, evaluation or pursuit, as the case may be. The Indemnifying Party shall bear all out-of-pocket costs and expenses in connection therewith.

(c) In furtherance and without limiting the provisions of Sections 4.7(a) and (b), the parties shall cooperate and consult to the extent reasonably necessary with respect to (i) any Third Party Claims and (ii) any written request for access to Information or Representatives of the other party and members of such other party's Group in connection with any Third Party Claim; provided that such request shall sufficiently identify the applicable custodian of the requested Information and, to the extent known to the requesting party, the date of, or any applicable time periods relating to, the requested Information and any other descriptions necessary to sufficiently identify the requested Information.

(d) Without limiting any provision of this Section 4.7, each of the parties agrees to reasonably cooperate, and to cause each member of its respective Group to reasonably cooperate, with each other in the defense of any infringement, misappropriation or similar claim with respect to any Intellectual Property and shall not claim to acknowledge, or permit any member of its respective Group to claim to acknowledge, the validity, enforceability or

misappropriation of any Intellectual Property of a third Person in a manner that would hamper or undermine the defense of such infringement, misappropriation or similar claim except as required by Law.

(e) The obligation of the parties to provide witnesses pursuant to this Section 4.7 is intended to be interpreted in a manner so as to facilitate cooperation and shall include the obligation to provide as witnesses inventors and other officers without regard to whether the witness or the employer of the witness could assert a possible business conflict (subject to the exception set forth in the first (1st) sentence of Section 4.7(a)).

(f) In connection with any matter contemplated by this Section 4.7, the parties will enter into a mutually acceptable joint defense agreement so as to maintain to the extent practicable any applicable attorney-client privilege, work product immunity or other applicable privileges or immunities of any member of any Group.

(g) For the avoidance of doubt, the provisions of this Section 4.7 are in furtherance of the provisions of Section 4.1 and shall not be deemed to in any way limit or otherwise modify the parties' rights and obligations under Section 4.1.

#### 4.8 Privileged Matters.

(a) The parties recognize that legal and other professional services that have been and will be provided prior to the Effective Time have been and will be rendered for the collective benefit of each of the members of the GGP Group and the Spinco Group, and that each of the members of the GGP Group and the Spinco Group should be deemed to be the client with respect to such services for the purposes of asserting all privileges which may be asserted under applicable Law in connection therewith. The parties recognize that legal and other professional services will be provided following the Effective Time, which services will be rendered solely for the benefit of the GGP Group or the Spinco Group, as the case may be.

(b) The parties agree as follows:

(i) GGP shall be entitled, in perpetuity, to control the assertion or waiver of all privileges in connection with any privileged Information that relates solely to the GGP Business and not to the Spinco Business, whether or not the privileged Information is in the possession or under the control of any member of the GGP Group or any member of the Spinco Group. GGP shall also be entitled, in perpetuity, to control the assertion or waiver of all privileges in connection with any privileged Information that relates solely to any Excluded Liabilities resulting from any Actions that are now pending or may be asserted in the future, whether or not the privileged Information is in the possession or under the control of any member of the GGP Group or any member of the Spinco Group; and

(ii) Spinco shall be entitled, in perpetuity, to control the assertion or waiver of all privileges in connection with any privileged Information that relates solely to the Spinco Business and not to the GGP Business, whether or not the privileged Information is in the possession or under the control of any member of the Spinco Group or any member of the GGP Group. Spinco shall also be entitled, in perpetuity, to control the assertion or waiver of all privileges in connection with any privileged Information that relates solely to any Spinco

Liabilities resulting from any Actions that are now pending or may be asserted in the future, whether or not the privileged Information is in the possession or under the control of any member of the Spinco Group or any member of the GGP Group.

(c) Subject to the restrictions set forth in this Section 4.8, the parties agree that they shall have a shared privilege, each with equal right to assert any such shared privilege, with respect to all privileges not allocated pursuant to Section 4.8(b) and all privileges relating to any Actions or other matters that involve both the GGP Group and the Spinco Group and in respect of which both parties have Liabilities under this Agreement.

(d) Subject to Sections 4.8(e) and (f), no party may waive any privilege that could be asserted under any applicable Law, and in which the other party has a shared privilege, without the consent of the other party, which consent shall (i) not be unreasonably withheld, conditioned or delayed, (ii) be in writing and (iii) be deemed to be granted unless written objection is made within twenty (20) days after notice has been given to the other party requesting such consent.

(e) In the event of any Actions between GGP and Spinco, or any members of their respective Groups, either party may waive a privilege in which the other party or member of such other party's Group has a shared privilege, without obtaining consent pursuant to Section 4.8(d); provided, that such waiver of a shared privilege shall be effective only as to the use of Information with respect to the Action between the parties and/or the applicable members of their respective Groups, and shall not operate as a waiver of the shared privilege with respect to any third Person.

(f) If any dispute arises between GGP and Spinco, or any members of their respective Groups, regarding whether a privilege should be waived to protect or advance the interests of either the GGP Group or the Spinco Group, each party agrees that it shall (i) negotiate with the other party in good faith, (ii) endeavor to minimize any prejudice to the rights of the other party and (iii) not unreasonably withhold, condition or delay consent to any request for waiver by the other party. Further, each party specifically agrees that it will not withhold its consent to the waiver of a privilege for any purpose except to protect its own legitimate interests.

(g) Upon receipt by either party, or by any member of its respective Group, of any subpoena, discovery or other request that may reasonably be expected to result in the production or disclosure of Information subject to a shared privilege or as to which another party has the sole right hereunder to assert a privilege, or if either party obtains knowledge that any of its, or any member of its respective Group's, current or former directors, officers, agents or employees have received any subpoena, discovery or other requests that may reasonably be expected to result in the production or disclosure of such privileged Information, such party shall promptly notify the other party of the existence of the request (which notice shall be delivered to such other party no later than five (5) business days following the receipt of any such subpoena, discovery or other request) and shall provide the other party a reasonable opportunity to review the Information and to assert any rights it or they may have under this Section 4.8 or otherwise to prevent the production or disclosure of such privileged Information.

(h) The transfer of all Information pursuant to this Agreement is made in reliance on the agreement of GGP and Spinco set forth in this Section 4.8 and in Section 6.2 to maintain the confidentiality of privileged Information and to assert and maintain all applicable privileges. The parties agree that their respective rights to any access to Information, witnesses and other Persons, the furnishing of notices and documents and other cooperative efforts between the parties contemplated by this Agreement, and the transfer of privileged Information between the parties and members of their respective Groups pursuant to this Agreement, shall not be deemed a waiver of any privilege that has been or may be asserted under this Agreement or otherwise.

(i) In furtherance of the parties' agreement under this Section 4.8, GGP and Spinco shall, and shall cause applicable members of their respective Group to, maintain their respective separate and joint privileges, including by executing joint defense and common interest agreements where necessary or useful for this purpose.

## ARTICLE V

### RELEASE; INDEMNIFICATION; AND GUARANTEES

#### 5.1 Release of Pre-Distribution Claims.

(a) Except as provided in (i) Section 5.1(c), (ii) any exceptions to the indemnification provisions of Sections 5.2, 5.3 and 5.4, and (iii) any other Transaction Document, effective as of the Effective Time, Spinco does hereby, for itself and each other member of the Spinco Group, their respective Subsidiaries, successors and assigns, and all Persons who at any time prior to the Effective Time have been directors, officers, agents or employees of any member of the Spinco Group (in each case, in their respective capacities as such), remise, release and forever discharge GGP and the other members of the GGP Group, their respective Subsidiaries, successors and assigns, and all Persons who at any time prior to the Effective Time have been stockholders, equityholders, directors, officers, agents or employees of any member of the GGP Group (in each case, in their respective capacities as such), and their respective heirs, executors, administrators, successors and assigns, from any and all Liabilities whatsoever, whether at Law or in equity (including any right of contribution), whether arising under any Contract or agreement, by operation of Law or otherwise, existing or arising from any acts or events occurring or failing to occur or alleged to have occurred or to have failed to occur or any conditions existing or alleged to have existed on or before the Plan Effective Date, including in connection with the Bankruptcy Cases, the Plan, the transactions and all other activities to implement the Restructuring, the Distribution and any of the other transactions contemplated hereunder and under the other Transaction Documents.

(b) Except as provided in (i) Section 5.1(c), (ii) any exceptions to the indemnification provisions of Sections 5.2, 5.3 and 5.4, and (iii) any other Transaction Document, effective as of the Plan Effective Date, GGP does hereby, for itself and each other member of the GGP Group, their respective Subsidiaries, successors and assigns, and all Persons who at any time prior to the Effective Time have been stockholders, directors, officers, agents or employees of any member of the GGP Group (in each case, in their respective capacities as such), remise, release and forever discharge Spinco, the respective members of the Spinco

Group, their respective Subsidiaries, successors and assigns, and all Persons who at any time prior to the Effective Time have been directors, officers, agents or employees of any member of the Spinco Group (in each case, in their respective capacities as such), and their respective heirs, executors, administrators, successors and assigns, from any and all Liabilities whatsoever, whether at Law or in equity (including any right of contribution), whether arising under any Contract or agreement, by operation of Law or otherwise, existing or arising from any acts or events occurring or failing to occur or alleged to have occurred or to have failed to occur or any conditions existing or alleged to have existed on or before the Plan Effective Date, including in connection with the Bankruptcy Cases, the Plan, the transactions and all other activities to implement the Restructuring, the Distribution and any of the other transactions contemplated hereunder and under the other Transaction Documents.

(c) Nothing contained in Section 5.1(a) or Section 5.1(b) shall impair any right of any party to enforce this Agreement, or any other Transaction Document, in accordance with its terms. Nothing contained in Section 5.1(a) or Section 5.1(b) shall release any Person from:

(i) any Liability, contingent or otherwise, assumed, transferred, assigned or allocated to the Group of which such Person is a member in accordance with, or any other Liability of any member of any Group under, this Agreement or any other Transaction Document;

(ii) any Liability for the sale, lease, construction or receipt of goods, property or services purchased, obtained or used in the ordinary course of business by a member of one Group from a member of the other Group prior to the Effective Time;

(iii) any Liability that the parties may have with respect to indemnification or contribution pursuant to this Agreement or otherwise for claims brought against the parties by third Persons, which Liability shall be governed by the provisions of this Article V and, if applicable, the appropriate provisions of the other Transaction Documents; or

(iv) as to the GGP Group, any Liability expressly provided for in the Plan.

In addition, nothing contained in Section 5.1(a) shall release GGP from indemnifying any director, officer or employee of Spinco who was a director, officer or employee of GGP or any of its Subsidiaries on or prior to the Effective Time, to the extent such director, officer or employee is or becomes a named defendant in any Action with respect to which he or she was entitled to such indemnification pursuant to then existing obligations, it being understood that if the underlying obligation giving rise to such Action is a Spinco Liability, Spinco shall indemnify GGP for such Liability (including GGP's costs to indemnify the director, officer or employee) in accordance with the provisions set forth in this Article V.

(d) Spinco shall not make, and shall not permit any member of the Spinco Group to make, any claim or demand, or commence any Action asserting any claim or demand, including any claim of contribution or any indemnification, against GGP or any member of the GGP Group, or any other Person released pursuant to Section 5.1(a), with respect to any

Liabilities released pursuant to Section 5.1(a). GGP shall not, and shall not permit any member of the GGP Group, to make any claim or demand, or commence any Action asserting any claim or demand, including any claim of contribution or any indemnification against Spinco or any member of the Spinco Group, or any other Person released pursuant to Section 5.1(b), with respect to any Liabilities released pursuant to Section 5.1(b).

(e) It is the intent of each of GGP and Spinco, by virtue of the provisions of this Section 5.1, to provide for a full and complete release and discharge of all Liabilities existing or arising from all acts and events occurring or failing to occur or alleged to have occurred or to have failed to occur and all conditions existing or alleged to have existed on or before the Plan Effective Date, between or among Spinco or any member of the Spinco Group, on the one hand, and GGP or any member of the GGP Group, on the other hand (including any contractual agreements or arrangements existing or alleged to exist between or among any such members on or before the Plan Effective Date), except as expressly set forth in Section 5.1(c). At any time, at the request of any other party, each party shall cause each member of its respective Group to execute and deliver releases reflecting the provisions hereof.

5.2 General Indemnification by Spinco. Spinco shall, and shall cause the other members of the Spinco Group to, indemnify, defend and hold harmless each member of the GGP Group and each of their respective directors, officers and employees, and each of the heirs, executors, successors and assigns of any of the foregoing (collectively, the “GGP Indemnified Parties”), from and against any and all Liabilities of the GGP Indemnified Parties relating to, arising out of or resulting from any of the following items (without duplication):

- (a) any Spinco Liability;
- (b) the failure of Spinco or any other member of the Spinco Group or any other Person to pay, perform or otherwise promptly discharge any Spinco Liabilities or Spinco Contract in accordance with its respective terms, whether prior to or after the Effective Time;
- (c) any guarantee, indemnification obligation, surety bond or other credit support agreement, arrangement, commitment or understanding by any member of the GGP Group for the benefit of any member of the Spinco Group that survives the Effective Time, except to the extent any of the foregoing is (i) expressly governed by the Surety Bond Indemnity Agreement or (ii) an Excluded Liability; and
- (d) any breach (including any breach of any representation or warranty) of this Agreement or any of the other Transaction Documents by any member of the Spinco Group, or any action by Spinco in contravention of its Amended and Restated Certificate of Incorporation or Bylaws as they exist at the Effective Time;

provided, however, that the indemnification provisions of this Section 5.2 shall not apply to the Transition Services Agreement, the Tax Matters Agreement, the Employee Leasing Agreement and the Subleases, which instead shall be subject to the indemnification provisions contained therein.

5.3 General Indemnification by GGP. GGP shall, and shall cause the other members of the GGP Group to, indemnify, defend and hold harmless each member of the Spinco Group



and each of their respective directors, officers and employees, and each of the heirs, executors, successors and assigns of any of the foregoing (collectively, the “Spinco Indemnified Parties”), from and against any and all Liabilities of the Spinco Indemnified Parties relating to, arising out of or resulting from any of the following items (without duplication):

- (a) any Excluded Liability;
- (b) the failure of any member of the GGP Group or any other Person to pay, perform or otherwise promptly discharge any Excluded Liabilities, whether prior to or after the Effective Time;
- (c) any guarantee, indemnification obligation, surety bond or other credit support agreement, arrangement, commitment or understanding by any member of the Spinco Group for the benefit of any member of the GGP Group that survives the Effective Time, except to the extent any of the foregoing is a Spinco Liability; and
- (d) any breach (including any breach of any representation or warranty) of this Agreement or any of the other Transaction Documents by any member of the GGP Group;

provided, however, that the indemnification provisions of this Section 5.3 shall not apply to the Transition Services Agreement, the Tax Matters Agreement, the Employee Leasing Agreement and the Subleases, which instead shall be subject to the indemnification provisions contained therein.

#### 5.4 Disclosure Indemnification.

(a) Spinco agrees to indemnify and hold harmless the GGP Indemnified Parties and each Person, if any, who controls any member of the GGP Group within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act from and against any and all Liabilities (whether arising before or after the Effective Time) out of or based upon any untrue statement or alleged untrue statement of a material fact contained in a Spinco Disclosure Document, or arising out of or based upon any omission or alleged omission to state a material fact required to be stated therein or necessary to make the statements therein not misleading.

(b) GGP agrees to indemnify and hold harmless the Spinco Indemnified Parties and each Person, if any, who controls any member of the Spinco Group within the meaning of Section 15 of the Securities Act or Section 20 of the Exchange Act from and against any and all Liabilities (whether arising before or after the Effective Time) out of or based upon any untrue statement or alleged untrue statement of a material fact contained in a GGP Disclosure Document, or arising out of or based upon any omission or alleged omission to state a material fact required to be stated therein or necessary to make the statements therein not misleading.

#### 5.5 Indemnification Obligations Net of Insurance Proceeds and Other Amounts.

(a) Any Liability subject to indemnification or contribution pursuant to this Article V, will be net of Insurance Proceeds that actually reduce the amount of the Liability or Loss, as applicable. Accordingly, the amount which any party (an “Indemnifying Party”) is

required to pay to any Person entitled to indemnification under this Article V (an “Indemnified Party”) will be reduced by any Insurance Proceeds theretofore actually recovered by or on behalf of the Indemnified Party in respect of the related Liability. If an Indemnified Party receives a payment (an “Indemnity Payment”) required by this Agreement from an Indemnifying Party in respect of any Liability and subsequently receives Insurance Proceeds, then the Indemnified Party will pay to the Indemnifying Party an amount equal to such Insurance Proceeds but not exceeding the amount of the Indemnity Payment paid by the Indemnifying Party in respect of such Liability.

(b) An insurer who would otherwise be obligated to pay any claim shall not be relieved of the responsibility with respect thereto or, solely by virtue of the indemnification provisions hereof, have any subrogation rights with respect thereto. The Indemnified Party shall use its commercially reasonable efforts to seek to collect or recover any third-party Insurance Proceeds (other than Insurance Proceeds under an arrangement where future premiums are adjusted to reflect prior claims in excess of prior premiums) to which the Indemnified Party is entitled in connection with any Liability for which the Indemnified Party seeks indemnification pursuant to this Article V; provided, that the Indemnified Party’s inability to collect or recover any such Insurance Proceeds shall not limit the Indemnifying Party’s obligations hereunder.

(c) Subject to Section 5.7(e), any indemnity payment under this Article V shall be increased to take into account any inclusion in income of the Indemnified Party arising from the receipt of such indemnity payment and shall be decreased to take into account any reduction in income of the Indemnified Party arising from such indemnified Liability. For purposes hereof, any inclusion or reduction shall be determined (i) using the highest marginal rates in effect at the time of the determination and applicable to a corporate resident of Chicago, Illinois and (ii) assuming that the Indemnified Party, including any entity that qualifies as a real estate investment trust, will be liable for Taxes at such rate and has no Tax Attributes at the time of the determination.

#### 5.6 Procedures for Indemnification of Third Party Claims.

(a) If an Indemnified Party receives written notice that a Person (including any Governmental Authority) that is not a member of GGP Group or Spinco Group has asserted any claim or commenced any Action (collectively, a “Third Party Claim”) that may implicate an Indemnifying Party’s obligation to indemnify pursuant to Sections 5.2, 5.3 or 5.4, or any other Section of this Agreement or any other Transaction Document, the Indemnified Party shall provide the Indemnifying Party written notice thereof as promptly as practicable (and no later than twenty (20) days or sooner, if the nature of the Third Party Claim so requires) after becoming aware of the Third Party Claim. Such notice shall describe the Third Party Claim in reasonable detail and include copies of all notices and documents (including court papers) received by the Indemnified Party relating to the Third Party Claim. Notwithstanding the foregoing, the failure of an Indemnified Party to provide notice in accordance with this Section 5.6(a) shall not relieve an Indemnifying Party of its indemnification obligations under this Agreement, except to the extent to which the Indemnifying Party is actually prejudiced by the Indemnified Party’s failure to provide notice in accordance with this Section 5.6(a).

(b) Subject to this Section 5.6(b) and Section 5.6(c), an Indemnifying Party may elect to defend (and seek to settle or compromise), at its own expense and with its own counsel, any Third Party Claim. Within thirty (30) days after the receipt of notice from an Indemnified Party in accordance with Section 5.6(a) (or sooner, if the nature of the Third Party Claim so requires), the Indemnifying Party shall notify the Indemnified Party whether the Indemnifying Party will assume responsibility for defending the Third Party Claim and shall specify any reservations or exceptions to its defense. After receiving notice of an Indemnifying Party's election to assume the defense of a Third Party Claim, whether with or without any reservations or exceptions with respect to such defense, an Indemnified Party shall have the right to employ separate counsel and to participate in (but not control) the defense, compromise, or settlement thereof, but the Indemnified Party shall be responsible for the fees and expenses of its counsel and, in any event, shall cooperate with the Indemnifying Party in such defense and make available to the Indemnifying Party, at the Indemnifying Party's expense, all witnesses, information and materials in such Indemnified Party's possession or under such Indemnified Party's control relating thereto as are reasonably required by the Indemnifying Party. If an Indemnifying Party has elected to assume the defense of a Third Party Claim, whether with or without any reservations or exceptions with respect to such defense, then such Indemnifying Party shall be solely liable for all fees and expenses incurred by it in connection with the defense of such Third Party Claim and shall not be entitled to seek any indemnification or reimbursement from the Indemnified Party for any such fees or expenses incurred during the course of its defense of such Third Party Claim, regardless of any subsequent decision by the Indemnifying Party to reject or otherwise abandon its assumption of such defense.

(c) Notwithstanding Section 5.6(b), if any Indemnified Party shall in good faith determine that there is an actual conflict of interest if counsel for the Indemnifying Party represented both the Indemnified Party and Indemnifying Party, then the Indemnified Party shall have the right to employ separate counsel and to participate in (but not control) the defense, compromise, or settlement thereof, and the Indemnifying Party shall bear the reasonable fees and expenses of one (1) separate counsel for all Indemnified Parties.

(d) If an Indemnifying Party elects not to assume responsibility for defending a Third Party Claim, or fails to notify an Indemnified Party of its election within thirty (30) days after the receipt of notice from an Indemnified Party as provided in Section 5.6(b), the Indemnified Party may defend the Third Party Claim at the cost and expense of the Indemnifying Party. If the Indemnified Party is conducting the defense against any such Third Party Claim, the Indemnifying Party shall cooperate with the Indemnified Party in such defense and make available to the Indemnified Party, at the Indemnifying Party's expense, all witnesses, information and materials in such Indemnifying Party's possession or under such Indemnifying Party's control relating thereto as are reasonably required by the Indemnified Party.

(e) Without the prior written consent of any Indemnifying Party, which consent shall not be unreasonably withheld, conditioned or delayed, no Indemnified Party may settle or compromise, or seek to settle or compromise, any Third Party Claim; provided, however, in the event that the Indemnifying Party elects not to assume responsibility for defending a Third Party Claim or fails to notify the Indemnified Party of its election within thirty (30) days after the receipt of notice from the Indemnified Party as provided in Section 5.6(b), the Indemnified Party shall have the right to settle or compromise such Third Party Claim in its sole

discretion. Without the prior written consent of any Indemnified Party, which consent shall not be unreasonably withheld, conditioned or delayed, no Indemnifying Party shall consent to the entry of any judgment or enter into any settlement of any pending or threatened Third Party Claim if such Indemnified Party is or could have been a party to the pending or threatened Third Party Claim and could have sought indemnity pursuant to this Section 5.6, unless such judgment or settlement is solely for monetary damages, and provides for a full, unconditional and irrevocable release of that Indemnified Party from all liability in connection with the Third Party Claim.

#### 5.7 Additional Matters.

(a) Indemnification or contribution payments in respect of any Liabilities for which an Indemnified Party is entitled to indemnification or contribution under this Article V shall be paid by the Indemnifying Party to the Indemnified Party as such Liabilities are incurred upon reasonable demand by the Indemnified Party, including reasonably satisfactory documentation setting forth the basis for the amount of such indemnification or contribution payment, including documentation with respect to calculations made and consideration of any Insurance Proceeds that actually reduce the amount of such Liabilities. The indemnity and contribution agreements contained in this Article V shall remain operative and in full force and effect, regardless of (i) any investigation made by or on behalf of any Indemnified Party, (ii) the knowledge by the Indemnified Party of Liabilities for which it might be entitled to indemnification or contribution hereunder and (iii) any termination of this Agreement.

(b) Any claim on account of a Liability which does not result from a Third Party Claim shall be asserted by written notice given by the Indemnified Party to the applicable Indemnifying Party. Such Indemnifying Party shall have a period of thirty (30) days after the receipt of such notice within which to respond thereto. If such Indemnifying Party does not respond within such thirty (30)-day period, such Indemnifying Party shall be deemed to have refused to accept responsibility to make payment. If such Indemnifying Party does not respond within such thirty (30)-day period or rejects such claim in whole or in part, such Indemnified Party shall be free to pursue such remedies as may be available to such party as contemplated by this Agreement and the other Transaction Documents without prejudice to its continuing rights to pursue indemnification or contribution hereunder.

(c) If payment is made by or on behalf of any Indemnifying Party to any Indemnified Party in connection with any Third Party Claim, such Indemnifying Party shall be subrogated to and shall stand in the place of such Indemnified Party as to any events or circumstances in respect of which such Indemnified Party may have any right, defense or claim relating to such Third Party Claim against any claimant or plaintiff asserting such Third Party Claim or against any other Person. Such Indemnified Party shall cooperate with such Indemnifying Party in a reasonable manner, and at the cost and expense of such Indemnifying Party, in prosecuting any subrogated right, defense or claim.

(d) In an Action in which the Indemnifying Party is not a named defendant, if either the Indemnified Party or Indemnifying Party shall so request, the parties shall endeavor to substitute the Indemnifying Party for the named defendant if they conclude that substitution is desirable and practical. If such substitution or addition cannot be achieved for any reason or is

not requested, the named defendant shall allow the Indemnifying Party to manage the Action as set forth in this Section 5.7(d), and the Indemnifying Party shall fully indemnify the named defendant against all costs of defending the Action (including court costs, sanctions imposed by a court, attorneys' fees, experts fees and all other external expenses), the costs of any judgment or settlement, and the cost of any interest or penalties relating to any judgment or settlement.

(e) For all Tax purposes, GGP and Spinco agree to treat (i) any payment required by this Agreement (other than payments with respect to interest accruing after the Effective Time) as either a contribution by GGP to Spinco or a distribution by Spinco to GGP, as the case may be, occurring immediately prior to the Effective Time or as a payment of an assumed or retained Liability, and (ii) any payment of interest as taxable or deductible, as the case may be, to the party entitled under this Agreement to retain such payment or required under this Agreement to make such payment, in either case except as otherwise required by applicable Law.

5.8 Remedies Cumulative; Limitations of Liability. The rights provided in this Article V shall be cumulative and, subject to the provisions of Article VII, shall not preclude assertion by any Indemnified Party of any other rights or the seeking of any and all other remedies against any Indemnifying Party. Notwithstanding the foregoing, neither Spinco or its Subsidiaries, on the one hand, nor GGP or its Subsidiaries, on the other hand, shall be liable to the other for any special, indirect, punitive, exemplary, remote, speculative or similar damages in excess of compensatory damages (collectively, "Special Damages") of the other arising in connection with the Transactions (provided, that any such liability with respect to a Third Party Claim shall be considered direct damages).

5.9 Survival of Indemnities. The rights and obligations of each of GGP and Spinco and their respective Indemnified Parties under this Article V shall survive the sale or other transfer by any party of any Assets or businesses or the assignment by it of any Liabilities.

5.10 Guarantees.

(a) Except as otherwise specified in any other Transaction Document, on or prior to the Effective Time or as soon as practicable thereafter, (i) GGP shall (with the reasonable cooperation of the applicable member(s) of the Spinco Group) use its commercially reasonable efforts to have any member(s) of the Spinco Group removed as guarantor of or obligor for any Excluded Liability, to the extent that they relate to Excluded Liabilities, and (ii) Spinco shall (with the reasonable cooperation of the applicable member(s) of the GGP Group) use its commercially reasonable efforts to have any member(s) of the GGP Group removed as guarantor of or obligor for any Spinco Liability, to the extent that they relate to Spinco Liabilities.

(b) On or prior to the Effective Time, to the extent required to obtain a release from a guarantee (a "Guarantee Release"):

(i) of any member of the GGP Group, Spinco shall execute a guarantee agreement in the form of the existing guarantee or such other form as is agreed to by the relevant parties to such guarantee agreement, except to the extent that such existing

guarantee contains representations, covenants or other terms or provisions either (A) with which Spinco would be reasonably unable to comply or (B) which would be reasonably expected to be breached; and

(ii) of any member of the Spinco Group, GGP shall execute a guarantee agreement in the form of the existing guarantee or such other form as is agreed to by the relevant parties to such guarantee agreement, except to the extent that such existing guarantee contains representations, covenants or other terms or provisions either (A) with which GGP would be reasonably unable to comply or (B) which would be reasonably expected to be breached.

(c) If GGP or Spinco is unable to obtain, or to cause to be obtained, any such required removal as set forth in clauses (a) and (b) of this Section 5.10, (i) the relevant member of the GGP Group or Spinco Group, as applicable, that has assumed the Liability with respect to such guarantee shall indemnify and hold harmless the guarantor or obligor for any Liability arising from or relating thereto (in accordance with the provisions of this Article V) and shall or shall cause one (1) of its Subsidiaries, as agent or subcontractor for such guarantor or obligor to pay, perform and discharge fully all the obligations or other Liabilities of such guarantor or obligor thereunder, and (ii) each of GGP and Spinco, on behalf of themselves and the members of their respective Groups, agree not to renew or extend the term of, increase its obligations under, or transfer to a third Person, any loan, guarantee, lease, Contract or other obligation for which the other party or member of such party's Group is or may be liable unless all obligations of such other party and the other members of such party's Group with respect thereto are thereupon terminated by documentation reasonably satisfactory in form and substance to such party; provided, however, with respect to leases, in the event a Guarantee Release is not obtained and the relevant beneficiary wishes to extend the term of such guaranteed lease, then such beneficiary shall have the option of extending the term if it provides such security as is reasonably satisfactory to the guarantor under such guaranteed lease.

## ARTICLE VI

### OTHER AGREEMENTS

#### 6.1 Further Assurances.

(a) In addition to the actions specifically provided for elsewhere in this Agreement, each of the parties hereto will cooperate with each other and use (and will cause their respective Subsidiaries to use) commercially reasonable efforts, prior to, on and after the Plan Effective Date, to take, or to cause to be taken, all actions, and to do, or to cause to be done, all things reasonably necessary on its part under applicable Law or contractual obligations to consummate and make effective the transactions contemplated by this Agreement and the other Transaction Documents.

(b) Without limiting the foregoing, prior to, on and after the Plan Effective Date, each party hereto shall cooperate with the other parties, and without any further consideration, but at the expense of the requesting party from and after the Effective Time, to execute and deliver, or use its commercially reasonable efforts to cause to be executed and

delivered, all instruments, including instruments of conveyance, assignment and transfer, and to obtain or make any Approvals or Notifications from or with any Governmental Authority or any other Person under any permit, license, agreement, indenture or other instrument, and to take all such other actions as such party may reasonably be requested to take by any other party hereto from time to time, consistent with the terms of this Agreement and the other Transaction Documents, in order to effectuate the provisions and purposes of this Agreement and the other Transaction Documents and the transfers of the Spinco Assets and the assignment and assumption of the Spinco Liabilities and the other transactions contemplated hereby and thereby. Without limiting the foregoing, each party will, at the reasonable request, cost and expense of any other party, take such other actions as may be reasonably necessary to vest in such other party good and marketable title to the Assets allocated to such party under this Agreement or any of the other Transaction Documents, free and clear of any Security Interest.

(c) At or prior to the Effective Time, GGP and Spinco in their respective capacities as direct and indirect stockholders of their respective Subsidiaries, shall each ratify any actions that are reasonably necessary or desirable to be taken by Spinco or any other Subsidiary of GGP or Spinco, as the case may be, to effectuate the transactions contemplated by this Agreement.

(d) Upon a party's written request of the other party regarding any pre-existing and specifically identifiable database, spreadsheet or other proprietary information that such requesting party determines in good faith is reasonably necessary to operate its business in the manner it was operated immediately prior to the Effective Time, the parties shall work in good faith to enter into a reasonable and customary cross-licensing arrangement, or another mutually agreeable arrangement, providing rights to use (but no obligation to maintain or update) such requested information.

## 6.2 Confidentiality.

(a) From and after the Effective Time, subject to Section 6.2(d) and except as contemplated by or otherwise provided in this Agreement or any other Transaction Document, without the prior written consent of Spinco (which may be withheld in Spinco's sole discretion), GGP shall not, and shall cause its Subsidiaries and officers, directors, employees, and other agents and representatives, including attorneys, agents, customers, suppliers, contractors, consultants and other representatives of any Person providing financing (collectively, "Representatives"), not to, directly or indirectly, disclose, reveal, divulge or communicate to any Person other than Representatives of such party or of its Subsidiaries who reasonably need to know such information to provide services to any member of the GGP Group, or use or otherwise exploit for its own benefit or for the benefit of any third Person, any Spinco Confidential Information. If any disclosures are made in connection with providing services to any member of the GGP Group under this Agreement or any other Transaction Document, then the Spinco Confidential Information so disclosed shall be used for the sole purpose of performing such services. GGP shall use the same degree of care to prevent and restrain the unauthorized use or disclosure of the Spinco Confidential Information by any of its Representatives as it currently uses for its own confidential information of a like nature, but in no event less than a reasonable standard of care. For purposes of this Section 6.2(a), any Information, material or document exclusively relating to the Spinco Business that is furnished

to, or in the possession of, GGP, irrespective of the form of communication, and all notes, analyses, compilations, forecasts, data, translations, studies, memoranda or other documents prepared by GGP or its officers, directors and Subsidiaries, that contain or otherwise reflect such information, material or document, is herein referred to as “Spinco Confidential Information.” Spinco Confidential Information does not include, and there shall be no obligation hereunder with respect to, information that (i) is or becomes generally available to the public, other than as a result of a disclosure by GGP not otherwise permissible hereunder, (ii) GGP can demonstrate was or became available to GGP from a source other than Spinco or its Subsidiaries or (iii) is developed independently by GGP without reference to the Spinco Confidential Information; provided, however, that, in the case of clause (ii), the source of such information was not known by GGP to be bound by a confidentiality agreement with, or other contractual, legal or fiduciary obligation of confidentiality to, Spinco or any member of the Spinco Group with respect to such information.

(b) From and after the Effective Time, subject to Section 6.2(d) and except as contemplated by this Agreement or any other Transaction Document, without the prior written consent of GGP (which may be withheld in GGP’s sole discretion), Spinco shall not, and shall cause its Subsidiaries and their respective Representatives, not to, directly or indirectly, disclose, reveal, divulge or communicate to any Person other than Representatives of such party or of its Subsidiaries who reasonably need to know such information to provide services to Spinco or any member of the Spinco Group, or use or otherwise exploit for its own benefit or for the benefit of any third Person, any GGP Confidential Information. If any disclosures are made in connection with providing services to any member of the Spinco Group under this Agreement or any other Transaction Document, then the GGP Confidential Information so disclosed shall be used for the sole purpose of performing such services. The Spinco Group shall use the same degree of care to prevent and restrain the unauthorized use or disclosure of the GGP Confidential Information by any of their Representatives as they currently use for their own confidential information of a like nature, but in no event less than a reasonable standard of care. For purposes of this Section 6.2(b), any Information, material or document exclusively relating to the businesses currently or formerly conducted, or proposed to be conducted, by GGP or any of its Subsidiaries (other than any member of the Spinco Group) that is furnished to, or in the possession of, any member of the Spinco Group, irrespective of the form of communication, and all notes, analyses, compilations, forecasts, data, translations, studies, memoranda or other documents prepared by Spinco, any member of the Spinco Group or their respective officers, directors and Subsidiaries, that contain or otherwise reflect such information, material or document, is herein referred to as “GGP Confidential Information.” GGP Confidential Information does not include, and there shall be no obligation hereunder with respect to, information that (i) is or becomes generally available to the public, other than as a result of a disclosure by any member of the Spinco Group not otherwise permissible hereunder, (ii) Spinco can demonstrate was or became available to Spinco from a source other than GGP and its respective Subsidiaries or (iii) is developed independently by such member of the Spinco Group without reference to the GGP Confidential Information; provided, however, that, in the case of clause (ii), the source of such information was not known by Spinco to be bound by a confidentiality agreement with, or other contractual, legal or fiduciary obligation of confidentiality to, GGP or its Subsidiaries with respect to such information.



(c) From and after the Effective Time, subject to Section 6.2(d) and except as contemplated by this Agreement or any other Transaction Document, without the prior written consent of the other party (not to be unreasonably withheld, conditioned or delayed), each party shall not, and shall cause its Subsidiaries and their respective Representatives, not to, directly or indirectly, disclose, reveal, divulge or communicate any Shared Information to any Person other than Representatives of such party or of its Subsidiaries who reasonably need to know such information for the purpose of operating such party's business in its ordinary course. The GGP Group and the Spinco Group shall use the same degree of care to prevent and restrain the unauthorized use or disclosure of the Shared Information by any of their Representatives as they currently use for their own confidential information of a like nature, but in no event less than a reasonable standard of care. For purposes of this Section 6.2(c), any Information, material or document relating to both (i) the businesses currently or formerly conducted, or proposed to be conducted, by GGP or any of its Subsidiaries (other than any member of the Spinco Group) and (ii) the Spinco Business that is furnished to, or in the possession of, any member of the GGP Group or any member of the Spinco Group, irrespective of the form of communication, and all notes, analyses, compilations, forecasts, data, translations, studies, memoranda or other documents prepared by, for or on behalf of the party possessing such Information, material or document, is herein referred to as "Shared Information." Shared Information does not include, and there shall be no obligation hereunder with respect to, information that (i) is or becomes generally available to the public, other than as a result of a disclosure by any member of the GGP Group or any member of the Spinco Group (as applicable) not otherwise permissible hereunder, (ii) GGP or Spinco (as applicable) can demonstrate was or became available to such party from a source other than the other party and its respective Subsidiaries or (iii) is developed independently without reference to the Shared Information; provided, however, that, in the case of clause (ii), the source of such information was not known by such party to be bound by a confidentiality agreement with, or other contractual, legal or fiduciary obligation of confidentiality to, the other party or its Subsidiaries with respect to such information.

(d) If GGP or its Subsidiaries, on the one hand, or Spinco or its Subsidiaries, on the other hand, are requested or required (by oral question, interrogatories, requests for information or documents, subpoena, civil investigative demand or similar process) by any Governmental Authority or pursuant to applicable Law to disclose or provide any Shared Information (applicable to both parties) or Spinco Confidential Information or GGP Confidential Information (as applicable), the Person receiving such request or demand shall use commercially reasonable efforts to provide the other party with written notice of such request or demand as promptly as practicable under the circumstances so that such other party shall have an opportunity to seek an appropriate protective order. The party receiving such request or demand agrees to take, and cause its representatives to take, at the requesting party's expense, all other reasonable steps necessary to obtain confidential treatment by the recipient. Subject to the foregoing, the party that received such request or demand may thereafter disclose or provide any Shared Information, Spinco Confidential Information or GGP Confidential Information, as the case may be, to the extent required by such Law (as so advised by counsel) or by lawful process or such Governmental Authority. This Section 6.2(d) shall not apply to any Information furnished pursuant to the provisions of Article IV of this Agreement.

(e) Each of GGP and Spinco acknowledges that it and the other members of its Group may have in their possession confidential or proprietary information of third Persons

that was received under confidentiality or non-disclosure agreements with such third Person prior to the Plan Effective Date. GGP and Spinco each agrees that it will hold, and will cause the other members of its Group and their respective Representatives to hold, in strict confidence the confidential and proprietary information of third Persons to which it or any other member of its respective Group has access, in accordance with the terms of any agreements entered into prior to the Plan Effective Date between or among one (1) or more members of the applicable party's Group and such third Persons.

### 6.3 Insurance Matters.

(a) Except as expressly provided herein or in any of the other Transaction Documents, Spinco acknowledges and agrees, on its own behalf and on behalf of each other member of the Spinco Group, that, from and after the Effective Time, neither Spinco nor any member of the Spinco Group shall have any rights to or under any of GGP's or its Subsidiaries' insurance policies, other than any insurance policies acquired prior to the Effective Time directly by and in the name of a member of the Spinco Group or as expressly provided in this Section 6.3 or in the Transition Services Agreement or the Employee Matters Agreement; provided, however, that Spinco shall be entitled to any loss recoveries paid to any member of the GGP Group subsequent to the Effective Time in respect of any insurance claims to the extent related to the Spinco Business that were formally filed and open prior to the Effective Time less the amount of (i) any Liabilities (other than Excluded Liabilities) that GGP or its Subsidiaries (including, for the avoidance of doubt, any member of the Spinco Group) incurred and paid in connection therewith prior to the Effective Time and (ii) any Liabilities incurred by any member of the GGP Group in connection with obtaining such insurance recoveries.

(b) Notwithstanding Section 6.3(a), from and after the Effective Time, with respect to losses, damages, wrongful acts or liability incurred prior to the Effective Time, Spinco may access GGP's insurance policies as follows:

(i) to file claims against GGP's occurrence policies including Workers' Compensation, Employers Liability, General Liability, Automobile Liability and Excess Umbrella Policies for losses occurring on or before the Effective Time; and

(ii) to file claims against GGP's claims made policies including Directors & Officers, Fiduciary Liability, Employment Practices Liability, Crime, and Pollution Legal Liability coverage in force at the time the claim is made if the act giving rise to the claim occurred prior to the Effective Time;

provided, however, that, in the case of each of clause (i) and (ii), such access to, and the right to make claims under such insurance policies, shall be subject to the terms and conditions of the applicable insurance policies, including any limits on coverage or scope, any deductible and other fees and expenses, and shall be subject to:

(A) For so long as Spinco may access GGP's policies, Spinco shall report as promptly as practicable (1) claims under the Workers' Compensation and Automobile Liability policy directly to the applicable insurance company in accordance with GGP's claim reporting procedures in effect immediately prior to the Effective Time and provide

copies of such reported claims to GGP's Corporate Insurance and Risk Management Department and (2) claims under all other insurance policies to the GGP Corporate Insurance Department;

(B) Spinco shall indemnify, hold harmless and reimburse GGP and its Subsidiaries for any deductibles and self-insured retention incurred by GGP or its Subsidiaries to the extent resulting from any access to, any claims made by Spinco or any of its Subsidiaries under, any insurance provided pursuant to Section 6.3(b)(i) and Section 6.3(b)(ii), including any indemnity payments, settlements, judgments, legal fees and allocated claims expenses and claim handling fees, whether such claims are made by Spinco, its employees or third Persons;

(C) Spinco shall exclusively bear and be responsible for (and GGP shall have no obligation to repay or reimburse Spinco or any of its Subsidiaries for) and pay the applicable insurers as required under the applicable insurance policies for any and all costs as a result of having access to, or making claims under, any insurance provided pursuant to Pre-GGP Insurance Policies, including any deductibles and self-insured retention associated with such claims, retrospective, retroactive or prospective premium adjustments associated with the applicable insurance policies, catastrophic coverage charges, overhead, claim handling and administrative costs, Taxes, surcharges, state assessments, reinsurance costs, other related costs and claim payments, relating to all open, closed or re-opened claims covered by the applicable policies, whether such claims are made by Spinco, its employees or third Persons; and

(D) Spinco shall exclusively bear (and GGP shall have no obligation to repay or reimburse Spinco or its Subsidiaries for) and shall be liable for all uninsured, uncovered, unavailable or uncollectible amounts of all such claims made by Spinco or any of its Subsidiaries under the policies as provided for in this Section 6.3(b).

(c) Any payments, costs and adjustments required pursuant to Section 6.3(b) (other than payments, costs and adjustments with respect to Pre-GGP Insurance Policies, which payments, costs and adjustments shall be paid by Spinco directly to the applicable insurers) shall be billed by GGP to Spinco on a monthly basis and payable within thirty (30) days from receipt of invoice. If payment is not made within ninety (90) days of invoice, the outstanding amount will accrue interest from and including the ninetieth (90th) day following the date of the invoice to (but excluding) the date of payment at a rate per annum equal to ten percent (10%). If GGP incurs costs to enforce Spinco's obligations herein, Spinco agrees to indemnify GGP for such enforcement costs, including attorneys' fees.

(d) Except as set forth in the proviso to Section 6.3(a) and the Employee Matters Agreement, Spinco acknowledges and agrees on its own behalf, and on behalf of each other member of the Spinco Group, that neither Spinco nor any member of the Spinco Group shall have any right or claim against GGP or any of its Subsidiaries for reimbursement, payment or any other obligation arising from any insurance policy covering Spinco, any Spinco Asset or any member of the Spinco Group, and hereby irrevocably releases, as of the Effective Time, GGP and its Subsidiaries from all of the duties, obligations, responsibilities and liabilities, known or unknown, reported or not reported, imposed upon GGP or any of its Subsidiaries to the extent resulting from, relating to or arising out of any such insurance policy, without recourse to GGP or any of its Subsidiaries.

(e) GGP shall retain the exclusive right to control its insurance policies and programs, including the right to exhaust, settle, release, commute, buy-back or otherwise resolve disputes with respect to any of its insurance policies and programs and to amend, modify or waive any rights under any such insurance policies and programs, notwithstanding whether any such policies or programs apply to any Spinco Liabilities and/or claims Spinco has made or could make in the future, and no member of the Spinco Group shall, without the prior written consent of GGP, erode, exhaust, settle, release, commute, buy-back or otherwise resolve disputes with GGP's insurers with respect to any of GGP's insurance policies and programs, or amend, modify or waive any rights under any such insurance policies and programs. Spinco shall cooperate with GGP and share such information as is reasonably necessary in order to permit GGP to manage and conduct its insurance matters as it deems appropriate.

(f) At the Effective Time, Spinco shall have in effect, except as contemplated by the Transition Services Agreement, all insurance programs required to comply with law or Spinco's contractual obligations and such other insurance policies as reasonably necessary or customary for companies operating a business similar to Spinco's.

(g) Except as otherwise provided in Section 6.3(i), GGP and its Subsidiaries shall have no obligation to secure extended reporting for any claims under any of GGP's or its Subsidiaries' claims-made or occurrence-reported liability policies for any acts or omissions by any member of the Spinco Group incurred prior to the Effective Time.

(h) GGP has obtained and shall provide for the joint benefit of GGP and Spinco, a fully paid directors and officers liability run-off insurance policy, for claims made after the Effective Time covering wrongful acts which take place after the commencement of the Bankruptcy Cases and on or prior to the Effective Time and arising out of or relating to the entities and business that are part of the Spinco Group as of immediately after the Effective Time, with a policy period of at least three (3) years from and after the Effective Time, covering (i) current as of the Effective Time and former directors and officers of GGP, (ii) current as of the Effective Time and former directors and officers of the entities and business that are part of the Spinco Group as of immediately after the Effective Time, (iii) current as of the Effective Time and former GGP employees for securities claims and (iv) GGP and its Subsidiaries and the entities and business that are part of the Spinco Group as of immediately after the Effective Time and its Subsidiaries for securities claims. Such directors and officers liability run-off insurance policy shall be materially consistent with the directors and officers liability insurance policy currently maintained by GGP (except for the policy period and provisions excluding coverage for wrongful acts occurring after the Effective Time).

(i) This Agreement shall not be considered as an attempted assignment of any policy of insurance or as a contract of insurance and shall not be construed to waive any right or remedy of any member of the GGP Group in respect of any of the GGP insurance policies and programs or any other Contract or policy of insurance.

6.4 Allocation of Costs and Expenses. Subject to the terms of the Investment Agreements, GGP shall pay for all out-of-pocket fees, costs and expenses incurred by GGP or any of its Subsidiaries prior to the Effective Time in connection with the Transactions, including (i) the preparation and negotiation of this Agreement, each other Transaction Document (unless

otherwise expressly provided therein), each of the financing transactions described in the Form 10 as occurring on or prior to the Plan Effective Date, including any financing transactions to be entered into by Spinco or any of its Subsidiaries and all other documentation related to the Transactions and all related transactions, (ii) the preparation and execution or filing of any and all other documents, agreements, forms, applications, Contracts or consents associated with the Transactions and all related transactions, (iii) the preparation and filing of Spinco's and its Subsidiaries' organizational documents, (iv) the preparation, printing and filing of the Form 10 and the information statement contained therein and/or any other required securities filings, including all fees and expenses of complying with applicable federal and state securities Laws and domestic securities exchange rules and regulations, together with fees and expenses of counsel retained to effect such compliance, (v) obtaining the Private Letter Ruling, (vi) the initial listing of the Spinco Common Stock on the New York Stock Exchange, (vii) the fees and expenses of Deloitte & Touche incurred in connection with the Form 10 and the information statement contained therein and/or any other required securities filings, (viii) the fees and expenses related to the bankruptcy proceeding of GGP and (ix) the fees and expenses of Weil, Gotshal & Manges LLP incurred in connection with rendering the legal opinions of outside tax counsel contemplated by Section 3.2(c).

#### 6.5 Litigation; Cooperation.

(a) As of the Effective Time, Spinco shall assume and thereafter, except as provided in Article V, be responsible for the administration of all Liabilities that may result from the Assumed Actions and all fees and costs relating to the defense of the Assumed Actions, including attorneys' fees and costs incurred after the Effective Time. "Assumed Actions" means those Actions (in which any member of the GGP Group or any Subsidiary of a member of the GGP Group is a defendant or the party against whom the claim or investigation is directed) primarily relating to the Spinco Business, including the Actions listed on Schedule 6.5(a). Spinco shall use its commercially reasonable efforts to cause each member of the GGP Group to be removed from the Assumed Actions; provided, however, that if Spinco is unable to cause each member of the GGP Group to be removed from an Assumed Action, GGP and Spinco shall cooperate and consult to the extent necessary or advisable with respect to such Assumed Action.

(b) GGP shall transfer the Transferred Actions to Spinco, and Spinco shall receive and have the benefit of all of the proceeds of such Transferred Actions. "Transferred Actions" means those Actions (in which any member of the GGP Group or any Subsidiary of a member of the GGP Group is a plaintiff or claimant) primarily relating to the Spinco Business. Spinco shall use its commercially reasonable efforts to cause each member of the GGP Group to be removed from the Transferred Actions; provided, however, that if Spinco is unable to cause each member of the GGP Group to be removed from a Transferred Action, GGP and Spinco shall cooperate and consult to the extent necessary or advisable with respect to such Transferred Action.

(c) (i) GGP agrees that at all times from and after the Effective Time if a Third Party Claim relating primarily to the GGP Business is commenced naming both a member of the GGP Group and a member of the Spinco Group as defendants thereto, then GGP shall use its commercially reasonable efforts to cause each such member of the Spinco Group to be removed from such Third Party Claim; provided, that, if GGP is unable to cause each such

member of the Spinco Group to be removed from such Third Party Claim, GGP and Spinco shall cooperate and consult to the extent necessary or advisable with respect to such Third Party Claim.

(ii) Spinco agrees that at all times from and after the Effective Time if a Third Party Claim relating primarily to the Spinco Business is commenced naming both GGP and Spinco as defendants thereto, then Spinco shall use its commercially reasonable efforts to cause GGP to be removed from such Third Party Claim; provided, that, if Spinco is unable to cause GGP to be removed from such Third Party Claim, GGP and Spinco shall cooperate and consult to the extent necessary or advisable with respect to such Third Party Claim.

(iii) GGP and Spinco agree that at all times from and after the Effective Time if a Third Party Claim which does not relate primarily to the Spinco Business or the GGP Business is commenced naming both GGP (or any member of the GGP Group) and Spinco (or any member of the Spinco Group) as defendants thereto, then GGP and Spinco shall cooperate fully with each other, maintain a joint defense (in a manner that would preserve for both parties and their respective Subsidiaries any attorney-client privilege, joint defense or other privilege with respect thereto) and consult each other to the extent necessary or advisable with respect to such Third Party Claim.

(d) GGP and Spinco agree that, with respect to any Assumed Action, Transferred Action, Third Party Claim, or any other Action to which either GGP or Spinco is a party and that is governed by this Section 6.5, neither GGP or any member of the GGP Group, on the one hand, nor Spinco or any member of the Spinco Group, on the other hand, shall settle such Action in a manner that would reasonably be expected to result in any liability or equitable relief, contingent or otherwise, against the other.

6.6 Tax Matters. GGP and Spinco shall enter into the Tax Matters Agreement on or prior to the Plan Effective Date. To the extent any representations, warranties, covenants or agreements between the parties with respect to Taxes or other matters are set forth in the Tax Matters Agreement, such Taxes and other matters shall be governed exclusively by the Tax Matters Agreement and not by this Agreement.

6.7 Employment Matters. GGP and Spinco shall enter into the Employee Matters Agreement concurrent with this Agreement. To the extent that any representations, warranties, covenants or agreements between the parties with respect to employment matters are set forth in the Employee Matters Agreement, such employment matters shall be governed exclusively by the Employee Matters Agreement and not by this Agreement, if applicable, with respect to Spinco Employees.

6.8 Real Estate Agreements. GGP and Spinco shall enter into the Real Estate Agreements on or prior to the Plan Effective Date. To the extent that any representations, warranties, covenants or agreements between the parties with respect to the subject matters contemplated by the Real Estate Agreements are set forth in the Real Estate Agreements, such subject matters shall be governed exclusively by the Real Estate Agreements and not by this Agreement.

## ARTICLE VII

### DISPUTE RESOLUTION

#### 7.1 General Provisions.

(a) Any dispute, controversy or claim arising out of or relating to this Agreement that arises prior to the closing of the Bankruptcy Cases (such time, the “Bankruptcy Closing”) shall be subject to the jurisdiction of and determination by the Bankruptcy Court, and any dispute, controversy or claim arising out of or relating to this Agreement that arises after the Bankruptcy Closing shall be subject to the procedures in this Article VII. Each of the parties hereto (i) consents to the exclusive personal jurisdiction of the Bankruptcy Court (prior to the Bankruptcy Closing) or the procedures set forth in this Article VII (after the Bankruptcy Closing) in connection with any dispute arising out of or relating to this Agreement, (ii) agrees that it will not attempt to deny or defeat such personal jurisdiction by motion or other request for leave from such courts for actions brought prior to the Bankruptcy Closing and (iii) agrees that it will not bring any action relating to this Agreement in any court other than the Bankruptcy Court (prior to the Bankruptcy Closing), unless such court first determines it does not have subject matter jurisdiction or otherwise declines to hear the dispute.

(b) Subject to Section 7.1(a), any dispute, controversy or claim arising out of or relating to this Agreement or the other Transaction Documents (other than the Transition Services Agreement and the Tax Matters Agreement, which shall be subject to the dispute resolution provisions contained therein), or the validity, interpretation, breach or termination thereof that arises after the final determination of the Bankruptcy Cases (a “Dispute”), shall be resolved in accordance with the procedures set forth in this Article VII, which shall be the sole and exclusive procedures for the resolution of any such Dispute unless otherwise specified in the applicable Transaction Document or in this Article VII below.

(c) Commencing with a request contemplated by Section 7.2 set forth below, all communications between the parties or their representatives in connection with the attempted resolution of any Dispute shall be deemed to have been delivered in furtherance of a Dispute settlement and shall be exempt from discovery and production, and shall not be admissible into evidence for any reason (whether as an admission or otherwise), in any arbitral or other proceeding for the resolution of any Dispute.

(d) THE PARTIES EXPRESSLY WAIVE AND FOREGO ANY RIGHT TO (I) SPECIAL DAMAGES, AS DEFINED HEREIN (PROVIDED, THAT LIABILITY FOR ANY SUCH SPECIAL DAMAGES, AS DEFINED HEREIN, WITH RESPECT TO ANY THIRD PARTY CLAIM SHALL BE CONSIDERED DIRECT DAMAGES) AND (II) TRIAL BY JURY.

(e) The specific procedures set forth in this Article VII below, including the time limits referenced therein, may be modified by agreement of both of the parties in writing.

(f) All applicable statutes of limitations and defenses based upon the passage of time shall be tolled while the procedures specified in this Article VII are pending. The parties will take any necessary or appropriate action required to effectuate such tolling.

7.2 Consideration by Senior Executives. Following the Bankruptcy Closing, if a Dispute is not resolved in the normal course of business at the operational level, the parties shall attempt in good faith to resolve the Dispute by negotiation between the Groups' executives who hold, respectively, the office of Vice President (or a more senior office). Either party may initiate the executive negotiation process by providing a written notice to the other (the "Initial Notice"). Within fifteen (15) days, the receiving party shall submit to the other a written response (the "Response"). The Initial Notice and the Response shall include (i) a statement of the Dispute and of each party's position and (ii) the name and title of the executive who will represent that party and of any other person who will accompany the executive. The parties agree that such executives shall have full and complete authority to resolve any Disputes submitted pursuant to this Section 7.2. Such executives will meet in person or by teleconference or video conference within thirty (30) days (or, where the Dispute relates to the a matter controlled by the Transition Services Agreement, then within the time periods set forth therein with respect to the Transition Services Agreement, twenty-five (25) days) of the date of the Initial Notice to seek a resolution of the Dispute. In the event that the executives are unable to agree to a location or format for such meeting, the meeting shall be convened by teleconference.

### 7.3 Arbitration.

(a) Following the Bankruptcy Closing, if a Dispute is not resolved by negotiation as provided in Section 7.2 within forty-five (45) days (or, where the Dispute relates to the Transition Services Agreement, thirty (30) days) from the delivery of the Initial Notice, then either party shall (i) pursuant to its rights under Section 7.1, submit a request for interim injunctive relief to the arbitrator appointed pursuant to Section 7.3(b) (provided, that, if the tribunal shall not have been constituted, either party may seek interim relief either before a special arbitrator, as provided for in Rule 14 of the CPR Institute for Dispute Resolution (the "CPR") Arbitration Rules, or before any court of competent jurisdiction) without first complying with the provisions of Section 7.2 if, in the reasonable opinion of such party, such interim injunctive relief is necessary to preserve its rights pending resolution of the Dispute, and (ii) if such Dispute is not finally resolved pursuant to Section 7.2, submit such Dispute to be finally resolved by binding arbitration, in each case, pursuant to the CPR Rules for Non-Administered Arbitration as then in effect (the "CPR Arbitration Rules").

(b) The neutral organization for purposes of the CPR Arbitration Rules will be the CPR. The arbitrator will be composed of one (1) arbitrator. The one (1) arbitrator will be appointed by CPR from a list of six (6) proposed neutrals submitted by the CPR. Each party may strike no more than two (2) neutrals from the list submitted by CPR.

(c) Arbitration will take place in the Borough of Manhattan in New York, New York. Along with the arbitrator appointed, the parties will agree to a mutually convenient date and time to conduct the arbitration, but in no event will the hearing(s) be scheduled less than nine (9) months from submission of the Dispute to arbitration unless the parties agree otherwise in writing; provided, that, if injunctive or other interim relief contemplated by Section 7.3(d)



below is requested, the hearing(s) will be expedited in accordance with any order entered by the court, tribunal or special arbitrator adjudicating that request.

(d) The arbitrator will have the right to award, on an interim basis, or include in the final award, money damages (with interest on unpaid amounts from the due date), injunctive relief (including specific performance) and attorneys' fees and costs; provided, that the arbitrator will not award any relief not specifically requested by the parties and, in any event, will not award Special Damages. Upon appointment of the arbitrator following any grant of interim relief by a special arbitrator or court pursuant to Sections 7.3(a) and 7.4, the tribunal may affirm or disaffirm that relief, and the parties will seek modification or rescission of the order entered by the special arbitrator or court as necessary to accord with the tribunal's decision.

(e) The parties agree to be bound by the provisions of Rule 13 of the Federal Rules of Civil Procedure with respect to compulsory counterclaims (as the same may be amended from time to time); provided, that any such compulsory counterclaim shall be filed within thirty (30) days of the filing of the original claim.

(f) So long as either party has a timely claim to assert, the agreement to arbitrate Disputes set forth in this Section 7.3 will continue in full force and effect subsequent to, and notwithstanding the completion, expiration or termination of, this Agreement.

(g) A party obtaining an order of interim injunctive relief may enter judgment upon such award in any court of competent jurisdiction. The final award in an arbitration pursuant to this Article VII shall be conclusive and binding upon the parties, and a party obtaining a final award may enter judgment upon such award in any court of competent jurisdiction.

(h) It is the intent of the parties that the agreement to arbitrate Disputes set forth in this Section 7.3 shall be interpreted and applied broadly such that all reasonable doubts as to arbitrability of a Dispute shall be decided in favor of arbitration.

(i) If a Dispute includes both arbitrable and nonarbitrable claims, counterclaims or defenses, the parties shall arbitrate all such arbitrable claims, counterclaims or defenses and shall concurrently litigate all such nonarbitrable claims, counterclaims or defenses.

(j) The parties agree that any Dispute submitted to mediation and/or arbitration shall be governed by, and construed and interpreted in accordance with, Section 8.2 and, except as otherwise provided in this Article VII or mutually agreed to in writing by the parties, the Federal Arbitration Act, 9 U.S.C. §§ 1 et seq., shall govern any arbitration between the parties pursuant to this Section 7.3.

(k) Each party shall bear (i) its own fees, costs and expenses and (ii) an equal share of other expenses of the arbitration, including the fees, costs and expenses of the one (1) arbitrator; provided, in the case of any Disputes relating to the parties' rights and obligations with respect to indemnification under Article V, the prevailing party shall be entitled to reimbursement by the other party of its reasonable out-of-pocket fees and expenses (including attorneys' fees) incurred in connection with the arbitration.

7.4 Specific Performance. In the event of any actual or threatened default in, or breach of, any of the terms, conditions and provisions of this Agreement, the Tax Matters Agreement, the Employee Matters Agreement or any of the Real Estate Agreements, the party or parties who are or are to be thereby aggrieved shall have the right to specific performance and injunctive or other equitable relief (on an interim or permanent basis) of its rights under such agreement, in addition to any and all other rights and remedies at law or in equity, and all such rights and remedies shall be cumulative. The parties agree that the remedies at law for any breach or threatened breach, including monetary damages, may be inadequate compensation for any loss and that any defense in any action for specific performance that a remedy at law would be adequate is waived. Any requirements for the securing or posting of any bond with such remedy are waived by each of the parties to this Agreement. Notwithstanding the foregoing, except with respect to breaches of Section 6.2 of this Agreement, specific performance can only be sought and granted in proceedings before the Bankruptcy Court or the independent arbitrator pursuant to this Article VII.

## ARTICLE VIII

### MISCELLANEOUS

8.1 Corporate Power. GGP represents on behalf of itself and on behalf of other members of the GGP Group, and Spinco represents on behalf of itself and on behalf of other members of the Spinco Group, as of the date hereof, as follows:

(a) each such Person has the requisite corporate power and authority and has taken all corporate action necessary in order to execute, deliver and perform each of this Agreement and each other Transaction Document to which it is a party and to consummate the transactions contemplated hereby and thereby; and

(b) this Agreement and each Transaction Document to which it is a party has been duly executed and delivered by it and constitutes a valid and binding agreement of it enforceable in accordance with the terms thereof.

8.2 Governing Law. This Agreement and, unless expressly provided therein, each other Transaction Document, shall be governed by and construed and interpreted in accordance with the Laws of the State of New York irrespective of the choice of Laws principles of the State of New York.

8.3 Survival of Covenants. Except as expressly set forth in any other Transaction Document, the covenants and other agreements contained in this Agreement and each other Transaction Document, and liability for the breach of any obligations contained herein or therein, shall survive each of the Restructuring and the Distribution and shall remain in full force and effect.

8.4 Force Majeure. No party hereto (or any Person acting on its behalf) shall have any liability or responsibility for failure to fulfill any obligation (other than a payment obligation) under this Agreement or, unless otherwise expressly provided therein, any other Transaction Document, so long as and to the extent to which the fulfillment of such obligation is

prevented, frustrated, hindered or delayed as a consequence of circumstances of Force Majeure. A party claiming the benefit of this provision shall, as soon as reasonably practicable after the occurrence of any such event, (i) notify the other parties of the nature and extent of any such Force Majeure condition and (ii) use due diligence to remove any such causes and resume performance under this Agreement as soon as feasible.

8.5 Notices. All notices, requests, claims, demands and other communications under this Agreement and, to the extent applicable and unless otherwise provided therein, under each of the other Transaction Documents shall be in writing and shall be given or made (and shall be deemed to have been duly given or made upon receipt) by delivery in person, by overnight courier service, by facsimile or electronic transmission with receipt confirmed (followed by delivery of an original via overnight courier service) or by registered or certified mail (postage prepaid, return receipt requested) to the respective parties at the following addresses (or at such other address for a party as shall be specified in a notice given in accordance with this Section 8.5):

(i) if to GGP:

General Growth Properties, Inc.  
110 N. Wacker Drive  
Chicago, IL 60606  
Attention: General Counsel  
Facsimile: (312) 960-5485

(ii) if to Spinco:

Spinco, Inc.  
[INSERT ADDRESS]

a copy of all notices should also be sent to:

Weil, Gotshal & Manges LLP  
767 Fifth Avenue  
New York, NY 10153  
Attention: Gary Holtzer and Marcia Goldstein  
Facsimile: (212) 310-8007

8.6 Termination. Notwithstanding any provision to the contrary, this Agreement may be terminated and the Distribution abandoned at any time prior to the Effective Time by and in the sole discretion of GGP without the prior approval of any Person, including Spinco. In the event of such termination, this Agreement shall become void and no party, or any of its officers and directors, shall have any liability to any Person by reason of this Agreement. After the Effective Time, this Agreement may not be terminated except by an agreement in writing signed by each of the parties to this Agreement.

8.7 Severability. If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced under any Law or as a matter of public policy, all other conditions and provisions of this Agreement shall remain in full force and effect. Upon such determination

that any term or other provision is invalid, illegal or incapable of being enforced, the parties to this Agreement shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated by this Agreement be consummated as originally contemplated to the greatest extent possible.

8.8 Entire Agreement. Except as otherwise expressly provided in this Agreement, this Agreement (including the Schedules and Exhibits hereto) constitutes the entire agreement of the parties hereto with respect to the subject matter of this Agreement and supersedes all prior agreements and undertakings, both written and oral, between or on behalf of the parties hereto with respect to the subject matter of this Agreement.

8.9 Assignment; No Third-Party Beneficiaries. This Agreement shall not be assigned by either party without the prior written consent of the other party. Notwithstanding the foregoing, either party may assign (i) any or all of its rights and obligations under this Agreement to any of its Subsidiaries and (ii) any or all of its rights and obligations under this Agreement in connection with a sale or disposition of any assets or entities or lines of business; provided, however, that, in each case, no such assignment shall (i) release the assigning party from any liability or obligation under this Agreement or (ii) change any of the steps in the Spinoff Plan or the Plan. Except as provided in Article V with respect to Indemnified Parties, this Agreement is for the sole benefit of the parties to this Agreement and members of their respective Group and their permitted successors and assigns and nothing in this Agreement, express or implied, is intended to or shall confer upon any other Person any legal or equitable right, benefit or remedy of any nature whatsoever under or by reason of this Agreement.

8.10 Public Announcements. From and after the Effective Time, GGP and Spinco shall consult with each other before issuing, and give each other the opportunity to review and comment upon, any press release or other public statements with respect to any matters covered by this Agreement, and shall not issue any such press release or make any such public statement prior to such consultation, except as may be required by applicable Law, court process or by obligations pursuant to any listing agreement with any national securities exchange or national securities quotation system.

8.11 Amendment. No provision of this Agreement may be amended or modified except by a written instrument signed by all the parties to this Agreement. No waiver by any party of any provision of this Agreement shall be effective unless explicitly set forth in writing and executed by the party so waiving. The waiver by any party of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any other subsequent breach.

8.12 Rules of Construction. Interpretation of this Agreement shall be governed by the following rules of construction: (i) in the event of any conflict between the terms and conditions of this Agreement and the terms and conditions of any Ancillary Document, the terms and conditions of the Ancillary Document shall govern and control this Agreement, unless otherwise specified herein; (ii) words in the singular shall be held to include the plural and vice versa and words of one gender shall be held to include the other gender as the context requires; (iii) references to the terms Article, Section, paragraph, clause, Exhibit and Schedule are references to the Articles, Sections, paragraphs, clauses, Exhibits and Schedules of this Agreement unless

otherwise specified; (iv) the terms “hereof,” “herein,” “hereby,” “hereto,” and derivative or similar words refer to this entire Agreement, including the Schedules and Exhibits hereto; (v) references to “\$” shall mean U.S. dollars; (vi) the word “including” and words of similar import when used in this Agreement shall mean “including, without limitation,” unless otherwise specified; (vii) the word “or” shall not be exclusive; (viii) references to “written” or “in writing” include in electronic form; (ix) unless the context requires otherwise, references to “party” shall mean GGP or Spinco, as appropriate, and references to “parties” shall mean GGP and Spinco; (x) provisions shall apply, when appropriate, to successive events and transactions; (xi) the table of contents and headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement; (xii) GGP and Spinco have each participated in the negotiation and drafting of this Agreement and if an ambiguity or question of interpretation should arise, this Agreement shall be construed as if drafted jointly by the parties hereto and no presumption or burden of proof shall arise favoring or burdening either party by virtue of the authorship of any of the provisions in this Agreement or any interim drafts of this Agreement; and (xiii) a reference to any Person includes such Person’s successors and permitted assigns.

8.13 Counterparts. This Agreement may be executed in one (1) or more counterparts, and by the different parties to each such agreement in separate counterparts, each of which when executed shall be deemed to be an original but all of which taken together shall constitute one and the same agreement. Delivery of an executed counterpart of a signature page to this Agreement by facsimile or portable document format (PDF) shall be as effective as delivery of a manually executed counterpart of any such Agreement.

*[The remainder of this page is intentionally left blank.]*

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed on the date first written above by their respective duly authorized officers.

GENERAL GROWTH PROPERTIES, INC.

By: \_\_\_\_\_  
Name:  
Title:

SPINCO, INC.

By: \_\_\_\_\_  
Name:  
Title:

**SCHEDULE 2.1(a)**

Spinoff Plan

See attached.

Spinco, Inc. – Spin-Off Reorganization Steps

**Spin-Off Transaction Steps**

1. Landmark Mall LLC elects to be treated as a corporation for tax purposes.
2. Simultaneous with Step 1, Landmark Mall LLC and GGP Holding II, Inc jointly, and Landmark Mall LLC and GGP Holding, Inc. jointly elect to treat Landmark Mall LLC as a taxable REIT subsidiary of GGP Holding II, Inc, and GGP Holding, Inc. respectively, for tax purposes.
3. GGP Holding II, Inc and Landmark Mall LLC jointly make a Section 362(e)(2)(C) election.
4. GGP Ivanhoe II, Inc. (QRS) distributes its 100% membership interests in Landmark Mall LLC to its owner, GGP Holding II, Inc.
5. GGP Holding II, Inc distributes its 100% membership interests in Landmark Mall LLC acquired in Step 4 pro rata to each of its owners, GGP Holding, Inc. (99.9953082%) and The Rouse Company Limited Partnership (.0046918%) in proportion to their ownership interests in GGP Holding II, Inc.
6. GGP Holding, Inc. contributes its 99.9953082% membership interest in Landmark Mall LLC acquired in Step 5 above to HRD Remainder, Inc.
7. General Growth Properties, Inc. and Spinco, Inc. enter into an agreement with respect to development of Fashion Show resulting in deemed tax transactions as follows (for all Fashion Show Air Rights steps): Fashion Show Mall LLC is deemed to distribute certain contractual rights with respect to the parcel above Fashion Show (the “Fashion Show Air Rights”) to its owner Rouse FS, LLC (MD).
8. Rouse FS LLC is deemed to distribute its interests in Fashion Show Air Rights pro rata to its owners, Nevada Office Holding, LLC (f/k/a HHPLP), The Rouse Company Limited Partnership and HRD Remainder Inc. in proportion to their ownership interest in Rouse FS LLC



### Spin-Off Transaction Steps

9. Columbia Mall, Inc. distributes (i) certain contract rights with respect to its subsidiaries described in the Columbia Development Agreement (the "Columbia Development Rights") (transactions with respect to the Columbia Development Rights are deemed to occur for federal income tax purposes only) and (ii) its 100% equity interest of Merriweather Post Business Trust (1,000 shares of beneficial interest) and Town Center East Business Trust (1,000 shares of beneficial interest) to its owner, HRD Remainder Inc.

#### **Extraction of non-SPINCO, INC. properties from Howard Research and Development Corporation ("TRS 1A"), includes Gateway Overlook II Business Trust and Columbia Land Holdings, Inc.:**

10. Columbia Land Holdings, Inc. distributes Parcel E-2 in Columbia, MD (excluding Lot 39) to its owner, The Howard Research and Development Corporation (TRS 1A).

11. The Howard Research and Development Corporation (TRS 1A) distributes its 100% interest in Gateway Overlook II Business Trust (100 shares of beneficial interest) and Columbia Land Holdings, Inc. (1,000 shares of common stock), to its owner, HRD Remainder Inc.

12. HRD Remainder, Inc. contributes its 99.9953082% membership interest in Landmark Mall L.L.C. acquired in Step 6 and its interests in the Columbia Development Rights (deemed to occur for federal income tax purposes only) acquired in Step 9, Merriweather Post Business Trust (1,000 shares of beneficial interest) acquired in Step 9, Town Center East Business Trust (1,000 shares of beneficial interest) acquired in Step 9, Wincopin Restaurant Business Trust (1,000 shares of beneficial interest), ACB Parking Business Trust (1,000 shares of beneficial interest), American City Building Corporation (100 shares of common stock), HRD Parking, Inc. (1,000 shares of common stock), HRD Parking Deck Business Trust (1,000 shares of beneficial interest), and deemed to contribute its interests in the Fashion Show Air Rights to The Howard Research and Development Corporation (TRS 1A).

13. HRD Remainder, Inc. distributes its 100% ownership interest (1,000 shares of common stock) in The Howard Research and Development Corporation (TRS 1A) to its owner, GGP Holding, Inc.

14. GGP Holding, Inc. distributes its 100% ownership interest (1,000 shares of common stock) in The Howard Research and Development Corporation (TRS 1A) acquired in Step 13 to its owner, The Rouse Company LP, in a tax-free spin-off.

## Spin-Off Transaction Steps

### Transfer of Summerlin Center LLC to TRS 2:

15. Nevada Office Holding, LLC (f/k/a Howard Hughes Properties Limited Partnership) distributes Nevada Office Holding LLC's 100% membership interest in Summerlin Center LLC to The Howard Hughes Company, LLC in payment of the Howard Hughes Company, LLC's Unpaid Preferred Return and Invested Capital in an amount equivalent to the fair market value of Nevada Office Holding, LLC's 100% membership interest in Summerlin Center LLC.
16. The Howard Hughes Company, LLC distributes its [5.577%] membership interest in Nevada Office Holding, LLC (f/k/a Howard Hughes Properties Limited Partnership) to its owner The Hughes Corporation (TRS 2) [Note: The bracketed percentage will be adjusted if any adjustments are made to Step 15]

### Extraction of retail assets from Rouse-Fairwood Development Corporation (TRS 5):

17.
  - a. Rouse-Fairwood Development Corporation (TRS 5) transfers its 100% membership interests in 1450 Center Crossing Drive LLC and 1451 Center Crossing Drive LLC to TRCLP in partial settlement of intercompany liabilities TRS 5 owes to TRCLP.
  - b. Rouse-Fairwood Development Corporation (TRS 5) transfers its 100% membership interests in Rouse-Abbey, LLC and Rouse-Wincopin, LLC, and its 1% LP interests in Harbor Place Associates Limited Partnership to GGP Limited Partnership (GGPLP) in partial settlement of intercompany liabilities TRS 5 owes to GGPLP.
  - c. Rouse-Fairwood Development Corporation changes its name to "Fairwood Development Commercial Corporation".
18. The Howard Hughes Company, LLC distributes its 100% membership interest in Vista Commons LLC, and a 100% stockholder interests in Hughes Properties, Inc. (1,000 shares of common stock), Summa Corporation (1,000 shares of common stock), Rouse Tri-Party TRS, Inc. (1,000 shares of common stock), and H-Tex Incorporated (1,000 shares of common stock) to its member, The Hughes Corporation (TRS 2)
19. In a fair market value exchange, Fairwood Development Commercial Corporation (f/k/a Rouse-Fairwood Development Corporation) (TRS 5) sells its .000495% membership interests in Pioneer Office, LLC and Pioneer Place, LLC to GGP Holding, Inc. for the purchase price of \$10 for Pioneer Place, LLC and \$27 for Pioneer Office, LLC.

**Spin-Off Transaction Steps**

**Severance of connection between NV Government Services, LLC (f/k/a HHP Government Services Limited Partnership) (owned by Nevada Office Holding, LLC (f/k/a Howard Hughes Properties Limited Partnership) and Summerlin Corporation (owned indirectly by The Hughes Corporation (TRS 2):**

20. Summerlin Corporation distributes its 1% membership interest in NV Government Services, LLC (f/k/a HHP Government Services Limited Partnership) to its owner, The Howard Hughes Company, LLC.

21. The Howard Hughes Company, LLC distributes its 1% membership interests in NV Government Services, LLC (f/k/a HHP Government Services Limited Partnership) acquired in Step 20 to its owner, The Hughes Corporation (TRS 2).

**Restructuring of The Hughes Corporation (TRS 2) ownership of General Growth Management, Inc. (GGMI):**

22. Hexalon Real Estate, LLC distributes its .20% ownership interest (1 share common stock) in General Growth Management, Inc. to its owner, Hex Holding, LLC.

23. Hex Holding, LLC distributes its .20% ownership interest (1 share common stock) in General Growth Management, Inc. acquired in Step 22 pro-rata to its owners, THC-HRE, LLC and The Howard Hughes Company, LLC in proportion to their ownership interest in Hex Holding, LLC.

24. THC-HRE, LLC distributes its ownership interest (.6 of a share of common stock) in General Growth Management, Inc. acquired in Step 23 to its owner, The Howard Hughes Company, LLC.

25. The Howard Hughes Company, LLC distributes its ownership interest (1 share common stock) in General Growth Management, Inc. acquired in Steps 23 & 24 to its owner, The Hughes Corporation (TRS 2).

**Severance of connection between The Hughes Corporation (TRS 2) and General Growth Management Inc., Nevada Office Holding, LLC (f/k/a Howard Hughes Properties LP) and others:**

26. The Hughes Corporation (TRS 2) distributes its 1% membership interest in NV Government Services, LLC (f/k/a HHP Government Services Limited Partnership) acquired in Step 21 to its owner, The Rouse Company LP.

### Spin-Off Transaction Steps

27. The Hughes Corporation (TRS 2) distributes its ownership interest (1 share common stock) in General Growth Management, Inc. acquired in Step 25 to its owner, The Rouse Company LP.
28. The Hughes Corporation (TRS 2) distributes its [5.577%] membership interest (acquired in Step 16) in Nevada Office Holding, LLC (f/k/a Howard Hughes Properties LP) to its owner, The Rouse Company LP. [Note: the bracketed percentage will be adjusted if any adjustments are made to Step 15]
29. The Hughes Corporation (TRS 2) distributes its 100% membership interest in Vista Commons LLC, and 100% stockholder interests in Hughes Properties, Inc., Summa Corporation, Rouse Tri-Party TRS, Inc., and H-TEX Incorporated it acquired in Step 18 to its owner, The Rouse Company LP (TRCLP).
30. Howard Hughes Properties, Inc. (TRS 3) contributes its 50% membership interest in MSM Property LLC and 100% membership interests in: Howard Hughes Properties IV, LLC, Howard Hughes Properties V, LLC, Howard Hughes Canyon Pointe Q4, LLC, 10000 West Charleston Boulevard LLC and Howard Hughes Centerpoint LLC to a newly formed wholly-owned subsidiary corporation to be named "Nevada Office, Inc."
31. Howard Hughes Properties, Inc. (TRS 3) distributes its 100% ownership interest (100 shares of common stock) in Nevada Office, Inc. to its owner, The Rouse Company LP.

### Extraction of non-SPINCO, INC. assets from Victoria Ward, including Maine Mall and St. Louis Land:

32. Victoria Ward, Limited distributes its 100% membership interest in Saint Louis Land LLC and GGP-Maine Mall Land LLC to its owner, GGPLP L.L.C.

### Redlands Restructuring:

33. Redlands Land Acquisition Company LP liquidates, distributing its 100% membership interest in Redlands Land Holding LLC pro rata to its owners, GGPLP LLC (99.5%) and Redlands Land Acquisition Company LLC (.5%) in proportion to their ownership interests in Redlands Land Acquisition Company LP.
34. Redlands Land Acquisition Company LLC liquidates, distributing its .5% membership interest in Redlands Land Holding LLC acquired in Step 33 to its owner, GGPLP LLC.

## Spin-Off Transaction Steps

35. Redlands Land Holding L.L.C. merges with and into GGP-Redlands Mall LP. and name change to Redlands Land Acquisition Company, LP

### **Ala Moana Air Rights Restructuring:**

36. GGP Kapiolani Development L.L.C. transfers the parking deck parcel to Kapiolani Retail, LLC and Partial release (for the parking deck parcel) of the GGP Kapiolani Development L.L.C. mortgage is obtained.

37. Kapiolani Retail, LLC, as declarant, forms a two unit condo, one unit consisting of a commercial unit and a residential unit.

38. Kapiolani Retail, LLC contributes the residential condo interest (along with, for tax purposes, certain contractual rights to develop the residential unit (“Ala Moana Air Rights”)) to a newly formed DE LLC named “Kapiolani Residential, LLC”.

39. Kapiolani Retail, LLC distributes its 100% membership interest in Kapiolani Residential, LLC to its owner GGPLP LLC

### **Cottonwood Mall Restructuring:**

40. Price Development Company Limited Partnership (“PDCLP”) distributes its 100% stockholder interest in Price Development TRS, Inc. (100 shares of common stock) and 100% membership interest in Cottonwood Mall, LLC pro-rata to its owners, GGP Acquisition, L.L.C. and GGPLP L.L.C. in proportion to their ownership interest in PDCLP

41. GGP Acquisition, L.L.C. distributes its stockholder interest in Price Development TRS, Inc. (81.94226 shares of common stock) and its 81.94226% membership interest in Cottonwood Mall, LLC acquired in Step 40 to GGPLP L.L.C.

### **Cottonwood Square Restructuring:**

42. Price Development Company, Limited Partnership (“PDCLP”) contributes the Cottonwood Square property to a newly formed Delaware LLC to be named “Cottonwood Square, LLC”.

### **Spin-Off Transaction Steps**

43. Price Development Company, Limited Partnership ("PDCLP") distributes its 100% membership interest in Cottonwood Square, LLC pro rata to its owners, GGP Acquisition, L.L.C. and GGPLP L.L.C. in proportion to their ownership interest in PDCLP.
44. GGP Acquisition, L.L.C. distributes its 81.94226% membership interest in Cottonwood Square, LLC acquired in Step 43 to its owner, GGPLP L.L.C.
- Alameda Plaza Restructuring:**
45. GGP Acquisition, L.L.C. contributes the parcel adjacent to Alameda Plaza to a newly formed DE LLC to be named "Alameda Plaza, LLC" in which both GGP Acquisition, L.L.C. and Price Development Company, Limited Partnership are equal members.
46. Price Development Company, Limited Partnership contributes the Alameda Plaza property to Alameda Plaza, LLC.
47. Price Development Company, Limited Partnership ("PDCLP") distributes its portion of the membership interest (50%) in Alameda Plaza, LLC pro rata to its owners, GGP Acquisition, L.L.C. (41%) and GGPLP LLC (9%) in proportion to their ownership interest in PDCLP.
48. GGP Acquisition, L.L.C. distributes its portion of the membership interests (91%) in Alameda Plaza, LLC (50% originally held upon formation, plus the additional 41% acquired in Step 47) to its owner, GGPLP L.L.C.
- GGPLP LLC Redemption/Distribution:**
49. GGPLP L.L.C. distributes its 100% membership interest in Kapiolani Residential, LLC acquired in Step 39 to its owner, GGP Limited Partnership.
50. GGPLP L.L.C. distributes its 100% membership interests in Cottonwood Square, LLC acquired in Steps 43 & 44 to GGP Limited Partnership.
51. GGPLP L.L.C. distributes its 100% membership interests in GGP-Redlands Mall LLC acquired in Steps 33 and 34 and its 99.5% LP interest in Redlands Land Acquisition Company, LP (f/k/a GGP-Redlands Mall LP) to GGP Limited Partnership.

**Spin-Off Transaction Steps**

- 52. GGPLP L.L.C. distributes its 100% stockholder interest (249,998.75 shares of common stock) in Victoria Ward, Limited to GGP Limited Partnership.
- 53. GGPLP L.L.C. distributes its 100% membership interest in Elk Grove Town Center L.L.C. and its 99.5% LP interest in Elk Grove Town Center L.P. to GGP Limited Partnership.
- 54. GGPLP L.L.C. distributes its 100% stockholder interest (100 shares of common stock) in Price Development TRS, Inc. and its 100% membership interest in Cottonwood Mall, LLC acquired in Steps 40 & 41 to GGP Limited Partnership.
- 55. GGPLP L.L.C. distributes its 99.5% membership interest in Century Plaza L.L.C. to GGP Limited Partnership
- 56. GGPLP L.L.C. distributes its 100% membership interest in GGP-Mint Hill L.L.C. to GGP Limited Partnership
- 57. GGPLP L.L.C. distributes its 100% membership interest in Alameda Plaza, LLC acquired in Steps 47 & 48 to GGP Limited Partnership.

**GGMI Restructuring as a result of TRS 2 Restructuring:**

- 58. The Rouse Company Limited Partnership distributes its ownership interest (1 share common stock) in General Growth Management, Inc. acquired in Step 27 pro rata to its owners, Rouse LLC and GGP Limited Partnership in proportion to their ownership interest in TRCLP.
- 59. Rouse LLC distributes its stockholder interest (.001 of a share of common stock) in General Growth Management, Inc. acquired in Step 58 to GGP Limited Partnership.
- 60. GGP Natick Residence LLC elects to be treated as a corporation for tax purposes
- 61. General Growth Management, Inc. and GGP Natick Residence LLC jointly make a Section 362(e)(2)(C) election.
- 62. General Growth Management, Inc. distributes its 100% membership interest in GGP Natick Residence LLC to its sole-owner, GGP Limited Partnership.

## Spin-Off Transaction Steps

63. GGP Natick Residence LLC and General Growth Properties, Inc. (“GGPI”) jointly elect to treat GGP Natick Residence LLC as a taxable REIT subsidiary of GGPI.

### **NV Government Services, LLC (f/k/a HHP Government Services Limited Partnership) Restructuring:**

64. The Rouse Company LP contributes its 1% membership interest in NV Government Services, LLC (f/k/a HHP Government Services Limited Partnership) acquired in Step 26 to its subsidiary, Nevada Office Holding, LLC (f/k/a Howard Hughes Properties Limited Partnership).

### **GGP/Homart, Inc. Restructuring:**

65. GGP/Homart, Inc. contributes real property (approx. 40 acres of undeveloped land in Volo, IL) to a newly formed wholly-owned Delaware LLC to be named “Volo Land, LLC”.

66. GGP/Homart, Inc. distributes its 100% membership interest in Volo Land, LLC to its owner, GGP Limited Partnership.

### **Howard Hughes Properties, Inc. (TRS 3) Transfer:**

67. The Rouse Company LP distributes its 100% stockholder interest (9,100 shares of common stock) in Howard Hughes Properties, Inc. (TRS 3) pro rata to its owners, Rouse LLC and GGP Limited Partnership.

68. Rouse LLC distributes its pro-rata interest (91 shares of common stock) in Howard Hughes Properties, Inc. (TRS 3) acquired in Step 67 to its owner, GGP Limited Partnership.

### **Fashion Show Transfer, Landmark Mall LLC and TRS 1A Transfer:**

69. Nevada Office Holding, LLC (f/k/a Howard Hughes Properties Limited Partnership) deemed to distribute its interests in the Fashion Show Air Rights acquired in Step 8 to its owner, The Rouse Company LP.

70. The Rouse Company LP distributes its 100% stockholder interest (1,000 shares of common stock) in The Howard Research and



### **Spin-Off Transaction Steps**

Development Company (TRS 1A) acquired in Step 14, its .0046918% membership interest in Landmark Mall LLC acquired in Step 5 and is deemed to distribute its interests in the Fashion Show Air Rights acquired in Steps 8 and 69, pro rata to its owners, Rouse LLC and GGP Limited Partnership in proportion to their ownership interest in The Rouse Company LP.

71. Rouse LLC distributes its portion of the stockholder interest (10 shares of common stock) in Howard Research and Development Company (TRS 1A) acquired in Step 70, its portion of the membership interests .000016948% (1% of .0046918%) in Landmark Mall LLC acquired in Step 70 and is deemed to distribute its interests in the Fashion Show Air Rights acquired in Step 70 to its owner, GGP Limited Partnership.

#### **The Hughes Corporation (TRS 2) Transfer:**

72. The Rouse Company LP distributes its 100% stockholder interest (9,100 shares of common stock) in The Hughes Corporation (TRS 2) pro rata to its owners, Rouse LLC (91 shares) and GGPLP (9,009 shares) in proportion to their ownership interest in The Rouse Company LP.

73. Rouse LLC distributes its portion of the stockholder interests (91 shares) it acquired in Step 72 in The Hughes Corporation (TRS 2) to its owner, GGP Limited Partnership.

#### **Summerlin Center Hospital Restructuring:**

74. The Rouse Company LP distributes its 6.8% LP interest in Summerlin-Hospital Medical Center, LP pro rata to its owners, Rouse LLC and GGP Limited Partnership in proportion to their ownership interest in The Rouse Company LP.

75. Rouse LLC distributes the portion of its LP interest (.07%) in Summerlin-Hospital Medical Center, LP acquired in Step 74 to its owner, GGP Limited Partnership.

#### **Princeton Land, LLC Restructuring:**

76. The Rouse Company LP distributes its 100% membership interest in Princeton Land, LLC pro rata to its owners, Rouse LLC (1%) and GGP Limited Partnership (99%) in proportion to their ownership interest in The Rouse Company LP.

### **Spin-Off Transaction Steps**

77. Rouse LLC distributes its portion of the membership interests (1%) in Princeton Land, LLC acquired in Step 76 above to its owner, GGP Limited Partnership.

#### **South Street Seaport Restructuring:**

78. The Rouse Company LP distributes its 100% membership interest in Seaport Marketplace, LLC, its 95% LP interest in South Street Seaport LP, and its 100% membership interest in Seaport Marketplace Theatre, LLC pro rata to its owners, Rouse LLC and GGP Limited Partnership in proportion to their ownership interest in The Rouse Company LP.

79. Rouse LLC distributes its 1% membership interest in Seaport Marketplace, LLC, its .95% LP interest South Street Seaport LP, and its 1% membership interest in Seaport Marketplace Theatre, LLC acquired in Step 78 to its owner, GGP Limited Partnership.

#### **Woodlands Restructuring:**

80. The Rouse Company LP distributes its 100% membership interest in TWC Commercial Properties, LLC, 99% LP interest in TWC Commercial Properties, LP, and its 75% LP interest in Woodlands Office Equities-95 Ltd pro rata to its owners, Rouse LLC and GGP Limited Partnership in proportion to their ownership interest in TRCLP.

81. Rouse LLC distributes its 1% membership interest in TWC Commercial Properties, LLC, its .99% LP interest in TWC Commercial Properties, LP, and its .75% LP interest in Woodlands Office Equities-95 Ltd acquired in Step 80 to its owner, GGP Limited Partnership.

#### **Restructuring and transfer of Riverwalk Marketplace to SPINCO, INC.:**

82. New Orleans Riverwalk Associates (LA) converts to a LA LLC named "Riverwalk Marketplace (New Orleans), LLC".

83. Riverwalk Marketplace (New Orleans), LLC (LA) merges with and into a newly formed DE LLC named "Riverwalk Marketplace (New Orleans), LLC"

84. Rouse-New Orleans, LLC (MD) merges with and into its sole member, The Rouse Company of Louisiana, LLC (MD), resulting in the assignment of its 50% membership interest in Riverwalk Marketplace (New Orleans), LLC to its sole member, The Rouse

## Spin-Off Transaction Steps

Company of Louisiana, LLC (MD).

85. The Rouse Company of Louisiana, LLC (MD) liquidates/dissolves, distributing its 50% membership interest in Riverwalk Marketplace (New Orleans), LLC to its owner, The Rouse Company LP (TRCLP).
86. New Orleans Riverwalk Limited Partnership dissolves/liquidates, distributing its 50% membership interest in Riverwalk Marketplace (New Orleans), LLC pro rata to its owners, Greengate Mall Inc. (4%) and The Rouse Company LP (46%) in proportion to their ownership interest in New Orleans Riverwalk Limited Partnership.
87. The Rouse Company LP distributes its 96% membership interest in Riverwalk Marketplace (New Orleans), LLC, acquired in Steps 84 and 85 above, pro rata to its owners, Rouse LLC (.96%) and GGP Limited Partnership (95.4%) in proportion to their ownership interests in The Rouse Company LP.
88. Rouse LLC distributes its portion of the membership interests (.96%) in Riverwalk Marketplace (New Orleans), LLC acquired in Step 86 above to its owner, GGP Limited Partnership.

### Circle T Restructuring:

89. General Growth–Westlake, LP converts into a new DE LLC named “Westlake Retail Holding, LLC”
90. General Growth 170, LP converts into a newly formed DE LLC named “170 Retail Holding, LLC”
91. General Growth 170 (GP), LLC merges with and into GGP Limited Partnership resulting in the assignment of the 1% membership interest in 170 Retail Holding, LLC (f/k/a General Growth 170 L.P.) from General Growth 170(GP), LLC to GGP Limited Partnership.

### Settlement of TRS 2 Intercompany Obligation:

92. a. GGP Limited Partnership (GGPLP) transfers its 100% membership interest in Kapiolani Residential, LLC acquired in Step 49 and Volo Land, LLC acquired in Step 66 to TRCLP
- b. TRCLP (i) transfers the 100% membership interest in Kapiolani Residential, LLC and Volo Land, LLC acquired in Step 92a to

### Spin-Off Transaction Steps

The Hughes Corporation (TRS 2), and (ii) enters into the Two Arizona Center Promissory Note payable to The Hughes Corporation (TRS 2), in partial settlement of intercompany obligations TRCLP owes to The Hughes Corporation (TRS 2).

93. GGP Limited Partnership is deemed to contribute its interests in the Fashion Show Air Rights acquired in Steps 70 & 71 to The Howard Research and Development Corporation (TRS 1A).
94. GGP Limited Partnership contributes its 100% membership interest in TWC Commercial Properties, LLC, 99% LP interest in TWC Commercial Properties, LP, and 75% interest in Woodlands Office Equities-95 Ltd acquired in Steps 80 & 81 to The Howard Research and Development Corporation (TRS 1A).
95. GGP Limited Partnership contributes its 100% stockholder interest (9,100 shares of common stock) in The Hughes Corporation (TRS 2) acquired in Step 73 to The Howard Research and Development Corporation (TRS 1A).
96. GGP Limited Partnership contributes its 100% stockholder interest (9,100 shares of common stock) in Howard Hughes Properties, Inc. (TRS 3) acquired in Steps 67 & 68 to The Howard Research and Development Corporation (TRS 1A)
97. GGP Limited Partnership contributes its 6.8% LP interest in Summerlin-Hospital Medical Center, LP acquired in Steps 74 & 75 to The Howard Research and Development Corporation (TRS 1A)
98. GGP Limited Partnership contributes its 100% membership interest in Seaport Marketplace, LLC, 95% LP interest in South Street Seaport LP, and 100% membership interest in Seaport Marketplace Theatre, LLC acquired in Steps 78 & 79 to The Howard Research and Development Corporation (TRS 1A).
99. GGP Limited Partnership contributes its 100% membership interest in Princeton Land, LLC acquired in Steps 76 & 77 to The Howard Research and Development Corporation (TRS 1A).
100. GGP Limited Partnership contributes its 96% membership interest in Riverwalk MarketMarketplace (New Orleans), LLC acquired in Steps 86 & 87 to The Howard Research and Development Corporation (TRS 1A).
101. GGP Limited Partnership and The Howard Research and Development Corporation (TRS 1A) jointly make a 362(e)(2)(C) election.

## Spin-Off Transaction Steps

102. GGP Limited Partnership contributes its 100% membership interest in GGP 110 Holding L.L.C. to Spinco, Inc. and name changes of GGP 110 Holding L.L.C. to 110 Holding, LLC. And GGP 110 L.L.C. to 110 Wacker, LLC
103. GGP Limited Partnership contributes its 99.5% membership interest in Century Plaza L.L.C. acquired in Step 55 to Spinco, Inc.
104. GGP Limited Partnership contributes its 100% membership interest in 170 Retail Holding, LLC (f/k/a General Growth 170, L.P.) and its 99.999% membership interest in Westlake Retail Holding, LLC (f/k/a General Growth-Westlake, LP) to Spinco, Inc.
105. GGP Limited Partnership contributes its 100% membership interest in Alameda Plaza, LLC acquired in Step 57 to Spinco, Inc.
106. GGP Limited Partnership contributes its 100% membership interest in AllenTowne Mall, LLC to Spinco, Inc.
107. GGP Limited Partnership contributes its 100% membership interest in GGP-Mint Hill L.L.C. acquired in Step 56 to Spinco, Inc. and name change of GGP-Mint Hill LLC to Bridges at Mint Hill, LLC.
108. GGP Limited Partnership contributes its 100% stockholder interest in Price Development TRS, Inc. (100 shares of common stock) acquired in Step 54 and its 100% membership interest in Cottonwood Mall, LLC acquired in Step 54 to Spinco, Inc.
109. GGP Limited Partnership contributes its 100% membership interest in Cottonwood Square LLC acquired in Step 50 to Spinco, Inc.
110. GGP Limited Partnership contributes its 100% membership interest in Elk Grove Town Center L.L.C. acquired in Step 53 and its 99.5% LP interest in Elk Grove Town Center L.P. acquired in Step 53 to Spinco, Inc.
111. GGP Limited Partnership contributes its 100% membership interest in Parke West LLC to Spinco, Inc.
112. GGP Limited Partnership contributes its 100% membership interest in Rio West L.L.C. to Spinco, Inc.
113. GGP Limited Partnership contributes its 100% membership interest in GGP-Redlands Mall L.L.C. and its 99.5% LP interest in Redlands Land Acquisition Company, LP (f/k/a GGP-Redlands Mall L.P.) acquired in Step 51 to Spinco, Inc. and name change of

### Spin-Off Transaction Steps

GGP-Redlands Mall LLC to Redlands Land Acquisition Company, LLC

114. GGP Limited Partnership contributes its .0046918% membership interest in Landmark Mall L.L.C. acquired in Steps 70 & 71 to Spinco, Inc.

115. GGP Limited Partnership contributes its 100% membership interest in GGP Natick Residence, LLC acquired in Step 62 to Spinco, Inc. and name change amendment of GGP Natick Residence, LLC to Natick Residence, LLC.

116. GGP Limited Partnership contributes its 100% stockholder interest (249,998.75 shares of common stock) in Victoria Ward, Limited acquired in Step 52 to Spinco, Inc.

117. GGP Limited Partnership and Spinco, Inc. jointly make a 362(e)(2)(C) election.

118. GGP Limited Partnership ("GGPLP") distributes its 100% stockholder interest in Spinco, Inc. (\_\_\_\_\_ shares of common stock after amending & restating certificate of incorporation) to General Growth Properties, Inc. ("GGPI") and the minority common and preferred GGPLP unit holders and distributes its 100% stockholder interest (1,000 shares of common stock) in Howard Research and Development Corporation (TRS 1A) to GGPI.

#### GGPI Restructuring:

119. General Growth-Westlake (GP), Inc. merges with and into its sole owner, General Growth Properties, Inc. ("GGPI") resulting in the transfer of the .001% membership interest in Westlake Retail Holding, LLC (f/k/a General Growth Westlake, LP) from General Growth-Westlake (GP), Inc. to GGPI.

120. Century Plaza, Inc. merges with and into its sole owner, General Growth Properties, Inc. ("GGPI") resulting in the transfer of the .5% membership interest in Century Plaza L.L.C. from Century Plaza, Inc. to GGPI.

121. GGP 110, Inc. (QRS) merges with and into its sole owner, General Growth Properties, Inc. ("GGPI") resulting in the transfer of the .5% membership interest in GGP 110 L.L.C. to GGPI.

#### GGPI Contribution to HRDC (TRS 1A):

## Spin-Off Transaction Steps

122. General Growth Properties, Inc. contributes its .5% membership interests in GGP 110 LLC acquired in Step 121 to The Howard Research and Development Corporation (TRS 1A).
123. General Growth Properties, Inc. contributes its .001% membership interest in Westlake Retail Holding, LLC (f/k/a General Growth Westlake, LP) acquired in Step 119 to The Howard Research and Development Corporation (TRS 1A).
124. a. General Growth Properties, Inc. contributes its .5% membership interest in Century Plaza L.L.C. acquired in Step 120 to The Howard Research and Development Corporation (TRS 1A).
- b. General Growth Properties, Inc. and The Howard Research and Development Corporation (TRS 1A) jointly make a Section 362(e)(2)(C) election (in connection with annual tax filings).
125. General Growth Properties, Inc. contributes its 100% stockholder interest (1,000 shares of common stock) in Howard Research and Development Corporation (TRS 1A) acquired in Step 118 to Spinco, Inc.
- Spinco Restructuring:**
126. Spinco, Inc. contributes its 100% membership interest in 110 Holding, LLC (f/k/a GGP 110 Holding L.L.C.) acquired in Step 102 to The Howard Research and Development Corporation (TRS 1A).
127. Spinco, Inc. contributes its 100% membership interest in Century Plaza L.L.C. acquired in Steps 103 and 124 to The Howard Research and Development Corporation (TRS 1A).
128. Spinco, Inc. contributes its 100% membership interest in 170 Retail Holding, LLC (f/k/a General Growth 170, L.P.) acquired in Step 104 and its 99.999% membership interest in Westlake Retail Holding, LLC f/k/a General Growth–Westlake, LP) acquired in Step 104 to The Howard Research and Development Corporation (TRS 1A).
129. Spinco, Inc. contributes its 100% membership interest in Alameda Plaza, LLC acquired in Step 105 to The Howard Research and Development Corporation (TRS 1A).

## Spin-Off Transaction Steps

130. Spinco, Inc. contributes its 100% membership interest in AllenTowne Mall, LLC acquired in Step 106 to The Howard Research and Development Corporation (TRS 1A).
131. Spinco, Inc. contributes its 100% membership interest in Bridges at Mint Hill, LLC (f/k/a GGP-Mint Hill L.L.C.) acquired in Step 107 to The Howard Research and Development Corporation (TRS 1A).
132. Spinco, Inc. contributes its 100% stockholder interest in Price Development TRS, Inc. (100 shares of common stock) acquired in Step 108 and its 100% membership interest in Cottonwood Mall, LLC acquired in Step 108 to The Howard Research and Development Corporation (TRS 1A).
133. Spinco, Inc. contributes its 100% membership interest in Cottonwood Square, LLC acquired in Step 109 to The Howard Research and Development Corporation (TRS 1A).
134. Spinco, Inc. contributes its 100% membership interest in Elk Grove Town Center L.L.C. acquired in Step 110 and its 99.5% LP interest in Elk Grove Town Center L.P. acquired in Step 110 to The Howard Research and Development Corporation (TRS 1A).
135. Spinco, Inc. contributes its 100% membership interest in Parke West, LLC acquired in Step 111 to The Howard Research and Development Corporation (TRS 1A).
136. Spinco, Inc. contributes its 100% membership interest in Rio West L.L.C. acquired in Step 112 to The Howard Research and Development Corporation (TRS 1A).
137. Spinco, Inc. contributes its 100% membership interest in Redlands Land Acquisition Company, LLC (f/k/a GGP-Redlands Mall L.L.C.) acquired in Step 113 and its 99.5% LP interest in Redlands Land Acquisition Company, LP (f/k/a GGP-Redlands Mall L.P.) acquired in Step 113 to The Howard Research and Development Corporation (TRS 1A).
138. Spinco, Inc. contributes its .0046918% membership interest in Landmark Mall L.L.C. acquired in Step 114 to The Howard Research and Development Corporation (TRS 1A).
139. Spinco, Inc. contributes its 100% membership interest in Natick Residence, LLC (f/k/a GGP Natick Residence, LLC) acquired in



**Spin-Off Transaction Steps**

Step 115 to The Howard Research and Development Corporation (TRS 1A)

140. Spinco, Inc. contributes its 100% stockholder interest (249,998.75 shares of common stock) in Victoria Ward, Limited acquired in Step 116 to The Howard Research and Development Corporation (TRS 1A)

141. GGPI distributes its interests in Spinco, Inc. pro rata to its shareholders.

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**SCHEDULE 6.5(a)**

Assumed Actions

See attached.

Pending Spinco Matters.xls  
General Litigation

Property / Entity	Case Caption	Court and Case No.	Outside Counsel
Nouvelle at Natick Residential Development Natick Mall, Natick, MA (Debtor)	Nouvelle at Natick Condominium Owner Dispute (not yet in litigation)	Not in litigation	Kirkland and Ellis Anup Sathy 300 N. LaSalle Chicago, Illinois 60654 Telephone: 312-862-2000
South Street Seaport New York, NY (Debtor)	Andejo, <i>et al.</i> v. South Street Seaport Limited Partnership, <i>et al.</i>	Supreme Court of the State of New York, County of New York Index No. 603707/04	DLA Piper US LLP Keara M. Gordon, Partner 1251 Avenue of the Americas New York, New York 10020 Telephone: 212-835-6232
Bridgeland MPC Houston, TX (Non-Debtor)	Harris Construction Company, Ltd. v. GGP- Bridgeland, LP	District Court, 133 Judicial District, Harris County TX No. 2007-58498	Boyar & Miller Lee Collins, Partner 4265 San Felipe, Suite 1200 Houston, Texas 77027 Telephone: 832-615-4282
	Sierra Club v. Federal Emergency Management Agency, <i>et al.</i>	U.S. District Court, S.D. Texas, Houston Division No. H-07-608	Munsch Hardt Kopf & Harr, P.C. Mary W. Koks Bank of America Center 700 Louisiana Street, Suite 4600 Houston, Texas 77002-2845 Telephone: 713-222-4030
	EPA Wetlands Enforcement Investigation	Not in litigation	Munsch Hardt Kopf & Harr, P.C. Mary W. Koks Bank of America Center 700 Louisiana Street, Suite 4600 Houston, Texas 77002-2845 Telephone: 713-222-4030  and  Bracewell & Giuliani LLP Jason Hutt 2000 K Street NW, Suite 500 Washington, D.C. 20006-1872 Telephone: 202-828-5850

Pending Spinco Matters.xls  
General Litigation

Property / Entity	Case Caption	Court and Case No.	Outside Counsel
	Allen & Robertson Construction, Inc . v. GGP-Bridgeland L.P.	No. 2008-29586, In the District Court of Harris County, Texas, 125th Judicial District	Boyar & Miller Lee Collins, Partner 4265 San Felipe, Suite 1200 Houston, Texas 77027 Telephone: 832-615-4282
	Related claim: GGP-Bridgeland L.P. and Safeco Insurance Co. of America v. Allen & Robertson Construction, Inc.	No. 2010- 12204, In the District Court of Harris County, Texas, 125th Judicial District.	Boyar & Miller Lee Collins, Partner 4265 San Felipe, Suite 1200 Houston, Texas 77027 Telephone: 832-615-4282
	Addicks Services, Inc. v. GGP-Bridgeland, LP, <i>et al.</i>	USDC Southern District of TX, Houston Division No. 4:06-3478	Boyar & Miller Lee Collins, Partner 4265 San Felipe, Suite 1200 Houston, Texas 77027 Telephone: 832-615-4282
Summerlin MPC Summerlin, NV (Debtor)	Howard Hughes Properties, Inc. and The Howard Hughes Corporation v. Kern River Gas Transmission Company	Not in litigation	Bracewell & Giuliani LLP Charles H. Shoneman 2000 K Street NW, Suite 500 Washington, D.C. 20006-1872 Telephone: 202-828-5850
West Kendall Development, Miami-Dade County, FL (Debtor)	West Kendall Holdings, LLC v. KTC Housing LLC and KTC Hotel LLC f/k/a Cardel-Masvidal LLC, Adversarial Complaint in the United States Bankruptcy Court, Southern District of New York and related state law claims filed by KTC Housing LLC and KTC Hotel LLC v. West Kendall Holdings LLC	In the Circuit Court for the 11th Judicial District, Miami-Dade County, Florida cause of action Nos. 09-94535 and 09-94539	Melanie Gray Weil, Gotshal & Manges LLP 700 Louisiana, Suite 1600 Houston, Texas 77002 713-546-5045 melanie.gray@weil.com
	Potential Delay Claim Against General Contractor  Downrite Engineering Corp. and West Kendall Holdings, LLC	Not in litigation	

Pending Spinco Matters.xls  
General Litigation

Property / Entity	Case Caption	Court and Case No.	Outside Counsel
Cottonwood Mall & Square Holladay, UT (Debtor)  Cottonwood Square is a strip center development located diagonally across the street from Cottonwood Mall; both are owned by Cottonwood Mall, LLC.	Cottonwood PERC contamination at Henrie's Dry Cleaners (not in litigation)	Not in litigation	Jeff Diver Jeffrey R. Diver, P.C. 2S741 Crimson King Lane Glen Ellyn, IL 60137 630-790-0001 (office) 630-217-1770 (cell) jeffdiver@comcast.net
	Potential Sale Dispute  First City Investors Inc. and Cottonwood Mall, LLC	Not in litigation	
	The Slaymaker Group, Inc. v. General Growth Properties, Inc., <i>et al.</i>	The Third Judicial District Court in and for Salt Lake County, UT, No. 080925544	Ballard Spahr Andrews & Ingersoll, LLP Mark Gaylord, Partner One Utah Center, Suite 800 201 South Main Street Salt Lake City, UT 84111 Telephone: 801-531-3000
Parke West, Peoria, AZ (Debtor)	Alta Peoria, LLC v. Parke West, LLC, <i>et al.</i>	Superior Court of Arizona - Maricopa County No. CV2007-013449	Lewis and Roca LLP Robert Charles, Partner 40 North Central Ave. Phoenix, AZ 85004-4429 Telephone: 602-262-5311
The Howard Hughes Corp. f/k/a Hughes Tool Co. (Debtor)	Tomek R. Rush, et al., Individually and as heirs of Tommie R. Rush. Vs. The Howard Hughes Corp., f/k/a Hughes Tool Company, et al.	Harris County, TX, Case No. 2007-69192	Peter J. Bambace Holm, Bambace & McCabe, LLP 1010 Lamar, Suite 1100 Houston, TX 77002
Howard Hughes Realty, Inc. (Debtor)	Catellus/ West Bluffs Dispute (Recovery)		Julia B. Strickland Stroock & Stroock & Lavan LLP 2029 Century Park East Los Angeles, CA 90067 Telephone: 301-556-5806

Pending Spinco Matters.xls  
Settled matters with ongoing obligations

Property / Entity	Matter & Ongoing Obligation	Court and Case No.	Outside Counsel/Internal Contact at GGP
Elk Grove	Elk Grove CEQA suit; ongoing obligations pursuant to settlement	n/a	<p>Amy Forbes Gibson Dunn &amp; Crutcher LLP 333 South Grand Ave Los Angeles, CA 90071-3197 213-229-7151 aforbes@gibsondunn.com</p> <p>Ryan Whitacre Sr. Assistant General Counsel General Growth Properties, Inc.</p>
Fairwood and Emerson MPCs	AG inquiry; ongoing obligations pursuant to settlement	n/a	<p>Paul Tiburzi DLA Piper USA, LLP 6225 Smith Avenue Baltimore, Maryland 21209-3600 410-580-4273 paul.tiburzi@dlapiper.com</p> <p>Rosemary Feit VP &amp; Assoc. General Counsel General Growth Properties, Inc.</p>
All retail shopping center properties going to Spinco	Ongoing obligation pursuant to settlement of <u>Heeling Sports Limited v. General Growth Properties, Inc., et al.</u>	Texas Federal Court	<p>Dawn Estes Taber Estes Thorne &amp; Carr PLLC 3500 Maple Avenue, Suite 1100 Dallas, Texas 75219 Direct Dial: 214.599.4002 destes@taberestes.com</p> <p>Lynn H. Murray Grippo &amp; Elden 111 South Wacker Drive Chicago, IL 60606 312-704-7700</p> <p>Ryan Whitacre Sr. Assistant General Counsel General Growth Properties, Inc.</p>

Pending Spinco Matters.xls  
 Settled matters with ongoing obligations

Property / Entity	Matter & Ongoing Obligation	Court and Case No.	Outside Counsel/Internal Contact at GGP
110 North Wacker/GGDR LLC (the venture that owns 110 North Wacker)	Ongoing obligations pursuant to the June 21, 2007 settlement of litigation claims in <u>Development Resources, LLC, et al. v. General Growth Properties, Inc., et al.</u> ; ongoing obligations are reflected in the Third Amendment to the LLC Agreement of GGDR LLC, the Amended and Restated Indemnity and Guaranty Agreement, and the First Amendment to the Development Advisory Services Agreement		Rosemary Feit VP & Assoc. General Counsel General Growth Properties, Inc.

Pending Spinco Matters.xls  
Asset Recovery Matters

Property	Case Caption	Jurisdiction	Case No	Cross-claim filed?	Outside Counsel
Landmark Mall	Landmark Mall LLC dba Landmark Mall v. Netland Group dba Netland Bridal & Fashion	General Dist Ct for the City of Alexandria, Virginia	GV10002898	No	Sandy Gregor Morris & Morris 700 E. Main Street Richmond, VA 23219
Landmark Mall	Landmark Mall LLC dba Landmark Mall v. Wireless Outlet dba AT & T Wireless	General Dist Ct for the City of Alexandria, Virginia	GV10002935	No	Sandy Gregor Morris & Morris 700 E. Main Street Richmond, VA 23220
Rio West	Rio West LLC, a Delaware limited liability company and debtor in possession v. Sonny Truong, dba Nail Salon & Spa	McKinley County District Court	D1113-CV-20100038	No	Lynn Isaacson Mason & Isaacson, P.A. PO Box 1772 104 E. Aztec Gallup, NM 87401 (505)722-4463
Riverwalk	New Orleans Riverwalk Associates, A Debtor In Possession v. B.L.C. of the Riverwalk, Inc. and Biagio Cucco	Civil District Court for the Parish of Orleans, State of Louisiana	No. 09-9604, Section B	No	David M. Kerth David Borghardt Jones Walker 8555 United Plaza Blvd., 5th Fl. Baton Rouge, LA 70809 (225) 248-2048
Riverwalk	New Orleans Riverwalk Associates, A Debtor In Possession v. Café Italia, LLC	Civil District Court for the Parish of Orleans, State of Louisiana	No. 09-9602, Section L	No	David M. Kerth David Borghardt Jones Walker 8555 United Plaza Blvd., 5th Fl. Baton Rouge, LA 70809 (225) 248-2048
Riverwalk	New Orleans Riverwalk Associates, A Debtor In Possession v. B.L.C. Management Inc. and B.L.C. of the Riverwalk, Inc.	Civil District Court for the Parish of Orleans, State of Louisiana	No. 09-9603, Section E	No	David M. Kerth David Borghardt Jones Walker 8555 United Plaza Blvd., 5th Fl. Baton Rouge, LA 70809 (225) 248-2048
South Street Seaport	South Street Seaport Limited Partnership v. NYC Charms, Inc.	Civil Court of the City of New York, County of New York	66999/2010	No	Clifford M. Solomon Solomon & Tanenbaum 707 Westchester Avenue, Suite 205 White Plains NY 10604-3102



Pending Spinco Matters.xls  
 Asset Recovery Matters

Property	Case Caption	Jurisdiction	Case No	Cross-claim filed?	Outside Counsel
South Street Seaport	South Street Seaport Limited Partnership v. Fulton Fish Retail Market, Inc.	Civil Court of the City of New York, County of New York	69076/2010	No	Clifford M. Solomon Solomon & Tanenbaum 707 Westchester Avenue, Suite 205 White Plains NY 10604-3102
South Street Seaport	South Street Seaport Limited Partnership v. Choice Portables, Inc.	Civil Court of the City of New York, County of New York	99434/2009	No	Clifford M. Solomon Solomon & Tanenbaum 707 Westchester Avenue, Suite 205 White Plains NY 10604-3102
South Street Seaport	South Street Seaport Limited Partnership v. Steven Holden	Civil Court of the City of New York, County of New York	603887/2007	No	Clifford M. Solomon Solomon & Tanenbaum 707 Westchester Avenue, Suite 205 White Plains NY 10604-3102
South Street Seaport	South Street Seaport Limited Partnership v. Spiegel LP	Civil Court of the City of New York, County of New York	117060/2008	No	Clifford M. Solomon Solomon & Tanenbaum 707 Westchester Avenue, Suite 205 White Plains NY 10604-3102

Pending Spinco Matters.xls  
Insured Litigation

Property / Asset	Matter Name	Jurisdiction and Case No.	Outside Counsel
Century Plaza	MOTLEY, TAKISHA vs. Simply Fashion Stores, General Growth Management, Inc., Century Plaza Mall	Jefferson, County, AL; CV 06 4213	Jason Langley Scott Sullivan Streetman & Fox 2450 Valleydale Road Post Office Box 380548 Birmingham, Alabama 35244
Merriweather Post Pavillion	Steven Blanchfield v. Gideon, et al.	Circuit Court for Howard County, MD, Case No. 13-C-09-079501 OT	Christopher R. Dunn, Esquire DeCaro, Doran, Siciliano, Gallagher & DeBlasis, LLP 17251 Melford Blvd. Suite 200 Bowie MD 20715 Office: 301-352-4950 Direct Dial: 301-352-4962 Fax: 301-352-8691
Merriweather Post Pavillion	Ryan Shifflett v. Merriweather Post Business Trust	Howard County Circuit Court, MD No. 13-C-09-079701 OT	Audrey Brasel Claims Adjuster Indemnity Insurance Corp 950 Ridgebrook Rd. Suite 1500 Sparks, MD 21152
Rio West	Harris Johnson v. Frank A. Colaianni, et al.	Santa Fe District Court, NM, Case No. D1010CV200802886	Timothy L. White, Esq. Valdez & White Law Firm, LLC P.O. Box 25646 Albuquerque, NM 87125 Phone: 505-345-0289 Fax: 505-345-2573
Riverwalk Marketplace	Augustine, Angelina (Yvonne Richards, et al. vs. The Board of Commissioners of the Port of New Orleans, et al.)	Parrish of Orleans, LA; 97-21716	Bill Forrester Lemle & Kelleher, L.L.P. 601 Poydras Street Suite 2100, Pan-American Life Center New Orleans, LA 70130 Telephone: (504) 585-6366

Pending Spinco Matters.xls  
Insured Litigation

Property / Asset	Matter Name	Jurisdiction and Case No.	Outside Counsel
Riverwalk Marketplace	Scott, Teerica vs. New Orleans Riverwalk Limited Partnership dba New Orleans Riverwalk Marketplace	Parrish of Orleans, LA; 2004-17456	Bill Forrester Lemle & Kelleher, L.L.P. 601 Poydras Street Suite 2100, Pan-American Life Center New Orleans, LA 70130 Telephone: (504) 585-6366
South Street Seaport	AJI, IMAMU vs. The City of New York and General Growth Properties, Inc.	New York County, NY; 105214/08	Jennifer Lee Newman Myers Kreines Gross Harris, PC 14 Wall Street NY, NY 10005-2101 (212) 619-3622
South Street Seaport	KULTGEN, JOSEPH v The City of New York, New York City Economic Development Corporation, South Street Seaport Limited Partnership, Seaport Marketplace, LLC, General Growth Properties, Inc., Front Realty Holdings Company, Inc., Dima Productions, LLC	New York County, NY; 111321/08	Patrick M. Caruana, Esq Newman Myers Kreines Gross Harris, PC 14 Wall Street NY, NY 10005-2101 (212) 619-3622
South Street Seaport	Mashreky, Marco A. vs. IPC International Corp., Seaport Marketplace LLC, Daniel Aragao	Queens County, NY; 34061/09	Richard H. Petersen LITCHFIELD CAVO LLP 420 Lexington Avenue, Suite 2104 New York, NY 10170 (212) 434-0107
South Street Seaport	NOEL, DENISE and Llewelyn Leibert vs. General Growth Properties, Inc., d/b/a South Street Seaport	County of Bronx, NY; 302296-07	Lon V. Hughes Newman Myers Kreines Gross Harris, PC 14 Wall Street NY, NY 10005-2101 (212) 619-3622
South Street Seaport	VISCOMI, ARLENE vs. The City of New York, South Street Seaport LP, General Growth Properties, Inc., Kone Inc.	New York County, NY/ 102090/09	James F. Biondo, Esq. Rosenblum Newfield, LLC NYC Office (212)888-8001

Pending Spinco Matters.xls  
 Insured Litigation

Property / Asset	Matter Name	Jurisdiction and Case No.	Outside Counsel
Ward Centers	Jan Nishitomi v. General Growth Management, Inc., et al.	First Circuit Court of Hawaii No. 09-1-2367-10 RAT	Michael H. Tsuchida Myhre & Tsuchida ATTORNEYS AT LAW, A LAW CORPORATION 1003 Bishop Street 1200 Pauahi Tower Honolulu, Hawaii 96813 Tel. No.: (808)524-2466, ext 120 Fax No.: (808)524-2556 Toll Free Neighbor Island No.: (800)200-2829, ext 120 Email: mnm-tsuchida@hawaii.rr.com

Pending Spinco Matters.xls  
 Insured Claims - non-litigated

Location	Claimant Name	Coverage Type	Assessment Code
10 Columbia Corporate Center	JOHNSON, MARY	General Liability	Fall/Slip
Landmark Mall	Lamin, Sulainan	General Liability	Personal Injury
Landmark Mall	WALKER, MICHELLE	General Liability	Personal Injury
Nouvelle at Natick	BERGANZA DELMY	Workers Compensation	Personal Injury
Nouvelle at Natick	GOULD MICHAEL	General Liability	Property Damage
Nouvelle at Natick	NATICK RESIDENCES	General Liability	Property Damage
Nouvelle at Natick	TRAVELERS	General Liability	Property Damage
Nouvelle at Natick	DANIELLO JOHN	Workers Compensation	Personal Injury
Nouvelle at Natick	CAMARA JOSE	Workers Compensation	Personal Injury
Riverwalk Marketplace	Johnson , Dominique	General Liability	Caught In/Under/Between
Riverwalk Marketplace	Robinson, Jeremy	General Liability	Personal Injury
Riverwalk Marketplace	Thornton, Stella	General Liability	Personal Injury
Riverwalk Marketplace	Vecerra, Juana	General Liability	Personal Injury
South Street Seaport	Reyes, John	General Liability	Miscellaneous
South Street Seaport	LESTER,TIMOTHY	Auto Liability	Bodily Injury
South Street Seaport	ACTON,ROBERT C	Workers Compensation	Personal Injury
Ward Centers	LAKE, LORRAINE	General Liability	Fall/Slip
Ward Centers	Kagan, Aaron	General Liability	Struck Against, cut, scratch
Ward Centers	Yee, Celia	General Liability	Vehicle Accidents
Ward Centers	Monnin, Alice	General Liability	Vehicle Accidents
Ward Centers	Scott, Erik	General Liability	Violence/Crime
Ward Centers	945Q, LLC	General Liability	Miscellaneous
Ward Centers	Meckley, Susan	General Liability	Violence/Crime
Ward Centers	Skilling, Eileen	General Liability	Personal Injury
Ward Centers	Yamamoto, Lisa	General Liability	Vehicle Accidents
Ward Centers	HU, Carol	General Liability	Personal Injury
Ward Centers	Lynch, Marjan	General Liability	Personal Injury
Ward Centers	PIRES ROY C	Workers Compensation	Personal Injury
Ward Centers	SAUER,GLEN	Workers Compensation	Personal Injury
Ward Centers	MULLER,DAMIEN	Workers Compensation	Personal Injury

**EXHIBIT A-1**

**[See Exhibit 16 to Plan Supplement]**

**EXHIBIT A-2**

**[See Exhibit 16 to Plan Supplement]**

**EXHIBIT B**

**[See Exhibit 16 to Plan Supplement]**



**EXHIBIT C**

## ASSUMPTION AGREEMENT

This ASSUMPTION AGREEMENT (this “Assumption Agreement”) is made and entered into as of [ \_\_\_\_\_ ], 2010, by and among General Growth Properties, Inc., a Delaware corporation (“GGP”), and [**Spinco, Inc.**], a Delaware corporation (“Spinco”).

WHEREAS, GGP and Spinco have entered into the Separation Agreement, dated as of [**the date hereof**] (as amended, modified or supplemented from time to time in accordance with its terms, the “Separation Agreement”);

WHEREAS, GGP and/or certain of its subsidiaries are parties to the contracts set forth on Exhibit A hereto (the “Assumed Contracts”), which contemplate or require performance by one or more members of the Spinco Group from and after the Effective Time (as defined in the Separation Agreement);

WHEREAS, the parties hereto desire to execute this Assumption Agreement to evidence the assumption by Spinco and each other member of the Spinco Group of the obligations contemplated or required to be performed by them pursuant to the Assumed Contracts from and after the Effective Time; and

WHEREAS, the Separation Agreement requires execution and delivery of this Assumption Agreement by GGP and Spinco on or prior to the Distribution Date (as defined in the Separation Agreement).

NOW, THEREFORE, for and in consideration of the premises and the mutual covenants contained herein, and for other good and valuable consideration, the receipt, adequacy and legal sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, the parties do hereby agree as follows:

1. Capitalized Terms. All capitalized terms used and not defined herein (including in the recitals hereto) shall have the respective meanings assigned to such terms in the Separation Agreement.
2. Assumption. In accordance with and subject to the terms of the Separation Agreement, Spinco, for itself and on behalf of each member of the Spinco Group, hereby expressly accepts, assumes and undertakes to pay, perform and discharge all of the liabilities of each member of the Spinco Group under the Assumed Contracts and to perform all of the obligations of each member of the Spinco Group to be performed under the Assumed Contracts.

3. Miscellaneous.

(a) Headings. The section headings used herein are inserted for convenience only and shall not affect in any way the meaning or interpretation of this Assumption Agreement.

(b) Counterparts. This Assumption Agreement may be executed in two or more counterparts, each of which shall be deemed an original but all of which together will constitute one and the same instrument.

(c) Amendments. No amendment or modification of this Assumption Agreement shall be effective unless it is set forth in writing and signed by each of the parties hereto.

(d) Successors and Assigns. This Assumption Agreement is executed by, and shall be binding upon, the parties hereto and their respective successors and permitted assigns for the uses and purposes above set forth and referred to, as of the date hereof.

(e) Severability. If any term or provision of this Assumption Agreement is invalid, illegal or incapable of being enforced by any Law or public policy, all other terms and provisions of this Assumption Agreement shall nevertheless remain in full force and effect so long as the legal substance of the transactions contemplated hereby is not affected in any manner materially adverse to any party. Upon such determination that any term or provision is invalid, illegal or incapable of being enforced, the parties hereto shall negotiate in good faith to modify this Assumption Agreement so as to effect the original intent of the parties as closely as possible in an acceptable manner in order that the transactions contemplated hereby are consummated as originally contemplated to the greatest extent possible.

*[The remainder of this page is intentionally left blank.]*

IN WITNESS WHEREOF, the parties have caused this Assumption Agreement to be duly executed and delivered as of the date first written above.

**General Growth Properties, Inc.**

By: \_\_\_\_\_

Name:

Title:

**[Spinceo, Inc.]**

By: \_\_\_\_\_

Name:

Title:

**Exhibit A**

**Assumed Contracts**

1. [Healing Settlement Agreement]

## SETTLEMENT AGREEMENT

April 22, 2010

This Settlement Agreement (the "Agreement"), effective as of ~~the day the last~~

~~signer executes this document~~ (the "Effective Date"), is made and entered into by and between Healing Sports Limited, a Texas limited partnership and its subsidiaries and Affiliates ("Healing") and General Growth Properties, Inc., a debtor in possession ("GGPI"), General Growth Management, Inc., a Delaware corporation ("GGM"), Stonebriar Mall, L.L.C., a Delaware limited liability company and successor to Stonebriar Mall Limited Partnership, and their respective subsidiaries and Affiliates (collectively "General Growth"). "Affiliate(s)," as used herein, shall mean as to any person or entity, a person or entity that directly or indirectly through one or more intermediaries, controls or is controlled by, or is under common control (through the power to direct or cause the direction of the management or policies of such person or entity through ownership of voting securities, by contract or otherwise) with such person or entity, and includes, with respect to General Growth, the current General Growth subsidiaries referenced in Exhibit A. Healing and General Growth are each sometimes referred to hereinafter as a "Party" and collectively sometimes referred to hereinafter as the "Parties."

### WITNESSETH:

WHEREAS, Healing is the owner of record of the entire right, title, and interest in and to United States Patent No. 6,406,038 entitled "Healing Apparatus and Method" ("the '038 Patent"); United States Patent No. 6,739,602 entitled "Healing Apparatus and Method" ("the '602 Patent"); United States Patent No. 6,746,026 entitled "Healing Apparatus and Method" ("the '026 Patent"); United States Patent No. 7,063,336 entitled

“External Wheeled Heeling Apparatus and Method,” and any and all continuation and division patents related thereto (“the ‘336 Patent”); and United States Patent No. 7,165,774 entitled “External Wheeled Heeling Apparatus and Method,” and any and all continuation and division patents related thereto (“the ‘774 Patent”) (collectively referred to hereinafter as the “Heeling Patents” and attached as Exhibit B); and

WHEREAS, General Growth leases or licenses space in certain shopping malls to kiosk and cart operators (“the Kiosk Operators”); and

WHEREAS, certain General Growth entities have an ownership interest in and/or manage a large number of shopping malls and/or other retail locations in the United States, a complete list of which is attached hereto as Exhibit C (collectively with malls and/or other retail locations in the United States that are later owned and/or managed by General Growth during the Term of this Agreement are referred to hereinafter as the “General Growth Malls”); and

WHEREAS, Heeling has asserted that certain Kiosk Operators previously purchased, imported, used, offered to sell and/or sold in the United States footwear, other than wheeled footwear manufactured and distributed by Heeling, containing removable, retractable, and/or attached wheels in or adjacent to the heel that allow a user to transition from walking or running to rolling on the one or more wheels in the heel (“Identified Products”), including but not limited to the products described and illustrated in the attached Exhibit D, at the General Growth Malls; and

WHEREAS, Heeling has asserted that the Identified Products are covered by one or more patent claims of each of the Heeling Patents; and

WHEREAS, a lawsuit is presently pending between Heeling on the one hand and GGMI and Stonebriar Mall, L.L.C. on the other, styled as *Heeling Sports Limited v. General Growth Management, et al.*, Civil Action No. 3:08-CV-2070G, in the United States District Court for the Northern District of Texas, Dallas Division (the "Lawsuit"); and

WHEREAS, Heeling and General Growth wish to settle the Lawsuit and develop a policy for addressing future claims or disputes involving the Identified Products.

NOW THEREFORE, in consideration of the premises, the mutual promises, covenants, and conditions set forth herein, the Parties further agree as follows:

1. Upon the execution of this Agreement, the attorneys for the Parties will execute a Joint Motion for Dismissal with Prejudice in the form attached hereto as Exhibit E (the "Dismissal"), and will promptly cause the Dismissal to be entered in the Lawsuit. Both Parties acknowledge, agree, and willingly submit that they are subject to personal jurisdiction of the United States District Court for the Northern District of Texas, Dallas division, for interpretation or enforcement of any terms of this Agreement.
2. Heeling agrees to accept and GGMI agrees to pay or cause to be paid, the principal sum of \$ 750,000.00 to Heeling, to be received by Heeling within 10-days of the Effective Date.
3. Within 30 days after the Effective Date, every six months thereafter for the first three (3) years of this Agreement, and once every year thereafter until March 31, 2020 (the "Term of this Agreement"), General Growth shall deliver the written notice, attached as Exhibit F, to all individuals responsible for licensing kiosks and to the mall general managers (the preceding terms, either individually or collectively, will hereinafter





be referred to as "Manager") that are directly responsible for the management of Kiosk Operators at all General Growth Malls.

4. General Growth shall not approve, authorize or permit the sale of the Identified Products in kiosks and/or carts at any of the General Growth Malls during the Term of this Agreement. If a General Growth representative identified in paragraph 22 or a Manager becomes aware or is notified of the existence of Identified Products at a kiosk or cart, General Growth will, within three (3) business days of its knowledge, awareness, or notification (i) notify Healing in writing, and (ii) provide the kiosk or cart with notice of the violation and demand that the kiosk or cart immediately remove the Identified Products and cease all sales. If the Kiosk Operator has failed to cease all sales of Identified Products within one (1) business day of notice by General Growth, General Growth shall terminate all agreements with the Kiosk Operator and shall not allow further sales of any ~~Identified~~<sup>Identified</sup> Products. Until a General Growth representative identified in paragraph 22 or a Manager becomes aware or is notified of the existence of Identified Products at a kiosk or cart, neither General Growth nor its Managers have any obligation to initiate any investigation of or to monitor the goods sold by kiosks or carts to determine whether any Identified Products are sold. In no event, however, shall General Growth approve or knowingly permit the sale of Identified Products in any kiosk or cart lease or license.

5. Healing may, at its sole discretion, provide written notice to General Growth (in the manner set forth in Paragraph 22) of the sale of the Identified Products in kiosks and/or carts at any General Growth Mall.

6. If General Growth fails to perform its obligations under the terms and conditions of this Agreement within the allotted time (as further set forth in Paragraphs 3, 4 and 5), Heeling may provide to General Growth written notice of its failure to perform those obligations under the terms and conditions of this Agreement and demand General Growth cure its failure within three (3) business days of receipt of the written notice. If General Growth fails to cure within the allotted time, Heeling may, in its sole discretion, exercise all rights and remedies of this Agreement and as otherwise provided by law.

7. In the event that General Growth, acting solely upon written notice from Heeling under Paragraphs 4, 5, or 6 of this Agreement and not on its own initiative, terminates a kiosk or cart lease/license, Heeling will indemnify and hold General Growth harmless against claims for improper kiosk or cart lease/license termination done at Heeling's direction.

8. Except as otherwise provided in this Agreement, General Growth agrees and acknowledges that it will not, directly or indirectly, make, use, sell, offer to sell, distribute, purchase, or import into the United States, or induce others to do so, any Identified Products and will not knowingly infringe, either directly or indirectly, any claim of any of the Heeling Patents after the Effective Date.

9. General Growth agrees that the obligations of this Agreement shall be assumed by any General Growth Affiliate arising out of, or purchasing the assets of General Growth after any bankruptcy now or later commenced, and any such subsequent Affiliate will be bound thereby. With respect to GGPI and its bankrupt subsidiaries and affiliates, this Agreement is subject to approval by the United States Bankruptcy Court for the Southern District of New York (the "Bankruptcy Court"). GGPI agrees to submit

this Agreement for approval by the Bankruptcy Court, and Heeling agrees to cooperate, within reason, in GGP's application for such approval. ~~This Agreement is subject to Bankruptcy Court approval and not effective until such approval is granted by the Bankruptcy Court.~~ <sup>in which</sup>

10. General Growth agrees that any purchaser, ~~where~~ <sup>in which</sup> General Growth or any one of its Affiliates has a direct or indirect ownership interest or control of any of the General Growth Malls shall assume this Agreement, including the rights and obligations hereunder.

11. The Parties acknowledge and agree that with respect to the exhaustion of rights and remedies under applicable law, General Growth's representations and obligations under this Agreement are reduced consideration that is accepted by Heeling for settlement purposes only.

12. General Growth and its assignees and successors hereby waive and relinquish the right to assert or claim that any of the claims of the Heeling Patents are invalid or unenforceable throughout the Term of this Agreement, regardless of whether any such assertions or claims would be made or initiated in any court, any arbitration, the U.S. Patent and Trademark Office, or other judicial or administrative proceeding, regardless of whether any such assertions or claims would be made or initiated directly or indirectly, including by way of claim, defense, counterclaim, offset, interference, reexamination, protest, reissue, or the like. It is the intent of the Parties and the provisions of this paragraph that, to the fullest and broadest extent permitted by law, General Growth will never challenge, nor voluntarily assist others in challenging, the validity or enforceability of the Heeling Patents or any of the claims thereof throughout

the Term of this Agreement. In the event that General Growth is forced under subpoena or similar requirement by a court of law to respond to a third party's request regarding the Identified Products, General Growth may respond to such subpoena only after first giving Heeling the opportunity to review and respond to such subpoena or similar requirement.

13. Heeling hereby represents and warrants that:

13.1. Heeling owns the entire right, title, and interest in and to the Healing Patents;

13.2. Heeling has the power and authority to execute and deliver this Agreement and to perform its obligations hereunder;

13.3. Identified Products have been sold in kiosks or carts located at properties owned, managed, or controlled by General Growth, its parents, subsidiaries, agents, or affiliates; and

13.4. The execution, delivery, and performance of this Agreement have been duly and validly authorized by Heeling. This Agreement shall constitute a legal, valid, and binding agreement of Heeling, enforceable in accordance with its terms, subject to bankruptcy, insolvency, reorganization, moratorium, or other similar laws affecting the enforceability of creditors' rights generally and other general equitable principles which may limit the right to obtain certain remedies.

14. General Growth hereby represents and warrants the following:

14.1. The list of shopping malls and retail locations attached as Exhibit C is full and complete as of the Effective Date of this Agreement;

14.2. Except for the persons and/or entities identified in documents provided pursuant to Paragraph 16 and after reasonable inquiry, General Growth is not

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aware of any additional Kiosk Operators or other third parties that may have used, sold, or offered for sale Identified Products in any General Growth Mall;

14.3. The execution, delivery, and performance of this Agreement have been duly and validly authorized by General Growth; and

14.4. The Party executing this Agreement has the power and authority to execute and deliver this Agreement, on behalf of General Growth, and to perform the obligations hereunder. This Agreement shall constitute a legal, valid, and binding agreement of General Growth, including its parents, subsidiaries, agents, affiliates, heirs and assigns, enforceable in accordance with its terms. Notwithstanding the foregoing, this Agreement is subject to Bankruptcy Court approval for the General Growth entities currently in bankruptcy and shall not be effective against such parties until such approval is granted by the Bankruptcy Court.

15. GGPI and GGML, including their ~~assignors~~<sup>assignees</sup> and successors, agree that they are jointly and severally liable for performance and/or breach of the obligations of this Agreement.

16. General Growth acknowledges and agrees that, upon request by Healing, General Growth shall make every reasonable effort to fully cooperate with Healing in the enforcement of the Healing Patents against Kiosk Operators and suppliers thereto. Healing will reimburse General Growth for reasonable out-of-pocket expenses necessarily and actually incurred by General Growth in connection with any such actions specifically requested by Healing. This obligation specifically includes, but is not limited to, the obligation to make every reasonable effort to obtain and deliver to Healing, within <sup>30</sup>~~10~~ days of the Effective Date of this Agreement, records and information specifically

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identifying the mall, mall owner, Manager, mall operator, lessor and/or licensor, leasee and/or licensee, products sold, and all sales and operational information reported to General Growth, for all Kiosk Operators that allegedly sell, sold, offer to sell or offered to sell Identified Products from January of 2005 to the Effective Date of this Agreement.

16.1 All of the Parties' representations and warranties contained in this Agreement shall be true and correct as of the Effective Date and shall survive past the Effective Date. In the event that any General Growth entity materially breaches this Agreement GPII and GMI, including their successors and assigns, jointly and severally, agree to pay all reasonable attorney fees and costs that Healing incurs in connection with the enforcement of this Agreement.

16.2 ~~16.2~~ In the event of a first or second failure to cure by General Growth under Paragraph 6, Healing will not be entitled to recover any liquidated damages from General Growth (but Healing expressly reserves the right to pursue claims against any non-General Growth person or entity). In the event of a third failure to cure by General Growth under Paragraph 6, the Parties agree that Healing shall be entitled to recover a liquidated, non-punitive amount of ten-thousand (\$10,000) dollars per retail kiosk location plus reasonable and necessary attorneys fees. In the event of a fourth failure to cure by General Growth under Paragraph 6, the Parties agree that Healing shall be entitled to recover a liquidated, non-punitive amount of twenty-thousand (\$20,000) dollars per retail kiosk location plus reasonable and necessary attorneys fees. In the event of a fifth or subsequent failure to cure by General Growth under Paragraph 6, the Parties agree that Healing shall be entitled to recover a liquidated, non-punitive amount of thirty-thousand (\$30,000) dollars per retail kiosk location plus reasonable and necessary

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attorneys fees. With respect to any third or subsequent failure to cure by General Growth under Paragraph 6 that occurs during the period between the day after Thanksgiving (U.S. Holiday) and December 31st, during the Term of this Agreement, the foregoing amounts shall be doubled per retail kiosk location. The Parties agree that damages associated with a failure to cure by General Growth under Paragraph 6 would be difficult to ascertain and determine and that the foregoing amounts are reasonable and not a penalty.

17. In the event that Healing materially breaches this Agreement, Healing agrees to pay all reasonable attorney fees and costs that General Growth incurs in connection with the enforcement of this Agreement.

18. Nothing herein shall be construed in any manner as an implied or express license or consent to General Growth or any kiosk to any existing, pending, or future intellectual property rights of Healing.

19. Subject to Healing's representations herein and full compliance and performance of its obligations under this Agreement, General Growth, and its parents, subsidiaries, officers, directors, shareholders, employees, agents, affiliates, representatives, attorneys, successors and assigns, hereby release, relinquish, and forever discharge Healing and each of its officers, directors, shareholders, employees, agents, representatives, attorneys, successors, and assigns from any and all obligations, debts, agreements, promises, demands, liabilities, claims, actions, and causes of action of any and every kind or character, whether known or unknown, suspected or unsuspected, now existing or heretofore existing, or which may hereafter exist, that arise out of or relate in any way to the facts or circumstances giving rise to or made the basis of any of the claims

or defenses asserted in the Lawsuit, including, but not limited to, any claims and causes of action alleged in the Lawsuit or which by pleading, amendment, or supplement, could be or could have been alleged therein; provided, however, that nothing in this Paragraph shall be construed to release Healing from any obligations it has expressly assumed hereunder.

20. Subject to General Growth's representations herein and full compliance and performance of its obligations under this Agreement, Healing and its parents, subsidiaries, officers, directors, shareholders, employees, agents, affiliates, representatives, attorneys, successors and assigns, hereby release, relinquish, and forever discharge General Growth and each of and its officers, directors, shareholders, employees, agents, affiliates, representatives, attorneys, successors, and assigns from any and all obligations, debts, agreements, promises, demands, liabilities, claims, actions, and causes of action of any and every kind or character, whether known or unknown, suspected or unsuspected, now existing or heretofore existing, or which may hereafter exist, that arise out of or relate in any way to the facts or circumstances giving rise to or made the basis of any of the claims or defenses asserted in the Lawsuit, including, but not limited to, any claims and causes of action alleged in the Lawsuit or which by pleading, amendment, or supplement, could be or could have been alleged therein; provided, however, that nothing herein shall be construed to release General Growth from any obligations they have expressly assumed hereunder or misrepresentations in this Agreement. Nothing herein is intended to or shall release any third party, including Kiosk Operators, that may have directly or indirectly committed acts of infringement of



the Heeling Patents, and Heeling specifically retains the right to seek redress from any such third party.

21. Each of the Parties agrees, immediately upon request therefor, to prepare, execute, acknowledge, deliver, or file such other and further papers, forms, instruments, and documents, and to take such other and further action, as may be reasonably necessary to evidence, perfect, or enforce any of the rights and obligations arising under or in connection herewith or with any document or agreement referred to herein or otherwise to consummate or carry out the intent of this Agreement.

22. All notices and other communications hereunder shall be in writing and addressed to the Party to be notified at the respective address set forth below (which address may be changed by like notice); and shall be deemed effective and duly given upon receipt by personal delivery, expedited courier or messenger service, with a courtesy copy provided by electronic mail transmission:

If to General Growth:

General Growth Legal Department  
General Practice Group  
General Growth Properties, Inc.  
110 North Wacker Drive  
Chicago, Illinois 60606  
ryan.whitacre@ggp.com

*and*

Lynn H. Murray  
Grippo & Elden LLC  
111 S. Wacker Dr.  
Chicago, Illinois 60606  
lmurray@grippoelden.com

If to Heeling:

Robert J. Ward

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Gardere Wynne Sewell  
1601 Elm Street, Ste. 3000  
Dallas, Texas 75201  
rward@gardere.com

23. The terms of this Agreement are confidential. The Parties shall not provide or disclose to any third party the terms or provisions of this Agreement; provided, however, that the Parties are not precluded from providing or disclosing the terms or provisions of this Agreement to its legal counsel, insurers, and auditors. In addition, the Parties may disclose the terms of this Agreement pursuant to any effort to obtain Bankruptcy Court approval. The Parties may also disclose the terms or provisions of this Agreement (a) to enforce any provision of this Agreement (b) in connection with federal or state income tax matters, (c) pursuant to bona fide inquiries from any court or from any governmental entity, and (d) in connection with any regulatory requirements, including Security Exchange Commission disclosure requirements,. Upon request, the Parties may consent in writing to disclosure of some or all of the terms of this Agreement. Notwithstanding the foregoing, any Party shall be permitted to disclose the terms of this Agreement in response to a subpoena or request for production of documents involving the Heeling Patents, marked "attorney's-eyes only" or the equivalent, pursuant to a protective order identical or substantially similar to the protective order automatically entered in any patent infringement case brought in the United States District Court for the Northern District of Texas, Dallas Division, pursuant to Miscellaneous Order No. 62.

24. The terms and conditions of this Agreement shall bind and apply to, and inure to the benefit of, the Parties, their parents, subsidiaries, affiliates, agents, and successors and assigns, if any, permitted hereunder.

25. This Agreement, together with the Exhibits hereto, sets forth the entire agreement and understanding between the Parties with respect to the subject matter hereof, and replaces all agreements, verbal consents, or understandings, if any, made between the Parties with respect to the subject matter hereof. Each Party expressly disclaims reliance upon any facts, promises, undertakings, or representations made by the other Party, or the agents or attorneys of the other Party, prior to the execution hereof, or as an inducement to enter into this Agreement or to provide a release hereunder. None of the terms of this Agreement shall be amended or modified except in writing signed by the Parties affected thereby.

26. The provisions of this Agreement are severable and, in the event any Paragraph or provision hereof is declared illegal or unenforceable by a court of competent jurisdiction, the Agreement shall be construed, interpreted, and enforced as if such Paragraph or provision were never a part hereof and the remainder of the Agreement shall be effective and binding on the Parties.

27. The Parties acknowledge that they have read this Agreement and understand all of its terms, and that it is executed voluntarily, without duress, and with full knowledge of its legal significance. The Parties acknowledge that they have received independent legal advice from their respective attorneys with respect to the legal consequences of entering into this Agreement and that in granting any release hereunder,

they are not relying upon any statement or representation of the releasee outside of those made herein.

28. The Parties agree that in the event of any dispute concerning the interpretation or construction of this Agreement, no presumption shall exist with respect to the Party initially drafting any portion of the Agreement. The Parties agree they have had ample opportunity to influence the choice of language and terms in the Agreement. This Agreement shall be governed, interpreted, and enforced in accordance with the laws of the State of Texas, without regard to its choice of law rules or any other law that would result in the application of the law of another jurisdiction. Any disputes or further actions between the Parties regarding or relating to this Agreement and/or regarding or relating to the alleged infringement of any of the Healing Patents shall be litigated in the United States District Court for the Northern District of Texas, Dallas Division, which shall have exclusive jurisdiction and venue to decide such disputes, and the Parties agree to submit themselves to the jurisdiction of that court for all such purposes.

29. No breach of any provision of this Agreement can be waived unless done so expressly and in writing.

30. It is understood and agreed that this is a compromise settlement of disputed claims, and that the furnishing of consideration pursuant to this Agreement shall not be deemed or construed at any time or any purpose as an admission of liability or wrongdoing by any of the Parties in any manner whatsoever.

31. Nothing in this Agreement shall be deemed to confer any benefit upon a non-Party except as expressly provided for in this Agreement.

32. This Agreement may be signed in one or more counterparts, and each fully executed counterpart shall be deemed an original of this Agreement which, when taken together, represent a fully executed and complete Agreement. Electronic copies shall be deemed original signatures.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed and delivered as of the Effective Date set forth above.

GENERAL GROWTH MANAGEMENT, INC.,  
a Delaware corporation

HEELING SPORTS LIMITED, a Texas  
limited partnership

By: [Signature]  
*Authorized Officer*  
*In-hand conveyed sign subject to*  
*execution by Authorized Officer*  
Name: Byron R. WILLIAMS  
Date: April 22, 2010

By: [Signature]  
Name: THOMAS R. HANSEN  
Its: PRESIDENT & CEO

GENERAL GROWTH PROPERTIES, INC.,  
a debtor in possession

By: [Signature]  
*Authorized Officer*  
Name: Byron R. WILLIAMS  
Date: April 22, 2010

*In-hand conveyed sign*  
*subject to execution by*  
*Authorized Officer*

STONEBRIAR MALL, L.L.C.,  
a Delaware limited liability company and as  
successor to STONEBRIAR MALL LIMITED  
PARTNERSHIP

By:   
Authorized Officer

Name: RYAN R. SMITH  
Date: April 22, 2013

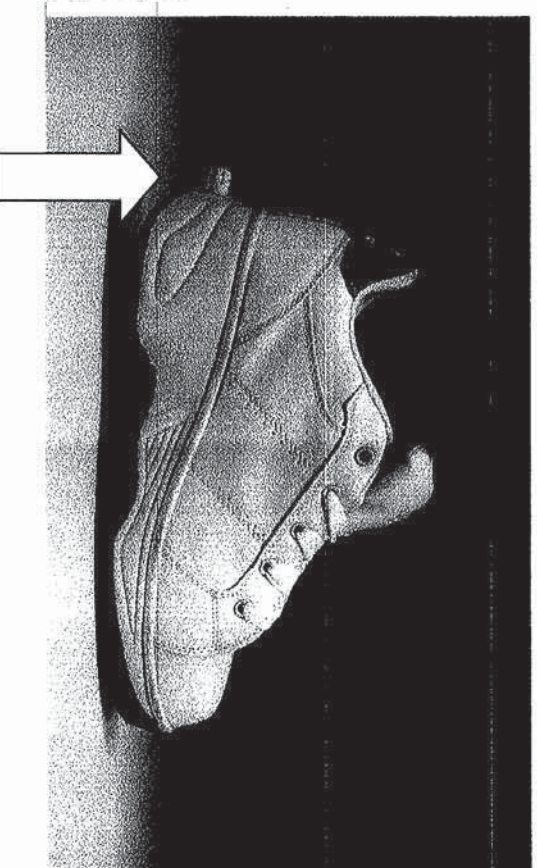
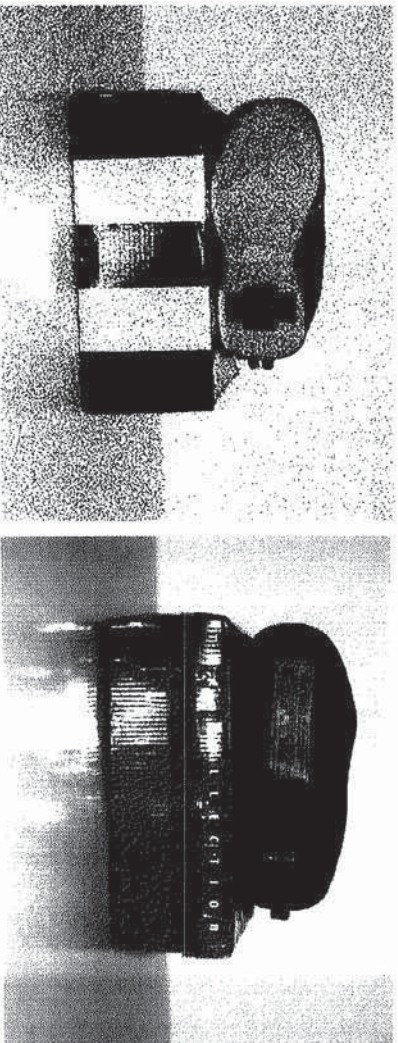
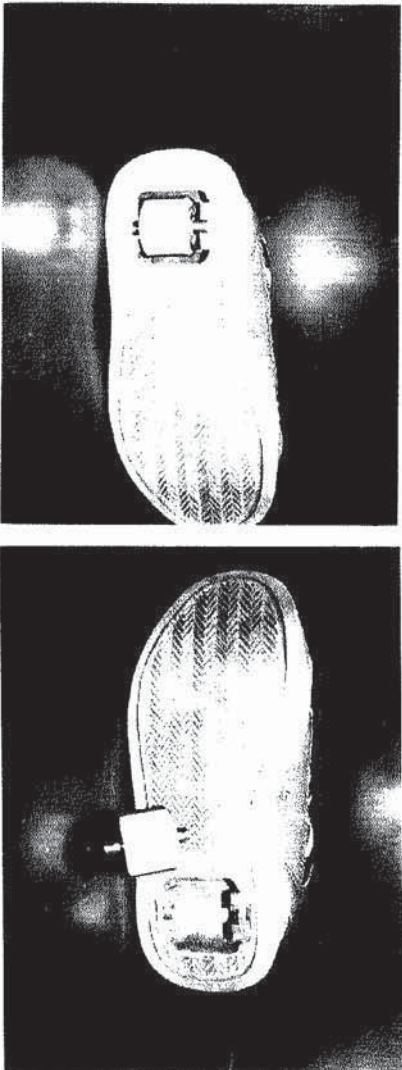
In-home court visit  
subject to execution by  
Authorized Officer

To: Specialty Leasing Managers

Heeling Sports Limited owns patents on products relating to "roller shoes" and it has informed us that certain products that are or have been sold in General Growth mall kiosks infringe those patents. General Growth has agreed not to authorize tenants to sell such products in the future. Going forward, please do not authorize any kiosk tenant to sell such roller shoe products. If you observe any kiosk selling roller shoe products now or in the future, please immediately report any kiosk tenants that sell these roller shoe products to Ryan Whitiacre at 312-960-2664 or [email\_address@generalgrowth.com].

To assist you in evaluating the prohibited products, we attach these pictures below.

1. Do not permit kiosk tenants to sell any shoes that include one or more wheels only in the heel, such as those shown below. This applies to **any** brand, trademark, or style of the shoes.



Push-button for retractable wheel-in-the-heel

Exhibit F

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2. Do not permit current or future kiosk tenants to sell shoes or strap-on apparatus that include wheels positioned external to the side of the heel, such as those shown below. This applies **regardless** of the brand, trademark, or style.



You may be told that an importer/manufacture has its own patent for wheeled footwear. This does not affect Heeling Sports' patent rights and you should not authorize or permit sale of such products based on that claim.

Questions? If you need further information or have any questions concerning this issue, please contact Ryan Whitacre at 312-960-2664 or [email address@generalgrowth.com].

Handwritten initials or signature.



**EXHIBIT D**

**[See Exhibit 16 to Plan Supplement]**

**EXHIBIT E**

**[See Exhibit 19 to Plan Supplement]**

**EXHIBIT F**

**[See Exhibit 17 to Plan Supplement]**

**EXHIBIT G**

**[See Exhibit 16 to Plan Supplement]**

**EXHIBIT H**

**[See Exhibit 1 to Plan Supplement]**

**EXHIBIT I-1**

**[See Exhibit 1 to Plan Supplement]**

**EXHIBIT I-2**

**[See Exhibit 1 to Plan Supplement]**

**EXHIBIT I-3**

**[See Exhibit 1 to Plan Supplement]**



**EXHIBIT J-1**

110 North Wacker Sublease Term Sheet

<b>Sublandlord:</b>	General Growth Management, Inc.
<b>Subtenant:</b>	Spincoco, Inc.
<b>Premises Size:</b>	3,200 square feet on the third floor
<b>Term:</b>	6 months from the date of General Growth Properties, Inc.'s emergence from bankruptcy
<b>Rent:</b>	\$10 per square foot gross (annually)
<b>Payment Date:</b>	First day of each month
<b>Termination Option:</b>	Subtenant shall have a right to terminate the sublease upon 60 days prior written notice
<b>Personalty:</b>	Subtenant shall be permitted to remove all its personal property upon termination of the Lease
<b>Assignment</b>	The sublease shall not be assignable without sublandlord's prior written consent

**EXHIBIT J-2**

10000 West Charleston Sublease Term Sheet

<b>Sublandlord:</b>	Howard Hughes Properties, Limited Partnership
<b>Subtenant:</b>	SpincO, Inc.
<b>Premises Size:</b>	16,000 square feet
<b>Term:</b>	6 months from the date of General Growth Properties, Inc.'s emergence from bankruptcy
<b>Rent:</b>	\$27 per square foot gross (annually)
<b>Payment Date:</b>	First day of each month
<b>Termination Option:</b>	Subtenant shall have a right to terminate the sublease upon 60 days prior written notice
<b>Personalty:</b>	Subtenant shall be permitted to remove all its personal property upon termination of the Lease
<b>Assignment</b>	The sublease shall not be assignable without sublandlord's prior written consent

**EXHIBIT J-3**

10275 Little Patuxent Parkway, Columbia, MD (Columbia Headquarters)  
Lease Term Sheet

<b>Landlord</b>	Clover Acquisition LLC
<b>Tenant</b>	GGP Limited Partnership
<b>Premises Size:</b>	32,000 square feet
<b>Term:</b>	6 months from the date of General Growth Properties, Inc.'s emergence from bankruptcy
<b>Rent:</b>	\$17 per square foot gross (annually)
<b>Payment Date:</b>	First day of each month
<b>Termination Option:</b>	Tenant shall have a right to terminate the lease upon 60 days prior written notice
<b>Personalty:</b>	Tenant shall be permitted to remove all its personal property, inclusive of artwork, upon termination of the Lease
<b>Assignment</b>	The lease shall not be assignable without landlord's prior written consent
<b>Other:</b>	The current lease pertaining to the property, dated January 21, 1973, between Clover Acquisition LLC and The Rouse Company LP, shall be terminated as of the date of General Growth Properties, Inc.'s emergence from bankruptcy.

**EXHIBIT K**

**[See Exhibit 20 to Plan Supplement]**

**EXHIBIT L**

**[See Exhibit 18 to Plan Supplement]**



**EXHIBIT M**

**[See Exhibit 15 to Plan Supplement]**

**EXHIBIT N**

**[See Exhibit 1 to Plan Supplement]**

# **EXHIBIT 15**

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**TRANSITION SERVICES AGREEMENT**

dated as of [●]

between

GGP LIMITED PARTNERSHIP,  
GENERAL GROWTH MANAGEMENT, INC.,

and

SPINCO, INC.

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## TRANSITION SERVICES AGREEMENT

This Transition Services Agreement (this “Agreement”), dated as of [●], is by and among GGP Limited Partnership, a Delaware limited partnership (“GGPLP”), General Growth Management, Inc., a Delaware corporation (“GGMI” and, collectively with GGPLP, “GGP”), and Spinco, Inc., a Delaware corporation (“Spinco”).

### RECITALS

WHEREAS, General Growth Properties, Inc. (“GGPI”) and Spinco entered into the Separation Agreement, dated as of the date hereof (as amended, modified or supplemented from time to time in accordance with its terms, the “Separation Agreement”); and

WHEREAS, pursuant to the Separation Agreement, the Parties agreed that GGPI (and/or its Subsidiaries on the date of this Agreement immediately after giving effect to, and subject to the occurrence of, the Distribution, collectively referred to as the “GGP Entities”) shall provide or cause to be provided to Spinco (and/or its Subsidiaries on the date of this Agreement immediately after giving effect to, and subject to the occurrence of, the Distribution, collectively referred to as the “Spinco Entities”) certain services on a transitional basis and in accordance with the terms and subject to the conditions set forth in this Agreement; and

WHEREAS, the Separation Agreement requires execution and delivery of this Agreement by GGP and Spinco on or prior to the Plan Effective Date.

NOW, THEREFORE, in consideration of the foregoing and the mutual agreements contained in this Agreement, the Parties hereby agree as follows:

### ARTICLE I

#### DEFINITIONS

Section 1.01. Certain Defined Terms. (a) Unless otherwise defined in this Agreement, all capitalized terms used in this Agreement shall have the same meaning as in the Separation Agreement.

(b) The following capitalized terms used in this Agreement shall have the meanings set forth below:

“Additional Services” shall have the meaning set forth in Section 2.03(a).

“Agreement” shall have the meaning set forth in the Preamble.

“Business Employees” shall have the meaning ascribed to such term in the Employee Matters Agreement.

“Competitor of GGP” shall mean an entity that is directly or indirectly (or whose Affiliates are directly or indirectly) in the business of owning or managing retail malls.



“Confidential Information” shall have the meaning set forth in Section 10.03(a).

“Cost Multiplier” shall mean: 110% during the period beginning on the Plan Effective Date and ending on the last day of the 6th month after the Plan Effective Date; 150% during the period beginning on the first day of the 7th month after the Plan Effective Date and ending on the last day of the 12th month after the Plan Effective Date; and 200% during the period beginning on the first day of the 13th month after the Plan Effective Date and ending on the date that this Agreement terminates.

“Direct Payroll Costs” shall mean, with respect to each GGP Employee providing a particular Service, the applicable hourly rate set forth on Exhibit I.

“Dispute” shall have the meaning set forth in Section 8.01(a).

“GGMI” shall have the meaning set forth in the Preamble.

“GGP” shall have the meaning set forth in the Preamble.

“GGP Employee” shall mean an employee of any of the GGP Entities.

“GGP Entities” shall have the meaning set forth in the Recitals.

“GGP Indemnified Party” shall have the meaning set forth in Section 7.04.

“GGP Intranet” shall mean GGPI’s internal computer network Intranet site generally accessible only by GGP Employees.

“GGPI” shall have the meaning set forth in the Recitals.

“GGPLP” shall have the meaning set forth in the Preamble.

“GGP Materials” shall have the meaning set forth in Section 3.01(a).

“GGP Overall Service Manager” shall have the meaning set forth in Section 2.04(a).

“GGP Service Manager” shall have the meaning set forth in Section 2.04(a).

“Interest Rate” shall have the meaning set forth in Section 5.01(b).

“Out-of-Pocket Expenses” shall mean, with respect to a particular Service, any out-of-pocket costs, fees and expenses that GGP or any other member of the GGP Group actually pays to an unaffiliated third party in the course of providing such Service, without any additional charge or mark up. The term “Out-of-Pocket Expenses” shall not include any rent, utilities, taxes, clerical support, GGP Employee compensation and benefits or any other general or administrative overhead or other similar costs or expenses.

“Overall Service Managers” shall mean the GGP Overall Service Manager and the Spinco Overall Service Manager.

“Party” shall mean GGP and Spinco individually, and “Parties” means GGP and Spinco collectively, and, in each case, their permitted successors and assigns.

“Representative” shall mean, with respect to any Person, any director, officer, employee, agent, consultant, accountant, auditor, attorney or other representative of such Person.

“Schedule(s)” shall have the meaning set forth in Section 2.02.

“Separation Agreement” shall have the meaning set forth in the Recitals.

“Service Charges” shall have the meaning set forth in Section 5.01(a).

“Service Increases” shall have the meaning set forth in Section 2.03(b).

“Service Resource Cost” shall mean, with respect to a particular Service, (A) an amount equal to the product of (x) the Direct Payroll Cost of the GGP Employee providing the Service multiplied by (y) the number of hours such employee spent performing the Service, or (B) if a different pricing methodology is expressly provided for in the applicable Schedule with respect to such Service, an amount calculated based on such pricing methodology.

“Services” shall have the meaning set forth in Section 2.01.

“Spinco” shall have the meaning set forth in the Preamble.

“Spinco Entities” shall have the meaning set forth in the Recitals.

“Spinco Indemnified Party” shall have the meaning set forth in Section 7.03.

“Spinco Intranet” shall have the meaning set forth in Section 4.02(a).

“Spinco Overall Service Manager” shall have the meaning set forth in Section 2.04(b).

“Spinco Service Manager” shall have the meaning set forth in Section 2.04(b).

## ARTICLE II

### SERVICES, DURATION AND SERVICE MANAGERS

Section 2.01. Services. Subject to the terms and conditions of this Agreement, GGP shall provide (or cause to be provided) to the Spinco Entities, as requested from time to time by Spinco, the services listed on Schedule A (which may be grouped by type of Services in sub-schedules) to this Agreement (the “Services”). All of the Services shall be for the sole use and benefit of the Spinco Entities as constituted on the Plan Effective Date.

Section 2.02. Duration of Services. Subject to the terms of this Agreement, commencing on the Plan Effective Date, GGP shall provide or cause to be provided to the Spinco Entities each Service until the earlier to occur of, with respect to each such Service, (i) the expiration of the period of the maximum duration for such Service as set forth on the sub-

schedules attached hereto defining such Service (each a “Schedule”, and collectively, the “Schedules”) and (ii) the date on which such Service is terminated under Section 9.01; provided, however, that Spinco shall use commercially reasonable efforts in good faith to transition itself to a stand-alone entity with respect to each Service during the period for such Service as set forth in the relevant Schedules. In the event that GGP sells, transfers or otherwise disposes of its interest in any of its Subsidiaries that is engaged in providing one or more Services, GGP shall (x) if requested by Spinco, use commercially reasonable efforts to cause such Subsidiary or the acquiror thereof to agree that such Subsidiary will continue to provide such Services to the same extent provided pursuant to the terms of this Agreement or (y) if requested by Spinco, or to the extent the Subsidiary or the acquiror will not agree to provide such Services after GGP’s exertion of commercially reasonable efforts pursuant to (x), secure such Services from a reputable and experienced third-party vendor at substantially equivalent service levels for the remaining term of such Services.

Section 2.03. Additional Unspecified Services. (a) After the Plan Effective Date, if Spinco (i) identifies a service that the GGP Entities provided to the Spinco Business prior to the Plan Effective Date that is reasonably necessary in order for the Spinco Business to continue to operate in substantially the same manner in which the Spinco Business operated prior to the Plan Effective Date and is otherwise material to operations of the Spinco Business, and such service was not included on the Schedules, and (ii) provides written notice to GGP within one hundred twenty (120) days following the Plan Effective Date requesting such additional service, then GGP shall, subject to the negotiation of mutually acceptable terms of the applicable Schedule (as described in the next sentence), provide such requested additional service provided that (i) the GGP Entities have adequate resources to provide such service, (ii) such service can be provided without unreasonable disruption to the GGP Entities’ businesses and (iii) the provision of such service will not violate (whether directly or by virtue of a cross-default) a material contract or agreement of a GGP Entity or result in a violation of applicable Law (such additional services, the “Additional Services”). In connection with any request for Additional Services in accordance with this Section 2.03(a), the GGP Service Manager and the Spinco Service Manager shall in good faith negotiate the terms of a supplemental Schedule, which terms shall be consistent with the terms of, and the pricing methodology used for, similar Services provided under this Agreement. The Parties shall agree to the applicable Service Charge and the supplemental Schedule shall describe in reasonable detail the nature, scope, service period(s), termination provisions and other terms applicable to such Additional Services. Each supplemental Schedule, as agreed to in writing by the Parties, shall be deemed part of this Agreement as of the date of such Schedule and the Additional Services set forth therein shall be deemed “Services” provided under this Agreement, in each case subject to the terms and conditions of this Agreement.

(b) After the Plan Effective Date, if (i) (x) Spinco requests GGP to increase, relative to historical levels prior to the Plan Effective Date, the volume, amount, level or frequency, as applicable, of any Service provided by GGP and (ii) such increase is reasonably determined by Spinco as necessary for Spinco to operate its businesses (such increases, the “Service Increases”), then GGP shall, subject to the negotiation of mutually acceptable terms of the applicable Schedule (as described in the next sentence), provide the Service Increases in accordance with such request; provided, that GGP shall not be obligated to provide any Service Increase if it does not, in its reasonable judgment, have adequate resources to provide such

Service Increase or if the provision of such Service Increase would significantly disrupt the operation of any of its businesses or violate an existing material contract or agreement or applicable Law. In connection with any request for Service Increases in accordance with this Section 2.03(b), the GGP Service Manager and the Spinco Service Manager shall in good faith negotiate the terms of an amendment to the applicable Schedule, which amendment shall be consistent with the terms of, and the pricing methodology used for, the applicable Service. Each amended Schedule, as agreed to in writing by the Parties, shall be deemed part of this Agreement as of the date of such amendment to the Schedule and the Service Increases set forth therein shall be deemed a part of the “Services” provided under this Agreement, in each case subject to the terms and conditions of this Agreement.

Section 2.04. Transition Service Managers. (a) GGP hereby appoints and designates the individual holding the GGP position set forth on Exhibit II to act as its initial service manager (the “GGP Overall Service Manager”), who will be directly responsible for coordinating and managing the delivery of the Services and have authority to act on GGP’s behalf with respect to matters relating to this Agreement. In addition, GGP hereby appoints, with respect to each Service, the individual set forth on the applicable Schedule as its initial service manager (each such manager, a “GGP Service Manager”) with respect to such Service, who will be directly responsible for coordinating and managing the delivery of such Service on a day-to-day basis. The GGP Service Managers will work with the personnel of the GGP Entities to periodically address issues and matters raised by Spinco relating to this Agreement. The GGP Overall Service Manager will oversee the GGP Service Managers and will be responsible for coordinating the overall delivery of the Services. Notwithstanding the notice requirements of Section 10.05, all communications from Spinco to GGP pursuant to this Agreement regarding routine matters involving the Services set forth on the Schedules shall be made through the applicable GGP Service Manager, or such other individual as specified by the applicable GGP Service Manager in writing and delivered to Spinco by email or facsimile transmission with receipt confirmed. GGP shall notify Spinco of the appointment of a different GGP Overall Service Manager or GGP Service Manager, if necessary, in accordance with Section 10.05.

(b) Spinco hereby appoints and designates the individual holding the Spinco position set forth on Exhibit II to act as its initial service manager (the “Spinco Overall Service Manager”), who will be directly responsible for coordinating and managing the receipt of the Services and have authority to act on Spinco’s behalf with respect to matters relating to this Agreement. In addition, Spinco hereby appoints, with respect to each Service, the individual set forth on the applicable Schedule as its initial service manager (each such manager, a “Spinco Service Manager”) with respect to such Service, who will be directly responsible for coordinating and managing the receipt of such Service on a day-to-day basis. The Spinco Service Managers will work with the personnel of Spinco Entities to periodically address issues and matters raised by GGP relating to this Agreement. The Spinco Overall Service Manager will oversee the Spinco Service Managers and will be responsible for coordinating the overall receipt of the Services. Notwithstanding the notice requirements of Section 10.05, all communications from GGP to Spinco pursuant to this Agreement regarding routine matters involving the Services set forth on the Schedules shall be made through the applicable Spinco Service Manager or such other individual as specified by the applicable Spinco Service Manager in writing and delivered to GGP by email or facsimile transmission with receipt confirmed. Spinco shall notify GGP of

the appointment of a different Spinco Overall Service Manager or Spinco Service Manager, if necessary, in accordance with Section 10.05.

Section 2.05. Personnel. (a) GGP will make available such appropriately qualified personnel as may be reasonably necessary to provide the Services, and will use reasonable efforts to make available personnel specifically requested by Spinco. Notwithstanding the foregoing, GGP will have the right, in its sole reasonable discretion, to (i) designate which personnel it will assign to perform each Service, and (ii) remove and replace such personnel at any time with personnel of similar qualifications and experience levels, if such action would not reasonably be expected to cause a material increase in costs and/or a material decrease in level of service for Spinco with respect to such Service; provided, however, that GGP will use its commercially reasonable efforts to limit the disruption to Spinco in the transition of the Services to different personnel.

(b) In the event that the provision of any Service by GGP requires, as set forth in the Schedules, the cooperation and services of the applicable personnel of Spinco, Spinco will make available to GGP such personnel (who shall be appropriately qualified for purposes of the provision of such Service by GGP) as may be necessary for GGP to provide such Service.

Section 2.06. No Duplication.

(a) GGP shall not charge any Service Charges under this Agreement or any other amounts for any Services performed by any GGP Employees if, and to the extent that, the employees performing such Services are doing so pursuant to the Employee Leasing Agreement, and the costs of such employees are being reimbursed pursuant thereto.

(b) GGP shall not charge any Service Charges or other amounts for any Services if, and to the extent that, such Service Charges are duplicative of services performed under the Employee Leasing Agreement or the Employee Matters Agreement.

### **ARTICLE III**

#### **GGP MATERIALS**

Section 3.01. Corporate Policies. (a) At the Plan Effective Date or reasonably promptly thereafter, GGP shall make available to Spinco its then existing policies and manuals that GGP determines in good faith are reasonably necessary for the operation of the Spinco Business (the "GGP Materials"). Subject to the terms and conditions of this Agreement, GGP grants to Spinco a non-exclusive, royalty-free, fully paid-up, worldwide license to create or have created any derivative works or materials based on the GGP Materials for distribution to employees and suppliers of Spinco and use such materials in the operation of the Spinco Business in substantially the same manner as the GGP Materials were used by GGP prior to the Distribution. It is understood and agreed that GGP makes no representation or warranty, express or implied, as to the accuracy or completeness of any of the GGP Materials, as to the noninfringement of any of the GGP Materials or as to the suitability of any of the GGP Materials for use by Spinco in respect of its business or otherwise. Access to any GGP Materials shall be

limited to those Representatives of Spinco who need access in order to perform their responsibilities.

(b) Notwithstanding the foregoing, the text of any materials related to or based upon any of the GGP Materials created by, for or on behalf of Spinco may not contain any references to the GGP Entities (or any use of the GGP Entities' marks, names, trade dress, logos or other source or business identifiers, including the GGP Name and GGP Marks), the GGP Entities' publications, the GGP Entities' personnel (including senior management), the GGP Entities' management structures or any other indication that in each instance such materials are based upon any of the GGP Materials.

Section 3.02. Limitation on Rights and Obligations with Respect to the GGP Materials.

(a) Spinco acknowledges and agrees that, except as expressly set forth above, GGP reserves all rights (including all Intellectual Property rights) in, to and under the GGP Materials and no rights with respect to ownership or use, except as otherwise expressly provided in this Agreement, shall vest in Spinco.

(b) GGP shall have no obligation to (i) notify Spinco of any changes or proposed changes to any of the GGP Materials, (ii) include Spinco in any consideration of proposed changes to any of the GGP Materials, (iii) provide draft changes of any of the GGP Materials to Spinco for review and/or comment or (iv) provide Spinco with any updated materials relating to any of the GGP Materials except to the extent such changes would affect the provision of Services in accordance with the terms hereof. The Parties acknowledge and agree that the GGP Materials are the Confidential Information of GGP. Spinco shall use at least the same degree of care to prevent and restrain the unauthorized use or disclosure of any materials created by, for or on behalf of Spinco that are based upon any of the GGP Materials as it uses for its other confidential information of a like nature, but in no event less than a reasonable degree of care. Spinco will allow GGP reasonable access to its personnel and information as reasonably necessary to determine Spinco's compliance with the provisions set forth above; provided, however, such access shall not unreasonably interfere with any of the business or operations of Spinco. Subject to Section 8.01, in the event that GGP determines that Spinco has not materially complied with some or all of its obligations with respect to any or all of the GGP Materials, and such noncompliance is not cured within thirty (30) days following Spinco's receipt of written notice thereof from GGP, GGP may terminate Spinco's rights with respect to such GGP Materials upon written notice to Spinco and, in such case, GGP shall be entitled to require such GGP Materials to be returned to GGP or destroyed and any materials created by or for Spinco that are based upon such GGP Materials to be destroyed (with such destruction certified by Spinco in writing to GGP promptly after such termination).

(c) If Spinco determines to cease to avail itself of any of the GGP Materials or upon expiration or termination of any period during which Spinco is permitted to use any of the GGP Materials, GGP and Spinco shall cooperate in good faith to take reasonable and appropriate actions to effectuate such determination, expiration or termination, to arrange for the return to GGP or destruction of such GGP Materials and to protect GGP's rights and interests in such GGP Materials.

## ARTICLE IV

### OTHER ARRANGEMENTS AND ADDITIONAL AGREEMENTS

Section 4.01. Software and Software Licenses. If and to the extent requested by Spinco, GGP shall use commercially reasonable efforts to (x) obtain permission from third-party licensors of computer software to allow GGP to provide services to Spinco as required hereunder and (y) assist Spinco in its efforts to obtain licenses (or other appropriate rights) to use, duplicate and distribute, as necessary and applicable, certain computer software necessary for GGP to provide, or Spinco to receive, Services (which assistance shall include to the extent appropriate providing Spinco the opportunity to receive a copy of, or participate in, any communication between GGP and the applicable third party licensor in connection therewith); provided, however, that GGP and Spinco shall mutually agree upon the specific types and quantities of any such software licenses; provided, further, that GGP shall not be required to pay any fees or other payments unless such fees and payments are reimbursed fully by Spinco or incur any obligations or liabilities to enable GGP to provide such services or enable Spinco to obtain any such license or rights; provided, further, that GGP shall not be required to seek broader rights or more favorable terms for Spinco than those applicable to GGP prior to the date of this Agreement or as may be applicable to GGP from time to time hereafter; and, provided, further, that Spinco shall bear only those costs that relate directly to obtaining such licenses (or other appropriation rights), which shall not include any payments relating to the discharge of Excluded Liabilities which are not related to the provision of Services. The Parties acknowledge and agree that there can be no assurance that GGP's efforts will be successful or that Spinco will be able to obtain such licenses or rights on acceptable terms or at all and, where GGP enjoys rights under any enterprise or site license or similar license, the Parties acknowledge that such license typically precludes partial transfers or assignments or operation of a service bureau on behalf of unaffiliated entities. In the event that Spinco is unable to obtain such software licenses, the Parties shall work together using commercially reasonable efforts to obtain an alternative software license or modification to an existing GGP license to allow GGP to provide, or Spinco to receive, such Services, and the Parties shall negotiate in good faith an amendment to the applicable Schedule to reflect any such new arrangement, which amended Schedule shall not require Spinco to pay for any fees, expenses or costs relating to the software license that Spinco was unable to obtain pursuant to the provisions of this Section 4.01.

#### Section 4.02. GGP Computer-Based and Other Resources.

(a) As of the Plan Effective Date, except as otherwise expressly provided in the Separation Agreement, in any Schedule hereto, or in any other Transaction Documents, Spinco and its Subsidiaries shall have no further access to, and GGP shall have no obligation to otherwise provide access to, the GGP Intranet, and Spinco shall have no access to, and GGP shall have no obligation to otherwise provide access to, computer-based resources (including access to GGPI's or its Subsidiaries' computer networks and databases) that require a password or are available on a secured access basis only. Notwithstanding the foregoing, from and after the Plan Effective Date, GGP shall use reasonable efforts to make available to Spinco an intranet (the "Spinco Intranet") accessible by Spinco and its Subsidiaries that contains (i) the GGP Materials and (ii) any materials that GGP determines in good faith that any member of the Spinco Group needs to access in connection with the performance or delivery of any Service.

(b) From and after the Plan Effective Date, Spinco and its Subsidiaries shall cause all of their personnel having access to the GGP Intranet or such other computer software, networks, hardware, technology or computer-based resources pursuant to the Separation Agreement, any Transaction Document or in connection with performance, receipt or delivery of a Service to comply with all reasonable security guidelines (including physical security, network access, Internet security, confidentiality and personal data security guidelines) of GGPI and its Subsidiaries (of which GGP provides Spinco notice). Spinco shall ensure that the access contemplated by this Section 4.02 shall be used by such personnel only for the purposes contemplated by, and subject to the terms of, this Agreement.

Section 4.03. Spinco Computer-Based and Other Resources. From and after the date of this Agreement, GGP and its Subsidiaries shall cause all of their personnel having access to the Spinco Intranet or such other computer software, networks, hardware, technology or computer based resources pursuant to the Separation Agreement, any Transaction Document or in connection with performance, receipt or delivery of a Service to comply with all reasonable security guidelines (including physical security, network access, internet security, confidentiality and personal data security guidelines) of Spinco and its Subsidiaries (of which Spinco provides GGP notice). GGP shall ensure that the access contemplated by this Section 4.03 shall be used by such personnel only for the purposes contemplated by, and subject to the terms of, this Agreement.

Section 4.04. Access. (a) Spinco shall, and shall cause its Subsidiaries to, allow GGP and its Representatives reasonable access to the facilities of Spinco necessary for GGP to fulfill its obligations under this Agreement.

(b) Notwithstanding the other rights of access of the Parties under this Agreement, each Party shall, and shall cause its Subsidiaries to, afford the other Party, its Subsidiaries and Representatives reasonable access, upon reasonable notice, during normal business hours to the facilities, information, systems, infrastructure, and personnel of the other Party as reasonably necessary for the other Party to verify the adequacy of internal controls over information technology, reporting of financial data and related processes employed in connection with the Services, including in connection with verifying compliance with Section 404 of the Sarbanes-Oxley Act of 2002; provided, however, such access shall not unreasonably interfere with any of the business or operations of such Party or its Subsidiaries.

Section 4.05. Insider Trading Policy. Each of the Parties hereby agrees that it will instruct its Representatives that it is a violation of applicable Law for any Representative to purchase or sell securities of the other Party based on non-public information obtained in connection with the performance of this Agreement.

Section 4.06. Cooperation. It is understood that it will require the significant efforts of both Parties to implement this Agreement and to ensure performance of this Agreement by the Parties at the agreed upon levels in accordance with all of the terms and conditions of this Agreement. The Parties will cooperate, acting in good faith and using commercially reasonable efforts, to effect a smooth and orderly transition of the Services provided under this Agreement from GGP to Spinco (including repairs and maintenance Services and the assignment or transfer of the rights and obligations under any third-party contracts relating to the Services) and Spinco



agrees that it will use commercially reasonable efforts to eliminate its need for the Services as quickly as practicable; provided, however, that this Section 4.06 shall not require either Party to incur any out-of-pocket costs or expenses unless and except as expressly provided in this Agreement or otherwise agreed to in writing by the Parties (acknowledging that Spinco will be required to incur costs and expenses in conjunction with eliminating its need for the Services).

## ARTICLE V

### COSTS AND DISBURSEMENTS

Section 5.01. Costs and Disbursements. (a) Spinco shall pay to GGP a fee for each Service (such fee constituting a “Service Charge” and, the fees for all Services collectively, “Service Charges”) equal to the sum of (A) the product of (i) the Cost Multiplier multiplied by (ii) the applicable Service Resource Cost plus (B) the amount of any Out-of-Pocket Expenses incurred with respect to such Service; provided, however, that the Cost Multiplier shall be held constant at 110% for the term of this Agreement with respect to Services in support of the JD Edwards application (including, for the avoidance of doubt, the applicable Services set forth in Schedule A-7: Accounting and Schedule A-10: Information Technology Services), in each case solely to the extent such Services are in support of the JD Edwards application.

(b) GGP shall invoice Spinco for the Service Charges monthly in arrears; provided that the Service Charges shall be pro rated for any partial month. Spinco shall pay the amount of each such invoice by wire transfer or check to GGP within thirty (30) days of the receipt of each such invoice. If Spinco fails to pay such amount (other than any portion of such amount being disputed in good faith in accordance with the terms of this Agreement) by such date, Spinco shall be obligated to pay to GGP, in addition to the amount due, interest thereon at an annual percentage rate of ten percent (10%) (the “Interest Rate”) accruing from the date the payment was due through the date of actual payment. Each invoice shall specify, for each type of Service, (A) (i) the aggregate number of hours GGP Employees in each group level set forth on Exhibit I spent performing such Service and (ii) the Direct Payroll Costs for each such group level (or the calculation under a different pricing methodology, as applicable), (B) the Cost Multiplier in effect and (C) any Out-of-Pocket Expenses incurred with respect to such Service. Together with any invoice for Service Charges, GGP shall provide Spinco with data and documentation (including documentation of Out-of-Pocket Expenses) as reasonably requested by Spinco for the purpose of verifying the accuracy of the calculation of such Service Charges; provided, however, that GGP shall provide Spinco with copies of all applicable third-party invoices as soon as reasonably practicable following receipt by GGP, it being understood that GGP’s receipt of applicable third-party invoices may be delayed for thirty (30) or more days.

(c) At any time during the term of this Agreement, and for two (2) years after the expiration or termination of this Agreement, Spinco or its auditors or other reputable accounting firm, upon ten (10) business days’ prior written notice to GGP, may audit the books and records of the GGP Group relating to this Agreement for the purpose of verifying the Service Charges (at Spinco’s sole expense). GGP shall, and shall cause its Affiliates to, reasonably cooperate in such audit, make available on a timely basis the information reasonably required to conduct the review, and assist the designated representatives of Spinco or its auditors as reasonably necessary. GGP shall, and shall cause its Affiliates to, retain all such books and

records relating to this Agreement and the performance of the Services for two (2) years after the expiration or termination of this Agreement or such longer period as may be required by applicable law. GGP shall refund any overcharges or other amounts owed to Spinco, occurring at any time during the term of this Agreement, disclosed by such audit, within thirty (30) days after the completion of such audit.

Section 5.02. Taxes.

(a) Without limiting any provisions of this Agreement, Spinco shall pay any sales, use and other similar taxes imposed on, or payable with respect to, any Services provided to it under this Agreement; provided, however, that Spinco shall not pay, or be responsible for, any applicable income, franchise or gross receipts taxes imposed on, or payable with respect to, the income derived by GGP from providing these Services to Spinco.

(b) Notwithstanding anything to the contrary in Section 5.02(a) or elsewhere in this Agreement, Spinco shall be entitled to withhold from any payments to GGP any such taxes that Spinco is required by law to withhold and shall pay over such taxes to the applicable taxing authority.

Section 5.03. No Right to Set-Off. Spinco shall pay the full amount of Service Charges and shall not set-off, counterclaim or otherwise withhold any amount owed to GGP under this Agreement on account of any obligation owed by GGP to Spinco that has not been finally adjudicated, settled or otherwise agreed upon by the Parties in writing.

## ARTICLE VI

### STANDARD FOR SERVICE

Section 6.01. Standard for Service. Except where GGP is restricted by an existing Contract with a third party or by Law, GGP agrees (i) to perform the Services such that the nature, quality, standard of care and the service levels at which such Services are performed are no less than that which are substantially similar to the nature, quality, standard of care and service levels at which the same or similar services were performed by or on behalf of GGP prior to the Plan Effective Date (or, if not so previously provided, then substantially similar to that which are applicable to similar services provided to GGP's Subsidiaries or other business components), but in any event, in at least a good and workmanlike manner in accordance with past practice; (ii) upon receipt of written notice from Spinco identifying any outage, interruption or other failure of any Service, to respond to such outage, interruption or other failure of any Services in a manner that is no less than that which is substantially similar to the manner in which GGP or its Subsidiaries responded to any outage, interruption or other failure of the same or similar services prior to the Plan Effective Date (the Parties acknowledge that an outage, interruption or other failure of any Service shall not be deemed to be a breach of the provisions of this Section 6.01 so long as GGP complies with this clause (ii)). As of or following the date of this Agreement, if GGP is or becomes aware of any restriction on GGP by an existing Contract with a third-party that would restrict the nature, quality, standard of care or service levels applicable to delivery of the Services to be provided by GGP to Spinco, GGP shall (x) promptly notify Spinco of any such restriction (which notice shall in any event promptly

follow any change to, or reduction in, the nature, quality, standard of care or service levels applicable to delivery of the Services resulting from such restriction), (y) use commercially reasonable efforts to negotiate an amendment to the Contract to remove such restriction or otherwise obtain the third party's consent to allow the Services to be performed to the standards described in this Section 6.01, and (z) use commercially reasonable efforts to provide such Services in a manner as closely as possible to the standards described in this Section 6.01 while attempting to secure the amendment or consent contemplated by (y). To the extent that GGP is unable to obtain the amendment or consent described above, the Parties shall negotiate in good faith an amendment to the applicable Schedule to reflect any such new arrangement.

Section 6.02. Disclaimer of Warranties. Except as expressly set forth in this Agreement or any Schedule, the Parties acknowledge and agree that the Services are provided as-is, that Spinco assumes all risks and liability arising from or relating to its use of and reliance upon the Services and GGP makes no representation or warranty with respect thereto. EXCEPT AS EXPRESSLY SET FORTH IN THIS AGREEMENT, GGP HEREBY EXPRESSLY DISCLAIMS ALL REPRESENTATIONS AND WARRANTIES REGARDING THE SERVICES, WHETHER EXPRESS OR IMPLIED, INCLUDING ANY REPRESENTATION OR WARRANTY IN REGARD TO QUALITY, PERFORMANCE, NONINFRINGEMENT, COMMERCIAL UTILITY, MERCHANTABILITY OR FITNESS OF THE SERVICES FOR A PARTICULAR PURPOSE.

Section 6.03. Compliance with Laws and Regulations. Each Party shall be responsible for its own compliance with any and all Laws applicable to its performance under this Agreement. No Party will knowingly take any action in violation of any such applicable Law that results in liability being imposed on the other Party.

## ARTICLE VII

### LIMITED LIABILITY AND INDEMNIFICATION

Section 7.01. Consequential and Other Damages. Notwithstanding anything to the contrary contained in the Separation Agreement or this Agreement, neither Spinco or its Subsidiaries, on the one hand, nor GGP or its Subsidiaries, on the other hand, shall be liable to the other Party or any of its Subsidiaries or Representatives, whether in contract, tort (including negligence and strict liability) or otherwise, at law or equity, for any special, indirect, incidental or consequential damages whatsoever (including lost profits or damages calculated on multiples of earnings approaches), which in any way arise out of, relate to or are a consequence of, the performance or nonperformance by the Party (including any Subsidiaries and Representatives of such Party and, in the case of GGP, any third-party providers providing the applicable Services) under this Agreement or the provision of, or failure to provide, or termination of, any Services under this Agreement, including with respect to loss of profits, business interruptions or claims of customers (provided, that any liability with respect to a Third Party Claim shall be considered direct damages).

Section 7.02. Limitation of Liability. Subject to Section 7.03, the Liabilities of GGP and its Subsidiaries and Representatives, collectively, under this Agreement for any act or failure to act in connection herewith (including the performance or breach of this Agreement), or

from the sale, delivery, provision, use or termination of any Services provided under or contemplated by this Agreement, whether in contract, tort (including negligence and strict liability) or otherwise, shall not exceed the greater of (a) the total aggregate Service Charges (excluding any Out-of-Pocket Expenses included in such Service Charges) actually paid to GGP by Spinco pursuant to this Agreement and (b) \$10,000,000.

Section 7.03. Obligation to Reperform and GGP Indemnity. In the event of any breach of this Agreement by GGP with respect to the provision of any Services, GGP shall (a) promptly correct in all material respects any error or defect resulting in such breach or reperform in all material respects such Services at the request of Spinco and at the sole cost and expense of GGP and (b) subject to the limitations set forth in Sections 7.01 and 7.02, indemnify Spinco and its Subsidiaries and Representatives (each, a “Spinco Indemnified Party”) for Liabilities (including direct damages, whether arising out of a Third Party Claim or otherwise) attributable to such breach by GGP; provided, however, that, to the extent any such breach can be cured through reperformance, the reperformance remedy set forth in Section 7.03(a) shall be the sole and exclusive remedy of Spinco for such portion of such breach; provided, further, however, that GGP shall indemnify each Spinco Indemnified Party to the extent any such party incurs indemnifiable losses that cannot be cured through reperformance. Any request for reperformance in accordance with Section 7.03(a) by Spinco must be in writing and specify in reasonable detail the particular error or defect resulting in such breach.

Section 7.04. Release and Spinco Indemnity. Subject to Section 7.01, Section 7.02 and Section 7.03, Spinco hereby releases GGP and its Subsidiaries and Representatives (each, a “GGP Indemnified Party”), and Spinco hereby agrees to indemnify, defend and hold harmless each such GGP Indemnified Party from and against any and all Liabilities arising from, relating to or in connection with the use of any Services by Spinco or any of its Subsidiaries, Representatives or other Persons using such Services, except to the extent that such Liabilities arise out of, relate to or are a consequence of the applicable GGP Indemnified Party’s bad faith, gross negligence or willful misconduct.

Section 7.05. Indemnification Procedures. The provisions of Article V of the Separation Agreement shall govern claims for indemnification under this Agreement.

Section 7.06. Liability for Payment Obligations. Nothing in this Article VII shall be deemed to eliminate or limit, in any respect, Spinco’s express obligation in this Agreement to pay Service Charges for Services rendered in accordance with this Agreement.

Section 7.07. Exclusion of Other Remedies. The provisions of Sections 7.03 and 7.04 of this Agreement shall be the sole and exclusive remedies for any claim, loss, damage, expense or liability, whether arising from statute, principle of common or civil law, principles of strict liability, tort, contract or otherwise under this Agreement.

## **ARTICLE VIII**

### **DISPUTE RESOLUTION**

Section 8.01. Dispute Resolution.

(a) In the event of any dispute, controversy or claim arising out of or relating to the transactions contemplated by this Agreement, or the validity, interpretation, breach or termination of any provision of this Agreement, or calculation or allocation of the costs of any Service, including claims seeking redress or asserting rights under any Law (each, a “Dispute”), GGP and Spinco agree that the GGP Overall Service Manager and the Spinco Overall Service Manager (or such other Persons as GGP and Spinco may designate) shall negotiate in good faith in an attempt to resolve such Dispute amicably. If such Dispute has not been resolved to the mutual satisfaction of the Overall Service Managers within fifteen (15) days after the initial written notice of the Dispute by one Party to another Party (or such longer period as the Parties may agree), then the respective Chief Executive Officers of GGPI and Spinco shall negotiate in good faith in an attempt to resolve such Dispute amicably. If such Dispute has not been resolved to the mutual satisfaction of the Chief Executive Officers of GGPI and Spinco within fifteen (15) days after the Dispute was referred to them for negotiation (or such longer period as the Parties may agree), then the Dispute shall be resolved in accordance with the dispute resolution process set forth in Sections 7.3 and 7.4 of the Separation Agreement; provided, that such dispute resolution process shall not modify or add to the remedies available to the Parties under this Agreement.

(b) Notwithstanding anything to the contrary in this Agreement, either Party may immediately seek equitable relief (without the necessity of posting a bond) including, without limitation, temporary injunctive relief, against the other Party with respect to any and all equitable remedies sought in connection with this Agreement in accordance with Article VII of the Separation Agreement.

(c) In any Dispute regarding the amount of a Service Charge, if after such Dispute is finally resolved pursuant to the dispute resolution process set forth or referred to in Section 8.01(a), it is determined that the Service Charge that GGP has invoiced Spinco, and that Spinco has paid to GGP, is greater or less than the amount that the Service Charge should have been, then (a) if it is determined that Spinco has overpaid the Service Charge, GGP shall within ten (10) business days after such determination reimburse Spinco an amount of cash equal to such overpayment, plus interest thereon at the Interest Rate accruing from the date of such overpayment to the time of reimbursement by GGP, and (b) if it is determined that Spinco has underpaid the Service Charge, Spinco shall within ten (10) business days after such determination pay GGP an amount of cash equal to such underpayment, plus interest thereon at the Interest Rate accruing from the date of such underpayment (or when such payment was due if not paid at all) to the time of payment by Spinco.

## ARTICLE IX

### TERM AND TERMINATION

Section 9.01. Term and Termination. (a) This Agreement shall commence immediately upon the Plan Effective Date and shall terminate upon the earlier to occur of: (i) the last date on which either Party is obligated to provide any Service to the other Party and the completion of all other obligations hereunder in accordance with the terms of this Agreement and (ii) the mutual written agreement of the Parties to terminate this Agreement in its entirety. Notwithstanding anything to the contrary contained in this Agreement or any Schedule,

(i) GGP's obligation to provide, or cause to be provided, Services to the Spinco Entities shall terminate, at GGP's sole option, with respect to any Spinco Entity that Spinco, directly or indirectly, sells, or otherwise transfers ownership and control of, to a non-Spinco Entity (e.g., pursuant to equity sale, asset sale, merger or otherwise) and (ii) in no event shall the provision of any Service extend beyond the date that is twenty-four (24) months from the Plan Effective Date.

(b) Without prejudice to Spinco's rights with respect to a Force Majeure, Spinco may from time to time terminate this Agreement with respect to the entirety of any individual Service but not a portion thereof, (A) for any reason or no reason upon providing to GGP the requisite prior written notice for such termination as specified in the applicable Schedule or, if no such notice period is provided in the applicable Schedule, on five (5) days' prior written notice, or (B) if GGP has failed to perform any of its material obligations under this Agreement with respect to such Service, and such failure shall continue to exist thirty (30) days after receipt by GGP of written notice of such failure from Spinco; and (ii) GGP may terminate this Agreement with respect to one or more Services, in whole but not in part, at any time upon prior written notice to Spinco if Spinco has failed to perform any of its material obligations under this Agreement relating to such Services, including making payment of any Service Charges when due, and such failure shall be continued uncured for a period of thirty (30) days after receipt by Spinco of a written notice of such failure from GGP. The relevant Schedule shall be updated to reflect any terminated Service. In the event that any Service is terminated other than at the end of a month, the Service Charge associated with such Service shall be pro-rated as applicable. In the event that Spinco terminates any Service pursuant to clause (A) of this Section 9.01(b), the GGP Group shall have the right to (i) terminate or discontinue any contract or other arrangement with an unaffiliated third party to the extent such contract or arrangement relates to such terminated Service, and any charges and out-of-pocket costs, fees and expenses payable by any member of the GGP Group in connection with the exercise of such right (other than severance obligations or other amounts payable to any GGP Employee) shall be reimbursed by Spinco promptly upon GGP's presentation to Spinco of the applicable third party invoice therefor and (ii) charge Spinco for any applicable Service Charges incurred in connection with the orderly unwinding and transfer of such terminated Service.

(c) Without prejudice to the rights and obligations of the Parties in Section 2.03 and Section 4.06, either Party may from time to time request a reduction in part of the scope or amount of any Service. If requested to do so by the other Party, each Party agrees to discuss in good faith appropriate reductions to the relevant Service Charges in light of all relevant factors including the costs and benefits to the Parties of any such reductions. If, after such discussions, Spinco and GGP do not agree to any requested reduction of the scope or amount of any Service and the relevant Service Charges in connection therewith, then there shall be no change to the scope or amount of any Services or Service Charges under this Agreement. In the event that Spinco and GGP agreed to any reduction of Service and the relevant Service Charges, the relevant Schedule shall be updated to reflect such reduced Service and relevant Service Charges if any. In the event that any Service is reduced other than at the end of a month, the Service Charge associated with such Service for the month in which such Service is reduced shall be pro-rated appropriately.

Section 9.02. Effect of Termination. Upon termination of any Service pursuant to this Agreement, GGP will have no further obligation to provide the terminated Service, and

Spinco will have no obligation to pay any future Service Charges relating to any such Service; provided, that Spinco shall remain obligated to GGP for the Service Charges owed and payable in respect of Services provided prior to the effective date of termination as set forth in the Schedule relating to such Service. In connection with termination of any Service, the provisions of this Agreement not relating solely to such terminated Service shall survive any such termination, and in connection with a termination of this Agreement, Article I, Article VII (including liability in respect of any indemnifiable Liabilities under this Agreement arising or occurring on or prior to the date of termination), Article VIII, Article IX, Article X, all confidentiality obligations under this Agreement and liability for all due and unpaid Service Charges shall continue to survive indefinitely.

Section 9.03. Force Majeure. (a) GGP (and any Person acting on its behalf) shall not have any liability or responsibility for failure to fulfill any obligation under this Agreement so long as and to the extent to which the fulfillment of such obligation is prevented, frustrated, hindered or delayed as a consequence of circumstances of Force Majeure; provided, that (i) GGP (or such Person) shall have exercised commercially reasonable efforts to minimize the effect of Force Majeure on its obligations; and (ii) the nature, quality and standard of care that GGP shall provide in delivering a Service after a Force Majeure shall be substantially the same as the nature, quality and standard of care that GGP provides to its Subsidiaries and its other business components with respect to such Service. In the event of an occurrence of a Force Majeure, GGP shall give notice of suspension as soon as reasonably practicable to the other Party stating the date and extent of such suspension and the cause thereof, and GGP shall resume the performance of such obligations as soon as reasonably practicable after the removal of such cause.

(b) During the period of a Force Majeure, Spinco shall be entitled to seek an alternative service provider with respect to such Service(s) and shall be entitled to permanently terminate such Service(s) (and shall be relieved of the obligation to pay Service Charges for such Services(s) throughout the duration of such Force Majeure) if a Force Majeure shall continue to exist for more than fifteen (15) consecutive days, it being understood that Spinco shall not be required to provide any advance notice of such termination to GGP in connection therewith.

## ARTICLE X

### GENERAL PROVISIONS

Section 10.01. No Agency. Nothing in this Agreement shall be deemed in any way or for any purpose to constitute any Party an agent of another unaffiliated Party in the conduct of such other Party's business. GGP shall act as an independent contractor and not as the agent of Spinco in performing such Services, maintaining control over GGP Employees, GGP's subcontractors and their employees and complying with all withholding of income and other requirements of Law, whether federal, state, local or foreign and no member of the GGP Group shall have any authority to bind any member of the Spinco Group by contract or otherwise.

Section 10.02. Subcontractors. GGP may hire or engage one or more subcontractors to perform any or all of its obligations under this Agreement; provided, that

(i) GGP shall use the same degree of care in selecting any such subcontractor as it would if such contractor was being retained to provide similar services to GGP, (ii) GGP shall in all cases remain primarily responsible for all of its obligations under this Agreement with respect to the scope of the Services, the standard for services as set forth in Article VI and the content of the Services provided to Spinco and (iii) without the prior written consent of the applicable Spinco Service Manager (not to be unreasonably withheld, conditioned or delayed), GGP shall not remove and/or replace any subcontractor if such action would reasonably be expected to cause a material increase in cost with respect to the applicable Service. Notwithstanding the foregoing, (x) Spinco (or any other member of the Spinco Group) shall have the right to hire or engage any subcontractor directly and (y) if GGP does hire or engage any subcontractor to provide any Service hereunder, then, notwithstanding any provision of this Agreement or any other Transaction Document to the contrary, the applicable Service Charge for the provision of such Service performed by such subcontractor shall be only the amount actually paid to such subcontractor for providing such Service, without any additional charge or mark up.

#### Section 10.03. Treatment of Confidential Information.

(a) The Parties shall not, and shall cause their respective Representatives and all other Persons providing Services or having access to information of the other Party that is known to such Party as confidential or proprietary (“Confidential Information”) not to, disclose to any other Person or use, except for purposes of this Agreement, any Confidential Information of the other Party; provided, however, that each Party may disclose Confidential Information of the other Party and to the extent permitted by applicable Law: (i) to its Representatives on a need-to-know basis in connection with the performance of such Party’s obligations under this Agreement; (ii) in any report, statement, testimony or other submission required to be made to any Governmental Authority having jurisdiction over the disclosing Party; or (iii) in order to comply with applicable Law, or in response to any summons, subpoena or other legal process or formal or informal investigative demand issued to the disclosing Party in the course of any litigation, investigation or administrative proceeding. In the event that a Party becomes legally compelled (based on advice of counsel) by deposition, interrogatory, request for documents, subpoena, civil investigative demand or similar judicial or administrative process to disclose any Confidential Information of the other Party, such disclosing Party shall provide the other Party with prompt prior written notice of such requirement, and, to the extent reasonably practicable, cooperate with the other Party (at such other Party’s expense) to obtain a protective order or similar remedy to cause such Confidential Information not to be disclosed, including interposing all available objections thereto, such as objections based on settlement privilege. In the event that such protective order or other similar remedy is not obtained, the disclosing Party shall furnish only that portion of the Confidential Information that has been legally compelled, and shall exercise its commercially reasonable efforts (at such other Party’s expense) to obtain assurance that confidential treatment will be accorded such Confidential Information.

(b) Each Party shall, and shall cause its Representatives to protect the Confidential Information of the other Party by using the same degree of care to prevent the unauthorized disclosure of such as the Party uses to protect its own confidential information of a like nature but in any event not less than reasonable means.



(c) Each Party shall cause its Representatives to agree to be bound by the same restrictions on use and disclosure of Confidential Information as are binding upon such Party in advance of the disclosure of any such Confidential Information to them.

(d) The restrictions set forth in Sections 10.03(a) and (b) shall not prevent either Party from disclosing Confidential Information which belongs to that Party or (a) is in or enters the public domain without breach of this Agreement or any other Transaction Document, (b) the receiving Party was lawfully and demonstrably in possession of prior to first receiving it from the disclosing Party, (c) the receiving Party can demonstrate was developed by the receiving Party independently and without use of or reference to the disclosing Party's Confidential Information, (d) the receiving Party receives from a third party without restriction on disclosure and without breach of a nondisclosure obligation, or (e) is approved by the other Party for disclosure.

(e) Each Party shall comply with all applicable state, federal and foreign privacy and data protection Laws that are or that may in the future be applicable to the provision of Services under this Agreement.

Section 10.04. Further Assurances. Each Party covenants and agrees that, without any additional consideration, it shall execute and deliver any further legal instruments and perform any acts that are or may become necessary to effectuate this Agreement.

Section 10.05. Notices. Except with respect to routine communications by the GGP Service Managers and Spinco Service Managers under Section 2.04, all notices, requests, claims, demands and other communications under this Agreement shall be in writing and shall be given or made (and shall be deemed to have been duly given or made upon receipt) by delivery in person, by overnight courier service, by facsimile or electronic transmission with receipt confirmed (followed by delivery of an original via overnight courier service) or by registered or certified mail (postage prepaid, return receipt requested) to the respective Parties at the following addresses (or at such other address for a Party as shall be specified in a notice given in accordance with this Section 10.05):

(i) if to GGP:

General Growth Properties, Inc.  
110 N. Wacker Drive  
Chicago, IL 60606  
Attention: General Counsel  
Facsimile: (312) 960-5485

(ii) if to Spinco:

Spinco, Inc.  
[INSERT ADDRESS]

(iii) in each case, with a copy to:

Weil, Gotshal & Manges LLP  
767 Fifth Avenue  
New York, NY 10153  
Attention: Gary Holtzer and Marcia Goldstein  
Facsimile: (212) 310-8007

Section 10.06. Severability. If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced under any Law or as a matter of public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated by this Agreement is not affected in any manner materially adverse to any Party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated by this Agreement be consummated as originally contemplated to the greatest extent possible.

Section 10.07. Entire Agreement. Except as otherwise expressly provided in this Agreement, this Agreement, the Separation Agreement and the other Transaction Documents constitute the entire agreement of the Parties with respect to the subject matter of this Agreement and supersede all prior agreements and undertakings, both written and oral, between or on behalf of the Parties with respect to the subject matter of this Agreement.

Section 10.08. No Third-Party Beneficiaries. Except as provided in Article VII with respect to GGP Indemnified Parties, this Agreement is for the sole benefit of the Parties and their permitted successors and assigns and nothing in this Agreement, express or implied, is intended to or shall confer upon any other Person, including any union, any current or former GGP Employee or any current or former employee of Spinco, any legal or equitable right, benefit or remedy of any nature whatsoever, including any rights of employment for any specified period, under or by reason of this Agreement.

Section 10.09. Governing Law. This Agreement (and any claims or disputes arising out of or related to this Agreement or to the transactions contemplated by this Agreement or to the inducement of any Party to enter into this Agreement or the transactions contemplated by this Agreement, whether for breach of contract, tortious conduct or otherwise and whether predicated on common law, statute or otherwise) shall in all respects be governed by, and construed in accordance with, the Laws of the State of New York, including all matters of construction, validity and performance, in each case without reference to any conflict of Law rules that might lead to the application of the Laws of any other jurisdiction.

Section 10.10. Amendment. No provision of this Agreement, including any Schedules to this Agreement, may be amended, supplemented or modified except by a written instrument making specific reference to this Agreement or any such Schedules to this Agreement, as applicable, signed by all the Parties.

Section 10.11. Rules of Construction. Interpretation of this Agreement shall be governed by the following rules of construction: (a) words in the singular shall be held to include the plural and vice versa, and words of one gender shall be held to include the other gender as the context requires; (b) references to the terms Article, Section, paragraph and Schedule are references to the Articles, Sections, paragraphs and Schedules of this Agreement unless otherwise specified; (c) references to “\$” shall mean U.S. dollars; (d) the word “including” and words of similar import when used in this Agreement shall mean “including without limitation,” unless otherwise specified; (e) the word “or” shall not be exclusive; (f) references to “written” or “in writing” include in electronic form; (g) provisions shall apply, when appropriate, to successive events and transactions; (h) the headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement; (i) GGP and Spinco have each participated in the negotiation and drafting of this Agreement and if an ambiguity or question of interpretation should arise, this Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favoring or burdening either Party by virtue of the authorship of any of the provisions in this Agreement or any interim drafts of this Agreement; (j) a reference to any Person includes such Person’s successors and permitted assigns; (k) any reference to “days” means calendar days unless business days are expressly specified; and (l) when calculating the period of time before which, within which or following which any act is to be done or step taken pursuant to this Agreement, the date that is the reference date in calculating such period shall be excluded, if the last day of such period is not a business day, the period shall end on the next succeeding business day.

Section 10.12. Counterparts. This Agreement may be executed in one or more counterparts, and by each Party in separate counterparts, each of which when executed shall be deemed to be an original but all of which taken together shall constitute one and the same agreement. Delivery of an executed counterpart of a signature page to this Agreement by facsimile or portable document format (PDF) shall be as effective as delivery of a manually executed counterpart of this Agreement.

Section 10.13. Assignability. (a) This Agreement shall not be assigned by operation of Law or otherwise without the prior written consent of GGP and Spinco, except that each Party may:

(i) assign all of its rights and obligations under this Agreement to any of its Subsidiaries; provided, that no such assignment shall release GGP or Spinco, as the case may be, from any liability or obligation under this Agreement;

(ii) in connection with the divestiture of any Subsidiary or business of Spinco to an acquiror that is not a Competitor of GGP, assign to the acquiror of such Subsidiary or business its rights and obligations as a recipient with respect to the Services provided to such divested Subsidiary or business under this Agreement; provided, that (i) no such assignment shall release GGP or Spinco, as the case may be, from any liability or obligation under this Agreement, (ii) any and all costs and expenses incurred by either Party in connection with such assignment (including in connection with clause (iii) of this proviso) shall be borne solely by the assigning Party, and (iii) the Parties shall in good faith negotiate any amendments to this

Agreement, including the Annexes and Schedules to this Agreement, that may be necessary or appropriate in order to assign such Services; and

(iii) in connection with the divestiture of any Subsidiary or business of Spinco to an acquiror that is a Competitor of GGP, assign to the acquiror of such Subsidiary or business its rights and obligations as a recipient with respect to the Services provided to such divested Subsidiary or business under this Agreement; provided, that (i) no such assignment shall release GGP or Spinco, as the case may be, from any liability or obligation under this Agreement, (ii) any and all costs and expenses incurred by either Party in connection with such assignment (including in connection with clause (iii) of this proviso) shall be borne solely by the assigning Party, (iii) the Parties shall in good faith negotiate any amendments to this Agreement, including the Annexes and Schedules to this Agreement, that may be necessary or appropriate in order to ensure that such assignment will not (x) materially and adversely affect the businesses and operations of each of the Parties and their respective Subsidiaries or (y) create a competitive disadvantage for GGP with respect to an acquiror that is a Competitor of GGP, and (iv) GGP shall not be obligated to provide any such assigned Services to an acquiror that is a Competitor of GGP if the provision of such assigned Services to such acquiror would disrupt the operation of such GGP's businesses or create a competitive disadvantage for such GGP with respect to such acquiror.

(b) In the event of the (i) merger, amalgamation or consolidation of Spinco and another Person, (ii) sale of all or substantially all of the assets of Spinco to another Person, (iii) the acquisition of a majority of the voting stock of Spinco by any Person or "group" (within the meaning of Section 13(d)(3) of the Securities Exchange Act of 1934, as amended) or (iv) the election of, or appointment to, the board of directors of Spinco of directors constituting a majority of the directors then serving if such elected or appointed directors have not been nominated as directors by the Nominating Committee of the board of directors prior to their election or appointment, then the requirement of GGP to provide Services hereunder shall automatically terminate without further action by the Parties thirty (30) days after the occurrence of such event.

Section 10.14. Waiver of Jury Trial. EACH PARTY TO THIS AGREEMENT WAIVES TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT TO ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT. EACH PARTY (I) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER; AND (II) ACKNOWLEDGES THAT IT AND THE OTHER PARTY TO THIS AGREEMENT HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER TRANSACTION AGREEMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 10.14.

Section 10.15. Specific Performance. The provisions of Section 7.4 of the Separation Agreement shall govern specific performance under this Agreement.

Section 10.16. Non-Recourse. Other than the GGP Group and the Spinco Group, no past, present or future director, officer, employee, incorporator, member, partner, stockholder, Affiliate, agent, attorney or representative of either GGP or Spinco or their Subsidiaries shall have any liability for any obligations or liabilities of GGP or Spinco, respectively, under this Agreement or for any claims based on, in respect of, or by reason of, the transactions contemplated by this Agreement.

*[The remainder of this page is intentionally left blank.]*

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed on the date first written above by their respective duly authorized officers.

GGP LIMITED PARTNERSHIP

By: \_\_\_\_\_  
Name:  
Title:

GENERAL GROWTH MANAGEMENT, INC.

By: \_\_\_\_\_  
Name:  
Title:

SPINCO, INC.

By: \_\_\_\_\_  
Name:  
Title:

**Exhibit I**

**Direct Payroll Costs**

<b>Group Level</b>	<b>Hourly Rate</b>	<b>GGP Employee's Annual Compensation*</b>
A	\$150	Greater than \$300,000
B	\$125	\$210,000 - \$300,000
C	\$85	\$140,000 - \$210,000
D	\$60	\$110,000 - \$140,000
E	\$47	\$90,000 - \$110,000
F	\$34	Less than \$90,000

\* GGP Employee's Annual Compensation is calculated, with respect to each GGP Employee, by adding (A) such employee's then current annual base salary plus (B) 20% of such base salary plus (C) such employee's incentive and other non-base salary compensation earned during the previous fiscal year (including, for the avoidance of doubt, bonus and equity compensation).

**Exhibit II**

**Service Managers**

Position

GGP Overall Service Manager  
Spinco Overall Service Manager



**SCHEDULE A-1**

**INSURANCE**

**A. Legacy Claims Management**

1. ***Services:***
  - a. Validate and pay legacy invoices on behalf of Spinco in accordance with GGP's practices as of the Plan Effective Date.
  - b. Cause third party claims adjustor(s) to manage Spinco's legacy general liability claims with the objective of reaching closure of all such claims. GGP shall work with such third party claims adjustor(s) in accordance with GGP's practices at the Plan Effective Date.
  - c. Cause third party claims adjustor(s) to manage Spinco's legacy workers compensation claims with the objective of reaching closure of all such claims. GGP shall work with such third party claims adjustor(s) in accordance with GGP's practices at the Plan Effective Date.
  - d. Cause third party claims adjustor(s) to manage Spinco's legacy OCIP workers compensation and general liability claims with the objective of reaching closure of all such claims. GGP shall work with such third party claims adjustor(s) in accordance with GGP's practices at the Plan Effective Date.
  - e. As requested by Spinco, manage claims and conduct a formal claim review on behalf of Spinco. Management of claims and claim reviews shall be handled in accordance with GGP's practices as of the Plan Effective Date.
2. ***Pricing:*** Spinco shall pay to GGP a Service Charge for each Service equal to the sum of (A) the product of (i) the Cost Multiplier multiplied by (ii) the applicable Service Resource Cost plus (B) the amount of any Out-of-Pocket Expenses incurred with respect to such Service.
3. ***Duration of Services:*** Any individual Service in this Section A shall terminate as of the date that all legacy claims, including final payments, related to Spinco have been settled or otherwise fully resolved (as mutually agreed in writing by Spinco and GGP). GGP agrees to use appropriate and reasonable efforts, as mutually agreed upon by the parties and at Spinco's cost, to ensure that any terminated Service is integrated into Spinco's broader business processes.

4. **Service Managers:** All communications related to the delivery of the Services shall be coordinated through the respective Service Managers of GGP and Spinco. The initial Service Managers of GGP and Spinco shall be as set forth on the attachment hereto.

**B. OCIP Administration (Non Claims)**

1. **Services:**
  - a. As requested by Spinco, negotiate the shut-down of the OCIP program and conduct a final premium audit on behalf of Spinco, which shall be delivered to Spinco within 30 days of receiving an undisputed final audit premium invoice.
  - b. As requested by Spinco, negotiate letter of credit reductions as Spinco claims close and shall negotiate final closeout of OCIP with carriers on behalf of Spinco.
  - c. As requested by Spinco, negotiate final buyout of the remaining losses related to the OCIP program with carriers.
  - d. Manage and oversee the OCIP broker with respect to appropriate program administration, including processing of invoices for payment by Spinco. Such Service shall be done in accordance with GGP's practices as of the Plan Effective Date.
  - e. Manage and oversee the OCIP broker, including with respect to safety for the Victoria Ward and Elk Grove properties, in accordance with GGP's practices as of the Plan Effective Date.
2. **Pricing:** Spinco shall pay to GGP a Service Charge for each Service equal to the sum of (A) the product of (i) the Cost Multiplier multiplied by (ii) the applicable Service Resource Cost plus (B) the amount of any Out-of-Pocket Expenses incurred with respect to such Service.
3. **Duration of Services:** Any individual Service in this Section B shall terminate upon the earliest to occur of (a) the date that the OCIP program is shut down (as mutually agreed in writing by Spinco and GGP), (b) five (5) days following written notice of termination of such Services by Spinco to GGP and (c) the applicable termination date pursuant to Article IX of the Agreement. GGP agrees to use appropriate and reasonable efforts, as mutually agreed upon by the parties and at Spinco's cost, to ensure that any terminated Service is integrated into Spinco's broader business processes.

4. **Service Managers:** All communications related to the delivery of the Services shall be coordinated through the respective Service Managers of GGP and Spinco. The initial Service Managers of GGP and Spinco shall be as set forth on the attachment hereto.

C. **Property Insurance Maintenance and Placement**

1. **Services:**
  - a. Provide for Spinco to remain on GGP's existing property insurance program until the program's renewal date of April 1, 2011.
  - b. As requested by Spinco, cause certificates of insurance to be issued from time to time to Spinco's lenders, vendors and other parties on behalf of Spinco and in accordance with GGP's practices as of the Plan Effective Date.
  - c. Per Spinco's direction, (i) with the assistance of GGP's third party property broker, oversee the placement of new Spinco property insurance policies to be effective on April 1, 2011, including by developing underwriting submissions for property insurance underwriters, attending and participating in meetings with property insurance underwriters, and managing the property insurance renewal process on behalf of Spinco, and (ii) set up any required property loss control services with appropriate third party vendors.
  - d. Manage any Spinco property claims that arise prior to the renewal date of April 1, 2011 in accordance with GGP's practices as of the Plan Effective Date.
2. **Pricing:** Spinco shall pay to GGP a Service Charge for each Service equal to the sum of (A) the product of (i) the Cost Multiplier multiplied by (ii) the applicable Service Resource Cost plus (B) the amount of any Out-of-Pocket Expenses incurred with respect to such Service.
3. **Duration of Services:** Any individual Service in this Section C shall terminate upon the earliest to occur of (a) December 31, 2011, (b) five (5) days following written notice of termination of such Services by Spinco to GGP and (c) the applicable termination date pursuant to Article IX of the Agreement. GGP agrees to use appropriate and reasonable efforts, as mutually agreed upon by the parties and at Spinco's cost, to ensure that any terminated Service is integrated into Spinco's broader business processes.

4. **Service Managers:** All communications related to the delivery of the Services shall be coordinated through the respective Service Managers of GGP and Spinco. The initial Service Managers of GGP and Spinco shall be as set forth on the attachment hereto.

**D. Special Events Review, Risk Assessment and Advice**

1. **Services:**
  - a. From time to time, as reasonably requested by Spinco, GGP personnel shall review any applicable contracts of Spinco for insurance requirements and assess the risks of specific events in accordance with GGP's practices as of the Plan Effective Date. Based on the results of such review, and in consultation with Spinco, GGP personnel shall place special events insurance on behalf of Spinco as needed.
2. **Pricing:** Spinco shall pay to GGP a Service Charge for each Service equal to the sum of (A) the product of (i) the Cost Multiplier multiplied by (ii) the applicable Service Resource Cost plus (B) the amount of any Out-of-Pocket Expenses incurred with respect to such Service.
3. **Duration of Services:** Any individual Service in this Section D shall terminate upon the earliest to occur of (a) May 31, 2011, (b) five (5) days following written notice of termination of such Services by Spinco to GGP and (c) the applicable termination date pursuant to Article IX of the Agreement. GGP agrees to use appropriate and reasonable efforts, as mutually agreed upon by the parties and at Spinco's cost, to ensure that any terminated Service is integrated into Spinco's broader business processes.
4. **Service Managers:** All communications related to the delivery of the Services shall be coordinated through the respective Service Managers of GGP and Spinco. The initial Service Managers of GGP and Spinco shall be as set forth on the attachment hereto.

**E. Surety Bond Support**

1. **Services:**
  - a. Assist Spinco in transitioning existing surety bonds to Spinco (as applicable).

- b. Per Spinco's direction, with the assistance of GGP's third party surety broker, assist with renewing surety bonds on behalf of Spinco.
  - c. Assist Spinco in setting up new surety bond agreements and issuing new surety bonds as Spinco requests.
  - d. Process all surety bond invoices on behalf of Spinco (as necessary) in accordance with GGP's practices as of the Plan Effective Date; provided, however that Spinco shall directly pay for all surety bonds.
2. **Pricing:** Spinco shall pay to GGP a Service Charge for each Service equal to the sum of (A) the product of (i) the Cost Multiplier multiplied by (ii) the applicable Service Resource Cost plus (B) the amount of any Out-of-Pocket Expenses incurred with respect to such Service.
  3. **Duration of Services:** Any individual Service in this Section E shall terminate upon the applicable termination date pursuant to Article IX of the Agreement; provided, however, that Spinco shall not be permitted to terminate any such Service pursuant to Section 9.01(b)(A) of the Agreement. GGP agrees to use appropriate and reasonable efforts, as mutually agreed upon by the parties and at Spinco's cost, to ensure that any terminated Service is integrated into Spinco's broader business processes.
  4. **Service Managers:** All communications related to the delivery of the Services shall be coordinated through the respective Service Managers of GGP and Spinco. The initial Service Managers of GGP and Spinco shall be as set forth on the attachment hereto.

**F. Placement of Policies (except Property) / General Support**

1. **Services:**
  - a. As requested by Spinco, GGP personnel shall oversee the placement of Spinco insurance policies on behalf of Spinco (with the exception of a Property Program, which is covered in Section C), including D&O, Fiduciary, Crime, Employment Practices, Workers' Compensation, General Liability, Wharfinger Liability, Auto, Excess / Umbrella, Pollution Legal Liability and Nouvelle at Natick Condo insurance program plus miscellaneous flood and D&O policies, in each case in accordance with GGP's practices as of the Plan Effective Date.
  - b. With respect to all Spinco insurance policies and programs that are placed or implemented as of the Plan Effective Date, GGP personnel

shall develop applications and specifications, shall bind coverage, set up claims handling and take other actions, in each case as directed by Spinco and in accordance with GGP's practices as of the Plan Effective Date.

2. **Pricing:** Spinco shall pay to GGP a Service Charge for each Service equal to the sum of (A) the product of (i) the Cost Multiplier multiplied by (ii) the applicable Service Resource Cost plus (B) the amount of any Out-of-Pocket Expenses incurred with respect to such Service.
3. **Duration of Services:** Any individual Service in this Section F shall terminate upon the earliest to occur of (a) May 31, 2012 and (b) the applicable termination date pursuant to Article IX of the Agreement. GGP agrees to use appropriate and reasonable efforts, as mutually agreed upon by the parties and at Spinco's cost, to ensure that any terminated Service is integrated into Spinco's broader business processes.
4. **Service Managers:** All communications related to the delivery of the Services shall be coordinated through the respective Service Managers of GGP and Spinco. The initial Service Managers of GGP and Spinco shall be as set forth on the attachment hereto.

**SCHEDULE A-2**  
**DEVELOPMENT**

**A. Project Development**

1. ***Services:***
  - a. As requested by Spinco, participate in transition meetings to discuss historical, current, or future development projects for any and all Spinco properties in a timely manner.
  - b. As requested by Spinco, share with Spinco information regarding historical project information, current development plans and files, vendor information, permits, and all other such applicable information in a timely manner.
  - c. As requested by Spinco, cooperate and provide information to Spinco in connection with any of its proposed or future developments in a timely manner.
  - d. As requested by Spinco, take such actions as are necessary to facilitate a meeting between Spinco and the City of New York, and otherwise provide reasonable support, in order for Spinco to obtain the City of New York's consent to the transfer of the development letter of intent with the City of New York regarding South Street Seaport from GGP to Spinco.
  - e. As requested by Spinco, provide general support in a timely manner for property-level development activities, with an emphasis on those activities involving public or third party approvals.
2. ***Pricing:*** Spinco shall pay to GGP a Service Charge for each Service equal to the sum of (A) the product of (i) the Cost Multiplier multiplied by (ii) the applicable Service Resource Cost plus (B) the amount of any Out-of-Pocket Expenses incurred with respect to such Service.
3. ***Duration of Services:*** Any individual Service in this Section A shall terminate upon the earliest to occur of (a) 12 months following the Plan Plan Effective Date, (b) five (5) days following written notice of termination of such Services by Spinco to GGP and (c) the applicable termination date pursuant to Article IX of the Agreement. GGP agrees to use appropriate and reasonable efforts, as mutually agreed upon by the parties and at Spinco's cost, to ensure that any terminated Service is integrated into Spinco's broader business processes.

4. **Service Managers:** All communications related to the delivery of the Services shall be coordinated through the respective Service Managers of GGP and Spinco. The initial Service Managers of GGP and Spinco shall be as set forth on the attachment hereto.

**B. Construction Project Management**

1. **Services:**
  - a. Manage the completion of the existing parking deck construction project and offsite improvement project at Victoria Ward on behalf of Spinco, including the punch list process, consistent with the current construction schedule and in accordance with GGP's practices as of the Plan Effective Date.
  - b. Manage the completion of the existing offsite improvement project at Elk Grove, and secure the associated reimbursement from the city on behalf of Spinco, including the punch list process, consistent with the current construction schedule and in accordance with GGP's practices as of the Plan Effective Date.
  - c. Manage the completion of the existing offsite improvement project at Kendall on behalf of Spinco, including the punch list process, consistent with the current construction schedule and in accordance with GGP's practices as of the Plan Effective Date.
2. **Pricing:** Spinco shall pay to GGP a Service Charge for each Service equal to the sum of (A) the product of (i) the Cost Multiplier multiplied by (ii) the applicable Service Resource Cost plus (B) the amount of any Out-of-Pocket Expenses incurred with respect to such Service.
3. **Duration of Services:** Any individual Service in this Section B shall terminate upon the earliest to occur of:
  - a. with respect to Services in Section B.1.a, upon the earliest to occur of (i) 12 months following the Plan Plan Effective Date, (ii) five (5) days following written notice of termination of such Services by Spinco to GGP and (iii) the applicable termination date pursuant to Article IX of the Agreement.
  - b. with respect to Services in Section B.1.b, upon the earliest to occur of (i) 6 months following the Plan Plan Effective Date, (ii) five (5) days following written notice of termination of such Services by Spinco to



GGP and (iii) the applicable termination date pursuant to Article IX of the Agreement.

- c. with respect to Services in Section B.1.c, upon the earliest to occur of (i) 9 months following the Plan Plan Effective Date, (ii) five (5) days following written notice of termination of such Services by Spinco to GGP and (iii) the applicable termination date pursuant to Article IX of the Agreement.
  - d. GGP agrees to use appropriate and reasonable efforts, as mutually agreed upon by the parties and at Spinco's cost, to ensure that any terminated Service is integrated into Spinco's broader business processes.
4. ***Service Managers:*** All communications related to the delivery of the Services shall be coordinated through the respective Service Managers of GGP and Spinco. The initial Service Managers of GGP and Spinco shall be as set forth on the attachment hereto.

**C. Tenant Coordination**

1. ***Services:***
- a. As requested by Spinco, manage the execution of approved lease deals, including landlord construction obligations, with the support of the mall operations team and in accordance with GGP's practices as of the Plan Effective Date.
  - b. As requested by Spinco, review and approve any tenant submitted plans in accordance with GGP's practices as of the Plan Effective Date.
  - c. As requested by Spinco, facilitate the construction activities of tenants with the support of the mall operations team and in accordance with GGP's practices as of the Plan Effective Date.
  - d. Coordinate tenant lease plan updates and lease outline drawings on behalf of Spinco and in accordance with GGP's practices as of the Plan Effective Date.
  - e. Maintain all leases and site plans on behalf of Spinco and in accordance with GGP's practices as of the Plan Effective Date.

2. **Pricing:** Spinco shall pay to GGP a Service Charge for each Service equal to the sum of (A) the product of (i) the Cost Multiplier multiplied by (ii) the applicable Service Resource Cost plus (B) the amount of any Out-of-Pocket Expenses incurred with respect to such Service.
3. **Duration of Services:** Any individual Service in this Section C shall terminate upon the earliest to occur of (a) 9 months following the Plan Plan Effective Date, (b) five (5) days following written notice of termination of such Services by Spinco to GGP and (c) the applicable termination date pursuant to Article IX of the Agreement. GGP agrees to use appropriate and reasonable efforts, as mutually agreed upon by the parties and at Spinco's cost, to ensure that any terminated Service is integrated into Spinco's broader business processes.
4. **Service Managers:** All communications related to the delivery of the Services shall be coordinated through the respective Service Managers of GGP and Spinco. The initial Service Managers of GGP and Spinco shall be as set forth on the attachment hereto.

**SCHEDULE A-3**

**ASSET MANAGEMENT**

**A. Asset Management**

1. *Services:*

- a. Perform on behalf of Spinco all asset management services for Spinco's properties, including oversight of leasing, marketing and operational and maintenance duties customary of an owner, in each case in accordance with GGP's practices as of the Plan Effective Date.
- b. Recommend to Spinco from time to time procedures with respect to Spinco's properties as Personnel may deem advisable for the more efficient and economic management and operation thereof and in accordance with GGP's practices as of the Plan Effective Date.
- c. Per Spinco's direction, implement and execute on behalf of Spinco the strategic plan and direction for each Spinco property in accordance with GGP's practices as of the Plan Effective Date
- d. Per Spinco's direction, focus on the customer experience, merchandising, operations, capital spending, and the positioning with respect to Spinco's properties in their respective markets on behalf of Spinco in accordance with GGP's practices as of the Plan Effective Date.
- e. Develop and manage property financial plans on behalf of Spinco, including budgets, forecasts, cash flows and capital planning in accordance with GGP's practices as of the Plan Effective Date.
- f. Per Spinco's direction, approve ordinary capital expenditures on behalf of Spinco in accordance with GGP's practices as of the Plan Effective Date.
- g. Manage business relationships with retailers, partners, and other community business leaders on behalf of Spinco in accordance with GGP's practices as of the Plan Effective Date.
- h. Manage vendor relationships (e.g., snow removal, security, etc.) on behalf of Spinco, including national contracts and property-specific contracts in accordance with GGP's practices as of the Plan Effective Date.

- i. Oversee security and maintenance, including the use of vehicles, for each of Spinco's properties to ensure appropriate coverage in accordance with GGP's practices as of the Plan Effective Date.
  - j. Per Spinco's direction, develop and implement special events and marketing programs (national and local) for each of Spinco's properties in accordance with GGP's practices as of the Plan Effective Date.
  - k. Per Spinco's direction, manage media relationships at the property level, including crisis management services, in accordance with GGP's practices as of the Plan Effective Date.
  - l. Manage the gift card program on behalf of Spinco in accordance with GGP's practices as of the Plan Effective Date.
2. **Pricing:** Spinco shall pay to GGP a Service Charge for each Service equal to the sum of (A) the product of (i) the Cost Multiplier multiplied by (ii) the applicable Service Resource Cost plus (B) the amount of any Out-of-Pocket Expenses incurred with respect to such Service.
3. **Duration of Services:** Any individual Service in this Section A shall terminate upon the earliest to occur of (a) 9 months following the Plan Effective Date, (b) five (5) days following written notice of termination of such Services by Spinco to GGP and (c) the applicable termination date pursuant to Article IX of the Agreement. GGP agrees to use appropriate and reasonable efforts, as mutually agreed upon by the parties and at Spinco's cost, to ensure that any terminated Service is integrated into Spinco's broader business processes.
4. **Service Managers:** All communications related to the delivery of the Services shall be coordinated through the respective Service Managers of GGP and Spinco. The initial Service Managers of GGP and Spinco shall be as set forth on the attachment hereto.

**B. National Operations**

1. **Services:**
  - a. Provide capital support and oversight on behalf of Spinco, including maintenance of CapEx application supporting approval documentation requirements, as well as related SOX documentation, in accordance with GGP's practices as of the Plan Effective Date.

- b. Provide project management of capital projects in collaboration with asset management/design and construction management on behalf of Spinco and in accordance with GGP's practices as of the Plan Effective Date.
- c. Maintain asset condition records, metrics, and subject matter coordination across asset categories on behalf of Spinco and in accordance with GGP's practices as of the Plan Effective Date.
- d. Manage national contracts (i.e., janitorial, utilities, trash and recycling, vertical transportation maintenance, lighting, etc.), including transition of existing contracts and/or securing new contracts as requested by Spinco and in accordance with GGP's practices as of the Plan Effective Date.
- e. Manage vendor relations in collaboration with Services in Section A on behalf of Spinco and in accordance with GGP's practices as of the Plan Effective Date
- f. Support of Clean-Safe-Secure minimum operating standards on behalf of Spinco and in accordance with GGP's practices as of the Plan Effective Date.
- g. As requested by Spinco, provide consultation to mall teams regarding local service contracts in accordance with GGP's practices as of the Plan Effective Date.
- h. Provide crisis support and natural disaster management Services on behalf of Spinco, in accordance with GGP's practices as of the Plan Effective Date.
- i. Security program management in collaboration with Services in Section A, including transition of existing contracts and/or securing new contracts as needed., on behalf of Spinco and in accordance with GGP's practices as of the Plan Effective Date.
- j. As requested by Spinco, provide specific event security procurement and management in accordance with GGP's practices as of the Plan Effective Date.
- k. Coordinate and direct the outsourcing of tenant light and power settlements to a third party service provider. GGP will review and approve (in consultation with Spinco) the settlement calculations prepared by such service provider. GGP will assist in forecasting energy costs based on consumption pattern. GGP will advise/recommend new procurement agreements as applicable.

- l. As requested by Spinco, conduct energy conservation programs for Spinco properties in accordance with GGP's practices as of the Plan Effective Date.
  - m. As requested by Spinco, provide procurement services and support in accordance with GGP's practices as of the Plan Effective Date.
  - n. As requested by Spinco, provide expense budget guidance, oversight and analysis in accordance with GGP's practices as of the Plan Effective Date.
  - o. Manage deregulated market energy procurement services for South Street Seaport on behalf of Spinco and in accordance with GGP's practices as of the Plan Effective Date.
2. **Pricing:** Spinco shall pay to GGP a Service Charge for each Service equal to the sum of (A) the product of (i) the Cost Multiplier multiplied by (ii) the applicable Service Resource Cost plus (B) the amount of any Out-of-Pocket Expenses incurred with respect to such Service.
3. **Duration of Services:** Any individual Service in this Section B shall terminate upon the earliest to occur of (a) 9 months following the Plan Plan Effective Date, (b) five (5) days following written notice of termination of such Services by Spinco to GGP and (c) the applicable termination date pursuant to Article IX of the Agreement. GGP agrees to use appropriate and reasonable efforts, as mutually agreed upon by the parties and at Spinco's cost, to ensure that any terminated Service is integrated into Spinco's broader business processes.
4. **Service Managers:** All communications related to the delivery of the Services shall be coordinated through the respective Service Managers of GGP and Spinco. The initial Service Managers of GGP and Spinco shall be as set forth on the attachment hereto.

**SCHEDULE A-4**

**LEASING**

**A. Retail Leasing**

1. ***Services:***
  - a. Use commercially reasonable efforts to (1) lease Spinco's properties, (2) negotiate lease renewals for existing Spinco tenants and (3) source and negotiate new deals for Spinco vacancies on behalf of Spinco; provided, however, that GGP shall not legally bind Spinco in any such lease without first obtaining Spinco's consent. All leasing services done on behalf of Spinco shall be done in accordance with GGP's practices as of the Plan Effective Date.
  - b. Manage and maintain national lease accounts on behalf of Spinco, as requested by Spinco, for the benefit of Spinco's properties. Such Service shall be done in accordance with GGP's practices as of the Plan Effective Date.
  - c. As requested by Spinco, evaluate property information with regard to such Spinco properties, including, among other customary items, rent rolls, sales, occupancy costs, lease expirations, termination rights, renewal potential, and retailer financial statements in accordance with GGP's practices as of the Plan Effective Date.
  - d. Actively participate in the management of the strategic plans related to Spinco's properties in accordance with GGP's practices as of the Plan Effective Date.
  - e. Manage and oversee the sales report process to facilitate the dissemination of property-level sales information to various departments on a monthly basis in accordance with GGP's practices as of the Plan Effective Date.
2. ***Pricing:*** Spinco shall pay to GGP a Service Charge for each Service equal to the sum of (A) the product of (i) the Cost Multiplier multiplied by (ii) the applicable Service Resource Cost plus (B) the amount of any Out-of-Pocket Expenses incurred with respect to such Service.
3. ***Duration of Services:*** Any individual Service in this Section A shall terminate upon the earliest to occur of (a) 9 months following the Plan Plan Effective Date, (b) five (5) days following written notice of termination of such Services by Spinco to GGP and (c) the applicable termination date pursuant to Article IX of the Agreement. GGP agrees to

use appropriate and reasonable efforts, as mutually agreed upon by the parties and at Spinco's cost, to ensure that any terminated Service is integrated into Spinco's broader business processes.

4. ***Service Managers:*** All communications related to the delivery of the Services shall be coordinated through the respective Service Managers of GGP and Spinco. The initial Service Managers of GGP and Spinco shall be as set forth on the attachment hereto.

## **B. Office Leasing**

1. ***Services:***
  - a. Use commercially reasonable efforts to (1) lease Spinco's office properties, (2) negotiate lease renewals for existing Spinco office tenants and (3) work with outside office brokers to market and lease vacant office spaces for Spinco vacancies on behalf of Spinco; provided, however, that GGP shall not legally bind Spinco in any such lease without first obtaining Spinco's consent. All leasing services done on behalf of Spinco shall be done in accordance with GGP's practices as of the Plan Effective Date.
  - b. As requested by Spinco, evaluate property information with regard to such Spinco properties, including, among other customary items, rent rolls, lease expirations, termination rights, rights of first refusal, renewal potential and tenant financial statements in accordance with GGP's practices as of the Plan Effective Date.
  - c. Actively participate in the management of the strategic plans related to Spinco's properties in accordance with GGP's practices as of the Plan Effective Date.
2. ***Pricing:*** Spinco shall pay to GGP a Service Charge for each Service equal to the sum of (A) the product of (i) the Cost Multiplier multiplied by (ii) the applicable Service Resource Cost plus (B) the amount of any Out-of-Pocket Expenses incurred with respect to such Service.
3. ***Duration of Services:*** Any individual Service in this Section B shall terminate upon the earliest to occur of (a) 9 months following the Plan Plan Effective Date, (b) five (5) days following written notice of termination of such Services by Spinco to GGP and (c) the applicable termination date pursuant to Article IX of the Agreement. GGP agrees to use appropriate and reasonable efforts, as mutually agreed upon by the



parties and at Spinco's cost, to ensure that any terminated Service is integrated into Spinco's broader business processes.

4. **Service Managers:** All communications related to the delivery of the Services shall be coordinated through the respective Service Managers of GGP and Spinco. The initial Service Managers of GGP and Spinco shall be as set forth on the attachment hereto.

### C. **Specialty Leasing and Strategic Partnerships**

1. **Services:**
  - a. Prospect for new local tenants on behalf of Spinco in accordance with GGP's practices as of the Plan Effective Date, provided, however, GGP does not guarantee to Spinco any results from such prospecting.
  - b. As requested by Spinco, negotiate contracts on behalf of Spinco subject to final Spinco approval, and manage the negotiation process until such deals close. Such Service shall be done in accordance with GGP's practices as of the Plan Effective Date.
2. **Pricing:** Spinco shall pay to GGP a Service Charge for each Service equal to the sum of (A) the product of (i) the Cost Multiplier multiplied by (ii) the applicable Service Resource Cost plus (B) the amount of any Out-of-Pocket Expenses incurred with respect to such Service.
3. **Duration of Services:** Any individual Service in this Section C shall terminate upon the earliest to occur of (a) 9 months following the Plan Effective Date, (b) five (5) days following written notice of termination of such Services by Spinco to GGP and (c) the applicable termination date pursuant to Article IX of the Agreement. GGP agrees to use appropriate and reasonable efforts, as mutually agreed upon by the parties and at Spinco's cost, to ensure that any terminated Service is integrated into Spinco's broader business processes.
4. **Service Managers:** All communications related to the delivery of the Services shall be coordinated through the respective Service Managers of GGP and Spinco. The initial Service Managers of GGP and Spinco shall be as set forth on the attachment hereto.

**SCHEDULE A-5**

**MARKETING AND COMMUNICATIONS**

**A. Marketing**

1. ***Services:***

- a. Management and oversight of national and/or regional advertising and marketing campaigns on behalf of Spinco at Spinco's expense consistent with GGP's then current advertising and marketing campaign practices.
- b. Collect consumer information and manage associated databases, circulate a monthly email newsletter, and distribute dedicated emails as scheduled on behalf of Spinco and in accordance with GGP's then current practices.
- c. Maintain on behalf of Spinco a corporate website, individual mall websites, domain names, and all other such applicable website materials in accordance with GGP's then current practices. GGP personnel shall update these websites within 10 days of being requested by Spinco.
- d. Conduct ongoing execution and monitoring of consumer generated media on behalf of Spinco and in accordance with GGP's then current practices.
- e. As requested by Spinco, provide demographic, mapping and/or troubled mall analysis for Spinco properties in accordance with GGP's then current practices.
- f. As requested by Spinco, conduct relevant consumer studies and research on behalf of Spinco in accordance with GGP's then current practices.
- g. As requested by Spinco, engage in media planning, consultation on creative planning, and monthly meetings in relation to Bridgeland MPC on behalf of Spinco and in accordance with GGP's then current practices.

2. ***Pricing:*** Spinco shall pay to GGP a Service Charge for each Service equal to the sum of (A) the product of (i) the Cost Multiplier multiplied by (ii) the applicable Service Resource Cost plus (B) the amount of any Out-of-Pocket Expenses incurred with respect to such Service.

3. ***Duration of Services:*** Any individual Service in this Section A shall terminate upon the earliest to occur of (a) 6 months following the Plan Plan Effective Date, (b) five (5) days following written notice of termination of such Services by Spinco to GGP and (c) the applicable termination date pursuant to Article IX of the Agreement. GGP agrees to use appropriate and reasonable efforts, as mutually agreed upon by the parties and at Spinco's cost, to ensure that any terminated Service is integrated into Spinco's broader business processes.
4. ***Service Managers:*** All communications related to the delivery of the Services shall be coordinated through the respective Service Managers of GGP and Spinco. The initial Service Managers of GGP and Spinco shall be as set forth on the attachment hereto.

**B. Corporate Communications**

1. ***Services:***
  - a. Cooperate reasonably with Spinco, as Spinco may request, to conduct, facilitate, maintain, manage, provide or undertake any of the following on behalf of Spinco and in accordance with GGP's then current practices: community relations; corporate social responsibility; crisis communications; government entitlements and community support; government and legislative relations; internal employee communications; investor communications; issues management; publicity; marketing program public relations; news media relations; news media access to property and customers; redevelopment and development public relations; retailer communications; retailer grand opening calendar and public relations; and senior executive communications.
2. ***Pricing:*** Spinco shall pay to GGP a Service Charge for each Service equal to the sum of (A) the product of (i) the Cost Multiplier multiplied by (ii) the applicable Service Resource Cost plus (B) the amount of any Out-of-Pocket Expenses incurred with respect to such Service.
3. ***Duration of Services:*** Any individual Service in this Section B shall terminate upon the earliest to occur of (a) 6 months following the Plan Plan Effective Date, (b) five (5) days following written notice of termination of such Services by Spinco to GGP and (c) the applicable termination date pursuant to Article IX of the Agreement. GGP agrees to use appropriate and reasonable efforts, as mutually agreed upon by the parties and at Spinco's cost, to ensure that any terminated Service is integrated into Spinco's broader business processes.

4. **Service Managers:** All communications related to the delivery of the Services shall be coordinated through the respective Service Managers of GGP and Spinco. The initial Service Managers of GGP and Spinco shall be as set forth on the attachment hereto.

C. **Nouvelle at Natick**

1. **Services:**
  - a. Engage in website development and content management on behalf of Spinco in accordance with GGP's then current practices.
  - b. Conduct media planning and placement related to Nouvelle at Natick on behalf of Spinco in accordance with GGP's then current practices.
  - c. Manage on behalf of Spinco the writing, design, and production of the bi-monthly Nouvelle-branded newsletter for residents and the sales and marketing team in accordance with GGP's then current practices.
  - d. As requested by Spinco, design and implement the visual display of model homes in accordance with GGP's then current practices.
  - e. As requested by Spinco, provide consultative support to the Nouvelle at Natick property manager in a timely manner.
  - f. As requested by Spinco, participate in weekly marketing meetings with the sales team, marketing team, and project developer of Nouvelle at Natick in accordance with GGP's then current practices.
  - g. As requested by Spinco, design banners and messaging for the barricade walls, sales gallery, tower, and other areas of Nouvelle at Natick in accordance with GGP's then current practices.
2. **Pricing:** Spinco shall pay to GGP a Service Charge for each Service equal to the sum of (A) the product of (i) the Cost Multiplier multiplied by (ii) the applicable Service Resource Cost plus (B) the amount of any Out-of-Pocket Expenses incurred with respect to such Service.
3. **Duration of Services:** Any individual Service in this Section C shall terminate upon the earliest to occur of (a) 6 months following the Plan Plan Effective Date, (b) five (5) days following written notice of termination of such Services by Spinco to GGP and (c) the applicable termination date pursuant to Article IX of the Agreement. GGP agrees to use appropriate and reasonable efforts, as mutually agreed upon by the

parties and at Spinco's cost, to ensure that any terminated Service is integrated into Spinco's broader business processes.

4. ***Service Managers:*** All communications related to the delivery of the Services shall be coordinated through the respective Service Managers of GGP and Spinco. The initial Service Managers of GGP and Spinco shall be as set forth on the attachment hereto.

Draft

**SCHEDULE A-6**

**LEGAL**

**A. General Legal Support and Review**

1. *Services:*
  - a. Assistance with securities law filings (including with respect to proxies and periodic reports).
  - b. Assistance with public company, public reporting, corporate secretary and board functions.
  - c. Assistance with corporate compliance.
  - d. Supervision with respect to legacy litigation, and cooperation with respect to Spinco litigation arising subsequent to the Effective Date.
  - e. Operational legal support.
  - f. Contract reviews.
  - g. Leasing (including in-line, box and anchor) with respect to Spinco's operational properties.
  - h. Human resources support.
  - i. Intellectual property matters.
  - j. Joint venture support.
  - k. Assistance with entity maintenance.
  - l. Assistance with master planned communities support (including sales and non-sales activities).
  - m. Assistance with legal development.
  - n. Coordination of tenant bankruptcies.
  - o. Supervision of asset recovery.
  - p. Assistance with legal financing support.
  - q. Coordinate with Spinco regarding engagement of outside counsel.

- r. Maintain new tenant lease set up in JDE property management file as required for each Spinco site location.
  - s. Such other ancillary Services consistent with the overall scope of the specific Services set forth above.
2. **Pricing:** Spinco shall pay to GGP a Service Charge for each Service equal to the sum of (A) the product of (i) the Cost Multiplier multiplied by (ii) the applicable Service Resource Cost plus (B) the amount of any Out-of-Pocket Expenses incurred with respect to such Service.
  3. **Duration of Services:** Any individual Service in this Section A shall terminate upon the earliest to occur of (a) 12 months following the Plan Effective Date, (b) five (5) days following written notice of termination of such Services by Spinco to GGP and (c) the applicable termination date pursuant to Article IX of the Agreement. GGP agrees to use appropriate and reasonable efforts, as mutually agreed upon by the parties and at Spinco's cost, to ensure that any terminated Service is integrated into Spinco's broader business processes.
  4. **Service Managers:** All communications related to the delivery of the Services shall be coordinated through the respective Service Managers of GGP and Spinco. The initial Service Managers of GGP and Spinco shall be as set forth on the attachment hereto.

**SCHEDULE A-7**

**ACCOUNTING**

**A. Accounts Payable and Accounts Receivable – Mall Operations and Corporate**

1. *Services:*

- a. For accounts payable functions, this includes the processing of vendor invoices from receipt of invoice at Spinco property locations through payment, matching of invoices with check remittance, and filing of processed invoices as directed by Spinco management. To the extent Basware software application is not utilized by Spinco, GGP shall utilize accounts payable processes consistent with those in place prior to Basware implementation.
- b. Conduct regular monthly vendor maintenance and set up in Spinco's accounts payable JDE module.
- c. Conduct invoice processing on a regular daily basis, except for MPC properties, so Spinco can make such payment.
- d. Conduct monthly invoice account distribution for posting in Spinco JDE and provide to Spinco so Spinco can make such payment.
- e. Provide Form 1099 (contractor payments) processing for year end December 31, 2010 and provide to Spinco for distribution to its 1099 defined contractors.
- f. Provide void check processing in JDE on a monthly basis, including for MPC properties.
- g. Provide P-Card continuation at the Plan Plan Effective Date for Spinco employees if Spinco does not enter directly into a Master Control Agreement with American Express.
- h. Conduct P-Card posting in JDE on a monthly basis as required.
- i. Transfer tenant lease history files to Spinco on the Plan Plan Effective Date.
- j. Maintain tenant lease files as required at all Spinco site locations.



- k. Maintain new tenant lease set up in JDE property management file as required for each Spinco site location.
  - l. Maintain past-due accounts collection support on a monthly basis.
  - m. Maintain customer master set up in JDE as requested by Spinco accountants.
2. **Pricing:** Spinco shall pay to GGP a Service Charge for each Service equal to the sum of (A) the product of (i) the Cost Multiplier multiplied by (ii) the applicable Service Resource Cost plus (B) the amount of any Out-of-Pocket Expenses incurred with respect to such Service; provided, however, that the Cost Multiplier shall be held constant at 110% for the term of this Agreement with respect to Services in support of the JD Edwards application.
3. **Duration of Services:** Any individual Service in this Section A shall terminate upon the earliest to occur of (a) 15 months from the Plan Effective Date, (b) five (5) days following written notice of termination of such Services by Spinco to GGP and (c) the applicable termination date pursuant to Article IX of the Agreement. GGP agrees to use appropriate and reasonable efforts, as mutually agreed upon by the parties and at Spinco's cost, to ensure that any terminated Service is integrated into Spinco's broader business processes.
4. **Additional Terms:**
- a. All accounting or related entries or related schedules supporting such entries that are processed by GGP must comply with GAAP and be in accordance with current GGP policies and procedures as defined in internal control processes for SOX compliance and shall comply with Spinco's financial reporting requirements. All work product provided herein shall be properly reviewed by GGP staff in accordance with normal on-going business practices.
  - b. All accounting services to be provided herein shall be completed in accordance with GGP's normal month end, quarter end, and year end closing time table; provided, such closing time table shall be provided to Spinco at least two weeks prior to any fiscal month close of Spinco.
5. **Service Managers:** All communications related to the delivery of the Services shall be coordinated through the respective Service Managers of GGP and Spinco. The initial Service Managers of GGP and Spinco shall be as set forth on the attachment hereto.

**B. Payroll Processing – Company**

1. **Services:**
  - a. Input time and attendance information to Ultipro from Ceridian on a weekly basis. All Ceridian time and attendance clocks shall remain in service through December 31, 2010.
  - b. Manage regular weekly payroll processing and payments to employees and provide reports to Spinco.
  - c. Manage weekly tax processing and payments to tax authorities through Ceridian and provide reports to Spinco.
  - d. Conduct weekly payroll posting to JDE on behalf of Spinco.
  - e. Conduct payroll capitalization to projects on a monthly basis.
  - f. Prepare year-end December 31, 2010 reporting and filing of W-2 and 941 forms and all other required annual reports and documents on behalf of Spinco.
  - g. Calculate employee incentive pay, input calculations to Ultipro, and make monthly accrual entry into JDE on a monthly basis.
2. **Pricing:** Spinco shall pay to GGP a Service Charge for each Service equal to the sum of (A) the product of (i) the Cost Multiplier multiplied by (ii) the applicable Service Resource Cost plus (B) the amount of any Out-of-Pocket Expenses incurred with respect to such Service; provided, however, that the Cost Multiplier shall be held constant at 110% for the term of this Agreement with respect to Services in support of the JD Edwards application.
3. **Duration of Services:** Any individual Service in this Section B shall terminate upon the earliest to occur of (a) March 31, 2011, (b) five (5) days following written notice of termination of such Services by Spinco to GGP and (c) the applicable termination date pursuant to Article IX of the Agreement. GGP agrees to use appropriate and reasonable efforts, as mutually agreed upon by the parties and at Spinco's cost, to ensure that any terminated Service is integrated into Spinco's broader business processes.
4. **Additional Terms:**
  - a. All accounting or related entries or related schedules supporting such entries that are processed by GGP must comply with GAAP and be in accordance with current GGP policies and procedures as

defined in internal control processes for SOX compliance and shall comply with Spinco's financial reporting requirements. All work product provided herein shall be properly reviewed by GGP staff in accordance with normal on-going business practices.

- b. All accounting services to be provided herein shall be completed in accordance with GGP's normal month end, quarter end, and year end closing time table; provided, such closing time table shall be provided to Spinco at least two weeks prior to any fiscal month close of Spinco.
5. ***Service Managers:*** All communications related to the delivery of the Services shall be coordinated through the respective Service Managers of GGP and Spinco. The initial Service Managers of GGP and Spinco shall be as set forth on the attachment hereto.

**C. General Ledger and Related**

- 1. ***Services:***
  - a. Maintain account code files in Spinco JDE general ledger module as requested by Spinco accountants and provide process for updating account files.
  - b. Create month-end journal entries and post to JDE those entries customarily generated by GGP prior to the Plan Effective Date or as requested by Spinco accountants.
  - c. Provide general ledger account reconciliation support each month or as requested by Spinco accountants.
  - d. Provide access to current and historical accounting data in support of Spinco ledger balances as of the Plan Effective Date.
  - e. Consolidate Spinco financial statements and supporting schedules each month.
  - f. Provide audit support for opening, quarterly, and year-end account balances as requested by Spinco accountants or Spinco's auditor.
  - g. Provide monthly closing schedule and technical accounting support to Spinco accountants upon request.
  - h. Upload accounting activity for the Woodlands joint venture each month.
  - i. Allocate overhead between capex and expenses each month.

- j. Conduct FIN 47 accounting for asset retirement obligations for each fiscal quarter and year-end 2010.
  - k. Provide derivative accounting journal entries as required on a monthly basis.
  - l. Conduct utilities journal entry processing and prepare for payment by Spinco to third parties every week.
  - m. Provide insurance and related journal entries, including liability and auto insurance every month.
  - n. Determine intangible asset values for leases and year-end impairment as of the Plan Effective Date and every fiscal quarter thereafter.
  - o. Provide specific bad debt reserve analysis for litigation tenants on a monthly basis.
  - p. Provide unclaimed property reporting and prepare for related payment on a monthly basis.
  - q. Provide period costs of vehicle leasing, communications, and marketing fees for JDE entry each month.
  - r. Provide Merchants Association accounting for Seaport every month.
  - s. Provide Merchants Association accounting for Riverwalk every month.
2. **Pricing:** Spinco shall pay to GGP a Service Charge for each Service equal to the sum of (A) the product of (i) the Cost Multiplier multiplied by (ii) the applicable Service Resource Cost plus (B) the amount of any Out-of-Pocket Expenses incurred with respect to such Service; provided, however, that the Cost Multiplier shall be held constant at 110% for the term of this Agreement with respect to Services in support of the JD Edwards application.
3. **Duration of Services:** Any individual Service in this Section C shall terminate upon the earliest to occur of (a) 15 months from the Plan Effective Date, (b) five (5) days following written notice of termination of such Services by Spinco to GGP and (c) the applicable termination date pursuant to Article IX of the Agreement. GGP agrees to use appropriate and reasonable efforts, as mutually agreed upon by the parties and at Spinco's cost, to ensure that any terminated Service is integrated into Spinco's broader business processes.

4. ***Additional Terms:***
  - a. All accounting or related entries or related schedules supporting such entries that are processed by GGP must comply with GAAP and be in accordance with current GGP policies and procedures as defined in internal control processes for SOX compliance and shall comply with Spinco's financial reporting requirements.
  - b. All accounting services to be provided herein shall be completed in accordance with GGP's normal month end, quarter end, and year end closing time table; provided, such closing time table shall be provided to Spinco at least two weeks prior to any fiscal month close of Spinco. All work product provided herein shall be properly reviewed by GGP staff in accordance with on-going business practices.
5. ***Service Managers:*** All communications related to the delivery of the Services shall be coordinated through the respective Service Managers of GGP and Spinco. The initial Service Managers of GGP and Spinco shall be as set forth on the attachment hereto.

**D. General Ledger and Consolidations (MPC and related)**

1. ***Services:***
  - a. Conduct cash reconciliations, including cash distributions and contributions on a monthly basis.
  - b. Conduct account reconciliations of corporate asset and liability accounts on a monthly basis.
  - c. Provide insurance accounting, including reconciliation of reserve accounts on a monthly basis.
  - d. Provide accounting for joint ventures, including the Woodlands, if applicable to Spinco, on a monthly basis.
  - e. Provide internal financial reporting and consolidations on a monthly basis.
  - f. Record quarterly and annual tax provision entries, and interface with the Spinco tax department on tax positions on a quarterly basis.
2. ***Pricing:*** Spinco shall pay to GGP a Service Charge for each Service equal to the sum of (A) the product of (i) the Cost Multiplier multiplied by (ii)

the applicable Service Resource Cost plus (B) the amount of any Out-of-Pocket Expenses incurred with respect to such Service.

3. ***Duration of Services:*** Any individual Service in this Section D shall terminate upon the earliest to occur of (a) 15 months from the Plan Effective Date, (b) five (5) days following written notice of termination of such Services by Spinco to GGP and (c) the applicable termination date pursuant to Article IX of the Agreement. GGP agrees to use appropriate and reasonable efforts, as mutually agreed upon by the parties and at Spinco's cost, to ensure that any terminated Service is integrated into Spinco's broader business processes.
4. ***Additional Terms:***
  - a. All accounting or related entries or related schedules supporting such entries that are processed by GGP must comply with GAAP and be in accordance with current GGP policies and procedures as defined in internal control processes for Sarbanes-Oxley compliance and shall comply with Spinco's financial reporting requirements.
  - b. All accounting services to be provided herein shall be completed in accordance with GGP's normal month end, quarter end, and year end closing time table; provided, such closing time table shall be provided to Spinco at least two weeks prior to any fiscal month close of Spinco. All work product provided herein shall be properly reviewed by GGP staff in accordance with normal on-going business practices.
5. ***Service Managers:*** All communications related to the delivery of the Services shall be coordinated through the respective Service Managers of GGP and Spinco. The initial Service Managers of GGP and Spinco shall be as set forth on the attachment hereto.

**E. Development Accounting – Malls**

1. ***Services:***
  - a. Migrate historical cost data to support closing CIP balances as of September 30, 2010 as of the Plan Effective Date.
  - b. Conduct lien escrow and settlement process as determined by a court or as otherwise required.

- c. Track, review and process construction invoices for progress payments (including appropriate documentation for payment) on a weekly basis.
  - d. Prepare month-end journal entries related to CIP additions and transfers to fixed asset accounts each month.
  - e. Maintain “Constructware” files and related analytics, including an open commitments report on a monthly basis.
2. **Pricing:** Spinco shall pay to GGP a Service Charge for each Service equal to the sum of (A) the product of (i) the Cost Multiplier multiplied by (ii) the applicable Service Resource Cost plus (B) the amount of any Out-of-Pocket Expenses incurred with respect to such Service.
3. **Duration of Services:** Any individual Service in this Section E shall terminate upon the earliest to occur of (a) 15 months from the Plan Effective Date, (b) five (5) days following written notice of termination of such Services by Spinco to GGP and (c) the applicable termination date pursuant to Article IX of the Agreement. GGP agrees to use appropriate and reasonable efforts, as mutually agreed upon by the parties and at Spinco’s cost, to ensure that any terminated Service is integrated into Spinco’s broader business processes.
4. **Additional Terms:**
  - a. All accounting or related entries or related schedules supporting such entries that are processed by GGP must comply with GAAP and be in accordance with current GGP policies and procedures as defined in internal control processes for SOX compliance and shall comply with Spinco’s financial reporting requirements.
  - b. All accounting services to be provided herein shall be completed in accordance with GGP’s normal month end, quarter end, and year end closing time table; provided, such closing time table shall be provided to Spinco at least two weeks prior to any fiscal month close of Spinco.
5. **Service Managers:** All communications related to the delivery of the Services shall be coordinated through the respective Service Managers of GGP and Spinco. The initial Service Managers of GGP and Spinco shall be as set forth on the attachment hereto. All work product provided herein shall be properly reviewed by GGP staff in accordance with normal on-going business practices.

**F. Fixed Asset Accounting**

1. ***Services:***
  - a. Record fixed assets in a JDE fixed asset module subledger and calculate depreciation on a monthly basis.
  - b. Reconcile the JDE fixed asset module with the general ledger on a monthly basis.
  - c. Record tenant allowances in the fixed asset module and set up an amortization schedule, including the general ledger on a monthly basis.
  - d. Record disposals and other asset dispositions in both the fixed asset module and the general ledger as needed or requested by Spinco operations management.
  - e. Provide and record lease cost allocations, deferred financing cost, and impairment, to assets in the fixed asset module and the general ledger as needed on a monthly basis.
2. ***Pricing:*** Spinco shall pay to GGP a Service Charge for each Service equal to the sum of (A) the product of (i) the Cost Multiplier multiplied by (ii) the applicable Service Resource Cost plus (B) the amount of any Out-of-Pocket Expenses incurred with respect to such Service; provided, however, that the Cost Multiplier shall be held constant at 110% for the term of this Agreement with respect to Services in support of the JD Edwards application.
3. ***Duration of Services:*** Any individual Service in this Section F shall terminate upon the earliest to occur of (a) 15 months from the Plan Effective Date, (b) five (5) days following written notice of termination of such Services by Spinco to GGP and (c) the applicable termination date pursuant to Article IX of the Agreement. GGP agrees to use appropriate and reasonable efforts, as mutually agreed upon by the parties and at Spinco's cost, to ensure that any terminated Service is integrated into Spinco's broader business processes.
4. ***Additional Terms:***
  - a. All accounting or related entries or related schedules supporting such entries that are processed by GGP must comply with GAAP and be in accordance with current GGP policies and procedures as defined in internal control processes for SOX compliance and shall comply with Spinco's financial reporting requirements.



- b. All accounting services to be provided herein shall be completed in accordance with GGP's normal month end, quarter end, and year end closing time table; provided, such closing time table shall be provided to Spinco at least two weeks prior to any fiscal month close of Spinco. All work product provided herein shall be properly reviewed by GGP staff in accordance with normal on-going business practices.
5. **Service Managers:** All communications related to the delivery of the Services shall be coordinated through the respective Service Managers of GGP and Spinco. The initial Service Managers of GGP and Spinco shall be as set forth on the attachment hereto.

**G. Field Accounting (excluding MPC properties)**

1. **Services:**
  - a. Provide mall accounting duties performed by on-site GGP accountants (excluding Victoria Ward and Seaport properties) on a day-to-day basis after the Plan Effective Date.
  - b. Provide Columbia regional office accounting oversight (excluding Victoria Ward) on a day-to-day basis after the Plan Effective Date.
  - c. Provide Hawaii regional office accounting for Victoria Ward on a day-to-day basis after the Plan Effective Date.
2. **Pricing:** Spinco shall pay to GGP a Service Charge for each Service equal to the sum of (A) the product of (i) the Cost Multiplier multiplied by (ii) the applicable Service Resource Cost plus (B) the amount of any Out-of-Pocket Expenses incurred with respect to such Service.
3. **Duration of Services:** Any individual Service in this Section G shall terminate upon the earliest to occur of (a) 15 months from the Plan Effective Date, (b) five (5) days following written notice of termination of such Services by Spinco to GGP and (c) the applicable termination date pursuant to Article IX of the Agreement. GGP agrees to use appropriate and reasonable efforts, as mutually agreed upon by the parties and at Spinco's cost, to ensure that any terminated Service is integrated into Spinco's broader business processes.
4. **Additional Terms:**
  - a. All accounting or related entries or related schedules supporting such entries that are processed by GGP must comply with GAAP and be in accordance with current GGP policies and procedures as

defined in internal control processes for SOX compliance and shall comply with Spinco's financial reporting requirements. All work product provided herein shall be properly reviewed by GGP staff in accordance with normal on-going business practice.

- b. All accounting services to be provided herein shall be completed in accordance with GGP's normal month end, quarter end, and year end closing time table; provided, such closing time table shall be provided to Spinco at least two weeks prior to any fiscal month close of Spinco. All work product provided herein shall be properly reviewed by GGP staff in accordance with normal on-going business practices.
5. ***Service Managers***: All communications related to the delivery of the Services shall be coordinated through the respective Service Managers of GGP and Spinco. The initial Service Managers of GGP and Spinco shall be as set forth on the attachment hereto.

**SCHEDULE A-8**

**REAL AND PERSONAL PROPERTY TAX**

**A. General**

1. *Services:*

- a. Process real and personal property tax payments for Spinco disbursement prior to the applicable due date required by the applicable taxing authorities and in accordance with current GGP policy and procedure.
- b. Record assessment notices in the month received by each applicable taxing authority and in accordance with current GGP policy and procedure.
- c. Analyze property values for tax assessment purposes as required and in accordance with current GGP policy and procedure.
- d. Conduct tax appeals administration when necessary and in accordance with current GGP policy and procedure.
- e. Set up spreadsheets with history, payments and budgets from PTMS at the Plan Effective Date.
- f. Provide audit support for sales and use and personal property taxes as required by applicable taxing authorities and in accordance with current GGP policy and procedure.
- g. Manage consultants and on behalf of Spinco and coordinate legal issues with the General Counsel of Spinco as requested by Spinco and in accordance with current GGP policy and procedure.
- h. Provide budgets and forecasts for fiscal year 2011 as requested by Spinco accountants.
- i. Conduct sales and use tax filing and provide to Spinco so that Spinco can make such payment (excluding malls and MPC) each month and in accordance with current GGP policy and procedure.

2. ***Pricing:*** Spinco shall pay to GGP a Service Charge for each Service equal to the sum of (A) the product of (i) the Cost Multiplier multiplied by (ii) the applicable Service Resource Cost plus (B) the amount of any Out-of-Pocket Expenses incurred with respect to such Service.

3. ***Duration of Services:*** Any individual Service in this Section A shall terminate upon the earliest to occur of (a) June 30, 2011, (b) five (5) days following written notice of termination of such Services by Spinco to GGP and (c) the applicable termination date pursuant to Article IX of the Agreement. GGP agrees to use appropriate and reasonable efforts, as mutually agreed upon by the parties and at Spinco's cost, to ensure that any terminated Service is integrated into Spinco's broader business processes.
4. ***Additional Terms:*** All property and sales and use tax related Services to be provided herein shall be completed and provided to Spinco at least two weeks prior to the tax deadline of the applicable taxing authority.
5. ***Service Managers:*** All communications related to the delivery of the Services shall be coordinated through the respective Service Managers of GGP and Spinco. The initial Service Managers of GGP and Spinco shall be as set forth on the attachment hereto.

**SCHEDULE A-9**

**INCOME TAX**

**A. General**

1. ***Services:***
  - a. Provide access to prior and current year historical files and records, including but not limited to permanent documents, tax returns and supporting work papers, JDE and other files on the GGP network as requested by Spinco tax accountants.
  - b. Coordinate outside tax advisors and experts, including compliance, on behalf of Spinco as requested by Spinco tax accountants and in accordance with GGP's current procedures.
  - c. Provide Victoria Ward REIT quarterly and annual REIT testing, including dividend payments at least two weeks prior to the applicable deadline for such quarterly and annual REIT testing in accordance with GGP's current policy and procedures.
  - d. Provide transfer pricing support as requested by Spinco accountants in accordance with GGP's current policy and procedure.
  - e. As requested by Spinco tax accountants, provide ongoing audit support beyond 2011 when required by applicable taxing authorities.
  - f. Such other ancillary Services consistent with the overall scope of the specific Services set forth above.
2. ***Pricing:*** Spinco shall pay to GGP a Service Charge for each Service equal to the sum of (A) the product of (i) the Cost Multiplier multiplied by (ii) the applicable Service Resource Cost plus (B) the amount of any Out-of-Pocket Expenses incurred with respect to such Service.
3. ***Duration of Services:*** Any individual Service in this Section A shall terminate upon the earliest to occur of (a) 15 months from the Plan Effective Date, (b) five (5) days following written notice of termination of such Services by Spinco to GGP and (c) the applicable termination date pursuant to Article IX of the Agreement. GGP agrees to use appropriate and reasonable efforts, as mutually agreed upon by the parties and at

Spinco's cost, to ensure that any terminated Service is integrated into Spinco's broader business processes.

4. ***Additional Terms:*** To the extent applicable, all income tax related Services to be provided herein shall be completed and provided to Spinco at least two weeks prior to the applicable tax deadline of the applicable taxing authority.
5. ***Service Managers:*** All communications related to the delivery of the Services shall be coordinated through the respective Service Managers of GGP and Spinco. The initial Service Managers of GGP and Spinco shall be as set forth on the attachment hereto.

**SCHEDULE A-10**

**INFORMATION TECHNOLOGY SERVICES**

**A. Mobile Communications**

1. ***Services:***
  - a. Provide mobile communications devices including cell phones, SmartPhones, and wireless broadband cards in accordance with GGP's practices as of the Plan Effective Date.
  - b. Set equipment standards, acquire plans and equipment, monitor usage and adjust plans to minimize costs and match plans to usage patterns in accordance with GGP's practices as of the Plan Effective Date.
  - c. As requested by Spinco, negotiate overall purchasing agreements with vendors, provided that the GGP Service Manager shall consult with the Spinco Service Manager prior to making any decisions regarding carrier changes for Spinco. GGP shall have no authority to legally bind Spinco.
  - d. Provide the technologies required for Email integration with the Enterprise Exchange server and Spinco-owned SmartPhones in accordance with GGP's practices as of the Plan Effective Date.
2. ***Pricing:*** Spinco shall pay to GGP a Service Charge for each Service equal to the sum of (A) the product of (i) the Cost Multiplier multiplied by (ii) the applicable Service Resource Cost plus (B) the amount of any Out-of-Pocket Expenses incurred with respect to such Service.
3. ***Duration of Services:*** Any individual Service in this Section A shall terminate upon the earliest to occur of (a) March 31, 2011, (b) five (5) days following written notice of termination of such Services by Spinco to GGP and (c) the applicable termination date pursuant to Article IX of the Agreement. GGP agrees to use appropriate and reasonable efforts, as mutually agreed upon by the parties and at Spinco's cost, to ensure that any terminated Service is integrated into Spinco's broader business processes.
4. ***Additional Terms:*** The Services provided in this Section A shall be subject to the following additional terms:

a. Service Targets

Service Targets				
Service	Availability	Support Coverage	Dependencies	Service Level Objective
New Cell Phone Service	Normal Working Hours	New Service can be set up by calling the Service desk.	Requester has appropriate management approvals	New equipment can be acquired within 7 days
Changes to cellular plans	Normal Working Hours	Requests can be submitted 24 x 7 to the Service desk.		Changes to existing plans will take place within 1 business day.

5. **Service Managers:** All communications related to the delivery of the Services shall be coordinated through the respective Service Managers of GGP and Spinco. The initial Service Managers of GGP and Spinco shall be as set forth on the attachment hereto.



**B. End User Support and Standards**

1. *Services:*

- a. Set standards for end user devices and software. These standards shall apply to all equipment and software acquired for Spinco in accordance with GGP's practices as of the Plan Effective Date. All such equipment and software acquired for Spinco shall be Spinco's property.
- b. Acquire end user computing equipment and software for Spinco which adhere to the standards in place in accordance with GGP's practices as of the Plan Effective Date, subject to Spinco's prior written approval.
- c. As requested by Spinco, negotiate overall purchasing agreements with vendors and consult with Spinco Service Manager prior to making any decisions regarding standards or vendor changes for Spinco. GGP shall have no authority to legally bind Spinco.
- d. Provide a Service Desk which provides a single point of contact for any request for IT Services or issues with Services in accordance with GGP's practices as of the Plan Effective Date. Ensure that a single phone number can be called to get assistance. In addition, the user can submit less urgent requests via Email or website.
- e. Ensure that all calls are logged into the Service Desk system and a ticket number assigned in accordance with GGP's practices as of the Plan Effective Date.
- f. Ensure that service desk calls are addressed according to the standard IT response time matrix depending on the criticality of the question / issue / outage in accordance with GGP's practices as of the Plan Effective Date.
- g. Create a stable image for each of the supported client computing platforms in accordance with GGP's practices as of the Plan Effective Date. The image consists of the operating system, utilities and drivers required by the operating system, and standard software. In addition, optional software may be selected to be loaded as part of the Service.
- h. As new models of laptop or desktop computers become available, Personnel shall test them and create images for those that become the new standard offerings in accordance with GGP's practices as of the Plan Effective Date.

- i. Provide vendor management services for any third party service providers in accordance with GGP’s practices as of the Plan Effective Date.
2. **Pricing:** Spinco shall pay to GGP a Service Charge for each Service equal to the sum of (A) the product of (i) the Cost Multiplier multiplied by (ii) the applicable Service Resource Cost plus (B) the amount of any Out-of-Pocket Expenses incurred with respect to such Service.
3. **Duration of Services:** Any individual Service in this Section B shall terminate upon the earliest to occur of (a) September 30, 2011, (b) five (5) days following written notice of termination of such Services by Spinco to GGP and (c) the applicable termination date pursuant to Article IX of the Agreement. GGP agrees to use appropriate and reasonable efforts, as mutually agreed upon by the parties and at Spinco’s cost, to ensure that any terminated Service is integrated into Spinco’s broader business processes.
4. **Additional Terms:** The Services provided in this Section B shall be subject to the following additional terms:
  - a. Service Targets

Service Targets				
Service	Availability	Support Coverage	Dependencies	Service Level Objective
Emergency Response	Available during all scheduled Production work hours	A support person will receive message and return call	Support person has means to receive problem call during off hours (Pager, cell phone)	100% of calls answered or returned according to Priority Matrix
Phone Response	12 x 5	A live person will answer the phone or respond to messages.	Adequate staffing to cover support hours	100% of calls answered or returned according to Priority Matrix
Problem Resolution	According to priority matrix	A live person will be available to respond to messages at all times	Need to educate Service desk personnel on setting of priorities	Response time and escalation 100% in compliance with priority matrix.

5. ***Service Managers:*** All communications related to the delivery of the Services shall be coordinated through the respective Service Managers of GGP and Spinco. The initial Service Managers of GGP and Spinco shall be as set forth on the attachment hereto.

**C. Electronic Mail Service Support**

1. ***Services:***
  - a. Provide electronic mail, including client email package (Microsoft Outlook), enterprise Email infrastructure (Microsoft Exchange), anti-virus and spam filtering Services, and Internet Email Gateway Services.
  - b. Provide support for the Outlook client software only for those Services that are business related. For example, if a user is having difficulty configuring their mail client to work with a non-Spinco/non-GGP Email Service, the Service desk shall not be obligated to help.
  - c. Personnel shall provide a spam filtering Service designed to let in legitimate Email and exclude “spam.”
  - d. As requested by Spinco, provide vendor management services for any third party service providers.
2. ***Pricing:*** Spinco shall pay to GGP a Service Charge for each Service equal to the sum of (A) the product of (i) the Cost Multiplier multiplied by (ii) the applicable Service Resource Cost plus (B) the amount of any Out-of-Pocket Expenses incurred with respect to such Service.
3. ***Duration of Services:*** Any individual Service in this Section C shall terminate upon the earliest to occur of (a) September 30, 2011, (b) five (5) days following written notice of termination of such Services by Spinco to GGP and (c) the applicable termination date pursuant to Article IX of the Agreement. GGP agrees to use appropriate and reasonable efforts, as mutually agreed upon by the parties and at Spinco’s cost, to ensure that any terminated Service is integrated into Spinco’s broader business processes.
4. ***Additional Terms:*** The Services provided in this Section C shall be subject to the following additional terms:

a. Service Targets

Service Targets				
Service	Availability	Support Coverage	Dependencies	Service Level Objective
Internal Electronic Mail accessibility	24 x 7	Subject to response time matrix. Monitoring software is continually testing the availability of this Service.	Need monitoring software in place to test Email Service and alert Service desk of outage.	Electronic Mail facility is available 99.9% of the time.
Email outage notification	24 x 7	Notice of Email outage will be issued 24 x 7 according to the severity matrix.	Service desk and monitoring processes must be designed to support this Service	Outage notification is issued within 5 minutes of outage detection. A second notice will be sent when Service is restored.

5. **Service Managers:** All communications related to the delivery of the Services shall be coordinated through the respective Service Managers of GGP and Spinco. The initial Service Managers of GGP and Spinco shall be as set forth on the attachment hereto.

**D. Access to Shared Resources / Intranet**

1. **Services:**
  - a. Create, maintain and provide access to shared resources for the enterprise in accordance with GGP's practices as of the Plan Effective Date. Specifically, these shared resources shall include secure access to space on servers, printers, electronic mail, intranet and internet portals, and Internet connections.
  - b. Detect, troubleshoot and repair the Intranet when degraded performance or outright failure occurs, including providing for appropriate notification of outages and their expected duration, provision of workarounds, and coordination of efforts of third party providers in the resolution in accordance with GGP's practices as of the Plan Effective Date.
  - c. Monitor and manage network and other resources to ensure that the services are available and meeting the needs of the user community.
  - d. Administrative services shall be made available to assist in the appropriate use and setup of the services in accordance with GGP's practices as of the Plan Effective Date. The response times for assistance shall be the same as those laid out in the service desk section of this document.
  - e. As requested by Spinco, provide vendor management services for any third party service providers.
2. **Pricing:** Spinco shall pay to GGP a Service Charge for each Service equal to the sum of (A) the product of (i) the Cost Multiplier multiplied by (ii) the applicable Service Resource Cost plus (B) the amount of any Out-of-Pocket Expenses incurred with respect to such Service.
3. **Duration of Services:** Any individual Service in this Section D shall terminate upon the earliest to occur of (a) September 30, 2011, (b) five (5) days following written notice of termination of such Services by Spinco to GGP and (c) the applicable termination date pursuant to Article IX of the Agreement. GGP agrees to use appropriate and reasonable efforts, as mutually agreed upon by the parties and at Spinco's cost, to ensure that any terminated Service is integrated into Spinco's broader business processes.
4. **Additional Terms:** The Services provided in this Section D shall be subject to the following additional terms:

a. Service Targets

Service Targets				
Service	Availability	Support Coverage	Dependencies	Service Level Objective
Access to Shared Drives	24 x 7	Access to Service desk for issues, questions		Able to access shared drives 99.9% of the time
Administration of Shared Drives	Normal Business Hours	New directories or changes to directory security can be made. Changes to disk allocations can be made.		New directories, security changes and disk allocations can be made within 1 hour.
Capacity management	Normal Business Hours	Disk space utilization will be proactively monitored and supplemented without user involvement.	Monitoring tools need to be in place. Authority to procure additional storage must be secured.	10% excess storage in reserve or on order at all times.
Troubleshoot equipment or quality issues	Normal Business Hours	IT or third party arrives at printer location to repair.		1 business day response from first call.

5. **Service Managers:** All communications related to the delivery of the Services shall be coordinated through the respective Service Managers of GGP and Spinco. The initial Service Managers of GGP and Spinco shall be as set forth on the attachment hereto.

**E. Telecommunications Services**

1. ***Services:***

- a. Provide a wide area network (“WAN”) for Spinco. All Spinco offices are connected by a WAN to enable access to shared resources in Chicago and other locations. The infrastructure and application architectures are such that if the network or any link is down for any period of time, many people are unable to complete their work.
- b. Detect, troubleshoot and repair telecommunications services when degraded performance or outright failure occurs, including appropriate notification of outages and their expected duration, provision of workarounds, and coordination of efforts of third party providers in the resolution in accordance with GGP’s practices as of the Plan Effective Date.
- c. Monitor the capacity to ensure that the services are available and meeting the needs of the user community in accordance with GGP’s practices as of the Plan Effective Date.
- d. Provide connectivity to the Internet for all Spinco users at the same service levels and performance as for GGP users in accordance with GGP’s practices as of the Plan Effective Date.
- e. Provide office phones, VoiceMail and all moves, adds, and changes associated with them as requested by Spinco and in accordance with GGP’s practices as of the Plan Effective Date.
- f. Provide telecommunications strategy and planning, including coordination with the local IT site management and business management required to successfully perform this function in accordance with GGP’s practices as of the Plan Effective Date.
- g. Work with local telecom providers to ensure smooth coordination in the event of location moves, capacity changes or other modifications in the telecommunications environment in accordance with GGP’s practices as of the Plan Effective Date.
- h. Provide vendor management services as requested by Spinco for any third party service providers in accordance with GGP’s practices as of the Plan Effective Date.

2. ***Pricing:*** Spinco shall pay to GGP a Service Charge for each Service equal to the sum of (A) the product of (i) the Cost Multiplier multiplied by (ii)



the applicable Service Resource Cost plus (B) the amount of any Out-of-Pocket Expenses incurred with respect to such Service.

3. **Duration of Services:** Any individual Service in this Section E shall terminate upon the earliest to occur of (a) September 30, 2011, (b) five (5) days following written notice of termination of such Services by Spinco to GGP and (c) the applicable termination date pursuant to Article IX of the Agreement. GGP agrees to use appropriate and reasonable efforts, as mutually agreed upon by the parties and at Spinco's cost, to ensure that any terminated Service is integrated into Spinco's broader business processes.
4. **Additional Terms:** The Services provided in this Section E shall be subject to the following additional terms:
  - a. Service Targets

Service Targets				
Service	Availability	Support Coverage	Dependencies	Service Level Objective
Interoffice connectivity	24 x 7	Access to Service desk for issues, questions.	Monitoring software installed.	Network up 99.9% of the time between all locations. All response time tests within benchmark limits.
Internet connectivity	24 x 7	Access to Service desk for issues, questions.		Connection to Internet up 99%. Performance tests within benchmark limits.
New Phone Service	Normal Working Hours	New Service can be set up by calling the Service desk.	Available handsets and PBX ports or IP ports.	New Service can be established within 1 business day of notice.
Repair for PBX or Voicemail Services	Normal Working Hours	Automated monitoring of Services.	Availability of Monitoring tools. Appropriate Service agreements with vendors	Restoration of Service according to Service desk severity matrix

5. ***Service Managers:*** All communications related to the delivery of the Services shall be coordinated through the respective Service Managers of GGP and Spinco. The initial Service Managers of GGP and Spinco shall be as set forth on the attachment hereto.

**F. Information Security Services**

1. *Services:*

- a. Provide and operate an authentication directory service database. The information in this database is shared among applications minimizing the need to sign in more than once to get work done in accordance with GGP's practices as of the Plan Effective Date.
- b. Add, change or delete / inactivate user information to/from the authentication directory in accordance with GGP's practices as of the Plan Effective Date. A key part of this is ensuring that appropriate approval signoffs have been received. These approval requirements vary for many applications in the environment and may also require that the authentication and rights be updated in multiple systems.
- c. Support the compliance efforts of Spinco for all services and systems. Spinco is required to comply with various laws including Sarbanes-Oxley (SOX). There are also industry compliance initiatives including the Payment Card Industry (PCI) standards for the protection of electronic payment information for companies accepting credit or debit cards for payments.
- d. Provide ongoing compliance support, including, as requested by Spinco, maintenance of control plans and other compliance documentation, execution of compliant processes, adherence to process and systems controls, and testing as required by the internal or external auditors in accordance with GGP's practices as of the Plan Effective Date. In addition, GGP shall be expected to participate in any system or compliance audits required by Spinco or Spinco auditors.
- e. Maintain software, hardware and processes to protect Spinco systems and networks from external and internal attacks by malware (viruses, Trojans, worms, etc.) in accordance with GGP's practices as of the Plan Effective Date. For example, malware may be introduced from sources other than the email system and some of these may have no means of protection other than making all of the target systems impervious to attack.
- f. Patch Spinco servers and update anti-virus signatures in accordance with GGP's practices as of the Plan Effective Date. For example, new patches are issued weekly and vary in the degree of threat reduction—some are required immediately to eliminate an imminent, destructive threat while others are optional and non-security related.

- g. Regularly update client virus scanning engines and anti-virus signatures in accordance with GGP's practices as of the Plan Effective Date.
  - h. Provide vendor management services as requested by Spinco for any third party service providers in accordance with GGP's practices as of the Plan Effective Date.
2. **Pricing:** Spinco shall pay to GGP a Service Charge for each Service equal to the sum of (A) the product of (i) the Cost Multiplier multiplied by (ii) the applicable Service Resource Cost plus (B) the amount of any Out-of-Pocket Expenses incurred with respect to such Service.
  3. **Duration of Services:** Any individual Service in this Section F shall terminate upon the earliest to occur of (a) September 30, 2011, (b) five (5) days following written notice of termination of such Services by Spinco to GGP and (c) the applicable termination date pursuant to Article IX of the Agreement. GGP agrees to use appropriate and reasonable efforts, as mutually agreed upon by the parties and at Spinco's cost, to ensure that any terminated Service is integrated into Spinco's broader business processes.
  4. **Additional Terms:** The Services provided in this Section F shall be subject to the following additional terms:

a. Service Targets

Service Targets				
Service	Availability	Support Coverage	Dependencies	Service Level Objective
Synchronization of Directory information	24 x 7	Directory information consistent and available across platforms.	Working integration between disparate systems	All key information available on each supported platform
Add, Change, Delete Users	Normal Business Hours	IT will add the user information to all users where authorized.	Approval process in place for each application.	User ID changes completed within 1 business day of receipt of approval in IT.
Execute processes in compliance with documented controls	24 x 7	IT personnel will follow all documented control processes	Existing SOX, PCI or other compliance regimes and documentation	100% compliance with control processes. No audit comments related to IT
Update Anti-Virus signatures and scanning engine	Normal Business Hours	IT will maintain a subscription to an update Service for the anti-virus installed on Spinco PC's.	All Spinco PC's must have an Anti-Virus program installed and operational	Anti-Virus updates must be automatically applied at least once per week

5. **Service Managers:** All communications related to the delivery of the Services shall be coordinated through the respective Service Managers of GGP and Spinco. The initial Service Managers of GGP and Spinco shall be as set forth on the attachment hereto.

**G. Internet Site**

1. **Services:**
  - a. Maintain the principal Spinco website and various property specific websites as agreed upon between the GGP Service Manager and the Spinco Service Manager.
  - b. Keep the Internet site up and running in accordance with GGP's practices as of the Plan Effective Date, but the content and maintenance of the content ultimately is the responsibility of the Spinco Sales and Marketing Department.
  - c. Provide marketing or other personnel with the tools they need to keep the content on the website updated.
2. **Pricing:** Spinco shall pay to GGP a Service Charge for each Service equal to the sum of (A) the product of (i) the Cost Multiplier multiplied by (ii) the applicable Service Resource Cost plus (B) the amount of any Out-of-Pocket Expenses incurred with respect to such Service.
3. **Duration of Services:** Any individual Service in this Section G shall terminate upon the earliest to occur of (a) September 30, 2011, (b) five (5) days following written notice of termination of such Services by Spinco to GGP and (c) the applicable termination date pursuant to Article IX of the Agreement. GGP agrees to use appropriate and reasonable efforts, as mutually agreed upon by the parties and at Spinco's cost, to ensure that any terminated Service is integrated into Spinco's broader business processes.
4. **Additional Terms:** The Services provided in this Section G shall be subject to the following additional terms:

a. Service Targets

Service Targets				
Service	Availability	Support Coverage	Dependencies	Service Level Objective
Website up and available	24 x 7	Site and all functions available.	N/A.	100% availability

5. ***Service Managers:*** All communications related to the delivery of the Services shall be coordinated through the respective Service Managers of GGP and Spinco. The initial Service Managers of GGP and Spinco shall be as set forth on the attachment hereto.

## **H. Application Support Services**

### **1. *Services:***

- a. In support of: (i) JD Edwards application and integrations; (ii) BI application and integrations; and (iii) customary non-financial applications: Provide access to Spinco company applications to the Spinco employees as Spinco may request from time to time and in accordance with GGP's practices as of the Plan Effective Date. The company makes a number of key applications available to the employees. These include packages like JD Edwards, BI Warehouse, and others. Access to these must be available when the employee needs to use them. This is typically during normal business hours, but may also include evenings and weekends.
- b. In support of: (i) JD Edwards application and integrations; (ii) BI application and integrations; and (iii) customary non-financial applications: Provide user level security access to applications in accordance with GGP's practices as of the Plan Effective Date. This Service shall be extended to Spinco users for as long as the application in question is maintained by GGP.
- c. In support of: (i) JD Edwards application and integrations; (ii) BI application and integrations; and (iii) customary non-financial applications: Support the application environment for Spinco for the duration of the Agreement in accordance with GGP's practices as of the Plan Effective Date. Spinco shall assume responsibility for support of its applications as it chooses to migrate from those in use by GGP to applications more appropriate to the size and scope of Spinco.
- d. In support of: (i) JD Edwards application and integrations; (ii) BI application and integrations; and (iii) customary non-financial applications: Application support including:
  - (i) Routine processing of business transactions.
  - (ii) Routine operation of interfaces and batch jobs.
  - (iii) Taking actions necessary to restore processing in the event of a system failure (hardware or software).
  - (iv) Working with vendors or other partners to troubleshoot or repair "bugs."
  - (v) Routine maintenance of the application environment such as database tuning for performance, backup and restore of files or



data, and repair or replacement of hardware components.

(vi) Working with end users to resolve questions or issues related to the use of features within the application.

(vii) Working with third party support resources to accomplish any of the above.

e. In support of: (i) JD Edwards application and integrations; (ii) BI application and integrations; and (iii) customary non-financial applications: Support Spinco in these electronic transfers for all third parties that are currently sending or receiving electronic data from GGP in accordance with GGP's practices as of the Plan Effective Date.

f. Personnel shall provide a customer advocate to serve as liaison between Spinco application users and GGP application support.

2. **Pricing:** Spinco shall pay to GGP a Service Charge for each Service equal to the sum of (A) the product of (i) the Cost Multiplier multiplied by (ii) the applicable Service Resource Cost plus (B) the amount of any Out-of-Pocket Expenses incurred with respect to such Service; provided, however, that the Cost Multiplier shall be held constant at 110% for the term of this Agreement with respect to Services in support of the JD Edwards application (including, for the avoidance of doubt, the applicable Services set forth in Sections H.1.a through H.1.e of this Schedule A-10: Information Technology Services).
3. **Duration of Services:** Any individual Service in this Section H shall terminate upon the earliest to occur of (a) September 30, 2012, (b) five (5) days following written notice of termination of such Services by Spinco to GGP and (c) the applicable termination date pursuant to Article IX of the Agreement. GGP agrees to use appropriate and reasonable efforts, as mutually agreed upon by the parties and at Spinco's cost, to ensure that any terminated Service is integrated into Spinco's broader business processes.
4. **Additional Terms:** The Services provided in this Section H shall be subject to the following additional terms:

a. Service Targets

Service Targets				
Service	Availability	Support Coverage	Dependencies	Service Level Objective
Remote Access to Applications	24 x 7	Access to Service desk for issues, questions	Connection to Internet. Functioning VPN software. Citrix Server Accessible.	Able to access company applications 99.9% of the time.
Timely completion of tasks in applications	24 x 7	Response time issues can be addressed to the Service desk. Monitoring tools provide historical look at performance data and ability to proactively manage performance.	Monitoring tool implemented for application servers.	No Service desk calls are received about performance where the root cause is within the Spinco infrastructure.
Move, add or change user application access	Normal Business Hours	User access changes will be initiated through the Service desk		Changes will be made within 1 business day of initial request
Application Troubleshooting	24 X 7	Requests captured in Service desk and prioritized.		According to standard Service request matrix
Routine Operations	24 X 7	Provide same level of support as for GGP Users		According to standard Service request matrix

5. ***Service Managers:*** All communications related to the delivery of the Services shall be coordinated through the respective Service Managers of GGP and Spinco. The initial Service Managers of GGP and Spinco shall be as set forth on the attachment hereto.

## **I. Application Development and Maintenance Services**

1. **Services:** Personnel shall provide the following Services to Spinco employees:
  - a. Provide project management, process engineering / business analysis, application architecture and development Services for technology initiatives, as requested by Spinco.
  - b. Work with the requesting department to agree on scope and timing for the project deliverables in accordance with GGP's practices as of the Plan Effective Date. The requesting department shall be responsible for allocating sufficient resources to serve as subject matter experts and co-project manager. The requesting department shall also secure any SME resources required to complete the project that fall outside of IT or the requesting department.
  - c. Provide application maintenance Services to Spinco employees and department for GGP supported applications as requested by Spinco.
  - d. Provide custom application maintenance in accordance with GGP's practices as of the Plan Effective Date. Spinco requests for modifications or small enhancements shall be added to the request queue for the maintenance team. The Service Managers shall meet and agree on the prioritization of the requests within the complete list.
  - e. For the Commercial Off The Shelf application maintenance, Personnel shall procure the contracts and coordinate the support activities of the software supplier as requested by Spinco. The service levels on the contracts shall be the same as they were prior to the Plan Effective Date. If GGP is paying for an enhanced level of service for the GGP systems (e.g. "Gold" or "Premium") then that is the level of maintenance that shall be procured for Spinco.
2. **Pricing:** Spinco shall pay to GGP a Service Charge for each Service equal to the sum of (A) the product of (i) the Cost Multiplier multiplied by (ii) the applicable Service Resource Cost plus (B) the amount of any Out-of-Pocket Expenses incurred with respect to such Service.
3. **Duration of Services:** Any individual Service in this Section I shall terminate upon the earliest to occur of (a) September 30, 2012, (b) five (5) days following written notice of termination of such Services by Spinco to GGP and (c) the applicable termination date pursuant to Article IX of the Agreement. GGP agrees to use appropriate and reasonable efforts, as mutually agreed upon by the parties and at Spinco's cost, to ensure that

any terminated Service is integrated into Spinco’s broader business processes.

4. **Additional Terms:** The Services provided in this Section I shall be subject to the following additional terms:
  - a. Service Targets

Service Targets				
Service	Availability	Support Coverage	Dependencies	Service Level Objective
Custom Application Maintenance	Normal Business Hours	Requests captured in Service desk and prioritized by IT Liaisons		Critical requests (bug fixes) prioritized within 3 days, High within 14 days
Project Management	Normal Business Hours	Project Manager available within two weeks of project approval by IT Steering Committee	Approved budget for project	100% availability within two weeks
Process Engineering	Normal Business Hours	Process engineering resource available per the requirements of the project plan		100% availability when needed
Technical Architecture	Normal Business Hours	Architecture resources available per the approved project plan		100% availability when needed
Application Development	Normal Business Hours	Development resources available per the approved project plan		100% availability when needed

5. ***Service Managers:*** All communications related to the delivery of the Services shall be coordinated through the respective Service Managers of GGP and Spinco. The initial Service Managers of GGP and Spinco shall be as set forth on the attachment hereto.

**J. Application Migration Services**

1. **Services:**
  - a. As requested by Spinco, Personnel shall assist Spinco in the migration from its legacy GGP applications to a new set of applications appropriate for a company of Spinco's scope, scale and mission. Migration assistance shall include, but not be limited to:
    - (i) Extraction of data from GGP standard systems in a format suitable for conversion to the new application suite.
    - (ii) Provision of source code and documentation for interfaces to applications which shall not be replaced by the suite, but shall still need to be integrated with the suite, e.g., CART.
    - (iii) Subject matter expert engagements to assist with requirement definition and creation of test plans. Such assistance shall be limited to expertise not available through other sources including end users and systems providers.
  - b. Personnel shall, on a minimum of 2 weeks notice, free up resources in order to respond in a timely fashion to a migration timeline to be created and published by Spinco and agreed upon by the Service Managers which shall include the resources required and the timeframe of the requirement for each resource.
2. **Pricing:** Spinco shall pay to GGP a Service Charge for each Service equal to the sum of (A) the product of (i) the Cost Multiplier multiplied by (ii) the applicable Service Resource Cost plus (B) the amount of any Out-of-Pocket Expenses incurred with respect to such Service.
3. **Duration of Services:** Any individual Service in this Section J shall terminate upon the earliest to occur of (a) September 30, 2012, (b) five (5) days following written notice of termination of such Services by Spinco to GGP and (c) the applicable termination date pursuant to Article IX of the Agreement. GGP agrees to use appropriate and reasonable efforts, as mutually agreed upon by the parties and at Spinco's cost, to ensure that any terminated Service is integrated into Spinco's broader business processes.
4. **Additional Terms:** The Services provided in this Section J shall be subject to the following additional terms:
  - a. Service Targets

Service Targets				
Service	Availability	Support Coverage	Dependencies	Service Level Objective
Application Migration	Normal Business Hours	Required resources will make themselves available for scheduled tasks	Published timeline with resources and timing	100% of resources are available when required per the published timeline

5. **Service Managers:** All communications related to the delivery of the Services shall be coordinated through the respective Service Managers of GGP and Spinco. The initial Service Managers of GGP and Spinco shall be as set forth on the attachment hereto.



**K. Data Center Services**

1. **Services:**
  - a. Operation and maintenance of the Spinco server and data center environment. All systems and servers shall be monitored in accordance with GGP's practices as of the Plan Effective Date.
  - b. Perform routine functions such as backups, restores, preventive maintenance, disk management, capacity and performance management on all servers supporting Spinco as requested by Spinco and in accordance with GGP's practices as of the Plan Effective Date.
  - c. Provide data archive, backup and data restoration for the servers in the main data center as well as for remote sites. The data shall be rotated off-site as required by the Disaster Recovery plan and in accordance with the GGP data backup policy.
  - d. Oversee the change management process, including testing and coordination to ensure that changes do not disrupt the operational environment in accordance with GGP's practices as of the Plan Effective Date.
  - e. Track all information technology assets of the company and plan for replacement, obsolescence, and the full lifecycle of asset management from acquisition to disposal in accordance with GGP's practices as of the Plan Effective Date. As required, the asset information and disposition shall be coordinated with the accounting department so that all assets valuations, amortization and write offs are properly reflected in the financial statements.
  - f. Provide vendor management services for any third party service providers at the request of Spinco.
2. **Pricing:** Spinco shall pay to GGP a Service Charge for each Service equal to the sum of (A) the product of (i) the Cost Multiplier multiplied by (ii) the applicable Service Resource Cost plus (B) the amount of any Out-of-Pocket Expenses incurred with respect to such Service.
3. **Duration of Services:** Any individual Service in this Section K shall terminate upon the earliest to occur of (a) September 30, 2011, (b) five (5) days following written notice of termination of such Services by Spinco to GGP and (c) the applicable termination date pursuant to Article IX of the Agreement. GGP agrees to use appropriate and reasonable efforts, as mutually agreed upon by the parties and at Spinco's cost, to ensure that

any terminated Service is integrated into Spinco’s broader business processes.

4. **Additional Terms:** The Services provided in this Section K shall be subject to the following additional terms:
  - a. Service Targets

Service Targets				
Service	Availability	Support Coverage	Dependencies	Service Level Objective
Troubleshooting and Break / Fix of servers	24 X 7	Issues entered and tracked in Service desk. Resources on-call for critical issues.		Covered standard Service desk severity matrix
Change Testing	Normal Business Hours	All changes will be tested and approved before going into production		100% of changes are tested and approved before going into production
Change Scheduling	Off Hours	All changes will go in at a time that will not impact end users		100% of Changes made during off hours during pre-approved outage window.
Data Backup	24 x 7	Available as needed around the clock	Need a data backup policy.	All systems backed up according to policy.
Asset Tracking	Normal Business Hours	Keep track in database of all IT assets. Assets can be found when required.	Asset Tracking software must be installed and functional.	100% of assets in the hands of employees can be found at will.

5. ***Service Managers:*** All communications related to the delivery of the Services shall be coordinated through the respective Service Managers of GGP and Spinco. The initial Service Managers of GGP and Spinco shall be as set forth on the attachment hereto.

**L. Microsoft Dynamics CRM Setup for DealMaker/LicenseMaker Replacement**

1. **Services:**
  - a. Implement the new CRM tools designed to replace DealMaker and LicenseMaker, including:
    - (i) Technical configuration as required in the Spinco Cloud Computing domain;
    - (ii) Set up of required user accounts and access rights;
    - (iii) Migration of application data from LicenseMaker and DealMaker including all history;
    - (iv) Configuration of workflows equivalent to those existing within the current LicenseMaker and DealMaker tools;
    - (v) Training of the users of the system;
    - (vi) Required integrations with Lease Assembly and JD Edwards; and
    - (vii) Project management of the overall implementation
2. **Pricing:** GGP shall provide the Services in this Section L at no cost to Spinco.
3. **Duration of Services:** Any individual Service in this Section L shall terminate upon the earliest to occur of (a) the date that the Services in this Section L have been fully completed (as mutually agreed upon by the parties), (b) five (5) days following written notice of termination of such Services by Spinco to GGP and (c) the applicable termination date pursuant to Article IX of the Agreement. GGP agrees to use appropriate and reasonable efforts, as mutually agreed upon by the parties and at Spinco's cost, to ensure that any terminated Service is integrated into Spinco's broader business processes.
4. **Additional Terms:** The Services provided in this Section L shall be subject to the following additional terms:

a. Service Targets

Service Targets				
Service	Availability	Support Coverage	Dependencies	Service Level Objective
Application Migration	Normal Business Hours	Required resources will make themselves available for scheduled tasks	Published timeline with resources and timing	100% of resources are available when required per the published timeline

5. **Service Managers:** All communications related to the delivery of the Services shall be coordinated through the respective Service Managers of GGP and Spinco. The initial Service Managers of GGP and Spinco shall be as set forth on the attachment hereto.

**M. Access to Historical Information Housed on GGP Systems**

1. **Services:**
  - a. Provide support and access for Spinco employees to historical information stored on GGP systems as required to support Spinco business processes. These processes include litigation support, responses to inquiries by taxing authorities and other ad hoc requests. The systems covered under this schedule consist of all applications currently running on the AS/400. These include JD Edwards World, Docusphere / AP Imaging, Showcase Strategy, and Worldvision.
2. **Pricing:** Spinco shall pay to GGP a Service Charge for each Service equal to the sum of (A) the product of (i) the Cost Multiplier multiplied by (ii) the applicable Service Resource Cost plus (B) the amount of any Out-of-Pocket Expenses incurred with respect to such Service.
3. **Duration of Services:** Any individual Service in this Section M shall terminate upon the earliest to occur of (a) September 30, 2010, (b) five (5) days following written notice of termination of such Services by Spinco to GGP and (c) the applicable termination date pursuant to Article IX of the Agreement. GGP agrees to use appropriate and reasonable efforts, as mutually agreed upon by the parties and at Spinco's cost, to ensure that any terminated Service is integrated into Spinco's broader business processes.
4. **Service Managers:** All communications related to the delivery of the Services shall be coordinated through the respective Service Managers of GGP and Spinco. The initial Service Managers of GGP and Spinco shall be as set forth on the attachment hereto.

**SCHEDULE A-11**

**PUBLIC REPORTING, INTERNAL AUDIT, SARBANES-OXLEY &  
DISCLOSURE/AUDIT COMMITTEES**

**A. Public Reporting**

1. *Services:*

- a. Provide assistance in (i) preparing required SEC documents on behalf of Spinco on a regular basis in accordance with current practices of GGP at the Plan Effective Date and (ii) complying with applicable SEC reporting requirements. Provide assistance in distributing for review and approval Form 10-Q and Form 10-K drafts to internal Spinco management, the external auditors of Spinco and the Disclosure Committee and Audit Committee of Spinco in accordance with current processes in place at GGP. Other external reports will be prepared, as requested by Spinco, to meet reporting requirements of financial institutions, rating agencies, insurance regulators and other court or government entities.
- b. On behalf of Spinco, manage annual audit and quarterly reviews with external auditors of Spinco, in accordance with current practices of GGP at the Plan Effective Date, including the performance of quarterly and annual review and analyses processes, the preparation and submission of all “Prepared by Client” schedules, reconciliations, assistance in preparation of Legal Letters and debt and equity roll-forwards
- c. Perform quarterly and monthly consolidation processes of actual results and allocation of non-controlling interests on behalf of Spinco, including preparation of Balance Sheet consolidation entries and Income Statement NOI and EBITDA calculations, and perform consolidation processes of quarterly forecast and budget information in accordance with current practices of GGP at the Plan Effective Date.
- d. On behalf of Spinco, prepare annual and quarterly consolidated balance sheets, consolidated statements of income and comprehensive income, consolidated statements of equity and consolidated statements of cash flows for inclusion in Spinco’s SEC quarterly and annual filings, in accordance with current practices of GGP at the Plan Effective Date.

- e. Prepare annual and quarterly support for notes to consolidated financial statements, earnings release schedules, fluctuation analyses, operational analytics, segment reporting analysis, pro rata performance metrics and other supporting schedules needed to prepare Spinco's MD&A and assist in the quarterly QBR process, on behalf of Spinco, in accordance with current practices of GGP at the Plan Effective Date.
- f. On behalf of Spinco, perform all quarterly management review processes, including tax provision calculations, litigation and other contingent liabilities reserve analysis, review properties for impairment quarterly and annually in accordance with current practices of GGP at the Plan Effective Date and provide this impairment analysis to the external auditors of Spinco.
- g. At the request of Spinco, perform technical accounting issue research and prepare relevant documentation for Spinco in accordance with current practices of GGP at the Plan Effective Date and prepare and distribute related memos to Spinco management and to the external auditors of Spinco.
- h. On behalf of Spinco, prepare monthly consolidated balance sheets and consolidated statements of income for internal Spinco management review, in accordance with current practices of GGP at the Plan Effective Date, including submission of related variance analyses.
- i. On behalf of Spinco, coordinate and facilitate the compilation of quarterly, annual and other periodic SEC Filings at Spinco's SEC filing printer and update and revise such filings for final filing with the SEC and XBRL.
- j. Support and facilitate training of and knowledge transfer to newly hired Spinco full-time Public Reporting staff and part or full-time contractors and, upon request by Spinco, assist with the hiring of such permanent or contracted Spinco staff.
- k. In addition to the normal recurring Services described in Items a. through i., Spinco may from time to time require Services related to support for Spinco's evaluation and determination of its accounting treatment for non-recurring or unusual items and provide information to Spinco and Spinco's executive officers. Spinco and Spinco's executive officers, including without limitation, its principal accounting officer, shall retain all decision making responsibility for accounting policy and related decisions.



For greater certainty, it is understood and agreed that GGP's role is one of support and not policy making. Services shall include:

- Asset or property disposition
  - Changes in business plans or holding periods that result in discontinued operations and/or impairment treatment for assets or properties
  - Significant re-financings
  - Tax or ownership restructurings
  - New joint venture or other participation arrangements entered into or significantly modified
  - New activities or lines of business
  - Changes in applicable GAAP, SEC rules, SEC or other third party reporting requirements or Spinco accounting policies
  - SEC or other regulatory body inquiries or comment letters
  - Additional SEC registration statements or other required filings
  - Deficiencies or material weaknesses in Spinco internal controls
  - External auditor changes or disagreements
  - Significant litigation or other adverse events or contingencies
2. **Pricing:** Spinco shall pay to GGP a Service Charge for each Service equal to the sum of (A) the product of (i) the Cost Multiplier multiplied by (ii) the applicable Service Resource Cost plus (B) the amount of any Out-of-Pocket Expenses incurred with respect to such Service.
3. **Duration of Services:** Any individual Service in this Section A shall terminate upon the earliest to occur of (a) the date all legacy claims related to Spinco have been settled or otherwise fully resolved, (b) five (5) days following written notice of termination of such Services by Spinco to GGP and (c) the applicable termination date pursuant to Article IX of the

Agreement. GGP agrees to use appropriate and reasonable efforts, as mutually agreed upon by the parties and at Spinco's cost, to ensure that any terminated Service is integrated into Spinco's broader business processes.

4. ***Additional Terms:*** All external reporting related Services shall be completed and provided to Spinco as soon as reasonably practical prior to applicable SEC reporting deadlines. Spinco will incorporate its full time Public Reporting management into all phases of the Public Reporting process, in order to facilitate the knowledge transfer process and to meet reporting deadlines.
5. ***Service Managers:*** All communications related to the delivery of the Services shall be coordinated through the respective Service Managers of GGP and Spinco. The initial Service Managers of GGP and Spinco shall be as set forth on the attachment hereto.

**B. Internal Audit and Sarbanes-Oxley**

1. ***Services:***
  - a. On behalf of Spinco, assist in the development of Spinco's initial internal controls assessment, identification of existing controls, revised controls and new Emergence Accounting and other controls & perform required testing to support Spinco's 2010 year-end Section 302 & 906 certifications by its CEO & CFO, in accordance with current practices of GGP at the Plan Effective Date. This should also include development and distribution of the SOX 302 questionnaire and assessment summaries.
  - b. Deliver copies to Spinco of existing Sarbanes-Oxley controls documentation related to Spinco's properties and businesses for use in determining carry-over Sarbanes-Oxley and internal controls and entity level and other controls requiring revisions.
  - c. On behalf of Spinco, assist in the development and implementation of Spinco's 2011 Sarbanes-Oxley compliance process, including development of Spinco's RCM process and various SOX 404 certifications, assessments and memos and interaction activities with Spinco's external auditors and Disclosure & Audit Committees, in accordance with current practices of GGP at the Plan Effective Date.
  - d. If requested by Spinco's external auditors, on behalf of Spinco, assist in internal audit support related to specific transactions and

- e. Support and facilitate training of and knowledge transfer to newly hired Spinco full-time Internal Audit/SOX staff and part or full-time contractors and, upon request by Spinco, assist with the hiring of such permanent or contracted Spinco staff.
2. **Pricing:** Spinco shall pay to GGP a Service Charge for each Service equal to the sum of (A) the product of (i) the Cost Multiplier multiplied by (ii) the applicable Service Resource Cost plus (B) the amount of any Out-of-Pocket Expenses incurred with respect to such Service.
3. **Duration of Services:** Any individual Service in this Section B shall terminate upon the earliest to occur of (a) the date all legacy claims related to Spinco have been settled or otherwise fully resolved, (b) five (5) days following written notice of termination of such Services by Spinco to GGP and (c) the applicable termination date pursuant to Article IX of the Agreement. GGP agrees to use appropriate and reasonable efforts, as mutually agreed upon by the parties and at Spinco's cost, to ensure that any terminated Service is integrated into Spinco's broader business processes.
4. **Service Managers:** All communications related to the delivery of the Services shall be coordinated through the respective Service Managers of GGP and Spinco. The initial Service Managers of GGP and Spinco shall be as set forth on the attachment hereto.

**C. Disclosure Committee and Audit Committee**

1. **Services:**
  - a. Assist Spinco in the establishment of the Spinco Disclosure Committee and related processes and implementation of completion and reporting protocols, in accordance with current practices of GGP at the Plan Effective Date.
  - b. Assist Spinco in the establishment of the Spinco Audit Committee and related processes, in accordance with current practices of GGP at the Plan Effective Date.
  - c. Assist Spinco with the implementation of Spinco Disclosure Committee scheduling and reporting protocols, in accordance with current practices of GGP at the Plan Effective Date.

- d. Assist Spinco with the implementation of Audit Committee protocol and timeline coordination and interaction with the external auditors of Spinco, based on and in accordance with current practices of GGP at the Plan Effective Date.
2. **Pricing:** Spinco shall pay to GGP a Service Charge for each Service equal to the sum of (A) the product of (i) the Cost Multiplier multiplied by (ii) the applicable Service Resource Cost plus (B) the amount of any Out-of-Pocket Expenses incurred with respect to such Service.
3. **Duration of Services:** Any individual Service in this Section C shall terminate upon the earliest to occur of (a) the date all legacy claims related to Spinco have been settled or otherwise fully resolved, (b) five (5) days following written notice of termination of such Services by Spinco to GGP and (c) the applicable termination date pursuant to Article IX of the Agreement. GGP agrees to use appropriate and reasonable efforts, as mutually agreed upon by the parties and at Spinco's cost, to ensure that any terminated Service is integrated into Spinco's broader business processes.
4. **Additional Terms:** These Services shall result in the successful completion of the Disclosure Committee and Audit Committee Process for Year-End 2010 and First Quarter 2011 and shall be completed and provided prior to all applicable deadlines.
5. **Service Managers:** All communications related to the delivery of the Services shall be coordinated through the respective Service Managers of GGP and Spinco. The initial Service Managers of GGP and Spinco shall be as set forth on the attachment hereto.

**SCHEDULE A-12**

**TREASURY / CAPITAL MARKETS**

**A. General Legal Support and Review**

1. *Services:*

- a. Maintenance and management of overall cash management structure on behalf of Spinco and in accordance with GGP's practices as of the Plan Effective Date.
- b. Management of various bank account services on behalf of Spinco and in accordance with GGP's practices as of the Plan Effective Date, including the following: corporate and operating accounts, lockbox accounts, controlled disbursement accounts, local depository accounts, lender required accounts, and gift cards/other.
- c. Management of various files and processes on behalf of Spinco and in accordance with GGP's practices as of the Plan Effective Date, including the following: lockbox autocash files, lockbox images, AAI's in JDE, check printing, positive pay files, ACH file transfers, and bank account reporting / BAI file set-up.
- d. Management of bank transactions, including wires and ACH's on behalf of Spinco and in accordance with GGP's practices as of the Plan Effective Date.
- e. Management of the check processing, positive pay, check research and stop payments on behalf of Spinco and in accordance with GGP's practices as of the Plan Effective Date.
- f. Management of any debt payments and/or short term revolver receipts and payments (as applicable) on behalf of Spinco and in accordance with GGP's practices as of the Plan Effective Date.
- g. Management of Spinco cash positioning and short-term investments in accordance with GGP's practices as of the Plan Effective Date.
- h. Development of daily internal Spinco bank statements (e.g., treasury docs) for use by Spinco mall accountants in accordance with GGP's practices as of the Plan Effective Date.
- i. As requested by Spinco, monthly, quarterly, annual reporting in accordance with credit agreements (as applicable) and in accordance with GGP's practices as of the Plan Effective Date.

- j. As requested by Spinco, monthly, quarterly, annual compliance testing and reporting in accordance with the credit agreements (as applicable) and in accordance with GGP's practices as of the Plan Effective Date.
  - k. As requested by Spinco, management of capital market reports, including guaranty, indemnity and master lease tracking, DSCR and unencumbered asset reports (if applicable) in accordance with GGP's practices as of the Plan Effective Date.
  - l. As requested by Spinco, loan administration, including management of lender requests, negotiation and facilitation of lender consents, escrow and reserve tracking (as applicable) in accordance with GGP's practices as of the Plan Effective Date.
  - m. As requested by Spinco, development of annual debt service budget in accordance with GGP's practices as of the Plan Effective Date.
  - n. As requested by Spinco, monthly interest forecasting, including property specific and corporate interest forecasts (as applicable) in accordance with GGP's practices as of the Plan Effective Date.
  - o. As requested by Spinco, maintain accuracy of debt model in which actual and forecasted debt information is contained in accordance with GGP's practices as of the Plan Effective Date.
  - p. As requested by Spinco, maintenance and management of letter of credit facilities (as applicable) in accordance with GGP's practices as of the Plan Effective Date.
2. **Pricing:** Spinco shall pay to GGP a Service Charge for each Service equal to the sum of (A) the product of (i) the Cost Multiplier multiplied by (ii) the applicable Service Resource Cost plus (B) the amount of any Out-of-Pocket Expenses incurred with respect to such Service.
  3. **Duration of Services:** Any individual Service in this Section A shall terminate upon the earliest to occur of (a) 12 months following the Plan Plan Effective Date, (b) five (5) days following written notice of termination of such Services by Spinco to GGP and (c) the applicable termination date pursuant to Article IX of the Agreement. GGP agrees to use appropriate and reasonable efforts, as mutually agreed upon by the parties and at Spinco's cost, to ensure that any terminated Service is integrated into Spinco's broader business processes.
  4. **Service Managers:** All communications related to the delivery of the Services shall be coordinated through the respective Service Managers of

GGP and Spinco. The initial Service Managers of GGP and Spinco shall be as set forth on the attachment hereto.

# **EXHIBIT 16**



**DEVELOPMENT AGREEMENT**

between

**KAPIOLANI RETAIL, LLC,**

as Owner

and

**KAPIOLANI RESIDENTIAL, LLC,**

as Developer

Dated as of \_\_\_\_\_, 2010

Respecting

1555 Kapiolani Condominium  
1555 Kapiolani Boulevard  
Honolulu, Hawaii

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**EXHIBITS**

**Exhibit A - Description of Land**

**Exhibit B - Description of Ala Moana Shopping Center**

**Exhibit C - Condominium Map**

**Exhibit D - Scope of Work for Plaza Area and Public Areas**

**Exhibit E - Description of Lot 73**

**Exhibit F - Form of Sewer Easement**

**Exhibit G - Form of Memorandum of Development Agreement**

**Exhibit H - Insurance Requirements**

**Exhibit I - Allocations**

## DEVELOPMENT AGREEMENT

THIS DEVELOPMENT AGREEMENT (this “Agreement”) is entered into and to be effective as of \_\_\_\_\_, 2010 (the “Effective Date”), by and between KAPIOLANI RETAIL, LLC, a Delaware limited liability company (“Owner”), and KAPIOLANI RESIDENTIAL, LLC, a Delaware limited liability company (“Developer”).

### R E C I T A L S :

A. Owner owns a parcel of land in Honolulu, Hawaii, described in Exhibit A attached hereto (the “Land”).

B. Owner has constructed or caused to be constructed on the Land a six-level retail/parking structure (the “Retail/Parking Structure”), a single story loading dock building, and certain other improvements.

C. By a Declaration of Condominium Property Regime of 1555 Kapiolani Condominium (the “Declaration”) dated \_\_\_\_\_, \_\_\_\_\_, recorded on \_\_\_\_\_, \_\_\_\_\_, as Land Court Document No. \_\_\_\_\_ of Official Records, Owner has submitted the Land and the improvements thereon to a condominium property regime under the laws of the State of Hawaii.

D. The Declaration divides the Land and the improvements thereon into (i) certain Commercial Units (as defined in the Declaration) and an appurtenant interest in certain Common Elements (as defined in the Declaration), and (ii) certain Residential Units (as defined in the Declaration) and an appurtenant interest in certain Common Elements. Owner owns the Commercial Units and their appurtenant interest in Common Elements (the “Commercial Project”), and has conveyed the Residential Units and their appurtenant interest in Common Elements to the Developer by a deed dated \_\_\_\_\_, \_\_\_\_\_, recorded on \_\_\_\_\_, \_\_\_\_\_, as Land Court Document No. \_\_\_\_\_ of Official Records (the “Conveyance Date”).

E. The Declaration grants the Developer the right to improve the Residential Units and certain Common Elements by constructing a residential tower over the Commercial Project (the “Tower Improvements”) and certain other associated improvements including, without limitation, the Plaza Area (hereinafter defined) (the “Residential Project”, and, together with the Commercial Project, the “Condominium Project”) pursuant to the terms of the Declaration and this Agreement.

F. The Owner and the Developer desire to enter into this Agreement (the Development Agreement contemplated by the Declaration) in order to set forth certain terms and conditions governing the Developer’s development and construction of the Residential Project.

**NOW, THEREFORE**, in consideration of Ten Dollars (\$10), the foregoing premises, the agreements hereinafter set forth and other good and valuable consideration, the receipt and sufficiency of which are acknowledged by the parties hereto, Owner and Developer hereby agree as follows:

ARTICLE 1.

**DEFINITIONS**

As used in this Agreement, the following capitalized terms shall have the meanings indicated hereafter unless a different meaning is specifically provided or unless the context otherwise requires a different meaning:

1.1 “Agreement” shall mean this Development Agreement, as amended from time to time.

1.2 “Air Rights Construction Activity” is defined in Section 2.5.

1.3 “Ala Moana Shopping Center” shall mean the retail shopping center located near the Condominium Project and connected thereto by vehicular bridges, known as the Ala Moana Shopping Center and more particularly described in Exhibit B attached hereto.

1.4 “Applicable Law” shall mean any law, statute, ordinance, rule, regulation, order or determination of any Governmental Authority, including, without limitation, all applicable zoning ordinances, building codes, and Environmental Laws, as the same may be amended from time to time.

1.5 “Approved Plans” shall mean the plans dated October 10, 2008 prepared by Callison, which plans have been fully approved by Owner and the Lot 73 Owner, but not by the Lot 73 Occupant.

1.6 “Assessment Date” is defined in Article 10.

1.7 “Association” is defined in the Declaration.

1.8 “Bylaws” shall mean the Bylaws of the Association of Unit Owners of 1555 Kapiolani Condominium dated \_\_\_\_\_, \_\_\_\_\_, recorded on \_\_\_\_\_, \_\_\_\_\_, as Land Court Document No. \_\_\_\_\_ of Official Records.

1.9 “Commercial Project” is defined in the Recitals to this Agreement.

1.10 “Commercial Units” is defined in the Recitals to this Agreement.

1.11 “Common Elements” is defined in the Recitals to this Agreement.

1.12 “Common Expenses” is defined in the Declaration.

1.13 “Condominium Map” is defined in Section 2.4.

1.14 “Condominium Project” is defined in the Recitals to this Agreement.

1.15 “Construction Contract” shall mean any agreement entered into between the Developer and the Contractor pursuant to which products and/or services will be provided in connection with the construction and/or completion of the Residential Project.

1.16 “Construction Plans and Specifications” is defined in Section 2.2.

1.17 “Construction Schedule” shall mean a time line schedule delineating all material critical path phases of the Residential Project and all material construction activities to be performed in connection with the construction of the Residential Project, which schedule shall set forth a targeted completion date of each such material critical path phase or construction activity.

1.18 “Contractor” is defined in Section 3.7.

1.19 “Conveyance Date” is defined in the Recitals to this Agreement.

1.20 “Declaration” is defined in the Recitals to this Agreement.

1.21 “Developer” shall mean Kapiolani Residential, LLC, a Delaware limited liability company, and its successors and permitted assigns.

1.22 “Effective Date” is defined in the Preamble to this Agreement.

1.23 “Environmental Laws” shall mean any applicable laws pertaining to health or the environment, including, without limitation, the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended by the Superfund Amendments and Reauthorization Act of 1986, 42 U.S.C. § 9601, et. seq.; the Hazardous Materials Transportation Act, 49 U.S.C. § 1801, et. seq.; the Toxic Substance Control Act, 15 U.S.C. § 2601, et. seq.; the Resource Conservation and Recovery Act of 1976, as amended by the Used Oil Recycling Act of 1980, 42 U.S.C. § 9601 et. seq.; the Solid Waste Disposal Act amendments of 1980, and the Hazardous and Solid Waste Amendments of 1984; the Clean Water Act, 33 U.S.C. § 1251, et. seq.; and the Clean Air Act, 42 U.S.C. § 7401, et. seq., as any of the foregoing may be amended from time to time.

1.24 “First Class Development Standard” is defined in Section 2.4.

1.25 “Force Majeure” shall mean the following: strikes, fire or other unavoidable casualties; adverse weather conditions; war; governmental regulations or controls not in existence as of the construction commencement date; terrorist acts; acts of God; unavailability of, or the inability to obtain, labor or materials; the refusal or unusual delay of the appropriate Governmental Authority to issue required permits and approvals for the Residential Project; or any other cause beyond the control of Developer with the exception of funds necessary for construction and completion of the Residential Project and for performance of Developer’s obligations under this Agreement.

1.26 “General Common Elements” is defined in the Declaration.

1.27 “Governmental Authority” shall mean any federal, state or local authority having jurisdiction over the Residential Project or the Condominium Project, and any agency, department, commission, board, bureau or instrumentality of any of them.

1.28 “Land” is defined in the Recitals to this Agreement.

1.29 “Land Records” means the real property records kept by the Bureau of Conveyances of the State of Hawaii and the Assistant Registrar of the Land Court of the State of Hawaii.

1.30 “Lien” shall mean any mortgage, deed of trust, pledge, security interest, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or other), or preference, priority, or other security agreement or preferential arrangement, charge, or encumbrance of any kind or nature whatsoever (including, without limitation, any conditional sale or other title retention agreement, any financing lease having substantially the same economic effect as any of the foregoing, and the filing of any financing statement under the Uniform Commercial Code or comparable law of any jurisdiction to evidence any of the foregoing).

1.31 “Lot 73” is defined in Section 2.5.

1.32 “Lot 73 Occupant” is defined in Section 2.5.

1.33 “Lot 73 Owner” is defined in Section 2.5.

1.34 “Managing Agent” is defined in the Declaration.

1.35 “Mechanic’s Lien” is defined in Section 3.9.

1.36 “Mortgage” shall mean a recorded mortgage, deed of trust, mortgage deed or similar instrument given to secure advances on real estate.

1.37 “Mortgagee” shall mean the party or parties to whom a money obligation is owed, the payment of which is secured by an interest in real property under the terms of a Mortgage, including, without limitation, any affiliate or participant of the Mortgagee or beneficiary under a Mortgage and any purchaser of such real property by means of a foreclosure sale under the Mortgage or transfer in lieu thereof, and any successors and assigns of such parties.

1.38 “Nordstrom” is defined in Section 2.5.

1.39 “Nordstrom Lease” shall mean that certain Lease dated as of June 15, 2005, between the Lot 73 Owner, as landlord, and Nordstrom, as tenant, as amended by First Amendment to Lease dated as of January 9, 2007.

1.40 “Owner” shall mean Kapiolani Retail, LLC, a Delaware limited liability company, and its successors and assigns.

1.41 “Person(s)” means any natural person or any corporation, partnership, limited partnership, limited liability partnership, joint venture, trust, limited liability company, or other legal entity.



1.42 “Plaza Area” shall mean that certain street-level portion of the Condominium Project designed to include drop off areas and interior spaces, designated as “Plaza Area” on sheet CPR-2 of the Condominium Map.

1.43 “Plumbing Installation” is defined in Section 2.5.

1.44 “Proximity Work” is defined in Section 3.3.

1.45 “Public Areas” is defined in Section 2.4.

1.46 “Representatives” shall mean a Person’s shareholders, directors, officers, members (in the case of a limited liability company), agents, employees and independent contractors.

1.47 “Residential Project” is defined in the Recitals to this Agreement.

1.48 “Residential Units” is defined in the Recitals to this Agreement.

1.49 “Retail/Parking Structure” is defined in the Recitals to this Agreement.

1.50 “Schematic Drawings” is defined in Section 2.1.

1.51 “Sewer Improvements” is defined in Section 3.10.

1.52 “Sewer Upgrade Easement” is defined in Section 3.10.

1.53 “Shopping Center Owner” shall mean GGP Ala Moana, LLC, a Delaware limited liability company and its successors and assigns as owner of the Ala Moana Shopping Center.

1.54 “Submission” is defined in Section 2.3.

1.55 “Substantial Completion” shall mean that (i) the construction of the Residential Project has been substantially completed in accordance with the Construction Plans and Specifications, free and clear of mechanic’s liens, the period for filing mechanic’s liens has expired, and that the Residential Units (other than finish items to be selected by the purchasers of individual units) and appurtenant Common Elements may be used for their intended purposes, (ii) all final approvals from Governmental Authorities, including, without limitation, a final Certificate of Occupancy allowing the occupancy of Residential Units on all floors, have been received and (iii) the architect for the Residential Project has certified that Substantial Completion has occurred.

1.56 “Tower Improvements” is defined in the Recitals to this Agreement.

1.57 “Unit C-1” shall mean the unit so designated on sheet CPR-2 of the Condominium Map.

1.58 “Unit C-1 Air Rights Area” is defined in Section 2.5.

## ARTICLE 2.

### PLANS AND SPECIFICATIONS; APPROVALS

2.1 Schematic Drawings. Developer shall submit to Owner for its approval a full and complete set of schematic drawings of the proposed Residential Project in sufficient detail to allow Owner to evaluate the proposed Residential Project, which shall include the following (collectively, the “Schematic Drawings”):

- (a) Site plan showing location and type of all buildings and structures, site amenities; treatment of open space areas; and location of adjacent buildings, structures, driveways, access roads, street and curb lines, and pedestrian structures;
- (b) Landscape plan showing the proposed location of plantings, including trees and shrubs;
- (c) Schematic building plans, including, without limitation, the Plaza Area and the amenities to be located on Level 7 (which level is shown on sheet CPR-9 of the Condominium Map);
- (d) Typical floor plans;
- (e) Elevations and cross-sections of the proposed improvements;
- (f) A summary chart or table showing the floor area of the proposed Residential Project, the floor area ratio and building coverage.

2.2 Construction Plans and Specifications. Following Owner’s approval of the Schematic Drawings, Developer shall submit to Owner for its approval a full and complete set of drawings and specifications for the proposed Residential Project, prepared by architects and engineers duly licensed in Hawaii, in a level of detail generally consistent with ninety-five percent (95%) complete design development drawings and ninety-five percent (95%) complete construction drawings (“Construction Plans and Specifications”). Such Construction Plans and Specifications shall be in conformity with applicable zoning and building code requirements and in substantial conformity with the Schematic Drawings as approved by Owner, and shall include the following:

- (a) Site plan showing location and type of all buildings and structures, site amenities; treatment of open space areas; and location of adjacent buildings, structures, driveways, access roads, street and curb lines, and pedestrian structures;
- (b) Front, side and back elevations showing roof lines, proposed building materials, floor to floor dimensions, building height, and building plans;
- (c) Typical sections showing, structural system and floor thickness, floor to ceiling dimensions, and relation to existing grades;
- (d) A summary chart or table showing the floor area of the proposed Residential Project, the floor area ratio, building height and building coverage;
- (e) Descriptions and samples of final building materials, including color treatments of all exterior surfaces and exterior building components;

(f) Descriptions and plans of all building systems, including mechanical, plumbing, electrical, air conditioning, exterior lighting, security, and sprinklering;

(g) Floor plans for all condominium units showing the overall square footage for each type of unit;

(h) A finish schedule for all types of condominium units, including appliances, windows, doors, plumbing fixtures, kitchen cabinets, countertops, flooring and lighting; and

(i) Descriptions of and plans (including capacity) for the Sewer Improvements.

### 2.3 Timing of Owner's Review and Approval of Developer's Submissions.

(a) Owner shall complete its review of the items identified in Section 2.1 and Section 2.2, and any other Schematic Drawings or Construction Plans and Specifications submitted for Owner's review and approval (each such item submitted to Owner, a "Submission", and, collectively, the "Submissions") within thirty (30) days after receiving each Submission from Developer.

(b) Owner's approval or disapproval of any such Submission shall be given in writing within such thirty (30) day period. If the Owner shall disapprove all or any portion of the Submission, it shall, within said thirty (30) day period, send written notice of its disapproval to the Developer, advising the Developer of the reasons for its disapproval in reasonable detail. If such notice of disapproval is not so sent within said thirty (30) day period, and the Owner thereafter fails to respond within seven (7) days after the Developer delivers written notice to the Owner that it has failed to respond within the required time, then the Submission shall be deemed to have been approved by the Owner. If any Submission is disapproved, Developer shall have a reasonable period of time from its receipt of written notice from Owner to submit amended materials. Owner shall have another fifteen (15) day period after receipt of an amended Submission to approve or disapprove the amended Submission, and the provisions of this Section 2.3 relating to approval, disapproval and submission of amended Submissions shall continue to apply until all Submissions have been approved by the Owner. If a Submission submitted by the Developer is disapproved, then the Owner agrees to reasonably cooperate with the Developer to arrive at a Submission satisfactory to both parties that is in compliance with the requirements of this Agreement including, without limitation, Section 2.4.

(c) Any material change or modification in the Schematic Drawings or the Construction Plans and Specifications, and any proposed change order during the construction process that would materially modify the Schematic Drawings or the Construction Plans and Specifications with the exception, in both cases, of interior changes that: (i) are non-structural, (ii) do not materially affect any building systems (including, without limitation, cooling, plumbing and electrical), (iii) are not visible from the exterior of the Condominium Project, and (iv) do not increase the number of Residential Units above the number specified in Section 2.4(b), shall be subject to the Owner's review and approval in accordance with the requirements of this Article 2.

2.4 Standards for Owner's Review and Approval of Developer's Submissions.

All Submissions shall be consistent with that certain condominium map filed in the Land Court as Condominium Map No. \_\_\_\_\_, a copy of which is attached hereto as Exhibit C (as the same may be amended from time to time, the "Condominium Map"). Owner's review and approval of the Developer's Submissions, and any changes thereto, shall not be unreasonably withheld (unless another standard is set forth in this Agreement), conditioned or delayed and shall be limited to the determination whether such Submissions and the Residential Project comply with the following standards and with the requirements set forth in Section 2.5:

(a) The Residential Project shall be designed and built to a development standard equal to or of higher quality than the development standard of the luxury residential condominium project known as Hokua at 1288 Ala Moana, Honolulu, Hawaii ("First Class Development Standard"). The term "First Class Development Standard" refers solely to the quality of development and maintenance of the Residential Project, as reasonably determined by the Owner, and not to the level of amenities offered in the Residential Project or the projected price range of units in the Residential Project.

(b) The Residential Project shall not exceed eighteen (18) stories of new construction above the Retail/Parking Structure containing not more than three hundred and ten (310) Residential Units. The loads and stresses placed upon the Retail/Parking Structure by the Tower Improvements shall not impair (beyond that contemplated by the Approved Plans) or endanger the structural integrity and stability of the Retail/Parking Structure or the safety of the occupants and customers of the Commercial Project and members of the public using the Condominium Project and its outdoor areas, as certified to Owner by Developer's structural engineer and/or by an independent structural engineer engaged by Owner if the Owner elects to engage the same.

(c) As part of the Residential Project, the Developer will be responsible for the construction of street-level improvements in accordance with the general scope of work attached hereto as Exhibit D. The Developer acknowledges that the outdoor portion of the Plaza Area and other street-level outdoor elements of the Residential Project referred to in Exhibit D (the "Public Areas") are visible to, and in some cases utilized by, the general public, including customers of the Commercial Units, Lot 73 and the Ala Moana Shopping Center. Accordingly, the Developer agrees that the Schematic Drawings and the Construction Plans and Specifications for the outdoor portion of the Plaza Area and other Public Areas, including aesthetic and decorative elements, and the outdoor portion of the Plaza Area and the other Public Areas as constructed, maintained, repaired and replaced, shall be consistent with industry standards for first-class regional shopping centers and shall be visually harmonious with surrounding structures including the existing improvements on Lot 73, as reasonably determined by the Owner.

Notwithstanding anything contained in this Agreement or the Declaration to the contrary, so long as the Schematic Drawings and Construction Plans and Specifications are consistent in all material respects with the Approved Plans, such Schematic Drawings and Construction Plans and Specifications shall be approved by Owner and the Lot 73 Owner. This approval shall not negate any additional approvals required from Owner and the Lot 73 Owner pursuant to other provisions of this Agreement (including, without limitation, approval of color treatment and

exterior materials as required by Section 2.5(a) to the extent not shown on the Approved Plans). In addition, all approvals required from the Lot 73 Occupant as provided in Section 2.5 and elsewhere in this Agreement shall be obtained.

2.5 Additional Approval Requirements. Developer acknowledges that the Land is adjacent to a parcel of land known as "Lot 73", more particularly described in Exhibit E attached hereto, and that the improvements on the Land are connected by a pedestrian bridge to the improvements on Lot 73. Lot 73 is owned by GGP Kapiolani Development L.L.C. (together with its successors and assigns as owner of Lot 73, the "Lot 73 Owner"), and leased to Nordstrom, Inc. ("Nordstrom", and, together with its successors and assigns and any other Person or Persons with a leasehold interest in all or substantially all of Lot 73, the "Lot 73 Occupant"). Nordstrom has constructed a retail department store on Lot 73, as leasehold improvements. The approval rights of the Owner (which shall be in addition to those set forth in the preceding provisions of this Article 2 and elsewhere in this Agreement), the Lot 73 Owner and the Lot 73 Occupant with respect to initial construction of the Residential Project, and restrictions which would require a waiver by the Owner, the Lot 73 Owner and the Lot 73 Occupant, and other requirements related to construction of the Residential Project, are as follows:

(a) The exterior design, color treatment and exterior materials used in the construction of the Residential Project shall be subject to the prior written approval of the Owner, the Lot 73 Owner and the Lot 73 Occupant, such approval not to be unreasonably withheld, conditioned or delayed. No construction of any Tower Improvements over Unit C-1 (the "Unit C-1 Air Rights Area") ("Air Rights Construction Activity") may be made without the express written approval of the Owner, the Lot 73 Owner and the Lot 73 Occupant. As more fully described in Section 2.5(d) below, Nordstrom has sole and absolute discretion over the Air Rights Construction Activity. If Nordstrom or any other Lot 73 Occupant consents to the Air Rights Construction Activity, Owner and the Lot 73 Owner shall not unreasonably withhold, delay or condition their consent to the Air Rights Construction Activity. In addition, no plumbing, drainage lines or similar facilities shall be installed or placed over the Unit C-1 Air Rights Area or within Unit C-1 (a "Plumbing Installation"). Prior to commencing construction of the Residential Project, including, without limitation, any Plumbing Installation or any Air Rights Construction Activity, the party seeking to do so shall provide the Owner, the Lot 73 Owner and the Lot 73 Occupant with the Submissions described in Sections 2.1 and 2.2 as well as such additional information reasonably deemed necessary by the Owner and the Lot 73 Owner and deemed necessary by the Lot 73 Occupant. The Owner, Lot 73 Owner and Lot 73 Occupant may consider (but shall not be restricted to consideration of) visual impact, harmony of external design with surrounding structures including, without limitation, the improvements on Lot 73 and whether such Residential Project, Plumbing Installation or Air Rights Construction Activity would interfere with the use or operation of any business on Lot 73 or any rights granted by easement for the benefit of the Lot 73 Owner, its tenants and their respective employees, licensees or invitees to use any parking facilities within the commercial portions of the Retail/Parking Structure and those portions of the General Common Elements intended to provide ingress to and egress from such parking areas and Unit C-1.

(b) Structural support for improvements to be constructed above Unit C-1 must be provided in locations that do not interfere with the use of Unit C-1.

(c) All of the work must be scheduled in advance with the approval of the Owner, the Lot 73 Owner and the Lot 73 Occupant in order to minimize interference with business in the Commercial Project, Lot 73 and the Ala Moana Shopping Center. Neither the Owner, the Lot 73 Owner nor any of their respective Representatives, shall bear any responsibility for any actions of the Lot 73 Occupant in its exercise or non-exercise of the Lot 73 Occupant's rights under this Section. Developer shall be responsible at its sole cost and expense for obtaining all necessary consents and approvals described herein from the Lot 73 Owner and from Nordstrom or other Lot 73 Occupant.

(d) Under the terms of the Nordstrom Lease, Nordstrom's approval of plans for the Residential Project is subject to a reasonableness standard. The standard for approval of construction timing and staging and Air Rights Construction Activity is in Nordstrom's sole and absolute discretion. Waivers of prohibition of Plumbing Installations over the Unit C-1 Air Rights Area shall be in Nordstrom's sole and absolute discretion. The same standards shall apply to the Owner and the Lot 73 Owner, but the Owner and Lot 73 Owner shall not unreasonably withhold, delay or condition their consent if Nordstrom or any other Lot 73 Occupant has provided such approval or waiver.

2.6 Governmental Permits and Approvals. Developer shall be responsible for obtaining at its sole cost and expense all building permits and other permits and approvals from Governmental Authorities (including, without limitation, the satisfaction of all conditions thereto) required to construct the Residential Project (including the Sewer Improvements) in accordance with Developer's Submissions as approved by Owner.

2.7 Owner's Cooperation.

(a) Owner shall use commercially reasonable efforts to cooperate with Developer in endeavoring to obtain consents, approvals and waivers required pursuant to this Agreement or reasonably determined by Developer to be reasonably necessary, from the Lot 73 Owner and the Lot 73 Occupant, provided that Owner shall not be required to agree to any concessions regarding the Nordstrom Lease or Owner's interest in the Commercial Project and that Owner shall have the right to conduct, or participate in all discussions and negotiations among Developer, the Lot 73 Owner, and Nordstrom or other Lot 73 Occupant, and provided further that Developer shall reimburse Owner for all reasonable, third party out-of-pocket expenses incurred by Owner in seeking such consents and approvals from Nordstrom or other Lot 73 Occupant. Developer shall provide the Owner with copies of all communications to and from Developer and the Lot 73 Owner and/or Nordstrom in connection with the foregoing.

(b) To the extent that Owner's consent or approval is needed in connection with any building permits or other approvals from any Governmental Authority required pursuant to this Agreement or reasonably determined by Developer to be reasonably necessary, Owner agrees, to the extent commercially reasonable, to cooperate with Developer in providing the same provided that Owner incurs no liability and incurs no other obligation (monetary or otherwise) in connection therewith. In addition, Developer agrees to fully indemnify, defend and hold Owner harmless should Owner incur any such liability or obligation as the result of such cooperation.

2.8 Effect of Review. In reviewing Submissions and acting upon any request for an approval, the Owner, the Lot 73 Owner and Lot 73 Occupant shall be acting in their own interests and shall owe no duty to any other Person, including, without limitation, the Association or any Unit Owner; provided, however, that the foregoing does not excuse compliance with the obligations of Owner to Residential Developer expressly set forth elsewhere in this Agreement. Any consent, approval or waiver by the Owner (whether under this subsection or elsewhere in this Agreement), the Lot 73 Owner and the Lot 73 Occupant shall in no way be construed as to pass judgment on the correctness of the location, structural, electrical or mechanical design, suitability of water flow or drainage, location of utilities, or other qualities of the item being reviewed. Neither the Owner, the Lot 73 Owner and the Lot 73 Occupant, nor any of their Representatives, shall bear any responsibility for insuring structural integrity, soundness or compliance with building codes. Any consent, approval or waiver by the Owner, the Lot 73 Owner and/or the Lot 73 Occupant shall not be construed as a representation or warranty of any type regarding the design or construction of the Residential Project including, without limitation, Plumbing Installation and/or any Air Rights Construction Activity and shall in no way be deemed to constitute a determination as to compliance with local zoning ordinances, governmental guidelines or restrictions, or be substituted in lieu of applicable governmental approvals and permits and no construction may commence until all such approvals and permits have been obtained. Without limiting the generality of the foregoing, neither the Owner, the Lot 73 Owner and the Lot 73 Occupant, nor any of their Representatives, shall incur any liability in connection with their review of any Submissions and shall be deemed to have reviewed and/or approved such Submissions solely for the purpose of protecting its own interests. The provisions of this Section 2.8 shall be fully applicable to any and all inspections performed by the Owner pursuant to Section 3.8, Section 5.1(c) and provided for elsewhere in this Agreement. The provisions of this Section 2.8 shall survive the termination of this Agreement.

### ARTICLE 3.

#### **CONSTRUCTION OF THE PROJECT**

3.1 Conditions Precedent. Developer shall have the right and option, but not the obligation, to construct the Residential Project. If Developer elects to construct the Residential Project, Developer shall cause all construction to be performed and completed in a good and workmanlike manner, free from any mechanic's or materialmen's liens, in substantial compliance with the Schematic Drawings, the Construction Plans and Specifications, and the Construction Schedule, and in accordance with all Applicable Law and the requirements of the Declaration and this Agreement. The following shall be conditions precedent to the Developer's right to commence construction of the Project:

(a) All Schematic Drawings and Construction Plans and Specifications shall have been submitted to and approved by Owner in accordance with the terms and conditions of this Agreement.

(b) The Developer shall have obtained all governmental permits and approvals required for the development and construction of the Residential Project (including the Sewer Improvements).

(c) The Developer shall have obtained all required consents, approvals and waivers from the Lot 73 Owner and Nordstrom or the other Lot 73 Occupant) as provided in Section 2.5.

(d) The Developer shall have entered into a Construction Contract for the construction of the Residential Project with a qualified Contractor, pursuant to Section 3.7.

(e) The Developer shall have produced a completion bond for the Residential Project in favor of Owner (and, at Developer's option, its Mortgagee), in accordance with the requirements of Section 3.6.

(f) The Developer and/or Contractor shall have produced evidence of insurance meeting the requirements of Article 8.

3.2 Construction Schedule and Conditions. All Residential Project construction activities, including, without limitation, Plumbing Installations and Air Rights Construction Activity, Tower Improvements and construction traffic access areas, shall be conducted in accordance with a Construction Schedule and conditions, including, without limitation, approved staging areas (including crane locations), approved in advance in writing by the Owner, the Lot 73 Owner and the Lot 73 Occupant (such approval not to be unreasonably withheld, conditioned, or delayed, except the Lot 73 Occupant may withhold approval based on the standards in the Nordstrom Lease) so as to minimize interference with the operation of any business within the Commercial Project, Lot 73 and the Ala Moana Shopping Center, and with any construction work being performed by or on behalf of the Owner, the Lot 73 Owner and the Lot 73 Occupant.

3.3 Proximity Work. No installation, repair, replacement or maintenance of any utility lines on or within the Retail/Parking Structure or within 150 feet of the improvements on Lot 73 ("Proximity Work") shall be performed without providing the Lot 73 Owner and the Lot 73 Occupant with two weeks' written notice except in the case of an emergency, in which case notice as practicable under the circumstances shall be given. In all events, non-emergency Proximity Work shall not be initiated or carried on during the period commencing November 1 through January 10 of each year, during the two weeks prior to Easter of each year, and, during any period of time that Nordstrom is the Lot 73 Occupant, during any consecutive two week period determined by Nordstrom in its sole discretion between July 10 and August 10 of each year. All of such work must be scheduled in advance with the approval of the Owner, the Lot 73 Owner and the Lot 73 Occupant in order to minimize interference with business upon the Commercial Project, Lot 73 and Ala Moana Shopping Center. Notwithstanding anything to the contrary contained in this Section 3.3, so long as Nordstrom or any other Lot 73 Occupant has so approved, Owner and Lot 73 Owner shall not unreasonably withhold, delay or condition their approval of construction of the Proximity Work during the foregoing two week period prior to Easter or the two week Nordstrom anniversary sale period during any consecutive two week period determined by Nordstrom in its sole discretion between July 10 and August 10 each year. Due to the importance of the period from November 1 through January 10, Owner may withhold its consent to the approvals required in this Section 3.3 in its sole discretion as to such period. However, as part of the Construction Schedule approval process, Developer may request advance



approval for construction during such period, which advance approval may be granted in Owner's sole discretion.

3.4 Plaza Area. The Developer's scope of work for the Residential Project shall include all work required to convert the Plaza Area and other Public Areas to residential use, in accordance with the outline scope of work attached hereto as Exhibit D and with Construction Plans and Specifications to be approved by the Owner as provided in Article 2. Developer has been advised that the area which will become the Plaza Area is leased and that such lease expires on March 31, 2015. If Developer wishes possession of the Plaza Area prior to the expiration of such lease, Owner agrees to use commercially reasonable efforts to work with the tenant to either relocate it or enter into an early termination agreement. The cost and expense of relocation or termination and the amount of Owner's lost rental income shall be reviewed, approved and paid for by Developer.

3.5 Commencement and Outside Completion Date. Provided that the Developer has satisfied all of the conditions precedent for construction identified in Section 3.1, and is otherwise in compliance with all of the terms and provisions of this Agreement, the Developer may commence construction of the Residential Project (other than the Plaza Area, as provided in Section 3.4) at any time upon at least thirty (30) days prior written notice to the Owner. Once construction of the Residential Project has commenced, it shall be diligently prosecuted to completion and must be Substantially Completed by the Developer within three (3) years after such commencement date, subject to Force Majeure.

3.6 Completion Bond. The Developer shall obtain a performance and labor and materials payment bond naming as obligee the Owner (and, at Developer's option, its Mortgagee), as their interests may appear, with a responsible corporate surety authorized to do business in the State of Hawaii, guaranteeing the full and faithful performance of construction of the Residential Project free and clear of any mechanic's and materialmen's liens for such construction, the payment of all subcontractors, laborers and materialmen, and the discharge of any mechanic's and materialmen's liens for a penal sum of not less than one hundred percent (100%) of the estimated cost of construction of the Residential Project, and shall provide the Owner with a such bond.

3.7 Contractors. The general contractor selected by the Developer to construct the Residential Project shall have significant experience with comparable projects and shall be subject to the Owner's approval, such approval not to be unreasonably withheld, conditioned or delayed. The general contractor so approved by the Owner (and any successor so approved by the Owner) shall be the "Contractor" for purposes of this Agreement. Any general contractors(s) performing interior work, if not the Contractor, shall meet the same standards set forth for the Contractor and shall be subject to the Owner's approval, such approval not to be unreasonably withheld, conditioned or delayed.

3.8 Inspection. The Owner and its Representatives shall have the right to enter the Residential Project construction site during customary business hours from time to time, upon reasonable advance notice to the Developer, for the purpose of performing inspections of the progress of Developer's construction work and its conformance to the approved Construction Plans and Specifications.

3.9 Mechanic's Liens. No mechanic's, materialmen's, warehousemen's, carrier's or similar lien (collectively, "Mechanic's Liens") may be filed or recorded against the Commercial Project including, without limitation, the Commercial Units or against Lot 73 or Ala Moana Shopping Center and each of the Construction Contract(s) and all subcontracts shall contain express provision to this effect. In the event any Mechanic's Lien is filed or recorded against the Commercial Project, Lot 73 or Ala Moana Shopping Center, which Mechanic's Lien relates to work claimed to have been done for, or materials claimed to have been furnished to or for the benefit of Developer, the Residential Project and/or any other improvements owned by Developer, then Developer shall take any and all actions necessary to remove or bond off such Mechanic's Lien and shall indemnify and hold the Owner, the Lot 73 Owner, the Shopping Center Owner and any Mortgagee thereof harmless from and against any and all costs, expenses, claims, losses or damages (including, without limitation, reasonable attorney's fees and expenses) resulting from such Mechanic's Lien.

3.10 Sewer Improvements. The Residential Project will require the Developer to install a sanitary sewer line beneath the Ala Moana Shopping Center and to upgrade a sewer pump station as required by the City and County of Honolulu (the "Sewer Improvements"), at the Developer's sole cost and expense, except as set forth below. The Schematic Drawings and Construction Plans and Specifications submitted by Developer for Owner's approval shall include the Sewer Improvements. Owner shall cooperate with the Developer in obtaining an easement for the Sewer Improvements from the Shopping Center Owner substantially in the form of Exhibit F attached hereto (the "Sewer Upgrade Easement"), and the consent and subordination to such easement by any Mortgagees of the Shopping Center Owner. The Sewer Improvements shall also serve the Commercial Project. The Shopping Center Owner, at its option and at its sole cost and expense, shall have the right to tap into and utilize the Sewer Improvements, for both a portion of the existing improvements at Ala Moana Shopping Center and improvements constructed after the date hereof. If the Shopping Center Owner exercises its option to utilize the Sewer Improvements for future improvements constructed at Ala Moana Shopping Center after the date hereof, the Shopping Center Owner shall, in addition to paying all costs and expenses associated with obtaining such usage, reimburse the Developer at the time of commencement of such usage for the Shopping Center Owner's prorata share of the unamortized cost of construction of the Sewer Improvements, amortized on a straight line basis over a fifteen (15) year period, which pro rata share shall be reasonably determined by Developer and the Shopping Center Owner based upon their relative anticipated usage of the Sewer Improvements. If such future improvements are done in stages, such prorata share shall be recalculated at the time of commencement of each additional expanded usage, based upon the incremental increase in usage and the Shopping Center Owner shall reimburse Developer for all additional amounts payable hereunder, calculated in the manner set forth above. No such reimbursement shall be required for the Shopping Center Owner's tapping into the Sewer Improvements solely to service improvements existing at Ala Moana Center Shopping Center as of the date hereof. Furthermore, costs of usage, maintenance, repair and replacement of the Sewer Upgrade as between the Shopping Center Owner and the Condominium Project shall be set forth in the Sewer Upgrade Easement. The resulting share to be paid by the Condominium Project shall be apportioned between the Residential Project and the Commercial Project as set forth in the Declaration. As provided, in the Declaration, after Completion of Construction (as defined in the Declaration) of the Residential Project, the Developer, at its sole cost and expense, shall cause a licensed engineer to recalculate flow estimates based upon the as built Residential Project and

the allocation as between the Residential Project and the Commercial Project shall be readjusted based upon such revised estimate. If, prior to such time, it is determined that usage charges for the Sewer Improvements shall be separately metered or billed, such recalculation shall not be necessary. Such allocations and reallocations shall be the basis for cost sharing for usage and apportionment of the cost of repair, maintenance and replacement. Likewise, if usage charges are separately metered or billed, the proportionate share of such usage shall be the basis for apportionment of the cost of repair, maintenance and replacement. Notwithstanding the foregoing, should any repair, maintenance or replacement be occasioned by the negligence or willful misconduct of Owner or Developer, or their respective Representatives, such party shall pay such cost in full. The provisions of this Section 3.10 shall survive the termination of this Agreement.

3.11 Construction Operations and Staging. In managing the day to day construction of the Residential Project, the Developer shall take all reasonable measures to minimize interference with the operation of any business within the Commercial Project, Lot 73 and the Ala Moana Shopping Center, and with any construction work being performed by or on behalf of the Owner, the Lot 73 Owner and the Lot 73 Occupant, including, without limitation, the following:

(a) Construction vehicles may be parked only in approved staging areas (such approval not to be unreasonably withheld, conditioned or delayed) and in the residential parking areas of the Retail/Parking Structure.

(b) There shall be no construction traffic on the two upper level bridges and the mall level bridge connecting the Retail/Parking Structure to the Ala Moana Shopping Center parking deck.

(c) Prior to commencement of construction, the Developer shall install fences and security barriers to separate the commercial parking spaces from the residential and residential guest parking spaces on Level 4 of the Retail/Parking Structure and to block access to the Level 4 stairwells and elevator.

(d) The Developer shall institute and comply with a program, reasonably acceptable to the Owner, for daily removal of dust, debris and excess construction materials. At Substantial Completion of the Residential Project, and thereafter as long as punchlist or other work is being performed, the Developer shall cause the removal of all waste material, rubbish, tools, construction equipment, machinery and surplus material from and about the Residential Project and the Commercial Project.

3.12 Safety Program. The Developer shall institute and comply with and cause the Contractor to comply with, a written safety program in compliance with good construction practices, all Applicable Law and the requirements of insurance underwriters for the protection of Persons, including tenants, occupants, customers and invitees of the Commercial Project, Lot 73, Ala Moana Shopping Center and property from injury or damage. The Developer shall cause to be erected and maintained, as required by existing conditions and the status of construction, reasonable safeguards for security, safety and protection, including posting danger signs and other warnings against hazards, and installing protective fencing or barriers.

3.13 Current Information. To permit Owner to have adequate current information regarding the Residential Project, Developer agrees:

(a) to provide Owner with a notice of all public hearings involving the Residential Project, in sufficient time to enable a representative of Owner to appear at such hearing if so desired; and

(b) to provide Owner with copies of all governmental filings and applications, and all permits and reports issued by any Governmental Authority respecting the Residential Project.

3.14 As-Built Plans. Upon completion of the Residential Project, the Developer shall cause its General Contractor to promptly deliver a duplicate set of as-built base building plans and construction drawings to the Owner.

#### ARTICLE 4.

#### **REPRESENTATIONS AND WARRANTIES**

4.1 Developer Representations and Warranties. Developer hereby represents, warrants and covenants to Owner that:

(a) Developer is a limited liability company duly organized, validly existing, and in good standing under the laws of the jurisdiction of its formation; has the power and authority to own its assets and to transact that business in which it is now engaged or proposed to be engaged in; and is duly qualified as a foreign limited liability company and in good standing under the laws of each other jurisdiction in which such qualification is required.

(b) This Agreement is a legal, valid and binding obligation of Developer.

(c) Developer has full requisite power and authority to perform all of its obligations under this Agreement and all requisite action has been duly and validly taken by Developer to authorize and to make this Agreement valid and binding upon Developer in accordance with its terms.

(d) Developer is not a party to any indenture, loan or credit agreement, or to any lease or other agreement, or subject to any charter or corporate restriction which could have a material adverse effect on the business, properties, assets, operations or conditions, financial or otherwise, of Developer or the ability of Developer to carry out its obligations under the Agreement. Developer is not in default in any respect in the performance, observance, or fulfillment of any of the obligations, covenants, or conditions contained in any agreement or instrument material to its business to which it is a party.

(e) There is no pending or threatened action or proceeding against or affecting the Developer before any court, governmental agency, or arbitrator, which may, in any one case or in the aggregate, materially adversely affect the financial condition, operations, properties, or

business of the Developer or the ability of Developer to perform its obligations under this Agreement.

(f) Developer has satisfied all judgments, and Developer is not in default with respect to any judgment, writ, injunction, decree, rule or regulation of any court, arbitrator, or federal, state, municipal, or other governmental authority, commission, board, bureau, agency, or instrumentality, domestic or foreign.

(g) The consummation of this transaction shall constitute the Developer's acknowledgement that it has independently inspected and investigated the Land, the Retail/Parking Structure and all other matters relating to the Condominium Project and has made and entered into this Agreement based upon such inspection and investigation and its own examination of the condition of all of the foregoing.

(h) Developer is experienced in, and knowledgeable about, the development of real estate, and it has relied and will rely exclusively on its own consultants, advisors, counsel, employees, agents, principals and/or studies, investigations and/or inspections with respect to the Land, the Retail/Parking Structure and all other matter relating to the Condominium Project, their condition and potential. Notwithstanding the fact that the Developer has received certain information from the Owner or its agents or consultants, the Developer has relied solely upon and will continue to rely solely upon its own analysis and will not rely on any information provided by the Owner or its agents or consultants.

4.2 Owner Representations and Warranties. Owner hereby represents, warrants and covenants to Developer that:

(a) Owner is a limited liability company duly organized, validly existing, and in good standing under the laws of the State of Delaware, has the power and authority to own its assets and to transact that business in which it is now engaged or proposed to be engaged in; and is duly qualified as a foreign limited liability company and in good standing under the laws of each other jurisdiction in which such qualification is required.

(b) This Agreement is a legal, valid and binding obligation of Owner.

(c) Owner has full requisite power and authority to perform all of its obligations under this Agreement and all requisite action has been duly and validly taken by Owner to authorize and to make this Agreement valid and binding upon Owner in accordance with its terms.

4.3 No Other Warranties and Representations of Owner.

(a) Except as specifically set forth herein, the Owner has not made, does not make and has not authorized anyone to make, any warranty or representation of any kind or character, express or implied, with respect to the Land, the Retail/Parking Structure and all other matters relating to the Condominium Project or this Agreement or any part thereof, including without limitation, any written materials delivered to the Developer, the persons preparing such materials, the truth, accuracy or completeness of such materials, the present or future physical condition, development potential, zoning, building or land use law or compliance therewith, the

operation, income generated by, or any other matter or thing affecting or relating to the Land, the Retail/Parking Structure and all other matters relating to the Condominium Project or this Agreement. Developer expressly acknowledges that no such warranty or representation has been made and that the Developer is not relying on any warranty or representation whatsoever other than as is expressly set forth herein.

(b) Without limiting the foregoing, the Owner makes no representations or warranties as to whether the Land or the Retail/Parking Structure, contains asbestos, radon or any hazardous materials or harmful or toxic substances, or pertaining to the extent, location or nature of same, if any. Further, to the extent that the Owner has provided to the Developer information from any inspection, engineering or environmental reports concerning asbestos, radon or any hazardous materials or harmful or toxic substances, the Owner makes no representations or warranties with respect to the accuracy or completeness, methodology of preparation or otherwise concerning the contents of such reports.

(c) Subject to the express provisions hereof, the Developer acknowledges and agrees that the Owner makes no representation or warranty as to, and the Developer, for itself, its successors and assigns, hereby waives and releases the Owner from any claims, at law or in equity, whether known or unknown, foreseeable or otherwise, arising from or relating to the presence or alleged presence of asbestos, radon or any hazardous materials or harmful or toxic substances in, on, under or about the Land or the Retail/Parking Structure, including, without limitation, any claims under or on account of (i) Environmental Laws and any other Applicable Law, (ii) this Agreement, or (iii) the common law.

4.4 Survival. The provisions of this Article 4 shall survive termination of this Agreement.

## ARTICLE 5.

### COVENANTS OF DEVELOPER AND OWNER

5.1 Developer Affirmative Covenants. So long as this Agreement shall remain in effect, Developer will:

(a) preserve and maintain its legal existence and good standing in the jurisdiction of its formation, and qualify and remain qualified as a foreign limited liability company in each jurisdiction in which such qualification is required.

(b) furnish to Owner promptly after the commencement thereof, notice of all actions, suits, and proceedings before any court or governmental department, commission, board, bureau, agency, or instrumentality, domestic or foreign, affecting the Residential Project or Developer.

(c) be and remain in compliance with the provisions of all Environmental Laws and all federal, state, and local health and safety laws, codes and ordinances, and all rules and regulations issued thereunder, all labor and other laws applicable to Developer's employment relationship with its employees and all other Applicable Laws; notify Owner immediately of any notice of a hazardous discharge or environmental complaint received from

any Governmental Authority or any other party; notify Owner immediately of any hazardous discharge from the Residential Project or any portion thereof of which Developer has knowledge; immediately contain and remove the same, in compliance with all Environmental Laws; promptly pay any fine or penalty assessed in connection therewith any such discharge, except for fines and penalties being contested by Developer in good faith; permit Owner to inspect the Residential Project and to conduct tests with respect to any such discharge; and at Owner's request, provide a report of a qualified environmental engineer, reasonably satisfactory in scope, form and content to Owner, and such other and further assurances reasonably satisfactory to Owner that the condition has been corrected.

5.2 Developer Negative Covenants. Developer will not create, incur, assume, or suffer to exist, any Lien upon or with respect to the Commercial Project, Ala Moana Shopping Center or Lot 73, arising out of Developer's development and construction of the Residential Project or otherwise as the result of the act or failure to act of the Developer. For purposes of this Section 5.2, the term "Lien" shall not include a Mechanic's Lien, the agreements with respect to which are addressed in Section 3.9.

5.3 Owner Affirmative Covenants. So long as this Agreement shall remain in effect, Owner will:

(a) preserve and maintain its legal existence and good standing in the jurisdiction of its formation, and qualify and remain qualified as a foreign limited liability company in each jurisdiction in which such qualification is required.

(b) furnish to Developer promptly after the commencement thereof, notice of all actions, suits, and proceedings before any court or government department, commission, board, bureau, agency, or instrumentality, domestic or foreign, affecting the Commercial Project.

(c) be and remain in compliance with the provisions of all Environmental Laws and all federal, state and local health and safety laws, codes and ordinances, and all rules and regulations issued thereunder, all labor and other laws applicable to Owner's employment relationship with its employees and all other Applicable Laws; notify Developer immediately of any notice of any hazardous discharge or environmental complaint received from any Governmental Authority; notify Developer immediately of any hazardous discharge from the Commercial Project or any portion thereof of which Owner has knowledge; immediately contain and remove the same, in compliance with all Environmental Laws; promptly pay any fine or penalty assessed in connection therewith expect for fines and penalties being contested by Owner in good faith; permit Developer to inspect the Commercial Project exclusive of Tenant occupied Commercial Units during reasonable hours, and to conduct tests thereon with respect to any such discharge; and at Developer's request, provide a report of a qualified environmental engineer, reasonably satisfactory in scope, form and content to Developer, and such other and further assurances reasonably satisfactory to Developer that the condition has been corrected.

(d) Developer has requested Owner's assistance in working with the Shopping Center Owner to enable Developer to install screening or take other measures to block the view of the mechanical equipment on the rooftop of Macy's and Shirokiya from the Residential Project. Upon receipt of plans and specifications for such project, Owner agrees to respond in

good faith and request management personnel at Ala Moana Center to consider such request. Such project shall require the approval of the Shopping Center Owner, which approval shall be subject to, but shall not be limited to: (i) all restrictions contained in leases and loan documents for Ala Moana Shopping Center; (ii) Developer obtaining all required consents and approvals from Macy's, Shirokija, other tenants and any Governmental Authority having jurisdiction; (iii) Developer complying with height limitations set forth in applicable building and zoning laws and ordinances, leases for Ala Moana Shopping Center and any other applicable covenants, conditions and restrictions of record; (iv) Developer complying with all rules and regulations for construction activities at Ala Moana Shopping Center (including, without limitation, approval of plans and specifications, time and duration of work, location of staging areas, and contractor ingress and egress and parking) and providing adequate assurance that none of Developer's construction activities shall negate any roof or other warranties that could be affected by Developer's work; and (v) Developer providing indemnities which shall not be subject to a waiver of the right of subrogation and evidence of acceptable insurance. In addition to the foregoing, the Shopping Center Owner, at its sole option, may require that the Shopping Center Owner, or its contractors, perform the work at Developer's sole cost and expense.

(e) If Developer determines that it wishes to lease office space for a sales office in the Ala Moana Pacific Tower and requests Owner's assistance, Owner agrees to respond in good faith and request leasing personnel for the Ala Moana Pacific Tower (which is owned by an affiliate of Owner) to consider Developer's space requirements, subject to space availability at the time of such request. Any lease so negotiated shall be subject to market rent and other market conditions determined by the owner of Ala Moana Pacific Center. The foregoing does not constitute an offer to lease, nor obligate Owner or the owner of Ala Moana Pacific Tower to reserve space for Developer, or advise Developer of any availability of space from time to time.

5.4 Owner Negative Covenants. Owner will not create, incur, assume, or suffer to exist, any Lien (with the exception of the Sanitary Sewer Easement and those exceptions to title set forth in Exhibit A to the Declaration) or any Mechanic's Lien upon or with respect to the Residential Project arising out of Owner's actions or failure to act.

## ARTICLE 6.

### MORTGAGEES

6.1 Collateral Assignment; Subordination. Developer and Owner shall each have the right to collaterally assign this Agreement as security to one or more of its Mortgagees holding a Mortgage so long as such Mortgagee, in writing (i) subordinates such Mortgage and the lien thereof to this Agreement and to the rights, interests, obligations, duties, conditions, covenants and agreements granted pursuant to this Agreement or otherwise contained herein (whether such Mortgage is recorded on or after the date hereof), and (ii) agrees to be bound by the terms and conditions of this Agreement upon its taking title to such property (subject to the provisions of Section 6.2 below). Notwithstanding the foregoing, regardless of whether any Mortgagee shall receive a collateral assignment of this Agreement, each Mortgage (whether recorded on or after the date hereof) and the lien thereof shall automatically be subject and



subordinate to this Agreement and to the rights, interests, obligations, duties, conditions, covenants and agreements granted pursuant to this Agreement or otherwise contained herein.

6.2 Foreclosure; Assumption. In the event of a foreclosure (which term shall include a deed-in-lieu of foreclosure) in which the Commercial Project or the Residential Project is acquired by a Person other than a Mortgagee, or in the event that after acquiring title to such Project through a foreclosure the Mortgagee shall thereafter transfer such Project, the purchaser, transferee or assignee, shall by taking title, automatically be deemed to have assumed all of the covenants, agreements and obligations of Developer or Owner, as applicable, under this Agreement . If a Mortgagee acquires title to the Commercial Project through foreclosure, such Mortgagee shall, by taking title, automatically be deemed to have assumed all of the obligations of Owner under this Agreement. If a Mortgagee acquires title to the Residential Project through foreclosure, such Mortgagee shall not be required to assume the Developer's obligations under this Agreement so long as such Mortgagee does not undertake or continue the construction of the Residential Project beyond the extent necessary to conserve or protect the construction already accomplished; provided, however, that any party acquiring title to the Residential Project from such Mortgagee shall, by taking title, automatically be deemed to have assumed all of the obligations of Developer under this Agreement. If a Mortgagee acquires the Residential Project and thereafter undertakes or continues the construction or completion of the Residential Project improvements beyond the extent necessary to conserve or protect the improvements already made, then such Mortgagee automatically shall be deemed to have assumed all of the covenants, agreements and obligations of Developer under this Agreement. Notwithstanding anything to the contrary contained in this Agreement, no Mortgagee shall be (i) bound by any amendment or modification of this Agreement entered into without such Mortgagee's consent or (ii) liable for the payment of any sum payable by Developer to Owner which accrued prior to foreclosure.

6.3 Notice of Default; Opportunity to Cure. Any notice of default given by Owner or Developer under this Agreement shall at the same time be given to the defaulting party's Mortgagee (provided that Developer or Owner, as applicable, has been notified, in writing, of such Mortgagee's notice address). From and after any such notice of default has been given to a Mortgagee, such Mortgagee shall have twenty (20) days to remedy or cause to be remedied any monetary default and an additional sixty (60) days to remedy or cause to be remedied any non-monetary default. In addition, as to any default that requires possession of all or part of the Commercial Project or the Residential Project, as applicable, a Mortgagee's cure period shall continue for such additional period of time as such Mortgagee may reasonably require to obtain possession and control of all or part of the Commercial Project or Residential Project, as applicable, and to cure such default.

6.4 Estoppel Certificates. Owner agrees that it will, at any time and from time to time (but in no event more often than two (2) times during any twelve (12) month period), within fifteen (15) business days following receipt of notice from Developer specifying that it is given pursuant to this Section 6.4, execute, acknowledge and deliver to Developer and/or to a specifically named lender or other person or entity having an interest or potential interest in the Residential Project, a statement certifying (i) that, this Agreement is unamended, unsupplemented and unmodified and in full force and effect (or, if there will be any such amendments, supplements and modifications, reference to the same will be made), and (ii) that to the best of the signer's knowledge and belief, there are no defaults in the performance of the

provisions of this Agreement by the Developer (or, if there are any such defaults of which the signer may have knowledge, reference to the same will be made). Such statement shall act as a waiver of any claim by Owner to the extent such claim is based upon facts contrary to those asserted in the statement and to the extent the claim is asserted against a bona fide encumbrancer or purchaser for value without the knowledge of facts to the contrary of those contained in the statement, and who has acted in reasonable reliance upon the statement. Without limiting the provisions of the immediately preceding sentence, such statement shall in no event subject Owner to any liability whatsoever, notwithstanding the negligent or otherwise inadvertent failure of Owner to disclose correct and/or relevant information.

## ARTICLE 7.

### TRANSFERS

7.1 Transfers by Owner. Owner shall have the right to transfer or assign its interest in the Commercial Project, the Condominium Project and/or this Agreement at any time.

7.2 Transfers by Developer. As long as this Agreement is in effect, but subject to the provisions of Section 7.4, the Developer shall be permitted to transfer or assign its interest in the Condominium Project and this Agreement, in whole but not in part, to any party reasonably approved by Owner which (i) in the reasonable judgment of the Owner, has a reputation and proven development expertise in the development of residential condominium projects in keeping with the First Class Development Standard, and (ii) has a financial net worth sufficient to complete the Residential Project as contemplated by this Agreement; provided, however, that, even if the foregoing requirements are met, Owner shall have the right to disapprove of any transferee (other than a transferee that is an affiliate of Developer) with whom Owner or any of its affiliates is, at the time of the transfer, in active litigation (or has received a written threat thereof) with such proposed transferee or any of its affiliates. If Developer proposes a transfer and so requests, Owner shall advise if there is pending or threatened litigation with the proposed transferee or any of its affiliates.

7.3 Assumption. Subject to the limitation set forth in Section 7.2, any party receiving an assignment or transfer of the interest of the Owner or the Developer in this Agreement shall assume in writing, for the benefit of the non-transferring party, all obligations of the transferring party arising under this Agreement from and after the date of such transfer provided, however, that such written assumption may be requested by Owner, but shall not be required, under the circumstances set forth in Section 6.2.

7.4 Transfers in the Ordinary Course of Business. The limitations in Section 7.2 and the requirements of Section 7.3 shall not apply to the sale or transfers of Residential Units or other interests in the Residential Project in the ordinary course of Developer's business.

## ARTICLE 8.

### INDEMNIFICATION; INSURANCE

8.1 Indemnification. The Developer shall protect, defend, indemnify and hold harmless the Owner, the Lot 73 Owner, the Lot 73 Occupant, the Shopping Center Owner, and their respective members, directors, officers, principals, employees and affiliated entities (the “Indemnified Parties”) from and against all actions, claims, expenses, costs, losses, injury, liability (including liabilities for penalties), judgments, fines, damages and settlements, including reasonable attorneys' fees and costs, arising from or as a result of the death of or injury to any Person or damage to any property as may occur in connection with the construction of the Residential Project or with any acts or omissions of Developer, its agents, employees or contractors pursuant to this Agreement, except, in each case, to the extent such claims result from the negligence or willful misconduct of the Indemnified Party. The foregoing is in addition to the provisions of Section 22.4.1 of the Declaration which provision shall be fully applicable to this Agreement.

8.2 Procedure for Indemnification. If any action, suit or proceeding is brought against any indemnified party and such party is entitled to be indemnified pursuant to Section 8.1 hereof, the Developer will resist and defend such action, suit or proceeding or cause the same to be resisted and defended by counsel designated by the Developer, which counsel shall be reasonably satisfactory to the indemnified party. No party entitled to any indemnity hereunder shall compromise, settle or release any claim without the written consent of the Developer, which consent shall not be unreasonably withheld or delayed. Developer shall not compromise, settle or release any claim without the consent of the indemnified party, which consent shall not be unreasonably withheld, conditioned or delayed; provided that (i) with respect to a settlement involving only the payment of money by the Developer in exchange for a complete, unqualified and unconditional release of the indemnified party (which release shall be subject to reasonable approval by the indemnified party), the Developer shall have sole control, and (ii) in no event shall the indemnified party be required to consent to a settlement imposing any obligation (financial or otherwise) or penalty on such indemnified party, or requiring the signing of any statement or document indicating or admitting responsibility or liability (whether criminal or civil) by the indemnified party. If and to the extent any provisions of this Section 8.2 are unenforceable for any reason, the Developer agrees to make the maximum contribution to payment and satisfaction of each of the indemnified liabilities which is permissible under applicable law.

8.3 Required Insurance. From and after the Conveyance Date, the Owner and the Developer shall provide and maintain the insurance coverage set forth in Exhibit H attached hereto for the period of time set forth therein. The cost of such insurance shall be allocated as set forth on Exhibit H and paid as set forth in Section 8.5. To the extent not set forth in Exhibit H, the general requirements set forth in the Declaration applicable to such coverages shall be fully applicable unless a greater standard is set forth in Exhibit H.

8.4 Additional Insurance Obligations. All insurance policies required by this Article 8 shall be written in such amounts as to avoid the Owner and the Developer and the Developer's contractors and subcontractors, as the case may be, being a co-insurer and shall

include a waiver of subrogation endorsement which shall expressly state that such coverage afforded to the insured shall not be voided, prejudiced or otherwise unavailable if the insured shall have waived any and all rights of recovery from the party(ies) responsible for such loss and shall further provide that, subject to the rights of Mortgagees whose interest may be covered by said policy or policies, that the loss, if any, under such policies shall be adjusted by the party who is responsible for obtaining the coverage and paid by the insurance company or companies to Owner, Developer and any Mortgagee of either thereof, as loss payees. All insurance policies required by this Article 8 shall be obtained through a recognized insurance company licensed to do business in the State of Hawaii and rated by Best's Insurance Report as A-VII or better. As a condition precedent to commencement of construction of the Project, the Developer shall furnish to Owner certificates of insurance (or copies of insurance policies, if requested by Owner) evidencing the insurance coverages required by this Article 8. All insurance policies shall contain an agreement by the insurer to notify the Owner or Developer, as applicable, in writing, by certified U.S. Mail, return receipt requested, not less than thirty (30) days before any material change, reduction in coverage, cancellation, or other termination thereof or change therein.

8.5 Sharing of Insurance Costs. Costs incurred for procuring and maintaining in force the insurance required by Section 8.3 shall be paid by the procuring party and reimbursed by the non-procuring party based upon the cost allocations set forth in Exhibit H within thirty (30) days of receipt by the non-procuring party of an invoice and reasonable supporting documentation.

8.6 WAIVER OF CLAIMS. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT (EXCEPT AS OTHERWISE PROVIDED IN THIS SECTION 8.6), OWNER AND THE DEVELOPER HEREBY RELEASE (FOR THEMSELVES AND, TO THE EXTENT LEGALLY POSSIBLE FOR THEM TO DO SO, ON BEHALF OF THEIR INSURERS AND THEIR RESPECTIVE REPRESENTATIVES) EACH OTHER AND THEIR RESPECTIVE REPRESENTATIVES FROM ANY LOSS, DAMAGE OR LIABILITY FOR ANY CLAIMS WITH RESPECT TO OR ARISING FROM PERSONAL INJURY, BODILY INJURY, DEATH AND PROPERTY DAMAGE WHICH LOSS, DAMAGE OR LIABILITY IS CAUSED BY A RISK OF THE TYPE GENERALLY COVERED BY POLICIES OF INSURANCE OF THE TYPE REFERRED TO AND REQUIRED TO BE OBTAINED PURSUANT TO THIS ARTICLE 8 EVEN IF DUE TO NEGLIGENCE OF A PARTY. THIS SECTION 8.6 RELEASES A PARTY FROM THE CONSEQUENCES OF ITS NEGLIGENCE. THE FOREGOING PROVISIONS OF THIS SECTION 8.6 SHALL APPLY ONLY DURING SUCH PERIOD OF TIME AS DEVELOPER MAINTAINS THE SINGLE POLICY OF INSURANCE COVERING BOTH OWNER AND DEVELOPER FOR PROPERTY DAMAGE AND LIABILITY INSURING THE RESPECTIVE INTERESTS OF OWNER AND DEVELOPER IN THE PROJECT AS REQUIRED BY THIS AGREEMENT AND, DURING SUCH PERIOD, IF ANY LOSS IS NOT COVERED BY SUCH INSURANCE POLICY OR POLICIES (WHETHER AS THE RESULT OF A DEDUCTIBLE OR SELF INSURED RETENTION, OR OTHERWISE), THE RESPONSIBLE PARTY WILL BE FULLY RESPONSIBLE AND LIABLE TO THE OTHER PARTY FOR SUCH LOSS.

8.7 Insurance Policy Provisions. Each party covenants that it will, to the extent such insurance endorsement is available, obtain for the benefit of the other party and its Representatives a waiver of the right of subrogation, consistent with Section 8.6.

8.8 Survival. The provisions of this Article 8 shall survive termination of this Agreement.

## ARTICLE 9.

### **MANAGING AGENT**

The Bylaws provide, in effect, in Section 7.2C, that (i) the Owner shall have the right to choose and employ the first Managing Agent for the Condominium Project, or, if it so elects, the Owner or one of its affiliates may manage the Project by written contract and (ii) after a certificate of occupancy has been issued for all of the Residential Units or such earlier time agreed upon by the Owner and the Developer, the Developer shall have the right to choose and employ the Managing Agent for the Condominium Project. Owner and the Developer acknowledge that, prior to issuance of all such certificates of occupancy, the expertise of a Managing Agent familiar with managing condominiums similar to the Condominium Project may be beneficial to the Condominium Project. Therefore, the Owner and the Developer agree that they shall reasonably and mutually agree upon the appropriate time, given the then stage of the Residential Project and marketing efforts, that the Developer may select and employ such Managing Agent.

## ARTICLE 10.

### **ALLOCATIONS**

The Bylaws provide, in effect, in Section 8.4, that unit owners of the Condominium Project shall become obligated for payment of their share of Common Expenses from and after a specified date to be set forth in a written notice from the Developer (the “Assessment Date”) and that, prior to the Assessment Date, the Owner and the Developer shall assume all actual expenses in the Condominium Project in the proportion set forth in this Agreement. Owner and the Developer agree to pay such expenses based upon the allocations set forth on Exhibit I hereto.

## ARTICLE 11.

### **NOTICES; MISCELLANEOUS**

11.1 Binding Effect; Assignment. The provisions hereof shall be binding upon, and shall inure to the benefit of, the parties hereto and their respective successors and permitted assigns.

11.2 Term and Termination. The term of this Agreement shall commence on the Effective Date and shall terminate (with the exception of those provisions that expressly survive such termination) upon Substantial Completion, the installation or completion of all

appliances, fixtures and interior finish work in all of the Residential Units, the completion of all punchlist items and other work required to fully complete the Residential Project and the complete performance by the Developer and the Owner of all of their respective obligations under this Agreement.

11.3 Notice. All notices to either party hereunder shall be in writing and, unless otherwise specified herein, shall be delivered by hand, United States certified mail, return receipt requested, United States Express Mail, Federal Express, Airborne Express or any other national overnight express delivery service (in each case postage or delivery charges paid by the party giving such communication) addressed to the party to whom such communication is given at its address or facsimile number set forth below:

If to Owner, to: Kapiolani Retail, LLC  
c/o General Growth Properties, Inc.  
110 North Wacker Drive  
Chicago, Illinois 60606  
Attention: President

with a copy to: Kapiolani Retail, LLC  
c/o General Growth Properties, Inc.  
110 North Wacker Drive  
Chicago, Illinois 60606  
Attention: General Counsel

If to Developer, to: Kapiolani Residential, LLC  
c/o \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_

with a copy to: Kapiolani Residential, LLC  
c/o \_\_\_\_\_  
13355 Noel Road, Suite 950  
Dallas, Texas 95240  
Attention: Grant Herlitz

provided, however, in lieu of the foregoing notice address, during the term of this Agreement all reports, Submissions and other communications required pursuant to Article 2 and Section 3.13 shall be sent to the following by any of the means set forth above (with a copy sent to the following recipient by electronic mail):

If to Owner, to: Kapiolani Retail, LLC  
c/o Ala Moana Center  
1585 Kapiolani Boulevard, Suite 800  
Honolulu, Hawaii 96814

Attention: General Manager  
Email: Francis.cofran@ggp.com

with a copy to: Kapiolani Residential, LLC  
c/o General Growth Properties, Inc.  
110 North Wacker Drive  
Chicago, Illinois 60606  
Attention: Vice President, Development Southwest  
Email: david.cuthill@ggp.com

If to Developer, to: Kapiolani Residential, LLC  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_  
Email: \_\_\_\_\_

with a copy to: \_\_\_\_\_  
13355 Noel Road, Suite 950  
Dallas, Texas 75240  
Attention: \_\_\_\_\_  
Email: \_\_\_\_\_

Either party may change the address for the delivery and receipt of such notice by communicating such information to the other party in writing not less than seven days in advance of the effective date thereof.

11.4 Recordation. This Agreement shall not be recorded, provided, however, that the parties shall execute, acknowledge and record a Memorandum of this Agreement substantially in the form of Exhibit G attached hereto, with the costs of recordation to be shared equally by the parties. Upon the termination of this Agreement, the parties shall execute, acknowledge and record an instrument terminating such Memorandum.

11.5 Gender. Words of any gender used in this Agreement shall be held and construed to include any other gender, and words of a singular number shall be held to include the plural and vice versa, unless the context requires otherwise.

11.6 Captions. The captions and headings used in connection with this Agreement are for convenience only and shall not be deemed or construed to limit the meaning of the language of this Agreement.

11.7 No Partnership. Nothing contained in this Agreement will be deemed or construed by the parties hereto or any third party as creating the relationship of principal and agent or of partnership or of joint venture between Developer and Owner.

11.8 Amendments. This Agreement may be amended only by a written instrument executed by the party against whom enforcement is sought. No waiver, approval,

consent or other agreement of either party shall be effective unless in writing and signed by the party to be bound.

11.9 Entire Agreement. This Agreement and the exhibits attached hereto, together with the Declaration and the Bylaws, constitute the entire agreement between Owner and Developer with respect to the subject matter hereof, and supersedes and replaces all prior or contemporaneous discussions, negotiations, letters, memoranda or other communications, oral or written, with respect to the subject matter hereof.

11.10 Counterparts. This Agreement may be executed in several original or faxed or electronically submitted counterparts, which shall be treated as originals for all purposes, and all so executed shall constitute one agreement, binding on all of the parties hereto, notwithstanding that all of the parties may not be signatories to the original or the same counterpart.

11.11 Waiver of Breach. No failure by Developer or Owner to insist upon the strict performance of any covenant, agreement, term, or condition of this Agreement, or to exercise any right or remedy consequent upon a breach thereof, shall constitute a waiver of any such breach thereof, or any subsequent breach of such covenant, agreement, term or condition. No waiver of any breach shall affect or alter this Agreement, but each and every covenant of this Agreement shall continue in full force and effect with respect to any other then existing or subsequent breach thereof.

11.12 Partial Invalidity. In the event that any one or more of the phrases, sentences, clauses, or paragraphs contained in this Agreement shall be declared invalid by final and unappealable order, decree, or judgment of any court, this Agreement shall be construed as if such phrases, sentences, clauses, or paragraphs had not been inserted in this Agreement, it being intended by the parties that the remaining provisions of this Agreement shall remain in full force and effect notwithstanding such invalidation.

11.13 Further Assurances. Each party agrees to take such actions and execute such documents as are reasonably necessary or desirable in order to carry out the purposes and intent of this Agreement.

11.14 Governing Law. This Agreement shall be construed under and in accordance with the laws of the State of Hawaii, without regard to principles of conflicts of laws.

11.15 Waiver of Jury Trial. OWNER AND DEVELOPER, EACH FOR ITSELF AND ON BEHALF OF ITS AFFILIATES, HEREBY WAIVES ITS RIGHT TO TRIAL BY JURY IN ANY ACTION, LAWSUIT OR PROCEEDING RELATING TO ANY DISPUTE ARISING UNDER OR IN CONNECTION WITH THIS AGREEMENT OR ANY TRANSACTION DESCRIBED IN THIS AGREEMENT OR DISPUTE BETWEEN THE PARTIES HERETO (INCLUDING DISPUTES WHICH ALSO INVOLVE OTHER PERSONS).

11.16 Defaults and Remedies. In the event of a default under this Agreement, the non-defaulting party may pursue any and all remedies that may be available at law and/or in



equity, including, without limitation, seeking to obtain either or both specific performance and injunctive relief.

11.17 Time of the Essence. Time is of the essence in the performance of each and every term of this Agreement.

11.18 References; Exhibits. All references to sections, paragraphs, and exhibits are to this Agreement unless otherwise specifically noted. The use of the words “hereof”, “hereunder”, “herein” and words of similar import shall refer to this entire Agreement and not to any particular section, paragraph or portion of this Agreement unless otherwise specifically noted. All exhibits attached hereto are by this reference made a part of this Agreement for all purposes.

11.19 Relationship to Declaration. To the extent of any express conflict or discrepancy between this Agreement and the Declaration, the terms and provisions of this Agreement shall control the subject matter hereof.

*[Signature Pages Follow]*

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first above written.

**OWNER:**

**KAPIOLANI RETAIL, LLC**, a Delaware limited liability company

By: \_\_\_\_\_

Name:

Title:

**DEVELOPER:**

**KAPIOLANI RESIDENTIAL, LLC**, a Delaware limited liability company

By: \_\_\_\_\_

Name:

Title:

**EXHIBIT A**

**Description of the Land**

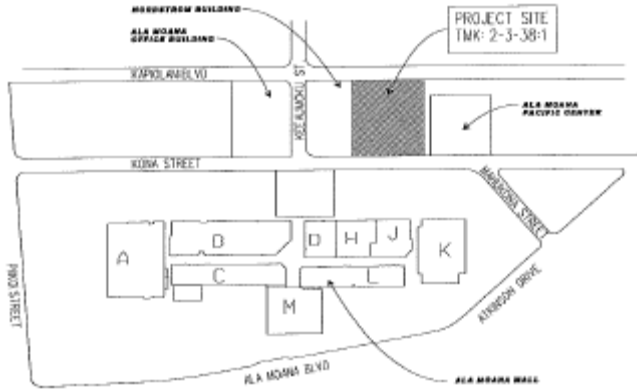
**EXHIBIT B**

**Description of Ala Moana Shopping Center**

**EXHIBIT C**

**Condominium Map**

**LOCATION MAP**



**INDEX OF DRAWINGS**

T-1	COVER SHEET
OPR-1	SITE PLAN
OPR-2	STREET LEVEL FLOOR PLAN
OPR-3	LEVEL 2 FLOOR PLAN
OPR-4	LEVEL 2B FLOOR PLAN
OPR-5	LEVEL 3 FLOOR PLAN
OPR-6	LEVEL 4 FLOOR PLAN
OPR-7	LEVEL 5 FLOOR PLAN
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OPR-9	LEVEL 7 FLOOR PLAN
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OPR-12	LEVELS 22-23 FLOOR PLANS
OPR-13	NORTH BUILDING ELEVATION
OPR-14	WEST BUILDING ELEVATION
OPR-15	SOUTH BUILDING ELEVATION
OPR-16	EAST BUILDING ELEVATION

**AREA MAP**

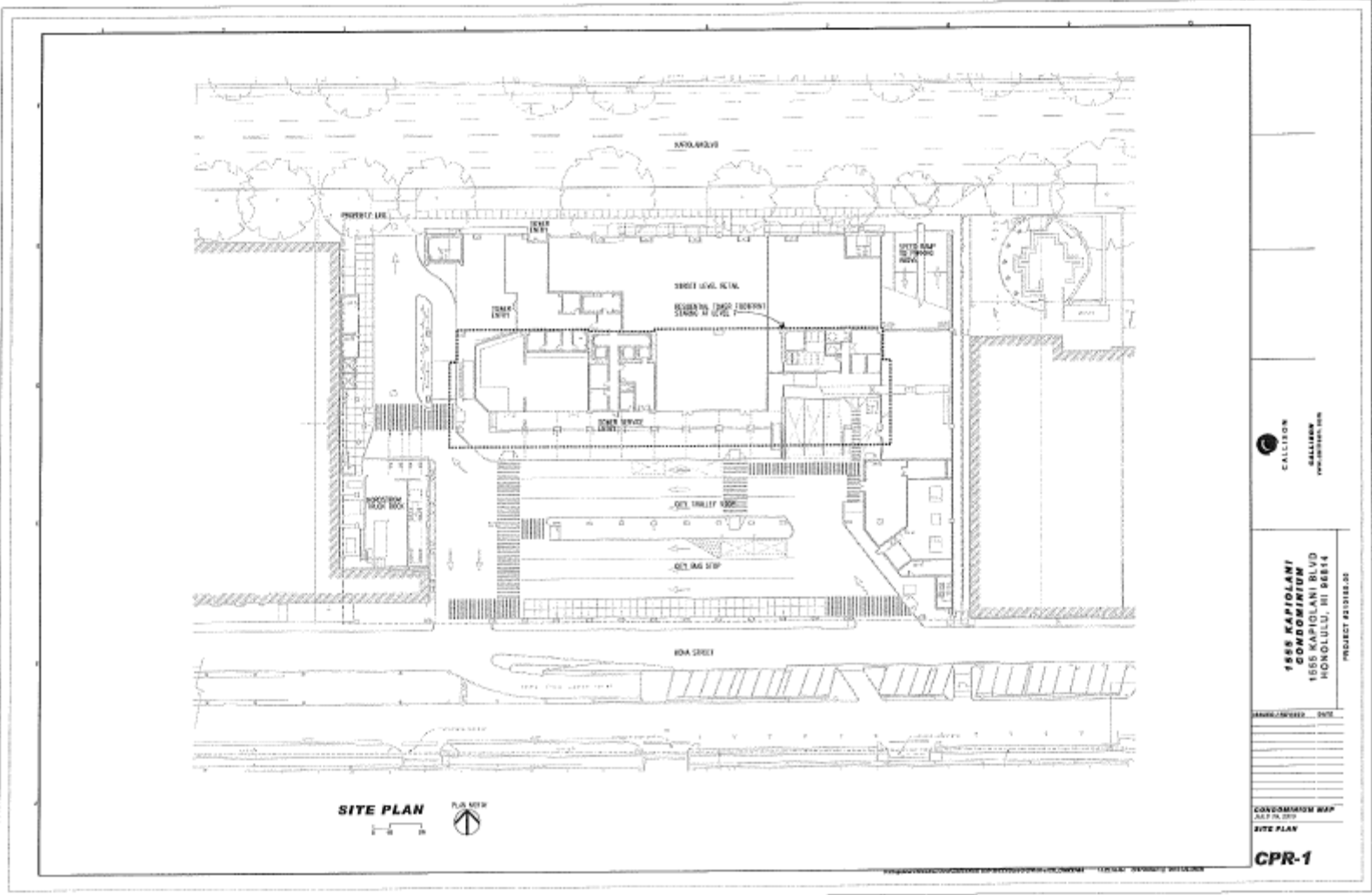


GALLISON
   
 CALLERS
   
 www.gallison.com

**1555 KAPIOLANI CONDOMINIUM**
  
 1555 KAPIOLANI BLVD
   
 HONOLULU, HI 96814
   
 PROJECT REVIEWER

UNRECORDED - MAY
   
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**T-1**



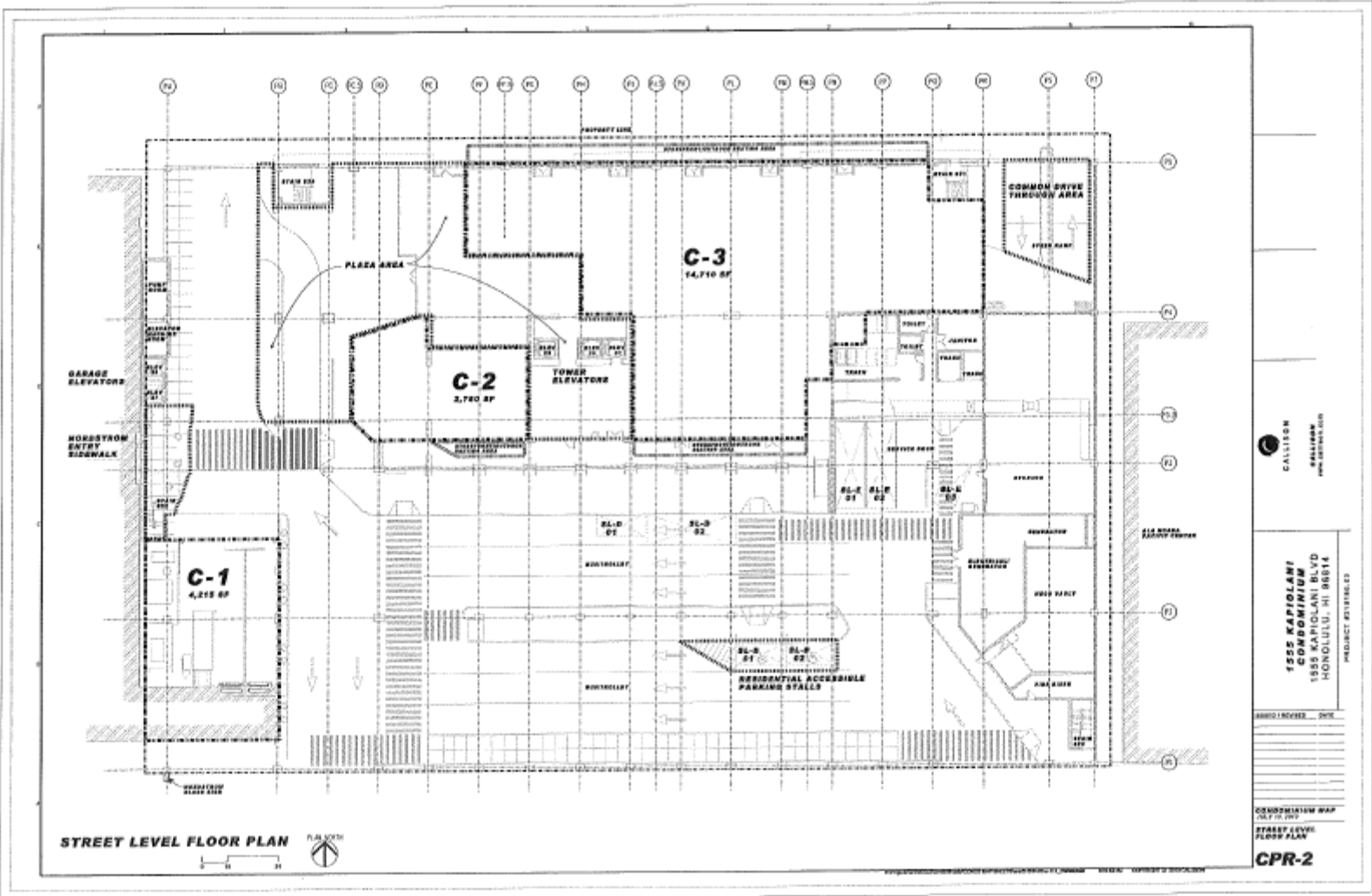

  
 CALLOUT

**1888 KAPIOLANI  
 CONDOMINIUM**  
 1888 KAPIOLANI BLVD  
 HONOLULU, HI 96814  
 PROJECT #210182-02

REVISION NO.	DATE	DESCRIPTION

CONDOMINIUM MAP  
 04/17/2012  
 SITE PLAN

**CPR-1**



**STREET LEVEL FLOOR PLAN**

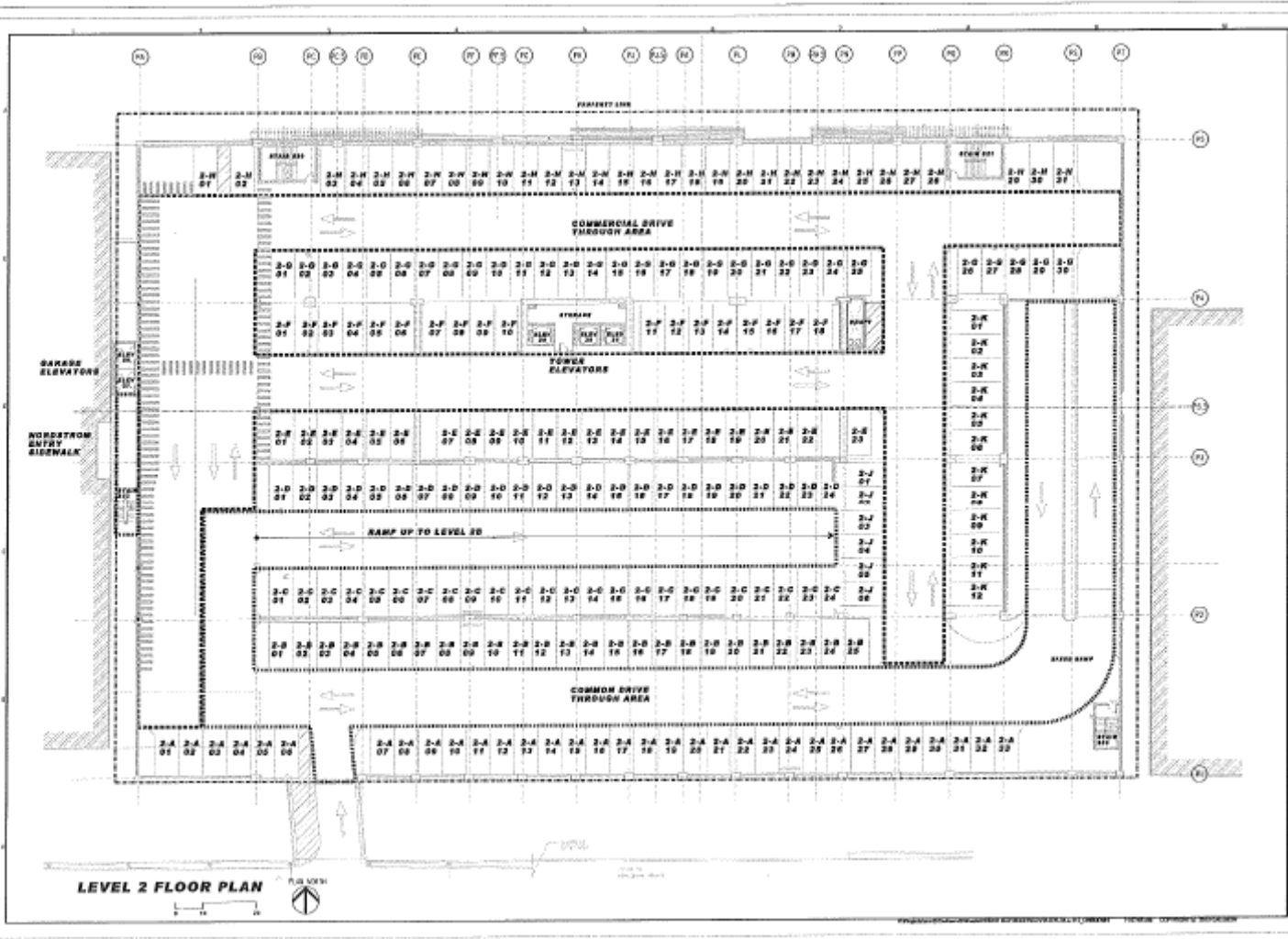
**CALLISON**  
 ARCHITECTS  
 4250 ALI DRIVE  
 SUITE 500  
 HONOLULU, HI 96816

**1555 KAPIOLANI CONDOMINIUM**  
 1555 KAPIOLANI BLVD  
 HONOLULU, HI 96814  
 PROJECT ESTABLISHED

NO.	REVISED	DATE

CONDOMINIUM MAP  
 ONLY TO 2012  
 STREET LEVEL  
 FLOOR PLAN  
**CPR-2**



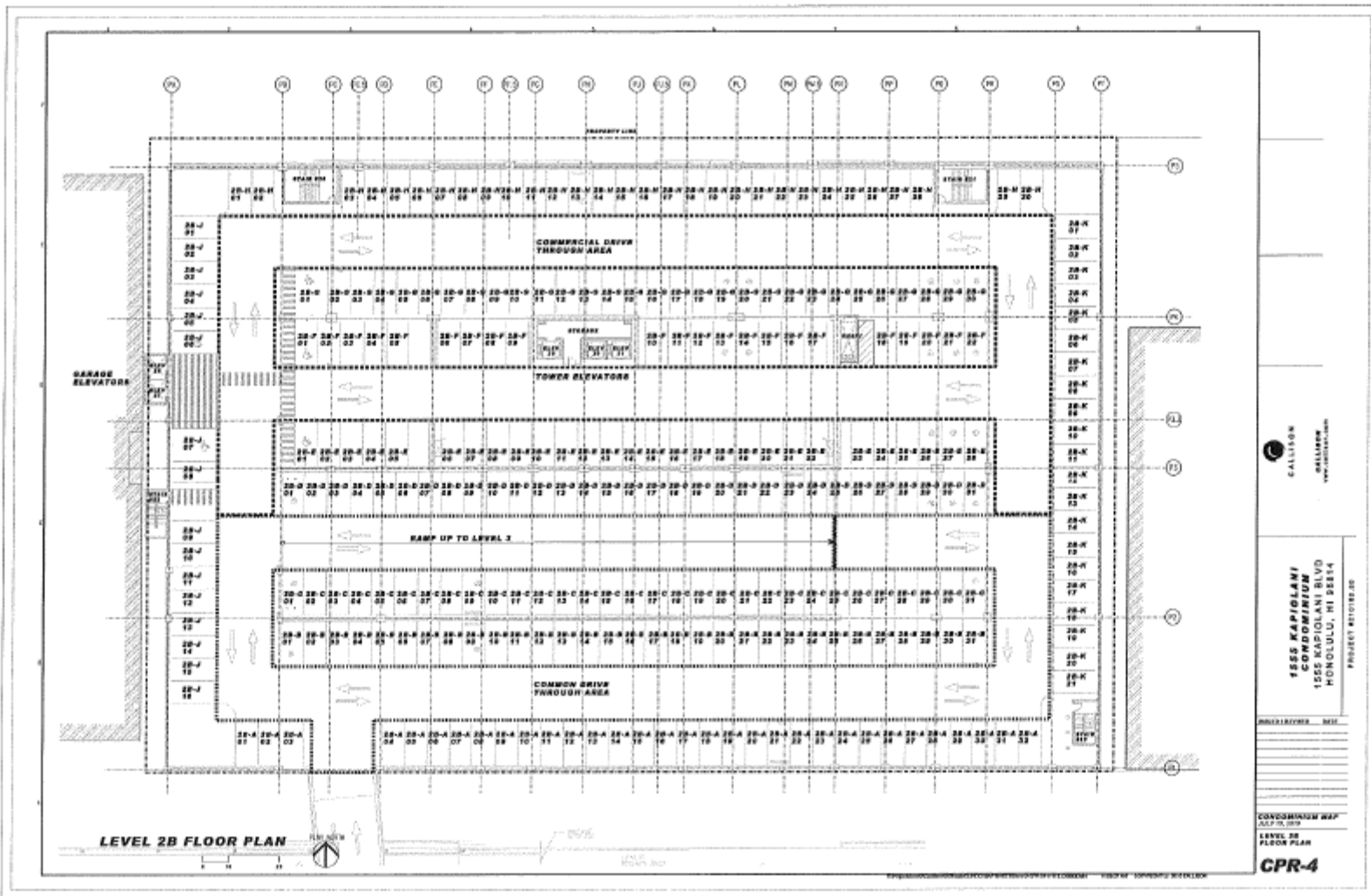


LEVEL 2 FLOOR PLAN


CALLIGON  
CALLIGON  
CALLIGON  
CALLIGON  
1555 KAPOLANI  
1555 KAPOLANI BLVD  
HONOLULU, HI 96814  
PROJECT #15146-01

REVISIONS

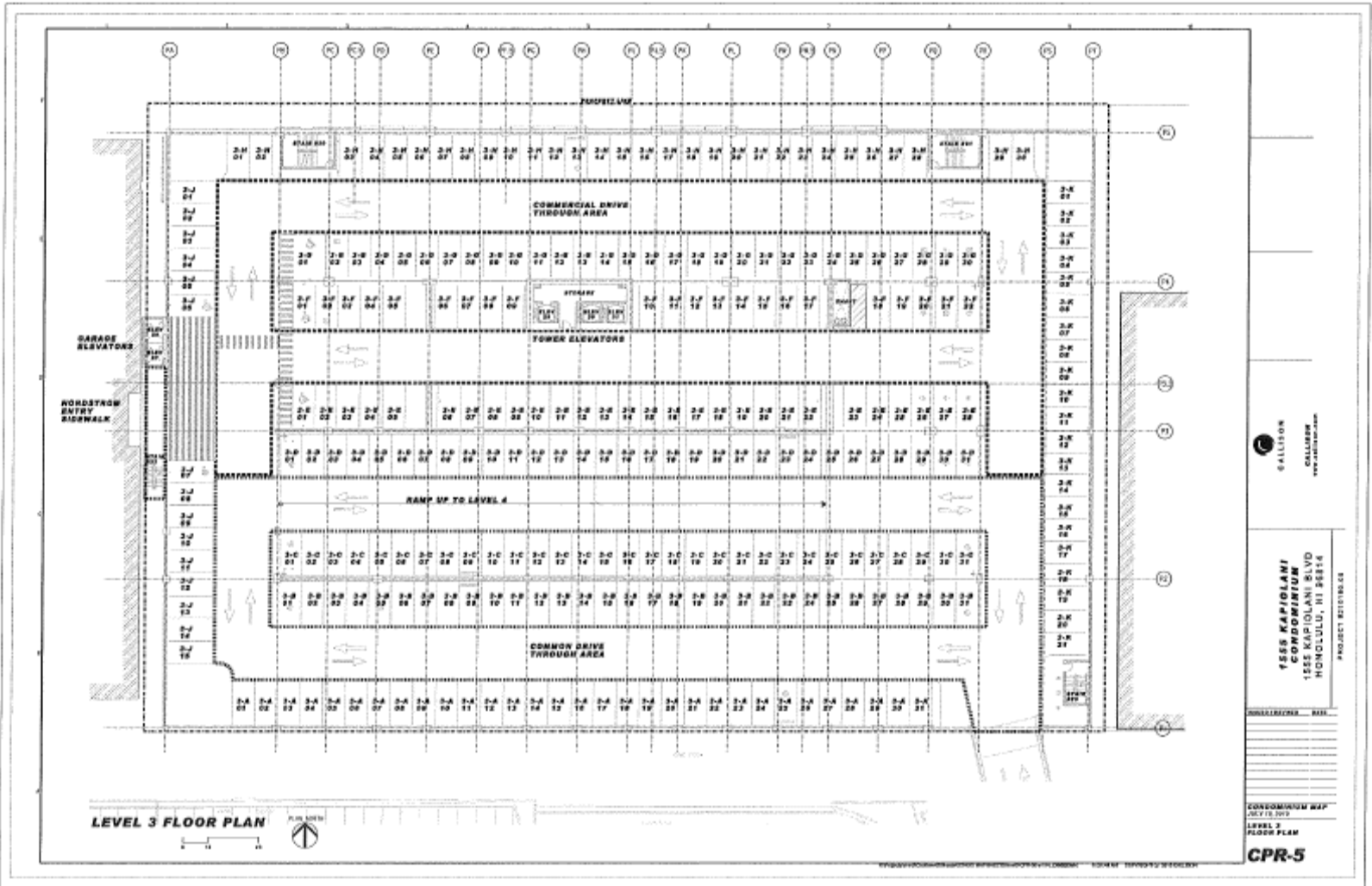
CONDOMINIUM MAP  
JULY 14, 2010  
LEVEL 2  
FLOOR PLAN  
CPR-3

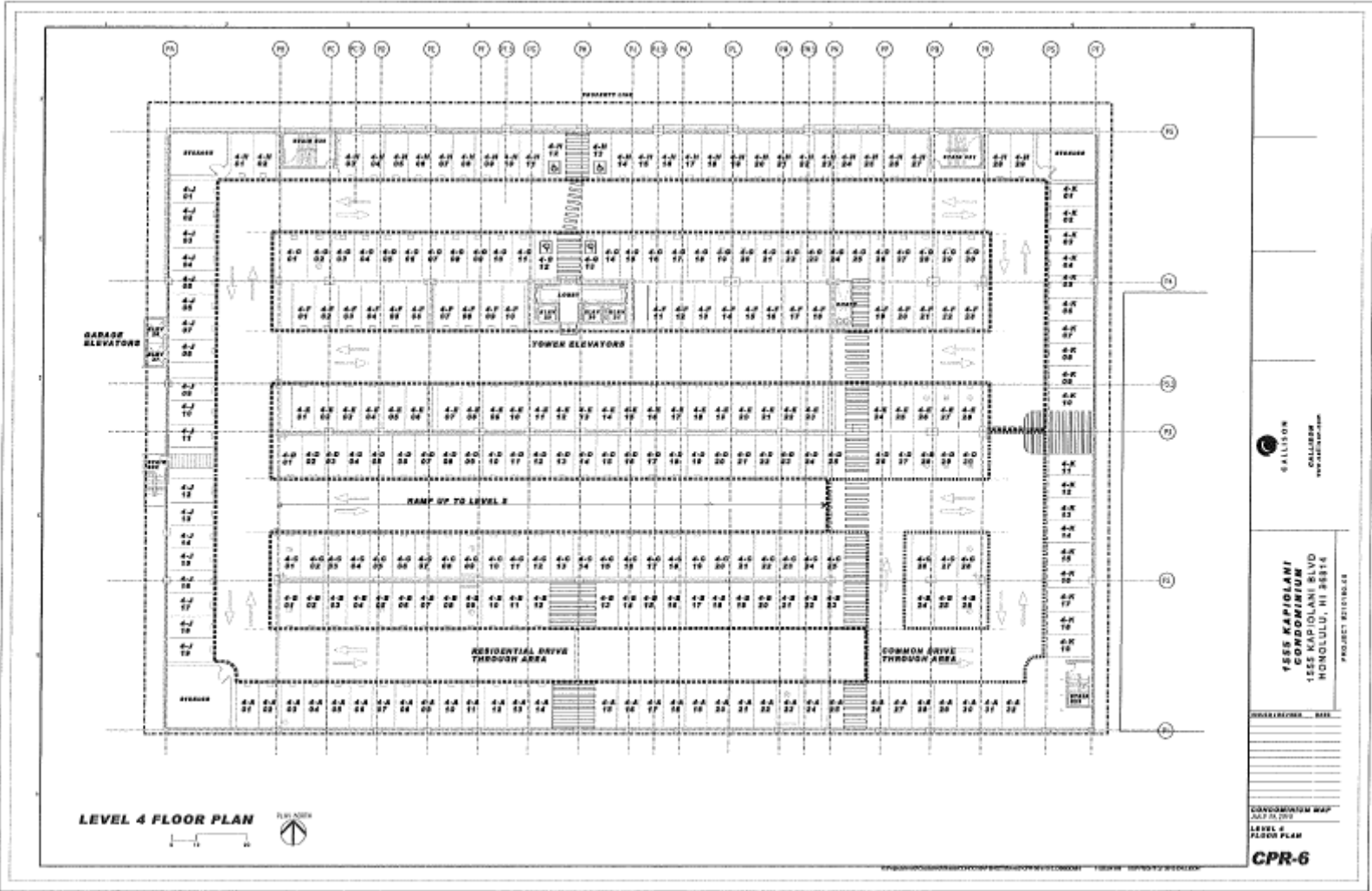


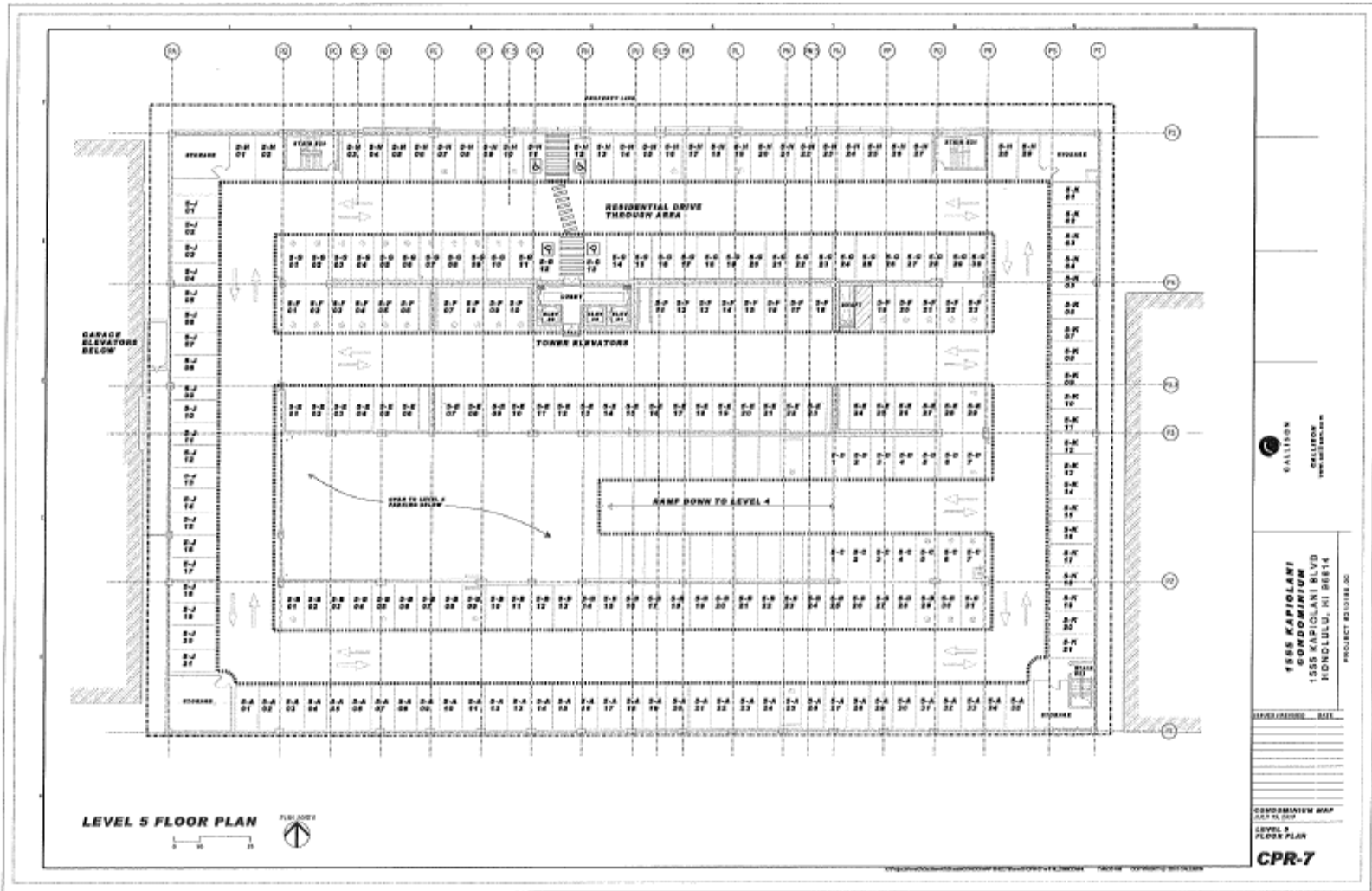
LEVEL 2B FLOOR PLAN

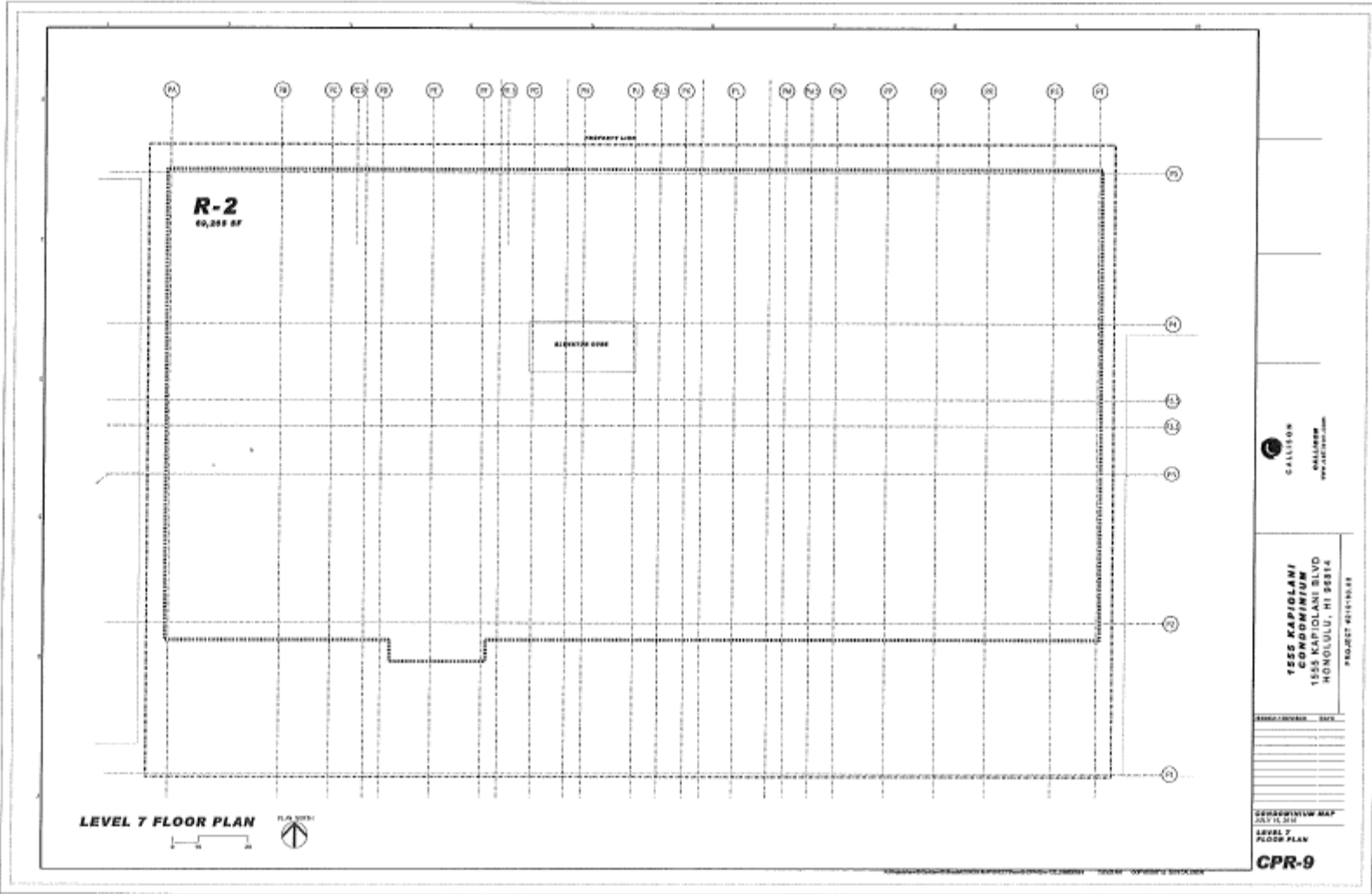

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**CONDOMINIUM**  
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 HONOLULU, HI 96814  
 PROJECT #20180220

SHEET/REVISION SET  
  
 CONDOMINIUM MAP  
 JULY 15, 2018  
 LEVEL 2B  
 FLOOR PLAN  
**CPR-4**









**R-2**  
60,000 SF

ELEVATOR CORE

**LEVEL 7 FLOOR PLAN**



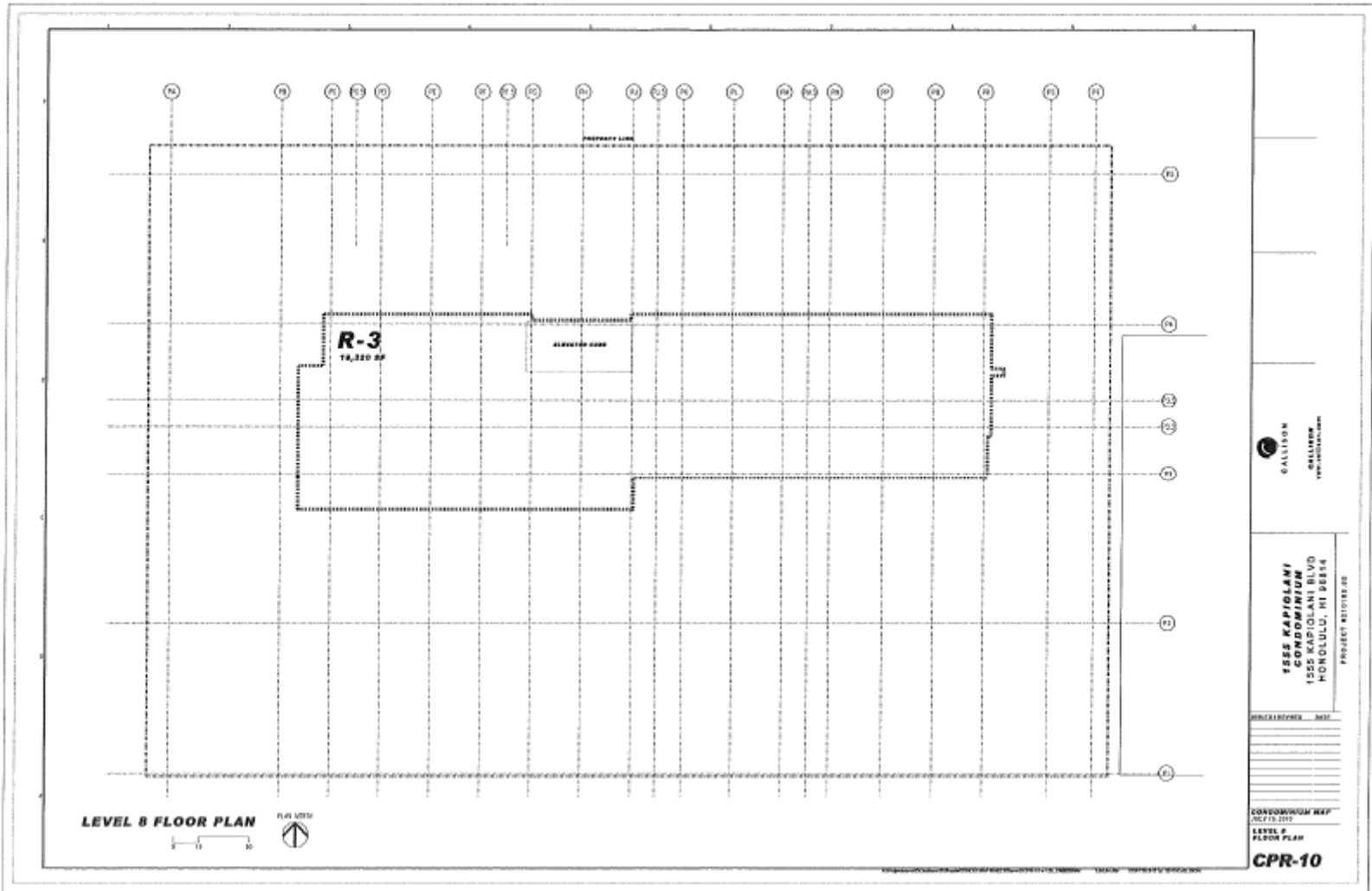
**1555 KAPIOLANI  
CONDOMINIUM**  
1555 KAPIOLANI BLVD  
HONOLULU, HI 96814

PROJECT 451100-01

DESIGNED BY MAP  
DATE 10.2011

LEVEL 7  
FLOOR PLAN

**CPR-9**



**LEVEL 8 FLOOR PLAN**



0 10 20



**1555 KAPIOLANI  
CONDOMINIUM**  
1555 KAPIOLANI BLVD  
HONOLULU, HI 96814

PROJECT #210183.00

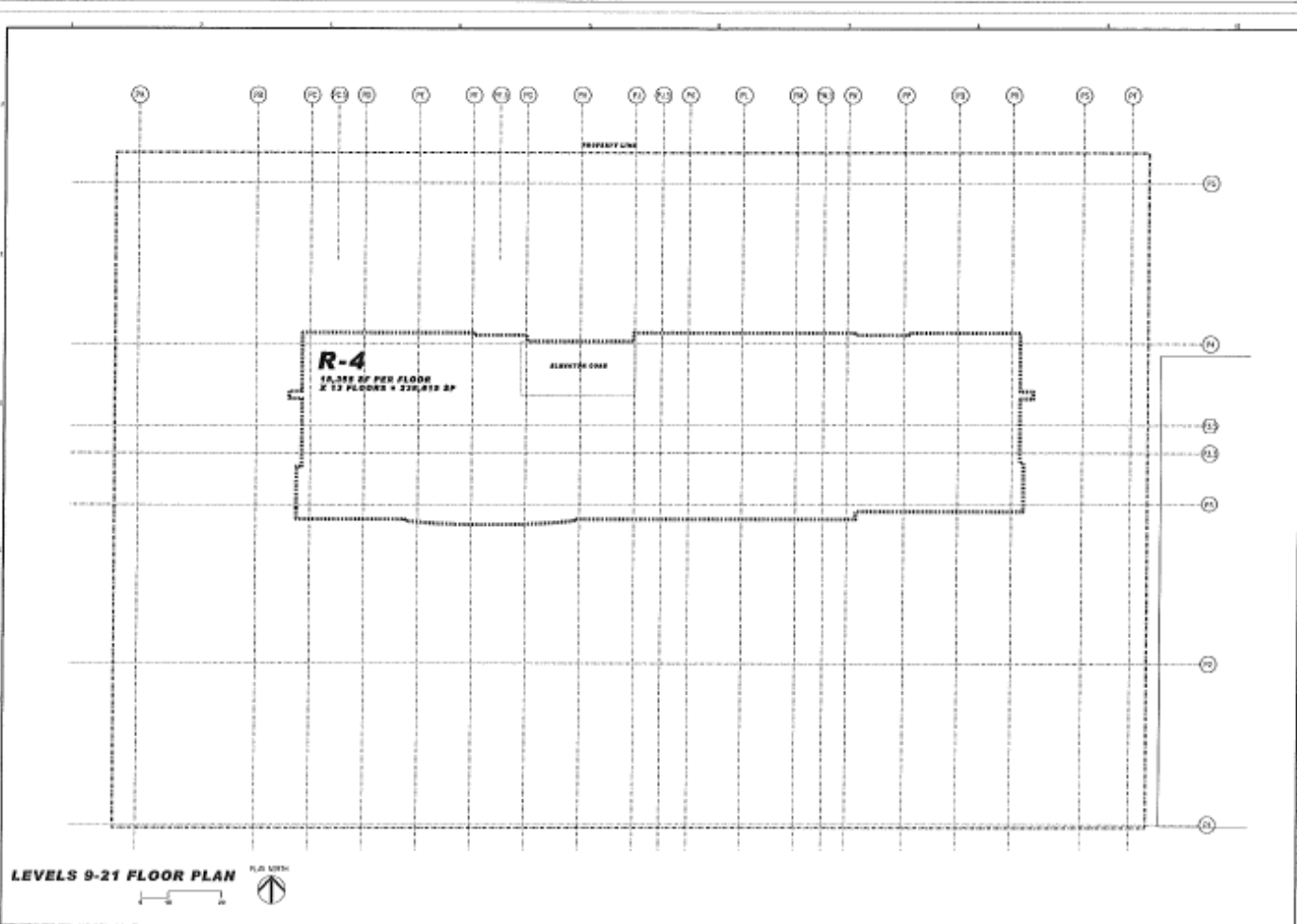
REVISIONS

NO.	DESCRIPTION	DATE

CONDOMINIUM MAP  
NOV 19, 2019

LEVEL 8  
FLOOR PLAN

**CPR-10**



**LEVELS 9-21 FLOOR PLAN**

PLS. SEE




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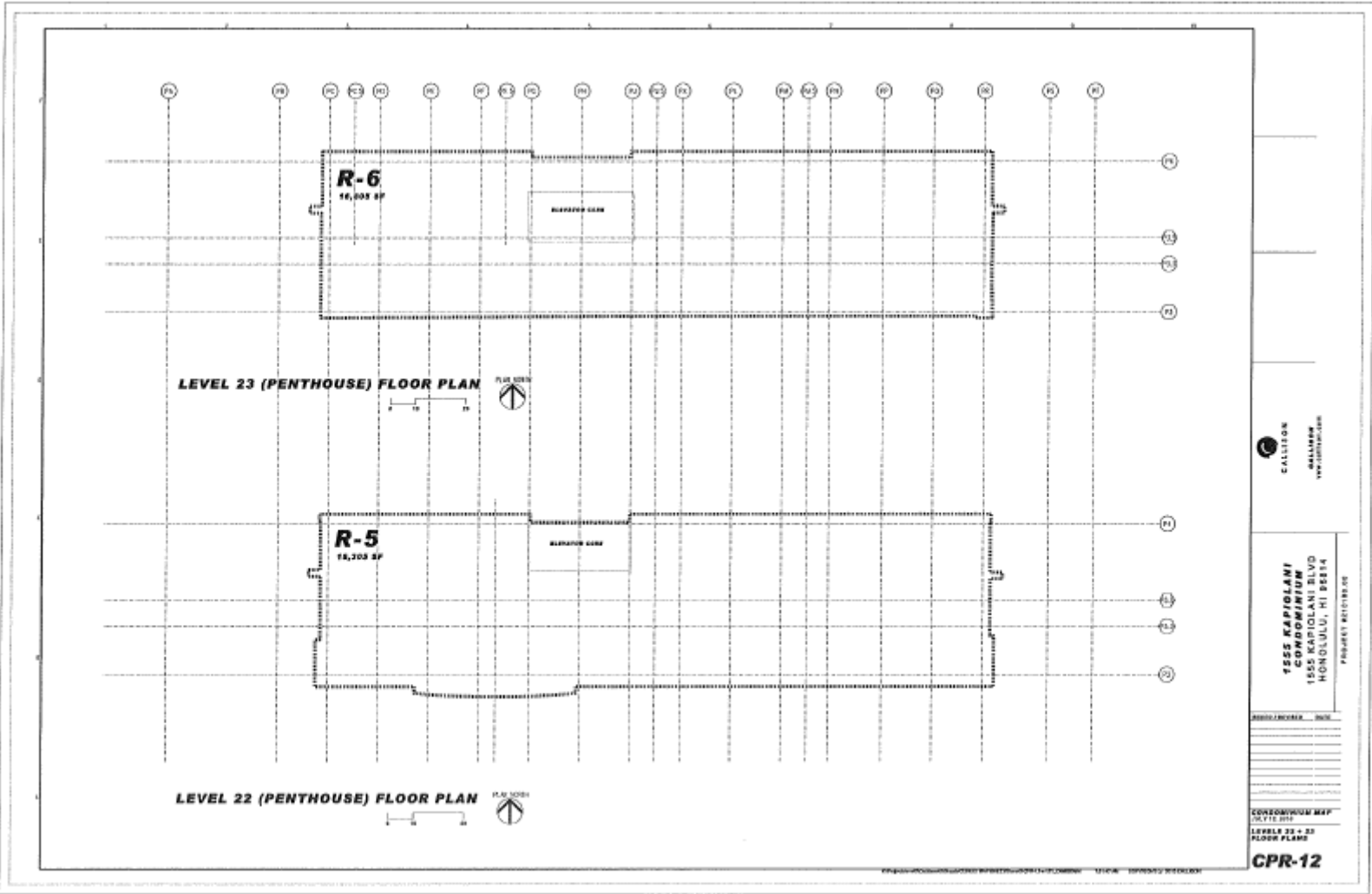
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 CONSTRUCTION  
 1555 KAPIOLANI BLVD  
 HONOLULU, HI 96814  
 PROJECT #0119546

DATE: 11/05/2014 10:00 AM

CONSTRUCTION MAP  
 2014.11.05  
 LEVELS 9-21  
 FLOOR PLAN

**CPR-11**





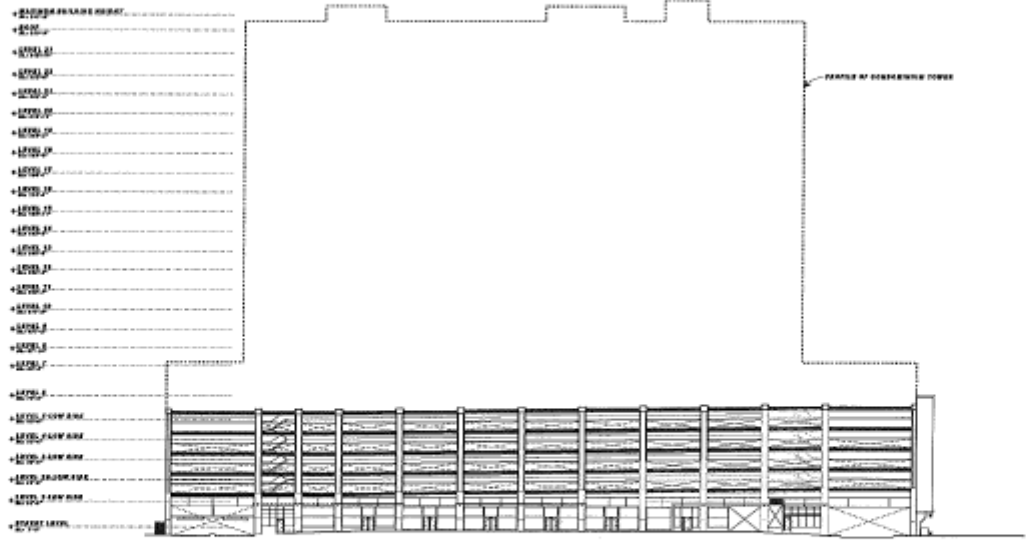

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**1555 KAPIOLANI BLVD**  
**HONOLULU, HI 96814**  
 PROJECT #15178.05

REVISION	DATE

CONDOMINIUM MAP  
 JULY 2011  
 LEVEL 22 - R-23  
 FLOOR PLANS

**CPR-12**



**NORTH BUILDING ELEVATION-KAPIOLANI BLVD**




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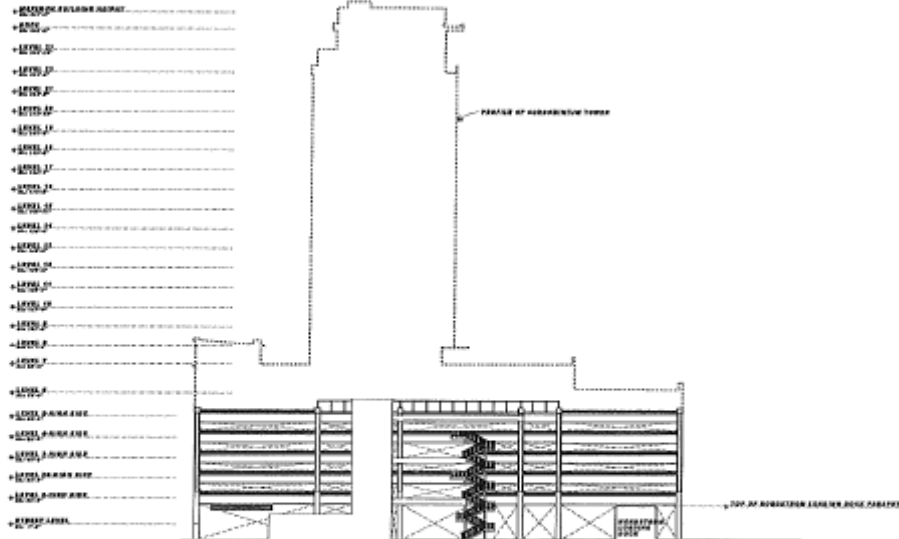
**1888 KAPIOLANI**  
**CONDOMINIUM**  
 1888 KAPIOLANI BLVD  
 HONOLULU, HI 96814  
 PROJECT #310189-06

DATE/REVISION DATE

DATE/REVISION	DATE

CONDOMINIUM MAP  
 SHEET 01.010  
 NORTH ELEVATION

**CPR-13**



**WEST BUILDING ELEVATION**

0 10 20


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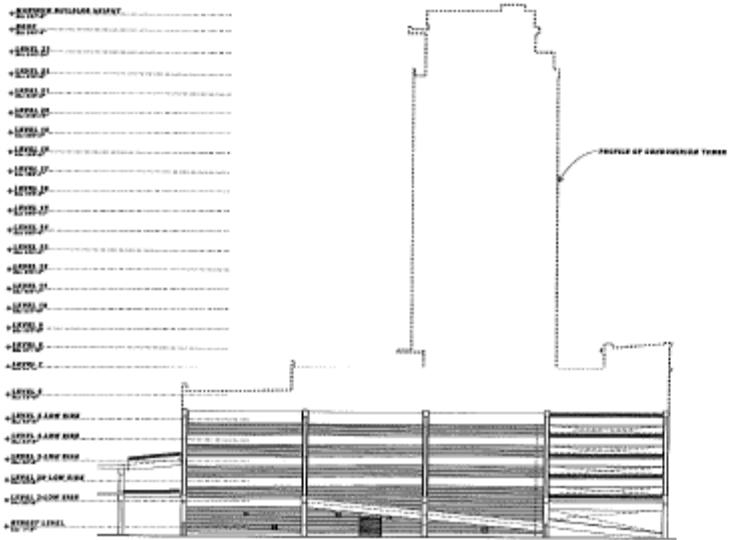
**1655 KAPIOLANI  
 CONDOMINIUM  
 1655 KAPIOLANI BLVD  
 HONOLULU, HI 96814**  
 PROJECT #21194618

OWNER/CLIENT DATE


CONDOMINIUM MAP  
 JULY 26, 2011  
 WEST BUILDING  
 ELEVATION

**CPR-14**





**EAST BUILDING ELEVATION**


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 HONOLULU, HI 96814  
 PROJECT #210182.00

SHEET NUMBER: 013  
 CONSTRUCTION MAP  
 NO. 713-001  
 EAST BUILDING  
 ELEVATION  
**CPR-16**

## EXHIBIT D

### Scope of Work for Plaza Area and Public Areas

The following is a brief description of the scope of work required to construct the Condominium Project at the Street Level:

#### **Demolition:**

- Paving and sidewalks to the north, south and west of the new residential lobby.
- Canopies and storefronts at the north side of the new residential lobby and Stair S21.
- Parking guardrail above the new lobby entry, Stair S21 and east side of the speed ramp at levels L2-L5.
- Partial soffit at the south retail sidewalk.
- Miscellaneous demising walls within the interior retail space.
- Partial interior slabs below the new residential lobby and future retail tenant space.
- Miscellaneous plumbing area drains.
- Miscellaneous mechanical ducts.
- Partial retail space occupied by new residential lobby.
- Trolley area ventilation air-ducts from Kapiolani driveway ceiling.

#### **New Construction**

- Decorative paving, concrete sidewalks and accessible curb ramps.
  - Canopies and exterior building signage.
  - Storefronts and entry doors.
  - Acoustic demising walls.
  - Decorative interior wall, floor and ceiling finishes.
  - Landscape planters.
  - Two water features.
  - Patched soffits along the south retail sidewalk.
  - Aluminum trellis applied to the north side of the garage and partial west and east sides.
  - Decorative exterior illuminated glass wall above north lobby entry.
  - Acoustic soffit above the Nordstrom loading dock exit drive lanes and Lobby Plaza.
  - Toilet room.
  - Mailroom.
  - Decorative exterior screenwall.
  - Decorative interior and exterior lighting and sound systems.
  - Emergency generator and electrical switchgear equipment.
  - Ventilation and air conditioning equipment and ductwork.
  - Exterior pedestrian plaza area.
  - Residential drop-off driveway.
  - Reroute trolley area ventilation air-ducts through service area ceiling.
-

**EXHIBIT E**

**Description of Lot 73**

**EXHIBIT F**

**Form of Sewer Easement**





**EXHIBIT G**

**Form of Memorandum of Development Agreement**

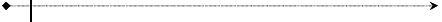

## EXHIBIT H

### Insurance Requirements

Property Insurance (Section References are to the Declaration. Capitalized terms used in this column are defined in the Declaration)	Pre Construction Property Insurance	Property Insurance Development Period (until Builders Risk Policy is replaced by a Condo Property Policy – see Declaration)
<p>5.1.2 Commercial Units C1, C2, C3 - perimeter, and interior walls, windows, doors, floors, ceiling and the other items enumerated in <u>Section 5.1.2</u>.</p> <ul style="list-style-type: none"> <li>• C1 Loading dock</li> <li>• C2 Retail Commercial Unit</li> <li>• C3 Retail Commercial Unit</li> </ul>	<ul style="list-style-type: none"> <li>• <b>General Growth Properties, Inc. (“GGP”) Manuscript Blanket Property Policy</b></li> <li>• <b>Owner pays premium</b></li> </ul>	<p>Developer to buy builder’s risk policy for entire property exposure other than tenants. Builders risk premium allocation to the Commercial Units is the lesser of (i) \$74,387 (the most recent GGP master policy allocation) or (ii) an amount determined by multiplying the builder’s risk policy premium by a fraction, the numerator of which is the replacement cost value of the Commercial Units and the Commercial Limited Common Elements and the denominator of which is the replacement cost value of the Commercial Units, and the Commercial Limited Common Elements, the Residential Units, the Residential Limited Common Elements and the General Common Elements from time to time.</p>
<p>Residential Unit R1, R2, R3,R4, R5, R6 and any additional Residential Units added to the Project from time to time by amendment to Declaration</p>	<p>Not Applicable</p>	
<p>5.2.1 General Common Elements consisting of Property other than Units and Limited Common Elements - Street Level garage trash room, toilets, janitor room, hallways, electrical and generator room, HECO Vault Room, fire riser, speed ramp, and sidewalks, and walkways depicted on Condominium Map and the other items listed in <u>Section 5.2.1</u>.</p>	<ul style="list-style-type: none"> <li>• <b>GGP Manuscript Blanket Property Policy</b></li> <li>• <b>Premium and uninsured loss allocated using “Parking Space Allocation” (63% to Owner, 37% to Developer)</b></li> </ul>	
<p>5.3.1 Residential Limited Common Elements: A. All portions of Residential improvements designated as Residential Limited Common Elements including all portions of Residential Developer Improvements not designated as Residential Units B. Roof, exterior walls C. Fire Riser, 3 storage rooms and Lobby on Garage Level 4 D. Assigned Parking Spaces E. The other items listed in <u>Section 5.3.1</u></p>		
<p>5.3.3 Commercial Limited Common Elements: All Commercial Developer improvements other than a Unit, Residential</p>	<ul style="list-style-type: none"> <li>• <b>GGP Manuscript Blanket Property Policy</b></li> </ul>	

<b>Property Insurance</b> <b>(Section References are to the Declaration. Capitalized terms used in this column are defined in the Declaration)</b>	<b>Pre Construction Property Insurance</b>	<b>Property Insurance Development Period (until Builders Risk Policy is replaced by a Condo Property Policy – see Declaration)</b>
Limited Common Element or General Common Elements and the other items listed in <u>Section 5.3.3</u>	<ul style="list-style-type: none"> <li>• <b>Premium and uninsured loss allocated using Parking Space Allocation</b></li> </ul>	
5.3.2 Individual Residential Limited Common Elements: Those items designated in <u>Section 5.3.2</u> including, without limitation: A. Assigned Parking Spaces B. Shutters, awnings, window boxes, doorsteps, stoops, porches, balconies, lanais, patios, exterior doors C. Any Chute, Flue, duct, wire, conduit that is specifically serving that Unit	Not Applicable	

*Note: GGP will put its master property policy above the Condominium Policy on an excess basis to cover Owner's interest only and Owner will pay the premium and collect any losses*

<b>Casualty General Liability, Worker's Compensation, Auto Liability Insurance</b>	<b>Pre Construction</b>	<b>Construction Period of Residential Tower</b>
5.1.2 Commercial Units C1, C2, C3. Tenant Space personal property, Tenant Improvements and Tenant Business Interruption	<ul style="list-style-type: none"> <li>• Tenant policy per Owner's Lease</li> <li>• Covers General Liability, Worker's Compensation, Auto</li> <li>• Additional Insured expanded to Association</li> </ul>	
5.1.2 Commercial Units C1, C2, C3 including perimeter, party walls, windows, doors, floors, ceiling <ul style="list-style-type: none"> <li>• C1 Loading dock</li> <li>• C2 Retail Commercial Unit</li> <li>• C3 Retail Commercial Unit</li> </ul>	<ul style="list-style-type: none"> <li>• GGP Blanket General Liability Policy in the amounts set forth in the Declaration</li> <li>• Developer as an additional insured on GGP's policy</li> <li>• \$500,000 self insured retention</li> <li>• Owner to pay for the insurance cost and losses for the spaces Owner is maintaining and using.</li> <li>• Once Developer commences use of the residential parking spaces, they will be removed from GGP's policy as an additional insured and Developer shall maintain its own coverage.</li> </ul>	<ul style="list-style-type: none"> <li>• OCIP or CCIP Worker's Compensation in the amounts set forth in the Declaration and General Liability policy in the amount of \$100,000,000</li> <li>• Cover the GC, Subs and all Unit Owners</li> <li>• Construction defect coverage for 10 years after Substantial Completion.</li> <li>• Kapiolani Retail, LLC, General Growth Properties, Inc., GGPLP L.L.C. and such additional insureds as Owner shall direct from time to time as additional insured.</li> <li>• Allocation of premium and losses within deductible: the premium is allocated based on an amount determined by multiplying the policy premium by a fraction whose numerator is the replacement cost value of the Commercial Units and Commercial Limited Common Elements and the denominator of which is the replacement cost value of the Commercial Units and the Commercial Limited Common Elements, plus the final planned estimated replacement cost of the Residential Units, the Residential Limited Common Elements and the General Common Elements. The party or its Representatives causing the loss shall be responsible for paying any deductible and for any uninsured loss.</li> </ul>
Residential Unit R1, R2, R3,R4, R5, R6 and additional Residential Units added to the Project from time to time by amendment to the Declaration	Not Applicable	
5.2.1 General Common Elements as described above	<ul style="list-style-type: none"> <li>• GGP Blanket General Liability Policy in the amount set forth in the Declaration</li> <li>• \$500,000 self insured retention</li> <li>• Allocate fixed cost to using Parking Space Allocation</li> </ul>	

Casualty General Liability, Worker's Compensation, Auto Liability Insurance	Pre Construction	Construction Period of Residential Tower
5.3.1 Residential Limited Common Elements as described above	Not Applicable	↑
5.3.3 Commercial Limited Common Elements as described above	<ul style="list-style-type: none"> <li>● GGP Blanket General Liability Policy in the amount set forth in the Declaration</li> <li>● \$500,000 self insured retention</li> <li>● Allocate fixed cost to using Parking Space Allocation</li> </ul>	↑
5.3.2 Individual Residential Limited Common Elements as described above	Not Applicable	↓

## EXHIBIT I

### Allocations

<u>Item</u>	<u>Allocation</u>	<u>Duration</u>
Premiums and Deductibles for insurance policies set forth in <u>Article 8</u>	As set forth in <u>Exhibit H</u> .	As set forth in <u>Exhibit H</u> .
Common Expenses in connection with the operation, maintenance and repair of the Condominium Project including street level and all portions of Retail/Parking Structure (less any such expenses for maintenance, repair, debris removal, etc. incurred in connection with Developer's construction activities which shall be paid in full by Developer	\$28,200 per annum by Developer payable monthly with the balance of such Common Expenses to be paid by Owner.	From the Conveyance Date until the Assessment Date.
Expenses incurred for fees of managing agent	N/A	
Common expenses, if any, incurred in connection with cost of usage, maintenance and repair with Sewer Upgrade Easement, if not separately metered or billed	1.8% by Owner 98.2% by Developer	From date that Residential Project taps into Sewer Improvements
Real Estate Taxes on Land and Commercial Project	Land and Improvements - 63% by Owner 37% by Developer, provided, however, that Developer shall pay 100% of real estate taxes assessed against any improvements constructed by or on behalf of Developer.	From Conveyance Date until the date that Residential Units are separately assessed.

LAND COURT SYSTEM

REGULAR SYSTEM

Return by Mail    Pickup    To:

SCHLACK ITO  
A LIMITED LIABILITY LAW COMPANY LLC  
Raymond S. Iwamoto, Esq.  
745 Fort Street, Suite 1500  
Honolulu, Hawaii 96813  
Phone: (808) 523-6006

Total Pages: \_\_\_\_\_

Tax Map Key No.:

**DECLARATION OF CONDOMINIUM PROPERTY REGIME  
OF  
1555 KAPIOLANI CONDOMINIUM**

**DECLARATION OF CONDOMINIUM PROPERTY REGIME  
OF  
1555 KAPIOLANI CONDOMINIUM**



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DECLARATION OF CONDOMINIUM PROPERTY REGIME  
OF  
1555 KAPIOLANI CONDOMINIUM

This Declaration of Condominium Property Regime of 1555 KAPIOLANI CONDOMINIUM is made by KAPIOLANI RETAIL, LLC, a Delaware limited liability company (the “Commercial Developer”).

INTRODUCTION

- A. The Commercial Developer is the owner in fee simple of the land described in [Exhibit A](#) attached to this document (the “Land”).
- B. The Commercial Developer has constructed a retail/parking structure on the Land (defined below as the “Commercial Developer Improvements”) and intends to convey certain portions of the Project to the Residential Developer (defined below as the “Initial Residential Space”) including certain Units along with an appurtenant interest in certain Common Elements. The Residential Developer will hold the option and all right under the Condominium Documents and the Condominium Property Act to construct a residential tower and associated improvements (defined below as the “Residential Developer Improvements”) located above the Commercial Developer Improvements.
- C. The Commercial Developer by recording this instrument intends to establish a condominium that consists of the Land, the Commercial Developer Improvements and the Residential Developer Improvements.
- D. This Declaration divides the Land and the improvements into separately owned “Units” and commonly owned “Common Elements.” It also establishes rights of the Commercial Developer, the Residential Developer and the Unit Owners.

1. DEFINITIONS. When used in this Declaration or the Bylaws, the following terms will have the following meanings unless the context clearly indicates otherwise:

1.1 “Agent” as used in Article 6 of the Bylaws means any person who is or was a Director, officer, employee, or other agent of the Association, or who is or was serving at the request of the Association as a director, officer, employee, or agent of another corporation, partnership, limited liability company, trust or other company.

1.2 “Air Rights Construction Activity” is defined in [Section 23.1](#)

1.3 “Alternative Allocation” is defined in Section 12 below.

1.4 “Association” means The Association of Unit Owners of 1555 Kapiolani Condominium.

1.5 “Assessments” mean all charges imposed by the Association against a Unit Owner pursuant to the Condominium Documents and includes Regular Assessments and Special Assessments.

1.6 “Board of Directors” or “Board” means the Board of Directors of the Association.

1.7 “Bureau” means the Bureau of Conveyances of the State of Hawaii.

1.8 “Bylaws” means the “Bylaws of the Association of Unit Owners of 1555 Kapiolani Condominium” recorded immediately following this Declaration. It also includes any amendments properly made to the Bylaws from time-to-time.

1.9 “Capital Upgrade” means additions, renovations, replacements, alterations or improvements to the Project.

1.10 “Class Common Expense” means those costs, expenses and charges payable by the Unit Owners within a Unit Class based on the Class Common Interest allocable to the Unit or Units within the Unit Class.

1.11 “Class Common Interest” means the percentage share assigned to a Unit within a Unit Class set forth in [Exhibit B](#) of this Declaration.

1.12 “Commercial Approval Rights” is defined in Section 22.4.2 of this Declaration.

1.13 “Commercial Class Common Interest” means the Class Common Interest appurtenant to a Commercial Unit as set forth on [Exhibit B](#).

1.14 “Commercial Developer” means KAPIOLANI RETAIL, LLC, a Delaware limited liability company. If the Commercial Developer transfers some or all of its rights to another Person pursuant to Section 22 then that Person will become the “Commercial Developer” to the extent of the rights transferred.

1.15 “Commercial Developer Improvements” means those improvements within the Land or serving any portion of the Association which are or have been constructed by or on behalf of the Commercial Developer and includes the Retail/Parking Structure. Each of the Commercial Developer Improvements is further depicted on sheets CPR-1 through CPR-7 of the Condominium Map.

1.16 “Commercial Developer Reserved Rights” means all rights reserved to the Commercial Developer under this Declaration, including, without limitation, those contained in this Declaration, or in the Bylaws.

1.17 “Commercial Developer Space” means all portions of the Project other than the Initial Residential Space.

1.18 “Commercial Indemnitee” is defined in Section 27.13.1 below.

1.19 “Commercial Limited Common Elements” means those parts of the Limited Common Elements which are reserved for the exclusive use of the Commercial Unit Owner(s).

1.20 “Commercial Unit C-1” means the Unit designated C-1 on the Condominium Map and further described herein.

1.21 “Commercial Retail Units” means the Units Designated as C-2 and C-3 on the Condominium Map and further described herein.

1.22 “Commercial Unit” means Commercial Unit C-1 and the Commercial Retail Units.

1.23 “Commercial Unit Class” means the sole Unit Class applicable to the Commercial Units.

1.24 “Commercial Unit Class Director” means each Director elected by the Commercial Unit Class.

1.25 “Commercial Unit Class Expense” means all Common Expenses which, pursuant to this Declaration or the Bylaws, are limited to the Commercial Units and are payable by each Unit Owner of a Commercial Unit.

1.26 “Commercial Unit Owner” means the Person or Persons that own fee simple title to a Commercial Unit; provided, however that any Person or Persons which hold such interest solely as security for the performance of an obligation shall not be a Commercial Unit Owner solely by reason of such interest. As used in the Condominium Documents and pursuant to Section 27.12 of this Declaration, the term Commercial Unit Owner shall not include Nordstrom Inc. with respect to Unit C-1.



1.27 “Common Elements” means all parts of the Project, other than the Units and includes all areas described in this Declaration or on the Condominium Map as General Common Elements or Limited Common Elements and includes any other interest in real estate for the benefit of the Association or Unit Owners that are or hereafter become subject to this Declaration.

1.28 “Common Expense” or “Common Expenses” means all charges, costs and expenses whatsoever incurred by the Association for or in connection with the administration, management, and operation of the Project and all other sums designated as Common Expenses under the Condominium Property Act, this Declaration or the Bylaws, including, without limiting the generality of the foregoing, the following: all charges for taxes (except real property taxes and other such taxes or assessments which are or may hereafter be assessed separately on each Unit and the Common Interest in the Common Elements appertaining thereto or the personal property or any other interest of the Unit Owner), assessments, costs of maintenance, repair, rebuilding, replacement and restoration of the Common Elements and any additions and alterations thereto, any labor, services, materials, supplies and equipment therefor, any liability whatsoever for loss or damage arising out of or in connection with the Common Elements or any accident, fire or nuisance thereon, yard, janitorial or other similar services, wages, accounting and legal fees, management fees, and other necessary expenses of upkeep, maintenance, management and operation incurred on or for the Common Elements, the cost of pest control services (including termite control), whether or not affecting any particular Unit or Units, any premiums for insurance, including hazard and liability insurance herein required to be maintained by the Association, and the cost of all utility services, including water, electricity, gas (if any), garbage disposal, sewer, sewage treatment, telephone, cable television, and other similar services, unless separately metered, or otherwise separately attributable to a Unit or group of Units, in which case the amount charged or attributable to each Unit or group of Units, as determined by the Board of Directors, shall be payable by the owner or owners of such Units.

1.29 “Common Interest” or “Common Interests” means the undivided percentage interest in the Common Elements appurtenant to each Unit in the Project as stated in [Exhibit B](#) of this Declaration or in any amendment to this Declaration.

1.30 “Community Systems” is defined in [Section 7.13](#) of this Declaration.

1.31 “Completion of Construction” means the earliest of: (1) The issuance of a certificate of occupancy for the Unit; (2) the date of completion for the Project, or the phase of the project that includes the Unit as defined in Section 507-43 of the Hawaii Revised Statutes; (3) the recordation of the "as built" amendment to the Declaration that includes the Unit; (4) the issuance of the architect's certificate of substantial completion for the Project or the phase of the Project that includes the Unit; or (5) the date the Unit is completed so as to permit normal occupancy.

1.32 “Condemnation Trustee” is defined in Section 16.1 of this Declaration.

1.33 “Condominium Documents” means this Declaration, the Bylaws, any House Rules, and the Condominium Map, as each of the same may be amended from time-to-time.

1.34 “Condominium Map” means the plans and elevations for the Project filed in the Land Court as Condominium Map No. \_\_\_\_\_, as amended.

1.35 “Condominium Property Act” means the Hawaii Condominium Property Act, Chapter 514B, Hawaii Revised Statutes, as amended.

1.36 “Condominium Regulations” means the regulations adopted under the Condominium Property Act from time-to-time.

1.37 “Declaration” means this document, as amended.

1.38 “Developer Control Period” has the meaning given to the term in [Section 7.7](#) below.

1.39 “Development Agreement” is defined in Section 22.3 of this Declaration.

1.40 “Development Period” means the period starting on the date that this Declaration is recorded and ending on the date after which the Commercial Developer and the Residential Developer record a document declaring the termination of the Development Period but in no event later that sixty (60) days after the Completion of Construction of the last Residential Unit.

1.41 “Eligible Mortgage Holder” means a holder, insurer, or guarantor of a first mortgage on a Unit who has submitted a written request for notice from the Association of amendments to the Condominium Documents or other significant matters which would affect the interests of the mortgagee.

1.42 “Emergency” is defined in [Section 7.10](#) of this Declaration.

1.43 “Existing Façade Sign” is defined in [Section 7.14](#) of this Declaration.

1.44 “Existing Owner” is defined in Section 8.12 of the Bylaws.

1.45 “Expenses” as used in Article 6 of the Bylaws includes, but is not limited to, attorneys’ fees, costs, judgments, fines, settlements and other amounts actually and reasonably incurred.

1.46 “Extraordinary Actions” is defined in Section 10.5 of this Declaration.

1.47 “Façade Sign” or “Façade Signs” is defined in [Section 7.14](#) of this Declaration.

1.48 “General Common Elements” is defined in Section 5.2.1 of this Declaration.

1.49 “General Common Expenses” are Common Expenses of the General Common Elements allocated by Special Allocation as set forth on [Exhibit D](#).

1.50 “Grantor” is defined in Section 7.16.2 of this Declaration.

1.51 “House Rules” means the rules and regulations affecting the Residential Units and Residential Limited Common Elements but not the Commercial Units and Commercial Limited Common Elements adopted by the Residential Unit Class Directors, subject to the restrictions and requirements for such rules and regulations as set forth in the Condominium Documents and the Condominium Property Act. In addition to the foregoing, any House Rules governing the General Common Elements may only be adopted with the consent of a majority of the Commercial Unit Class Directors. It also includes any changes and additions properly made to the House Rules from time-to-time.

1.52 “Improvements” means all improvements located on the Land, now or in the future, including the Commercial Developer Improvements and the Residential Developer Improvements.

1.53 “Individual Commercial Limited Common Element” means those parts of the Commercial Limited Common Elements which are reserved for the exclusive use of one (1) or more, but less than all, of the Commercial Unit Owners.

1.54 “Individual Residential Limited Common Element” means those parts of the Residential Limited Common Elements which are reserved for the exclusive use of one (1) or more, but less than all, of the Residential Unit Owners.

1.55 “Individual Limited Common Element” means those parts of the Limited Common Elements which are reserved for the exclusive use of one (1) or more, but less than all of the Unit Owners and includes Individual Commercial Limited Common Elements and Individual Residential Limited Common Elements.

1.56 “Initial Residential Space” means the Residential Units designated R-1, R-2, R-3, R-4, R-5, and R-6 and includes the Residential Limited Common Elements described herein and on the Condominium Map as configured at the time this Declaration is first recorded before the construction of the Residential Developer Improvements. The Plaza Area shall also be renovated by the Residential Developer as part of the development of the Initial Residential Space.

1.57 “Interested Person” means any person who has any interest in the Project or who has the right to use the Project or any part of it but shall not include the Commercial Developer or any Owner of a Commercial Unit. For example, each Owner, each Lender, and anyone who rents or leases a Unit would be an “Interested Person.” It would also include anyone who has the legal right or who has permission to use the Project or any part of it.

1.58 “Insurance Trustee” is defined in [Section 15.8](#) of this Declaration.

1.59 “Land” means the real property and its appurtenances described in [Exhibit A](#).

1.60 “Land Court” means the Office of the Assistant Registrar of the Land Court of the State of Hawaii.

1.61 “Lender” means the mortgagee of a recorded Mortgage on a Unit. It also includes the beneficiary of a deed of trust encumbering a Unit.

1.62 “Limited Common Assessments” means that portion of the Common Expenses, if any, attributable to the maintenance, operation, inspection, administration, repair, or replacement of the Limited Common Elements, if any (which expenses are payable by the Unit Owner of the Unit to which such Limited Common Elements are appurtenant).

1.63 “Limited Common Elements” means (i) those parts of the Common Elements designated in [Section 5.3](#) of this Declaration as Limited Common Elements and (ii) any Common Elements later designated as Limited Common Elements as expressly permitted by this Declaration. The term “Limited Common Elements” shall include Commercial Limited Common Elements, Individual Commercial Limited Common Elements, Residential Limited Common Elements and Individual Residential Limited Common Elements, as the context may require.

1.64 “Limited Common Expenses” means that portion of the Common Expenses, if any, attributable to the maintenance, operation, inspection, administration, repair, or replacement of the Limited Common Elements.

1.65 “Lot 73” means that parcel of land adjacent to the Property and designated as Lot 73, as shown on Map 23 filed with Land Court Consolidation No. 20 of the Hawaiian Dredging Company Limited.

1.66 “Lot 73 Occupant” means a Person or Persons with a leasehold interest in all or substantially all of Lot 73 from time-to-time if the Lot 73 Owner advises the Residential Developer in writing that such Person or Persons can exercise the approval rights contained in Section 23 of this Declaration (which notice may indicate with specificity which approval rights, if less than all, shall apply to such Lot 73 Occupant). Until further notice, the Lot 73 Occupant is Nordstrom, Inc., who shall be entitled to exercise all of the approval rights granted to the Lot 73 Occupant herein. Such notice shall be binding upon the Residential Developer and the Association until such time as such notice is withdrawn, in writing, by the Lot 73 Owner.

1.67 “Lot 73 Owner” means the Person or Persons which owns Lot 73.

1.68 “Majority of the Owners” means Owners of Units having more than fifty percent (50%) of the Common Interests for the whole Project. Any other reference to a certain percentage of the Unit Owners means the Owners of Units having that percentage of the Common Interests for the whole Project.

1.69 “Managing Agent” means the agent employed by the Commercial Developer or the Board pursuant to the Declaration and Bylaws.

1.70 “Member” is defined in Section 2.3 of the Bylaws.

1.71 “Management Contract” is defined in Section 7.2.D of the Bylaws.

1.72 “Mortgage” when used as a noun, means a recorded mortgage, deed of trust, mortgage deed or similar instrument on a Unit as collateral for a loan. When used as a verb, it refers to making a Unit subject to a mortgage or deed of trust.

1.73 “New Improvement” means any improvements that the Commercial Developer or Residential Developer develops, builds, or adds from time-to-time on the Land pursuant to [Sections 19 or 21](#) of this Declaration and does not include the initial Residential Developer Improvements approved by the Commercial Developer pursuant to Section 22.

1.74 “New Owner” is defined in Section 8.11 and 8.12 of the Bylaws.

1.75 “Operational Expense” means any Common Expense other than a Capital Upgrade and includes expenses for the operation and normal care, upkeep, repair, and maintenance of the Project.

1.76 “Outside Plaza Area” means that portion of the Plaza Area that may be designated as General Common Elements by the Commercial Developer pursuant to Section 1.78 of this Declaration.

1.77 “Person” means any natural person or any corporation, partnership, limited partnership, limited liability partnership, joint venture, trust, limited liability company or other legal entity.

1.78 “Plaza Area” means the area designated on the Condominium Map containing certain drop off areas and interior spaces and is initially a Commercial Limited Common Element appurtenant to the Commercial Units. The Commercial Developer hereby reserves the right to amend this Declaration to designate the interior portion of the Plaza Area as a Residential Limited Common Element appurtenant to the Residential Units and the exterior portion of the Plaza Area as General Common Elements.

1.79 “Pledge” is defined in Section 3.11.B of the Bylaws.

1.80 “Pledge Proxy Holder” is defined in Section 3.11.B of the Bylaws.

1.81 “Plumbing Installation” is defined in [Section 23.1](#).

1.82 “Policy” is defined in [Section 14.2](#).

1.83 “Proceeding” as used in Article 6 of the Bylaws means any threatened, pending, or completed action or proceeding including, but not limited to, civil suits, a criminal matters, and administrative or investigative proceedings.

1.84 “Project” means the condominium project established pursuant to this Declaration and the other Condominium Documents.

1.85 “Property” means the Land and the Improvements.

1.86 “Proximity Work” is defined in Section 23.2

1.87 “Record”, “Recorded”, “Recording”, and similar terms mean filed in the Land Court and/or recorded in the Bureau.

1.88 “Record Date” is defined in Section 3.5 of the Bylaws.

1.89 “Regular Assessments” is defined in Section 8.4.B of the Bylaws.

1.90 “Representatives” means a Person’s shareholders, directors, officers, members (in the case of a limited liability company), agents, employees and independent contractors.

1.91 “Reserved Rights Interests” is defined in Section 16.2 of this Declaration.

1.92 “Residential Class Common Interest” means the Class Common Interest appurtenant to a Residential Unit as set forth on [Exhibit B](#).

1.93 “Residential Developer” means a Person who is initially transferred the Initial Residential Space from the Commercial Developer. If the Residential Developer transfers some or all of its rights to another Person pursuant to Section 22, then that Person will become the “Residential Developer” to the extent of the rights transferred.

1.94 “Residential Developer Improvements” means those improvements within the Land or serving any portion of the Association which are or have been constructed by or on behalf of the Residential Developer and shall include all improvements and all Units included within the boundaries of the Initial Residential Space and all Residential Limited Common Elements appurtenant thereto. The Residential Developer shall be required pursuant to the Condominium Property Act to amend the Condominium Map as may be necessary to show the layout, location, Residential Unit numbers and dimensions of the Residential Units and elevations of the Residential Developer Improvements following Completion of Construction of all Residential Units within the Residential Developer Improvements.

1.95 “Residential Developer Reserved Rights” means all rights reserved to the Residential Developer under this Declaration, including, without limitation, those contained in this Declaration, or in the Bylaws and includes the obligation to comply with [Section 22.3](#) of this Declaration prior to and during the exercise of such rights.

1.96 “Residential Guest Parking” shall refer to the parking stalls designated as such in [Exhibit C](#).

1.97 “Residential Limited Common Element” means those parts of the Limited Common Elements which are reserved for the exclusive use of all Residential Unit Owners and are described further in [Section 5.3.1](#) of this Declaration.

1.98 “Residential Indemnitee” is defined in Section 27.13.3 of this Declaration.

1.99 “Residential Unit” means the Unit(s) designated as Residential Units on the Condominium Map and further described herein.

1.100 “Residential Unit Class” means the sole Unit Class applicable to the Residential Units.

1.101 “Residential Unit Class Director” means each Director elected by the Residential Unit Class

1.102 “Residential Unit Class Expense” means all Common Expenses which, pursuant to this Declaration or the Bylaws, are limited to the Residential Units and are payable by each Unit Owner of a Residential Unit as a Residential Unit Class Expense.

1.103 “Residential Unit Owner” means the Person or Persons which own a Residential Unit; provided, however that any Person or Persons which hold such interest solely as security for the performance of an obligation shall not be a Residential Unit Owner solely by reason of such interest.

1.104 “Restricted Areas” is defined in [Section 7.10](#) of this Declaration.

1.105 “Retail/Parking Structure” means the six (6)-level retail and parking structure building within the Property.

1.106 "Service Dock" means the Commercial Limited Common Element Loading Dock so designated on the street level of the Project as shown on the Condominium Map. The use of the Service Dock by the Residential Units shall be governed by [Section 7.15](#) below.

1.107 "Sewer Upgrade" is defined in [Section 7.16.2](#).

1.108 Sewer Upgrade Easment" is defined in [Section 7.16.2](#)

1.109 "Special Assessment" means those Assessments charged by the Association pursuant to Section 8.4.B.2 of the Bylaws.

1.110 "Special Cost" means those Common Expenses assessed against Units based upon Alternative Allocation.

1.111 "Tower Modification" is defined in [Section 23.1](#).

1.112 "Unit" means any part of the Project designated as a Unit in [Section 5.1](#), and includes the Residential Units and Commercial Units.

1.113 "Unit C-1 Air Rights Area" is defined in [Section 23.1](#)

1.114 "Unit Class" means the class groupings for the Units. The Association shall be comprised of a Residential Unit Class and a Commercial Unit Class. The Owner of any Unit, upon acquiring title thereto, shall automatically become a member of the Unit Class to which such Owner's Unit belongs.

1.115 "Unit Owner" or "Owner" means the Person or Persons which own a Unit and its appurtenant Common Interest; provided that to such extent and for such purposes as specifically provided in a recorded lease, including the exercise of voting rights if so specified, a lessee of a Unit shall be deemed to be the Unit Owner. The term Unit Owner includes each Residential Unit Owner and Commercial Unit Owner. The buyer of a Unit under a recorded agreement of sale has all the rights of Unit Owner, including the right to vote, subject to any retained voting rights that the seller may have retained on matters substantially affecting the seller's security interest as provided in the Condominium Property Act.

1.116 "2005 Lease" is defined in Section 27.12.

2. **SUBMISSION TO CONDOMINIUM PROPERTY REGIME.** In order to create a condominium project consisting of the Land and the Improvements, the Commercial Developer hereby submits the Property to the condominium property regime established by the Condominium Property Act. In furtherance thereof, the Commercial Developer makes the following declarations as to divisions, limitations, covenants, conditions, easements and restrictions, and declares and agrees that the Property is held and will be held, conveyed, mortgaged, encumbered, leased, rented, used, occupied and improved subject to the declarations, covenants, conditions, easements and restrictions contained in this Declaration and the Bylaws, as amended, which shall be binding on and for the benefit of the Commercial Developer, Residential Developer and their successors and assigns, and all subsequent owners, mortgagees, lessees and sublessees of all or any part of the Project and their respective heirs, devisees, personal representatives, successors and assigns, and any other person who may use any part of the Project. The terms, "successors and assigns" of the Commercial Developer and Residential Developer as used herein shall refer only to a Person that has been transferred Commercial Developer Reserved Rights or Residential Developer Reserved Rights in accordance with requirements of §514B-136 of the Condominium Property Act.

2.1 **Commercial Developer's Reservation of Easements and Other Rights.** The Commercial Developer grants and reserves the easements described in this Declaration. This Declaration also reserves the Commercial Developer Reserved Rights and Residential Developer Reserved Rights in the Property and the Project. All Units and their appurtenant Common Interests and all Common Elements (including the Limited Common Elements) are

subject to the Commercial Developer Reserved Rights and Residential Developer Reserved Rights and to the easements granted or reserved in this Declaration or in the Bylaws.

3. NAME OF THE CONDOMINIUM. The name of the Project is “**1555 KAPIOLANI CONDOMINIUM**”.

4. DESCRIPTION OF THE PROJECT. At the time of recordation of this Declaration and the Condominium Map, the Project consists of two buildings, each without a basement, comprising the Commercial Developer Improvements; the one Commercial Unit C-1 (a single story loading dock building) and the other an existing six (6)-level retail/parking structure building containing the Retail/Parking Structure, elevators, elevator machine rooms a pump room and certain other improvements. Commercial Unit C-1 and the Retail/Parking Structure are constructed principally of concrete, wood, glass and steel and together with the Land are submitted to the condominium property regime. The Project includes 802 Commercial Limited Common Element parking stalls, 448 Residential Limited Common Element parking stalls, 22 Residential Limited Common Element parking stalls intended as Residential Guest Parking, for a total of 1,272 parking stalls including those on the street level and in the Retail/Parking Structure.

The Commercial Developer has developed the Project with the Commercial Developer Improvements which currently includes within and adjacent to the Retail/Parking Structure, certain interior commercial space comprising Commercial Unit C-2 and Commercial Unit C-3, Commercial Unit C-1, a Commercial Limited Common Element Service Dock, Commercial Limited Common Element parking areas and stalls on Garage Levels 2, 2B, 3 and part of Garage Level 4, the elevator roof structure located on Garage Level 4, two Residential Limited Common Element parking stalls on the street level of the Project and the Residential Limited Common Element parking areas and stalls on Garage Levels 4 and 5, Residential Limited Common Element areas on Garage Levels 2, 2B and 3 containing elevator and ventilation shafts, Commercial Limited Common Element parking stalls, Commercial Limited Common Elements, Residential Limited Common Element parking stalls, Residential Limited Common Elements and certain General Common Elements. The Residential Developer will construct a residential tower consisting of 18 stories above the Commercial Developer Improvements. The Residential Developer Improvements will be constructed within the boundaries of the Initial Residential Space which may be subdivided by the Residential Developer into multiple Residential Units, Residential Limited Common Elements and General Common Elements as provided herein. The Common Elements consist of General Common Elements, Residential Limited Common Elements, Individual Residential Limited Common Elements, Commercial Limited Common Elements and Individual Commercial Limited Common Elements as described in [Section 5.3](#) below and on the Condominium Map.

4.1 Street Level. The street level will initially include the Plaza Area, Commercial Unit C-1, Commercial Unit C-2, Commercial Unit C-3, Commercial Limited Common Element Service Dock, five (5) Commercial Limited Common Element parking stalls identified as SL-D.01 and 02 and SL-E.01 through 03 on the Condominium Map, Commercial Limited Common Element garage elevators, pump room, elevator machine room, two (2) Residential Limited Common Element accessible parking stalls identified as SL-B.01 and 02 on the Condominium Map (though such stalls may be designated for Residential Guest Parking at the election of the Residential Developer), Tower Elevators 29, 30 and 31 and General Common Element rest rooms, stairs, trash areas, janitor closet, storage areas, generator, electrical and fire riser rooms, bus and trolley lanes, streets, sidewalk areas and garage ramp as shown on the Condominium Map.

4.2 Garage Levels 2, 2B, and 3. The Commercial Limited Common Element parking areas parking stalls and drive aisles will be located on Garage Levels 2, 2B, and 3, as shown on the Condominium Map and shall contain, together with the Commercial Limited Common Element parking areas, 226 parking stalls on Level 2, 272 parking stalls on Level 2B and 270 parking stalls on Level 3. Certain drive isles and ramps on these levels will be General Common Elements as described below and as shown on the Condominium Map. These Garage Levels will also contain Residential Limited Common Element areas containing elevator and ventilation shafts. On Garage Levels 2, 2B and 3, the General Common Elements drive through areas are separated from the Commercial Limited Common Elements parking and drive through areas for the purposes set forth in [Section 5.4](#) below.

4.3 Garage Level 4. Garage Level 4 will include Commercial Limited Common Element parking areas and twenty-nine (29) parking stalls located therein, Commercial Limited Common Element stairs and elevator

structures, as well as Residential Limited Common Element parking areas, drive aisles, 213 Residential Limited Common Element parking stalls, 22 Residential Limited Common Element parking stalls designated for Residential Guest Parking, elevator and ventilation shafts as shown on the Condominium Map. The drive through ramp from Level 3 and the Common Drive Through Area shown on the Condominium Map will be General Common Elements as described below. The General Common Elements drive aisle (shown as a turn around area on the Condominium Map) are separated from the Residential Limited Common Elements parking and drive through areas for the purposes set forth in [Section 5.4](#) below.

4.4 [Garage Level 5](#). Garage Level 5 is intended as parking areas for the Residential Units and will include Residential Limited Common Element parking areas, drive aisles and 233 Residential Limited Common Element parking stalls. Garage Level 5 will include the Commercial Limited Common Element elevator roof structure.

4.5 [Level 6 - 23](#). Level 6 through 23 will be initially comprised of Residential Units R-1, R-2, R-3, R-4, R-5 and R-6, but may be developed by the Residential Developer to include a maximum of 310 Residential Units on 18 levels as well as Residential Limited Common Elements and Individual Residential Limited Common Elements; provided that in the event that the number of levels to be developed is reduced below 18, the number of Residential Units that may be constructed must also be reduced pro rata.

5. [DIVISION OF PROPERTY](#). The Project is hereby divided into the following separate freehold estates:

5.1 [Units](#). There are hereby established in the Project, Commercial Unit C-2, Commercial Unit C-3, Commercial Unit C-1, and Residential Units R-1, R-2, R-3, R-4, R-5 and R-6 as hereinafter described and designated and shown on the Condominium Map. Commercial Units C-2 and C-3 consist of the spaces within the perimeter and party walls, windows, doors, floors and ceiling of the respective Unit as shown on the Condominium Map. Commercial C-1 is a detached free standing loading dock building and includes the perimeter walls, doors, floors, ceiling and all other improvements of the loading dock building. All Residential Units consist of the spaces within the upper, lower and lateral boundaries for such Units as shown on the Condominium Map and as described herein. The Units shall be divided into Unit Classes for certain purposes provided herein and in the Bylaws. There shall be two Unit Classes, a Residential Unit Class and a Commercial Unit Class. All Residential Units shall be members of the Residential Unit Class and all Commercial Units shall be members of the Commercial Unit Class.

5.1.1 [Types of Residential Units](#). Initially there shall be only one residential unit type as described herein and shown on the Condominium Map. Pursuant to the Residential Development Rights, but subject to Section 22 and Section 4.5 of this Declaration the Initial Residential Space and Residential Units may be subdivided and reconfigured and this Declaration may be amended from time-to-time by the Residential Developer to describe the different Residential Unit types created by the Residential Developer.

5.1.2 [Types of Commercial Units](#). There are two Commercial Unit types, Unit C-1 which is a commercial loading dock and Units C-2 and C-3 which are Retail Commercial Unit types.

5.1.3 [Location of Units](#). Each Unit is numbered and located in the manner described herein and as shown on the Condominium Map.

5.1.4 [Number of Rooms/Net Living Area/Net Floor Area of Units](#). Each Residential Unit as part of the Initial Residential Space will have the approximate net floor area set forth in [Exhibit B](#) attached hereto and made a part hereof. Pursuant to the Residential Developer Reserved Rights, subject to Section 22 and Section 4.5 of this Declaration, the Residential Developer reserves the right to amend and update [Exhibit B](#) to reflect changes to the number of rooms and approximate net living area in square feet of each Residential Unit. Each Commercial Unit will have the approximate net floor area set forth in [Exhibit B](#).

5.1.5 [Measurement of Net Living Area/Net Floor Area](#). The approximate net floor areas of the Commercial Units set forth in [Exhibit B](#) are based on measurements taken from the interior surface of all perimeter walls, except that no reduction has been made to account for interior walls, ducts, vents, shafts, stairways and the like located within the perimeter walls (and/or the imaginary vertical planes where there is no perimeter



wall). The approximate net floor area of the Residential Units set forth in [Exhibit B](#) is based on measurements taken from the boundaries of the Residential Unit and calculations prior to construction and does not conform with the actual areas or dimensions of the Residential Units to be built therein. Upon completion of the Residential Developer Improvements with the Initial Residential Space, the floor area of the Residential Units to be set forth in an amended [Exhibit B](#) shall be based on measurements taken from the interior surface of all perimeter walls, except that no reduction may be made to account for interior walls, ducts, vents, shafts, stairways and the like located within the perimeter walls.

5.1.6 Access to Common Elements. Each of the Units shall have access to walkways, corridors, stairways and/or elevators to the extent reasonably necessary to gain access to the Unit, Common Elements and to a public street and to any other portions of the Project that serve or benefit such Unit.

5.1.7 Limitation of Commercial Unit Boundaries. Commercial Unit C-1 shall be deemed to include all perimeter and interior walls if any whether load bearing or not, all doors, windows, window frames and partitions, floors and ceilings, and all improvements and materials constituting any part of such walls, columns, doors, door and window frames, floors and ceilings, the air space surrounded by such walls, doors, door and window frames, floors and ceilings, all fixtures (if any) installed in Unit C-1 and any pipes, shafts, wires, conduits, service lines and equipment located within Unit C-1 which exclusively serve Unit C-1 but shall not include any pipes, shafts, wires, conduits, service lines and equipment located within Unit C-1 which do not exclusively serve Unit C-1 and are deemed General Common Elements or Limited Common Elements as hereinafter provided. Each of Commercial Unit C-2 and C-3 shall be deemed to include: (i) all interior walls, doors, windows, window frames and partitions that are not load-bearing and that are located within the space bounded by the Unit's perimeter walls but not the perimeter walls themselves, (ii) the interior and exterior decorated or finished surfaces of all walls, doors, door frames and window frames that are located in the Unit's perimeter walls, (iii) the decorated or finished surfaces of all interior walls, columns, doors, door frames and window frames that are load-bearing, (iv) the interior decorated or finished surfaces of all floors and ceilings, (v) all lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring and any other materials constituting any part of the decorated or finished surfaces of such walls, columns, doors, door and window frames, floors and ceilings, (vi) the air space surrounded by such walls, doors, door and window frames, floors and ceilings, and (vii) all fixtures (if any) originally installed in the Unit. Commercial Units C-2 and C-3 shall not be deemed to include: (a) the perimeter (including party) walls and doors, door frames, windows and window frames located in the perimeter walls and their undecorated or unfinished surfaces, (b) the interior load-bearing walls and columns and their undecorated or unfinished surfaces, (c) any load-bearing door or window frame located in the interior load-bearing walls and their undecorated or unfinished surfaces, and (d) any pipes, shafts, wires, conduits or other utility or service lines running through such Unit, the items described in (a) through (d) above being deemed General Common Elements or Limited Common Elements as hereinafter provided.

5.1.8 Limitation of Residential Unit Boundaries Pre-Construction. Each of Residential Units R-1 through R-6 is a three-dimensional space, the boundaries of which are described and/or shown in this Declaration and on the Condominium Map and in which the Residential Developer may construct, use and occupy apartments and other improvements. Each of Residential Units R-1 through R-6 has immediate access to the common elements of the Project for access to Public streets. The perimeter boundaries of each of Units R-1 through R-6 are shown on the Condominium Map. The vertical boundaries of each of Units R-1 through R-6 consist of vertical planes extending straight upward and downward from the Unit's perimeter boundaries as shown on the Condominium Map to the upper and lower boundaries of the Unit. The upper boundary of Unit R-1 is a horizontal plane located 12'6" above the surface of Level 6 and the upper boundary of Unit R-2 is a horizontal plane located 9'8" above the surface of Level 7 and the upper boundary of each of each of Units R-3 and R-4 is a horizontal plane located 9'7" feet above the respective Level on which the Unit will be built. The upper boundary of Unit R-5 is a horizontal plane located 10'10" above Level 21. The upper boundary of Unit R-6 is a horizontal plane located 10'10" above Level 22. The upper boundary of each of Units R-1 through R-6 shall extend in all directions until it intersects with the Unit's vertical boundaries but in no event shall the maximum elevation of the Residential Developer Improvements exceed that shown on the Condominium Map as initially recorded with this Declaration. The lower boundary of each of Units R-1 through R-6 is a horizontal plane located on the surface of the level on which the Unit is constructed and extending in all directions until it intersects with the Unit's vertical boundaries. The Residential Units contain the following approximate floor areas: Unit R-1 88,920 square feet, Unit R-2 69,265 square feet, Unit R-3 19,320 square feet, Unit R-4 238,615 square feet (18,355 square feet on each of Levels 9

through 21), Unit R-5 18,305 square feet and Unit R-6 16,805 square feet, subject to modification by the Residential Developer. Each of Residential Units R-1 through R-6 includes all of the surface of the level on which it is or will be constructed and air spaces located within the Unit's boundaries. Following completion of construction of the Residential Units, all building improvements of any kind constructed by the Residential Developer, including without limitation, all foundations, footings, exterior and interior walls and partitions, roofs, ceilings, girders, beams, floor slabs, columns, supports, walkways located within the boundaries of each Unit and pipes, wires, vents, shafts, ducts, conduits or other utility or service lines or enclosed spaces for wiring, pipes, air exhaust, or air conditioning located within the Unit shall be either a part of the Residential Units or shall be Residential Limited Common elements as set forth below. Following completion of construction of the Residential Developer Improvements, the Residential Developer shall amend this Declaration to describe the Residential Units as constructed and shall amend the Condominium Map to depict the Residential Units as built. Except for those portions of the Residential Developer Improvements defined in such amendment to this Declaration as part of each Residential Unit, the Residential Developer Improvements shall be Residential Limited Common Elements as described below.

5.1.9 Limitation of Residential Unit Boundaries Post-Construction. Following completion of construction of the Residential Developer Improvements, each Residential Unit shall include all of the walls and partitions which are not load-bearing and which are within its boundaries and shall include only the finished surfaces of the perimeter walls, floors and ceilings. The respective Residential Units shall not include the undecorated or unfinished surfaces of the interior load-bearing walls or partitions, foundations, columns, girders, beams, footings, walls, floor slabs, supports, roofs and ceilings located within or at the perimeter of or surrounding such unit, all of which are part of the Residential Limited Common Elements. Any shutters, awnings, window boxes, lanais, doorsteps, stoops, and all exterior doors and windows or other fixtures designed to serve a single Residential Unit, but are located outside the Residential Unit's boundaries, are limited common elements appurtenant exclusively to that Residential Unit. All lath, furring, wallboard, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring, and any other materials constituting any part of the finished surfaces of walls, floors, or ceilings that constitute the boundaries of the Residential Units are a part of the Residential Unit, and all other portions of the walls, floors, or ceilings, are a part of the Residential Limited Common Elements.

5.2 Common Elements. One freehold estate is hereby designated in all remaining portions of the Project, herein called the "Common Elements", including specifically, but not limited to:

5.2.1 The General Common Elements will include Property other than Units and Limited Common Elements and include without limitation, the following areas unless specifically designated herein or on the Condominium Map as part of a Unit or as a Limited Common Element:

A. The street level garage trash rooms, toilets, janitor room, hallways, electrical room, HECO vault room and fire riser rooms depicted on the Condominium Map, and

B. The street level sidewalks and walkways and stairways 20, 21, and 23 within the Commercial Developer Improvements; and

C. The Common Drive Through Area Speed Ramp as shown on the street level Plan and the Level 2 Floor Plan of the Condominium Map, the Common Drive Through Areas between parking rows A and B and the Ramp up to Level 2 B between parking rows C and D as shown on the Level 2 Floor Plan of the Condominium Map, the Common Drive Through Areas between parking rows A and B and the Ramp up to Level 3 between parking rows C and D as shown on the Level 2 B Floor Plan of the Condominium Map, the Common Drive Through Areas between parking rows A and B and the Ramp up to Level 4 between parking rows C and D as shown on the Level 3 Floor Plan of the Condominium Map and the Common Drive Through Areas as shown on the Level 4 Floor Plan and all other areas designated as Common Drive Through Areas on the Condominium Map.

D. Foundations, floor slabs, columns, girders, beams, supports, perimeter, party and load-bearing walls and partitions (excluding the finishes thereon) within the Commercial Developer Improvements but not within Unit C-1; and

E. All vents, shafts, sewer lines, water lines, pipes, cables, conduits, ducts, electrical equipment, wiring and other central and appurtenant transmission facilities and installations on, above, over, under

and across the Project and within the Commercial Developer Improvements to the point of their respective connections to improvements comprising a part of the Units or the Limited Common Elements appurtenant thereto, which serve Residential Units and Commercial Units, including, without limitation, those providing electricity, light, gas (if any), water; air conditioning, sewer, refuse, drainage, irrigation, telephone, and radio and television signal distribution (if any); and

F. Any and all areas, equipment, apparatus and installations existing for common use by or for the common benefit of one or more Residential Units and one or more Commercial Units, and not designated as a Limited Common Element or a Unit to the extent designated in the Condominium Documents or the Condominium Map and not described above in this Section 5.2.1. Notwithstanding the foregoing, the designation of any area so designated on the Condominium Map or in the Condominium Documents as General Common Elements may only be changed by the Residential Developer in accordance with the requirements of the Residential Developer Reserved Rights.

5.3 Limited Common Elements. Certain parts of the Common Elements, herein called the “Limited Common Elements”, are hereby designated and set aside for the exclusive use of certain Units, and such Units shall have appurtenant thereto exclusive easements for the use of such Limited Common Elements as follows:

5.3.1 The Residential Limited Common Elements shall include:

A. The Ramp Up to Level 5 and the Drive Through Areas other than the Drive Through Area designated as “Common Drive Through Area” as shown on the Level 4 Floor Plan, the Riser Shaft, 3 Storage Rooms and the Lobby on Garage Level 4 as shown on the Condominium Map.

B. All drive aisles, floor area, the 4 Storage Rooms, Riser Shaft and Lobby on Garage Level 5 as shown on the Condominium Map.

C. The two parking stalls designated SL-B 01 and SL-B 02 residential accessible parking stalls on the street level as shown on the Condominium Map and the street level generator room.

D. Elevators 29, 30 31 designated “Tower Elevators” and related elevator shafts as shown on the Condominium Map.

E. Twenty-two (22) of the Residential Limited Common Element parking stalls designated as Residential Guest Parking stalls on [Exhibit C](#) attached hereto and made a part hereof.

F. The Plaza Area following conversion as provided in Sections 1.7.8 and 9.4.4.

G. All portions of the Residential Developer Improvements not designated as a part of a Residential Unit, including without limitation the following:

(1) The Roof;

(2) All foundations, columns, girders, beams, footings, floor slabs, supports, unfinished portions of unit perimeter walls, party and load-bearing walls and partitions, the portions of the boundaries of the units described as Residential Limited Common Elements in Section 5.1.9 above, elevator cars, shafts, and doors, and related equipment, stairs and stairways, walkways, corridors, ramps, fences, entrances, entryways and exits;

(3) All walkways, sidewalks, retaining walls, fences, gates, yard areas, and all other common ways, pool enclosure areas, all landscaping, fences, gates, walls enclosing Residential Limited Common Elements, yards and grounds;

(4) Those portions of any pipes, cables, conduits, chutes, flues, ducts, wires, vents, shafts, other utility or service lines, sewage treatment equipment and facilities (if any), electrical equipment, electrical closets, storage rooms, communications rooms, or other central and appurtenant transmission facilities and installations over, under and across the Residential Developer Improvements, or any other fixtures, whether located partially within and partially outside the designated boundaries of a unit, which serve more than one unit;

(5) All utility and maintenance rooms, closets and facilities, storage rooms, closets, and facilities, electrical and mechanical rooms, accessory equipment areas, trash chutes and rooms, and refuse areas;

(6) All laundry rooms, washers, dryers, and any and all other apparatus and installations of common use and all other parts of the Residential Developer Improvements necessary or convenient to its maintenance and safety, or normally in common use;

(7) All recreational facilities and other amenities of the Project that are not part of any Unit, including, but not limited to swimming pools, recreation areas, restrooms, outdoor showers, fitness areas and all other amenities located on a recreation deck, all as more particularly to be shown on the amended Condominium Map;

(8) Any and all decorative elements added by or on behalf of the Residential Developer to the exterior of the Retail/Parking Structure, including without limitation, any louvers, metal panels, glass curtain wall, glass and fixtures.

H. All other parts of the Residential Developer Improvements that are not part of any Unit.

5.3.2 The Individual Residential Limited Common Elements shall include the following:

A. Each of the parking stalls identified on [Exhibit C](#) hereto as a Residential Limited Common Element and as shown on the Condominium Map. Each of these parking stalls may be subsequently designated appurtenant to any Residential Unit formed by the subdivision and reconfiguration of the Initial Residential Space and Residential Units pursuant to the Residential Developer Reserved Rights.

B. Any shutters, awnings, window boxes, doorsteps, stoops, porches, balconies, lanais, patios, and all exterior doors and windows or other fixtures designed to serve a single Residential Unit, but are located outside the Residential Unit's boundaries, are Individual Residential Limited Common Elements appurtenant to such Residential Unit.

C. If any chute, flue, duct, wire, conduit, or any other fixture lies partially within and partially outside the designated boundaries of a Residential Unit, any portion thereof serving only that Residential Unit is an Individual Residential Limited Common Element appurtenant to that Unit, and any portion thereof serving more than one Residential Unit or any portion of the Residential Limited Common Elements is a part of the Residential Limited Common Elements.

5.3.3 The Commercial Limited Common Elements shall include:

A. All portions of the Commercial Developer Improvements other than those designated as a Unit, Residential Limited Common Element or General Common Elements.

B. The exterior surface of the walls of the Retail Parking Structure on the street level and Garage Levels 2, 2B, 3 and those portions of the exterior walls of the Retail Parking Structure on Garage Level 4 which are adjacent to the Commercial Limited Common Element parking stalls on Garage Level 4.

C. The area marked as Storage on the Condominium Map located on the street level of the Project.

D. The Commercial Drive Through Areas between parking rows E and F and between parking rows G and H and between parking rows J and K as shown on the Level 2 Floor Plan of the Condominium Map, the Commercial Drive Through Areas between parking rows E and F, between parking rows G and H, between parking rows J and G, F, E and D; and between parking rows K and G, F, E and D as shown on the Level 2 B Floor Plan of the Condominium Map, the Commercial Drive Through Areas between parking rows E and F and between parking rows G and H as shown on the Level 3 Floor Plan of the Condominium Map and all other areas designated as Commercial Drive Through Areas on the Condominium Map.

E. Each of the parking stalls identified on [Exhibit C](#) hereto as a Commercial Limited Common Element and as shown on the Condominium Map.

F. Any signage or other items attached to such Commercial Limited Common Elements, including, but not limited to, the “Nordstrom” blade sign attached to the Retail Parking Structure.

G. The Storefront/Outdoor Seating Areas adjacent to the Commercial Retail Units which are also shown on the Condominium Map.

H. The Pump Room, Elevator Machine Room, Elevators designated as Garage Elevators, Elev 26 and Elev 27, the area designated as Nordstrom Entry Sidewalk and Stair S 22 on the Condominium Map. The Garage Elevators currently service Level 4 but may not service Level 4 in the future.

I. The storage area adjacent to Elevators 29, 30 and 31 on Garage Levels 2, 2B and 3.

J. The Service Dock and the adjacent storage area beneath the Common Drive Through Area Speed Ramp, the bus and trolley lanes and adjacent drive aisles as shown on the Condominium Map.

K. The Plaza Area until the conversion as provided in Sections 1.78 and 9.4.4.

5.3.4 The Individual Commercial Limited Common Elements include any doorsteps, stoops, patios, and all exterior doors and windows or other fixtures designed to serve a single Commercial Unit, whether located outside or within the Commercial Unit's boundaries, are Individual Commercial Limited Common Elements appurtenant to such Commercial Unit.

5.3.5 If any chute, flue, duct, wire, conduit, or any other fixture lies partially within and partially outside the designated boundaries of a Commercial Unit, any portion thereof serving only that Commercial Unit is an Individual Commercial Limited Common Element appurtenant to that Commercial Unit, and any portion thereof serving more than one Commercial Unit or any portion of the Commercial Limited Common Elements is a part of the Commercial Limited Common Elements.

5.4 Parking and Drive Through Areas. The General Common Element drive through areas are intended for general use by all Unit Owners, their guests, invitees and tenants and by the general public accessing the Commercial Units, Lot 73 and adjacent properties. The Commercial Limited Common Element parking and drive through areas are intended for use by the general public accessing the Commercial Units, Lot 73 and adjacent properties. The Residential Limited Common Element parking and drive through areas are intended for use only by the Residential Unit Owners, their guests, invitees and tenants. The separation of each of the General Common Element drive through areas, the Commercial Limited Common Element parking and drive through areas and the Residential Limited Common Element parking and drive through areas are shown on the Condominium Map and more particularly described above.

6. COMMON INTEREST; ALTERNATIVE ALLOCATION; CLASS COMMON INTEREST. Attached to and made part of this Declaration as [Exhibit B](#) is a list of the Units, the Class Common Interest and the Common Interest of each Unit. The votes appurtenant to each Unit are also set forth on [Exhibit B](#) hereto. The Commercial Developer, as owner of the Commercial Units may from time-to-time, by amendment to this Declaration, adjust the Commercial Class Common Interest assigned to a Commercial Unit so long as the total Commercial Class Common Interest aggregates to 100%. The Residential Developer, as owner of the Residential Units may from time-to-time,

by amendment to this Declaration, adjust the Residential Class Common Interest assigned to a Residential Unit owned by the Residential Developer so long as the total Residential Class Common Interest aggregates to 100%. All Owners of Units in a Unit Class shall have the right to vote each Owner's Class Common Interest with respect to matters requiring voting by a Unit Class and each Unit in a Unit Class shall be allocated and their respective Owners shall be responsible for such allocated proportionate share of all Class Common Expenses of the Project as provided in Section 12.

7. EASEMENTS. In addition to any (a) easements and access rights described in [Exhibit A](#), (b) the exclusive easements herein designated in the Limited Common Elements, and (c) any reserved easements provided for in [Section 7.9](#) below, the Units and Common Elements shall also have and be subject to the following easements:

7.1 Easements for Access and Support. Each Unit shall have appurtenant thereto non-exclusive easements in the Common Elements designed for such purposes for ingress to, egress from, utility services for and support, maintenance and repair of such Unit and its Limited Common Elements, in the other Common Elements for use according to their respective purposes, subject always to the exclusive or limited use of the Limited Common Elements, if any, as herein provided, and in all other Units of the building(s) for support.

7.1.1 Each Commercial Unit shall have an appurtenant easement for the benefit of its owners, representatives, agents, employees, vendors, licensee, customers and invitees, to use the Limited Common Elements appurtenant to their Unit, for their intended purposes, for access to the parking serving their Commercial Unit, for access from public streets or sidewalks, for delivery purposes to Commercial Units and for all other purposes reasonably necessary for the conduct of business operations of the Commercial Units. Portions of the Commercial Limited Common Element parking areas and General Common Elements will be used by the general public, during certain times and by the occupants of the building on Lot 73 (which is currently occupied by Nordstrom Department Store) and its (their) employees, customers, licensees and invitees. In addition, the Outside Plaza Area will be used by the occupants of the building on Lot 73 and its (their) employees, customers, licensees and invitees and by the general public.

7.1.2 Each Residential Unit shall have an appurtenant easement for the benefit of its owners, tenants and invitees, to use the General Common Elements, for their intended purposes and for access to the parking serving their Residential Unit, for access from public streets or sidewalks and for all other purposes reasonably necessary for the use of the Residential Units.

7.2 Easement for Encroachments. If any part of the Common Elements now or hereafter encroaches upon any Unit or Limited Common Element or if any Unit or Limited Common Element now or hereafter encroaches upon any other Unit or upon any portion of the Common Elements, then a valid easement for such encroachment and the maintenance thereof shall and does exist for so long as such encroachment continues. In the event any building(s) of the Project shall be partially or totally destroyed and then rebuilt or in the event of any shifting, settlement or movement of any portion of the Project, minor encroachments of any parts of the Common Elements or Units or Limited Common Elements due to such construction, shifting, settlement or movement shall be permitted and valid easements for such encroachments and the maintenance thereof shall and do exist for so long as such encroachments exist.

7.3 Association's Easement for Access. Subject to [Section 7.10](#) below, the Association shall have the right, to be exercised by its Board of Directors or Managing Agent, to enter any Unit and/or Limited Common Elements from time-to-time during reasonable hours as may be necessary for the operation of the Project or for the inspection, repair, painting, resurfacing, maintenance, installation or replacement of any Common Elements, or at any time for making emergency repairs therein required to prevent damage to any Unit or Common Element or injury to any person.

7.4 Residential Developer's Easement for Sales Activities. The Residential Developer and its Representatives, licensees, and invitees have a right and an easement to conduct extensive sales activities on the Residential Limited Common Elements appurtenant to Units owned and/or leased by the Residential Developer and from any Unit owned and/or leased by the Residential Developer. This right includes, but it is not limited to, (a) the

right to permit purchasers and prospective purchasers and their family members and guests, to come onto the Project through the Common Elements intended for access to and from any nearby roads, streets or highways; (b) the right to permit purchasers and prospective purchasers to park motor vehicles in any guest stall or Individual Residential Limited Common Element appurtenant to any Residential Units owned by the Residential Developer or in other areas as may be permitted by the Commercial Developer in its reasonable discretion; (c) the right to show the Project (including, but not limited to, model Units) to purchasers and prospective purchasers (who will have a right of ingress and egress for these purposes); (d) the right to use Units owned by the Residential Developer as model Residential Units, sales, management, and/or administrative offices; and (e) the right to use banners, signs or other extensive sales displays and activities at the Project to the extent provided in Section 9.3.4. This easement applies to activities conducted in connection with the initial sale and/or any resale of any Residential Unit in the Project. Each Interested Person understands, acknowledges and accepts that the easements provided in this [Section 7.4](#), and their use, may result in increased traffic, noise, and related inconveniences. Each Interested Person, waives, releases and discharges any rights, claims or actions such person may have, now or in the future, against the Residential Developer and its Representatives, licensees, invitees, successors and assigns and arising from or with respect to the exercise of this easement.

7.5 Developer Easements for Access. The Commercial Developer and the Residential Developer and their Representatives, licensees, invitees (including any governmental officials that each may invite), successors and assigns, have an easement over, under and upon the Project, including the Common Elements, and any Unit, as may be reasonably necessary or convenient to complete any improvements and to correct any defects and other punchlist items in the Common Elements or any Unit, provided that such access over the Commercial Developer Improvements by or on behalf of the Residential Developer may only be exercised in accordance with the Residential Developer Reserved Rights.

7.6 Developer Easements for Noise, Dust, Etc. The Commercial Developer and the Residential Developer and their invitees, have an easement over, under and upon the Project and all of its parts, to create and cause noise, dust, soot, smoke, odors, surface water runoff, vibrations, and other nuisances or hazards in connection with (a) the exercise of the easements it has under this [Section 7](#), (b) the exercise of any or all their respective rights described elsewhere in this Declaration, or (c) the development of the Project. Each Interested Person (i) understands, acknowledges and accepts that these activities may result in noise, dust, soot, smoke, odors, surface water runoff, vibrations and other nuisances and hazards, (ii) consents to this activity, and (iii) waives, releases and discharges any rights, claims or actions that he or she may have, now or in the future, against the Commercial Developer and/or the Residential Developer and their respective Representatives, licensees, invitees, successors and assigns with respect to the exercise of their rights under this [Section 7](#). Each Interested Person assumes the risk any property damage, personal injury or loss in property value arising from these activities. The rights of the Residential Developer under this [Section 7](#) are part of the Residential Developer's Reserved Rights under this Declaration. The rights of the Commercial Developer under this [Section 7](#) are part of the Commercial Developer's Reserved Rights under this Declaration.

7.7 Developer Control Period. In accordance with Section 514B-106(d) of the Condominium Property Act, the Commercial Developer and the Residential Developer or their respective designees shall have the following unilateral rights: The Commercial Developer shall have the right during the Developer Control Period to appoint and remove all of the Commercial Unit Class Directors of Association's Board of Directors and the Residential Developer shall have the right during the Developer Control Period defined below to appoint and remove all of the officers and the Residential Unit Class Directors of the Association's Board of Directors. The "Developer Control Period" shall commence with the first meeting of the Association and will terminate upon the earlier of: (a) sixty (60) days after conveyance of seventy-five percent (75%) of the Common Interests appurtenant to Units to Owners other than the Commercial Developer, Residential Developer or an affiliate of the Commercial Developer or Residential Developer, (b) two (2) years after the Residential Developer has ceased to offer Residential Units in the ordinary course of business or (c) the day the Residential Developer, after giving written notice to the Unit Owners, records an instrument voluntarily surrendering its powers under this [Section 7.7](#).

7.8 Grant of Additional Easements and Modification of Easements by the Association.

7.8.1 Easements Through Common Elements. The Association has the right, exercisable by the Board, to designate, grant, lease, convey, transfer, cancel, relocate and otherwise deal with any easements over, under, across, or through the Common Elements for any reasonable purpose, which may include, but will not be limited to, (i) those purposes necessary to the operation, care, upkeep, maintenance or repair of any Unit, the Common Elements or any Limited Common Element, or (ii) any easements for utilities or for any public purpose including for example, pedestrian walkways, stairs, ramps, or other passageways, or restroom facilities. The Association must have the written consent of each affected Commercial Unit Owner before it can exercise this right within any Commercial Limited Common Elements or Individual Commercial Limited Common Elements and during the Development Period, the Association must have the written consent of the Commercial Developer before it can exercise this right.

7.8.2 Easements Through Adjacent Lands. The Association has the right, exercisable by the Board, to transfer, cancel, relocate and otherwise deal with any easement or license in favor of the land or the Project, for any reasonable purpose. This includes, for example, any of the purposes mentioned in [Section 7.9.1](#). During the Development Period, the Association must have the written consent of the Commercial Developer before it can exercise this right, such consent not to be unreasonably withheld, conditioned or delayed. The Board may also exercise these rights without the consent of the Commercial Developer if the owner of property that is subject to an easement in favor of the Land or the Project uses any right he or she has to require a change in the location of that easement.

7.9 Grant of Additional Easements and Modification of Easements by the Commercial Developer or Residential Developer. The Commercial Developer and Residential Developer hereby reserve, as additional Commercial Developer Reserved Rights and Residential Developer Reserved Rights, the following rights:

7.9.1 Easements Through Common Elements. The Commercial Developer and Residential Developer reserve the right to designate, grant, convey, transfer, cancel, relocate and otherwise deal with any easements over, under, across or through the Common Elements as necessary or convenient to the exercise of any of their reserved rights, or for any reasonable purpose, which may include, but will not be limited to:

(1) Any purpose necessary to the operation, care, upkeep, maintenance or repair of any Unit, the Common Elements or any Limited Common Element; or

(2) Any easements for sewer purposes, utilities or for any public purpose including for example pedestrian walkways, bus stops, stairs, ramps, paths, trails, bikeways, or other passageways, reinterment sites or restroom facilities.

Notwithstanding the foregoing, the exercise of such rights by the Residential Developer shall require the consent of the Commercial Developer, such consent not to be unreasonably withheld, conditioned or delayed.

7.9.2 Easements Through Adjacent Lands. The Commercial Developer also reserves the right to transfer, cancel, relocate and otherwise deal with any easement or license in favor of the Land or the Project for any reasonable purpose which may include, but will not be limited to, any of the same purposes set forth above in [Section 7.9.1](#), or for the reason that any owner of property that is subject to an easement in favor of the Land or the Project uses any right it has to require a change in the location of that easement.

7.10 Access to Commercial Units. Each Owner of a Commercial Unit grants a reasonable right of access to its Commercial Unit or portion thereof to the Board of Directors, the Managing Agent and any other persons authorized by the Board or the Managing Agent, to allow for the exercise of their respective rights, powers and responsibilities including, without limitation, (i) making inspections, (ii) correcting any condition originating in the Commercial Unit or Common Element to which access is obtained through the Commercial Unit and threatening the Project, and (iii) subject to Section 23 of this Declaration, performing installations, alterations or repairs to the Common Elements. Any exercise of the rights of access pursuant to this Section within a Commercial Retail Unit shall be made after a prior request for entry is made and any such entry shall be made at a time reasonably convenient to such Commercial Unit Owner, its tenants or occupants (and subject to the terms of the applicable lease or occupancy agreement), which may be before or after the customary business hours of the Commercial Unit Owner, its tenants or licensees, and, if requested by the Commercial Unit Owner, in the company of a representative



of such Commercial Unit Owner. In all events, any such entry shall be exercised in a commercially reasonable manner so as to minimize inconvenience or disruption to the activities being conducted in the Commercial Retail Unit. Except for areas within a Commercial Retail Unit that are designated as “Restricted Areas” by written notice from the Commercial Unit Owner to the Board of Directors, in case of an Emergency (as defined below), such right of entry shall be immediate, whether or not a representative of the Commercial Unit Owner is present or a prior request was made. An “Emergency” is defined as any occurrence or situation where, if immediate remedial action is not undertaken, substantial damage to the physical structure of the Project, to a Unit, or to personal property located therein, or injury or death to individual persons within the Project, is likely to result. Restricted Areas may not be accessed at any time unless a representative of the respective Commercial Unit Owner is present or the Commercial Unit Owner has otherwise consented to such access. Examples of “Restricted Areas” may include jewelry stores, bank vaults, cash handling areas, inventory storage and display areas and similar areas containing property to which access must be reasonably limited for purposes of loss prevention, inventory control, confidentiality, or compliance with legal requirements. Any Commercial Unit Owner that designates any Restricted Areas shall provide the Board of Directors with the name(s), phone number(s), and e-mail address(es) of one or more agents or representatives who can readily be contacted in the event access to a Restricted Area is required.

7.11 Utility Access. There is hereby reserved to the Unit Owners, subject to Section 23 of this Declaration, for the benefit of the Units, perpetual blanket easements and rights of passage on, through, over, under and across all of the Common Elements for ingress, egress, installation, construction, inspection, replacement, repair, removal, maintenance and use of all public and/or private utilities serving and/or benefiting all or any portion of the Units, including, but not limited to, power, water, sewer, gas (if any), light, electric, microwave, drainage, television (including, without limitation, cable and satellite), telephone, internet, broadband, and other communication lines, life safety and security systems, and storm drains, and further including the right to connect to and use any such utilities which may exist or may hereafter be located within the Project from time-to-time. The Unit Owner seeking access to such utilities pursuant to this subsection shall be responsible for restoring the areas through which access was obtained to the condition existing immediately prior to such access and shall be responsible for all costs associated with such access and restoration.

7.12 Emergency Ingress and Egress To the extent emergency means of ingress and egress are not otherwise available then the General Common Elements, the Commercial Limited Common Elements and Residential Limited Common Elements shall be subject to an easement for the benefit of the Unit Owners for emergency ingress and egress to and from their respective Units.

7.13 Community Systems and Telecommunications Easements. There is reserved to the Residential Developer, its agents, employees, personnel or licensees and its successors and assigns, a perpetual, right and easement over the Project to install and operate, or provide for the installation and operation of, such central telecommunication receiving and distribution systems and services (e.g., cable television, high speed data/Internet/intranet services, cellular telephone, satellite television, and security monitoring) and related components, including associated infrastructure, equipment, hardware, and software (collectively, “Community Systems”) as the Residential Developer, in its discretion, deems appropriate to serve all or any portion of the Residential Developer Improvements, provided that such easement shall not be exercised over any of the Commercial Developer Improvements without the consent of the Commercial Developer, such consent not to be unreasonably withheld, conditioned or delayed. Such right shall include, without limitation, the Residential Developer’s right to select and contract with companies licensed to provide telecommunications, cable television, and other Community Systems services in the region, to receive compensation from any source related to the rights set forth in this Section, and to and to grant easements for such purpose, all upon such terms and conditions as such Residential Developer may determine in its discretion.

7.14 Façade Signage; Residential Developer Signage.

7.14.1 Each Commercial Unit Owner shall have an exclusive right for the benefit of its Commercial Unit for the installation, maintenance, repair and replacement (from time-to-time) of signs and other displays on the exterior façade of the Retail/Parking Structure (individually, a “Façade Sign” and collectively, the “Façade Signs”), in a size and location as permitted by and subject to any zoning laws or other governmental requirements. The Façade Signs shall be consistent with first class regional shopping center standards. The

Façade Sign that is affixed to the Retail/Parking Structure at the time of recordation of this Declaration, including its electrical connections (the "Existing Façade Sign") is a Commercial Limited Common Element and shall be permitted to remain so long as it complies with all governmental requirements, provided that all other Façade Signs shall be subject to any requirements and limitations established by the Commercial Developer with respect to all aspects of Façade Signs (including, without limitation, the plans, specifications, and method of affixing the Façade Signs to the building and extending electrical service thereto, if applicable) and shall be subject to the Commercial Developer's prior approval. All Façade Signs, to the extent not required to be insured by the Association, shall be insured at the exclusive cost of the Commercial Unit Owner installing such signage, unless insured by the occupant of a Commercial Unit pursuant to the terms of the lease or other occupancy agreement. Any Commercial Unit Owner who exercises its right to install the Façade Sign pursuant to this Section shall be solely responsible for the lighting, installation, maintenance and replacement of its Façade Sign, and liable for the costs and repair of any damage to the Project proximately caused by such installation, maintenance and replacement. Upon such time that the Commercial Developer shall assign such duty in writing to one or more Commercial Unit Class Directors, the Commercial Unit Class Director(s) may establish and administer any comprehensive sign criteria and shall assume all duties of the Commercial Developer relating to Façade Signs other than the Existing Façade Sign including, without limitation, approval thereof. The Owner of a Commercial Unit shall have the right to assign all or any portion of its rights regarding Façade Signs to its tenants or subtenants.

7.14.2 The Residential Developer shall have an exclusive right for the benefit of the Residential Developer Improvements for the installation, maintenance, repair and replacement (from time-to-time) of directional signage within the street level of the Project, identity signage on Kapiolani Boulevard and canopy signage, all of which shall be in a size and location as permitted with the consent of the Commercial Developer, such consent not to be unreasonably withheld, conditioned or delayed and subject to any zoning laws or other governmental requirements. Such residential signage shall be subject to all commercially reasonable requirements and limitations established by the Commercial Developer with respect to all aspects of Residential Signage, including, without limitation, the plans, specifications, and method of affixing the signage and extending electrical service thereto, if applicable. Until such time that the Residential Developer shall provide notice that all Unit Owners shall be obligated for the payment of Common Expenses as set forth in Section 8.4.A of the Bylaws, the Residential Developer shall be responsible for lighting, installation, maintenance and replacement of such residential signage as well as costs to repair of any damage to the Project proximately caused by such installation, maintenance and replacement and after such notice, the Residential Unit Class Directors shall be responsible for administering the such obligations and assessing the costs thereof as a Residential Unit Class Expense. Upon such time that the Commercial Developer shall assign in writing all or any portion of the duties under this Section 7.14.2 to one or more Commercial Unit Class Directors, the Commercial Unit Class Director(s) may establish and administer any residential sign criteria and shall assume all duties of the Commercial Developer relating to including, without limitation, approval thereof.

7.15 Service Dock. The Commercial Unit Class Directors shall make the Commercial Limited Common Element Service Dock available for use from time-to-time by the Residential Unit Owners, subject to reasonable rules and restrictions that may be promulgated by the Commercial Unit Class Directors from time-to-time. In no event shall any party be permitted to utilize the Service Dock in a manner that unreasonably or materially interferes with the use or operation of any Commercial Unit or any business located therein. The Commercial Unit Owners shall have the right to remove or arrange for the removal of any property left within the Service Dock which unreasonably or materially interferes with the use or operation of the Commercial Unit or the business located therein at the sole expense and risk of the owner of such removed property.

#### 7.16 Easements for Residential Developer Improvements.

7.16.1 There is hereby reserved to the Residential Developer, for the benefit of the Initial Residential Space and the Residential Units and Residential Limited Common Elements, perpetual blanket easements and rights of passage on, through, over, under and across portions of the Property reasonably required and intended for ingress, egress, installation, construction, inspection, replacement, repair, removal, maintenance and use of all public and/or private utilities serving and/or benefiting all or any portion of the Residential Developer Improvements, including, but not limited to, water, sewer, gas (if any), electric, microwave, drainage, television (including, without limitation, cable and satellite), telephones, storm drains and storm water management and detention facilities and further including the right to connect to and use any such utilities which may exist or may

hereafter be located upon the Property from time-to-time, all subject, however, to Section 23 of this Declaration. Connections to utilities shall be made at the points most convenient or necessary, provided that such connections shall not cause any of the utilities to be burdened beyond their capacity and all such utilities serving the Residential Units or Residential Limited Common Elements shall be separately metered from the Commercial Units and Commercial Limited Common Elements and the General Common Elements to the extent such separate metering may be installed on a commercially reasonable basis. The Residential Developer when accessing such utilities pursuant to this subsection shall be responsible for restoring the areas through which access was obtained to the condition existing immediately prior to such access and shall be responsible for all costs associated with such access and restoration.

7.16.2 In addition to the easements described in [Section 7.16.1](#) above, a new sewer line and upgraded pump station will be located in the vicinity of the Property and are required for the development and operation of the Residential Developer Improvements (the "Sewer Upgrade"). It is anticipated that the sewer line shall be located within an easement (the "Sewer Upgrade Easement") to be granted by the owner of the Ala Moana Shopping Center (the "Grantor") for the benefit of the Property. The Commercial Developer hereby reserves the right, on behalf of and for the use and benefit of the Association, but without the joinder or consent of the Association, any Unit Owner, Unit purchaser, lienholder or other person, to accept, acquire, transfer, cancel, relocate and otherwise deal with any exclusive or nonexclusive right, license, easement or other entitlement over, under, across or through any lands adjacent to or in the vicinity of the Property for any reasonable purpose, including without limitation the Sewer Upgrade Easement. Upon acceptance of such easement or other rights, including without limitation rights in and to and obligations in connection with the Sewer Upgrade, such rights shall become subject to this Declaration and shall be a Common Element. The Residential Developer shall install the Sewer Upgrade and connect the same to the Project at its sole cost and expense. The Grantor (for a portion of the existing improvements at Ala Moana Shopping Center and new improvements) shall have the right to tap into and use the Sewer Upgrade. Following installation of the Sewer Upgrade and connections, the Association's share of the costs of usage, maintenance, replacement, and repair of the Sewer Upgrade as shall be set forth in the Sewer Upgrade Easement, shall be a Common Expense subject to an Alternative Allocation which is an equitable allocation based on the Commercial Developer's engineering consultant's 2005 engineering flow estimates for sanitary and domestic water service used in calculating requirements for plumbing system permits for the planned Residential Developer Improvements and the Commercial Developer Improvements. After Completion of Construction of the Residential Developer Improvements, the Residential Developer, at its cost and expense, shall cause a licensed engineer to recalculate flow estimates based upon the as built Residential Developer Improvements and the allocation shall be readjusted based upon such revised estimate, provided, however, if the usage of the Sewer Upgrade is separately metered for the Commercial Units and the Residential Units, or otherwise separately billed by the billing authority, then the cost of usage shall be allocated by usage as measured by the separate meters or pursuant to the separate billing by the billing authority and such recalculation of flow estimates shall not be necessary. If the usage is not separately metered or separately billed then the cost of usage shall be an Alternative Allocation as set forth above for the costs of usage, maintenance, replacement and repair of the Sewer Upgrade.

7.16.3 There is further reserved unto the Commercial Developer the right to unilaterally grant specific easements, both temporary and permanent, to the Residential Developer over any part of the Property as may be necessary or desirable for the Residential Developer to commence, complete, maintain, repair and replace the Residential Developer Improvements which additional easements and other agreements need not be consented to or joined in by any party having an interest in the Property; provided, however, that if requested by the Commercial Developer, any party having an interest in the Property shall promptly join in and execute such confirmatory easements and other agreements. The Residential Developer and the Commercial Developer may execute such further assurances as may be necessary or desirable to give further evidence of the easements granted by or pursuant to this [Section 7.16.3](#), including the granting of specific easements described by metes and bounds.

7.16.4 Any and all work performed in connection with the easements granted by this [Section 7.16](#) shall be performed at the sole risk and expense of the Residential Developer in a manner that complies with all applicable governmental laws, rules, orders and regulations and that does not unreasonably interfere with the use, enjoyment and development of the Commercial Improvements, Lot 73, the adjacent Ala Moana Shopping Center and that portion of the Property upon which the work is being performed. Subject to Section 14.10 below, any and all damage caused by or in connection with the performance of such work shall be promptly repaired by and at the cost of the Residential Developer. Subject to Section 14.10 below, in the event that any liability, loss or damage is

caused by the Residential Developer as a result of the exercise of the easement rights granted by this [Section 7.16](#), Residential Developer shall and hereby agrees to indemnify, defend and hold the Commercial Developer and each Commercial Unit Owner and occupant harmless from any and all such liability, loss or damage.

7.16.5 The Residential Developer shall have all rights and privileges reasonably necessary to the exercise of such easements granted by or pursuant to this [Section 7.16](#) provided, however, that the Residential Developer shall take reasonable steps to minimize any damage to any portion of the Property or inconvenience to the other Unit Owners as a result of its exercise of such rights and privileges. Subject to Section 14.10 below, if there is any material damage or alteration to any portion of the Property as a result of a Residential Developer's exercise of the easements established by or pursuant to this [Section 7.16](#), the Residential Developer shall restore such Property to its condition that existed immediately prior to the exercise of such easements. The Residential Developer's exercise of such easements shall not unreasonably interfere with the use and enjoyment of the Property by other Unit Owners and shall occur only during reasonable hours. Subject to Section 14.10 below, the Residential Developer, on its own behalf and on behalf of its successors and assigns, hereby agrees to defend, indemnify and hold harmless the Commercial Unit Owners, the Association and the Commercial Developer, and their respective successors and assigns, from and against any loss, claims, liability, or damage (including attorneys' fees and court costs) arising out of or resulting from the Residential Developer's exercise of the easements established by or pursuant to this Section 7.16.5.

7.17 Consent of Other Persons. The Commercial Developer and Residential Developer may exercise the rights reserved to them in this [Section 7](#) without the consent or joinder of anyone else, provided that the exercise of the rights reserved to the Residential Developer (with the exception of the rights set forth in Section 7.16.2) shall not be exercised without the consent of the Commercial Developer pursuant to Section 22 below, such consent not to be unreasonably, withheld, conditioned, or delayed.

7.18 No Dedication. The Commercial Developer shall have the right, from time to time to temporarily close off any portion of the Common Elements open to the general public to prevent a dedication, provided that an advance notice of such closure is provided to the Association.

8. ALTERATION AND TRANSFER OF INTERESTS. Except as otherwise expressly provided in this Declaration, the Common Interest, Class Common Interest, Alternative Allocation and easements appurtenant to each Unit (a) shall have a permanent character, (b) shall not be altered without the consent of all owners of Units affected thereby as expressed in an amendment to this Declaration duly recorded, which amendment shall contain the consent thereto by the holders of any first mortgage on such Units, as shown in the Association's record of ownership, or who have given the Board notice of their interest through the Secretary of the Association or the Managing Agent, (c) shall not be separated from such Unit, and (d) shall be deemed to be conveyed or encumbered with such Unit even though not expressly mentioned or described in the conveyance or other instrument. Except as otherwise expressly provided in this Declaration, the Common Elements shall remain undivided, and no right shall exist to partition or divide any part thereof, except as provided by the Condominium Property Act.

## 9. PURPOSES AND USE.

9.1 Units. The Units may be occupied and used as follows:

9.1.1 Residential Units. Residential Units and their appurtenant Limited Common Elements shall be used by the Residential Developer for construction of the Residential Developer Improvements and thereafter for residential purposes exclusively, except that a home-based business may be maintained within a Residential Unit, provided that (i) such maintenance and use is limited to the person actually residing in the Residential Unit; (ii) no employees or staff other than a person actually residing in the Residential Unit are utilized; (iii) no clients or customers of such business visit the Residential Unit; (iv) the number of persons, other than clients or customers, that shall visit such business and the frequency of such visits shall be kept to a reasonable minimum, as determined in the sole discretion of the Board of Directors; (v) such maintenance and use is in strict conformity with the provisions of any applicable law (including zoning law), ordinance or regulation; (vi) the person utilizing such office maintains a principal place of business other than the Residential Unit; (vii) such business uses no equipment or process that creates noise, vibration, glare, fumes, odors, or electrical or electronic interference detectable by neighbors and does not cause an increase of Common Expenses that can be solely and directly

attributable to the business; (viii) such business does not involve the use, storage or disposal of any materials that the State of Hawaii or any governing body with jurisdiction over the Property designates as hazardous material; and (ix) the Residential Unit Owner has provided the Board of Directors thirty (30) days prior written notice of their intent to operate such home-based business. Notwithstanding the foregoing, the Residential Unit Class Directors shall have the authority, but not the obligation, to permit a home based business to be maintained within a Residential Unit which does not meet one or more of the requirements set forth above, which permission may be withdrawn at any time in the sole discretion of the Residential Unit Class Directors. Nothing contained in this [Section 9.1.1](#), shall be construed to prohibit the Residential Developer from the use of any Residential Unit for promotional or display purposes, as a “model home”, as a sales and/or construction office, or for any other lawful purpose for this Project.

9.1.2 Occupancy limitation for Residential Units. No Residential Unit shall be occupied by a total number of persons which exceeds nine (9) persons, but in no event more than three (3) persons per bedroom. Any studio Residential Unit shall be deemed to contain a single bedroom. This occupancy limitation shall not apply to or restrict the owner of any such Residential Unit from hosting a larger group of invited guests or visitors in such Residential Unit.

9.1.3 Commercial Units. Subject to the provisions set forth in [Section 9.3](#) below, the Commercial Units (and all Commercial Units into which said Commercial Units may be divided pursuant to this Declaration) shall be operated and used only for commercial purposes or uses, which shall be deemed to include all non-residential uses permitted in BMX-3 business mixed use districts under the Land Use Ordinance of the City and County of Honolulu, as amended from time-to-time. All uses within the Commercial Retail Units shall be consistent with tenants within the Ala Moana Shopping Center or high end mixed-use residential condominiums which are similar to the Project.

9.1.4 The Owner of any Commercial Unit may contract with various providers of goods and services, such as food and beverage operators, retail stores and other vendors, to provide goods and services at the Project. The Owner of a Commercial Unit may retain any compensation paid to the Owner in return for permitting a vendor to use space at the Project, whether that space is inside the Owner’s Unit or its Limited Common Elements.

9.1.5 Any amendment to this [Section 9.1](#), and any other amendment to the Declaration or any other Condominium Document that would limit or interfere in any way with the use of a Commercial Unit or its Limited Common Elements in accordance with [Section 9](#), or with access to or from the Commercial Unit or its Limited Common Elements, shall require and will not be effective without the prior written consent of the Owner of the affected Commercial Unit.

9.1.6 Right to Sell, Lease or Rent. The Unit Owners have the absolute right to sell, lease, rent or otherwise transfer their own Units, subject to these restrictions and also subject to all other provisions of this Declaration and the Bylaws.

9.1.7 Association’s Use. Except for any rights to use expressly reserved to the benefit of the Commercial Developer, Residential Developer or the Commercial Unit Owners under this Declaration, nothing in this [Section 9](#) or otherwise contained in the Declaration is intended to limit or restrict the Association’s right to use the General Common Elements, Residential Limited Common Elements or any Unit owned or leased by the Association for the benefit of the members of the Association to the full extent permitted by the applicable zoning ordinance.

9.2 Use of the Common Elements. Each Unit Owner and occupant of a Unit may use the General Common Elements in accordance with the purposes for which they were intended without hindering or encroaching upon the lawful rights of the other Unit Owners, subject to the right of the Unit Owners, as may be provided herein, to amend the Declaration to change the permitted uses of the General Common Elements or to implement such changes without amending the Declaration as expressly permitted by the Condominium Property Act and subject to the right of the Board to lease or otherwise use for the benefit of the Association certain General Common Elements as expressly permitted by the Condominium Property Act. No such lease, use or change in use may be made before the Development Period ends without the written consent of the Commercial Developer.

9.3 Limits on use of the Units and Common Elements. In order to provide for the congenial occupancy of the Condominium and for the protection of the values of the Units, the use of the Project shall be restricted to and shall be in accordance with the following provisions:

9.3.1 Nothing shall be done or kept in any Residential Unit or in the General Common Elements, or the Limited Common Elements appurtenant to one or more Residential Units which will increase the rate of insurance for the Condominium without the prior written consent of the Board of Directors in which case such increase in the rate of insurance shall be a Residential Class Common Expense. Any increase in the rate of insurance for the Condominium caused by the maintenance or use of a Commercial Unit for the operation of a business shall be paid by the Owner of such Commercial Unit. No Owner shall permit anything to be done or kept in his or her Unit or in the Common Elements which will result in the cancellation of insurance on the Condominium, or the contents thereof, or which would be in violation of any law. No waste will be committed in the Common Elements.

9.3.2 All valid laws, zoning ordinances and regulations of all governmental agencies having jurisdiction over the Project shall be observed. All laws, orders, rules, regulations, or requirements of any governmental agency having jurisdiction thereof, relating to the maintenance and repair of any portion of the Condominium, shall be complied with, by and at the sole expense of the Owner or the Board, whichever shall have the obligation to maintain or repair such portion of the Condominium. No immoral, improper, offensive, or unlawful use shall be made of the Condominium or any part thereof, provided that this shall not prohibit any use of a Commercial Unit which is in accordance with all applicable and valid laws, zoning ordinances and regulations of all governmental agencies having jurisdiction over the Project.

9.3.3 Nothing shall be done in any Unit or in, on, or to the Common Elements which will impair the structural integrity of the Condominium, or which would structurally change any building or improvements thereon except as is otherwise provided in the Condominium Documents.

9.3.4 No advertisement, poster or sign of any kind shall be posted on the exterior of any Residential Unit, in the windows of a Residential Unit or on any of the Residential Limited Common Element exterior walls. For so long as the Residential Developer shall own any Residential Unit, the right is reserved for the Residential Developer or its agents to display "For Sale" or "For Rent" signs for unsold Residential Units upon the street level of the Retail Parking Structure subject to reasonable restrictions and conditions required by the Commercial Developer and applicable laws and ordinances. Notwithstanding the foregoing, this [Section 9.3.4](#) shall not apply to a Commercial Unit. The Commercial Units shall have the right to affix signs to any portion of the Common Elements within, or upon the exterior of, the Commercial Developer Improvements, provided the same are consistent with first class regional shopping center standards.

9.3.5 Except with the prior approval of the Board, no Residential Unit Owner shall permit any fixtures or other improvements to be installed in a manner which penetrates the unexposed surfaces of the ceilings, walls and floors of a Residential Unit.

9.3.6 Only exterior antennas and satellite dishes specifically permitted by applicable federal, state or local governmental regulations shall be permitted within those portions of a Residential Unit under the exclusive control of a Residential Unit Owner. The Board may impose reasonable rules and regulations regarding the location and screening of any permitted antennas and satellite dishes, subject to applicable governmental regulations and may, but shall not be obligated to, designate one or more areas within the Residential Limited Common Elements within which such equipment may be permitted.

9.3.7 No transient tenants may be accommodated in any Residential Unit, nor shall any Residential Unit be utilized for hotel purposes. No portion of a Residential Unit (other than the entire Residential Unit) may be rented unless the prior written approval of the Board of Directors is obtained. All agreements of the lease of a Unit shall be in writing and provide that the terms of the lease shall be subject to the provisions of the Condominium Property Act, and the Condominium Documents to the extent applicable to such Unit. The failure of the lessee of a Residential Unit to comply with the terms of such provisions shall be a default under the lease, which default may be remedied by the Residential Unit Owner in accordance with the lease and by the Association, in accordance with the Condominium Property Act. In no event shall the Association have the authority to evict a

tenant of a Commercial Unit or enforce any rights against the tenant of a Commercial Unit for any violation which the Commercial Unit Owner as landlord may lawfully exercise under the lease against such tenant or which the Association may lawfully exercise against the Owner of such Commercial Unit.

9.3.8 Portions of a Residential Unit and its appurtenant Limited Common Elements that are visible from the exterior of the Residential Unit must be kept in an orderly condition so as not to detract from the neat appearance of the Project. No items may be stored upon any lanai appurtenant to a Residential Unit except for patio furniture and/or a reasonable number of plants. To maintain a uniform and attractive exterior appearance for the Project, Residential Unit Owner-installed window coverings must include a backing of an off-white color and must be of a type and general appearance approved by the Board. Residential Unit Owners may not, without the prior written approval of the Board, apply any substance, material or process to the exterior or interior surfaces of the Residential Unit's windows that may alter the exterior color, appearance or reflectivity of the windows. The Board, in its sole discretion, may determine whether the portions of a Residential Unit visible from the exterior of the Residential Unit are orderly. The Board of Directors may have any objectionable items removed from the portions of a Residential Unit that are visible from the exterior of the Unit so as to restore their orderly appearance, without liability therefore, and charge the Residential Unit Owner for any costs incurred in connection with such removal.

9.3.9 Any business which operates within a Commercial Unit shall be subject to and comply with all applicable laws, including obtaining business or professional licenses and permits, and such other requirements as may be imposed by the City and County of Honolulu or any other governmental entity or other authority. The hours of operation for such businesses shall be subject only to applicable requirements imposed by the City and County of Honolulu.

9.3.10 No Residential Unit or Residential Limited Common Element or any portion of either shall be used for the promotion or sale of, or use as, time share interests or interests in any other interval ownership, fractional use or joint ownership plan or program, directly or indirectly or for the operation of a tour or activity desk or any other business that directly or indirectly promotes the sale of time share interests, or interests in any other interval ownership, fractional use or joint ownership plan or program, including without limitation any so-called "vacation license," "residence club membership," "travel club membership" or "time interval ownership" arrangement. The term "time-share" as used herein shall be deemed to include, but is not limited to, any plan, program or arrangement under which the right to use, occupy, own or possess a Unit or Units in the Project is available to, or rotates among, various persons (whether or not identified) on a periodically recurring or nonrecurring basis, whether according to a fixed or floating interval or period of time or otherwise, and whether by way of deed, lease, association or club membership, license, rental or use agreement, cotenancy agreement, partnership or otherwise, and whether or not the program or arrangement is registered or required to be registered under Chapter 514E, Hawaii Revised Statutes, as amended, or under any successor law.

9.3.11 Every Owner and occupant must at all times keep his or her Unit and the Individual Limited Common Elements appurtenant thereto in a strictly clean and sanitary condition, in a condition that is consistent with a first class condominium project, and in compliance with all local ordinances and regulations.

9.3.12 Except as permitted herein for the Commercial Limited Common Elements, no Owner or occupant may place, store, or maintain on walkways, roadways, grounds, or other Common Elements any furniture, packages, or objects of any kind or otherwise obstruct transit through the Common Elements. This does not prohibit the Owners of Units from placing goods and other materials on the Common Elements when loading or unloading them, or transporting them to the Unit or to a storage area that is a Limited Common Element appurtenant to the Unit. Any such loading, unloading, and transportation must be completed promptly.

9.3.13 In no event shall any lease, license, easement or similar interest be granted over all or any portion of the Residential Limited Common Element Roof unless such grant is for equipment which exclusively serves one or more Units or the Common Elements within the Association.

9.3.14 Residential Limited Common Element parking stalls shall only be used by Residential Unit Owners, occupants of Residential Units and their guests.

9.3.15 Notwithstanding any provision contained in this [Section 9.3](#) to the contrary, the use and other restrictions set forth in this [Section 9.3](#) shall not apply to the construction or development activities of the Residential Developer, to the use of the Common Elements and/or Residential Units owned by the Residential Developer for display, marketing, promotion, sales, rental, leasing or construction purposes or the use of Residential Units as "models", or the use of any portion of the Residential Unit as a sales, rental or management office for this Condominium.

9.3.16 Additional use restrictions which are consistent with the Declaration and Bylaws may be set forth in the House Rules, provided that in no event shall House Rules regulate use or behavior in any Commercial Unit or Commercial Limited Common Element and may only regulate use or behavior in Residential Units and the Limited Common Elements appurtenant thereto to the extent permitted by Section 514B-105 of the Condominium Property Act.

#### 9.4 Changes to Building Appearances.

9.4.1 Residential Units - Changes by Owners or the Residential Developer. Owners of Residential Units are not allowed to change or cause a change to the exterior appearance of their respective Residential Units unless they have the prior written consent of the Board pursuant to Section 9.4 of the Bylaws; provided, however, that this rule does not apply to the Residential Developer when exercising the Residential Developer's Reserved Rights. During the Development Period, however, neither the Association nor the Board can consent to any such change to the exterior appearance of any Residential Unit without the Commercial Developer's written consent, such consent not to be unreasonably withheld, conditioned or delayed and subject to applicable provisions of Section 23 of this Declaration.

9.4.2 Changes by the Board. The Board, by unanimous consent, has the right to change or consent to a change affecting the exterior appearance of the Project, subject to applicable provisions of Section 23 of this Declaration. During the Development Period, however, the Board cannot do so without the Commercial Developer's written consent, such consent not to be unreasonably withheld, conditioned or delayed. It is intended that the exterior of the Residential Developer Improvements present a uniform and attractive appearance. Accordingly, whenever Board approval is required for any proposed modification, change, addition to or alteration of any Residential Unit or Residential Limited Common Element, the Board shall base its decision to grant or deny approval at least in part upon considerations of whether (and to what extent) the proposed modification, change, addition or alteration will adversely affect the appearance of the Project. Except in connection with proposed modifications to accommodate Owners with disabilities, if the Board determines that the proposed modification, change, addition or alteration will adversely affect the appearance of the Project, the Board shall deny its approval. If the Board unanimously decides that a proposed modification, change, addition or alteration will not adversely affect the appearance of the Project and to permit the modification, the Board shall first provide all the Unit Owners with written notice and the proposed modification shall not be implemented until the Unit Owners shall have an opportunity to challenge the determination and if challenged by any Unit Owner, then the proposed modification will require the approval of Unit Owners of Units holding no less than 80% of the Common Interests.

9.4.3 Commercial Units and Commercial Limited Common Elements Changes by Owners or the Commercial Developer. Owners of Commercial Units and/or the Commercial Developer shall have the right to change the exterior appearance of the Commercial Units, their assigned Limited Common Elements and the Common Element walls of the Commercial Units to change the configuration, size and appearance of entrances and windows, façade and storefronts of the Commercial Units and their Limited Common Elements without the consent or approval of the Board or any other entity, subject to the provisions of [Section 18.2.3](#) of this Declaration; provided, however, that in no event shall the Commercial Developer require the consent of the Board when exercising the Commercial Developer's Reserved Rights.

9.4.4 Change to Plaza Area. After the Plaza Area is converted into a Residential Limited Common Elements and General Common Elements as provided in Section 1.78, the Residential Developer shall modify the Plaza Area as provided in the Development Agreement, including, without limitation, segregation of the Plaza Area into a lobby which shall be a Residential Limited Common Element and the Outside Plaza Area which shall be General Common Elements. The Outside Plaza Area shall be subject to an easement for use by the general public, including customers of the Commercial Units, Lot 73 and Ala Moana Shopping Center.



9.5 Maintenance and Repair of Units and Limited Common Elements. Each Owner must keep the interior of Owner's Unit, and its appurtenant Limited Common Elements, in good order and repair. This includes not just the walls and windows, but also includes all plumbing, electrical and other fixtures and equipment that are part of the Unit or its Limited Common Elements. The Board, however, will provide for periodic resurfacing and other routine maintenance of Individual Residential Limited Common Element parking stalls.

9.6 Residential Developer's Rights of Use. Notwithstanding anything to the contrary stated in the Condominium Documents, the Residential Developer has the right to use any Unit that it owns or leases for promotional purposes or in connection with the initial sale and any resale of Residential Units. This includes, for example, the right to have guests stay in those Residential Units for any length of time. It also includes the right to use its Residential Units and the appurtenant Limited Common Elements as model Units or as sales, management or administrative offices or to provide services to the Owners or other occupants of the Project. These rights are subject to any requirements of the zoning code and any other laws that may apply to the Property.

10. ADMINISTRATION OF PROJECT. Administration of the Project shall be vested in the Association, consisting of all Unit Owners in accordance with the Bylaws. Operation of the Project and maintenance, repair, replacement and restoration of the Common Elements, and any additions and alterations thereto, shall be in accordance with the provisions of the Condominium Property Act, this Declaration and the Bylaws including all requirements and limitations set forth in this Declaration and the Bylaws regarding the Residential Units, Commercial Units and Common Elements. The Project is intended to be operated as a Project where the residential and commercial properties are operated and managed professionally and efficiently and where the different uses and interests of the different unit type owners are integrated and balanced fairly all as provided by the Act, this Declaration and the Bylaws.

10.1 Operation. Except as otherwise provided in this Section 10, the Association shall:

10.1.1 Make, build, maintain and repair all Common Elements, including without limitation, fences, gates, sewer lines, water lines, water features, drains, roads, driveways, driveways ramps, curbs, sidewalks, parking areas, landscape lighting, together with other improvements not located within the Project which may be required by law or any recorded document to be made, built, maintained and repaired in connection with or for the use of all or any portion of the Project, provided that the costs to maintain and repair the Sewer Upgrade shall be allocated as set forth in [Section 7.16.2](#) of this Declaration.

10.1.2 Operate, maintain, repair and replace all Residential Limited Common Elements as a Residential Unit Class Expense, all Commercial Limited Common Elements as a Commercial Unit Class Expense and all General Common Elements as a General Common Expense regardless of location within the Project as provided in this Declaration.

10.1.3 Keep all Common Elements in a strictly clean and sanitary condition, repair, maintain, amend and keep all Common Elements, with all necessary reparations whatsoever in good order and condition, and maintain and keep the Land and all adjacent land between any street boundary of the Project and the established curb or street line in a neat and attractive condition and all trees, shrubs and grass thereon in good cultivation and replant the same as may be necessary, and repair and make good all defects in the Common Elements herein required to be repaired by the Association and observe and do anything required by all laws, ordinances, rules and regulations that apply from time-to-time to the Project or the use of it. Because the Land, the Outside Plaza Area and certain other portions of the Common Elements are visible to and, in some cases, utilized by the general public, including customers of the Commercial Units, Lot 73 and Ala Moana Shopping Center, these areas are to be maintained by the Association (and the Commercial Developer, if applicable) in accordance with industry standards for the operation of first-class regional shopping centers.

10.1.4 In performing the operations set forth in this Section 10.1, the Association shall be required to obtain the prior consent of the Commercial Unit Owners before altering the appearance of any portion of the General Common Elements within the Commercial Developer Improvements and before affecting in any way the Commercial Limited Common Elements.

10.1.5 In all events, the Commercial Developer shall have the right but not the obligation to perform all or any portion of the functions of the Association prescribed in Sections 10.1.1 through 10.1.3 of this Declaration in a reasonable manner and with the same duty of care required of the Association with respect to the Land, Commercial Limited Common Elements and certain or all Common Elements located within the Commercial Developer Improvements and the street level of the Project, including without limitation, all Residential Limited Common Element parking stalls and aisles and the General Common Element ramps and drive through areas and the General Common Elements listed in Section 5.2.1A of this Declaration. To the extent any costs are incurred by the Association or the Commercial Developer in performing such functions, the reasonable costs and expense of performance or services rendered will be allocated as provided in this Declaration with respect to General Common Expenses, Commercial Unit Class Expenses and Residential Unit Class Expenses, subject to the provisions of Section 12.2.3. In addition, because the Outside Plaza Area may be utilized by the general public, including customers of the Commercial Units, Lot 73 and Ala Moana Shopping Center, should the Association fail to maintain the Outside Plaza Area in the condition required by Sections 10.1.2 and 10.1.3 of this Declaration, Commercial Developer shall have the right, if such condition is not corrected within fifteen (15) days after notice from the Commercial Developer to the Association (or, if such condition cannot, with the exercise of commercially reasonable efforts, be corrected within such fifteen (15) day period, then within such additional period of time as may be necessary to correct such condition provided that the Association commences to correct such condition within the fifteen (15) day period and proceeds diligently thereafter to complete such cure) then the Commercial Developer, at its election, may take over the obligation to operate, maintain, repair and replace the Outside Plaza Area for such period of time as it elects. To the extent the Commercial Developer has paid for such costs, the amount of any payments over and above the reasonable third party costs required to be allocated to the Commercial Units will be charged to the Residential Unit Owners as a Residential Class Expense and the Commercial Unit Owners shall receive a credit against any other charges payable by the Commercial Unit Owners for such overpayment of costs which credit shall be allocated in accordance with the respective Commercial Unit Class Common Interest of each Commercial Unit. During such time as the Commercial Developer (and not the Association) is performing the functions of the Association prescribed in Sections 10.1.1 through 10.1.3 with respect to the Retail Parking Structure, the Commercial Developer and the Association shall consult and establish a coordinated maintenance schedule to promote the safety and efficiency of their maintenance activities within the Project (including, without limitation, window washing, power washing, erection of scaffolding, etc.).

10.1.6 Until the Commercial Developer notifies the Board in writing to the contrary, the Commercial Developer shall be responsible for the operation, maintenance, repair and replacement of the following elements of the Project: (i) the Land (including landscaping); (ii) the Retail Parking Structure (exclusive of the elevator and elevator lobbies serving the Residential Units and interior portions of the Plaza Area); and (iii) those portions of the General Common Elements listed in Section 5.2.1.A through F of this Declaration, with the reasonable cost and expense thereof allocated as required by this Declaration and with such costs and expenses appearing in the budget as a Common Expense. Upon the date of such notice, the Board shall be responsible for such maintenance, repair and replacement of such Project components designated by the Commercial Developer in such notice. To the extent such right has been assigned by the Commercial Developer, one or more Commercial Unit Owners shall have the right to exercise the rights and obligations of the Commercial Developer set forth in this Section 10.1.6 unless and until such assignment is withdrawn and such obligations are again assumed by the Commercial Developer.

10.1.7 Not erect or place on the Project any building or structure, including fences and walls, nor make material additions or structural alterations to or exterior changes of any Common Elements of the Project except in accordance with plans and specifications prepared by a licensed architect and approved by any other Owners whose consent is required by the Condominium Property Act and subject to applicable approvals required by Section 23 of this Declaration. After starting the improvements, the Association must work diligently to complete them;

10.1.8 Before commencing or permitting construction of any improvement on the Project where the cost thereof exceeds Twenty-Five Thousand and No/100 Dollars (\$25,000.00), obtain a performance and labor and materials payment bond naming as obligees, the Board of Directors, the Association and collectively all Unit Owners and their respective Lenders of record, as their respective interests may appear, with a responsible corporate surety authorized to do business in the State of Hawaii, guaranteeing the full and faithful performance of the contract for such construction free and clear of any mechanics' and materialmen's liens for such construction, the payment of

all Subcontractors, laborers and materialmen, and the discharge of any mechanics' and materialmen's liens for a penal sum of not less than one hundred percent (100%) of the estimated cost of such construction. As an alternative, and under the appropriate circumstances, the Board may approve a written guaranty or other instrument guaranteeing the full and faithful performance of the contract for such construction free and clear of any mechanics' and materialmen's liens for such construction, the payment of all subcontractors, laborers and materialmen, and the discharge of any mechanics' and materialmen's liens;

10.1.9 Observe any setback lines affecting the Project and not erect, place or maintain any building or structure whatsoever except approved fences or walls between any street boundary of the Project and the setback line along such boundary;

10.1.10 Not neglect or abuse, or make or suffer any strip or waste or unlawful, improper or offensive use of the Project; and

10.1.11 Subject to [Section 7](#) above, have the right to be exercised by the Board of Directors or Managing Agent to enter any Unit or Limited Common Elements appurtenant thereto from time-to-time during reasonable hours as may be necessary for the operation of the Project or at any time for making emergency repairs therein required to prevent damage to any Units or Common Elements or for the installation, repair or replacement of any portions of the Project for which the Association is responsible.

10.1.12 Except as specifically provided herein, the Association shall have all of the powers set forth in Section 514B-104 of the Condominium Property Act; provided, however, the Association may not impose any fees or charges for the use, rental or operation of the Commercial Limited Common Elements or amend the Declaration in any way that adversely affects the Commercial Units or the Commercial Limited Common Elements. Except as specifically provided herein, the Association shall have all of the powers set forth in Section 514B-104 of the Condominium Property Act; provided, however, the Association may not impose any fees or charges for the use, rental or operation of the Commercial Limited Common Elements or amend the Declaration in any way that adversely affects the Commercial Units or the Commercial Limited Common Elements and during the Developer Control Period the Association may not impose any fees or charges for the use, rental or operation of the Residential Limited Common Elements or amend the Declaration in any way that adversely affects the Residential Units or the Residential Limited Common Elements.

## 10.2 Commercial Unit Limitations.

10.2.1 The Commercial Unit Owners, shall pay and be responsible for the operation, care, upkeep, repair, and maintenance of their Commercial Units and the Individual Commercial Limited Common Elements appurtenant to their Commercial Units.

10.2.2 In no event may the Board or the Association regulate or take any action with respect to Capital Upgrades or the operation, care, upkeep, repair, and maintenance of the Commercial Limited Common Elements or Individual Commercial Limited Common Elements without the consent of the affected Commercial Unit Owner. In no event during the Developer Control period may the Board or the Association regulate or take any action with respect to Capital Upgrades or the operation, care, upkeep, repair, and maintenance of the Residential Limited Common Elements without the consent of the Residential Developer or the Individual Residential Limited Common Elements without the consent of the affected Residential Unit Owner. Notwithstanding the foregoing, the actions described herein may be taken in an emergency situation if and only to the extent necessary to prevent bodily injury or property damage.

10.3 Capital Upgrades of General Common Elements. Whenever in the judgment of the Board the General Common Elements shall require Capital Upgrades costing in excess of five percent (5%) of the budgeted gross expenses of the Association for that fiscal year, and the making of such Capital Upgrades shall have been approved by a majority of the votes of the Residential Owners and the vote of all Commercial Unit Owners, the Commercial Developer and during the Developer Control Period, the Residential Developer, the Board shall proceed with such Capital Upgrades and may assess the Owners for the cost thereof as a General Common Expense. If such Capital Upgrades, if not made, could reasonably result in a threat to the health or safety of the Owners or a significant risk of damage to the Project, then such actions may be taken without the prior approval of Unit Owners.

Any Capital Upgrades costing less than five percent (5%) of the budgeted gross expenses of the Association for that fiscal year may be made by the Board without approval of the Owners, provided said Owners are given at least ten (10) days written notice of a special meeting at which actions are approved by an amendment to the budget by the Board. The cost of such Capital Upgrades shall constitute a Common Expense. The foregoing shall not apply to Operational Expenses which shall be subject to applicable provisions of the Condominium Documents, including Article 9 of the Bylaws. This Section 10.3 shall not apply to any Capital Upgrades made by the Commercial Developer when exercising the Commercial Developer's Reserved Rights or the Residential Developer when exercising the Residential Developer's Reserved Rights.

10.4 Capital Upgrades of Residential Limited Common Elements Whenever in the judgment of the Board the Residential Limited Common Elements shall require Capital Upgrades costing in excess of five percent (5%) of the budgeted gross expenses of the Association for that fiscal year and the making of such Capital Upgrades shall have been approved by a majority of votes of the Residential Unit Owners, and during the Developer Control Period, the Residential Developer, the Board shall proceed with such Capital Upgrades and may assess the Residential Unit Owners for the cost thereof as a Residential Limited Common Expense. If such Capital Upgrades, if not made, could reasonably result in a threat to the health or safety of the Owners or a significant risk of damage to the Project, then such additions, renovations, replacements, alterations or improvements may be made without the prior approval of the Residential Unit Owners. The foregoing shall not apply to Operational Expenses which shall be subject to applicable provisions of the Condominium Documents, including Article 9 of the Bylaws. This Section 10.4 shall not apply to any Capital Upgrades made by the Residential Developer when exercising the Residential Developer's Reserved Rights.

10.5 Extraordinary Actions. Although the Board shall generally have broad powers to regulate, govern and manage the Project, the power to approve certain Extraordinary Actions (as defined below) shall remain vested in the Association. Any provision of this Declaration or the Bylaws to the contrary notwithstanding, the Board and the Association shall not be authorized to take any Extraordinary Actions during the Developer Control Period without the affirmative vote of Owners representing not less than 80% of the Residential Owners and the consent of all Commercial Unit Owners and the Residential Developer, and after the end of the Developer Control Period, without the affirmative vote of Owners representing not less than a majority of the votes of the Residential Owners and the consent of all Commercial Unit Owners. As used herein, the term "Extraordinary Actions" shall mean any and all actions taken by or on behalf of the Association, including, without limitation, amending this Declaration to change the permitted use of the General Common Elements, commencing or maintaining any litigation, mediation or similar proceeding (except for routine common expense collection matters, or actions required to enforce the restrictions on use of Units, rules or architectural controls) which would reasonably require the expenditure of funds in excess of Twenty Five Thousand Dollars (\$25,000.00) in the aggregate during any fiscal year of the Association and any determinations pursuant to Section 514B-41(c) of the Condominium Property Act and not prohibited by an express provision of this Declaration. However, Extraordinary Actions shall not be deemed to include Capital Upgrades or actions by the Association in connection with Operational Expenses, including the establishment and utilization of reserves for the repair or replacement of Common Elements.

11. MANAGING AGENT; SERVICE OF LEGAL PROCESS. Operation of the Project shall be conducted for the Association by a responsible corporate Managing Agent who shall be appointed by the Association in accordance with the Bylaws; provided that until such time as the Association appoints a Managing Agent, the Commercial Developer shall either manage the Project or hire a Managing Agent. The Managing Agent shall be authorized to receive service of legal process in all cases provided in the Condominium Property Act.

12. COMMON EXPENSES; SPECIAL COSTS; ALTERNATIVE ALLOCATION; LIMITED COMMON EXPENSES; CLASS COMMON EXPENSES.

12.1 Assessment and Payment of Common Expenses; Limited Common Expenses and Class Common Expenses, Special Costs; Alternative Allocation. Due to the mix of residential and commercial uses and elements contemplated to be included within the Project and to promote the efficient and equitable maintenance, repair, replacement and operation of such elements and uses, all costs of maintenance, repair, replacement, including reserves shall be allocated as hereinafter provided. Common Expenses shall be allocated as General Common Expenses, Limited Common Expenses, Residential Unit Class Expenses or Commercial Unit Class Expenses. General Common Expenses are allocated to each Unit as a Special Cost as provided on Exhibit D. Limited

Common Expenses are allocated based upon the relative Common Interest of all Units to which that Limited Common Expense is to be charged as set forth in Section 8.3 of the Bylaws. Residential Unit Class Expenses, which shall include any Special Costs allocated to the Residential Units by Alternative Allocation, shall be allocated to and shared among the Residential Unit Owners based on their respective Residential Class Common Interests as set forth on [Exhibit B](#). Commercial Unit Class Expenses, which shall include any Special Costs allocated to the Commercial Units by Alternative Allocation, shall be allocated to and shared among the Commercial Unit Owners based on their respective Commercial Class Common Interests as set forth on [Exhibit B](#). The Special Costs identified on [Exhibit D](#) of this Declaration shall not be allocated by Common Interests but shall be allocated between the Commercial Unit Class and the Residential Unit Class as set forth on [Exhibit D](#) and referred to as an “Alternative Allocation”. The Alternative Allocation is a fair and equitable apportionment of Special Costs pursuant to the provisions of Section 514B-41 of the Condominium Property Act. Special Costs identified in [Exhibit D](#) shall be allocated and shared pursuant to Alternative Allocation and, in turn, shall be allocated to and shared among the Residential Unit Owners subject to such Special Cost based on their respective Residential Class Common Interests and allocated to and shared among the Commercial Unit Owners subject to such Special Cost based on their respective Commercial Class Common Interests. Except as otherwise provided in this Declaration, a Unit and its Common Interest, Alternative Allocation and Class Common Interest cannot be separated. Such Assessments shall be levied annually and shall be due and payable in monthly or such other installments approved by the Board of Directors. Any expenses incurred by the Association at the request of a Unit Owner directly related to the maintenance, management, operation, repair and replacement of its Unit shall be assessed against such Unit Owner and shall be collectible to the same extent as any other Assessment of the Association. Within ninety (90) days after the end of each fiscal year, the Board of Directors shall supply to all Unit Owners, an itemized accounting of the Common Expenses (and to all Unit Owners within the respective Unit Class, an itemized accounting of the Class Common Expenses) for such fiscal year actually incurred and paid, together with a tabulation of the amounts collected pursuant to the budget adopted by the Board of Directors for such fiscal year, and showing the net amount over or short of the actual expenditures plus any reserves. Any amount accumulated in excess of the amount required for actual expenses and reserves shall, at the discretion of the Board of Directors, (A) be placed in any reserve accounts, (B) be placed in a special account to be expended solely for the general welfare of the Unit Owners, (C) be credited according to each Unit Owner’s Common Interest, Alternative Allocation or Class Common Interest, as applicable, to the next periodic installments due from Unit Owners under the current fiscal year’s budget, until exhausted, or (D) distributed to the Unit Owners according to each Unit Owner’s Common Interest, Alternative Allocation or Class Common Interest, as applicable. The provisions of this Section shall take precedence over Section 514B-41 of the Condominium Property Act and shall preclude the Board’s assessment of limited common expenses by undivided common interest pursuant to Section 514B-41 of the Act.

## 12.2 Specific Allocations.

12.2.1 All common expenses incurred for the Residential Limited Common Elements, including structural components of the Project that are designated as Residential Limited Common Elements, including without limitation, the structure and roof of the residential tower within the Residential Developer Improvements, costs of maintenance, repair, replacement, including reserves, of any equipment serving only the Residential Developer Improvements and Residential Limited Common Elements, all costs of a resident manager, if any, including salary expense, cost of any apartment used by the resident manager, the cost of personnel for any residential lobby, shall be a Residential Unit Class Expense. The costs of maintenance, repair, replacement, including reserves, for any equipment that serves only the Commercial Units and Commercial Limited Common Elements shall be a Commercial Unit Class Expense. The costs of maintenance, repair, replacement, including reserves and all other General Common Expenses of the General Common Elements shall be allocated as provided in [Exhibit D](#).

12.2.2 Janitorial services and the cost of electricity furnished to the street level areas and parking areas of the Retail Parking Structure, shall be allocated as Special Costs in proportion to the respective number of parking stalls within the Residential Limited Common Elements and Commercial Limited Common Elements, as set forth in [Exhibit D](#).

12.2.3 If any services are provided to or if any costs are incurred for any Common Element where the respective direct allocation of such costs between General Common Elements, Residential Limited Common Elements and Commercial Limited Common Elements are not readily determinable by separate meters or separate billing by vendors, the Board shall request the vendor of the services to segregate the billings as between the General Common Elements, Commercial Limited Common Elements and Residential Limited Common Elements. If the services have been rendered to any part of the Commercial Developer Improvements and the street level of the Project and the vendor is unable or refuses or is willing to do so only at a cost not acceptable to the Board, then the allocation between Commercial Unit Class Expenses and Residential Unit Class Expenses shall be assessed as a Special Cost to be allocated according to the Alternative Allocations set forth in Exhibit D. If such services have been provided to any part of the Project other than the Commercial Developer Improvements and the street level of the Project, the costs shall be assessed based upon an allocation agreed upon by the unanimous consent of the Board. In arriving at such agreement, the Board may engage the services of a professional engineer or other professional to provide its opinion of a fair allocation. If the Board shall not be able to agree on such allocation (a “deadlock”) the matter will be submitted to binding arbitration unless the Board unanimously otherwise agrees. In the event of a deadlock, any Board member may initiate arbitration to resolve the deadlock by providing written notice of such desire to each Board member. The Board, shall have a period of twenty (20) calendar days following the date notice is given to agree on a single arbitrator who shall be a professional engineer to resolve the deadlock, and if they fail to do so then the arbitrator shall be determined by application to Dispute Prevention & Resolution, Inc. (or similar alternative dispute resolution services if Dispute Prevention & Resolution, Inc. ceases to exist), in which event the arbitration shall be administered by Dispute Prevention & Resolution, Inc. pursuant to its Protocols for Arbitration of Disputes (or the arbitration rules and proceedings of such similar dispute resolution service if Dispute Prevention and Resolution ceases to exist). The costs of the arbitration shall be a General Common Expense. The decision of the arbitrator shall be final and binding on the Board and the Unit Owners and a judgment on the arbitrator’s decision may be entered by any court having jurisdiction. Notwithstanding the foregoing, in the event that the Commercial Units and Commercial Limited Common Elements are not separately metered from the Residential Units and Residential Limited Common Elements for water usage, the costs of water usage shall be a Special Cost allocated as set forth in Exhibit D.

12.2.4 Except as set forth in Section 12.2.2 and Section 12.2.3, the maintenance, repair and replacement of all other General Common Elements shall be assessed as a General Common Expense.

12.3 Other Charges. All charges, costs and expenses incurred by the Association which are necessitated by the negligence, misuse or neglect of any Unit Owner or occupant or any person under either of them to the extent not covered by insurance may be charged to such Unit Owner or the owner of the Unit of such occupant, as a Special Assessment secured by the lien created under this Section 12 pursuant to the provisions of Section 514B-143(d) of the Condominium Property Act. No Unit Owner shall be exempted from liability for the Owner’s contribution toward the Common Expenses by waiver of the use or enjoyment of any of the Common Elements or by abandonment of the Owner’s Unit.

12.4 Collection of Assessments. The Board of Directors shall from time-to-time assess the Common Expenses against all the Units, assess the Class Common Expenses against the Units within a Unit Class and certain costs against specific Units in accordance with law and the provisions of this Declaration and the Bylaws. The unpaid amount of such Assessments against any Unit shall constitute a lien against such Unit prior to all other liens, except only (i) liens for taxes and assessments lawfully imposed by governmental authority against such Unit, and (ii) all sums unpaid on any mortgage of record which was filed prior to the filing of a notice of a lien by the Association (a “Paramount Mortgage”), and costs and expenses including attorney’s fees provided in such mortgages. The lien of the Association for an unpaid Assessment may be foreclosed by the Board of Directors or Managing Agent as provided by the Condominium Property Act, provided that thirty (30) days’ prior written notice of intention to foreclose shall be mailed, postage prepaid, to all persons having any interest in such Unit as shown in the Association’s record of ownership. When the Lender or other purchaser of any Unit acquires title to such Unit as a result of the remedies provided in the mortgage, foreclosure of the mortgage, or a private sale or deed in lieu of foreclosure, such Lender or such other purchaser, as the case may be, and their respective heirs, devisees, personal representatives, successors and assigns, shall not be liable for the share of the Common Expenses or Assessments chargeable to such Unit which became due prior to such acquisition of title, subject to the rights of the Board to specially assess the amount of the unpaid Assessment against a purchaser who purchases the Unit (other than purchasers who hold a Paramount Mortgage) pursuant to the provisions of Section 514B-146 (g) of the

Condominium Property Act. Subject to the right of the Board to specially assess the amount of the unpaid regular monthly Assessments for Common Expenses against a Unit Owner pursuant to the provisions of Section 514B-146 (g) of the Condominium Property Act: (i) the unpaid share of Common Expenses shall be deemed Common Expenses collectible from all of the Unit Owners, including such Lender or such other purchaser of a Unit with the unpaid share of Common Expense and their respective heirs, devisees, personal representatives, successors and assigns, (ii) the unpaid share of Class Common Expense shall be deemed collectible from all of the Unit Owners in the particular Unit Class, including the purchasing Lender or purchaser of the Unit with the unpaid share of such Class Common Expense and their respective heirs, devisees, personal representatives, successors and assigns, (iii) the unpaid share of Special Costs shall be deemed collectible from all of the Unit Owners to which such Special Cost is applicable, including the purchasing Lender or purchaser of the Unit with the unpaid share of such Special Cost and their respective heirs, devisees, personal representatives, successors and assigns, and (iv) the unpaid share of Limited Common Expenses shall be deemed collectible from all of the Unit Owners to which such Limited Common Expense is applicable, including the purchasing Lender or purchaser of the Unit with the unpaid share of such Limited Common Expense and their respective heirs, devisees, personal representatives, successors and assigns.

12.5 Interest in Common Expense Funds Not Separately Assignable. The proportionate interest of each Unit Owner in any capital contributions, custodial fund or maintenance reserve fund cannot be withdrawn or separately assigned but shall be deemed to be transferred with such Unit even though not expressly mentioned or described in the conveyance thereof. In case the condominium property regime hereby created shall be terminated or waived, said capital contributions, custodial fund or maintenance reserve fund remaining after full payment of all Common Expenses of the Association shall be distributed to all Unit Owners in their respective proportionate shares except for the owners of any Units then reconstituted as part of a new condominium property regime.

13. COMPLIANCE WITH DECLARATION AND BYLAWS. All Unit Owners, their tenants, families, servants, guests, and invitees, and anyone else who may in any manner use the Project, or any part of it, are bound by and must comply strictly with the Condominium Documents and all agreements, decisions and determinations of the Association as lawfully made from time-to-time. Any failure to comply is grounds for an action to recover sums due, for damages or injunctive relief, or both. The Board or the Managing Agent acting on behalf of the Association or, in a proper case, an aggrieved Unit Owner may bring such an action.

13.1 Costs and Expenses of Enforcement. All costs and expenses, including reasonable attorneys' fees, incurred by or on behalf of the Association for:

- A. Collecting any delinquent Assessments against any Owner's Unit;
  - B. Foreclosing any lien on it;
  - C. Enforcing any part of the Condominium Documents or the Condominium Property Act;
- or
- D. Enforcing the Condominium Regulations

against an Owner, occupant, tenant, employee of an Owner, or anyone else who may in any manner use the Project or any part of it must be paid, promptly on demand, to the Association by that person or persons; provided, that if the claims upon which the Association takes any action are not substantiated, then promptly on demand the Association must pay all costs and expenses, including reasonable attorneys' fees, incurred by the Unit Owner as a result of the Association's action.

13.2 Exemptions for Persons with Disabilities. Notwithstanding anything to the contrary contained in the Condominium Documents, and except as otherwise provided by law, Owners with disabilities are allowed reasonable exemptions from the requirements of the Condominium Documents when necessary and to the extent appropriate to enable them to use and enjoy their Units or the Common Elements. Any Owner with a disability and who wants an exemption must ask the Board in writing. The request must include a specific and detailed description of the exemption requested and the reason why the Owner needs such exemption. A request will be

granted automatically unless the Board denies it in writing within forty-five (45) days after the Board receives it, or within forty-five (45) days after the Board receives any additional information reasonably required by the Board in order to consider the request, whichever occurs last.

#### 14. INSURANCE.

14.1 Insurance Generally. The Association shall obtain and maintain the insurance required by this [Section 14](#) with the exception of the insurance coverage to be obtained by the Unit Owners Pursuant to Section 14.2.3 and Section 14.6 below. The cost of insurance obtained by the Association shall be a Special Cost to be assessed in accordance with the Alternative Allocation provided in [Exhibit D](#). Each policy may be separate, or the Association can buy one or more commercial package policies.

14.1.1 Source of the Insurance. The Association shall buy the insurance.

14.1.2 Qualified Insurance Companies. Each insurance company must be licensed to do business in the State of Hawaii except for (i) federal flood insurance and other government insurance programs, and (ii) insurance not available, or not available at a reasonable price from a company licensed in Hawaii. Each insurance company must have a financial rating of A-VII or better according to Best's Insurance Report. If the insurance cannot be obtained from a company having that rating, or if the Board decides that the cost is too high, then the Association may buy the insurance from any financially sound company of recognized responsibility.

14.1.3 Additional Insurance. The Board has the right and power to increase coverage or to obtain better terms than those stated in this [Section 14](#) if the Board decides that it is necessary or is in the best interests of the Association. The Board may also buy other kinds of insurance even if they are not described in this [Section 14](#).

14.1.4 Summary of Insurance Policies. Each insurance policy obtained by the Association to provide the coverage required under this [Section 14](#) shall contain a provision requiring the insurance carrier, at the inception of the insurance policy and on each anniversary date thereof, to provide the Board with a written summary, in layman's terms, of the insurance policy. The summary shall include the type of insurance policy, a description of the coverage and the limits thereof, amount of annual premium and renewal dates. The Board shall provide this information to each Owner.

14.1.5 Yearly Review of Insurance Programs. The Board must review the adequacy of its entire insurance program at least yearly. The Managing Agent must furnish an analysis of (a) the insurance needs of the Association and the Owners; and (b) the adequacy of the existing insurance policies to meet those needs. The Board shall review this analysis and then make any changes in the insurance program that it deems necessary or appropriate. All Board decisions are final. The Board must report in writing its conclusions and the action taken after its review.

14.1.6 Liability for Insurance Decisions. The Board will not be liable for any decision it makes regarding insurance unless it was grossly negligent or was guilty of intentional misconduct. Likewise, none of the Commercial Developer, Residential Developer or the Managing Agent will be liable except for their gross negligence or intentional misconduct regarding any decisions regarding insurance.

14.1.7 Inspection and Copies of Insurance Policies. Any Owner (and anyone having executed a contract to buy a Unit) may inspect copies of the Association's insurance policies at the office of the Managing Agent. If asked to do so, the Board will furnish a copy of any policy, or a current certificate of insurance, to any Lender that has a first Mortgage on a Unit. The Lender must pay a reasonable fee for the copy. The Board shall provide a copy of any policy to a Commercial Unit Owner free of charge.

14.1.8 Notice of Changes in Insurance. The Association will send notice to the Owners if:



A. The Association's policy of property insurance under [Section 14.2](#) or liability insurance under [Section 14.4](#) has lapsed, has been canceled, or will not be renewed unless replacement coverage will be in effect before the policies lapse or are canceled; or

B. There is a significant adverse change in the coverage of those policies (for example, a significant reduction in the policy limits or a substantial increase in the deductible).

C. The Association must send any notice required by this Section 14.1.8 by first-class mail and it must do so as soon as reasonably possible.

14.2 Property Insurance. The Association must buy and keep in effect at all times a policy of property insurance. This is called the "Policy" as referred to in this [Section 14.2](#).

14.2.1 Who is Insured. The Policy must name the Association, as trustee for all Unit Owners and any Lenders, as the insured. The Residential Developer must also be named as an insured during the Development Period.

14.2.2 Required Coverage. Except for those items set forth in [Section 14.2.3](#) below which are required to be covered by a Unit Owner, the Policy must insure all Units, Common Elements and all common personal property belonging to the Association. The Policy must be in a total amount not less than the full insurable replacement cost of the insured property with no co-insurance, less commercially reasonable deductibles, but including coverage for the increased costs of construction due to building code requirements, at the time the insurance is purchased and at each renewal date. Replacement cost shall be evaluated and updated, at a minimum, annually and at the time of each renewal. The Policy shall not cover any improvements and betterments or personal property in a Commercial Unit after the time a certificate of use and occupancy is issued for such Commercial Unit, the cost of replacement of which shall be the sole responsibility and expense of the Owner of such Commercial Unit. The Policy does not have to cover land, foundation, excavation and other items normally excluded from such coverage.

14.2.3 Unit Owner Hazard Coverage Required.

A. Each owner of a Residential Unit is solely responsible, at its sole expense, for obtaining and maintaining a personal home insurance policy of Type HO-6 or an equivalent policy that provides customary coverage for liability and for such Unit Owner's personal property, improvements and betterments, and other portions of the Residential Unit that are not covered under the Policy.

B. The Unit Owner of each Commercial Unit is responsible, at its sole expense, for obtaining insurance coverage for personal property, improvements and betterments, and other items within such Commercial Unit to the extent that such items or personal property are not covered under the Policy and such insurance policy may include business interruption coverage for loss of rents, as applicable.

C. In addition to the insurance obtained in [Section 14.2.3.C](#), the Commercial Unit Owners may purchase, for the benefit of the Commercial Unit Owners, supplemental all-risk of physical loss insurance coverage insuring all Commercial Units and the Commercial Limited Common Elements the proceeds of which shall be paid to, for the exclusive use of, and administered by the Commercial Unit Owners. Notwithstanding such coverage, the Policy shall remain the primary insurance for those matters required to be insured pursuant to [Section 14.2.2](#) above and the liability of carriers issuing the Policy shall not be affected or diminished by reason of any such supplemental insurance obtained by the Commercial Unit Owners.

D. Each Unit Owner may also be required, at his own expense, to obtain additional insurance coverage as may be decided pursuant to the provisions of Section 514B-143 (g) of the Condominium Property Act.

14.2.4 Form of Policy. The Policy must cover the perils insured under ISO special causes of loss form (CP 10 30) or equivalent. Flood coverage with a limit equal to the full replacement cost of the building

shall be provided. This requirement is subject to annual review and modification in recognition of changes in the insurance marketplace and if such flood coverage is not available at commercially reasonable rates or such lesser limit that is commercially available at a commercially reasonable rate, then the Association shall at a minimum obtain the flood insurance required by [Section 14.3](#) below. Earthquake coverage and terrorism coverage with a limit equal to the full replacement cost of the building shall be provided. This requirement is subject to annual review and modification in recognition of changes in the insurance marketplace. The Association must obtain coverage under the National Flood Insurance Program as required by [Section 14.3](#) below regardless of whether the Association also obtains the coverage required by this Section 14.2.4.

14.2.5 Additional Coverage. The Policy must contain an agreed amount endorsement or waive any co-insurance requirement.

14.2.6 Required and Prohibited Provisions. Unless the Board decides the cost is unreasonably high, the Policy must provide as follows:

A. The Policy must not relieve the insurance company from liability because of:

(1) Any increased hazard on any part of the Project, whether or not within the control or knowledge of the Association, the Board, the Commercial Developer, Residential Developer, the Managing Agent, any Owner, or any persons under any of them; or

(2) Any breach of warranty or condition or any other act or neglect by any of those persons.

B. The Policy must not permit the insurance company to cancel or substantially change the Policy or the coverage (whether or not asked by the Board) unless the insurance company gives written notice of the cancellation or change at least thirty (30) days in advance. The insurance company must send the notice to the Board and the Managing Agent. The Board will send a copy to each Lender and any other Interested Person who has, in either case, requested a copy of any such notice and has provided the Board with an address for such notice.

C. The Policy must provide for payment of the full replacement cost up to the policy limits (which will be allocated as provided in Section 15.2) if a Unit or its Limited Common Elements are not rebuilt. The Policy must also provide that the insurance company agrees to pay the insured for the full replacement cost (up to the policy limits) of the insured property if the Association decides not to repair, rebuild, or replace the Project pursuant to the provisions of the Condominium Property Act.

D. The Policy must provide that the insurance company waives any right of subrogation to any right of the persons insured by the policy as against the Association, the Board, the Managing Agent, the Developer, the Owners and the Representatives of each of the foregoing.

E. The Policy must provide that the insurance company waives any right to deny liability because any Unit or Units are vacant.

F. The Policy must not limit or prohibit any Unit Owner from buying other insurance for the Owner's own benefit. It must also provide that the liability of the insurance company will be primary and will not be affected by any such other insurance, and that the insurance company cannot claim any right of set-off, counterclaim, apportionment, proration, or contribution by reason of any other insurance obtained by or for any Unit Owner.

G. The Policy must provide that any loss will be settled by (i) the insurance company, (ii) the Board, and (iii) any Lender having a Mortgage on a Unit directly affected by the loss.

H. The Policy must contain a standard "mortgagee clause". This protects the rights of Lenders. Unless it cannot be reasonably obtained, the mortgagee clause must:

(1) Name as an insured any Lender whose name has been furnished to the Board and to the insurance company;

(2) Provide that any reference to a Lender in the policy includes all Lenders, in their order of priority, whether or not named in the policy;

(3) Provide that any act or neglect of the Association, the Board, or any occupant will not release the insurance company from its duties to the Lender;

(4) Provide that the insurance company waives:

(a) any right to deny coverage for the Lender's benefit because the Lender fails to notify the insurance company of any hazardous use or vacancy,

(b) any requirement that the Lender pay any policy premium (provided, however, the Lender may pay any premium due if the Association fails to do so on time), and

(c) any right to contribution from the Lender.

I. The Policy must provide that if there is a loss to the Project and the amount paid by the insurance company exceeds Two Hundred Thousand Dollars (\$200,000.00), then the money must be paid the Insurance Trustee. The Insurance Trustee shall be required to make the proceeds of the Policy available pursuant to the provisions of Section 15.1 and Section 15.4 of this Declaration. The Policy must also require that the insurance company recognize the insurance trust agreement referred to in Section 15.8 of this Declaration. Whenever insurance proceeds are deposited with an Insurance Trustee, the Association must promptly notify each Lender listed in the Association's records of ownership.

14.3 Flood Insurance. If the Project is located in a special flood hazard area as delineated on flood maps issued by the Federal Emergency Management Agency, then the Association must buy a policy of flood insurance that complies with the requirements of the National Flood Insurance Program and the Federal Insurance Administration unless the Project has obtained an exemption certificate from the Federal Emergency Management Agency. The amount of the coverage under the policy must be equal to the lesser of One Hundred Percent (100%) of current replacement cost or the maximum limit of coverage available under the National Flood Insurance Program.

14.4 Liability Insurance. The Board must buy and keep in effect commercial general liability insurance and, if necessary, commercial umbrella insurance. In this [Section 14.4](#), the commercial general liability insurance and commercial umbrella insurance are together called the "Liability Policy".

14.4.1 Who is Insured. The Liability Policy must cover all Unit Owners, the Board, the Association, the Managing Agent and, during the Development Period, the Commercial Developer and the Residential Developer and each of their Representatives against claims for personal injury, bodily injury, death, and property damage. The Liability Policy must name each Unit Owner and their Representatives as an additional insured and the policy must contain a waiver of subrogation against the Unit Owners and their Representatives. To evidence compliance with this requirement, the Board will obtain a certificate of insurance and provide a copy to the Commercial Unit Owners. During such time that the Commercial Developer is a Unit Owner, the liability policy must name as additional insureds the Commercial Developer, General Growth Properties, Inc., GGPLP L.L.C. and such additional insureds as Commercial Developer shall direct from time to time and the Representatives of all of the foregoing. To the extent commercially reasonably available, the certificate shall also provide that not less than thirty (30) days notice of cancellation or decrease in coverage shall be given to the Commercial Unit Owners.

14.4.2 Required Coverages. The Liability Policy limits must not be less than SIX MILLION DOLLARS (\$6,000,000.00) (which can be any provided by any combination of primary and umbrella coverage) for personal injury, bodily injury, and death, and ONE MILLION DOLLARS (\$1,000,000.00) for property damage. The Liability Policy should provide coverage for bodily injury (including death) and property damage that results

from the operation, maintenance or use of the Common Elements and any legal liability that results from lawsuits related to employment contracts in which the Association is a party and, if applicable, commercial vehicle liability (owned and non-owned exposure) with the limits set forth in this Section 14.4.2.

14.4.3 Required and Prohibited Provisions. Unless the Board decides the cost is unreasonably high, the Liability Policy must provide as follows:

A. The Liability Policy must not limit or prohibit any Unit Owner from buying other liability insurance for the Owner's own benefit.

B. The Liability Policy must not relieve the insurance company from liability because of any act or neglect of the Association, the Managing Agent, the Commercial Developer, Residential Developer, the Board, the Units Owners and occupants, or any person under any of them.

C. The Liability Policy must provide that the insurance company waives any right of subrogation to any right of the persons insured by the Liability Policy as against the Association, the Board, the Managing Agent, the Commercial Developer, Residential Developer, the Owners and any of their Representatives.

D. The Liability Policy must contain a "cross-liability" endorsement.

E. The Liability Policy must contain a "severability of interest" provision.

F. The Liability Policy must not permit the insurance company to cancel or substantially change the Liability Policy or the coverage (whether or not asked by the Board) unless the insurance company gives written notice of the cancellation or change at least thirty (30) days in advance. The insurance company must send the notice to the Board, the Managing Agent, the Commercial Developer and, during the Development Period, the Residential Developer. The Board will send a copy to every Lender and any other Interested Person who has, in either case, requested a copy of any such notice.

14.4.4 Opting-Out Notwithstanding anything herein contained, the Commercial Unit Owners (acting unanimously if more than one) may elect at any time and from time to time by notice to the Association to obtain on its or their own behalf (and not on a shared basis with the Association) commercial general liability insurance and the commercial umbrella insurance set forth in Section 14.4 above, in which event (a) the Commercial Unit Owner(s) shall pay for such insurance and the costs and benefits thereof shall not be shared; (b) the Commercial Unit Owner(s) shall provide to the Association upon its request, and in all events not less than once every 12 months, with reasonably satisfactory evidence of such coverage; (c) the insurance coverage provided by the separate policies maintained by the Commercial Unit Owner(s) must be substantially equivalent to provide coverage for the Commercial Unit Owner(s) exposure to the coverage that would have been required to be maintained by the Association for the benefit of all Owners if the Commercial Unit Owner(s) had not made such election; and (d) in the event that the Commercial Unit Owner(s) have elected to obtain on its or their own behalf such insurance, then with respect to such Commercial Unit Owner(s), the coverages maintained by the Association as set forth in this Section 14.4 shall be limited to covering the Residential Unit Owners, the Board, the Association and each of their Representatives and the Commercial Unit Owner(s) shall have no obligation to pay any portion of the cost of such liability insurance coverage maintained by the Association and with respect to such costs, this provision shall take precedence over the Alternative Allocation of the Special Cost for insurance provided in Exhibit D.

14.5 Directors' and Officers' Liability Insurance. The Board must buy and maintain a policy insuring, to the extent allowed by law, each person who is or was a director, officer, agent or employee of the Association against all liability in connection with any claim made against him or her as a result of his or her holding that position. This is called the "D&O Policy" in this Section 14.5. The D&O Policy must also cover anyone who serves, at the request of the Association, as a director, officer, member, employee or agent of another company. The Board will choose the D&O Policy limits from time-to-time. If it can be obtained at a reasonable cost, the D&O Policy must provide coverage to the extent permitted by law for any proceeding whether it is civil or criminal, administrative or investigative. The D&O Policy must pay for any expense actually and reasonably incurred. This

includes, but is not limited to, attorneys' fees, court costs, and payment of any judgments, fines and settlements. The Board may decide to buy insurance to cover circumstances where direct reimbursement is not required by law.

14.6 Residential Unit Liability and Other Insurance A Residential Unit Owner who operates a home based business in the Unit is also responsible for obtaining a commercial general liability policy with coverage that is customary for operations of its size and character and the Association shall be named as an additional insured on such policy. The Unit Owner of each Commercial Unit is also responsible for obtaining (i) a commercial general liability policy with coverage that is customary for operations of its size and character; (ii) worker's compensation insurance covering all personnel employed by such Commercial Unit Owner as may be required by applicable law; and (iii) during any period in which significant construction, alterations, repairs or reconstruction are being undertaken by such Commercial Unit Owner, builder's risk insurance covering the total completed value including any "soft costs" with respect to the improvements being constructed, altered, repaired or reconstructed (on a completed value, non-reporting basis) by such Commercial Unit Owner, replacement cost of work performed and equipment, supplies, and materials furnished in connection with such construction or repair of improvements or equipment, together with such "soft cost" endorsements and such other endorsements as the Board of Directors may reasonably determine, and commercial general liability, workers' compensation and automobile liability insurance with respect to the services provided by the contractor. The Association shall be named as an additional insured on all such policies and the Commercial Unit Owner shall, promptly upon request, provide the Board with a certificate evidencing the required coverage. The Association shall be entitled to receive at least 30 days prior notice before the termination or material change of any such policy.

14.7 Fidelity Insurance. To the extent reasonably available, blanket fidelity insurance shall be required to be maintained by the Board of Directors for all officers, directors, managers, trustees, employees and volunteers of the Association and all other persons handling or responsible for funds held or administered by the Association, whether or not they receive compensation for their services. Where the Board of Directors has delegated some or all of the responsibility for the handling of funds to the Managing Agent, such Managing Agent shall be covered by its own fidelity insurance policy which must provide the same coverage as fidelity insurance maintained by the Board of Directors. Except for fidelity insurance that a Managing Agent obtains for its personnel, all other fidelity insurance policies shall name the Association as the insured and should have their premiums paid as a Common Expense. Fidelity insurance obtained by the Managing Agent shall name the Association as an additional insured. The total amount of fidelity coverage required shall be sufficient to cover the maximum funds (including reserve funds) that will be in the custody of the Association or Managing Agent at any time while the fidelity insurance policy is in force, but must at least equal the sum of three (3) months aggregate Assessments on all Units within the Condominium plus any reserves. Fidelity insurance policies shall contain waivers by the insurers of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees", or similar terms or expressions. The fidelity insurance policies shall provide that they cannot be canceled or substantially modified (including cancellation for non-payment of premium) without at least ten (10) days prior written notice to the Association, any Insurance Trustee and all Eligible Mortgage Holders.

14.8 Substitute Insurance Coverage Any insurance coverage specified in this Section 14 shall be subject to availability on commercially reasonable terms with reputable insurance companies authorized to do business in the State of Hawaii. Where such coverage is not available, or is not available on commercially reasonable terms, then the Board shall substitute such other insurance coverage as is acceptable to institutional lenders for Units in projects similar in construction, location and use.

14.9 Insurance Prior to First Use and Occupancy Permit Notwithstanding anything in this Section 14, prior to the issuance of the first use and occupancy permit for a Residential Unit, the insurance requirements specified in this Section 14 shall not be applicable and insurance coverage shall be maintained as specified in the Development Agreement.

14.10 Waiver of the Right of Subrogation **NOTWITHSTANDING ANYTHING PROVIDED IN THIS DECLARATION, EACH UNIT OWNER, THE ASSOCIATION, THE BOARD, THE COMMERCIAL DEVELOPER, THE RESIDENTIAL DEVELOPER AND EACH OF THEIR REPRESENTATIVES, HEREBY RELEASE (FOR THEMSELVES AND, TO THE EXTENT LEGALLY POSSIBLE TO DO SO ON BEHALF OF THEIR INSURERS AND THEIR RESPECTIVE REPRESENTATIVES) EACH OTHER AND THEIR REPRESENTATIVES, FROM ANY LOSS, DAMAGE**

**OR LIABILITY FOR ANY CLAIMS WITH RESPECT TO OR ARISING FROM PERSONAL INJURY, BODILY INJURY, DEATH AND PROPERTY DAMAGE WHICH LOSS, DAMAGE OR LIABILITY IS CAUSED BY A RISK OF THE TYPE GENERALLY COVERED BY POLICIES OF INSURANCE OF THE TYPE REFERRED TO AND REQUIRED TO BE OBTAINED PURSUANT TO THIS SECTION 14, EVEN IF DUE TO THE NEGLIGENCE OF A PARTY AND PROVIDED THAT THIS SECTION 14.10 REMAINS SUBJECT TO THE BOARD'S RIGHTS UNDER SECTION 514B-143(D) OF THE CONDOMINIUM PROPERTY ACT WITH RESPECT TO THE ASSESSMENT AND PAYMENT OF THE DEDUCTIBLE. THIS SECTION RELEASES A PARTY FROM THE CONSEQUENCES OF ITS OWN NEGLIGENCE, SUBJECT TO ANY LIABILITY UNDER SECTION 514B-143(D).**

15. INSURED DAMAGE OR DESTRUCTION. This [Section 15](#) applies if all or any part of the Project is damaged or destroyed and if the damage or destruction is covered by insurance procured by the Association. If this happens, then the Association or the Insurance Trustee will use the insurance proceeds as provided in this [Section 15](#). In this [Section 15](#) "proceeds" means any money paid by an insurance company for a loss under an insurance policy paid for by the Association. Any restoration or repair of the Project shall be performed substantially in accordance with the Declaration and the original plans and specifications, or if reconstruction in accordance with said plans and specifications is not permissible under the laws then in force, in accordance with such modified plans and specifications as shall be approved by the Board and any Lender holding a Mortgage in a Unit directly affected thereby and in compliance with Section 4.5 and Section 23 of this Declaration.

15.1 Damage to a Unit. If any Residential Units, Commercial Units and/or their appurtenant Limited Common Elements are damaged, the Board shall hire one or more contractors to rebuild or repair such damaged areas according to their design just before the damage occurred. The repairs will include those items covered by the Policy. If the Board cannot repair such damaged areas according to their design just before the damage occurred (for example, if changes in the law prevent it) then the Association will rebuild or repair the Residential Unit, Commercial Unit and/or their appurtenant Limited Common Elements according to a new design. The new design must comply with Section 4.5 and Section 23 of this Declaration and with all laws then in effect. Any modified plans and specifications must first be approved by the Board, the Unit Owner and by any Lender holding a Mortgage on that Unit. If only one or more of the Commercial Units and/or their appurtenant Limited Common Elements are damaged, the Commercial Developer, at its election, may cause the same to be rebuilt in accordance with the requirements of this Declaration, in which event the Association or the Insurance Trustee shall make the proceeds of the Policy available for such purposes subject to the requirements of Section 15.4.

15.2 Damage to General Common Elements. The Board shall hire one or more contractors to repair or rebuild all damaged General Common Elements. The General Common Elements shall be rebuilt according to their design just before the damage. If the Board cannot repair such damaged areas according to their design just before the damage occurred (for example, if changes in the law prevent it) then the Association will rebuild or repair the General Common Elements according to a new design. The new design must comply with all laws then in effect. Any modified plans and specifications must first be approved by the Board, the Association as required by the Condominium Documents and any Lender having a Mortgage on any Unit that is directly affected.

15.2.1 Use of Proceeds if Unit Not Repaired or Rebuilt. It is possible that the modified plans and specifications will not provide for rebuilding or repairing a particular Unit or its Limited Common Elements. Also, if applicable law or this Declaration allows it, the Association may decide not to rebuild or repair a particular Unit or its Limited Common Elements. In either case the Association or the Insurance Trustee will use the insurance proceeds as follows:

- A. Proceeds will be applied first to pay that Unit's share of the cost of debris removal;
- B. The part of the insurance proceeds allocable to that Unit and/or its Limited Common Elements will be paid to the Owner of the Unit and to any Lender having a Mortgage on that Unit, as their interests may appear.

15.3 Shortfall of Insurance Proceeds. The Association or the Insurance Trustee will use insurance proceeds to pay any contractor hired pursuant to this [Section 15](#). Payments will be made as and when required by the construction contract and this [Section 15](#). If there are not enough insurance proceeds to pay the full cost to

repair and/or rebuild the Common Elements, then the Board is expressly authorized to pay the shortfall from the applicable replacement reserve fund for the General Common Elements, Residential Limited Common Elements and Commercial Limited Common Elements, as the case may be. If a replacement reserve fund is not adequate, the Board must (i) determine the amount of the remaining shortfall attributable to such reserve fund, and (ii) charge a Special Assessment to each Unit required to contribute to such reserve fund except for Units that are not being rebuilt or repaired. Any Special Assessment for a General Common Element reserve shortfall shall be paid by each Unit Owner according to their Common Interest, any Residential Limited Common Element reserve shortfall shall be paid as a Residential Unit Class Expense and any Commercial Limited Common Element reserve shortfall shall be paid as a Commercial Unit Class Expense which shall be adjusted as set forth in [Section 17.2](#) below where necessary to account for any Units that are not being rebuilt or repaired. The Association will also charge a Special Assessment to the Owner of any Unit for any costs in excess of the insurance proceeds for rebuilding or repairing their Unit and/or its appurtenant Individual Limited Common Elements (but not including any General Common Elements within any Unit).

15.4 Disbursement of Insurance Proceeds. The Association or the Insurance Trustee will pay the cost of the work (as estimated by the Board) from time-to-time or at the direction of the Board as the work progresses. Notwithstanding the foregoing, the Association or the Insurance Trustee shall make the proceeds of the Policy available to the Commercial Developer pursuant to the provisions of Section 15.1. If an Insurance Trust is required, then the Insurance Trustee will make payment only if these conditions are met:

A. An architect or engineer (who may be an employee of the Board) must be in charge of the work.

B. Each request for payment must be given to the Insurance Trustee at least seven days in advance. It must include a certificate signed by the architect or engineer. The certificate must state that:

(1) All of the work completed complies with the approved plans and specifications,

(2) The amount requested is justly required to reimburse the Board or the Commercial Developer for payments by the Board or the Commercial Developer to, or is justly due to, the contractor, subcontractors, materialmen, laborers, engineers, architects or other persons providing services or materials for the work (giving a brief description of those services or materials), and

(3) When the amount requested is added to all sums previously paid by the Insurance Trustee, the total does not exceed the value of the work done as of the date of the certificate.

C. Each request must include releases of liens. The releases must:

(1) Be satisfactory to the Insurance Trustee, and

(2) Cover the work for which payment or reimbursement is being requested.

D. Each request must include a search prepared by a title company or licensed abstractor or by other evidence satisfactory to the Insurance Trustee, that nobody has recorded with respect to the Property any mechanics' or other lien or instrument for the retention of title with respect to any part of the work not discharged of record or that will not be discharged of record by payment with a recordable release of lien exchanged for such payment.

E. If the work is finished, then the request for any payment must include a copy of any certificate or certificates required by law to make it legal to occupy the Property. This includes, for example, a certificate of occupancy in the case of any Unit.

F. The fees and expenses of the Insurance Trustee, as agreed by the Board and the Insurance Trustee, are a Special Cost to be paid by each Unit Owner according to their Alternative Allocation for insurance costs. The Insurance Trustee may pay these fees and expenses from any proceeds it holds from time-to-time.

G. The Insurance Trustee may establish any other reasonable conditions to payment if they are not inconsistent with the conditions listed in this [Section 15.4](#).

15.5 Excess Insurance Proceeds. “Excess proceeds” paid under an insurance policy obtained and paid for by the Association are proceeds remaining after paying the cost to rebuild or repair any damage. Any excess proceeds will be paid to the Unit Owners and their Lenders in proportion to their Alternative Allocation for insurance costs.

15.6 Release of Claims. To the extent that the Association’s insurance covers any loss, damage or destruction to any part of the Project, the Association and the Owners will have no claim or cause of action for that loss, damage or destruction against the Commercial Developer, the Residential Developer, the Managing Agent, the Association, or any of their Representatives or against any Unit Owner (except for any Special Assessment charged under [Section 15.3](#)) or any person under any of them. To the extent that any loss, damage or destruction to the property of any Unit Owner or anyone under the Unit Owner is covered by insurance purchased by that Owner, the Owner will have no claim or cause of action for that loss, damage or destruction against the Association, the Commercial Developer, the Residential Developer, the Managing Agent or any other Unit Owner, or any person under any of them, or any of their Representatives.

15.7 Restoration. In the event of an insured casualty or loss of all or any part of the Project, the Project or such portion thereof will be repaired, rebuilt and restored as provided in this [Section 15](#) and no percentage of the Common Interest is required to approve the rebuilding, repairing or restoring of the Project.

15.8 Insurance Trust Agreement. Notwithstanding any provision of this Declaration relating to property or liability insurance, there may be named as an insured, on behalf of the Association, a bank or trust company authorized to do business in Hawaii and chosen by the Board to have custody and control of the insurance proceeds (the “Insurance Trustee”), who may have exclusive authority to negotiate losses under any policy providing such property or liability insurance and to perform such other functions as are necessary to accomplish this purpose. The insurance policy(ies) covering the Condominium obtained by the Association shall provide that any insurance trust agreement will be recognized. Except to the extent inconsistent with applicable law, each Unit Owner is deemed to appoint the Association, or any Insurance Trustee or substitute Insurance Trustee designated by the Association, as attorney-in-fact for the purpose of purchasing and maintaining such insurance, including: (1) the collection and appropriate disposition of the proceeds thereof; (2) the negotiation of losses and execution of releases of liability; and (3) the execution of all documents and the performance of all other acts necessary to accomplish such purpose.

## 16. CONDEMNATION.

16.1 Condemnation Trustee and Condemnation Proceedings. In case at any time or times the Project or any part thereof shall be taken or condemned by any authority having the power of eminent domain, or shall be sold to such authority under threat of condemnation, all compensation and damages for or on account of any common elements of the Project shall be payable to such bank or trust company (the “Condemnation Trustee”) authorized to do business in Hawaii as the Board shall designate as trustee for the Commercial Developer, the Residential Developer as their interests may appear and all Unit Owners and Lenders according to the loss or damage to their respective Units and appurtenant common interests and the Lot 73 Owner as its interests may appear pursuant to the Declaration of Easements and Covenants described in Exhibit A. Each Residential Unit Owner shall be represented in any condemnation proceedings by the Association, including settlement negotiations and decisions and shall be deemed to give the Association a power of attorney to represent the interests of the Residential Units and their Owners in such proceedings and settlements. The Commercial Developer, the Residential Developer and the Commercial Unit Owners may elect to be represented by the Association with respect to the Units owned by them or to represent themselves in the condemnation proceedings and settlement negotiations. The Commercial Developer and the Residential Developer may also elect to represent themselves with respect to their respective Reserved Rights Interests development rights in the condemnation proceedings and settlement negotiations.

16.2 Allocation of Condemnation Proceeds. In the event all or any of the Units are taken and there is no final judicial determination of the amount of condemnation proceeds allocable to each Unit so taken and allocable to the Commercial Developer’s Reserved Rights and/or the Residential Developer’s Reserved Rights (together called the “Reserved Rights Interests”), then the amount of the condemnation proceeds allocable to the Reserved Rights



Interests and each Unit (including the Unit's appurtenant interest in the Common Elements) shall be determined by the real estate appraiser or appraisers who shall have acted on behalf of the Commercial Developer, the Residential Developer and/or the Unit Owners in the condemnation proceedings and the determination by such single appraiser or a majority of such appraisers if more than one shall determine the amount of condemnation proceeds allocable to each Unit and to the respective Reserved Rights Interests. If the Commercial Developer, the Residential Developer and the Commercial Unit Owners elected to have the Association represent them in the condemnation proceedings, then for purposes of deciding the allocations pursuant to this [Section 16.2](#), the Association shall be entitled to appoint two appraisers and the Commercial Unit Owners, the Commercial Developer and the Residential Developer shall each be entitled to appoint a single appraiser and the amount of amount of condemnation proceeds allocable for each Unit taken and the Reserved Rights Interests shall be determined not counting the highest and lowest appraisal allocations for each Unit taken and the Reserved Rights Interests and averaging the remaining allocated amounts.

16.3 Condemnation of Entire Project. If the entire Project is taken, the Condemnation Trustee shall pay each Unit Owner and Lender, as their interests may appear, the portion of the condemnation proceeds determined in the above manner.

16.4 Partial Taking. In the event of a partial taking of the Project in which (i) any Unit is physically eliminated, or (ii) a portion thereof is eliminated and the remaining portion cannot be repaired or rebuilt in a manner satisfactory to the Owner of the Unit, then such Unit shall be removed from the Project and the Condemnation Trustee shall disburse to the Owner and any Lender of such Unit, as their interests may appear, in full satisfaction of their interests in the Unit, the portion of the proceeds of such award allocable to such eliminated or removed Unit after deducting the proportionate share of such Unit in the cost of debris removal, and the Unit Owners shall amend this Declaration to reflect the removal of said Unit(s) and to adjust the Common Interests appurtenant to the remaining Units by assigning to each remaining Unit, pro rata based upon Common Interest, the Common Interests originally assigned to the removed Unit(s) so that the aggregate percentage interests of all remaining Units equals 100%. In the event that such an assignment of Common Interests to each Unit is not possible or will not equal 100% in the aggregate, minor adjustment(s) to the Common Interests appurtenant to one or more Units shall be equitably made so that the aggregate Common Interests equal 100%.

B. In the event of any partial taking of any of the Common Elements of the Project, the Board shall arrange for any necessary repair and restoration of the improvements remaining after the taking in accordance with the design thereof immediately prior to such condemnation or, if repair and restoration in accordance with such design are not permissible under applicable laws and regulations then in force, in accordance with such modified plan as shall be first approved by the Board, and the Lender of record of each Unit in the Project remaining after such taking and the Lot 73 Owner. If the sums held by the Condemnation Trustee are insufficient to pay the cost for such repair and restoration, the Board shall pay such excess as a General Common Expense, and if necessary shall levy a Special Assessment against the Unit Owners. If the Lot 73 Owner fails to approve the modified plan then a portion of the condemnation proceeds shall be payable to the Lot 73 Owner as provided in the Declaration of Easements and Covenants described in Exhibit A which Declaration of Easements and Covenants described in Exhibit A shall terminate as provided therein and upon such termination, the Board will proceed to repair and restore the parking structure in accordance with such modified plan.

C. If the sums received as a result of a partial condemnation exceed the total of any amounts payable to the Owner and Lender of a removed Unit and the amount of costs for debris removal and for repair and restoration of the remaining buildings and improvements, such excess shall be divided among the Unit Owners including the Owners of any eliminated Units in accordance with their Common Interests prior to the condemnation.

D. Unless restoration or replacement is undertaken within a reasonable time after such taking, condemnation or sale, the Association as a General Common Expense shall remove all remains of such improvements on the remaining land and restore the site thereof to good orderly condition and even grade.

16.5 Adjustment of Interests. If a Residential Unit is not rebuilt, the Common Interest and any Alternative Allocation and Unit Class Interest for such Residential Unit shall be equally allocated to the remaining Residential Units. If a Commercial Unit is not rebuilt, the Common Interest and any Alternative Allocation and Unit Class Interest for such Commercial Unit shall be equally allocated to the remaining Commercial Units.

17. UNINSURED DAMAGE; DECISION NOT TO REPAIR. In the event of an uninsured casualty or loss of all or any part of the Project, then the percentage of the common interest required to approve or disapprove the rebuilding, repairing or restoring of the Project is as follows. Unless the Association decides pursuant to 17.1 below, not to repair, rebuild or restore, then the Project shall be repaired, rebuilt or restored as provided below.

17.1 Decision Not to Rebuild. The Association may decide at a meeting duly held not to repair, rebuild or restore the improvements. The Association may only make this decision by the affirmative vote of Unit Owners holding no less than eighty percent (80%) Common Interests and their respective Lenders. The meeting must be held within ninety (90) days after the damage or destruction occurs.

17.2 Adjustment of Interest. If a Residential Unit is not rebuilt, the Common Interest and any Alternative Allocation and Unit Class Interest for such Residential Unit shall be allocated to the remaining Residential Units pro rata based upon Common Interest. If a Commercial Unit is not rebuilt, the Common Interest and any Alternative Allocation and Unit Class Interest for such Commercial Unit shall be allocated to the remaining Commercial Units pro rata based upon Common Interest.

17.3 Rebuilding. If the Project will be repaired, rebuilt and restored by the Association, the uninsured costs will be allocated as follows:

A. The uninsured costs to repair, rebuild and restore the General Common Elements will be assessed as a General Common Expense.

B. Each Residential Unit Owner will be assessed the cost to repair, rebuild, and restore the Owner's Residential Unit and any appurtenant Individual Residential Limited Common Elements. In addition, all Residential Unit Owners will be assessed as a Residential Unit Class Expense the cost to repair, rebuild, and restore the Residential Limited Common Elements other than the Individual Limited Residential Limited Common Elements.

C. Each Commercial Unit Owner will be assessed the cost to repair, rebuild, and restore the Commercial Unit Owner's Commercial Unit and any appurtenant Individual Commercial Limited Common Elements. In addition, all Commercial Unit Owners will be assessed as a Commercial Unit Class Expense the cost to repair, rebuild, and restore the Commercial Limited Common Elements other than the Individual Commercial Limited Common Elements.

D. Any restoration or repair of the Project shall be performed substantially in accordance with the Declaration and the original plans and specifications, or if reconstruction in accordance with said plans and specifications is not permissible under the laws then in force, in accordance with such modified plans and specifications as shall be approved by the Board and any Lender holding a Mortgage in a Unit directly affected thereby and by the Commercial Developer during the Development Period and in compliance with Section 4.5 and Section 23 of this Declaration.

18. CHANGES TO THE PROJECT.

18.1 General Provisions. This [Section 18](#) applies, except as otherwise provided by the federal Fair Housing Act (42 U.S.C. Sec. 3601 et seq.), as amended by the Fair Housing Amendments Act of 1988, and the rules and regulations adopted under it, as either of them may be amended from time-to-time and except as otherwise provided in this Declaration. This [Section 18](#) does not apply to changes made by the Commercial Developer when exercising the Commercial Developer's Reserved Rights or to changes made by the Residential Developer when exercising the Residential Developer's Reserved Rights. Neither the Association nor any Owner may make any structural change or addition to the Project that is different in any material respect from the Condominium Map, except pursuant to an amendment of this Declaration. The amendment must be adopted by the vote or the written consent of (i) by the affirmative vote of Unit Owners holding no less than eighty percent (80%) Common Interests, (ii) the Commercial Developer until the end of the Developer Control Period, (iii) the Residential Developer until the end of the Developer Control Period, (iv) all Unit Owners whose Units or whose Limited Common Elements are directly affected (as the Board reasonably determines) and (v) in conformance with any other express provision of

this Declaration with respect to such amendment. Any such restoration, replacement, construction, alteration or addition must be made in accordance with complete plans and specifications that are first approved by the Board in writing. Promptly after the work is completed, the Association must record the amendment along with any necessary changes to the Condominium Map. This Section does not apply to “nonmaterial structural additions to the Common Elements” as that term is used in Section 514B-140 of the Condominium Property Act.

## 18.2 Changes by Residential Unit Owners or by the Residential Developer.

18.2.1 Changes Permitted. Notwithstanding anything in the Condominium Documents to the contrary, and except as otherwise provided by law, (i) the Residential Developer here and now reserves the rights listed in this [Section 18.2](#) for itself (and these will be included within the Residential Developer’s Reserved Rights), and (ii) each other Residential Unit Owner will also have the rights listed in this [Section 18.2](#). The Residential Developer and the Residential Unit Owners may use their rights under this [Section 18.2](#) at any time and may use them more than once. The Residential Developer or the Residential Unit Owners must pay all costs associated with the exercise of these rights.

18.2.2 Additions or Changes Within a Residential Unit or Residential Limited Common Element. Each Residential Unit Owner has the right, subject only to the terms and conditions set forth in the Condominium Documents and to Board approval (which will not be unreasonably withheld or delayed), to make any of the following changes, additions and improvements solely within the Owner’s Residential Unit or solely within any Individual Residential Limited Common Elements for such Residential Unit:

A. To install, maintain, remove and rearrange partitions and other walls from time-to-time within the Residential Unit or Individual Residential Limited Common Element; provided that the Residential Unit Owner shall not have the right to enclose any exterior lanai; and provided, further, that the number of Residential Units shall not be increased as a result of the exercise of such rights;

B. To finish, change or substitute any plumbing, electrical or other fixtures attached to the ceilings, floors or walls as appropriate for the use of the Residential Unit or Individual Residential Limited Common Element, subject to applicable approvals required by Section 23 of this Declaration to the extent such changes are located within the Unit C-1 Air Rights Area and constitute a Plumbing Installation;

C. To decorate, paint, repaint, wallpaper or otherwise change the appearance of any walls, floors and ceilings of the Residential Unit or Individual Residential Limited Common Element which are not readily visible from outside the Residential Unit or Individual Residential Limited Common Element;

D. To tile, finish, carpet, re-carpet, and install, change, or remove other flooring in the Unit or Limited Common Element which is not readily visible from outside the Residential Unit or Individual Residential Limited Common Element, subject to the limitations on installation of hard floor surfaces in Residential Units set forth in the Bylaws; or

E. To make such changes, additions and improvements to the Residential Unit or Individual Residential Limited Common Element to facilitate handicapped accessibility within the Residential Unit or Individual Residential Limited Common Element.

F. A Residential Unit Owner may make “nonmaterial structural additions to the Common Elements” as that term is used in § 514B-140 of the Condominium Property Act.

18.2.3 Additions or Changes Within a Commercial Unit or Commercial Limited Common Element Not Requiring Consent. Except for material changes described in [Section 18.2.4](#) below, each Commercial Unit Owner has the right to make any additions, improvements and changes within the Owner’s Commercial Unit or any Commercial Limited Common Elements without the consent of the Board of Directors or any other party, other than applicable governmental agencies and such right shall include, but not be limited to the right:

A. To install, maintain, remove and rearrange partitions and other walls from time-to-time;

B. To finish, change or substitute any plumbing, electrical or other fixtures attached to the ceilings, floors or walls as appropriate for the use of the Commercial Unit or Commercial Limited Common Elements;

C. To decorate, paint, repaint, wallpaper or otherwise change the appearance of any walls, floors and ceilings of the Commercial Unit or Commercial Limited Common Elements and to add, modify or replace storefronts on any Commercial Unit;

D. To make such changes, additions and improvements to the Commercial Unit or Commercial Limited Common Elements to facilitate handicapped accessibility within the Residential Unit or Individual Residential Limited Common Element.

E. To make “nonmaterial structural additions to the Common Elements” as that term is used in § 514B-140 of the Condominium Property Act. The Commercial Developer’s Reserved Rights include the right to do any or all of these things with respect to any Commercial Unit that the Commercial Developer owns or the Commercial Limited Common Elements.

18.2.4 Material Changes by Commercial Unit Owner or Commercial Developer. Any material addition or alteration to a Commercial Unit or Commercial Limited Common Element shall require the approval of the Board only if the proposed addition or alteration, as reasonably determined by the unanimous consent of the Board, could jeopardize the soundness or safety of the property, impair any easement, or interfere with or deprive any non-consenting Owner of the use or enjoyment of any part of the Property. The issuance of a building permit by the City and County of Honolulu for the material addition or alteration shall be evidence that the addition or alteration would not jeopardize the soundness or safety of the property. Nonmaterial additions or alterations by the Commercial Unit Owner or Commercial Developer shall be subject to [Section 18.2.3](#) of this Declaration. A written request for Board approval must include plans and specifications depicting or showing the proposed alteration. If the Board shall fail to respond to such request for approval within thirty (30) days of receipt of such request the request will be approved automatically unless, within the thirty (30) day period, the Board either disapproves the request, or issues a conditional approval which requires changes to the proposed alteration.

18.2.5 Changes Between Two Residential Units. The Owner of two Residential Units which are separated by a Common Element that is a wall, or whose Limited Common Elements are separated from each other or from such Residential Units by a Common Element that is a wall, has the right and an easement to do the following, subject to Board approval (which will not be unreasonably withheld or delayed) and the requirements of this [Section 18.2.5](#) set forth below, to:

- (1) Change or remove all or part of the intervening wall.
- (2) Install doors and other improvements in such opening or openings in the intervening Common Element.
- (3) Make other reasonable changes or additions.

The Residential Developer’s Reserved Rights include the right to do the same things with respect to any two (2) adjacent Residential Units that it owns. Before terminating its common ownership of any of the adjacent Residential Units, the Owner or Residential Developer must restore the Common Element wall and/or other openings to substantially the same condition as before the change or removal unless the new Owners each agree otherwise in writing.

The rights of an Owner and the Residential Developer under [Section 18.2.5](#) may be exercised only if.

A. The structural integrity of the Residential Unit, or Limited Common Element or the building will not be adversely affected;

B. The finish of the remaining Common Element improvements are restored to substantially the same condition they were in before the change or removal; and

C. All construction activity is completed within a reasonable time after it begins. If there is a delay for reasons beyond the control of the Owner or Residential Developer or their contractors, the construction activity must be completed in the additional time reasonably needed to finish it by working on it diligently.

18.2.6 Changes Between Two Commercial Units. The Owner of two Commercial Units which are separated by a Common Element that is a wall, floor, or ceiling or whose Limited Common Elements are separated from each other or from such Commercial Units by a Common Element that is a wall, floor or ceiling, has the right and an easement to do these things, subject only to the requirements of this [Section 18.2.6](#), to:

- (1) Change or remove all or part of the intervening wall, floor and/or ceiling.
- (2) Install doors, stairways and other improvements in such opening or openings in the intervening Common Element.
- (3) Make other commercially reasonable changes or additions.

The Commercial Developer's Reserved Rights include the right to do the same things with respect to any two (2) adjacent Commercial Units that it owns. Before terminating its common ownership of any of the adjacent Commercial Units, the Owner or Commercial Developer must restore the Common Element wall and/or other openings to substantially the same condition as before the change or removal unless the new Owners each agree otherwise in writing.

The rights of an Commercial Unit Owner and the Commercial Developer under [Section 18.2.6](#) may be exercised only if:

A. The structural integrity of the Commercial Unit, or Commercial Limited Common Element or the building in which the Commercial Unit is situated will not be adversely affected;

B. The finish of the remaining Common Element improvements are restored to substantially the same condition they were in before the change or removal; and

C. All construction activity is completed within a reasonable time after it begins, if there is a delay for reasons beyond the control of the Commercial Owner or Commercial Developer or their contractors, the construction activity must be completed in the additional time reasonably needed to finish it by working on it diligently.

18.2.7 Subdivision of Unit. Each Commercial Unit Owner has the right to:

- A. Subdivide the Unit to create two or more Units.
- B. Designate which Limited Common Elements of the subdivided Unit will be appurtenant to the Units resulting from the subdivision,
- C. Convert parts of the existing Commercial Unit to Common Element status to facilitate the subdivision.

The total of the Common Interests for the newly created Commercial Units must be equal to the Common Interest of the Commercial Unit that was subdivided.

If the Commercial Unit Owner subdivides that Commercial Unit, the Commercial Unit Owner can decide whether one or more than one of the resulting Commercial Units will have any special rights or easements of the original

Commercial Unit under this Declaration, or it can divide some or all of those rights among the resulting Commercial Units.

The Commercial Developer Reserved Rights include the right to do the same things with respect to any Commercial Unit owned by the Commercial Developer.

18.2.8 Limits on Alterations. Nothing contained in this [Section 18.2](#):

A. Authorizes any work or change that would jeopardize the soundness or safety of any part of the Project or Lot 73 (subject to the provisions of [Section 18.2.4](#) regarding the effect of issuance of a building permit);

B. Authorizes any work or change by a Residential Unit Owner that would materially change the uniform external appearance of the Project without the consent of the Board ;

C. Authorizes any work or change by the Board or the Residential Developer that would materially change the uniform external appearance of the Project without the consent of each Commercial Unit Owner;

D. Prohibits the Board from making or requiring that an Owner make changes within any Unit or Limited Common Element as needed to comply with the fire code and all other laws that apply to the Project.

18.2.9 Conditions to Board Approval. The Board may impose certain conditions upon the Board's approval of any alteration, addition, change, removal or consolidation over which it has approval authority under this [Section 18](#), including, without limitation the following:

A. The Owner of the Unit provide evidence satisfactory to the Board that the Owner has sufficient funds in cash or by means of committed financing to fully pay the estimated costs of construction for the contemplated alterations, additions, changes or consolidation.

B. The Owner of the Unit provides a copy of the building permit covering the proposed improvement work duly issued by the City and County of Honolulu.

C. For additions, alterations, and other work the estimated cost of which shall exceed \$500,000, the Owner of the Unit provides a performance bond and a labor and materials payment bond in a face amount equal to one hundred percent (100%) of the estimated cost of the construction, naming the Board on behalf of the Association, the Unit Owners and their Lenders, as their respective interests may appear as additional obligees. As an alternative, and under the appropriate circumstances, the Board may approve a written indemnity, in form and content acceptable to the Association, under which the Owner of the Unit agrees to indemnify and save harmless the Association, the Unit Owners, and their Lenders, as their respective interests may appear, from and against any claims, demands or liability arising out of any failure by the Owner to pay all costs and expenses for any and all labor, materials or supplies for any work performed in or to the Unit or Limited Common Element.

18.3 Amendment To Declaration. If any change to a Unit made under the authority of [Section 18](#) materially changes the depiction of a particular Unit or Units on the Condominium Map or the description of it in the Declaration, then the Owner or Owners of the Unit(s) must amend this Declaration and/or the Condominium Map to reflect the change. The amendment will take effect when it is recorded, subject to the following:

A. The Owner of the changed Unit or Units must sign the amendment. Notwithstanding anything set forth in this [Section 18](#) to the contrary, it is not necessary for any other party to vote for, consent to, or sign the amendment, except for any Lender who has a Mortgage on the Unit or Units that are changed or altered.

B. When any Unit Owner or other Interested Person acquires a Unit or any other interest in the Project, he or she automatically (i) consents to the change; and (ii) agrees that he or she will, if required by law

or by the Owner who has changed a Unit under the authority of [Section 18](#), join in, consent to, sign, deliver and record all documents necessary or desirable to make the amendment of the Condominium Documents effective.

19. RESERVED RIGHT TO DESIGN, DEVELOP, BUILD, ADD TO AND COMPLETE NEW IMPROVEMENTS ON THE LAND. Notwithstanding anything to the contrary in this Declaration or the Bylaws, the Commercial Developer reserves the right to design, develop, build, add, reconfigure, and complete New Improvements within the Commercial Developer Space and, subject to Section 4.5 and any applicable approvals required by Section 23 of this Declaration, the Residential Developer reserves the right to design, develop, build, add, and complete New Improvements within the Initial Residential Space. The Commercial Developer and/or Residential Developer may do this more than once and at any time before the Development Period ends. This [Section 19](#) shall not apply to the initial Residential Developer Improvements approved pursuant to Section 22 and Section 23 until after Completion of Construction of each Residential Unit within such Residential Developer Improvements.

19.1 Limits on Reserved Rights. The Commercial Developer Reserved Rights and the Residential Developer Reserved Rights and in this [Section 19](#) are Subject to these terms and conditions:

19.1.1 Plans and Specifications. A licensed architect or engineer must prepare plans and specifications for any New Improvements having an estimated value of \$100,000 or more, and any such plans and specifications must be approved by the officer of the City and County of Honolulu having jurisdiction over the issuance of building permits. The plans and specifications must be designed so that the New Improvements will be substantially consistent with the existing improvements of the Project in terms of quality of construction and finish, as determined by the Residential Developer (for so long as the Residential Developer owns a Residential Unit) and the Commercial Developer in their sole discretion. The New Improvements must be built substantially in accordance with the plans and specifications.

19.1.2 Changes to Existing Improvements. The plans and specifications cannot require any material change to, or the demolition of: (i) any existing Residential Unit not owned by the Residential Developer or Individual Residential Limited Common Element appurtenant to such Residential Unit, or (ii) any material building or structure of the Project; provided that:

A. The Commercial Developer and the Residential Developer each shall have right to connect to, use, relocate and/or realign existing, and/or to develop additional central and appurtenant installations for services to the New Improvements to provide electricity, hot and cold water, air conditioning and other applicable utilities and services, subject to obtaining the applicable approvals required by Section 23 of this Declaration, and when applicable, to designate, grant, convey, transfer, cancel, relocate and otherwise deal with any easements over, under, across or through the Common Elements as necessary and desirable in connection therewith all subject to the applicable approvals required by Section 23 of this Declaration. The Commercial Developer and the Residential Developer must do this in a way that does not cause any interruption, other than a temporary interruption, in the service of utilities to any other part of the Project or Lot 73. In the exercise of the foregoing rights, the Commercial Developer and the Residential Developer with respect to their respective New Improvements, shall provide for separate metering in order to separately account for the cost of services to such additional and central installations and if separate metering is not provided, must provide a fair and equitable allocation of the cost of such services as between the Residential Unit Class and the Commercial Unit Class. All of such New Improvements constructed by the Commercial Developer shall be Commercial Units or Commercial Limited Common Elements with the exception of any structural components which support the Residential Improvements which structural components shall be General Common Elements. All of such New Improvements constructed by the Residential Developer shall be Residential Units or Residential Limited Common Elements.

B. The Commercial Developer and the Residential Developer can change or demolish all or any part of an existing Unit they may own or where the Owner consents to the change or demolition in writing.

C. The Commercial Developer and the Residential Developer can change or demolish all or any part of an existing Individual Limited Common Element appurtenant to any Unit they may own or when the Unit Owner to which the Limited Common Element is appurtenant consents to the change or demolition in writing.

If the Limited Common Element is appurtenant to more than one Unit then the consent of the Owners of all of those Units is necessary.

D. Only the Commercial Developer can change or remove any roads, driveways, parking structures, and the like provided that there must be reasonable and adequate access from the public streets and highways to the parking stalls and to the entries to the buildings of the Project.

E. The Commercial Developer and the Residential Developer can relocate or replace any utility locations and installations and the like so long as the plans and specifications provide for replacements that provide comparable services and so long as the applicable approvals required by Section 23 of this Declaration have been obtained. Such relocation or replacement must be done in a way that does not cause any interruption, other than a temporary interruption, in the service of utilities to any other part of the Project.

F. The Commercial Developer and the Residential Developer have the right to remove or change parking stalls provided that in no event shall the number of parking stalls be less than required by applicable codes and ordinances and, provided further, that:

(1) At all times each sold Residential Unit must have at least one parking stall as an Individual Limited Common Element and the number of Residential Guest Parking stalls set forth in [Exhibit C](#) hereto must be provided as part of the Residential Limited Common Elements at all times;

(2) The Commercial Developer and the Residential Developer cannot materially reduce the size of a parking stall that is a Limited Common Element appurtenant to a Unit not owned by the Commercial Developer or the Residential Developer, unless such Unit Owner consents in writing.

(3) The Commercial Developer and the Residential Developer cannot remove a parking stall that is a Limited Common Element appurtenant to a Unit not owned by the Commercial Developer or the Residential Developer unless a replacement parking stall is provided that is reasonably acceptable to the affected Unit Owner.

(4) All changes to Limited Common Element parking stalls shall be executed and recorded as an amendment to this Declaration.

G. The Commercial Developer shall have the right to install electric or other utility facilities and equipment and in connection therewith to change or alter any Commercial Developer Improvements if required by any law that requires designating any of the Commercial Limited Common Element parking stalls as exclusively for electric vehicles and the right to perform any alterations to the Common Elements in order to equip the parking stall(s) with electric vehicle charging units.

19.1.3 Cost and Time for Completion. The Commercial Developer and the Residential Developer must pay all costs and expenses for the design, development and construction of their respective New Improvements. Neither the Commercial Developer nor the Residential Developer makes any promise as to if or when construction of any New Improvements will commence and/or be completed. The Commercial Developer and the Residential Developer must finish building any New Improvements within a reasonable time after they start building them. If there is a delay for reasons beyond the reasonable control of the Commercial Developer or the Residential Developer or their contractors and subcontractors, the construction must be completed in the additional time reasonably needed to complete such construction.

19.1.4 Expenses. Subject to Section 14.10 of this Declaration, except as provided in the Development Agreement during the term thereof, the Commercial Developer and the Residential Developer must at their sole cost and expense repair any damage to the Common Elements caused by their respective construction contractors.

19.1.5 Insurance. The Commercial Developer with respect to any New Improvements it undertakes and the Residential Developer with respect to the Residential Developer Improvements or New



Improvements it undertakes shall each arrange and pay for builder's risk insurance. The insurance must stay in effect during the entire course of construction and must cover no less than 100% of the estimated cost of construction. After the first sale of a Residential Unit by the Residential Developer, if the builder's risk policy is still in effect, the insurance policy must name the Association and the Managing Agent as additional insureds and the Residential Developer must deposit evidence of the insurance with the Board and the Managing Agent.

19.1.6 Encumbrance of Units. The Commercial Developer and the Residential Developer can Mortgage or assign their interest in any Units they may own as security for a loan. It may do this even before construction of the New Improvements is complete.

19.2 Nature of Reserved Rights. The Commercial Developer Reserved Rights and Residential Developer Reserved Rights in this [Section 19](#) include the right to do anything necessary or convenient to design, develop, build, add, and complete New Improvements on the Land, including the right to amend the Declaration and Condominium Map as necessary or convenient to describe the New Improvements.

19.3 Owners' Obligations. During the construction period, each Owner must: (a) remain outside of any fenced construction area; and (b) not directly or indirectly do or attempt to do anything that would or could affect or interfere with the development, construction and completion of the New Improvements in the manner determined by the Commercial Developer and the Residential Developer in their sole discretion.

20. RESERVED RIGHT TO RENT OR SELL UNITS. Anything contained in this Declaration or the Bylaws to the contrary notwithstanding, the Residential Developer shall have the right to transact any business on and utilize any portion of the Residential Limited Common Elements and the Initial Residential Space necessary or desirable to consummate sales or rentals of Residential Units, including, but not limited to, the right to maintain employees in the sales or rental office, and to show Residential Units for sale or rent. The sales or rental office, the furniture and furnishings in the model Residential Units, signs and all items pertaining to the sale or rental of Residential Units by the Residential Developer shall not be considered Common Elements but shall remain the property of the Residential Developer. The right to consummate rentals of units and to maintain and start a rental or management office shall extend to any managing agent or rental agents employed by the nominees or designees of the Residential Developer. The Commercial Developer also reserves the right to permit the Residential Developer to display signs within the Property as set forth in [Section 9.3.4](#) of this Declaration and the use of signs pursuant to this Paragraph 22 shall also be governed by [Section 9.3.4](#) of this Declaration.

In furtherance of the rights granted the Residential Developer in this Section 20, no act of omission or commission shall be taken by any Residential Owner, or the Association, which, in the reasonable discretion of the Residential Developer, would infringe upon the Residential Developer's ability to sell or rent Residential Units, including, without limitation, altering the design, location or appearance of any of the Common Elements, failing to maintain any portion of the Condominium in accordance with sound property management standards or otherwise detracting from the aesthetic nature of the Condominium.

21. RESERVED RIGHT TO CHANGE THE PROJECT TO COMPLY WITH LAW. Notwithstanding anything stated to the contrary in this Declaration or the Bylaws, and except as otherwise provided by law and subject to Section 4.5 of this Declaration and subject to obtaining such approvals as may be required by Section 23 of this Declaration, the Commercial Developer with respect to the Commercial Developer Improvements and the Residential Developer with respect to the Residential Developer Improvements, reserve the right, at any time and from time-to-time, to change the Units, the Common Elements, the Limited Common Elements, and/or to amend the Condominium Documents, as required to comply with any laws that apply to the Project or to the Association, or the Commercial Developer and the Residential Developer. This includes, without limitation, the federal Fair Housing Act, 42 U.S.C. §§3601 et seq., and the Americans With Disabilities Act 42 U.S.C. §§12101 et seq. (the "ADA"), and any rules and regulations adopted under either of them. The Commercial Developer may also use any of the Commercial Developer Reserved Rights described in this Declaration and the Residential Developer may use any of the Residential Developer Reserved Rights described in this Declaration in connection with the use of their rights under this Section 21.

22. RESIDENTIAL DEVELOPER AND COMMERCIAL DEVELOPER RESERVED RIGHTS GENERALLY.

22.1 Nature of Commercial Developer Reserved Rights. The Commercial Developer hereby reserves all of the Development Rights as defined in §514B-3 of the Condominium Property Act with respect to the Commercial Developer Space and all other rights reserved herein to the Commercial Developer with respect to the Commercial Developer Space (all of such reserved rights hereinafter referred to as the Commercial Developer Reserved Rights). The Commercial Developer Reserved Rights may be exercised from time-to-time partially or in combination. The Commercial Developer is not obligated to exercise any of the Commercial Developer Reserved Rights and may exercise the Commercial Developer Reserved Rights unilaterally without the joinder, approval or consent of the Board, or any other Owner or entity subject only to the Board's rights under §514B-140 of the Condominium Property Act. Any person or entity that acquires any interest in any portion of the Project, whether by lien or ownership acquires such interest subject in all respects to this Declaration including without limitation all of the Commercial Developers Reserved Rights, their exercise and assignment of such rights if any. The Commercial Developer may transfer the Commercial Developer Reserved Rights by complying with the requirements of §514B-136 of the Condominium Property Act. The Commercial Developer may transfer a security interest in the Commercial Developer Reserved Rights and the transferee shall have the rights provided in §514B-136 of the Condominium Property Act. Without the express written consent of the Commercial Developer the Commercial Developer Reserved Rights may not be invalidated by any amendment to this Declaration. The costs and expenses associated with the exercise of the Commercial Developer Reserved Rights shall be the responsibility of the Commercial Developer and this provision shall take precedence over any and all provisions of this Declaration and the Bylaws to the contrary. When a Unit Owner or any other Interested Person acquires a Unit or any other interest in the Project, he or she automatically agrees, promptly after being asked to do so, to join in, consent to, sign (and have notarized if asked), deliver, and record all documents and do all other things that the Commercial Developer in its sole discretion determines to be convenient to the exercise of the Commercial Developer Reserved Rights or to accomplish the purposes for which those rights were reserved as determined by the Commercial Developer. In all events such joinder and consent shall not be required and in each instance shall be given by such third parties for the convenience of the Commercial Developer only.

22.2 Nature of Residential Developer's Reserved Rights. The Residential Developer is hereby reserved each and all of the rights reserved in this Declaration (which shall be included as Residential Developer Reserved Rights). In addition, the Residential Developer is reserved the right to construct a residential tower above the Commercial Developer Improvements. The Residential Developer Improvements will be constructed within the boundaries of the Initial Residential Space which may be subdivided by the Residential Developer into multiple Residential Units, Residential Limited Common Elements and General Common Elements as provided herein. With respect to the Development Rights as defined in §514B-3 of the Condominium Property Act, only the Commercial Developer shall have the right to add or withdraw real estate from the Project or to merge Projects. The Residential Developer shall have and hereby reserves the following Development Rights as defined in §514B-3 of the Condominium Property Act with respect to the Initial Residential Space, all subject to Section 4.5 and Section 23 of this Declaration:

22.2.1 The right to create Residential Units, Residential Limited Common Elements and General Common Elements.

22.2.2 The right to subdivide or combine Residential Units or convert Residential Units into Common Elements, and

22.2.3 The right to otherwise alter or construct improvements within the Initial Residential Space.

22.3 Exercise of Residential Developer Reserved Rights. Notwithstanding anything in the Condominium Documents to the contrary, no construction or development activities shall be commenced, no Residential Developer Improvement shall be commenced, erected or maintained and no exterior addition, change or alteration of any nature to any Residential Developer Improvement, shall be made by the Residential Developer, nor shall the Residential Developer exercise any of the Residential Developer Reserved Rights for such purposes without the prior written consent of the Commercial Developer (such consent not to be unreasonably withheld, conditioned or delayed) and compliance with the terms of provisions of that certain Development Agreement dated \_\_\_\_\_, 2010 by and between Commercial Developer and Residential Developer as may be amended or modified (the "Development Agreement"); provided, however, notwithstanding anything to the contrary, the Residential Developer may change

the location of Residential Units and net floor area without the approval of the Commercial Developer, provided that the number of Residential Units shall not be increased beyond the number permitted by Section 4.5 of this Declaration and, provided further, that in the event that the number of levels to be developed is reduced below 18, the number of Residential Units that may be constructed must also be reduced pro rata.

22.3.1 The Residential Developer shall obtain a performance and labor and materials payment bond naming as obligee the Commercial Developer, as its interests may appear, with a responsible corporate surety authorized to do business in the State of Hawaii, guaranteeing the full and faithful performance of such construction free and clear of any mechanics' and materialmen's liens for such construction, the payment of all Subcontractors, laborers and materialmen, and the discharge of any mechanics' and materialmen's liens for a penal sum of not less than one hundred percent (100%) of the estimated cost of such construction. The Commercial Developer shall have the right to condition its approval of any Residential Improvements upon such other reasonable requirements regarding insurance coverage (including but not limited to a requirement that the Residential Developer maintain builder's risk insurance as set forth in Section 19.1.5 of this Declaration), bonding, indemnification, required completion dates and such other matters as may be set forth in the Development Agreement including a requirement that the Residential Developer Improvements be approved by the Lot 73 Owner and the Lot 73 Occupant.

22.3.2 Until the end of the Developer Control Period, the Commercial Developer with respect to the Commercial Improvements and the Residential Developer with respect to the Residential Improvements shall have the rights of the Association and/or the Insurance Trustee provided herein.

22.3.3 Once commenced, the Residential Developer shall complete the Residential Developer Improvements within such time frame as required by the Development Agreement.

22.3.4 The Residential Developer shall fully disclose to all potential buyers and buyers of Residential Units that the Commercial Developer shall have no responsibility for the construction and sales of the Residential Developer Improvements, including but not limited to, the residential tower, Residential Units and Residential Limited Common Elements and shall include agreements by each purchaser to waive any claims against the Commercial Developer and to look solely to the Residential Developer, its general contractor, subcontractors, material suppliers and manufacturers regarding any and all claims for any liabilities, warranties or obligations which have or may accrue to Residential Developer in connection with Residential Developer's status under the Condominium Documents, or in connection with Residential Developer's development of all or any real property and improvements within the Property, including, but not limited to, any liabilities, warranties or obligations concerning any Residential Units, Residential Limited Common Elements or other improvements constructed, or to be constructed, by or on behalf of the Residential Developer. Residential Developer shall also include in each sales agreement with Residential Unit purchasers, the waivers of claims against the Commercial Developer contained in [Section 22.4 and 22.4.1](#) of this Declaration.

22.3.5 The Residential Developer Reserved Rights may be exercised from time-to-time partially or in combination. The Residential Developer is not obligated to exercise any of the Residential Developer Reserved Rights. Except as otherwise required in this [Section 22.3](#), the Residential Developer may exercise the Residential Developer Reserved Rights unilaterally without the joinder, approval or consent of the Board, or any other Owner or entity subject to the Board's rights under §514B-140 of the Condominium Property Act. Any person or entity that acquires any interest in the Project, or in any apartment whether by lien or ownership acquires such interest subject in all respects to this Declaration including without limitation all of the Residential Developer Reserved Rights, their exercise and assignment of such rights if any. The Residential Developer may transfer the Residential Developer's Reserved Rights by complying with the requirements of §514B-136 of the Condominium Property Act and any requirements on such transfer that may be imposed by the Commercial Developer. The Residential Developer may transfer a security interest in the Residential Developer Reserved Rights and the transferee shall have the rights provided in §514B-136 of the Condominium Property Act. Without the express written consent of the Residential Developer the Residential Developer Reserved Rights may not be invalidated by any amendment to this Declaration. The costs and expenses associated with the exercise of the Residential Developer Reserved Rights shall be the responsibility of the Residential Developer and this provision shall take precedence over any and all provisions of this Declaration and the Bylaws to the contrary. When a Unit Owner or any other Interested Person acquires a Unit or any other interest in the Project, he or she automatically agrees, promptly after being asked to do so, to join in, consent to, sign (and have notarized if asked), deliver, and record all

documents and do all other things that the Residential Developer in its sole discretion determines to be convenient to the exercise of the Residential Developer Reserved Rights or to accomplish the purposes for which those rights were reserved as determined by the Residential Developer. In all events such joinder and consent shall not be required and in each instance shall be given by such third parties for the convenience of the Residential Developer only.

22.4 Responsibility for Residential Developer Improvements. Approval by the Commercial Developer shall in no way be construed as to pass judgment on the correctness or suitability of the location, structural, mechanical or electrical design, suitability of water flow or drainage, location of utilities, or other qualities of the item being reviewed. Neither the Commercial Developer nor any of its Representatives, shall bear any responsibility for ensuring structural integrity, soundness or compliance with building codes. No representation is made by the Commercial Developer with respect to the quality, size, value or design of Residential Developer Improvements. Approval by the Commercial Developer shall not be construed as a representation or warranty of any type regarding the design or construction of any Residential Developer Improvements and the neither the Commercial Developer, nor any of its Representatives, shall be liable for (i) soil conditions, drainage or other site work problems, (ii) defects or errors in any plans or specifications submitted by the Residential Developer, (iii) any structural or other defects in the Residential Developer Improvements, or (iv) any injury, damages, or loss arising out of the design, quality or manner of construction of any Residential Developer Improvements. Approvals by Commercial Developer shall in no way be deemed to constitute a determination as to compliance with local zoning ordinances, governmental guidelines or restrictions, or be substituted in lieu of applicable governmental approvals and permits and no construction may commence until all such approvals and permits have been obtained.

22.4.1 The Commercial Developer shall not assume or be responsible for and Residential Developer shall defend, indemnify and hold Commercial Developer and its Representatives harmless from any and all liability, cost and expense arising out of or associated with and each purchaser of a Residential Unit or subsequent owner thereof, by taking title thereto acknowledges and agrees that the Commercial Developer has no responsibility for and shall be deemed to have waived any and all claims against the Commercial Developer arising out of or associated with (a) Residential Developer's status as the Residential Developer under the Declaration and the Condominium Property Act, (b) in any other capacity of Residential Developer acting on behalf of the Association including, but not limited to, Residential Developer's designees on the Association Board of Directors, or (c) Residential Developer's development, sale, leasing, marketing or operation of the Project, including, but not limited to, any acts, omissions, liabilities, obligations, or other matters concerning any Units, Common Elements or other improvements sold, operated or leased by or on behalf of Residential Developer. Each purchaser of a Residential Unit or subsequent owner thereof, by taking title thereto acknowledges and agrees that the Commercial Developer has no responsibility for and shall be deemed to have waived any and all claims against the Commercial Developer arising out of or associated with the Residential Developer Improvements, including without limitation, their construction and sales.

22.4.2 Pursuant to Section 514B-38(4) and Section 514B-32 (a) (12) of the Condominium Property Act, it is hereby reserved to the Commercial Developer and the Owners of the Commercial Units, the following rights: In order to protect the interests of the Commercial Units and their Owners and tenants, the powers of the Association set forth in Section 514B-104 (1) of the Condominium Property Act to adopt and amend the Declaration, Bylaws, Condominium Map, rules and regulations affecting the Commercial Limited Common Elements, the power of the Association set forth in Section 514B-104 (6) of the Condominium Property Act to regulate the use, maintenance, repair, replacement and modification of the Commercial Limited Common Elements and the powers of the Association set forth in Section 514B-104 (7) and 514B-104 (8) of the Condominium Property Act shall all be subject to the consent and approval by affirmative vote of the Commercial Unit Class members and the written approval of the Commercial Developer. The foregoing approval rights of the Commercial Unit Class members and the Commercial Developer (the "Commercial Approval Rights") shall constitute approval requirements for the purposes of Section 514B-105 (e) of the Condominium Property Act with respect to the Commercial Limited Common Elements and shall also constitute restrictions on the powers of the Board of Directors as provided in Section 514B-106 (a) of the Condominium Property Act.

23. APPROVALS REQUIRED FOLLOWING COMPLETION OF RESIDENTIAL DEVELOPER IMPROVEMENTS. Following Completion of Construction of each Residential Unit within the Residential Developer Improvements (which shall have been approved pursuant to Section 22 of this Declaration, including, without limitation, the approvals required under the terms of the Development Agreement) the following shall apply:

23.1 Tower Exterior Modifications; Plumbing Installation. No (i) change or alteration of any nature to the Residential Developer Improvements above Garage Level 5, which changes the exterior design, color treatment and exterior materials used in the construction or reconstruction of the Residential Developer Improvements (a "Tower Modification"), (ii) plumbing, drainage lines or similar facilities shall be installed or placed over Unit C-1 (the "Unit C-1 Air Rights Area") including within Unit C-1 (a "Plumbing Installation") or (iii) construction or alteration of any Improvements within the Unit C-1 Air Rights Area ("Air Rights Construction Activity") may be made without the express written approval of the Commercial Developer, the Lot 73 Owner and the Lot 73 Occupant. This shall apply to any party (including, but not limited to, the Residential Developer, the Association, any Unit Owner or the Board) seeking to commence a Tower Modification, Plumbing Installation or Air Rights Construction Activity. Prior to commencing a Tower Modification, Plumbing Installation or any Air Rights Construction Activity, the party seeking to do so shall provide the Commercial Developer, the Lot 73 Owner and the Lot 73 Occupant with detailed plans showing the site layout, exterior elevations, materials and other features of the Tower Modification, Plumbing Installation or Air Rights Construction Activity as well as such additional information deemed necessary by the Commercial Developer, the Lot 73 Owner and the Lot 73 Occupant. The Commercial Developer, Lot 73 Owner and Lot 73 Occupant may consider (but shall not be restricted to consideration of) visual impact, harmony of external design with surrounding structures including, without limitation, the improvements on Lot 73 and whether such Tower Modification, Plumbing Installation or Air Rights Construction Activity would interfere with the use or operation of any business on Lot 73 or any rights granted by easement for the benefit of the Lot 73 Owner, its tenants and their respective employees, licensees or invitees to use any parking facilities within the Commercial Limited Common Elements and those portions of the General Common Elements intended to provide ingress to and egress from such parking areas and Unit C-1. In reviewing and acting upon any request for an approval, the Commercial Developer, the Lot 73 Owner and Lot 73 Occupant shall be acting in their own interests and shall owe no duty to any other Person, including, without limitation, the Association or any Unit Owner. Approval by the Commercial Developer, the Lot 73 Owner and the Lot 73 Occupant shall in no way be construed as to pass judgment on the correctness of the location, structural, electrical or mechanical design, suitability of water flow or drainage, location of utilities, or other qualities of the item being reviewed. Neither the Commercial Developer, the Lot 73 Owner and the Lot 73 Occupant, nor any of their Representatives, shall bear any responsibility for insuring structural integrity, soundness or compliance with building codes. Approval by the Commercial Developer, the Lot 73 Owner and/or the Lot 73 Occupant shall not be construed as a representation or warranty of any type regarding the design or construction of any Tower Modification, Pipe Installation and/or any Air Rights Construction Activity and shall in no way be deemed to constitute a determination as to compliance with local zoning ordinances, governmental guidelines or restrictions, or be substituted in lieu of applicable governmental approvals and permits and no construction may commence until all such approvals and permits have been obtained.

23.2 Notice; Restrictions. All construction upon the Property including, without limitation, Plumbing Installations, Air Rights Construction Activity and Tower Modifications and construction traffic access areas shall be conducted in accordance with a schedule and conditions (including, without limitation, approved staging areas) approved in advance, in writing by the Commercial Developer, the Lot 73 Owner and the Lot 73 Occupant so as to minimize interference with any construction work being performed by or on behalf of the Commercial Developer, the Lot 73 Owner and the Lot 73 Occupant and the operation of any business within the Property, Lot 73 and Ala Moana Shopping Center. Structural support for improvements to be constructed above Unit C-1 must be provided in locations that do not interfere with the use of Unit C-1. No Plumbing Installation and no repair, replacement or maintenance of any utility lines on or within the Retail/Parking Structure or within 150 feet of the Improvements on Lot 73 (the "Proximity Work") shall be performed without providing the Lot 73 Owner and the Lot 73 Occupant with two week's notice except in the event of an emergency, in which case, notice as practicable under the circumstances shall be given. In all events, except as provided in the Development Agreement, non-emergency Proximity Work shall not be performed during November 1 through January 10 of any year, during the two weeks prior to Easter of any year and, during any period of time that the Lot 73 Occupant's approval rights are in effect, and during any consecutive two week period between July 10 and August 10 of any year the dates of which shall be determined by the Lot 73 Occupant in its sole discretion. All of the above work must be scheduled in advance with the approval of the Commercial Developer, the Lot 73 Owner and the Lot 73 Occupant in order to minimize interference with business on the Property, Lot 73 and the Ala Moana Shopping Center. Neither the Lot 73 Owner nor any of its Representatives, shall bear any responsibility for any actions of the Lot 73 Occupant in its exercise or non-exercise of the Lot 73 Occupant's rights under this Section 23.

24. CALCULATION OF COMMON INTERESTS. The Common Interests for the Units will be determined as follows:

24.1 Common Interest. Each Unit will have an appurtenant undivided percentage interest in the Common Elements of the Project as set forth in [Exhibit B](#) of this Declaration.

24.2 Adjustment. The Residential Developer reserves the right to amend this Declaration to correct the total percentage of Common Interests appurtenant to the Residential Units to equal seventy-nine percent (79%). Prior to the first conveyance of a Residential Unit by the Residential Developer, the Residential Developer shall have the right to adjust one or more Residential Unit's Common Interest in the Residential Developer's discretion and following the first conveyance of a Residential Unit by the Residential Developer, the Residential Developer will have the right and option to adjust the Common Interest of one or more Residential Units by up to one tenth of a percent (0.1 %), so that the total of all Common Interests for all of the Residential Units equals seventy-nine percent (79%). As provided in Section 514B-109, the amendment shall also automatically amend the conveyance instrument if any that governs a Unit Owner's interest in the Residential Unit.

25. AMENDMENT AND RESTATEMENT OF DECLARATION.

25.1 General. Subject to the provisions of [Section 22.4.2](#) and any other express requirements set forth herein restricting the right of the Unit Owners to amend this Declaration, this Declaration may be amended by vote or written consent of Owners of Units to which at least eighty percent (80%) of the Common Interests are appurtenant. An amendment will take effect only after if it is signed by the proper officers of the Association and is recorded. The requirements of this [Section 25.1](#) apply, except where this Declaration provides otherwise.

25.2 Super-Majority Vote. Notwithstanding [Section 25.1](#) to the contrary, the percentage of the voting power necessary to amend a specific clause or provision will not be less than the percentage of affirmative votes prescribed for action to be taken under that clause. For example, if this Declaration says that one hundred percent (100%) of the Owners must approve a proposal not to repair or rebuild the Project after it is damaged, then the vote of one hundred percent (100%) of the Owners is necessary to amend that provision despite the requirements of [Section 25.1](#).

25.3 Changes by the Residential Developer, Commercial Developer or an Owner. Notwithstanding [Sections 25.1 and 25.2](#) to the contrary, if the Commercial Developer, Residential Developer or any Owner changes or alters a Unit, the Common Elements and/or the Limited Common Elements pursuant to [Section 18.2](#) such party may amend this Declaration and/or the Condominium Map as permitted by [Section 18.3](#). In addition the Commercial Developer, Residential Developer may in its exercise of the Residential Developer Reserved Rights or Commercial Developer Reserved Rights under this Declaration amend this Declaration and/or the Condominium Map as permitted by [Section 18.3](#).

25.4 Developer Reserved Rights to Amend. Notwithstanding [Sections 25.1 and 25.2](#) to the contrary, the Residential Developer Reserved Rights and the Commercial Developer Reserved Rights include the right of the Residential Developer and the Commercial Developer, with the consent of the other and without the consent of any other Person, to change the Condominium Documents:

A. In any way and for any purpose before the date when the Residential Developer first records a deed transferring a Residential Unit to someone other than the Residential Developer or its Lenders;

B. To unilaterally file the "as-built" statement (with plans, if necessary or convenient) required by Section 514B-34 of the Condominium Property Act. This may be done each time any improvement is completed. It may also do this at any other time required by law or permitted by this Declaration.

C. To comply with the real estate laws of any jurisdiction (for example, the State of Hawaii) or the requirements of any government agency or quasi-governmental agency having regulatory jurisdiction over the Condominium in connection with the registration of the Project to permit the sale of Residential Units or in connection with any other matter;

D. To satisfy requests for changes made by any institutional lender, any title company licensed to do business in the State of Hawaii, FNMA, FHA, VA, the Federal Home Loan Mortgage Corporation, the Government National Mortgage Association or as may be required to comply with the Fair Housing Amendments Act of 1988, as amended, to comply with the Act, or to comply with other applicable laws and regulations.

E. To correct any misstatements of fact in the Condominium Documents. For example, to correct a mistake in the legal description of the Land.

The Residential Developer and Commercial Developer may use these rights at any time and it may use them more than once.

#### 25.5 Limits on Amendments.

25.5.1 Changes to Developer Reserved Rights. Notwithstanding anything to the contrary in the Condominium Documents, no amendment to the Condominium Documents that changes, terminates, or otherwise adversely impacts any of the Commercial Developer Reserved Rights or Residential Developer Reserved Rights, or any other rights of the Commercial Developer or Residential Developer under the Condominium Documents, will be effective without the express joinder of the Commercial Developer or Residential Developer as the adversely impacted party, as applicable.

25.5.2 Commercial Units; Lot 73. Notwithstanding anything stated to the contrary in the Condominium Documents all amendments to the Condominium Documents shall be subject to the following:

A. No amendment to the Condominium Documents affecting any of the Commercial Limited Common Elements shall be effective without the consent of the Owner or Owners of the Unit or Units to which the Commercial Limited Common Elements are appurtenant. This restriction shall not be affected by any changes to Section 514B-39 of the Condominium Property Act and may not be amended without the consent of all of the Commercial Unit Owners. Until the end of the Developer Control Period no amendment to the Condominium Documents affecting any of the Residential Limited Common Elements shall be effective without the consent of the Residential Developer or affecting any of the Individual Residential Limited Common Elements without the consent of the Owner or Owners of the Unit or Units to which the Individual Residential Limited Common Elements are appurtenant. This restriction shall not be affected by any changes to Section 514B-39 of the Condominium Property Act and, during the Developer Control Period, may not be amended without the consent of the Residential Developer.

B. In no case shall an amendment to the Condominium Documents prohibit or materially restrict the use or occupancy of, or behavior within, a Commercial Unit, Commercial Limited Common Element or Individual Commercial Limited Common Element.

C. No Amendment to the Condominium Documents may remove, revoke, modify or amend any of the rights, reservations, easements, interests, exemptions privileges or powers expressly provided to a Commercial Unit Owner under the Condominium Documents without the prior written consent of the affected Commercial Unit Owner.

D. Any amendment to the Condominium Documents that would limit or interfere in any way with the use or operation of a Commercial Unit or its Limited Common Elements or with access to or from the Commercial Unit or its Limited Common Elements, shall not be effective without the prior written consent of the affected Commercial Unit Owner.

E. Any amendment to the Condominium Documents that would limit or interfere in any way with the rights, reservations, easements, interests, exemptions, privileges or powers expressly provided to the Lot 73 Owner or the Lot 73 Occupant under the Condominium Documents shall require the prior written consent of the Lot 73 Owner.

F. Any amendment to the Condominium Documents that would limit or interfere with use of those of the Common Elements which, pursuant to this Declaration, are available for use by the general public shall require the written consent of all Commercial Unit Owners and the Lot 73 Owner.

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25.6 Reassignment of Parking Stalls and Commercial Limited Common Elements.

25.6.1 Any Residential Unit Owner may transfer or exchange an Individual Residential Limited Common Element parking stall that is assigned to such Unit Owner's Unit to another Unit; provided that at all times each Residential Unit shall have at least one assigned Individual Residential Limited Common Element parking stall. The transfer shall be executed and recorded as an amendment to this Declaration and the amendment need only be executed by the Owner of the Unit whose Individual Residential Limited Common Element is being transferred and the Owner of the Unit receiving the Individual Residential Limited Common Element subject to any required consent of Lenders or lessors. Any Commercial Unit Owner may transfer or exchange an Individual Commercial Limited Common Element that is assigned to such Unit Owner's Unit to another Unit. The transfer shall be executed and recorded as an amendment to this Declaration and the amendment need only be executed by the Owner of the Unit whose Individual Commercial Limited Common Element is being transferred and the Owner of the Unit receiving the Individual Commercial Limited Common Element subject to any required consent of Lenders or lessors. A copy of the Amendment must be promptly delivered to the Association.

25.7 Restatement. Pursuant to the provisions of Section 514B-109 of the Condominium Property Act, the Association has the authority by Board Resolution to:

A. restate this Declaration and the Bylaws, but only to set forth all valid amendments thereto adopted in full compliance with all of the requirements of this Declaration; and

B. amend this Declaration and the Bylaws as required to conform with the provisions of the Condominium Property Act or any other law or regulation adopted by a governmental authority.

No restated or amended Declaration or Bylaws will be effective unless and until it is recorded.

25.8 Residential Limited Common Elements. Subject to all of the reservation of rights and requirements for consents as specifically provided in this Declaration, any consents or approvals required by the Owners of Residential Units in connection with the Residential Limited Common Elements shall require the affirmative vote of no less than a majority of the Residential Class Common Interests and any specified percentage of Residential Unit Owners shall mean the percentage of Residential Class Common Interests.

26. DISCLOSURES AND LIMITATION OF LIABILITY.

26.1 Obstruction of Views. The views from the Unit or Project may change, be affected or obstructed by (i) construction or installation of buildings, improvements, structures, walls and/or landscaping by the Commercial Developer, Residential Developer or owners of property outside the Project and/or (ii) the growth of trees, landscaping and/or vegetation within or outside the Project. Each Owner and every other Interested Person waives, releases and discharges any rights, claims or actions that such person may have, now or in the future, against the Commercial Developer, Residential Developer and their Representatives, licensees, successors and assigns, and arising directly or indirectly out of or from any such change or obstruction of views by reason of such further development.

26.2 Noise; Traffic. Noise, dust, vibration, and/or traffic in the vicinity of the Project may increase if and when any structures are constructed on lands adjacent to or in the vicinity of the Project. Each Owner and every other person who has any interest in the Project or who has the right to use the Project or any part of it waives, releases and discharges any rights, claims or actions that such person may have, now or in the future, against the Commercial Developer, Residential Developer and their representatives, licensees, successors and assigns, and arising directly or indirectly out of or from such obstruction of views, additional noise, dust, vibrations, and/or



additional traffic by reason of such further development including, without limitation, construction and operation of the City and County of Honolulu's planned elevated rail transit project, if constructed, which could be constructed upon portions of, and adjacent to, the Project.

26.3 Security. The Association, the Commercial Developer, Residential Developer, the Managing Agent, and each of their Representatives, are not in any way to be considered insurers or guarantors of safety or security within the Project, nor can any of them be held liable for any loss or damage by reason of failure to provide adequate or affective safety or security measures. Neither the Association nor the Commercial Developer, Residential Developer nor the Managing Agent make any representation or warranty that any fire protection, burglar alarm, or other safety or security system or measures, including anything intended to limit access to the Project, (i) will be effective in all cases and cannot be compromised or circumvented; (ii) will prevent all losses; (iii) will limit access to the Project; or (iv) will provide the detection or protection which it is designed or intended to provide. Each Owner and every other Interested Person acknowledges, understands, and agrees that the Association, the Commercial Developer, Residential Developer and the Managing Agent are not insurers and that each person using the Project assumes all risks of personal injury, death, or loss or damage to property resulting from the acts of third parties. Each Owner and every other person who has any interest in the Project or who has the right to use the Project or any part of it waives, releases and discharges any rights, claims or actions that such person may have, now or in the future, against the Commercial Developer, Residential Developer and their Representatives by reason of failure to provide adequate or effective safety or security measures.

26.4 Warranties. Each Residential Unit Owner by acceptance of a deed to a Residential Unit acknowledges that the Residential Developer is the developer of the Residential Developer Improvements which includes the Residential Units and their appurtenant Residential Limited Common Elements within the Initial Residential Space and that the Residential Developer is independent from and not affiliated with Commercial Developer. The Commercial Developer shall not assume or be responsible for any liabilities, warranties or obligations which have or may accrue to the Residential Developer, their successors and assigns including, but not limited to, any liabilities, warranties or obligations concerning any Units, buildings or other improvements constructed, or to be constructed, by or on behalf of the Residential Developer. Commercial Developer makes no representation or warranty whatsoever, whether express or implied, with respect to any Units, Common Elements buildings or other Residential Developer Improvements, nor has Commercial Developer authorized any other party to make any such representation or warranty, and such other parties are without legal authority to enforceably make any such representation or warranty. Commercial Developer shall not assume or be responsible for and each Residential Unit Owner by acceptance of a deed to a Residential Unit expressly waives any and all claims against Commercial Developer for any liabilities, warranties or obligations which have or may accrue to Residential Developer in connection with Residential Developer's status under the Condominium Documents, or in connection with Residential Developer's development of all or any real property and improvements within the Property, including, but not limited to, any liabilities, warranties or obligations concerning any Residential Units, Residential Limited Common Elements or other improvements constructed, or to be constructed, by or on behalf of Residential Developer.

26.4.1 The Residential Developer is developing the Residential Developer Improvements in the Project but it is not the general contractor or an affiliate of the general contractor who built the Residential Developer Improvements in the Project. In addition, the Commercial Developer developed the Commercial Developer Improvements in the Project but it is not the general contractor or an affiliate of the general contractor who built the Commercial Developer Improvements in the Project. Neither the Residential Developer nor the Commercial Developer makes any warranties, express or implied, about the Units or the Project, or about consumer products or anything else installed or contained in the Units or the Project. This includes, but is not limited to, warranties of merchantability, habitability, workmanlike construction, fitness for a particular purpose, or sufficiency of design. All rights and interests in the Project are sold "as is" and "where is", with all defects, whether visible or hidden, and whether known or not known. This means, among other things, that neither the Commercial Developer nor the Residential Developer is required to fix any defect no matter who or what causes it or when it is discovered. Each Owner and every other Interested Person waives, releases, and discharges any and all rights and claims such person may have, now or in the future, against the Commercial Developer, Residential Developer and their Representatives, successors and assigns for (i) any defects in the Units or the Project or any consumer products or anything else things installed or contained in the Units or the Project, and (ii) for injury to persons or property arising from any such defects. This means that neither the Commercial Developer nor Residential Developer will not have to pay for any injury or damage to people or things as a result of any defect.

CHAPTER 672E OF THE HAWAII REVISED STATUTES CONTAINS IMPORTANT REQUIREMENTS OWNERS MUST FOLLOW BEFORE THEY MAY FILE A LAWSUIT OR OTHER ACTION FOR DEFECTIVE CONSTRUCTION AGAINST THE CONTRACTOR WHO DESIGNED, REPAIRED, OR CONSTRUCTED THE OWNER'S HOME OR FACILITY. NINETY DAYS BEFORE AN OWNER FILES A LAWSUIT OR OTHER ACTION, THE OWNER MUST SERVE ON THE CONTRACTOR A WRITTEN NOTICE OF ANY CONSTRUCTION CONDITIONS THE OWNER ALLEGES ARE DEFECTIVE. UNDER THE LAW, A CONTRACTOR HAS THE OPPORTUNITY TO MAKE AN OFFER TO REPAIR AND/OR PAY FOR THE DEFECTS. THE OWNER IS NOT OBLIGATED TO ACCEPT ANY OFFER MADE BY A CONTRACTOR. THERE ARE STRICT DEADLINES AND PROCEDURES UNDER THE LAW, AND FAILURE TO FOLLOW THEM MAY NEGATIVELY AFFECT BUYER'S ABILITY TO FILE A LAWSUIT OR OTHER ACTION.

26.5 Condominium Map. Nothing in the Condominium Map is intended to be or is a representation or warranty by the Commercial Developer or Residential Developer.

26.6 Environmental Issues-Mold. Mold and mold spores are present throughout the environment and residential condominium construction cannot practicably be designed to exclude the introduction of mold spores. All mold is not necessarily harmful, but certain strains of mold have been found to have adverse health effects on susceptible persons. Moisture is the primary mold growth factor that must be addressed. Affirmative steps taken by Owners and the Association to minimize or control moisture can minimize or eliminate mold growth in the Project. The Bylaws set forth steps that should be taken by Unit Owners and the Association to reduce or eliminate the occurrence of mold growth and thereby minimize any possible adverse health effects that may be caused by mold. Neither the Commercial Developer nor the Residential Developer can ensure that mold and mold spores will not be present in the Project. The failure of an Owner or the Association to follow the steps set forth in the Bylaws may increase the risk of mold growth and mold spores being present in the Project. Neither the Commercial Developer nor the Residential Developer shall be liable for any actual, special, incidental or consequential damages based on any legal theory whatsoever, including, but not limited to, strict liability, breach of express or implied warranty, negligence or any other legal theory, with respect to the presence and/or existence of molds, mildew and/or microscopic spores at the Project unless caused by the sole negligence or willful misconduct of the Commercial Developer or the Residential Developer.

## 27. MISCELLANEOUS.

27.1 Owners May Incorporate. The Unit Owners may form a non-profit Hawaii corporation to serve as the Association. If so, the corporation will have all of the rights, powers, obligations and duties of the Association as stated in the Condominium Documents or the Condominium Property Act. The fact that a corporation is formed to be the Association does not change any of the covenants, conditions or restrictions contained in this Declaration or in the Bylaws. The corporation must adopt the Bylaws as the bylaws of the corporation. The Articles of Incorporation and Bylaws of the corporation will be subordinate to this Declaration. If the corporation takes any action that violates all or any part of this Declaration or the Bylaws of the Association, the action will be void.

27.2 Effect of Invalid Provisions. The provisions of this Declaration are severable. Invalidation of any part of this Declaration by judgment, decree or order shall in no way affect any other provisions of this Declaration, each of which shall remain in full force and effect.

### 27.3 Dispute Resolution.

27.3.1 Claim Notice; Inspection; Right to Repair. Every claim against the Commercial Developer, including any of their employees, agents or contractors (each of the foregoing a "Commercial Respondent") by the Association and/or any Owner or Owners (each of the foregoing a "Commercial Claimant") regarding the design or construction of the Commercial Developer Improvements, shall be resolved pursuant to the requirements of this [Section 27.3](#). In addition, every claim against the Residential Developer, including any of their employees, agents or contractors (each of the foregoing a "Residential Respondent") by the Association and/or any Owner or Owners (each of the foregoing a "Residential Claimant") regarding the design or construction of the Residential Developer Improvements, shall be resolved pursuant to the requirements of this [Section 27.3](#). As used below in this Section 27.3, the term "Respondent" shall refer to the Commercial Respondent and the Residential Respondent, as applicable.

A. The Respondent shall have the absolute right, in its sole discretion, to repair any portion of the Condominium, including but not limited to, items listed in the “Claim Notice” (defined below) provided that such repair is undertaken and completed within a reasonable period of time and is performed within acceptable industry standards in effect when the improvement was originally constructed by or on behalf of the Respondent. The Association and each Owner shall provide the Respondent with all necessary access to the Condominium to perform such repairs.

B. The Claimant shall make a prudent and reasonable attempt to mail or otherwise deliver written notice to the Respondent specifying the defect or defects that are the subject of its claim, including specific identification of the exact locations of all portions of the Condominium for which the Respondent has responsibility that have manifested damage or otherwise indicate existence of a defect (the “Claim Notice”). The Claim Notice must clearly state and describe in detail whether and how the Claim involves the improvements constructed by or on behalf of the Respondent.

C. Within twenty (20) days after the receipt of the Claim Notice, the Respondent may notify the Claimant that the Claim is rejected or may be rejected subject to investigation and may make a written request to the Claimant to inspect the property identified in the Claim Notice (the “Inspection Request”).

D. Within ten (10) days after receipt of the Inspection Request, the Claimant shall make available for inspection the property identified in the Claim Notice during normal working hours or other mutually agreed upon times. If necessary, interior inspections of Units shall occur only during normal business hours or other mutually agreed upon times, only upon prior notice to the Owner or occupant of the Unit, and only with the consent of the Owner of the Unit, which consent may not be unreasonably withheld or delayed. In addition, if the Claimant has engaged the services of a professional to prepare the contents of the Claim Notice, then the Claimant shall make the professional available to meet with and/or accompany the Respondent in inspecting the items in the Claim Notice.

E. Such inspection shall be completed within forty-five (45) days after the date the subject property is made available to the Respondent by the Claimant for inspection; provided, however, that if such inspection is not reasonably capable of being completed within such forty-five (45) day period, and provided further that the Respondent commences good faith efforts to commence such inspection within such forty-five (45) day period and thereafter diligently prosecutes such efforts to completion, such forty-five (45) day period shall be extended for the period of time reasonably necessary for the Respondent to commence and complete such inspection. The Respondent shall pay all costs of such inspection, shall restore the subject property to the condition that existed immediately before such inspection within ten (10) days after the completion of such inspection, and shall indemnify the Claimant for any and all damages resulting from such inspection; provided, however, that if such restoration is not reasonably capable of being completed within such ten (10) day period, and provided further that the Respondent commences good faith efforts to commence such restoration within such ten (10) day period and thereafter diligently prosecutes such efforts to completion, such ten (10) day period shall be extended for the period of time reasonably necessary for the Respondent to commence and complete such restoration.

27.3.2 Settlement Statement; Settlement Conference. Within thirty (30) days after completion of the inspection under [Section 27.3.1](#) above, the Respondent shall submit a written statement to the Claimant stating the Respondent’s position regarding the items in the Claim Notice which may include a proposed settlement of the claim or claims identified in the Claim Notice, and may state whether the Respondent proposes to do any remedial work, pay the Claimant a cash amount, or both (the “Settlement Statement”).

A. If the Respondent fails to deliver a timely Settlement Statement, the Claimant may bring an action on the claim or claims identified in the Claim Notice subject to the requirements of [Section 27.3.3](#).

B. If the Respondent delivers a timely Settlement Statement, then within thirty (30) days after receipt of the Settlement Statement, the Claimant shall hold a settlement conference with the Respondent to discuss the claim or claims identified in the Claim Notice and the proposed settlement stated in the Settlement Statement (the “Settlement Conference”). If the Claimant is the Association, it shall be represented by at least a majority of the members of the Board of Directors at the Settlement Conference. The Claimant and the Respondent

may be represented by attorneys and consultants at the Settlement Conference and any mutually agreed upon continuation thereof.

C. If a settlement of the claim or claims identified in the Claim Notice is not reached within thirty (30) days after the Settlement Conference, or any mutually agreed upon continuation thereof, the Claimant or the Respondent may deliver to the other party, within thirty (30) days after the Settlement Conference, or any mutually agreed upon continuation thereof, a written request for nonbinding mediation. Either party to any such nonbinding mediation may elect to terminate such nonbinding mediation at any time, but not before the mediation has lasted at least three (3) hours, upon that party's determination that the nonbinding mediation has been unable to resolve the dispute, by giving written notice to the other party of such determination.

D. With respect to any claim brought by the Association, if the Board of Directors does not accept the Respondent's proposed settlement set forth in the Settlement Statement, and if the parties are unable to resolve the dispute through nonbinding mediation, the Association shall comply with [Section 27.3.3](#) prior to bringing any action against the Respondent.

E. Any notice, request, statement, or other communication required to be sent to the Respondent or a Claimant under this Section 27 shall be mailed by first-class registered or certified mail, return receipt requested, or sent by facsimile (with evidence of transmission and receipt), or personally served on the party entitled to receive such notice, request statement or other communication.

**27.3.3 Commencement of Action by the Association; Notice to Owners.** Before the Association may file a lawsuit against the Respondent based on any claim or claims identified in a Claim Notice, the Association shall:

A. Provide to each Owner a statement of the claim of the Association against the Respondent and estimates of (i) the value of the claims, (ii) the likelihood that the Association will prevail on each claim, (iii) the total amount of legal fees, court costs and expenses that the Association is likely to incur through the trial or completion of other legal proceeding, (iv) an estimate of the total amount of any Special Assessments, or any increase in the Regular Assessments, that the Board expects to charge to the Owners to pay for legal fees, court costs, and expenses while the lawsuit or other legal proceeding is going on and (v) an analysis of the impact that the commencement of any action may have on the lending institutions and their willingness to finance Units in the Project;

B. Provide to each Owner a copy of the list of claims and estimates, together with a notice of the annual or special meeting of the Association at which the matter of Association authorization to start and prosecute a lawsuit or other legal proceeding against the Respondent or any company related to the Respondent will be put to a vote;

C. Provide to each Owner a copy of the written response of the Respondent to the claim of the Association, including any proposed settlement delivered by the Respondent to the Association;

D. Provide to each Owner a statement that if at least ten percent (10%) of the Owners (other than the Respondent) request a special meeting of the Association to discuss the proposed litigation or other legal proceeding within thirty (30) days after the date the notice is mailed or otherwise delivered to the Owners, then a special meeting must be held.

E. At the annual or special meeting of the Association, Owners of Units having at least a majority of the Common Interests of the Project (not counting the Common Interests appurtenant to Units owned by the Respondent) shall authorize the Board to start and prosecute the lawsuit or other legal proceeding. This requirement does not apply to lawsuits against the Respondent filed solely to collect Assessments, that are past due or to enforce the Condominium Documents.

**27.4 Waiver of Jury Trial.** ANY LAWSUIT AGAINST THE RESPONDENT BY A CLAIMANT SHALL BE SOLELY BEFORE A JUDGE IN THE JURISDICTION WHERE THE CONDOMINIUM IS

LOCATED. THE ASSOCIATION AND ALL INDIVIDUAL UNIT OWNERS WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY THE ASSOCIATION OR ANY INDIVIDUAL UNIT OWNER AGAINST THE RESPONDENT IN CONNECTION WITH ANY RIGHTS OR OBLIGATIONS BETWEEN THE ASSOCIATION AND/OR A UNIT OWNER AGAINST THE RESPONDENT REGARDLESS OF THE FORM OF THE CLAIM(S) MADE OR DAMAGES SOUGHT. THIS WAIVER OF JURY TRIAL WILL EXTEND TO ANY THIRD PARTY NAMED IN ANY PROCEEDING BY THE ASSOCIATION, ANY UNIT OWNER OR THE RESPONDENT. IN ADDITION TO THE FOREGOING, ANY CLAIMS AGAINST THE COMMERCIAL DEVELOPER ARE SUBJECT TO THE LIMITATIONS SET FORTH IN SECTION 22.4 OF THIS DECLARATION.

27.5 Compliance. The Respondent and any Claimant may assert a substantial failure by the other to substantially comply with a material requirement of this Section 27 as a procedural deficiency in any action or proceeding, at law or in equity, involving the Respondent and such Claimant. In the event that the court before which such action or proceeding is pending shall find that the Respondent or the Claimant has failed to substantially comply with a material requirement of this Section 27 and that the rights of a party have been substantially impaired, the parties shall be deemed to have consented to a stay in such action or proceeding, not to exceed ninety (90) days, during which the Respondent and the Claimant shall, in good faith, establish compliance with such material requirement.

27.6 Several Obligations. The obligations and liability of the Commercial Developer and Residential Developer under this Section 27 and elsewhere in the Condominium Documents are several and not joint and several. Any claim asserted with respect to the Commercial Developer Improvements may be pursued only against the Commercial Developer as the Respondent and any claim asserted with respect to the Residential Developer Improvements may be pursued only against the Residential Developer as the Respondent.

27.7 Amendment. Any provision of this Declaration or the Bylaws to the contrary notwithstanding, no amendment to this Section 27 shall be made without the prior written consent of the Commercial Developer and the Residential Developer.

27.8 Continuing Activities. EACH OWNER UNDERSTANDS AND AGREES THAT RESIDENTIAL DEVELOPER IS ENGAGED IN A SALES AND DEVELOPMENT PROGRAM AND THAT CERTAIN ELEMENTS OF THE PROJECT MAY NOT BE COMPLETED AND COMPLETION OF THE IMPROVEMENT OF SUCH ITEMS MAY BE DEFERRED BY RESIDENTIAL DEVELOPER AT RESIDENTIAL DEVELOPER'S SOLE AND ABSOLUTE OPTION, PROVIDED NORMAL ACCESS AND PARKING FACILITIES ARE PROVIDED FOR THE UNITS CONVEYED TO THIRD PARTIES. AS AN INTEGRATED STRUCTURE CONSISTING OF A VARIETY OF USES THAT MAY BE CHANGED FROM TIME-TO-TIME, ALTERATIONS, CONSTRUCTION, REMODELING, REPAIR AND CHANGES OF USES OF PORTIONS OF THE PROPERTY MAY OCCUR FROM TIME-TO-TIME.

27.9 Uses Changes. EXCEPT AS EXPRESSLY SET FORTH IN THE CONDOMINIUM DOCUMENTS, NEITHER THE COMMERCIAL DEVELOPER NOR THE RESIDENTIAL DEVELOPER MAKES ANY REPRESENTATIONS OR WARRANTIES WITH RESPECT TO THE (A) NATURE OF ANY IMPROVEMENTS TO BE INITIALLY OR SUBSEQUENTLY CONTAINED IN THE PROJECT, (B) THE INITIAL OR SUBSEQUENT USES OF ANY PORTION OF THE PROJECT, OR (C) THE SERVICES (AND THE COSTS OF SUCH SERVICES) WHICH MAY BE PROVIDED TO OWNERS.

27.10 Mixed-Use Project. THE PROJECT IS A MIXED USE CONDOMINIUM WHICH INCLUDES RETAIL AND OTHER COMMERCIAL FACILITIES. OWNING PROPERTY IN A MIXED USE PROJECT HAS ADVANTAGES AS WELL AS DISADVANTAGES. THE DISADVANTAGES INCLUDE, BUT ARE NOT LIMITED TO, CROWDS, DISTURBANCES, LIGHTS, NOISE, INTERRUPTIONS, LOSS OF PRIVACY AND TRAFFIC CONGESTION DURING DAY AND EVENING HOURS, RESULTING FROM THE GENERAL PUBLIC'S USE OF RETAIL AND OTHER COMMERCIAL FACILITIES AND CERTAIN COMMON ELEMENTS WITHIN THE CONDOMINIUM. EACH OWNER, BY ACCEPTANCE OF A DEED, ACKNOWLEDGES THE ADVANTAGES AND DISADVANTAGES OF LIVING IN A MIXED USE PROJECT.

27.11 Declaration Regarding Zoning Compliance. Subject to the penalties set forth in Hawaii Revised Statutes Section 514B-69(b), the Commercial Developer declares that the Project as currently built is in compliance with all zoning and building ordinances and codes, and all other permitting requirements applicable to the Project, pursuant to Hawaii Revised Statutes Section 514B-5 and 514B-32(a)(13). In order to achieve this compliance, Zoning Variance No. 2005/VAR-31 was issued on January 11, 2006 by the Director of the Department of Planning and Permitting of the City and County of Honolulu to permit the parking structure building to encroach into the Kona Street front yard. By letter dated September 17, 2008, the Director of the Department of Planning and Permitting of the City and County of Honolulu interpreted Zoning Variance No. 2005/VAR-31 as permitting certain improvements to the façade of the parking structure fronting Kapiolani Boulevard. The encroachment into yards is a legal nonconforming condition, use or structure which is made legal by Zoning Variance No. 2005/VAR-31.

27.12 Unit C-1 Special Provisions. The Land and Improvements submitted to the condominium property regime is submitted to the condominium property regime subject to the items described in the attached Exhibit A, including the unrecorded lease dated June 15, 2005 (the "2005 Lease") by and between the Lot 73 Owner and Nordstrom, Inc. As provided in Section 514B-31 of the Condominium Property Act, the condominium property regime created hereby shall be subject to the right, title and interests described in and created by the 2005 Lease including, without limitation, rights to use and occupy Unit C-1 and rights and obligations to insure or self insure the improvements that make up Unit C-1 and the requirements for reconstruction after damage or destruction and the rights and obligations in connection with any condemnation of Unit C-1 as set forth in the 2005 Lease, all of which shall take precedence over any conflicting provisions in this Declaration. During the term of the 2005 Lease, the lessee thereunder shall be the Owner of the improvements that constitute Unit C-1.

#### 27.13 Indemnification

27.13.1 By Residential Developer. Subject to Section 14.10, the Residential Developer shall defend (with counsel reasonably acceptable to the Commercial Indemnitee), indemnify and hold harmless, at its expense, the Commercial Developer, the Lot 73 Owner, the Lot 73 Occupant and their Representatives and each Commercial Unit Owner (individually and collectively the "Commercial Indemnitee") against and from all claims, demands, liabilities, penalties, damages, actions, suits, losses, expenses and judgments, including court costs and reasonable attorneys' fees, distribution and costs (including those incurred through appeals), which may be imposed upon or incurred by or asserted against any Commercial Indemnitee, to the extent arising out of the development, construction, repair, failure to repair, or renovation by the Residential Developer, or any tenant, subtenant, licensee, employee, contractor and agent of the Residential Developer of any Residential Unit, Residential Limited Common Elements or General Common Elements. The foregoing indemnification obligation shall only be applicable to the extent that the claim, demand, liability, penalty, damage, action, suit, expense, loss or judgment results in a loss which exceeds the liability insurance coverage maintained by the Residential Developer.

27.13.2 By Association. Subject to Section 14.10, the Association shall defend (with counsel reasonably acceptable to the Commercial Indemnitee), indemnify and hold harmless, at its expense, the Commercial Indemnitee against and from all claims, demands, liabilities, penalties, damages, actions, suits, losses, expenses and judgments, including court costs and reasonable attorneys' fees, distribution and costs (including those incurred through appeals), which may be imposed upon or incurred by or asserted against any Commercial Indemnitee, to the extent arising out of the development, construction, repair, failure to repair, or renovation by the Association, or any tenant, subtenant, licensee, employee, contractor and agent of the Association, of any Residential Unit, Residential Limited Common Elements or General Common Elements. The foregoing indemnification obligation shall only be applicable to the extent that the claim, demand, liability, penalty, damage, action, suit, expense, loss or judgment results in a loss which exceeds the liability insurance coverage maintained by the Association.

27.13.3 By Commercial Unit Owner. Subject to Section 14.10, Each Commercial Unit Owner shall defend (with counsel reasonably acceptable to the Residential Indemnitee), indemnify and hold harmless, at its expense, the Residential Developer and its Representatives and the Association (individually and collectively the "Residential Indemnitee") against and from all claims, demands, liabilities, penalties, damages, actions, suits, losses, expenses and judgments, including court costs and reasonable attorneys' fees, distribution and costs (including those incurred through appeals), which may be imposed upon or incurred by or asserted against any such Residential Indemnitee, to the extent arising out of the development, construction, repair, failure to repair or renovation by the Commercial Unit Owner or any tenant, subtenant, licensee, employee, contractor and agent of the Commercial Unit

Owner of any Commercial Unit or Commercial Limited Common Elements. The foregoing indemnification obligation shall only be applicable to the extent that the claim, demand, liability, penalty, damage, action, suit, expense, loss or judgment results in a loss which exceeds the liability insurance coverage maintained by the Commercial Unit Owner.

27.14 Notices. Except as otherwise expressly required in this Declaration, the Bylaws or the Condominium Property Act, all notices, requests, demands, bills, statements, or other communications under this Declaration and the Bylaws shall be in writing and shall be deemed to have been duly given if delivered personally or when delivered by certified mail, return receipt requested, or by any other delivery or courier service that can provide tracking information regarding the delivery of such notice, as follows: (a) if to the Commercial Developer \_\_\_\_\_, or such other address provided by the Commercial Developer to the Board of Directors, (b) if to the Residential Developer \_\_\_\_\_, or such other address provided by the Residential Developer to the Board of Directors, or (c) if to the Lot 73 Owner, \_\_\_\_\_, or such other address provided by the Lot 73 Owner to the Board of Directors. If delivery of any notice as provided in this Section is refused, the date of such refusal shall be deemed to be the date of delivery.

27.15 Changes In The Law. If any law that applies to the Project changes after this Declaration and the Bylaws are recorded, the change in law will control over the provisions of the Declaration or the Bylaws only to the extent the legislative body that enacted the change in law expressly provides that the changes in law will control over inconsistent provisions in existing condominium documents.

27.16 No Gift or Dedication. Nothing contained in this Declaration shall be deemed to be a gift or dedication of any portion of the Property to the general public, or for the general public or for any public purpose whatsoever.

27.17 Captions. The captions contained herein are here for convenience only. They do not completely or adequately explain each section or the entire document. Owners must read with care each and every part of this Declaration, not just the captions.

27.18 Effect of Failure to Enforce. A violation of any part of the Condominium Documents by one person does not excuse that person or anyone else from his or her duty to obey that and all other parts of the Condominium Documents. Any failure to enforce any provision of this Declaration does not limit or take away the right to enforce that provision later.

27.19 No Partnership. Nothing contained in this Declaration shall be deemed to or is intended to create a partnership between the Commercial Developer, the Residential Developer, or any Unit Owner for federal income tax law, state law, or any other purpose.

27.20 Consent Standard. Where the consent of a party is called for in this Declaration, such consent shall not be unreasonably conditioned, withheld or delayed unless a different approval standard is specifically set forth in this Declaration.

IN WITNESS WHEREOF, the Commercial Developer has executed this Declaration of Condominium Property Regime as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_.

KAPIOLANI RETAIL, LLC,  
a Delaware limited liability company

By: \_\_\_\_\_  
Name:  
Title:



STATE OF \_\_\_\_\_ )  
 ) ss.  
CITY AND COUNTY OF \_\_\_\_\_ )

On this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, before me personally appeared \_\_\_\_\_, to me known, who, being by me duly sworn or affirmed, did say that such person executed this \_\_\_\_\_ **DECLARATION OF CONDOMINIUM PROPERTY REGIME OF 1555 KAPIOLANI CONDOMINIUM** dated \_\_\_\_\_, 20\_\_\_\_, as the free act and deed of such person, and if applicable, in the capacity shown, having been duly authorized to execute such instrument in such capacity.

KAPIOLANI RETAIL, LLC

\_\_\_\_\_  
Print Name: \_\_\_\_\_  
Notary Public, State of Hawaii  
First Judicial Circuit

My Commission expires: \_\_\_\_\_

## EXHIBIT A

### DESCRIPTION OF LAND

ALL OF THAT CERTAIN PARCEL OF LAND SITUATE AT KALIA, WAIKIKI, CITY AND COUNTY OF HONOLULU, STATE OF HAWAII, DESCRIBED AS FOLLOWS:

LOT 74, AREA 95,725 SQUARE FEET, AS SHOWN ON MAP 23, FILED WITH LAND COURT CONSOLIDATION NO. 20 OF THE HAWAIIAN DREDGING COMPANY, LIMITED.

TOGETHER WITH A NON-EXCLUSIVE, IRREVOCABLE AND PERPETUAL EASEMENT AND RIGHTS-OF-WAY FOR PURPOSES OF INGRESS AND EGRESS AND UTILITIES OVER, UNDER, IN AND THROUGH LOTS 1, 3, 4, 5 AND 6 OF LAND COURT CONSOLIDATION NO. 65 AND LOTS 1, 2 AND 3 OF LAND COURT CONSOLIDATION NO. 70, AS GRANTED BY UNDATED EASEMENT AGREEMENT RECORDED JUNE 28, 1982 AS LAND COURT DOCUMENT NO. 1121201 OF OFFICIAL RECORDS, AS AMENDED BY INSTRUMENT RECORDED APRIL 7, 1983 AS LAND COURT DOCUMENT NO. 1160791 OF OFFICIAL RECORDS, AND SUBJECT TO THE TERMS AND PROVISIONS, INCLUDING THE FAILURE TO COMPLY WITH ANY COVENANTS, CONDITIONS AND RESERVATIONS, CONTAINED THEREIN.

BEING THE PREMISES DESCRIBED IN AND COVERED BY TRANSFER CERTIFICATE OF TITLE NO. \_\_\_\_\_, ISSUED TO \_\_\_\_\_, A \_\_\_\_\_.

TMK(S): (1) 2-3-040-022-0000 (PORTION)

SUBJECT, HOWEVER, to the following (To be updated):

1. Title to all mineral and metallic mines reserved to the State of Hawaii.
2. Easement "C" (10 feet wide) in favor of the City and County of Honolulu, for storm drain purposes, as shown on Map 2, filed with Land Court Consolidation No. 20, recorded as Land Court Order No. 5647.
3. The terms and provisions contained in the Easement Agreement recorded June 28, 1982 as Land Court Document No. 1121201, as amended, of Official Records.
4. The terms and provisions contained in the Agreement Regarding Construction of Overhead Structures recorded December 10, 2001 as Regular System Document No. 2001-192440 and Land Court Document No. 2759413 of Official Records.
5. An unrecorded lease dated June 15, 2005, executed by GGP Kapiolani Development L.L.C., a Delaware limited liability company, as Lessor, and Nordstrom, Inc., a Washington corporation, as Lessee, for a term beginning on the Opening Date (as defined in the Lease) and terminating on the last day of February immediately following the fifteenth (15th) anniversary of the Opening Date, together with the right, privilege and option to extend the term of the Lease thereafter for five (5) successive terms of ten (10) years each, as disclosed by a Memorandum of Lease Agreement recorded June 30, 2005 as Land Court Document No. 3289517 of Official Records.
6. Easement H, area 477 square feet, for waterline purposes in favor of the Board of Water Supply, as set forth in Land Court Order 177839 filed February 12, 2009.
7. Terms, provisions, reservations, covenants, conditions and restrictions, but deleting any of the aforementioned indicating a preference, limitation or discrimination based on race, color, religion, sex,

handicap, familial status, national origin, sexual orientation, marital status, ancestry, source of income or disability, to the extent such covenants, conditions or restrictions violate Title 42, Section 3604(c), of the United States Codes or Chapter 515 of the Hawaii Revised Statutes, as contained in the Agreement for Issuance of Conditional Use Permit Under Section 21-5.380 of the Land Use Ordinance (LUO) recorded April 22, 2005 as Land Court Document No. 3257597 of Official Records.

8. Terms and provisions contained in the Agreement for Issuance of Conditional Use Permit dated April 14, 2005, recorded April 22, 2005, as Land Court Document No. 3257597 of Official Records.
9. Terms and provisions contained in that certain Declaration of Easements and Covenants by GGP Kapiolani Development LLC dated as of \_\_\_\_\_, 2010 recorded \_\_\_\_\_, 20\_\_\_\_, as Land Court Document No. \_\_\_\_\_ of Official Records.
10. Terms and conditions contained in the Limited Warranty Deed dated \_\_\_\_\_, recorded \_\_\_\_\_, 20\_\_\_\_, as Land Court Document No. \_\_\_\_\_ of Official Records.

**[END OF EXHIBIT A]**

**EXHIBIT B**

**DESCRIPTION OF UNIT TYPES**

**Residential Unit Types**

<b>Unit Number</b>	<b>Unit Type</b>	<b>Approx. Unit Area in Square Feet</b>	<b>Residential Class Common Interest</b>	<b>Common Interest</b>
R-1	Spatial	88,920	20%	15.57%
R-2	Spatial	69,265	15%	12.13%
R-3	Spatial	19,320	4%	3.38%
R-4	Spatial	238,615	53%	41.78%
R-5	Spatial	18,305	4%	3.20%
R-6	Spatial	16,805	4%	2.94%
		Total	100%	79%

**Commercial Unit Types**

<b>Unit Number</b>	<b>Unit Type</b>	<b>Approx. Unit Area in Square Feet</b>	<b>Commercial Class Common Interest</b>	<b>Common Interest</b>
C-1	Loading Dock	4,215	19%	4.08%
C-2	Retail	2,780	13%	2.69%
C-3	Retail	14,710	68%	14.23%
		Total	100%	21%

**[END OF EXHIBIT B]**

**EXHIBIT C**  
**LIMITED COMMON ELEMENT**  
**PARKING STALL DESIGNATIONS**

**I. PARKING SUMMARY PER UNIT:**

Commercial Limited Common Elements:	802 stalls
Residential Limited Common Elements:	448 stalls
Residential Guest Parking:	<u>22 stalls</u>
Total:	1,272 stalls

**II. PARKING BREAKDOWN PER LEVEL:**

Street Level:

**Commercial Limited Common Elements:**

- SL-D.01, SL-D.02.

*Subtotal: 2 stalls*

- SL-E.01, SL-E.02, SL-E.03.

*Subtotal: 3 stalls*

*Total for Street Level: 5 stalls*

**Residential Limited Common Elements:**

- SL-B.01, SL-B.02.

*Subtotal: 2 stalls*

*Total for Street Level: 2 stalls*

Level 2:

**Commercial Limited Common Elements:**

- 2-A.01, 2-A.02, 2-A.03, 2-A.04, 2-A.05, 2-A.06, 2-A.07, 2-A.08, 2-A.09, 2-A.10, 2-A.11, 2-A.12, 2-A.13, 2-A.14, 2-A.15, 2-A.16, 2-A.17, 2-A.18, 2-A.19, 2-A.20, 2-A.21, 2-A.22, 2-A.23, 2-A.24, 2-A.25, 2-A.26, 2-A.27, 2-A.28, 2-A.29, 2-A.30, 2-A.31, 2-A.32, 2-A.33.

*Subtotal: 33 stalls*

- 2-B.01, 2-B.02, 2-B.03, 2-B.04, 2-B.05, 2-B.06, 2-B.07, 2-B.08, 2-B.09, 2-B.10, 2-B.11, 2-B.12, 2-B.13, 2-B.14, 2-B.15, 2-B.16, 2-B.17, 2-B.18, 2-B.19, 2-B.20, 2-B.21, 2-B.22, 2-B.23, 2-B.24, 2-B.25.

*Subtotal: 25 stalls*

- 2-C.01, 2-C.02, 2-C.03, 2-C.04, 2-C.05, 2-C.06, 2-C.07, 2-C.08, 2-C.09, 2-C.10, 2-C.11, 2-C.12, 2-C.13, 2-C.14, 2-C.15, 2-C.16, 2-C.17, 2-C.18, 2-C.19, 2-C.20, 2-C.21, 2-C.22, 2-C.23, 2-C.24.  
*Subtotal: 24 stalls*
- 2-D.01, 2-D.02, 2-D.03, 2-D.04, 2-D.05, 2-D.06, 2-D.07, 2-D.08, 2-D.09, 2-D.10, 2-D.11, 2-D.12, 2-D.13, 2-D.14, 2-D.15, 2-D.16, 2-D.17, 2-D.18, 2-D.19, 2-D.20, 2-D.21, 2-D.22, 2-D.23, 2-D.24.  
*Subtotal: 24 stalls*
- 2-E.01, 2-E.02, 2-E.03, 2-E.04, 2-E.05, 2-E.06, 2-E.07, 2-E.08, 2-E.09, 2-E.10, 2-E.11, 2-E.12, 2-E.13, 2-E.14, 2-E.15, 2-E.16, 2-E.17, 2-E.18, 2-E.19, 2-E.20, 2-E.21, 2-E.22, 2-E.23.  
*Subtotal: 23 stalls*
- 2-F.01, 2-F.02, 2-F.03, 2-F.04, 2-F.05, 2-F.06, 2-F.07, 2-F.08, 2-F.09, 2-F.10, 2-F.11, 2-F.12, 2-F.13, 2-F.14, 2-F.15, 2-F.16, 2-F.17, 2-F.18.  
*Subtotal: 18 stalls*
- 2-G.01, 2-G.02, 2-G.03, 2-G.04, 2-G.05, 2-G.06, 2-G.07, 2-G.08, 2-G.09, 2-G.10, 2-G.11, 2-G.12, 2-G.13, 2-G.14, 2-G.15, 2-G.16, 2-G.17, 2-G.18, 2-G.19, 2-G.20, 2-G.21, 2-G.22, 2-G.23, 2-G.24, 2-G.25, 2-G.26, 2-G.27, 2-G.28, 2-G.29, 2-G.30.  
*Subtotal: 30 stalls*
- 2-H.01, 2-H.02, 2-H.03, 2-H.04, 2-H.05, 2-H.06, 2-H.07, 2-H.08, 2-H.09, 2-H.10, 2-H.11, 2-H.12, 2-H.13, 2-H.14, 2-H.15, 2-H.16, 2-H.17, 2-H.18, 2-H.19, 2-H.20, 2-H.21, 2-H.22, 2-H.23, 2-H.24, 2-H.25, 2-H.26, 2-H.27, 2-H.28, 2-H.29, 2-H.30, 2-H.31.  
*Subtotal: 31 stalls*
- 2-I.01, 2-I.02, 2-I.03, 2-I.04, 2-I.05, 2-I.06.  
*Subtotal: 6 stalls*
- 2-K.01, 2-K.02, 2-K.03, 2-K.04, 2-K.05, 2-K.06, 2-K.07, 2-K.08, 2-K.09, 2-K.10, 2-K.11, 2-K.12.  
*Subtotal: 12 stalls*

*Total for Level 2: 226 stalls*

**Level 2B:**

**Commercial Limited Common Elements:**

- 2B-A.01, 2B-A.02, 2B-A.03, 2B-A.04, 2B-A.05, 2B-A.06, 2B-A.07, 2B-A.08, 2B-A.09, 2B-A.10, 2B-A.11, 2B-A.12, 2B-A.13, 2B-A.14, 2B-A.15, 2B-A.16, 2B-A.17, 2B-A.18, 2B-A.19, 2B-A.20, 2B-A.21, 2B-A.22, 2B-A.23, 2B-A.24, 2B-A.25, 2B-A.26, 2B-A.27, 2B-A.28, 2B-A.29, 2B-A.30, 2B-A.31, 2B-A.32.  
*Subtotal: 32 stalls*

- 2B-B.01, 2B-B.02, 2B-B.03, 2B-B.04, 2B-B.05, 2B-B.06, 2B-B.07, 2B-B.08, 2B-B.09, 2B-B.10, 2B-B.11, 2B-B.12, 2B-B.13, 2B-B.14, 2B-B.15, 2B-B.16, 2B-B.17, 2B-B.18, 2B-B.19, 2B-B.20, 2B-B.21, 2B-B.22, 2B-B.23, 2B-B.24, 2B-B.25, 2B-B.26, 2B-B.27, 2B-B.28, 2B-B.29, 2B-B.30, 2B-B.31.

*Subtotal: 31 stalls*

- 2B-C.01, 2B-C.02, 2B-C.03, 2B-C.04, 2B-C.05, 2B-C.06, 2B-C.07, 2B-C.08, 2B-C.09, 2B-C.10, 2B-C.11, 2B-C.12, 2B-C.13, 2B-C.14, 2B-C.15, 2B-C.16, 2B-C.17, 2B-C.18, 2B-C.19, 2B-C.20, 2B-C.21, 2B-C.22, 2B-C.23, 2B-C.24, 2B-C.25, 2B-C.26, 2B-C.27, 2B-C.28, 2B-C.29, 2B-C.30, 2B-C.31.

*Subtotal: 31 stalls*

- 2B-D.01, 2B-D.02, 2B-D.03, 2B-D.04, 2B-D.05, 2B-D.06, 2B-D.07, 2B-D.08, 2B-D.09, 2B-D.10, 2B-D.11, 2B-D.12, 2B-D.13, 2B-D.14, 2B-D.15, 2B-D.16, 2B-D.17, 2B-D.18, 2B-D.19, 2B-D.20, 2B-D.21, 2B-D.22, 2B-D.23, 2B-D.24, 2B-D.25, 2B-D.26, 2B-D.27, 2B-D.28, 2B-D.29, 2B-D.30, 2B-D.31.

*Subtotal: 31 stalls*

- 2B-E.01, 2B-E.02, 2B-E.03, 2B-E.04, 2B-E.05, 2B-E.06, 2B-E.07, 2B-E.08, 2B-E.09, 2B-E.10, 2B-E.11, 2B-E.12, 2B-E.13, 2B-E.14, 2B-E.15, 2B-E.16, 2B-E.17, 2B-E.18, 2B-E.19, 2B-E.20, 2B-E.21, 2B-E.22, 2B-E.23, 2B-E.24, 2B-E.25, 2B-E.26, 2B-E.27, 2B-E.28.

*Subtotal: 28 stalls*

- 2B-F.01, 2B-F.02, 2B-F.03, 2B-F.04, 2B-F.05, 2B-F.06, 2B-F.07, 2B-F.08, 2B-F.09, 2B-F.10, 2B-F.11, 2B-F.12, 2B-F.13, 2B-F.14, 2B-F.15, 2B-F.16, 2B-F.17, 2B-F.18, 2B-F.19, 2B-F.20, 2B-F.21, 2B-F.22.

*Subtotal: 22 stalls*

- 2B-G.01, 2B-G.02, 2B-G.03, 2B-G.04, 2B-G.05, 2B-G.06, 2B-G.07, 2B-G.08, 2B-G.09, 2B-G.10, 2B-G.11, 2B-G.12, 2B-G.13, 2B-G.14, 2B-G.15, 2B-G.16, 2B-G.17, 2B-G.18, 2B-G.19, 2B-G.20, 2B-G.21, 2B-G.22, 2B-G.23, 2B-G.24, 2B-G.25, 2B-G.26, 2B-G.27, 2B-G.28, 2B-G.29, 2B-G.30.

*Subtotal: 30 stalls*

- 2B-H.01, 2B-H.02, 2B-H.03, 2B-H.04, 2B-H.05, 2B-H.06, 2B-H.07, 2B-H.08, 2B-H.09, 2B-H.10, 2B-H.11, 2B-H.12, 2B-H.13, 2B-H.14, 2B-H.15, 2B-H.16, 2B-H.17, 2B-H.18, 2B-H.19, 2B-H.20, 2B-H.21, 2B-H.22, 2B-H.23, 2B-H.24, 2B-H.25, 2B-H.26, 2B-H.27, 2B-H.28, 2B-H.29, 2B-H.30.

*Subtotal: 30 stalls*

- 2B-J.01, 2B-J.02, 2B-J.03, 2B-J.04, 2B-J.05, 2B-J.06, 2B-J.07, 2B-J.08, 2B-J.09, 2B-J.10, 2B-J.11, 2B-J.12, 2B-J.13, 2B-J.14, 2B-J.15, 2B-J.16.

*Subtotal: 16 stalls*

- 2B-K.01, 2B-K.02, 2B-K.03, 2B-K.04, 2B-K.05, 2B-K.06, 2B-K.07, 2B-K.08, 2B-K.09, 2B-K.10, 2B-K.11, 2B-K.12, 2B-K.13, 2B-K.14, 2B-K.15, 2B-K.16, 2B-K.17, 2B-K.18, 2B-K.19, 2B-K.20, 2B-K.21.

*Subtotal: 21 stalls*

*Total for Level 2B: 272 stalls*

**Level 3:**

**Commercial Limited Common Elements:**

- 3-A.01, 3-A.02, 3-A.03, 3-A.04, 3-A.05, 3-A.06, 3-A.07, 3-A.08, 3-A.09, 3-A.10, 3-A.11, 3-A.12, 3-A.13, 3-A.14, 3-A.15, 3-A.16, 3-A.17, 3-A.18, 3-A.19, 3-A.20, 3-A.21, 3-A.22, 3-A.23, 3-A.24, 3-A.25, 23-A.26, 3-A.27, 3-A.28, 3-A.29, 3-A.30, 3-A.31.

*Subtotal: 31 stalls*

- 3-B.01, 3-B.02, 3-B.03, 3-B.04, 3-B.05, 3-B.06, 3-B.07, 3-B.08, 3-B.09, 3-B.10, 3-B.11, 3-B.12, 3-B.13, 3-B.14, 3-B.15, 3-B.16, 3-B.17, 3-B.18, 3-B.19, 3-B.20, 3-B.21, 3-B.22, 3-B.23, 3-B.24, 3-B.25, 3-B.26, 3-B.27, 3-B.28, 3-B.29, 23-B.30, 3-B.31.

*Subtotal: 31 stalls*

- 3-C.01, 3-C.02, 3-C.03, 3-C.04, 3-C.05, 3-C.06, 3-C.07, 3-C.08, 3-C.09, 3-C.10, 3-C.11, 3-C.12, 3-C.13, 3-C.14, 3-C.15, 3-C.16, 3-C.17, 3-C.18, 3-C.19, 3-C.20, 3-C.21, 3-C.22, 3-C.23, 3-C.24, 3-C.25, 3-C.26, 3-C.27, 3-C.28, 3-C.29, 3-C.30, 3-C.31.

*Subtotal: 31 stalls*

- 3-D.01, 3-D.02, 3-D.03, 3-D.04, 3-D.05, 3-D.06, 3-D.07, 3-D.08, 3-D.09, 3-D.10, 3-D.11, 3-D.12, 3-D.13, 3-D.14, 3-D.15, 3-D.16, 3-D.17, 3-D.18, 3-D.19, 3-D.20, 3-D.21, 3-D.22, 3-D.23, 3-D.24, 3-D.25, 3-D.26, 3-D.27, 3-D.28, 3-D.29, 3-D.30, 3-D.31.

*Subtotal: 31 stalls*

- 3-E.01, 3-E.02, 3-E.03, 3-E.04, 3-E.05, 3-E.06, 3-E.07, 3-E.08, 3-E.09, 3-E.10, 3-E.11, 3-E.12, 3-E.13, 3-E.14, 3-E.15, 3-E.16, 3-E.17, 3-E.18, 3-E.19, 3-E.20, 3-E.21, 3-E.22, 3-E.23, 3-E.24, 3-E.25, 3-E.26, 3-E.27, 3-E.28.

*Subtotal: 28 stalls*

- 3-F.01, 3-F.02, 3-F.03, 3-F.04, 3-F.05, 3-F.06, 3-F.07, 3-F.08, 3-F.09, 3-F.10, 3-F.11, 3-F.12, 3-F.13, 3-F.14, 3-F.15, 3-F.16, 3-F.17, 3-F.18, 3-F.19, 3-F.20, 3-F.21, 3-F.22.

*Subtotal: 22 stalls*

- 3-G.01, 3-G.02, 3-G.03, 3-G.04, 3-G.05, 3-G.06, 3-G.07, 3-G.08, 3-G.09, 3-G.10, 3-G.11, 3-G.12, 3-G.13, 3-G.14, 3-G.15, 3-G.16, 3-G.17, 3-G.18, 3-G.19, 3-G.20, 3-G.21, 3-G.22, 3-G.23, 23-G.24, 3-G.25, 3-G.26, 3-G.27, 3-G.28, 3-G.29, 3-G.30.

*Subtotal: 30 stalls*

- 3-H.01, 3-H.02, 3-H.03, 3-H.04, 3-H.05, 3-H.06, 3-H.07, 3-H.08, 3-H.09, 3-H.10, 3-H.11, 3-H.12, 3-H.13, 3-H.14, 3-H.15, 3-H.16, 3-H.17, 3-H.18, 3-H.19, 3-H.20, 3-H.21, 3-H.22, 3-H.23, 3-H.24, 3-H.25, 3-H.26, 3-H.27, 3-H.28, 3-H.29, 3-H.30.

*Subtotal: 30 stalls*

- 3-J.01, 3-J.02, 3-J.03, 3-J.04, 3-J.05, 3-J.06, 3-J.07, 23-J.08, 3-J.09, 3-J.10, 3-J.11, 3-J.12, 3-J.13, 3-J.14, 3-J.15.

*Subtotal: 15 stalls*



- 3-K.01, 3-K.02, 3-K.03, 3-K.04, 3-K.05, 3-K.06, 3-K.07, 3-K.08, 3-K.09, 3-K.10, 3-K.11, 3-K.12, 3-K.13, 3-K.14, 3-K.15, 3-K.16, 3-K.17, 3-K.18, 3-K.19, 3-K.20, 3-K.21.  
*Subtotal: 21 stalls*

*Total for Level 3: 270 stalls*

**Level 4:**

**Commercial Limited Common Elements:**

- 4-A.26, 4-A.27, 4-A.28, 4-A.29, 4-A.30, 4-A.31, 4-A.32  
*Subtotal: 7 stalls*
- 4-B.24, 4-B.25, 4-B.26  
*Subtotal: 3 stalls*
- 4-C.25, 4-C.26, 4-C.27, 4-C.28  
*Subtotal: 4 stalls*
- 4-D.25, 4-D.26, 4-D.27, 4-D.28, 4-D.29, 4-D.30  
*Subtotal: 6 stalls*
- 4-K.11, 4-K.12, 4-K.13, 4-K.14, 4-K.15, 4-K.16, 4-K.17, 4-K.18, 4-K.19  
*Subtotal: 9 stalls*

*Total for Level 4: 29 stalls*

**Residential Limited Common Elements:**

- 4-A.01, 4-A.02, 4-A.03, 4-A.04, 4-A.05, 4-A.06, 4-A.07, 4-A.08, 4-A.09, 4-A.10, 4-A.11, 4-A.12, 4-A.13, 4-A.14  
*Subtotal: 14 stalls*
- 4-B.01, 4-B.02, 4-B.03, 4-B.04, 4-B.05, 4-B.06, 4-B.07, 4-B.08, 4-B.09, 4-B.10, 4-B.11, 4-B.12.  
*Subtotal: 12 stalls*
- 4-C.01, 4-C.02, 4-C.03, 4-C.04, 4-C.05, 4-C.06, 4-C.07, 4-C.08, 4-C.09, 4-C.10, 4-C.11, 4-C.12, 4-C.13, 4-C.14, 4-C.15, 4-C.16, 4-C.17, 4-C.18, 4-C.19, 4-C.20, 4-C.21, 4-C.22, 4-C.23, 4-C.24.  
*Subtotal: 24 stalls*
- 4-D.01, 4-D.02, 4-D.03, 4-D.04, 4-D.05, 4-D.06, 4-D.07, 4-D.08, 4-D.09, 4-D.10, 4-D.11, 4-D.12, 4-D.13, 4-D.14, 4-D.15, 4-D.16, 4-D.17, 4-D.18, 4-D.19, 4-D.20, 4-D.21, 4-D.22, 4-D.23, 4-D.24.  
*Subtotal: 24 stalls*

- 4-E.01, 4-E.02, 4-E.03, 4-E.04, 4-E.05, 4-E.06, 4-E.07, 4-E.08, 4-E.09, 4-E.10, 4-E.11, 4-E.12, 4-E.13, 4-E.14, 4-E.15, 4-E.16, 4-E.17, 4-E.18, 4-E.19, 4-E.20, 4-E.21, 4-E.22, 4-E.23, 4-E.24, 4-E.25, 4-E.26, 4-E.27, 4-E.28.

*Subtotal: 28 stalls*

- 4-F.01, 4-F.02, 4-F.03, 4-F.04, 4-F.05, 4-F.06, 4-F.07, 4-F.08, 4-F.09, 4-F.10, 4-F.11, 4-F.12, 4-F.13, 4-F.14, 4-F.15, 4-F.16, 4-F.17, 4-F.18, 4-F.19, 4-F.20, 4-F.21, 4-F.22, 4-F.23.

*Subtotal: 23 stalls*

- 4-G.01, 4-G.02, 4-G.03, 4-G.04, 4-G.05, 4-G.06, 4-G.07, 4-G.08, 4-G.09, 4-G.10, 4-G.11, 4-G.12, 4-G.13, 4-G.14, 4-G.15, 4-G.16, 4-G.17, 4-G.18, 4-G.19, 4-G.20, 4-G.21, 4-G.22, 4-G.23, 4-G.24, 4-G.25, 4-G.26, 4-G.27, 4-G.28, 4-G.29, 4-G.30.

*Subtotal: 30 stalls*

- 4-H.01, 4-H.02, 4-H.03, 4-H.04, 4-H.05, 4-H.06, 4-H.07, 4-H.08, 4-H.09, 4-H.10, 4-H.11, 4-H.12, 4-H.13, 4-H.14, 4-H.15, 4-H.16, 4-H.17, 4-H.18, 4-H.19, 4-H.20, 4-H.21, 4-H.22, 4-H.23, 4-H.24, 4-H.25, 4-H.26, 4-H.27, 4-H.28, 4-H.29.

*Subtotal: 29 stalls*

- 4-J.01, 4-J.02, 4-J.03, 4-J.04, 4-J.05, 4-J.06, 4-J.07, 4-J.08, 4-J.09, 4-J.10, 4-J.11, 4-J.12, 4-J.13, 4-J.14, 4-J.15, 4-J.16, 4-J.17, 4-J.18, 4-J.19.

*Subtotal: 19 stalls*

- 4-K.01, 4-K.02, 4-K.03, 4-K.04, 4-K.05, 4-K.06, 4-K.07, 4-K.08, 4-K.09, 4-K.10.

*Subtotal: 10 stalls*

*Total for Level 4: 213 stalls*

**Residential Guest Parking:**

- 4-A.15, 4-A.16, 4-A.17, 4-A.18, 4-A.19, 4-A.20, 4-A.21, 4-A.22, 4-A.23, 4-A.24, 4-A.25.

*Subtotal: 11 stalls*

- 4-B.13, 4-B.14, 4-B.15, 4-B.16, 4-B.17, 4-B.18, 4-B.19, 4-B.20, 4-B.21, 4-B.22, 4-B.23.

*Subtotal: 11 stalls*

*Total for Level 4: 22 stalls*

**Level 5:**

**Residential Limited Common Elements:**

- 5-A.01, 5-A.02, 5-A.03, 5-A.04, 5-A.05, 5-A.06, 5-A.07, 5-A.08, 5-A.09, 5-A.10, 5-A.11, 5-A.12, 5-A.13, 5-A.14, 5-A.15, 5-A.16, 5-A.17, 5-A.18, 5-A.19, 5-A.20, 5-A.21, 5-A.22, 5-A.23, 5-A.24, 5-A.25, 5-A.26, 5-A.27, 5-A.28, 5-A.29, 5-A.30, 5-A.31, 5-A.32, 5-A.33, 5-A.34, 5-A.35.

*Subtotal: 35 stalls*

- 5-B.01, 5-B.02, 5-B.03, 5-B.04, 5-B.05, 5-B.06, 5-B.07, 5-B.08, 5-B.09, 5-B.10, 5-B.11, 5-B.12, 5-B.13, 5-B.14, 5-B.15, 5-B.16, 5-B.17, 5-B.18, 5-B.19, 5-B.20, 5-B.21, 5-B.22, 5-B.23, 5-B.24, 5-B.25, 5-B.26, 5-B.27, 5-B.28, 5-B.29, 5-B.30, 5-B.31.  
*Subtotal: 31 stalls*
- 5-C.01, 5-C.02, 5-A.03, 5-A.04, 5-A.05, 5-A.06, 5-A.07.  
*Subtotal: 7 stalls*
- 5-D.01, 5-D.02, 5-D.03, 5-D.04, 5-D.05, 5-D.06, 5-D.07.  
*Subtotal: 7 stalls*
- 5-E.01, 5-E.02, 5-E.03, 5-E.04, 5-E.05, 5-E.06, 5-E.07, 5-E.08, 5-E.09, 5-E.10, 5-E.11, 5-E.12, 5-E.13, 5-E.14, 5-E.15, 5-E.16, 5-E.17, 5-E.18, 5-E.19, 5-E.20, 5-E.21, 5-E.22, 5-E.23, 5-E.24, 5-E.25, 5-E.26, 5-E.27, 5-E.28, 5-E.29.  
*Subtotal: 29 stalls*
- 5-F.01, 5-F.02, 5-F.03, 5-F.04, 5-F.05, 5-F.06, 5-F.07, 5-F.08, 5-F.09, 5-F.10, 5-F.11, 5-F.12, 5-F.13, 5-F.14, 5-F.15, 5-F.16, 5-F.17, 5-F.18, 5-F.19, 5-F.20, 5-F.21, 5-F.22, 5-F.23.  
*Subtotal: 23 stalls*
- 5-G.01, 5-G.02, 5-G.03, 5-G.04, 5-G.05, 5-G.06, 5-G.07, 5-G.08, 5-G.09, 5-G.10, 5-G.11, 5-G.12, 5-G.13, 5-G.14, 5-G.15, 5-G.16, 5-G.17, 5-G.18, 5-G.19, 5-G.20, 5-G.21, 5-G.22, 5-G.23, 5-G.24, 5-G.25, 5-G.26, 5-G.27, 5-G.28, 5-G.29, 5-G.30.  
*Subtotal: 30 stalls*
- 5-H.01, 5-H.02, 5-H.03, 5-H.04, 5-H.05, 5-H.06, 5-H.07, 5-H.08, 5-H.09, 5-H.10, 5-H.11, 5-H.12, 5-H.13, 5-H.14, 5-H.15, 5-H.16, 5-H.17, 5-H.18, 5-H.19, 5-H.20, 5-H.21, 5-H.22, 5-H.23, 5-H.24, 5-H.25, 5-H.26, 5-H.27, 5-H.28, 5-H.29.  
*Subtotal: 29 stalls*
- 5-J.01, 5-J.02, 5-J.03, 5-J.04, 5-J.05, 5-J.06, 5-J.07, 5-J.08, 5-J.09, 5-J.10, 5-J.11, 5-J.12, 5-J.13, 5-J.14, 5-J.15, 5-J.16, 5-J.17, 5-J.18, 5-J.19, 5-J.20, 5-J.21.  
*Subtotal: 21 stalls*
- 5-K.01, 5-K.02, 5-K.03, 5-K.04, 5-K.05, 5-K.06, 5-K.07, 5-K.08, 5-K.09, 5-K.10, 5-K.11, 5-K.12, 5-K.13, 5-K.14, 5-K.15, 5-K.16, 5-K.17, 5-K.18, 5-K.19, 5-K.20, 5-K.21.  
*Subtotal: 21 stalls*

*Total for Level 5: 233 stalls*

[END OF EXHIBIT C]

**EXHIBIT D**

**TABLE OF SPECIAL COSTS AND ALTERNATIVE ALLOCATIONS**

<b>Special Cost Item</b>	<b>Alternative Allocation</b>
<p>Premiums and deductibles for insurance policies obtained by the Association Pursuant to Section 14.2 and costs of Insurance Trustee pursuant to Section 15.4.F but only to the extent the premiums for such insurance are not specifically in the Policy attributed to and based upon the value of the Retail Parking Structure.</p> <p>Premiums and deductibles for insurance policies obtained by the Association Pursuant to Section 14.1 which are not allocated elsewhere in this Exhibit D.</p> <p>General Common Expenses incurred in connection with the General Common Elements listed in Section 5.2.1.A, D, and E of the Declaration.</p>	<p>4.6% of such Special Costs to be paid by Commercial Unit Owners based upon their respective Commercial Class Common Interest and 95.4% of such Special Costs to be paid by Residential Unit Owners based upon their respective Residential Class Common Interest. (This allocation is based upon the square footage of the Commercial Units and the anticipated square footage of the Residential Units and may be recalculated by the mutual consent of the Commercial Developer and Residential Developer based upon the actual square footage of the Residential Units constructed or to be constructed.)</p>
<p>General Common Expenses incurred in connection with the General Common Elements listed in Section 5.2.1.F of the Declaration.</p>	<p>Pro rata based upon the square footage of the affected units.</p>
<p>General Common Expenses in connection with the General Common Elements listed in Section 5.2.1.B and C of the Declaration.</p> <p>Common Expenses in connection with the street level and the Retail Parking Structure which are not segregated as set forth in Section 12.2.3.</p> <p>Janitorial services and the cost of electricity furnished to the street level areas and parking areas as set forth in Section 12.2.2.</p> <p>Premiums and deductibles for insurance policies obtained by the Association Pursuant to Section 14.2 and costs of Insurance Trustee pursuant to Section 15.4.F but only to the extent the premiums for such insurance are specifically in the Policy attributed to and based upon the value of the Retail Parking Structure.</p>	<p>63% of such Special Costs to be paid by Commercial Unit Owners based upon their relative Commercial Class Common Interest.</p> <p>37% of such Special Costs to be paid by Residential Unit Owners based upon their relative Residential Class Common Interest.</p>
<p>Common Expenses, if any, incurred other than in connection with the street level and the Retail Parking Structure, incurred by the Association which are not segregated as set forth in Section 12.2.3 and other than as allocated elsewhere in this Exhibit D.</p>	<p>By agreement of the Board or by an arbitrator as provided in 12.2.3.</p>
<p>Expenses incurred for fees of Managing Agent after termination of Developer Control Period pursuant to</p>	<p>1% to be paid by Commercial Unit Owners based upon their respective Commercial Class Common Interest</p>

<p>Section 7.2.A of the Bylaws.</p>	<p>and 99% to be paid by Residential Unit Owners based upon their respective Residential Class Common Interest. (This allocation is based upon the number of Commercial Units and anticipated number of Residential Units and may be recalculated by the mutual consent of the Commercial Developer and Residential Developer based upon the actual number of Residential Units constructed or to be constructed.)</p>
<p>Common Expenses incurred in connection with Sewer Upgrade Easement</p>	<p>1.8% of such Special Costs to be paid by Commercial Unit Owners based upon their respective Commercial Class Common Interest and 98.2% of such Special Costs to be paid by Residential Unit Owners based upon their respective Residential Class Common Interest. (See Section 7.16.2 for basis of allocation).</p>
<p>Water Usage if Commercial Units and Commercial Limited Common Elements are not separately metered from the Residential Units and Residential Limited Common Elements pursuant to Section 12.2.3 of the Declaration.</p>	<p>1.8% of such Special Costs to be paid by Commercial Unit Owners based upon their respective Commercial Class Common Interest and 98.2% of such Special Costs to be paid by Residential Unit Owners based upon their respective Residential Class Common Interest.</p>

**PROMISSORY NOTE**

\$35,058,042

New York, New York  
November [\_\_], 2010

WHEREAS, Rouse-Phoenix Corporate Center Limited Partnership, a Maryland limited partnership (“Landlord”) is a subsidiary of GGP Limited Partnership, a Delaware limited partnership (“Maker”).

WHEREAS, Landlord is a party to that certain Lease Agreement, dated May 15, 1987, between Landlord and Arizona Public Service Company (“Tenant”), as amended by that certain (i) Lease Amendment, dated October 1, 1987, (ii) Second Lease Amendment, dated May 10, 1988, (iii) Third Lease Amendment, dated April 5, 1989, (iv) Fourth Lease Amendment, dated February 9, 1990, (v) Fifth Lease Amendment, dated September 17, 1990, (vi) Sixth Lease Amendment, dated December 31, 1991, (vii) Seventh Lease Amendment, dated May 10, 1993, (viii) Eighth Lease Amendment, dated December 15, 1993 and (ix) Ninth Lease Amendment, dated May 1, 2008 (collectively, the “Capital Lease,” and all amounts due to Landlord pursuant to Article 7 of the Capital Lease are herein referred to as the “Capital Lease Payments”).

WHEREAS, pursuant to the Separation Agreement (as hereinafter defined), Maker has agreed to make payments approximating the Capital Lease Payments to The Rouse Company LLC, a Delaware limited liability company (the holder of this Note from time to time, or any portion hereof, is hereinafter referred to as the “Holder”), and such payments are listed on Schedule A hereto and are not contingent on the Tenant’s performance of its obligations under the Capital Lease.

NOW, THEREFORE, FOR VALUE RECEIVED, Maker promises to pay to the order of Holder or its designee pursuant to such wiring instruction as the Holder may from time to time designate in writing, all amounts that are listed on Schedule A hereto on such corresponding dates as are listed on Schedule A hereto (each such payment, an “Installment Payment”), provided that Maker shall only be required to make each Installment Payment in one installment and to one payee, as notified in writing by the Holder or Holders. The obligations of this Promissory Note (this “Note”) shall arise as of the date hereof and expire (subject to payment of all amounts payable hereunder) on December 31, 2015. The amounts payable pursuant to this Promissory Note shall be in the aggregate sum of THIRTY FIVE MILLION FIFTY EIGHT THOUSAND FORTY TWO AND 00/100 DOLLARS (\$35,058,042.00), and shall be payable in accordance with Schedule A hereto. Capitalized terms used herein but not otherwise defined herein shall have the meanings assigned to such terms in the Separation Agreement (as hereinafter defined).

This Note is the “Arizona 2 Promissory Note” referred to in that certain Separation Agreement, dated as of the date hereof, between General Growth Properties, Inc. and [Spinco, Inc.] (as amended, modified or supplemented and in effect from time to time, the “Separation Agreement”). Reference to the Separation Agreement is hereby made for the

purposes set forth herein, but neither this reference to the Separation Agreement nor any provision thereof shall affect or impair the absolute and unconditional obligation of the Maker to pay the principal, interest and other amounts payable with respect to this Note when due.

Failure by the Maker to pay any sum as due pursuant to this Note for a period of fifteen (15) days (the "Cure Period") after Maker's receipt of written notice that such amounts are past due (each, a "Delinquency Notice") shall constitute a default under this Note. Upon the occurrence of a default, at the option of the Holder, the entire unpaid balance of this Note, discounted at the time of payment by the yield for non-callable U.S. Treasuries plus 50 basis points, with a maturity date most nearly approximating December 31, 2015, as quoted by Bloomberg Financial Markets at the time of such payment, together with all interest accrued thereon, and all other amounts evidenced or secured by this Note, shall become immediately due and payable if all amounts owed are not paid following fifteen (15) days prior written notice of acceleration (an "Acceleration Notice"), which Acceleration Notice must (a) be preceded by Maker having failed to pay all amounts during the Cure Period after Maker's receipt of a Delinquency Notice and (b) specify in bold uppercase letters that the failure to pay all amounts outstanding within fifteen (15) days shall result in an acceleration pursuant to the terms of this Note. Furthermore, following the occurrence of a default, the Maker shall pay interest on all outstanding amounts and all other amounts remaining unpaid or thereafter accruing under this Note, at a rate equal to the lesser of ten percent (10 %) or the maximum rate permitted by applicable Law until paid. Following the occurrence of a default, the Maker also shall pay upon demand all reasonable costs and expenses incurred by the Holder in connection with the collection of any sum payable under this Note, or in the exercise by the Holder of any of its rights, remedies or powers under this Note, at law or in equity. From and after acceleration of this Note as provided above, each payment made under this Note shall be applied to pay the amounts due hereunder, in such order as the Holder may elect from time to time in its sole discretion. Prior to acceleration, each payment under this note shall be paid first to outstanding interest, next to outstanding principal and thereafter to other amounts due and payable to Holder pursuant to the terms of this Note.

With respect to the amounts due and payable pursuant to this Note, the Maker waives the following: demand, presentment, protest, notice of dishonor, notice of nonpayment, notice of suit against any party, diligence in collection of this Note, except for notices required by any Governmental Authority and notices required by the Separation Agreement.

The Holder shall have the right from time to time at its discretion to make an assignment of or sell a participation in this Note.

All rights and remedies of the Holder under the terms of this Note and applicable statutes or rules of law or equity shall be cumulative, and may be exercised successively or concurrently. The Maker agrees that there are no defenses, equities or setoffs with respect to the obligations set forth herein. The Holder shall not be deemed to have modified or waived any of its rights or remedies under this Note, unless such modification or waiver is in writing and signed by the Holder, and then only to the extent explicitly set forth in such writing.

Wherever possible, each provision of this Note shall be interpreted in such manner as to be effective and valid under applicable Law, but if any provision of this Note shall

be prohibited by or invalid under applicable Law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Note.

This Note was negotiated in New York, and made by the Maker and accepted by the Holder in the State of New York, which State the parties agree has a substantial relationship to the parties and to the underlying transaction embodied hereby, and in all respects (including, without limitation, matters of construction, validity and performance), this Note and the obligations arising hereunder shall be governed by, and construed in accordance with, the laws of the State of New York applicable to contracts made and performed in such State and any applicable law of the United States of America.

Time is of the essence of each and every provision of this Note of which time is an element.

ANY LEGAL SUIT, ACTION OR PROCEEDING AGAINST THE HOLDER OR THE MAKER ARISING OUT OF OR RELATING TO THIS NOTE SHALL BE INSTITUTED IN ANY FEDERAL OR STATE COURT IN NEW YORK, NEW YORK. THE MAKER, AND BY ACCEPTANCE OF THIS NOTE, THE HOLDER, HEREBY (i) IRREVOCABLY WAIVE, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY SUCH SUIT, ACTION OR PROCEEDING BROUGHT IN SUCH A COURT AND ANY CLAIM THAT ANY SUCH PROCEEDING BROUGHT IN SUCH A COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM, AND (ii) IRREVOCABLY SUBMIT TO THE JURISDICTION OF ANY SUCH COURT IN ANY SUIT, ACTION OR PROCEEDING.

THE MAKER AND, BY ACCEPTANCE HEREOF, THE HOLDER, TO THE FULLEST EXTENT THAT EACH MAY LAWFULLY DO SO, WAIVE TRIAL BY JURY IN ANY ACTION OR PROCEEDING (INCLUDING, WITHOUT LIMITATION, ANY TORT ACTION), BROUGHT BY EITHER PARTY HERETO WITH RESPECT TO THIS NOTE.

Except as otherwise provided herein, the provisions of this Note shall be subject to the provisions of the Separation Agreement, the provisions of which are incorporated herein by this reference as if fully set forth herein.

[Signature page follows]



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

**MAKER:**

GGP Limited Partnership, a Delaware limited partnership

By: \_\_\_\_\_

Name:

Title:

**Schedule A**

<b><u>Payment Date</u></b>	<b><u>Payment Amount</u></b>
12/1/2010	\$574,722
1/1/2011	\$574,722
2/1/2011	\$574,722
3/1/2011	\$574,722
4/1/2011	\$574,722
5/1/2011	\$574,722
6/1/2011	\$574,722
7/1/2011	\$574,722
8/1/2011	\$574,722
9/1/2011	\$574,722
10/1/2011	\$574,722
11/1/2011	\$574,722
12/1/2011	\$574,722
1/1/2012	\$574,722
2/1/2012	\$574,722
3/1/2012	\$574,722
4/1/2012	\$574,722
5/1/2012	\$574,722
6/1/2012	\$574,722
7/1/2012	\$574,722
8/1/2012	\$574,722
9/1/2012	\$574,722
10/1/2012	\$574,722
11/1/2012	\$574,722
12/1/2012	\$574,722
1/1/2013	\$574,722
2/1/2013	\$574,722
3/1/2013	\$574,722
4/1/2013	\$574,722
5/1/2013	\$574,722
6/1/2013	\$574,722
7/1/2013	\$574,722
8/1/2013	\$574,722
9/1/2013	\$574,722
10/1/2013	\$574,722
11/1/2013	\$574,722
12/1/2013	\$574,722
1/1/2014	\$574,722
2/1/2014	\$574,722
3/1/2014	\$574,722
4/1/2014	\$574,722
5/1/2014	\$574,722
6/1/2014	\$574,722
7/1/2014	\$574,722

8/1/2014	\$574,722
9/1/2014	\$574,722
10/1/2014	\$574,722
11/1/2014	\$574,722
12/1/2014	\$574,722
1/1/2015	\$574,722
2/1/2015	\$574,722
3/1/2015	\$574,722
4/1/2015	\$574,722
5/1/2015	\$574,722
6/1/2015	\$574,722
7/1/2015	\$574,722
8/1/2015	\$574,722
9/1/2015	\$574,722
10/1/2015	\$574,722
11/1/2015	\$574,722
12/1/2015	\$574,722
TOTAL	\$35,058,042

**ALLONGE TO ARIZONA 2 PROMISSORY NOTE**

This Allonge is attached to and made a part of that certain Promissory Note, dated as of November \_\_, 2010, in the original principal amount of THIRTY FIVE MILLION AND FIFTY-EIGHT THOUSAND AND FORTY-TWO AND 00/100 DOLLARS (\$35,058,042), executed by **GGP LIMITED PARTNERSHIP**, a Delaware limited partnership, to **THE ROUSE COMPANY LLC**, a Delaware limited liability company.

Pay to the order of **THE HUGHES CORPORATION**, a Delaware corporation, without recourse or warranty.

Dated as of November \_\_, 2010.

**THE ROUSE COMPANY LLC**,  
a Delaware limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**DEVELOPMENT AGREEMENT AND MEMORANDUM OF INTENT  
RELATING TO THE CORE DEVELOPMENT AREA OF  
COLUMBIA TOWN CENTER**

THIS DEVELOPMENT AGREEMENT AND MEMORANDUM OF INTENT RELATING TO THE CORE DEVELOPMENT AREA OF COLUMBIA TOWN CENTER (this "Agreement") is made as of the \_\_\_\_\_ day of \_\_\_\_\_, 2010. This Agreement sets forth certain key terms and conditions for the proposed future development of the Columbia Town Center Core Development Area (as defined below) by General Growth Properties, Inc. ("GGP"), Spinco, Inc. ("Spinco") and their respective subsidiaries, successors and assigns.

I. Statement of Background and Purpose.

GGP is a debtor under the United States Bankruptcy Code (the "Bankruptcy Code"). Under an Order Pursuant to Sections 105(a) and 363 of the Bankruptcy Code (A) Approving Bidding Procedures, (B) Authorizing the Debtors to Enter into Certain Agreements, (C) Approving Issuance of Warrants, and (D) Granting Related Relief, dated May 7, 2010, Docket No. 5145 (the "Bidding Procedures Motion"), GGP entered into certain Investment Agreements and created a separate entity called Spinco. GGP proposes to transfer certain assets, both through entity transfers and property transfers, to Spinco. Pursuant to the Bidding Procedures Motion, GGP has filed a disclosure statement with the Bankruptcy Court that describes the allocation of particular assets between GGP and Spinco.

GGP, through various wholly-owned affiliates, owns real property in Howard County, Maryland, including The Mall in Columbia and adjacent parcels in Town Center. In furtherance of the Bidding Procedures Motion, GGP proposes to allocate the parcels of land within the area of Town Center shown on the attached Exhibit A-1, and known herein as the "Core Development Area." The Core Development Area generally is bounded (clockwise from the intersection of Little Patuxent Parkway and Governor Warfield Parkway) by Little Patuxent Parkway, Broken Land Parkway, the Mall ring road, a Mall entrance road (Lot 41), and Governor Warfield Parkway.

Land owned by GGP within the Core Development Area shall be allocated between GGP and Spinco as set forth on Exhibit B attached hereto and made a part hereof. The allocation was determined pursuant to the Bidding Procedures Motion, a desire to enable Spinco to control assets "with the potential for significant long-term value", and the acknowledgement that certain property was encumbered by an existing Indemnity Deed of Trust and various documents with anchor department stores that bind GGP and its affiliates. GGP shall cause Spinco to hold directly and indirectly the following entities relating to the Core Development Area: The Howard Research And Development Corporation ("HRD"), Parcel C Business Trust, and Parcel D Business Trust. GGP also shall transfer all other land owned by it or its affiliates within the NT District (hereinafter defined) to Spinco, primarily through entity transfers, other than

Benson Business Park (TGI Fridays – Parcel D) and Running Brook 7-Eleven (Lot 80, VWL).

Land within the Core Development Area, whether owned by GGP, to be owned by Spinco, or owned by unrelated third parties, is subject to a Development Area Declaration and Agreement dated December 1, 1970, as amended to date (the “DADA”) and a Loop Declaration and Agreement dated December 1, 1970, as amended to date (the “LADA”), both of which are recorded in the Land Records of Howard County, Maryland, and the property encumbered by which is shown on Exhibit A-2 attached hereto and made a part hereof.

Land within the Core Development Area, whether owned by GGP, to be owned by Spinco, or owned by unrelated third parties, is part of the New Town (“NT”) District zoning classification of Howard County, and is subject to the Howard County Zoning Regulations that establish submission requirements and the review process for any development in Town Center. The Zoning Regulations specifically require that any development in Town Center be consistent with a Downtown Columbia Plan (the “Plan”) that, among other things, (i) establishes neighborhoods and neighborhood development requirements, shown graphically on Exhibit C attached hereto, (ii) requires that GGP, as the principal property owner within the NT District, provide certain Downtown Community Enhancements, Programs and Public Amenities (“CEPPAs”) as set out on Exhibit D attached hereto, (iii) contemplates development as shown on Exhibit E attached hereto, (iv) contemplates roadway improvements as shown on Exhibit F attached hereto, and (v) limits heights as shown on Exhibit H attached hereto..

GGP has considered various issues relating to the potential development of the Core Development Area that arise out of the allocation of assets between GGP and Spinco.

## II. Discussion of Issues.

A. Right of First Offer and Option to Purchase. GGP, through its applicable affiliates, promptly following the formation of Spinco, for no further consideration payable by Spinco, shall grant to Spinco, or its designated affiliate, a right of first offer (“ROFO”) and option to purchase (“Purchase Option”) on each and every of the parcels of land and improvements listed on Exhibit G attached hereto (the “ROFO and Option Property”). The ROFO and Purchase Option shall be exercisable from time to time either on individual parcels or on any combination of aggregate and individual parcels, and shall be subject to any mortgages existing on the date this Agreement is executed other than those mortgages delivered in connection with the debtor-in-possession financing obtained by GGP (as indicated on Exhibit A-1 hereto), and shall be exercisable only if no uncured default has occurred under any such mortgage at the time of the exercise. The ROFO and Option may be exercised, at the agreement of the parties, either by a deed or transfer of the ownership interests of the entity owning the property if such entity owns no property other than that to be transferred. The ROFO shall be in effect for a period of five (5) years beginning on the date of grant (the “ROFO Period”). The Purchase Option

shall be in effect immediately after the expiration of the ROFO Period and shall continue for a period of six (6) months thereafter (the "Purchase Option Period").

The ROFO shall be exclusive and irrevocable and shall obligate the property owner, and its successors and assigns, to offer the ROFO and Option Property for sale to Spinco prior to listing all or any of it with a real estate broker or otherwise holding the ROFO and Option Property out for sale to the general public or to any other buyer(s) other than an entity owned or controlled by GGP or Spinco. The first time that the property owner proposes to offer all or any of the ROFO and Option Property for sale, or if during the ROFO Period the owner shall have received an offer to purchase any or all of the ROFO and Option Property, the owner shall furnish Spinco with a written notice (the "First Offer Proposal") containing the material terms of the proposed sale, including without limitation the purchase price for each applicable portion of the ROFO and Option Property (the "Offer Price"). Spinco, or its designee, thereafter shall be entitled to receive customary diligence materials with respect to the specified ROFO and Option Property that is to be sold promptly upon request for the same. Spinco shall thereafter have the right and privilege, but not the obligation, exercisable by written notice delivered to the owner within thirty (30) days after Spinco's receipt of the First Offer Proposal (the "Election Period"), to elect to purchase the ROFO and Option Property at issue at the applicable Offer Price and on the terms and conditions contained in the First Offer Proposal. In the event that Spinco or its designee timely exercises its election, then promptly thereafter the parties shall enter into a purchase and sale agreement containing the material terms and conditions contained in the First Offer Proposal; provided, however, that closing shall occur no later than 90 days after the date of the notice of such exercise. In the event Spinco fails to exercise its election as provided above then GGP shall have the right and privilege, for a period of 270 days after the expiration of the Election Period to consummate the sale or conveyance of the ROFO and Option Property at issue without regard to the restrictions contained in this paragraph and at not less than 98% of the Offer Price and on such other material terms and conditions as set forth in the First Offer Proposal (the earlier to occur of (a) the expiration of such 270-day period or (b) the ROFO Period shall be referred to herein as the "Marketing Period"). If the owner shall not so consummate the sale or conveyance of the property at issue within the Marketing Period, or if owner shall so sell or convey a particular ROFO and Option Property within the Marketing Period leaving the remainder of the ROFO and Option Property owned by GGP and its affiliates, and the owner thereafter during the ROFO Period decides to offer that property or any or all of the remaining ROFO and Option Property for sale or receives an offer to purchase it or them, then owner again shall be obligated to offer it or them to Spinco as set forth in the paragraph below.

In the event that Spinco or its designee has not exercised its ROFO and thereafter during the ROFO Period owner intends or desires to accept an offer to purchase the ROFO and Option Property at issue at a purchase price less than 98% of the Offer Price, GGP, its successors and assigns, shall promptly deliver to Spinco a written notice and a true, correct and complete copy of such offer (the "Second Offer Notice"). Spinco, or its designee, thereafter shall have the right and privilege, but not the obligation, to purchase the ROFO and Option Property at issue at the price and on the terms and conditions

contained in the Second Offer Notice (the “Second Right of Offer”). The Second Right of Offer is to be exercised by Spinco or its designee by providing to owner written notice of Spinco’s election to exercise within fifteen (15) days after Spinco’s receipt of the Second Offer Notice. In the event Spinco or its designee fails to exercise its Second Right of Offer as provided herein then the property owner shall have the right and privilege to proceed with the sale or conveyance of the property at issue pursuant to the Second Offer Notice.

Spinco, or its designated affiliate, may exercise the Purchase Option within the Purchase Option Period upon written notice to GGP, which notice shall specify the property to be acquired, the purchase price, the method of transfer (whether by special warranty deed or transfer of ownership of the entity if such entity owns no property other than that to be transferred), and shall be subject only to customary closing conditions such as a due diligence period not to exceed ninety (90) days (with an option to terminate within such period in favor of Spinco, provided that exercise of such termination option shall extinguish Spinco’s Purchase Option with respect to such property), title and survey, customary representations and warranties of seller, including environmental representations and warranties, with recordation and transfer taxes to be evenly divided between seller and purchaser, shall not require an earnest money or escrow deposit, shall not include a financing contingency, and closing shall occur within thirty (30) days following the expiration of the due diligence period. Upon receipt of the notice, GGP shall be obligated to reply in writing for receipt by Spinco within ten (10) business days, either to accept the offer, reject the offer, or to propose a counteroffer. Failure to reply within ten (10) business days shall be deemed acceptance. If GGP rejects the offer or proposes a counteroffer that Spinco does not accept, then GGP and Spinco each within ten (10) business days shall select a professional real estate appraiser with knowledge and experience in the Howard County, Maryland office market. Both appraisers shall submit a written appraisal of the value of the property at issue (based on the current use of the property in question) on an “as-is, where-is” basis within thirty (30) business days. If the two appraisals shall not arrive at the same value of the property, then the two appraisers shall within ten (10) business days select a third professional real estate appraiser with knowledge and experience in the Howard County, Maryland office market and with whom neither party has a prior business relationship (the “Third Appraiser”). Within ten (10) business days the Third Appraiser shall select one of the two appraisals as the final purchase price, as in “baseball” arbitration, with no ability to deviate from the chosen appraisal. If Spinco or an affiliate properly exercises the Purchase Option within the Purchase Option Period, closing may occur after the lapse of the Purchase Option Period. If GGP receives an offer for any ROFO and Option Property during the Purchase Option Period, GGP within ten (10) business days of receipt shall tender that offer to Spinco and Spinco shall have the rights set forth above under the ROFO provisions regarding that offer.

The ROFO and Purchase Option as to any particular ROFO and Option Property may be assigned to HRD or to any entity directly or indirectly majority owned or managed by Spinco.



During the ROFO Period and the Purchase Option Period, GGP shall, and shall cause its applicable affiliates that own the ROFO and Option Property (the “ROFO Property Owners”) to, in addition to the general development agreements set forth below, (i) allow Spinco adequate time and detail to review and comment in good faith upon any Final Development Plan relating to the ROFO and Option Property, (ii) not enlarge any buildings or parking decks on, or change any existing use of, or adversely encumber any ROFO and Option Property without HRD’s prior written approval, such approval not to be unreasonably withheld or delayed, and (iii) insure and maintain the ROFO and Option Property in a manner consistent with the then-current market standard levels. GGP shall be permitted to obtain financing secured by any ROFO and Option Property (or interests in the owner entity) but not for any more than an aggregate of 75% of the value of any particular property as determined by an independent third party institutional lender. In the event that any ROFO and Option Property becomes subject to a mortgage pursuant to a loan encumbering more than one property, the loan-to-value determination contemplated by the preceding sentence shall take into account the value of the entire collateral pool securing such loan. Notwithstanding the foregoing, GGP shall not procure such financing unless it is subordinated to the ROFO and Purchase Option. It is the agreement of the parties that any property conveyed to Spinco pursuant to the Purchase Option will be free of mortgage liens unless otherwise agreed to by all parties at the time of exercise of the Purchase Option.

Upon transfer of Parcel C and Parcel D (or interests in the owner entities thereof) to Spinco, GGP (together with applicable affiliates) and Spinco shall execute and deliver a Memorandum of the ROFO and the Purchase Option containing the provisions set forth herein, which Memorandum shall be recorded in the land records of Howard County, Maryland, at Spinco’s option and expense; provided, however, that with respect to any parcels that are encumbered by existing mortgage indebtedness as of the date hereof, no document will be recorded until the satisfaction of such mortgage indebtedness, and such indebtedness may be refinanced and extended on commercially reasonable terms not to exceed three (3) additional years.

B. Development Cooperation. GGP and Spinco agree that they and their affiliates shall cooperate in good faith and in a commercially reasonable manner:

1. To acknowledge and assign to HRD the role of Community Developer under the Plan, including, without limitation, architectural or declarant rights held by GGP or its affiliates over property owned by Spinco or its affiliates (and Spinco shall acknowledge and assign similar rights it holds over property owned by GGP or its affiliates). HRD shall have the responsibility to pay for and perform the obligations of Community Developer under the Plan to the extent obligated by the Plan. Spinco shall indemnify, hold harmless and defend GGP from and against any claims made against GGP by any third parties arising out of failure to perform the Community Developer role from and after the date of the assignment. All claims arising out of HRD’s failure to perform the Community Developer role before the date of the assignment shall be allocated pursuant to the Cornerstone Investment Agreement and the Separation Agreement provisions regarding the same. GGP acknowledges and agrees that Spinco shall be entitled to collect

from all third party owners within the NT District, including GGP and its affiliates within the Core Development Area, amounts to recover Spinco's costs and expenses relating to the activities of the Community Developer and the CEPPAs under the Plan. Except for property currently owned by a governmental or community association entity, HRD anticipates that it would bill each property owner desiring to develop its property within the NT District a two part fee: first a per square foot proportionate allocation of the CEPPA costs plus a second fee to recoup land development costs incurred by HRD relating to Town-wide development costs not included in the CEPPA costs above and relating to a particular portion of the master planned development, which fees would be determined at the time of the submittal of the final development plan of the property owner, but only payable by GGP at the time the plans for the development were approved by Howard County, Maryland. GGP, for itself and on behalf of the GGP Mall Property Owners (hereinafter defined) covenants and agrees that it and they will condition any approval rights over expansion or alteration rights that do not exist on the date hereof of third parties within the Core Development Area upon payment by the third party of the fees set forth herein and cooperation by the third party with the Neighborhood development plan set forth below ;

2. With each other's development in the shared Neighborhoods of The Lakefront, Symphony Overlook, and Warfield as anticipated by the sketch plans shown on Exhibits E and F attached hereto. Such cooperation in good faith shall include, but not be limited to, joining in applications, submissions, legislation, design manual changes, and changes in the overall design concept that are consistent with the implementation of the Plan, or that are not detrimental to the overall design concept of the Plan. Specifically, GGP shall cooperate reasonably with HRD in the submission of (i) the amendment to the adequate public facilities ordinance, (ii) the amendment to the design manual for Town Center specific regulations, (iii) Downtown-wide design guidelines, (iv) requirements for Art in the Community, (v) the housing trust fund, (vi) Neighborhood design guidelines, (vii) Neighborhood Concept Plans, (viii) transit studies, (ix) preservation, and (x) studies and sustainability program. Costs of Spinco and HRD for items (i) through (x) shall be included in the CEPPA costs set forth in B.1. above. Costs of GGP for items (i) through (x) shall be GGP's responsibility. At the time of a proposed development that triggers a Neighborhood plan, Spinco and GGP hereby covenant mutually to prepare a Neighborhood plan that identifies the density, infrastructure, sewer, utilities and other development factors and HRD will provide written representations and warranties to GGP regarding the availability and completeness of each such item;

3. With each other to grant easements for access, construction, utilities, storm water management facilities, road improvements, pedestrian/bicycle improvements, and the relocation of existing facilities and similar matters consistent with development under the Plan, such grants to have commercially reasonable insurance (including self-insurance) and indemnification provisions customary within the industry;

4. With each other to obtain tax increment financing for transportation and parking facilities within the Core Development Area to implement the Plan;

5. With each other to implement new parking arrangements and construction phasing of development within the Core Development Area to implement the Plan, including limiting of work during peak business and retail sale periods and limiting interference with tenants and occupants of The Mall in Columbia;
6. With each other in the modification, relocation or improvement of the pedestrian bridge over Little Patuxent Parkway to Lot 48; and
7. With each other in the enforcement of covenants burdening third-party owned property.
8. Without limiting the generality of the foregoing, GGP and Spinco, for themselves and their affiliates and successors and assigns, agree that they shall not contest or otherwise oppose any development by the other party, and its successors and assigns, that is consistent with the Plan.

C. DADA and LADA. GGP and its affiliates, including but not limited to, the Owner of the Mall Parcel (as defined in the DADA and LADA), shall not amend either the DADA or the LADA to materially adversely affect the rights of Spinco or HRD, either in its capacity as current owner of property subject to the DADA and LADA, or as potential owner under the ROFO, Purchase Option and/or development rights discussed in Paragraph II.D., without the prior written consent of HRD, such consent not to be unreasonably withheld or delayed.

D. Grant of and Recordation of Development Rights and Covenants. GGP and Spinco acknowledge and agree that certain property within the Core Development Area owned by The Mall in Columbia Business Trust, CM Theatre Business Trust, CM-N Business Trust, CM-H Business Trust, Mall Entrances Business Trust, Lot 48 Business Trust, Lot 49 Business Trust and Columbia Land Holdings, Inc. (collectively, the “GGP Mall Property Owners”) is subject to mortgage liens, and such property is identified on Exhibit A-1 hereto as the “Mall Development Area.” GGP covenants and agrees, on its behalf and on behalf of its wholly-owned GGP Mall Property Owners that for a period of the lesser of (i) twenty (20) years from the date of grant, which shall be the date of the Separation Agreement, or (ii) until such time as HRD abandons in writing its role as Community Developer under the Plan and such role is not assumed in writing by an affiliate of HRD or Spinco, that if any of GGP or any of the GGP Mall Property Owners desire to develop any of their respective properties within the Mall Development Area for residential or office use pursuant to the Plan, they first shall offer in writing to Spinco or its affiliates the opportunity to purchase land and/or air rights to develop all such residential or office use at no additional cost for the land or air rights to Spinco payable to GGP or the GGP Mall Property Owners (the “Preferred Residential and Office Developer Covenant”). Notwithstanding the foregoing, office and storage purposes that are incidental to the retail merchandising and services being conducted in the Mall Development Area shall not be included in the Preferred Residential and Office Developer Covenant. Spinco’s rights under the Preferred Residential and Office Developer Covenant may be assigned to HRD or to any entity that owns a controlling

interest in HRD or any entity that is controlled by HRD. Spinco or its designee thereafter shall be entitled to develop, construct, sell, transfer, and convey all residential and office buildings and related parking developed pursuant to the Preferred Residential and Office Developer Covenant to any other party at terms solely satisfactory to Spinco. Spinco shall pay for all costs relating to entitlements, construction, third party consents and other costs of development other than the cost of the land and/or air rights. If Spinco declines in writing the offer to purchase such land and/or air rights, then GGP or the applicable offering GGP Mall Property Owner(s) shall thereafter be able to develop such residential or office use itself or by offer to a third party other than Spinco. GGP covenants that it shall record a memorandum containing the terms of the Preferred Residential and Office Developer Covenant immediately prior to the refinancing of the mortgage against the property owned by the GGP Mall Property Owners, currently anticipated to be October 1, 2012, the current maturity date of the mortgage and related loans, (or at such earlier time as the existing mortgage is otherwise released or discharged for any reason), and subject to commercially reasonable extensions for refinancing not to exceed three (3) years. GGP, on its behalf and on behalf of the GGP Mall Property Owners, covenants and agrees that any new mortgage or deed of trust shall be subordinate to the terms of the Preferred Residential and Office Developer Covenant and to a memorandum of the final documentation that shall set forth the covenants and agreements of GGP in Section II B. and C. of this Agreement. Spinco acknowledges and agrees that any rights to develop residential units on the property owned by the GGP Mall Property Owners currently is limited by various agreements with tenants and other third parties. GGP and the GGP Mall Property Owners shall have no obligation to Spinco to terminate or amend any of those limitations. GGP, however, agrees, on its behalf and on behalf of the GGP Mall Property Owners that it and they will not amend the agreements to increase or impose any further limitations relating to residential and office development on any of the property owned by the GGP Mall Property Owners without the prior written consent of HRD, such consent not to be unreasonably withheld or delayed.

E. Dispute Resolution. The final documentation shall contain mutual indemnity provisions and a mutual waiver of jury trial provision, provide that Maryland law, as the law of the jurisdiction where the Core Development Area is located, shall apply to disputes between the parties, and shall acknowledge that because of the nature of the losses and damages that could be sustained by the non-defaulting party by uncured failures to perform and/or pay by the defaulting party, the parties shall agree to binding arbitration conducted by three (3) arbitrators, one selected by the non-defaulting party, the second by the defaulting party, and the third by the two arbitrators, with each arbitrator to be an independent third party with architectural, development, economic, engineering, or legal experience with mixed-use developments. The document shall not contain liquidation of damages or limitation of damages provisions.

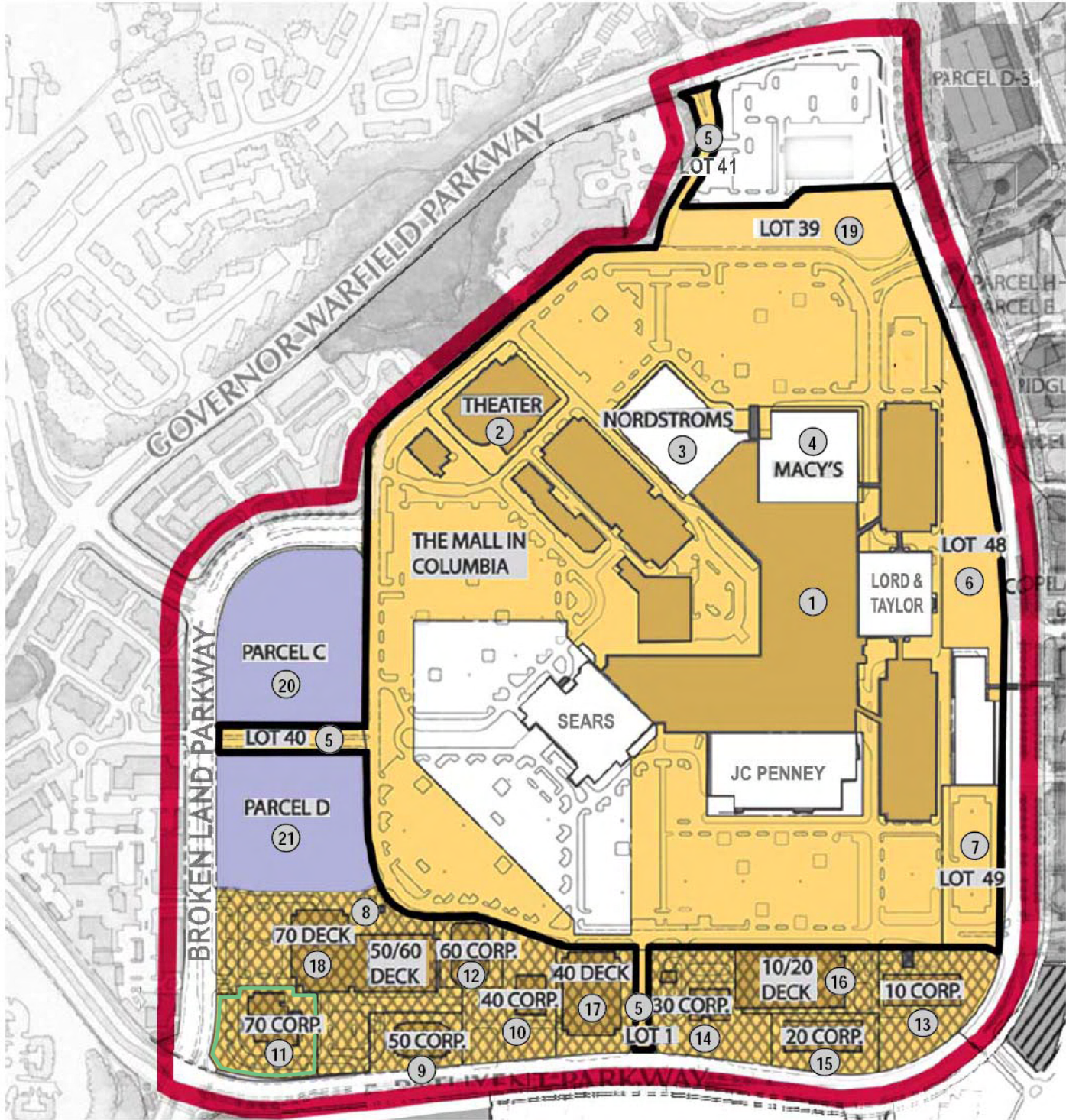
III. Execution and Delivery of Final Documentation. GGP and Spinco shall execute and deliver a final memoranda to be recorded in the Land Records of Howard County, Maryland as set forth above and other agreements necessary or desirable to reflect or clarify the provisions of this Agreement.

IN WITNESS WHEREOF, GGP, by its duly authorized officer, hereby executes this Memorandum as of the date first above written.

GENERAL GROWTH PROPERTIES, INC.

By: \_\_\_\_\_  
Authorized Signatory

# Exhibit A-1<sup>1</sup>



- Core Development Zone - Columbia Town Center
- Spinco Allocated Parcel
- GGP Allocated Parcel
- ROFO and Option Property
- Mall Development Area
- Existing Mortgages

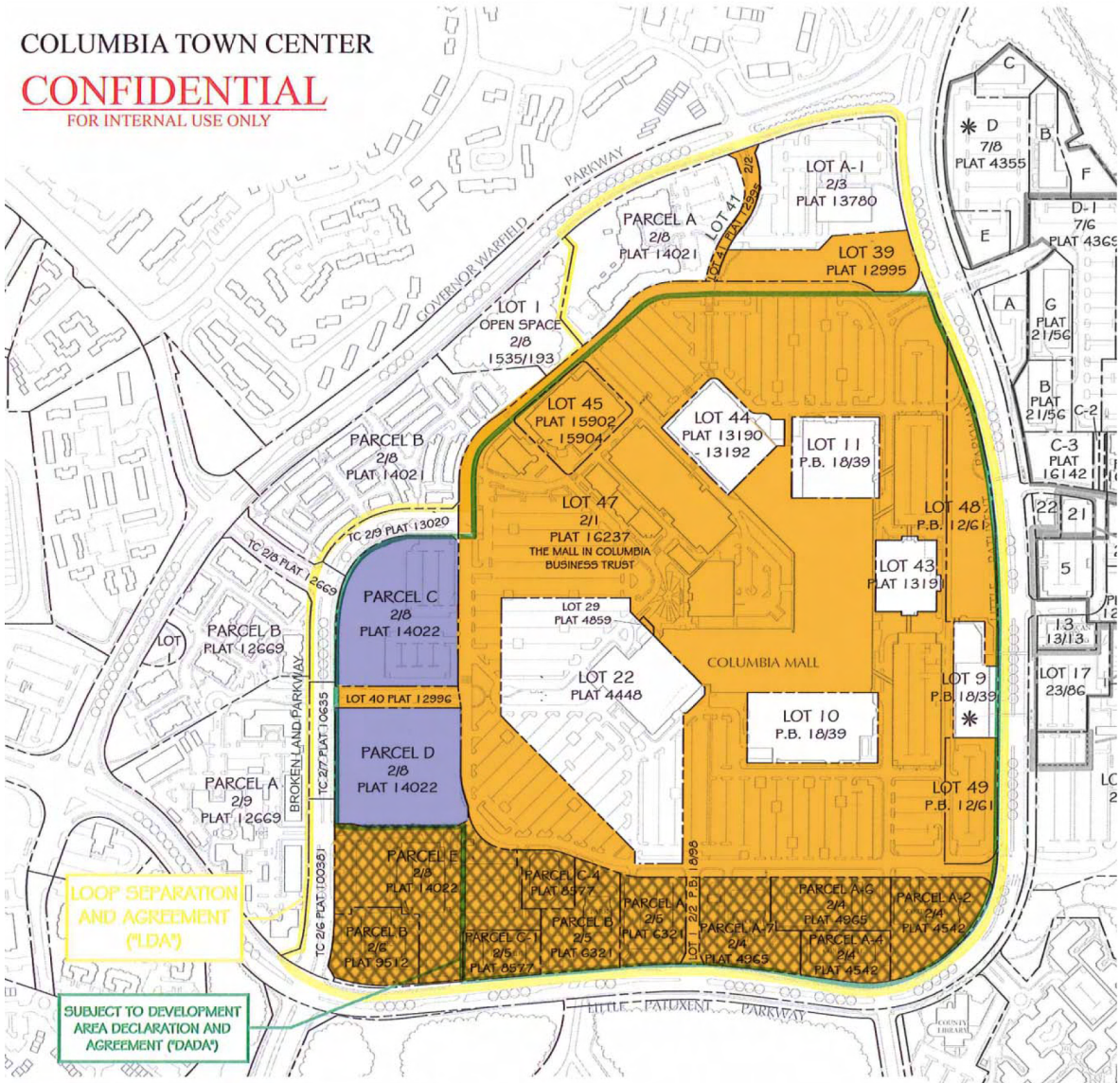
<sup>1</sup> The numbers in the grey circles on this Exhibit A-1 correspond to the column labeled “EXHIBIT A-1 NUMBER” on Exhibit B hereto.

# Exhibit A-2

## COLUMBIA TOWN CENTER

### CONFIDENTIAL

FOR INTERNAL USE ONLY



LOOP SEPARATION AND AGREEMENT (LDA)

SUBJECT TO DEVELOPMENT AREA DECLARATION AND AGREEMENT (DADA)

Spincio Allocated Parcel
  GGP Allocated Parcel
  ROFO and Option Property

**EXHIBIT B**

**Property within the Core Development Area**

<b><u>EXHIBIT A-1 NUMBER<sup>1</sup></u></b>	<b><u>PROPERTY</u></b>	<b><u>ENTITY</u></b>	<b><u>OWNER</u></b>
1	The Mall in Columbia	The Mall in Columbia Business Trust	GGP
2	AMC Theater	CM Theatre Business Trust	GGP
3	Nordstrom	CM-N Business Trust	GGP
4	Macy	CM-H Business Trust	GGP
5	Mall Entrance Roads (Lot 40, 41, Lot 1)	Mall Entrances Business Trust	GGP
6	Lot 48	Lot 48 Business Trust	GGP
7	Lot 49	Lot 49 Business Trust	GGP
8	Columbia Bank Drive Thru (p/o Parcel E, TC Sec. 2, Area 8)	CMI Corporate Parking Business Trust	GGP
9	Columbia Corporate Center Offices (Fifty Columbia Corporate Center – Parcel C-1 TC Sec. 2, Area 5)	Parkside Limited Partnership	GGP
10	Columbia Corporate Center Offices (Forty Columbia Corporate Center – Parcel B TC Sec. 2, Area 5)	Parkview Office Building Limited Partnership	GGP
11	Columbia Corporate Center Offices (Seventy Columbia Corporate Center – Parcel B TC Sec. 2, Area 6)	Seventy Columbia Corporate Center Limited Partnership	GGP

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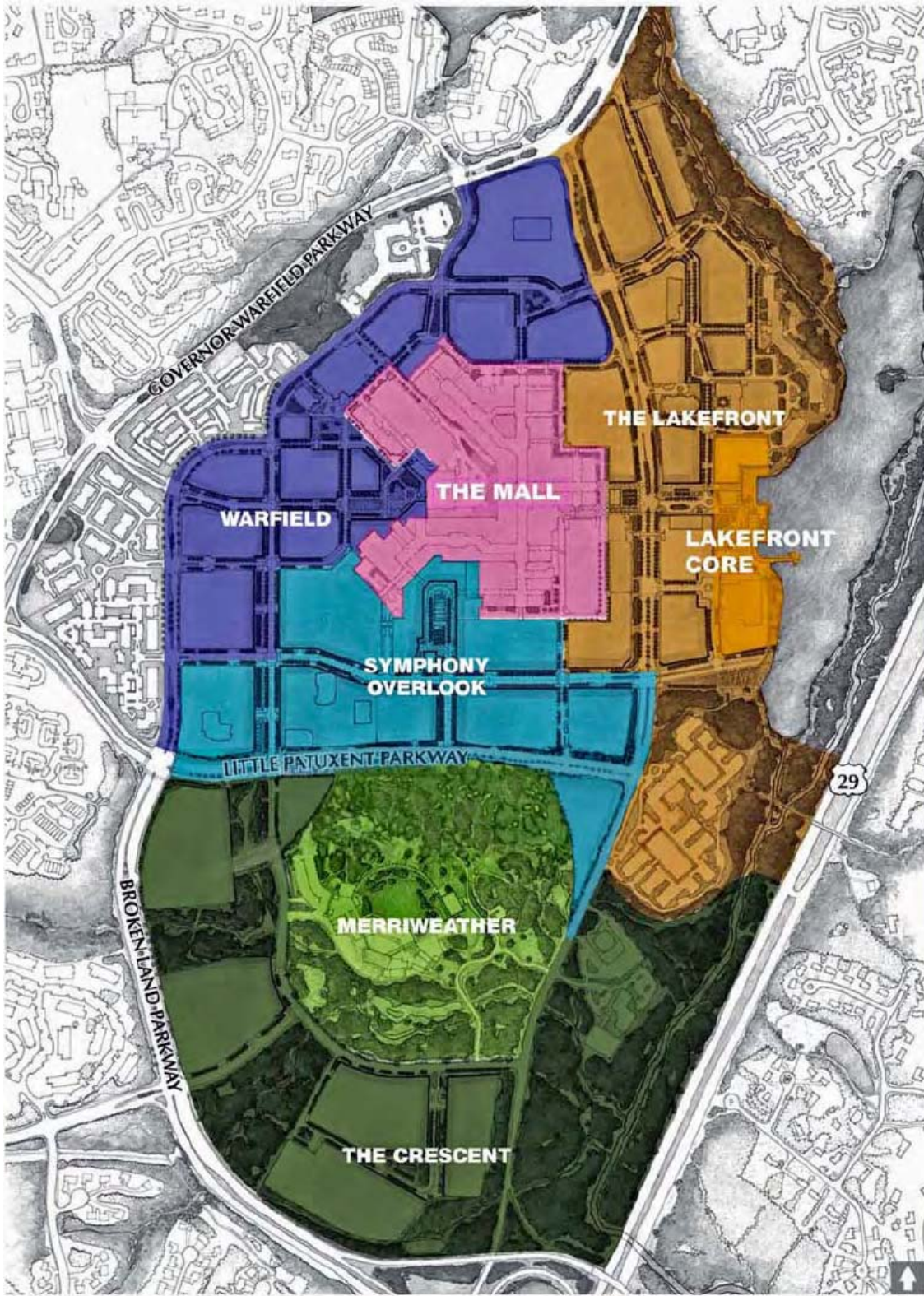
<sup>1</sup> The numbers in this column correspond to the labels on Exhibit A-1 hereto.



**EXHIBIT A-1**  
**NUMBER**<sup>1</sup>

<b><u>NUMBER</u></b> <sup>1</sup>	<b><u>PROPERTY</u></b>	<b><u>ENTITY</u></b>	<b><u>OWNER</u></b>
12	Columbia Corporate Center Offices (Sixty Columbia Corporate Center – Parcel C-4, TC Sec. 2, Area 5)	Park Square Limited Partnership	GGP
13	Columbia Corporate Center Offices (Ten Columbia Corporate Center – Parcel A-2, TC Sec. 2, Area 4)	10 CCC Business Trust	GGP
14	Columbia Corporate Center Offices (Thirty Columbia Corporate Center – Parcel A-7, TC Sec. 2, Area 4)	30 CCC Business Trust	GGP
15	Columbia Corporate Center Offices (Twenty Columbia Corporate Center – Parcel A-4, TC Sec. 2, Area 4)	20 CCC Business Trust	GGP
16	Parcel A-6, TC Sec. 2, Area 4 (Deck for 10, 20, 30 CCC)	CMI Corporate Parking Business Trust	GGP
17	Parcel A TC Sec. 2	CMI Corporate Parking Business Trust	GGP
18	Parcel E, TC Sec. 2 (Deck for 70 CCC)	CMI Corporate Parking Business Trust	GGP
19	Lot 39, TC Sec. 2, Area 3	Columbia Land Holdings, Inc.	GGP
20	Parcel C, TC Sec. 2, Area 8	Parcel C Business Trust	Spinco
21	Parcel D, TC Sec. 2, Area 8	Parcel D Business Trust	Spinco

**EXHIBIT C**



## EXHIBIT D

### **DOWNTOWN COMMUNITY ENHANCEMENTS, PROGRAMS AND PUBLIC AMENITIES (CEPPAs) IMPLEMENTATION CHART**

The Downtown CEPPA Implementation Chart identifies the timing and implementation of the various specific CEPPAs to be provided. The Downtown Columbia Plan anticipates that GGP, as the principal property owner, will undertake many of the CEPPAs. However, the responsibility lies with all property owners undertaking development or redevelopment in Downtown Columbia. Moreover, in the event of any future fragmentation of ownership of GGP's holdings, the CEPPAs must still be provided in accordance with the benchmarks established in this chart. Under such circumstances, the required CEPPAs could be funded by the developer(s) of individual parcels, a cooperative of developers or otherwise. In no case shall the obligation to provide a CEPPA to be triggered: (i) by the development or construction of downtown arts, cultural and community uses, downtown community commons, or downtown parkland; or (ii) when the development of an individual parcel of land shown on a plat or deed recorded among the County Land Records as of (effective date) consists only of up to a total of 10,000 square feet of commercial floor area and no other development. The timing and implementation of other amenities discussed in this Plan or shown in concept on the exhibits to this Plan will be governed by the zoning regulation recommended by this Plan.

If a specific CEPPA identified in the Downtown CEPPA Implementation chart cannot be provided because: (i) the consent of the owner of the land on which the CEPPA is to be located or from whom access is required cannot reasonably be obtained; (ii) all necessary permits or approvals cannot reasonably be obtained from applicable governmental authorities; or (iii) factors exist that are beyond the reasonable control of the petitioner, then the Planning Board shall: (i) require the petitioner to post security with the County in an amount sufficient to cover the cost of the original CEPPA; or (ii) approve an alternate CEPPA comparable to the original and appropriate timing for such alternate CEPPA or alternative timing for the original CEPPA. In approving an alternate comparable CEPPA or timing, the Planning Board must conclude the alternate comparable CEPPA and/or timing: (i) does not result in piecemeal development inconsistent with the Plan; (ii) advances the public interest; and (iii) conforms to the goals of the Downtown Plan.

Additionally, because development phasing is inextricably linked to market forces and third party approvals, it will be important for the zoning to provide sufficient flexibility to consider a Final Development Plan which takes advantage of major or unique employment, economic development or evolving land use concepts or opportunities, and to consider a Final Development Plan amendment that adjusts the location, timing or schedule of CEPPAs and/or the residential and commercial phasing balance to take advantage of these opportunities.

	<b>PRIOR TO SUBMISSION OF THE FIRST FINAL DEVELOPMENT PLAN</b>
1.	GGP completed at its expense an environmental assessment of the three sub-watersheds of Symphony Stream, Wilde Lake and Lake Kittamaqundi located upstream of the Merriweather & Crescent Environmental Enhancements Study area. GGP participated with Howard County and The Columbia Association in a joint application to the Maryland Department of Natural Resources for Local implementation grant funding from the Chesapeake and Atlantic Coastal Bays 2010 Trust Fund.
2.	GGP will commission at GGP's expense (i) the preparation of the Land Framework component of the Downtown Columbia Sustainability Program and (ii) a detailed outline for the Community Framework component of the Sustainability Program (Community Framework Outline). The Sustainability Program must be developed around the Sustainability Framework document referenced with this Plan. The Howard County

	Environmental Sustainability Board must be provided with a copy of the Sustainability Program, and will be invited to provide comments to the Design Advisory Panel concurrent with the Design Advisory Panel's review of the Downtown-wide Design Guidelines (Guidelines).
3.	GGP will commission at GGP's expense in consultation with Howard County a study evaluating a new Downtown Columbia Route 29 interchange between Route 175 and Broken Land Parkway and options for a connection over Route 29 connecting Downtown Columbia to Oakland Mills, including potential bicycle, transit and multimodal improvements. The study will evaluate alternative alignments and geometry, capacity analysis, preliminary environmental assessments, right of way impacts, multimodal opportunities, interaction and options with regard to the Oakland Mills bridge connection, preliminary costs, design and implementation schedule. Once the study is completed, GGP will suggest funding mechanism(s) for the potential implementation of its recommendation(s). If the study concludes that enhancing the existing pedestrian bridge is not recommended, then the funding for the renovation of the existing bridge should be used for the alternative connection recommended by the study. In addition, the pathways described in CEPPA No. 12 should be realigned to match the recommended connection.
4.	GGP will prepare at its expense Downtown-wide Design Guidelines inclusive of sustainability provisions from the Sustainability Program and a Comprehensive Signage Plan for Downtown for approval by the County Council.

	<b>PRIOR TO APPROVAL OF THE FIRST FINAL DEVELOPMENT PLAN</b>
5.	GGP will commission at GGP's expense and in consultation with Howard County one or more feasibility studies for the following: (i) a new Broken Land Parkway/Route 29 north/south collector road connection to Little Patuxent Parkway and (ii) a new Downtown transit center and Downtown Circulator Shuttle. With regard to the collector road, the feasibility study will evaluate alternative alignments and geometry, capacity analysis, preliminary environmental assessments, right of way impacts, preliminary costs, design and phasing of construction for this connection. With regard to the transit center, the study will evaluate both long and short term transit expectations and needs both locally and regionally so that an appropriate location and facility program can be determined. Consideration shall be given to how the facility will operate initially as a 'free standing building, and in the future as a mixed use component of the Downtown Plan. Recommendations will be provided with regard to goals, management and operations. With regard to the Shuttle, the study will evaluate and determine appropriate levels of service and phasing in of service at various levels of development. As part of this, the study should examine the relationship between the shuttle and both long and shortterm, local and regional transit expectations and needs. The shuttle feasibility study will also analyze equipment recommendations, routes and stops, proposed vehicle types, and operational and capital costs. The feasibility study shall include an evaluation and recommendations regarding ownership, capital and operational funding opportunities, responsibilities and accountability to provide guidance to the Downtown Columbia Partnership and the County.
6.	GGP and Howard County will jointly determine the functions, organizational structure, implementation phasing schedule consistent with the redevelopment phasing schedule, potential funding sources and projected funding needs of the Downtown Columbia Partnership, prior to GGP's establishment of this Partnership. The Downtown Columbia Partnership's role in promoting Downtown Columbia is outlined in Section 5.2 of the Plan. One of the primary responsibilities of the Downtown Columbia Partnership shall be the transportation initiatives outlined in the shuttle feasibility study and the promotion and

	<p>implementation of the TDMP. As such, at least fifty percent (50%) of the revenue collected pursuant to CEPPA No. 25 shall be utilized for the implementation of transportation initiatives in the shuttle feasibility study or other direct transit services downtown.</p> <p>GGP will provide the Partnership's initial operating funding as necessary to fund the initial efforts of the Partnership until other sources of funding and/or sufficient developer contributions are available to operate the Partnership. Funding provided by GGP to support initial start-up costs shall be in addition to funding provided for by CEPPA No. 23 and 25. However, after issuance of a building permit for the 500,000 square-foot of new commercial uses, GGP's obligation as described in the previous two sentences shall end and thereafter the property owners developing pursuant to Section 125.A.9 of the Howard County Zoning Regulations, including but not limited to GGP, will contribute toward funding the permanent ongoing operations of the Downtown Columbia Partnership as set forth in CEPPA No. 25.</p>
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	<b>PRIOR TO APPROVAL OF THE FIRST SITE DEVELOPMENT PLAN</b>
7.	GGP will submit a phasing schedule for implementation of the restoration work on GGP's property and a Site Development Plan for the first phase of the environmental restoration work as described in CEPPA No. 15.
8.	GGP, in collaboration with the County, will establish the Downtown Arts and Culture Commission, an independent nonprofit organization, to promote and support Merriweather Post Pavilion's revitalization in accordance with this Plan and the development of Downtown Columbia as an artistic and cultural center.

	<b>PRIOR TO ISSUANCE OF THE FIRST BUILDING PERMIT</b>
9.	To facilitate the renovation of the Banneker Fire Station, GGP and the County shall cooperate to identify a site for the development of a temporary fire station while the Banneker Fire station is being renovated. GGP shall make the site available at no cost to the County on an interim basis but not longer than 30 months. GGP shall not be responsible for the development or construction costs associated with the temporary fire station. In the alternative, if prior to the issuance of the first building permit the County determines a new location for a fire station in Downtown Columbia is necessary and desirable, then GGP shall provide, subject to all applicable laws and a mutual agreement between the parties, a new location for a fire station within the Crescent Neighborhood as shown on Exhibit C by fee transfer at no cost to the County or by a long-term lease for a nominal sum.

	<b>UPON ISSUANCE OF THE FIRST BUILDING PERMIT</b>
10.	GGP shall contribute \$1.5 million in initial funding for the Downtown Columbia Community Housing Fund. Payment will be contingent upon the expiration of all applicable appeal periods associated with each building permit without an appeal being filed or if an appeal is filed upon the issuance of a final decision of the courts upholding the issuance of the permit.

	<b>UPON ISSUANCE OF THE BUILDING PERMIT FOR THE 400TH RESIDENTIAL UNIT</b>
11.	GGP shall contribute \$1.5 million in additional funding for the Downtown Columbia

	Community Housing Fund. Payment will be contingent upon the expiration of all applicable appeal periods associated with each building permit without an appeal being filed or if an appeal is filed upon the issuance of a final decision of the courts upholding the issuance of the permit.
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	<b>PRIOR TO ISSUANCE OF A BUILDING PERMIT FOR THE 500,000<sup>th</sup> SF OF DEVELOPMENT</b>
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12.	<p>GGP will complete at its expense (i) the pedestrian and bicycle pathway from the existing Route 29 pedestrian bridge to Oakland Mills Village Center and to Blandair Park; (ii) the pedestrian and bicycle pathway from the existing Route 29 pedestrian bridge to the Crescent and Merriweather-Symphony Woods neighborhoods, inclusive of the pathway located between the Town Center Apartments and Route 29; and (iii) the pedestrian and bicycle pathway from the Crescent and Merriweather neighborhoods to Howard Community College and Howard County General Hospital. The scope and design of new pedestrian and bicycle pathways in the Plan will be guided by the new Downtown-wide Design Guidelines, Adequate Public Facilities Ordinance, and as delineated in this Plan and its Exhibit I. GGP will develop at its expense recommended maintenance standards and responsibilities for a heightened level of design and security for the new pathway improvements. When GGP submits the first Site Development Plan under this Plan, GGP will also submit a Site Development Plan to facilitate implementation of these pathway improvements.</p> <p>In addition, GGP along with the County and community will develop a scope of work for renovation of the existing Route 29 pedestrian bridge and will solicit a minimum of two proposals from separate architectural design consulting firms for alternative design improvements to the bridge structure to enhance its appearance and pedestrian safety. The consultant responses will be provided to the County for its selection, in consultation with GGP, of appropriate near-term improvements to retrofit the existing bridge. GGP will contribute up to \$500,000 towards the implementation of the selected improvements. If enhancement of the bridge is not recommended by the study in CEPPA No.3, GGP shall either post security or cash with the County in the amount of \$500,000 to be used in accordance with CEPPA NO.3.</p>
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13.	<p>GGP will enter into and record in the land records of Howard County, Maryland, a declaration of restrictive covenants that shall (1) prohibit the demolition of the former Rouse Company Headquarters building, and (2) prohibit the exterior alteration of the former Rouse Company Headquarters building, except as provided for in the Downtown-wide Design Guidelines. GGP shall provide a copy of the recorded declaration to the County. The declaration of restrictive covenants will not prohibit interior alterations or future adaptive reuse that would better integrate the building into its surroundings and activate the adjacent pedestrian spaces as described in the Downtown-wide Design Guidelines and this Plan or prohibit reconstruction of the building in the event of casualty.</p>
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	<b>PRIOR TO ISSUANCE OF A BUILDING PERMIT FOR THE 1,300,000<sup>th</sup> SF OF DEVELOPMENT</b>
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14.	<p>GGP in cooperation with Howard Transit shall identify a location in Downtown Columbia for a new Howard County Transit Center consistent with the recommendation(s) of the feasibility study (See CEPPA No.5). GGP shall provide a location either by fee transfer at no cost or a long-term lease for a nominal sum subject to all applicable laws and regulations. Any contract of sale or lease may provide for the retention of air and subsurface development rights by GGP and allow for the co-location of public facilities or</p>
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	private development on the same parcel provided that any other use of any portion of the property does not interfere with the County's ability to use, construct, or finance the facility in the manner most advantageous to the County.
15.	GGP will complete, at GGP's expense, environmental restoration projects, including stormwater management retrofit, stream corridor restoration, wetland enhancement, reforestation and forest restoration, on its property and on property included within GGP's construction plans for the Merriweather-Symphony Woods and Crescent areas, as identified in the Land Framework of the Sustainability Program as referenced in Section 3.1 of this Plan.
16.	GGP will complete Phase I of the Merriweather Post Pavilion redevelopment program based on the redevelopment program scope and phasing outlined below. The redevelopment program will generally follow the evaluation and conclusions outlined in the October 2004 Ziger/Sneed LLP Merriweather Post Pavilion Study, Section III "Evaluation of the Site and Structures" and Section IV "Conclusions" included in the 2004 Merriweather Citizens Advisory Panel report to Howard County. Final design and scope will be determined by GGP's consultants, program and industry needs, operator recommendations, site and facility conditions and code requirements. Major components of the redevelopment program will include new handicapped parking accommodation; entrance and access modifications; restroom, concession and box office renovations and or replacement; utility systems replacement and additions; new roofs over the loge seating areas; reconfigured and replacement seating; renovated and new administration, back of house dressing and catering areas; code upgrades including fire suppression systems and handicapped ramps and pathway access. After development of preliminary renovation drawings, contractor input and schedule development, the program will be divided into three distinct phases to allow uninterrupted seasonal performances, staging and construction phasing.

	<b>PRIOR TO APPROVAL OF THE SITE DEVELOPMENT PLAN FOR THE 1,375TH NEW RESIDENTIAL UNIT</b>
17.	GGP shall, if deemed necessary by the Board of Education, reserve an adequate school site or provide an equivalent location within Downtown Columbia.

	<b>PRIOR TO ISSUANCE OF A BUILDING PERMIT FOR THE 2,600,000<sup>th</sup> SF OF DEVELOPMENT</b>
18.	GGP will construct at its expense, the Wilde Lake to Downtown Columbia pedestrian and bicycle pathway. The scope and design of new pedestrian and bicycle pathways in the Plan will be guided by the new Downtown-wide Design Guidelines, Adequate Public Facilities Ordinance, and as delineated in this Plan and its Exhibit.
19.	GGP will construct at its expense the Lakefront Terrace (steps to the Lake) amenity space and pedestrian promenade (see Item 9, on Plan Exhibit G) connecting the Symphony Overlook Neighborhood to the Lakefront and Lakefront pathway. The final design of the Lakefront Terrace will be determined at the time of Site Development Plan review.
20.	GGP will complete Phase II redevelopment of Merriweather Post Pavilion based on the redevelopment program scope and phasing as outlined in CEPPA No. 16.

	<b>PRIOR TO ISSUANCE OF A BUILDING PERMIT FOR THE 3,900,000<sup>th</sup> SF OF DEVELOPMENT</b>
21.	GGP will complete Phase III redevelopment of Merriweather Post Pavilion based on the redevelopment program scope and phasing as outlined in CEPPA No. 16.
22.	At least one Downtown Neighborhood Square as defined in the Zoning Regulations shall be completed and deeded to Howard County for public land.
	<b>PRIOR TO ISSUANCE OF A BUILDING PERMIT FOR THE 5,000,000<sup>th</sup> SF OF DEVELOPMENT</b>
23.	GGP will provide \$1,000,000 towards the initial funding of a Downtown Circulator Shuttle.
24.	Transfer of ownership of Merriweather Post Pavilion to the Downtown Arts and Culture Commission for zero dollar consideration.

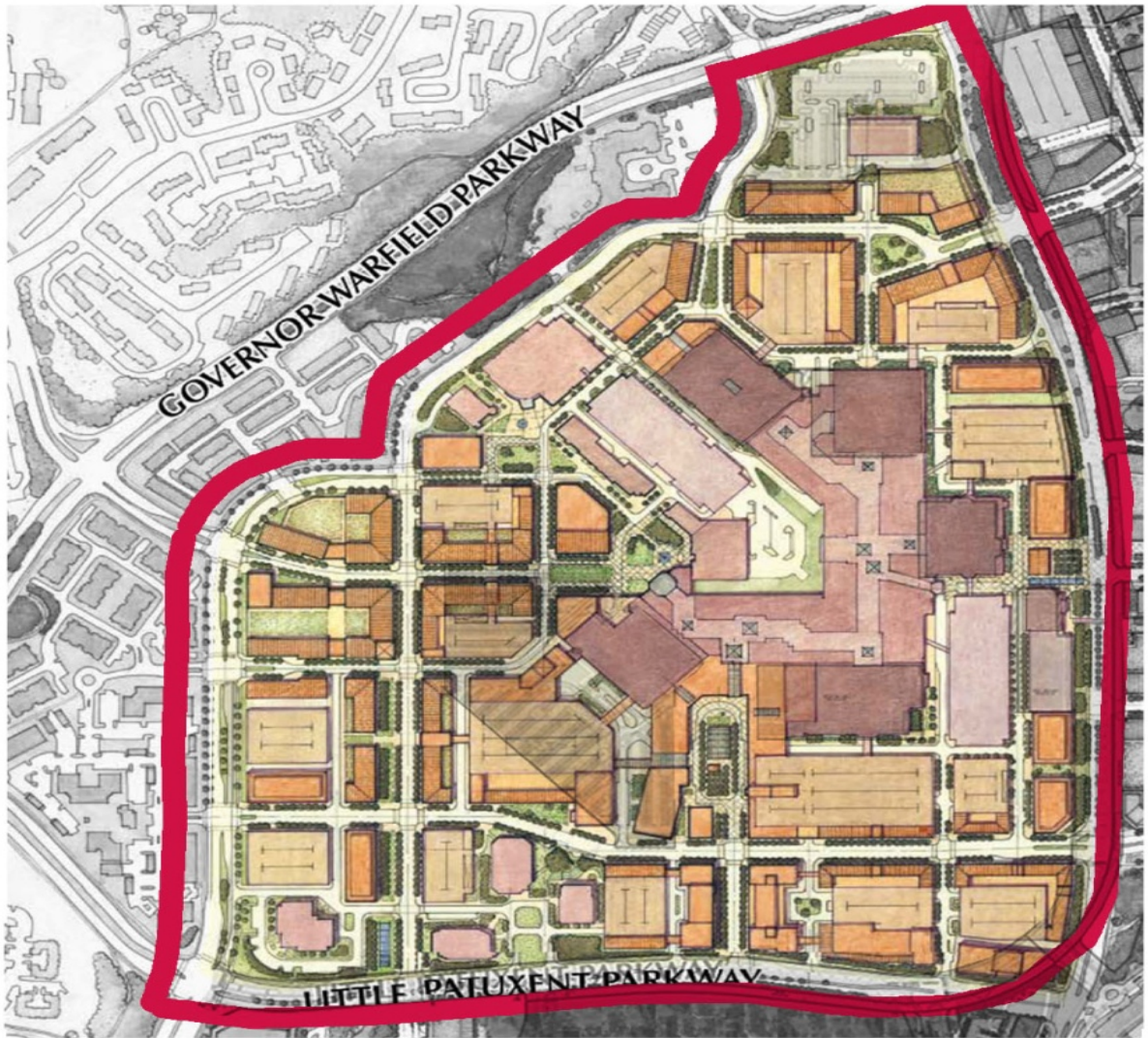
	<b>PRIOR TO THE APPROVAL OF EACH FINAL DEVELOPMENT PLAN</b>
25.	Each owner of property developed with commercial uses pursuant to the Downtown Revitalization Zoning Regulations shall participate as a member in the Downtown Columbia Partnership established pursuant to CEPPA No. 6 and provide an annual per-square-foot charge in an amount of twenty-five cents (\$0.25) per square foot of Gross Leasable Area for office and retail uses and twenty-five cents (\$0.25) per square foot of net floor area for hotels to the Downtown Columbia Partnership. Each Final Development Plan shall show a consistent means of calculating and providing this charge, and require that the first annual charge be paid prior to issuance of occupancy permits for those buildings constructed pursuant to that Final Development Plan and subsequent Site Development Plans under Downtown Revitalization. This per-square-foot charge shall be calculated at the time of Site Development Plan approval and shall include an annual CPI escalator to be specified in each Site Development Plan.

	<b>UPON ISSUANCE OF ANY BUILDING PERMIT FOR A BUILDING CONTAINING DWELLING UNITS</b>
26.	<p>To fulfill an affordable housing obligation each developer will provide a one-time per unit payment to the DCCHF in the following amounts to be imposed upon the issuance of any building permit for a building containing dwelling units. Payment will be contingent upon the expiration of all applicable appeal periods associated with each building permit without an appeal being filed, or if an appeal is filed upon the issuance of a final decision of the courts upholding the issuance of the permit:</p> <ol style="list-style-type: none"> <li>1). \$2.000/unit for each unit up to and including the 1,500th unit.</li> <li>2). \$7.000/unit for each unit between the 1,501th unit up to and including the 3,500th unit.</li> <li>3). \$9.000/unit for each unit between the 3,501st unit up to and including the 5,500th unit.</li> </ol> <p>The amounts to be paid under 1), 2) and 3) above will be subject to annual adjustment based on a builder's index, land value or other index provided in the implementing legislation.</p>



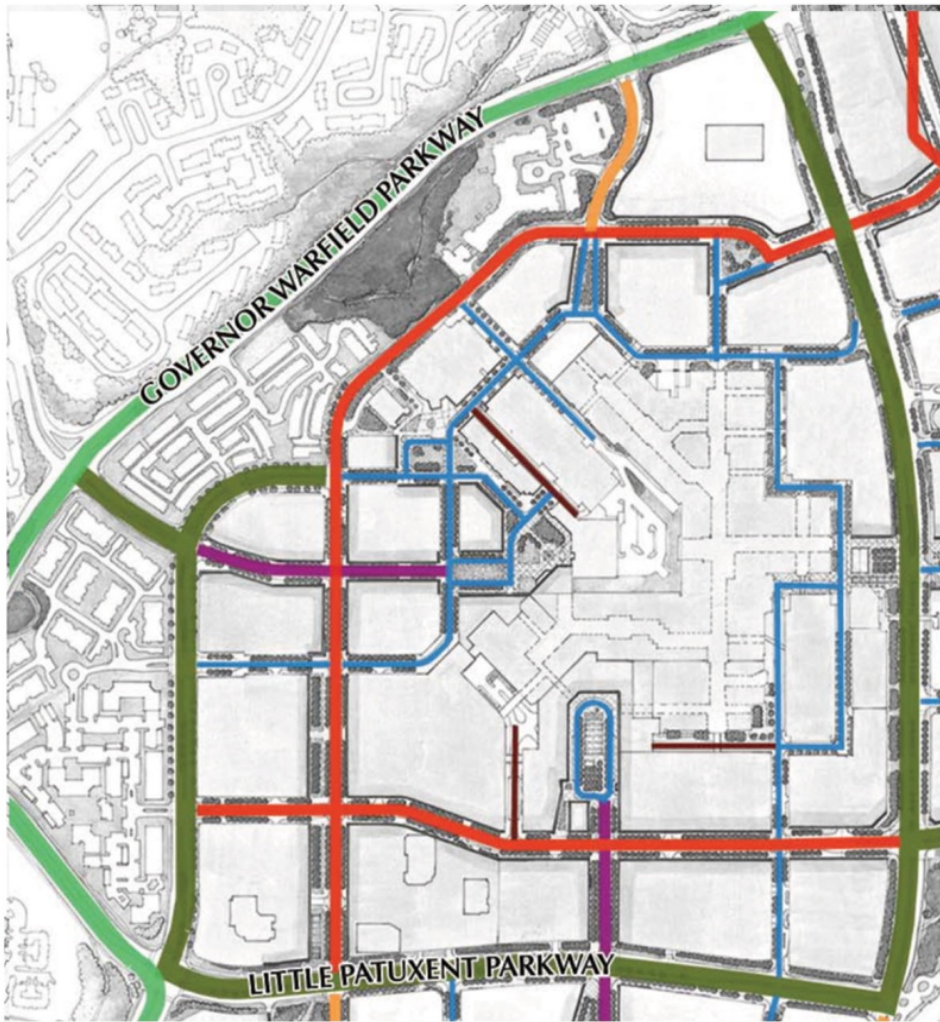
	<b>ADDITIONAL CEPPA CONTRIBUTION</b>
27.	Each owner of property developed with commercial uses pursuant to the Downtown Revitalization Zoning Regulations shall provide an annual payment to the DCCHF in the amount of five cents (\$0.05) per square foot of Gross Leasable Area for office and retail uses and five cents (\$0.05) per square foot of net floor area for hotels. The payment will be made annually by the property owner with the initial payment being made prior to the issuance of an occupancy permit for net new commercial development on the property. The amount of the charge will be subject to annual adjustment based on a builder's index land value or other index provided in the implementing legislation.






**EXHIBIT E**



■ Core Development Zone - Columbia Town Center

**EXHIBIT F**

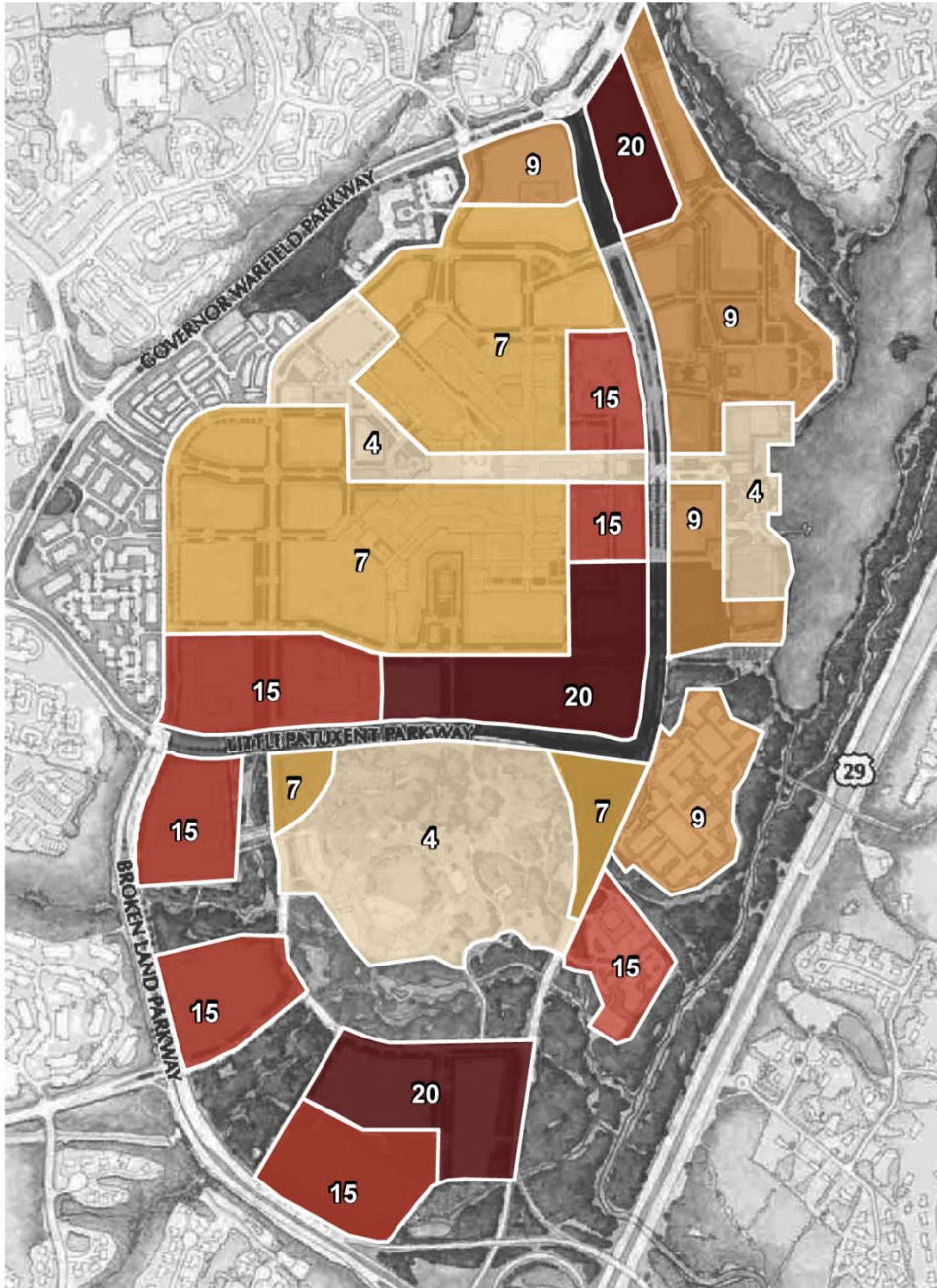







- |   |   |  |
|---|---|--|
|  Parkway   |  Avenue Type 1 |  Avenue Type 3 |
|  Boulevard |  Avenue Type 2 |  Street        |

**EXHIBIT G**  
**ROFO and Option Property**

<b><u>PROPERTY</u></b>	<b><u>ENTITY</u></b>
Columbia Bank Drive Thru (p/o Parcel E, TC Sec. 2, Area 8)	CMI Corporate Parking Business Trust
Columbia Corporate Center Offices (Fifty Columbia Corporate Center – Parcel C-1 TC Sec. 2, Area 5)	Parkside Limited Partnership
Columbia Corporate Center Offices (Forty Columbia Corporate Center – Parcel B TC Sec. 2, Area 5)	Parkview Office Building Limited Partnership
Columbia Corporate Center Offices (Seventy Columbia Corporate Center – Parcel B TC Sec. 2, Area 6)	Seventy Columbia Corporate Center Limited Partnership
Columbia Corporate Center Offices (Sixty Columbia Corporate Center – Parcel C-4, TC Sec. 2, Area 5)	Park Square Limited Partnership
Columbia Corporate Center Offices (Ten Columbia Corporate Center – Parcel A-2, TC Sec. 2, Area 4)	10 CCC Business Trust
Columbia Corporate Center Offices (Thirty Columbia Corporate Center – Parcel A-7, TC Sec. 2, Area 4)	30 CCC Business Trust
Columbia Corporate Center Offices (Twenty Columbia Corporate Center – Parcel A-4, TC Sec. 2, Area 4)	20 CCC Business Trust
Parcel A-6, TC Sec. 2, Area 4 (Deck for 10, 20, 30 CCC)	CMI Corporate Parking Business Trust
Parcel A TC Sec. 2	CMI Corporate Parking Business Trust
Parcel E, TC Sec. 2 (Deck for 70 CCC)	CMI Corporate Parking Business Trust

**Exhibit H**  
**Height Limits**



<b>Up to:</b>	<b>And not to exceed:</b>	<b>Up to:</b>	<b>And not to exceed:</b>
 4 Stories	60 feet	 15 Stories	170 feet
 7 Stories	100 feet	 20 Stories	250 feet
 9 Stories	120 feet		

**Fashion Show Air Rights - Core Principles**

The list below represents general principles for the development of the air rights above the site of the current Fashion Show Mall (the “Mall Parcel,” and the air rights above the Mall Parcel, the “Air Rights”).

1. The parties acknowledge and agree that the rights afforded to the Spinco Venture (including the right to acquire the Air Rights) outlined in these Core Principles are (i) subject and subordinate in all respects to the current Mall Parcel mortgage loan documents (including the term thereof) (the “Existing Loan”) and existing leases, (ii) will not become effective until the Existing Loan is satisfied in its entirety and (iii) will be effectuated in such a way as to avoid a default under the Existing Loan. To the extent any provision in the Core Principles or future documentation with respect to the conveyance and development of the Air Rights in accordance with the principles set forth herein (the “Air Agreements”) causes a default under the Existing Loan, the parties shall make the most minimal amendments as necessary to the Air Agreements to remedy such default. Upon satisfaction of the Existing Loan (including, but not limited to, satisfaction of the loan in connection with refinancing with the existing lender), the Spinco Venture shall have the right to record an instrument reflecting its rights as set forth herein.
2. The parties agree that the Mall Parcel is currently a dynamic and successful retail venue and the parties agree that no portion of the Mall Parcel shall experience a material disruption for an extended period of time (objective parameters to be determined) as a result of the development of the Air Rights.
3. The parties agree that the Air Rights may have significant potential future value that can only be achieved by cooperation between the parties, and, as such, wish to create as much value as possible for the Spinco Venture while minimizing the impact on the Mall Parcel, recognizing that development and operation of the Air Rights will cause some disruption to the Mall Parcel. To such end, the parties shall work together in good faith to minimize material disruptions to, or the impairment of the long-term value of, the Mall Parcel, while enabling the construction of the Air Rights development to proceed in a commercially reasonable manner, taking into account the principles set forth herein and recognizing that the Spinco Venture may be required to incur additional construction costs to minimize impact on the Mall Parcel.
4. The parties acknowledge that in order to realize the value of the Air Rights, the Spinco Venture will require the limited right to occupy space (via lease, license, easement or other occupancy arrangement, all of an essentially permanent nature other than temporary space provided for construction purposes) owned by GGP at the buildings in the Mall Parcel in order to use as a gateway to the Air Rights, and GGP will only be required to provide (a) space at the buildings in the Mall Parcel as is necessary and appropriate for access, ingress and egress to and from the proposed development(s) in the Air Rights, recognizing that such spaces will create a gateway

to a high-end development, and (b) signage reasonably necessary to identify and locate the proposed development in the Air Rights, subject to the core principles.

5. GGP will be compensated at fair market value for any space it allows the Spinco Venture to use at the Mall Parcel on either a temporary or permanent basis (taking into account any replacement space offered to and accepted by GGP, in its sole discretion); provided, however, that in no event shall the access described in this paragraph be construed to require the conversion of a material portion of the buildings in the Mall Parcel from their then-current use to a new use. For example, if the Spinco Venture is provided space in the Mall Parcel for the construction of a lobby area but the Spinco Venture offers and GGP accepts replacement space in such lobby for retail use by GGP, such benefit to GGP shall be included in the determination of any fair market value compensation owed by the Spinco Venture to GGP.

6. The parties acknowledge that GGP's ownership interest in the Mall Parcel is currently financed, and that a primary objective of the Air Agreements is to minimize any adverse impact on the ability of GGP to finance its ownership in the Mall Parcel in the future. In light of the foregoing, GGP agrees to use commercially reasonable efforts to obtain market-rate financing for the Mall Parcel that permits the Air Agreements. In the event that GGP reasonably determines that GGP is unable to obtain market-rate financing for the Mall Parcel due to the existence of the Air Agreements (an "Impaired Financing Event"), GGP shall provide the Spinco Venture with notice of the same (the "Impaired Financing Notice"), upon which the Spinco Venture will be required to pursue one (or more) the following alternatives: (a) such amendments to the Air Agreements as are necessary for GGP to obtain market-rate financing, (b) independently seek to obtain market-rate financing for GGP's interest in the Mall Parcel on terms and conditions reasonably acceptable to GGP, or (c) pay any incremental financing costs (including, without limitation, increased rate, fees, required credit enhancements or lower available loan proceeds) resulting from the existence of the Air Agreements. GGP shall provide the Spinco Venture with reasonable evidence of the Impaired Financing Event which shall include, should the Spinco Venture request the same, direct discussions between GGP, the Spinco Venture and GGP's proposed lender(s). For purposes of clarity, if GGP completes a refinancing of the Existing Loan without providing Spinco with the Impaired Financing Notice, Spinco shall not be responsible for any incremental financing costs described in this paragraph. Furthermore, such refinancing or the extension of the Existing Loan shall specifically permit the Air Agreements (as the same may be amended pursuant to subsection (a) above), and failure to do the same will constitute a default by GGP under this agreement.

7. The parties acknowledge that the Spinco Venture will have broad rights with respect to the type of project(s) that can be developed in the Air Rights so long as the Air Rights project(s) is not a noxious or salacious use or is not in direct competition with the mall. There is no requirement that the Air Rights and Mall Parcel be integrated; provided, however, that the Spinco Venture will be entitled to operate restaurant and retail facilities in the Air Rights project(s) only as such restaurant

and/or retail presence is ancillary (objective standard to be determined) to such project(s).

8. For a period of 20 years following the date of the Separation Agreement (except to the extent permitted under existing department store occupancy agreements in the Mall Parcel), GGP agrees that it will not allow a casino, hotel or residential condominium to exist in the portions of the Mall Parcel that it owns now or acquires in the future. For purposes of clarification, it is the intent of the parties that ancillary gaming machines will be permitted in the Mall Parcel at all times.

9. As of the date hereof, the parties have not agreed on any particular project as the likely or ultimate development in the Air Rights and explicitly disclaim any renderings created or discussed prior to the date hereof from serving as the basis of the object of ultimate agreement between the parties. Notwithstanding the foregoing, any project developed in the Air Rights will be a first-class project.

10. GGP shall have reasonable approval rights over all entitlements, the form and substance of any Approvals (as hereinafter defined), and the development, construction and operations related to the Air Rights. Notwithstanding the foregoing, the parties acknowledge that (a) the mall's frontage on Las Vegas Boulevard is a unique and valuable characteristic of the mall, (b) the in-line tenant spaces and common areas are extremely sensitive to potential development, and (c) the Air Rights contain sufficient area to construct, access and operate several first-class facilities in the event that it is not possible to erect structures above the areas identified in clauses (a) and (b) above. As a result, GGP will retain a right of sole discretion to approve any proposed development that (i) impacts the mall's frontage on Las Vegas Boulevard and/or (ii) physically impacts the inline tenant spaces and common areas. As part of its approval process described in this paragraph, GGP shall provide the Spinco Venture with an estimate of GGP's reasonably anticipated increase in costs associated with a Particular Project (as defined below) such that the Spinco Venture will have an opportunity to modify such Particular Project plans.

11. The parties believe that any proposed development of the Air Rights will ultimately be more successful if the economic interests of GGP and Spinco are aligned. Therefore, GGP and Spinco shall be joint venture partners in the ownership of the Air Rights (the "Spinco Venture"). Spinco or its affiliate shall have an 80% managing interest and GGP will have a 20% non-managing interest in the Spinco Venture. Notwithstanding the foregoing, the rights to develop the Air Rights (as conditioned and defined in these Core Principles) will be exclusively owned by Spinco. Subject to and in accordance with these Core Principles, Spinco shall have the sole right to perform all pre-development activities (the "Pre-development Activities"), including without limitation, the right to (a) conceptualize, design and propose development projects in all or a portion of the Air Rights (each a "Particular Project"), (b) subdivide the Air Rights into one or more legally divisible parcels, and (c) seek all necessary Approvals associated with the Particular Project. All costs and expenses associated with the Pre-Development Activities (the "Pre-development



Costs”) shall be the sole responsibility of Spinco (subject to reimbursement set forth below). With respect to any Particular Project for which Spinco has received the Approvals (the “Approval Date”), GGP shall select one of the following three options within thirty days (30) days after receiving a written notice of the Approval Date: (i) becoming an active 20% economic non-managing partner with customary non-managing partner rights and protections (including provisions for “market rate” related party transactions and punitive dilution in the event either partner fails to make a capital contribution), (ii) becoming a passive economic non-managing partner with minimal institutional protections (including provisions for “market rate” related party transactions and proportional dilution in the event GGP fails to make a capital contribution) or (iii) “opting out” of any Particular Project, thereby resulting in a forfeiture of GGP’s interest in such Particular Project and 100% of the ownership of such Particular Project vesting with Spinco. Should GGP select option (i) or (ii) above, the Particular Project shall be owned by a single purpose entity and the parties shall enter into a joint venture agreement within thirty days after GGP makes its election. Under no circumstances shall the provisions of this paragraph or the ultimate joint venture agreements (i) enable either party to frustrate or circumvent the other party’s respective rights and obligations as set forth in these Core Principles, or (ii) require either party to “buy out” the other party’s partnership interest in a Particular Project prior to the completion and stabilization of such Particular Project. Each party will be responsible for its own respective costs of establishing its own joint venture interest and administering the same. [Tax structure to be determined]

12. Spinco shall only be permitted to transfer its interests in the Air Rights and/or the Spinco Venture to a transferee that has a reasonable net worth taking into account the proposed project and a reputation and proven development expertise commensurate with the development of the proposed project(s) (a “Qualified Transferee”); provided, however, that in no event shall a direct mall competitor of GGP be a Qualified Transferee. Prior to completion of a particular project, GGP shall (i) not be permitted to transfer its interest in its Spinco Venture interest with respect to that particular project independently of a transfer of its entire interest in the Mall Parcel, and (ii) be required to transfer its interest in the Spinco Venture in connection with the transfer of its entire interest in the Mall Parcel such that at all times the interest in the Mall Parcel and the 20% partnership interest in the Spinco Venture are held by the same person; provided that such interests may be held by separate entities, so long as such entities are under common control. GGP shall not be permitted to transfer its ownership interest in the Mall Parcel to a third party (such party being the “Mall Purchaser”) other than in connection with a transfer of GGP’s rights and responsibilities under Air Agreements to the Mall Purchaser in connection with the same.

13. The parties agree that neither GGP nor the Spinco Venture shall have any type of “call” or “put” option with respect to the Air Rights.

14. The parties agree that they will work diligently to enter into more definitive documentation and a conceptual plan with respect to the conveyance and development

of the Air Rights to the Spinco Venture on the earlier of (a) May 1, 2016 (one year prior to the current maturity of the Mall Parcel financing), or (b) such other date as specified by GGP, upon at least one year prior written notice from GGP to the Spinco Venture.

15. The parties agree that while the Spinco Venture is not required to develop the Air Rights in a single phase, the Spinco Venture must design and construct its proposed Air Rights project(s) in a manner that minimizes disruption to the Mall Parcel.

16. Prior to commencing construction on any Air Rights project, the Spinco Venture shall be responsible for (I) providing reasonably appropriate financial assurances of completion and (II) obtaining all necessary third party consents and approvals, including, without limitation, governmental entitlements and consents from tenants and REA parties of the Mall Parcel (collectively, the "Approvals"). GGP agrees that it will reasonably cooperate in obtaining such consents for the benefit of the Spinco Venture and in a manner consistent with the principles enumerated herein. GGP agrees that it will negotiate reasonably and in good faith not to obstruct the goals of the agreements with respect to the development of the Air Rights when it negotiates new leases or lease modifications; provided, however, that nothing contained herein shall require GGP to (a) pursue the negotiation of provisions that would require lender consent under the Existing Loan or (b) accept lesser rent in exchange for the addition of such provisions to its standard form leases at the Mall Parcel; provided, further, however, that in the event a tenant demands lower rent in connection with the negotiation contemplated in the preceding sentences of this paragraph, GGP shall afford the Spinco Venture with reasonable notice of such request, the ability to conduct direct discussions with the proposed tenant (if requested and with GGP's participation), and a reasonable opportunity to agree to pay such increased costs. After the Spinco Venture proposes a project (i) that has been conceptually developed, (ii) that has been approved by GGP (in accordance with the principles set forth herein) and the other parties from which Approvals are required, and (iii) for which it can adequately assure the ability to obtain financing, the parties will discuss and negotiate the creation of "strategic leasing zones" in which GGP will agree to further restrictions with respect to its leasing agreements in specified areas of the Mall Parcel (at the Spinco Venture's cost and expense to the extent GGP is unable to charge market rent; provided, however, that GGP will be required to provide Spinco with reasonably sufficient evidence of the same).

17. The parties agree that in addition to (a) the actual costs of developing and operating Air Rights projects (which shall be borne by the Spinco Venture), and (b) any property-level costs or impairment incurred by GGP as a result of the Spinco Venture (as addressed in paragraph 4), all reasonable costs and expenses incurred by GGP as a result of the development of the Air Rights (including the costs and expenses incurred in connection with obtaining third party consents or net increased operating costs) shall be borne by the Spinco Venture; provided that GGP will be

required to provide Spinco with reasonably sufficient evidence of any net increased operating cost.

18. To the extent the parties have irreconcilable differences regarding the negotiation and execution of final documentation regarding the development of the Air Rights, the parties will submit the matter to an arbitrator who will resolve the dispute using the Separation Agreement mechanisms (any dispute regarding valuation will be resolved by two-appraiser baseball-style arbitration, and all arbitration will be conducted in Las Vegas) and consistent with provisions of these core principles and any other further written agreement relating to the Air Rights between the parties. In no event shall either party be liable for consequential damages for its breach of its agreements with respect to the conveyance and development of the Air Rights. Subject to a waiver of all subrogation rights, the parties will indemnify each other in a manner consistent with the indemnification provisions in the Separation Agreement.

The parties agree to work in good faith to negotiate (a) a partnership agreement that reflects the core principles identified above and as is necessary to be able to develop the Air Rights, and (b) a term sheet that contains additional detail and certainty with respect to the scope of the agreement between the parties concerning the future development of the Air Rights.

# **EXHIBIT 17**

**EMPLOYEE MATTERS AGREEMENT**

THIS EMPLOYEE MATTERS AGREEMENT (this “Agreement”) is executed effective as of [\_\_\_], 2010, by and among General Growth Management, Inc., a Delaware corporation (“GGMI”), GGP Limited Partnership, a Delaware limited partnership (“GGPLP” and collectively with GGMI, “GGP”), and Spinco, Inc., a Delaware corporation (“Spinco” and together with GGMI and GGPLP, the “Parties”). Unless otherwise indicated, capitalized terms have the meanings set forth in the Separation Agreement (as hereinafter defined).

WHEREAS, the Parties have entered into that certain Separation Agreement (the “Separation Agreement”) dated as of [\_\_\_], 2010; and

WHEREAS, Spinco shall continue the employment of its employees and may offer employment to certain employees of GGP as of January 1, 2011, and the Parties wish to set forth the terms and conditions of employment of such employees, and

WHEREAS, Spinco’s employees shall continue to participate in certain welfare benefit plans sponsored by GGP until December 31, 2010.

NOW, THEREFORE, in consideration of the promises and mutual covenants set forth in the Separation Agreement and herein, and other good and valuable consideration, and contingent upon the consummation of the transactions contemplated by the Separation Agreement, the parties hereby agree as follows:

**SECTION 1. Employment of All Business Employees.**

(a) *Defined Terms.* Capitalized terms not otherwise defined herein shall have the same meanings as in the Separation Agreement. “Transfer Date” means the Plan Effective Date as to the Spinco Employees and Former Business Employees and January 1, 2011 as to the other Business Employees (as such terms are defined below).

(b) *Continuation of Employment.* (i) The Spinco Group shall continue to employ as of the Plan Effective Date all of its employees (the “Spinco Employees”), and (ii) the Spinco Group may cause one of its members to offer employment, as of January 1, 2011, to any or all of the employees currently employed by GGP or any of its Affiliates (other than any member of the Spinco Group) who are listed on Schedule A or in a written list of such employees agreed to by GGP and Spinco (such employees who accept such offer of employment, “Transferred Employees” and together with the Spinco Employees the “Business Employees”). No member of the Spinco Group shall be obligated to employ any Business Employee or any other employee employed by GGP or any of its Affiliates for any specific period of time following the Plan Effective Date.

(c) *Terms and Conditions of Employment.* For a period of one year following the Plan Effective Date, the Business Employees shall be entitled to receive, while in the employ of Spinco or any of its Affiliates: (i) base salary or wages and target cash incentive compensation opportunities having a comparable, employer-provided aggregate value as those provided to such

employees immediately prior to the Plan Effective Date, (ii) employee benefits having a substantially comparable employer-provided aggregate value as employee benefits provided under the applicable employee benefit plans maintained by GGP and its Affiliates for such employees in effect immediately prior to the Plan Effective Date (“GGP Plans”), and (iii) severance benefits that are no less favorable than the severance benefits provided by the GGP Group for such employees in effect immediately prior to the Plan Effective Date; *provided, however*, the GGP Key Employee Incentive Plan shall not be considered for comparability purposes; and *provided, further, however*, for the period from the Plan Effective Date until December 31, 2010, the General Growth 401(k) Savings Plan shall not be considered for comparability purposes. Nothing in this Agreement shall require the Spinco Group to establish any specific type of benefit plan (including, without limitation, any tax-qualified or non-qualified defined benefit pension, retiree health or retiree welfare benefits).

(d) *Bonuses.* As of the Transfer Date, Spinco shall or shall cause a member of the Spinco Group to assume and, subject to the requirements or limitations of applicable Law, pay all obligations to each Business Employee pursuant to any cash bonus or commission program if, and to the extent that: (i) such obligations are payable to such Business Employees after the Transfer Date (for purposes of determining what obligations are payable it shall be assumed that the Business Employees were employed by the GGP Group through December 31, 2010) or (ii) an inter-company charge for such obligations exists as of the Transfer Date. Consistent with Spinco’s obligation under the first sentence of this Section 1(d), Spinco shall, or shall cause a member of the Spinco Group to, pay Business Employees any amounts due under annual cash bonus or commission programs for the year in which the Plan Effective Date occurs on the same basis as in effect immediately prior to the Transfer Date.

(e) *Employee Agreements.* Subject to the requirements or limitations of applicable Law, the Spinco Group shall retain exclusive responsibility on and after the Transfer Date for all employment, retention, termination, severance, supplemental retirement, deferred compensation and other similar agreements between the Spinco Group and any Business Employee or Former Business Employee (collectively, “Employee Agreements”), including, without limitation, the agreements listed on Schedule B. Subject to the requirements or limitations of applicable Law, as of the Plan Effective Date, Spinco shall, or shall cause a member of the Spinco Group to, assume all obligations of the GGP Group under all Employee Agreements pursuant to which any of the GGP Group has any obligation, contingent or otherwise, to any Business Employee or Former Business Employee.

(f) *Accrued and Unused Vacation; FMLA.* Effective as of the Transfer Date, Spinco shall, or shall cause a member of the Spinco Group to, assume or retain, as the case may be, all obligations of the GGP Group for the accrued, unused vacation of the Business Employees, and shall reimburse the GGP Group for any such accrued and unused vacation required by Law to be paid (and actually paid) by the GGP Group after the Transfer Date to any Business Employee or Former Business Employee. Former employees of the Spinco Group and former employees of the GGP Group who were last employed in the Spinco Business, as identifiable on GGP’s payroll and employment records (including, without limitation, individuals listed on Schedule C), are referred to herein as “Former Business Employees.” With respect to all Business Employees who commence a leave of absence prior to December 31, 2010, Spinco shall, or shall cause a member of the Spinco Group to, provide the benefits mandated by the Family and

Medical Leave Act of 1993, as amended (the “FMLA”) with respect to such leave of absence, without regard to whether Spinco or any member of the Spinco Group is subject to the FMLA.

(g) *Credit for Service.* Subject to the requirements or limitations of applicable Law, Spinco shall, or shall cause a member of the Spinco Group to, credit Business Employees for service earned on and prior to the Transfer Date with the GGP Group, and, to the extent recognized under corresponding GGP Plans, any of their respective predecessors, in addition to service earned with the Spinco Group on or after the Transfer Date: (i) to the extent that service is relevant for purposes of eligibility, vesting or the calculation of vacation, sick days, severance, layoff and similar benefits (but not for purposes of defined benefit pension benefit accruals or vesting of equity compensation awards) under any retirement or other employee benefit plan, program or arrangement of the Spinco Group for the benefit of the Business Employees on or after the Plan Effective Date and (ii) for such additional purposes as may be required by applicable Law; provided that nothing herein shall result in a duplication of benefits.

(h) *Pre-existing Conditions; Coordination.* Subject to the requirements or limitations of applicable Law, Spinco shall, and shall cause each member of the Spinco Group to, waive limitations on benefits relating to any pre-existing conditions of the Business Employees and, to the extent applicable, eligible spouses, dependents, beneficiaries, heirs, successors and assigns of the Business Employees or Former Business Employees (“Beneficiaries”).

## SECTION 2. GGP Plans and Liabilities.

(a) *No Assumption or Transfer of GGP Plans.* Except as otherwise specifically provided in the Agreement, the Spinco Group shall not assume sponsorship of or any administrative obligations under, or receive any right or interest in any trusts relating to, any assets of or any insurance, administration or other contracts pertaining to, or have any liability with respect to any of the GGP Plans.

(b) *No Assumption of GGP Liabilities.* Except as otherwise specifically provided herein, in the Separation Agreement or in the Employee Leasing Agreement, the Spinco Group shall not assume any liabilities or obligations of GGP or any other member of the GGP Group under any of the GGP Plans or otherwise have any liability with respect to any of the GGP Plans, with respect to any employee of GGP (other than the Business Employees).

(c) *Participation in GGP Plans.* Except as otherwise specifically provided in the Agreement: (i) all Spinco Employees shall, as of the Plan Effective Date, cease any active participation in and any benefit accrual under the General Growth 401(k) Savings Plan and any other GGP Plan which is a pension or retirement plan, (ii) all Spinco Employees shall, from the Plan Effective Date through December 31, 2010, continue participation in the GGP Plans which are welfare benefit plans and which are listed on Schedule D hereto, on the same terms and conditions as in effect prior to the Plan Effective Date, and will cease participation in such plans thereafter and (iii) all Transferred Employees shall, as of the Transfer Date, cease any active participation in and any benefit accrual under all GGP Plans. GGP and the GGP Group shall take all necessary actions to effect such cessation of Business Employees under the GGP Plans as of the respective cessation date. Notwithstanding the first sentence of this Section 2(b), Business Employees and Former Business Employees may continue after the Transfer Date to

participate in accordance with, and subject to their eligibility under, the terms of the applicable GGP Plans as in effect from time to time as follows:

- 1) as to claims incurred on or prior to December 31, 2010 under the GGP Plans which provide health, disability, worker's compensation, life insurance or similar benefits;
- 2) as to claims incurred on or prior to March 31, 2011 under GGP's flexible spending plans; and
- 3) as to vested and accrued benefits as of the Transfer Date under the General Growth 401(k) Savings Plan and any other GGP Plan which is a pension or retirement plan.

(d) *Stock Options.* As of the Plan Effective Date, Spinco shall assume or issue a substitute award for all outstanding stock options or other equity awards under the GGP Plans granted to Business Employees and Former Business Employees.

(e) *COBRA.* As of January 1, 2011, Spinco shall, or shall cause a member of the Spinco Group to, assume all obligations to provide continuation health care coverage in accordance with Section 4980B of the Code and Title I, Subtitle B, Part 6 of ERISA ("COBRA") to all Business Employees and Former Business Employees and their qualified Beneficiaries who incur or incurred a qualifying event at any time, including all obligations with respect to all health claims incurred on or after December 31, 2010.

(f) *Transfer of Sponsorship of Victoria Ward Pension Plan.* Effective as of the Plan Effective Date, sponsorship of the General Growth Pension Plan for Employees of Victoria Ward, Ltd. shall be transferred from the GGP Group and assumed by Spinco or a member of the Spinco Group.

### SECTION 3. Reimbursement of Costs.

Spinco shall reimburse GGP for all liabilities actually paid by any member of the GGP Group after the Plan Effective Date (including allocations of actual estimated annual expenses, consistent with past practice) (i) with respect to the Business Employees and Former Business Employees, to the extent not paid directly by Spinco (other than any compensation or other amounts payable pursuant to the GGP Key Employee Incentive Plan), (ii) in connection with the provision of coverage for Spinco Employees under the GGP Plans listed on Schedule D hereto (including insurance premiums, claims and costs of administration) and (iii) in connection with the provision of retiree medical, dental, vision, life insurance and prescription drug coverage for "Victoria Ward retirees," to the extent not paid directly by Spinco. Such amounts shall be paid in accordance with the procedures set forth in Section 3.1(b) of the Employee Lease Agreement.

### SECTION 4. Obligations Net of Insurance Proceeds and Other Amounts.

(a) The amount which Spinco is required to pay under this Agreement will be reduced by any Insurance Proceeds theretofore actually recovered in respect of the related Liability. If a Party receives a payment (an "Indemnity Payment") required by this Agreement



from Spinco in respect of any Liability and subsequently receives Insurance Proceeds, then such Party will pay to Spinco an amount equal to such Insurance Proceeds but not exceeding the amount of the Indemnity Payment paid by Spinco in respect of such Liability.

(b) An insurer who would otherwise be obligated to pay any claim shall not be relieved of the responsibility with respect thereto or, solely by virtue of the indemnification provisions hereof, have any subrogation rights with respect thereto. GGP shall use its commercially reasonable efforts to seek to collect or recover any third-party Insurance Proceeds (other than Insurance Proceeds under an arrangement where future premiums are adjusted to reflect prior claims in excess of prior premiums) to which GGP is entitled in connection with any Liability for which GGP seeks indemnification pursuant to this Agreement; provided, that GGP's inability to collect or recover any such Insurance Proceeds shall not limit Spinco's obligations hereunder.

(c) Any Indemnity Payment under this Agreement shall be increased to take into account any inclusion in income of GGP arising from the receipt of such Indemnity Payment and shall be decreased to take into account any reduction in income of GGP arising from such indemnified Liability. For purposes hereof, any inclusion or reduction shall be determined (i) using the highest marginal rates in effect at the time of the determination and applicable to a corporate resident of Chicago, Illinois and (ii) assuming that GGP, including any entity that qualifies as a real estate investment trust, will be liable for Taxes at such rate and has no Tax Attributes at the time of the determination.

#### SECTION 5. Impermissibility; Good Faith.

In the event that any provision hereof is not permissible under any Law or practice, the parties agree that they shall in good faith take such actions as are permissible under such Law or practice to carry out to the fullest extent possible the purposes of such provision.

#### SECTION 6. Restrictive Covenants Relating to Employees.

(a) *Non-Solicitation by GGP.* GGP and members of the GGP Group shall not, directly or indirectly, induce or attempt to induce any Business Employee to leave the employ of the Spinco Group (or any member thereof), or solicit, recruit, or attempt to solicit or recruit any Business Employee. The foregoing covenant in the immediately preceding sentence shall apply for a period of two (2) years following the Plan Effective Date.

(b) *Non-Hire by GGP.* GGP and members of the GGP Group shall not hire or employ any of the individuals listed on Schedule E hereto during the one (1) year period immediately following the Plan Effective Date.

(c) *Non-Solicitation by Spinco.* Spinco and members of the Spinco Group shall not, directly or indirectly, induce or attempt to induce to leave the employ of the GGP Group any employee of the GGP Group not identified on Schedule A or in a written list of such employees agreed to by GGP and Spinco. The foregoing covenant shall apply for a period of one (1) year following the Plan Effective Date and for any employee working on a transition services agreement project, apply for a period of one (1) year from the date of termination of his or her performance of transition services, regardless of the length of time on the project.

(d) *Exceptions.* Notwithstanding the limitations in this Section 6 applicable to employees of the GGP Group or the Spinco Group (collectively, the “Restricted Employees”), such limitations will not prohibit the GGP Group or the Spinco Group from: (i) attempting to hire or hiring any Restricted Employee after the termination of such employee's employment at any time after the Plan Effective Date by the GGP Group or the Spinco Group, as the case may be, (ii) placing public advertisements or conducting any other form of general solicitation that is not specifically targeted towards the Restricted Employees, including the use of an independent employment agency or search firm whose efforts are not specifically directed at Restricted Employees, and hiring any Restricted Employee that responds to such solicitation (other than those employees identified on Schedule E) or (iii) soliciting and hiring specifically identified Restricted Employees with the prior agreement of the other Party.

#### SECTION 7. Cooperation and Assistance.

(a) *Mutual Cooperation.* After the Plan Effective Date, to the extent permitted by Law, each of Spinco and GGP shall, and shall cause the Spinco Group and the GGP Group, respectively, to, provide to the other Party such current information regarding the Business Employees or Former Business Employees, and their Beneficiaries, on an ongoing basis upon any reasonable request, as may be necessary to facilitate determinations of eligibility for, and payments of benefits to, the Business Employees and Former Business Employees and their Beneficiaries under the GGP Plans.

(b) *Claims Assistance.* To the extent permitted by Law, each of Spinco and GGP shall, and shall cause the Spinco Group and the GGP Group, respectively, to, permit their respective employees to provide, at the other Party's expense, such reasonable assistance to the other Party as may be required in respect of claims (whether asserted or threatened) against the GGP Group or the Spinco Group, respectively, other than with respect to claims by the other Party, to the extent that (i) such employee has particular knowledge of relevant facts or issues or (ii) such employee's assistance is reasonably necessary in respect of any such claim.

(c) *Consultation with Employee Representative Bodies.* The parties hereto shall, and shall cause their respective Affiliates to, mutually cooperate in undertaking all reasonably necessary or legally required provision of information to, or consultations, discussions or negotiations with, employee representative bodies (including any unions) which represent employees affected by the transactions contemplated by this Agreement.

#### SECTION 8. Employment Files.

As of the Transfer Date, to the extent permitted by HIPAA and other applicable law, GGP shall, and shall cause the GGP Group to provide to Spinco all employment files of the Business Employees and Former Business Employees; provided, that, GGP and the GGP Group shall not transfer any performance evaluations relating to the Transferred Employees. GGP and the GGP Group may retain copies of any employment files transferred to Spinco.

#### SECTION 9. Employee Data Protection.

(a) “Personal Data” includes: (i) any information relating to an identified or identifiable natural person who is an employee of GGP or any of its Affiliates and that (A) is

obtained by the Spinco Group from GGP or any of its Affiliates or representatives, (B) is processed by the Spinco Group on behalf of the GGP Group, or (C) is created by the Spinco Group based on (A) or (B) above, and (ii) any information relating to an identified or identifiable natural person who is an employee of Spinco or any of its Affiliates and that (A) is in the GGP Group's possession, custody or control as of the Plan Effective Date, (B) is obtained by the GGP Group from Spinco or any of its Affiliates or representatives, (C) is processed by the GGP Group on behalf of the Spinco Group, or (D) is created by the GGP Group based on (A), (B), or (C) above.

(b) SpinCo shall, and shall cause the Spinco Group to, and GGP shall, and shall cause the GGP Group to, comply with all applicable Laws regarding the maintenance, use, sharing or processing of the other Party's Personal Data, including, but not limited to: (i) compliance with any applicable requirements to provide notice to, or obtain consent from, the data subject for processing of the data after the Plan Effective Date, and (ii) taking any other steps necessary to ensure compliance with data protection Laws, including but not limited to, the execution of any separate agreements with the other Party to facilitate the lawful processing of certain Personal Data (such agreements to be executed before or after the Plan Effective Date, as necessary).

(c) Spinco shall, and shall cause the Spinco Group to, and GGP shall, and shall cause the GGP Group to, share and otherwise process the other Party's Personal Data only on a need-to-know basis, only as legally permitted and to the extent necessary to perform its obligations under the Separation Agreement and the exhibits thereto (the "Transaction Agreements") or to process benefits under applicable employee benefit plans. Each of Spinco and GGP agrees that it shall not otherwise disclose any of the other Party's Personal Data to third parties without the express written approval of the other Party unless required by applicable Law. Each of Spinco and GGP shall use reasonable, technical and organizational measures to ensure the security and confidentiality of the other Party's Personal Data in order to prevent, among other things, accidental, unauthorized or unlawful destruction, modification, disclosure, access or loss. Each of Spinco and GGP shall promptly inform the other Party of any breach of this security and confidentiality undertaking, unless prohibited from doing so by Law or at the request of a Governmental Authority.

#### SECTION 10. Miscellaneous.

(a) *No Third-Party Beneficiaries.* All provisions contained in this Agreement are included for the sole benefit of the respective parties to this Agreement and shall not create any right in any other Person, including, without limitation, any Business Employees, Former Business Employees, any Beneficiary or any participant in any GGP Plan. Nothing in this Agreement shall amend any GGP Plan.

(b) *No Rights to Continued Employment or Change in At-Will Status.* Consistent with Section 1(b) above, neither Spinco nor any member of the Spinco Group shall be obligated to employ any employee of GGP or any of its Affiliates or the Spinco Group, or continue to employ any Business Employee for any specific period of time, subject to applicable Law and the Employee Agreements.

(c) *No Limitation on Ability to Amend Plans.* Except as expressly set forth in this Agreement, nothing in this Agreement or in the Transaction Agreements shall require any member of the Spinco Group, or any of Spinco's Affiliates, to continue or amend any particular benefit plan after the consummation of the transactions contemplated in this Agreement, and any such plan may be amended or terminated in accordance with its terms and applicable Law.

(d) *Severability.* If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced under any Law or as a matter of public policy, all other conditions and provisions of this Agreement shall remain in full force and effect. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the parties to this Agreement shall negotiate in good faith to modify this Agreement so as to effect the original intent of the parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated by this Agreement be consummated as originally contemplated to the greatest extent possible.

(e) *Assignment.* This Agreement shall not be assigned by either party without the prior written consent of the other party. Notwithstanding the foregoing, either party may assign (i) any or all of its rights and obligations under this Agreement to any of its Subsidiaries and (ii) any or all of its rights and obligations under this Agreement in connection with a sale or disposition of any assets or entities or lines of business; provided, however, that, in each case, no such assignment shall (i) release the assigning party from any liability or obligation under this Agreement or (ii) change any of the steps in the Spinoff Plan or the Plan.

(f) *Amendment.* No provision of this Agreement may be amended or modified except by a written instrument signed by all the parties to this Agreement. No waiver by any party of any provision of this Agreement shall be effective unless explicitly set forth in writing and executed by the party so waiving. The waiver by any party of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any other subsequent breach..

(g) *Counterparts.* This Agreement may be executed in one or more counterparts, and by the different parties to each such agreement in separate counterparts, each of which when executed shall be deemed to be an original but all of which taken together shall constitute one and the same agreement. Delivery of an executed counterpart of a signature page to this Agreement by facsimile or portable document format (PDF) shall be as effective as delivery of a manually executed counterpart of any such Agreement.

IN WITNESS WHEREOF, each of the Parties hereto has caused this Agreement to be signed as of the date first above written.

GENERAL GROWTH MANAGEMENT, INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

GGP LIMITED PARTNERSHIP

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

SPINCO, INC.

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**Schedule A – GGP Employees**

[To be provided.]

**Schedule B – Employee Agreements**

[To be provided.]

**Schedule C – Former Business Employees**

[To be provided.]



**Schedule D – GGP Welfare Plans**

Medical Plan (self-insured), including Express Scripts prescription coverage

Aetna Dental

Vision Service Plan

Health Care and Dependent Care Flexible Benefits Plan

Hartford Basic Life/AD&D

Hartford Supplemental and Dependent Life and Voluntary AD&D

Hartford Long Term Disability

Short Term Disability (self-insured)

CAN Long Term Care Insurance

Cigna Business Travel Accident Insurance

Employee Assistance Program

**Schedule E – Spinco Employees Subject to Non-Hire**

[To be provided.]

# **EXHIBIT 18**

**[Not included in this filing]**

# **EXHIBIT 19**

## **EMPLOYEE LEASING AGREEMENT**

THIS EMPLOYEE LEASING AGREEMENT (this “Agreement”) is executed effective as of [\_\_\_], 2010, by and among General Growth Management, Inc., a Delaware corporation (“GGMI”), GGP Limited Partnership, a Delaware limited partnership (“GGPLP” and collectively with GGMI, “GGP”), and Spinco, Inc., a Delaware corporation (“Spinco” and together with GGMI and GGPLP the “Parties”). Unless otherwise indicated, capitalized terms have the meanings set forth in the Separation Agreement (as hereinafter defined).

### **Statement of Background Information**

WHEREAS, the Parties have entered into that certain Separation Agreement (the “Separation Agreement”) dated as of [\_\_\_], 2010;

WHEREAS, Spinco desires to temporarily lease substantially all of the employees of GGP who are primarily engaged in Spinco’s business so that such employees have uninterrupted benefits coverage through the end of 2010, and GGP is willing to accommodate Spinco’s desire to temporarily lease such employees, in each case in preparation for an orderly transfer of such employees to Spinco; and

WHEREAS, the parties desire to set forth the terms and conditions pursuant to which this employee leasing arrangement will operate.

NOW, THEREFORE, in consideration of the promises and mutual covenants set forth in the Separation Agreement and herein, and other good and valuable consideration, and contingent upon the consummation of the transactions contemplated by the Separation Agreement, the parties hereby agree as follows:

### **ARTICLE 1**

#### **DEFINITIONS**

“Agreement” has the meaning set forth in the preamble hereto.

“COBRA” shall mean the continuation coverage requirements under Code Section 4980B and Part 6 of Subtitle B, Title I of ERISA.

“Code” shall mean the Internal Revenue Code of 1986, as amended.

“Direct Payroll Costs” shall mean, with respect to any Leased Employee or Former Leased Employee, (i) the gross amount of all salaries and wages, including severance pay (if applicable) and vacation or other paid time-off, (ii) the gross amount of any bonus, commissions or other incentive compensation payable in cash (other than any compensation or other amounts payable pursuant to the GGP Key Employee Incentive Plan), (iii) employee benefit costs (in accordance with the methodology set forth in Exhibit A), (iv) amounts payable by an employer pursuant to federal, state or other workers’ compensation, unemployment insurance, other payments required by federal, state or local law or regulations, including employer contributions pursuant to the Federal Insurance Contribution Act, and (v) costs incurred upon the exercise of

employee option awards outstanding as of the Plan Effective Date, including the fair market value of any stock delivered upon the exercise of such options.

“ERISA” shall mean the Employee Retirement Income Security Act of 1974, as amended.

“Former Leased Employees” shall mean Leased Employees who, during or upon the expiration of the Term cease to be employed by GGP or any of its Affiliates.

“GGP Indemnified Parties” has the meaning set forth in Section 4.1.

“HIPAA” shall mean the Health Insurance Portability and Accountability Act of 1996.

“Indirect Payroll Costs” shall mean, with respect to any Leased Employee or Former Leased Employee, all costs (other than Direct Payroll Costs) associated with such employee’s compensation and benefits in accordance with the methodology set forth in Exhibit A.

“Leased Employees” has the meaning set forth in Section 2.1.

“Out-of-Pocket Expenses” means, with respect to any Leased Employee or Former Leased Employee, any reasonable actual out-of-pocket expenses that are incurred by GGP arising from or relating to the employment or termination of employment of such Leased Employee or Former Leased Employee (other than Direct Payroll Costs and Indirect Payroll Costs), including, but not limited to, reasonable business expenses properly incurred by Leased Employees or Former Leased Employees, costs of cars, laptops and other equipment and services provided to Leased Employee or Former Leased Employee, and bereavement gifts and other out-of-pocket expenses incurred in the ordinary course of business consistent with past practices as an employer, but excluding general corporate overhead costs otherwise allocable to Leased Employees and Former Leased Employees or the provisions of services by such Leased Employee or Former Leased Employee.

“Separation Agreement” has the meaning set forth in the Statement of Background Information herein.

“Spinco Indemnified Parties” has the meaning set forth in Section 4.2.

“Term” has the meaning set forth in Section 2.2.

## **ARTICLE 2**

### **RESPONSIBILITIES OF GGP**

#### **Section 2.1 Provision of Leased Employees.**

Subject to the terms and conditions hereof, GGP shall furnish to Spinco during the Term the services of (i) all of the individuals who are employed by GGP or any of its Affiliates exclusively in or in support of the Spinco business on the Plan Effective Date and are set forth in Schedule A to the Employee Matters Agreement and (ii) such additional employees of GGP or

any of its Affiliates as may be set forth in a written list mutually agreed by GGP and Spinco, with such deletions as may be requested by Spinco or may occur in the ordinary course of business (*e.g.*, by reason of an employee's resignation, death or disability), and such additions as may be mutually agreed by the Parties, to perform the functions and services that were performed by the employees with respect to the business of the Parties as of the Plan Effective Date (such employees, with such additions and deletions, are collectively referred to hereinafter as "Leased Employees"). All Leased Employees will perform their usual and customary functions, including at facilities owned or leased by Spinco or one of its Affiliates, for a period not to exceed the Term of this Agreement.

## Section 2.2 Term of Agreement.

The term of this Agreement with respect to each Leased Employee shall commence as of 12:01 a.m. on the day following the Plan Effective Date and shall continue in full force and effect with respect to such Leased Employee until December 31, 2010, unless terminated earlier by Spinco upon at least five business days' prior written notice to GGP (the "Term").

## Section 2.3 Status of Leased Employees.

(a) Leased Employees providing services to Spinco under this Agreement shall at all times during the Term remain employees of GGP solely for purposes of payroll, employment taxes, employee benefits, workers compensation and related obligations. Spinco shall have the right to have GGP remove any Leased Employee as a service provider to Spinco. GGP shall have the ultimate authority to make all termination decisions; provided, however, that GGP may only terminate a Leased Employee (i) at the request of Spinco or (ii) as determined by GGP in good faith. GGP shall also have the ultimate authority to make all hiring decisions, but GGP shall make all reasonable efforts to accommodate Spinco's needs and desires in operating its business.

(b) All Leased Employees shall be subject to supervision and control solely by Spinco and its Affiliates, and GGP shall not have any authority or responsibility to exercise any supervision or control over Leased Employees. In particular, Spinco and its Affiliates shall have full and exclusive responsibility to evaluate, train, supervise, promote, discipline and control the Leased Employees, and to determine which Leased Employees shall be designated to perform required tasks. Certain Leased Employees may hold supervisory positions and, in such capacity (unless otherwise determined by Spinco), shall control and determine the procedures to be followed by other Leased Employees regarding the time, place and manner of performance of work for Spinco by the Leased Employees, including determination of hours of work, rest periods, lunch periods and the delegation and assignment of work; provided, however, that such Leased Employees having supervisory responsibilities shall adhere to all of GGP's policies, practices and contractual obligations if any, concerning days of vacation, sick time, leave and all other terms and conditions of employment unless otherwise mutually agreed by the Parties.

(c) Leased Employees shall not be treated as agents or representatives of GGP or any of its Affiliates and shall not have any authority or responsibility to enter into any contract or otherwise take any action in the name or on behalf of GGP or any of its Affiliates, except as may be specifically authorized in writing on or after the date hereof by GGP. Likewise, Leased



Employees shall not have any authority or responsibility to enter into any contract in the name or on behalf of Spinco and its Affiliates, except as may be specifically authorized in writing by Spinco.

Section 2.4 Standards of Performance.

In performing GGP's obligations under this Agreement, GGP agrees that it shall in good faith exercise the same standard of care as it has used to perform such services for its own account and for its other employees, except as mutually agreed in writing by GGP and Spinco.

Section 2.5 Employee Benefits Matters.

Throughout the Term, unless otherwise specified in this Agreement, GGP shall maintain, or continue participation in, for the benefit of all Leased Employees and, if applicable, Former Leased Employees, all employee benefit programs that GGP generally makes available to its employees as of the Plan Effective Date, including, but not limited to, qualified retirement plans, welfare plans, fringe benefit plans and workers' compensation benefits.

### **ARTICLE 3**

#### **RESPONSIBILITIES OF SPINCO**

Section 3.1 Reimbursement of Payroll Costs; Out-of Pocket Expenses.

(a) Spinco shall pay GGP for all Direct Payroll Costs, Indirect Payroll Costs and Out-of-Pocket Expenses attributable to all Leased Employees and Former Leased Employees.

(b) During the Term and thereafter to the extent applicable, GGP shall supply Spinco with an invoice of all Direct Payroll Costs, Indirect Payroll Costs and Out-of-Pocket Expenses as soon as practicable following the end of each pay period. Payment shall be made by Spinco of these amounts invoiced via wire transfer of immediately available funds into a bank account designated by GGP within 15 days following the date the invoice. To the extent any Direct Payroll Costs or Out-of-Pocket Expenses are not included within GGP's payroll system and therefore not included in the invoices generated each pay period, GGP shall supply Spinco with an invoice of such Direct Payroll Costs or Out-of-Pocket Expenses as soon as practicable following payment by the GGP Group, but in no event later than fifteen (15) business days following the end of each month in which payment was made by the GGP Group.

(c) GGP shall have no obligation to continue to employ any Leased Employee who is removed by Spinco, is not offered employment with Spinco concurrent with the expiration of the Term or does not accept employment with Spinco and, if GGP terminates any such Leased Employee, Spinco shall be responsible for, and shall pay, any and all costs and expenses (including, without limitation, all severance benefits or costs) attributable to such terminated Leased Employee. During the 90 day period following the termination of employment of a Leased Employee, GGP shall not re-employ such Leased Employee if such Leased Employee receives severance benefits.

## **ARTICLE 4**

### **OBLIGATIONS NET OF INSURANCE PROCEEDS AND OTHER AMOUNTS**

Section 4.1 The amount which Spinco is required to pay under this Agreement will be reduced by any Insurance Proceeds theretofore actually recovered in respect of the related Liability. If a Party receives a payment (an “Indemnity Payment”) required by this Agreement from Spinco in respect of any Liability and subsequently receives Insurance Proceeds, then such Party will pay to Spinco an amount equal to such Insurance Proceeds but not exceeding the amount of the Indemnity Payment paid by Spinco in respect of such Liability.

Section 4.2 An insurer who would otherwise be obligated to pay any claim shall not be relieved of the responsibility with respect thereto or, solely by virtue of the indemnification provisions hereof, have any subrogation rights with respect thereto. GGP shall use its commercially reasonable efforts to seek to collect or recover any third-party Insurance Proceeds (other than Insurance Proceeds under an arrangement where future premiums are adjusted to reflect prior claims in excess of prior premiums) to which GGP is entitled in connection with any Liability for which GGP seeks indemnification pursuant to this Agreement; provided, that GGP’s inability to collect or recover any such Insurance Proceeds shall not limit Spinco’s obligations hereunder.

Section 4.3 Any Indemnity Payment under this Agreement shall be increased to take into account any inclusion in income of GGP arising from the receipt of such Indemnity Payment and shall be decreased to take into account any reduction in income of GGP arising from such indemnified Liability. For purposes hereof, any inclusion or reduction shall be determined (i) using the highest marginal rates in effect at the time of the determination and applicable to a corporate resident of Chicago, Illinois and (ii) assuming that GGP, including any entity that qualifies as a real estate investment trust, will be liable for Taxes at such rate and has no Tax Attributes at the time of the determination.

## **ARTICLE 5**

### **INDEMNIFICATION AND LIMITATION OF LIABILITY**

#### Section 5.1 Indemnification of GGP.

Spinco agrees to protect, indemnify, and hold harmless GGP and its affiliates, and their respective officers, directors, employees (including Leased Employees to the extent entitled to indemnification by GGP), and agents (“GGP Indemnified Parties”), from and against and in respect of any damages which result from, arise out of or relate to this Agreement and the employment or termination of employment of Leased Employees and Former Leased Employees, except to the extent arising from or relating to the willful misconduct or gross negligence of any GGP Indemnified Parties (other than Leased Employees). For clarification and without limiting the generality of the foregoing, GGP shall not be responsible for any act or omission of any Leased Employee, and any such act or omission shall not constitute willful misconduct or gross negligence of GGP.

Section 5.2 Indemnification of Spinco.

GGP agrees to protect, indemnify and hold harmless Spinco and its affiliates, and their respective officers, directors, employees, and agents (“Spinco Indemnified Parties”), from and against and in respect of any damages which result from, arise out of or relate to this Agreement and the employment or termination of employment of Leased Employees and Former Leased Employees to the extent resulting from or attributable to willful misconduct or gross negligence of GGP (excluding Leased Employees).

Section 5.3 Incorporation of Separation Agreement.

The indemnification provisions in this Article 4 shall be subject to the same procedures as set forth in Section 5.5, Section 5.6, Section 5.7, Section 5.8 and Section 5.9 of the Separation Agreement.

**ARTICLE 6**

**EMPLOYMENT TAX REPORTING**

Consistent with the Leased Employees and Former Leased Employees being or having been employees of GGP, GGP shall respond to all questions and inquiries from Spinco, state and federal agencies, and other persons regarding payroll and employment data and history relating to the Leased Employees and Former Leased Employees for periods of employment with GGP.

**ARTICLE 7**

**SEVERANCE BENEFITS**

GGP shall notify Spinco in advance of any contemplated termination of employment of any Leased Employee prior to the termination of his or her employment if Spinco would be liable under the terms of this Agreement for any severance benefits or costs payable to, or on account of, the terminated Leased Employee. Each Leased Employee shall be eligible for severance benefits, in the event of a termination of his or her employment during or at the end of the Term, in accordance with the provisions of GGP’s severance policy.

**ARTICLE 8**

**COBRA AND HIPAA; FLEX PLAN**

Section 8.1 COBRA and HIPAA.

(a) GGP shall be solely responsible for the COBRA administration of GGP’s group health plans in respect of Leased Employees and Former Leased Employees (and their qualified beneficiaries), including providing the appropriate COBRA notices and making available any coverage required under COBRA in respect of such individuals for any qualifying event (as defined in COBRA) that occurs before they transfer to employment with Spinco and its Affiliates.

(b) GGP shall provide a timely certificate of creditable coverage (within the meaning of HIPAA) to each Leased Employee (and his or her covered dependents) who transfers to employment with Spinco and its Affiliates for any HIPAA triggering event which occurs during such employee's employment with GGP.

Section 8.2 Code Section 125 Benefits.

During the Term, the Leased Employees shall continue to participate in the flexible benefits plans sponsored by GGP, including any health care or dependent care spending account plans.

**ARTICLE 9**

**RELATIONSHIP OF PARTIES**

Section 9.1 Delivery of Information; Cooperation Between the Parties.

Spinco and GGP shall provide each other with all such information and materials reasonably necessary to effect GGP's and Spinco's prompt and complete performance of their duties and obligations under this Agreement. The parties agree that they shall cooperate with each other and shall act in such a manner as to promote the prompt and efficient completion of the obligations hereunder.

Section 9.2 Confidentiality.

All materials delivered by Spinco to GGP or GGP to Spinco pursuant to this Agreement shall be treated as confidential information unless required to be disclosed pursuant to law or an order of a court of competent jurisdiction. The terms of this Section 7.2 shall survive termination of this Agreement. In addition to the foregoing, the confidentiality provision contained in the Separation Agreement shall apply to this Agreement and be enforceable in accordance with the terms of the Separation Agreement.

Section 9.3 Contractor Relationship.

(a) The Parties stipulate and agree that GGP and each Leased Employee is an independent contractor with respect to its, his or her duties to Spinco for all payroll, benefit and workers compensation purposes.

(b) Unless otherwise agreed by the Parties, neither Spinco nor GGP shall represent to any party that any Leased Employee is an employee of Spinco, or that such Leased Employee's relationship to Spinco is other than that of an independent contractor for purposes described in Section 7.3(a).

Section 9.4 Compliance with Law.

GGP and its employees (other than Leased Employees), and any contractors, subcontractors and other agents engaged by GGP, shall comply with all applicable laws in

connection with the employment or termination of employment of the Leased Employees and Former Leased Employees.

Section 9.5 Liability Insurance Coverages.

(a) GGP shall obtain and keep in force at all times during the term of this Agreement liability insurance coverage relating to the acts, omissions or employment of all Leased Employees and Former Leased Employees, including general liability and workers compensation, as though the Leased Employees and Former Leased Employees had remained assigned to a facility operated by GGP.

(b) Spinco shall obtain all necessary property and casualty and other liability coverage with respect to the premises at which the Leased Employees perform services, and with respect to any acts, omissions or the use of Leased Employees as is prudent under the circumstances.

**ARTICLE 10**

**MISCELLANEOUS**

Section 10.1 Captions.

The headings of the several Articles and Sections of this Agreement are inserted for convenience of reference only and do not constitute a part of this Agreement.

Section 10.2 Governing Law.

This Agreement is made pursuant to and shall be governed by and construed in accordance with the laws of the State of New York, without regard to any conflict of law rules which might result in the application of the laws of another jurisdiction.

Section 10.3 Dispute Resolution.

In the event a dispute arises among the parties relating to this Agreement, the parties agree to resolve such dispute pursuant to the procedures set forth in Article VII of the Separation Agreement, and the procedures of Article VII of the Separation Agreement is hereby incorporated into this Agreement in its entirety.

Section 10.4 Waiver of Jury Trial.

Each of the parties hereto hereby waives the right to a trial by jury in any proceeding or litigation brought against any other party with respect to this Agreement or the transactions contemplated herein. Each Party represents that this waiver is made knowingly and voluntarily after consultation with and upon advice of counsel and is a material part of this Agreement.

Section 10.5 Counterparts.

This Agreement may be executed in one or more counterparts, each of which will be considered one and the same agreement.

Section 10.6 Notices.

Any notice or communication under this Agreement shall be made in a manner consistent with Section 8.5 of the Separation Agreement.

Section 10.7 Assignment.

This Agreement shall inure to the benefit of and be binding on the successors, assigns and legal representatives of each of the Parties; provided that no Party shall assign this Agreement without the written consent of each of the other Parties and any attempted assignment without said consent shall be null, void and without any effect *ab initio*; and provided, further, that no such assignment by either Party shall release the assignor from its obligations hereunder.

Section 10.8 Amendment.

This Agreement may not be amended, modified or any provision waived, except by an instrument in writing signed by the Party or an executive officer of a corporate Party against whom enforcement of the amendment, modification or waiver is sought. A waiver by a Party of the performance of any covenant, agreement, obligation, condition, representation or warranty will not be construed as a waiver of any other covenant, agreement, obligation, condition, representation or warranty. A waiver by any Party of the performance of any act will not constitute a waive of the performance of any other act or an identical act required to be performed at a later time.

Section 10.9 Expenses.

Except as otherwise provided in this Agreement, each Party shall pay its own expenses and costs of attorneys, accountants and consultants.

Section 10.10 Severability.

Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction will, as to such jurisdiction, be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions of this Agreement, and any such prohibition or unenforceability in any jurisdiction will not invalidate or render unenforceable such provision in any other jurisdiction. To the extent permitted by law, the parties waive any provision of law which renders any such provision prohibited or unenforceable in any respect.

Section 10.11 No Third Party Beneficiaries.

The terms and provisions of this Agreement are intended solely for the benefit of the GGP and the Spinco and their respective successors and permitted assigns, and it is not the intention of the parties to confer third-party beneficiary rights upon any other person or entity.

No Leased Employee, beneficiary or dependent of a Leased Employee or other person shall be regarded for any purpose as a third party beneficiary of this Agreement.

IN WITNESS WHEREOF, each of the Parties hereto has caused this Agreement to be signed as of the date first above written.

GENERAL GROWTH MANAGEMENT, INC.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

GGP LIMITED PARTNERSHIP

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

SPINCO, INC.

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_



## EXHIBIT A

### Direct Payroll Costs and Indirect Payroll Costs Methodology

#### Direct Payroll Costs:

The following Direct Payroll Costs will be billed each pay period to Spinco based on the applicable charges as indicated in GGP's payroll system:

1. Medical and prescription employer amounts (because GGP's medical plan is self-funded, our systems allocate a deemed amount for the coverage each pay period to each participating employee)
2. Kaiser and HMSA Hawaii medical coverage employer paid premiums
3. Aetna Dental coverage employer paid premiums
4. Vision Service Plan coverage employer paid premiums
5. Hartford Basic Life/AD&D coverage employer paid premiums, including for the South Street Seaport union employees
6. Short Term Disability payments made to applicable employees
7. 401(k) employer matching contributions
8. Tuition reimbursement payments made to applicable employees

The following Direct Payroll Costs will be separately billed to Spinco as they are paid by the GGP Group:

1. Retiree medical, dental and prescription coverage for the "Victoria Ward retirees"
2. Retiree life insurance coverage for the "Victoria Ward retirees"

#### Indirect Payroll Costs:

Indirect Payroll Costs will be billed each pay period to Spinco as a percentage of the earnings reflected for the applicable employee in the applicable pay period, consistent with GGP's usual internal accounting and payroll practices. The rate is 2% for corporate employees and 4.25% for field employees.

# **EXHIBIT 20**

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**SURETY BOND INDEMNITY AGREEMENT**

dated as of [• ]

between

GENERAL GROWTH PROPERTIES, INC.

and

SPINCO, INC.

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## SURETY BOND INDEMNITY AGREEMENT

This Surety Bond Indemnity Agreement (this “Agreement”), dated as of [•], is by and between General Growth Properties, Inc., a Delaware corporation (“GGP”), and Spinco, Inc., a Delaware corporation (for itself, and on behalf of each of its subsidiaries, “Spinco”).

### RECITALS

WHEREAS, GGP and Spinco entered into the Separation Agreement, dated as of the date hereof (as amended, modified or supplemented from time to time in accordance with its terms, the “Separation Agreement”);

WHEREAS, certain members of the Spinco Group, as principal obligors, and the surety or bonding companies party thereto (the “Sureties”) have issued those certain surety bonds set forth on Exhibit A hereto (the “Spinco Bonds”), which are outstanding on the date hereof;

WHEREAS, GGP and certain of its Subsidiaries are parties to those certain indemnity agreements set forth on Exhibit B hereto (the “Indemnity Agreements”), pursuant to which GGP and its Subsidiaries party thereto are obligated to make premium payments in respect of the Spinco Bonds and indemnify the Sureties from and against all losses and liabilities they may incur or suffer in respect of the Spinco Bonds; and

WHEREAS, the Separation Agreement requires execution and delivery of this Agreement by GGP and Spinco on or prior to the Plan Effective Date.

NOW, THEREFORE, in consideration of the foregoing and the mutual agreements contained in this Agreement, the Parties hereby agree as follows:

### ARTICLE I

#### DEFINITIONS

Section 1.01. Certain Defined Terms. (a) Unless otherwise defined in this Agreement, all capitalized terms used in this Agreement shall have the same meaning as in the Separation Agreement.

(b) The following capitalized terms used in this Agreement shall have the meanings set forth below:

“Agreement” shall have the meaning set forth in the Preamble.

“GGP” shall have the meaning set forth in the Preamble.

“Indemnity Agreements” shall have the meaning set forth in the Recitals.

“Losses” means all claims, liabilities, damages, awards, assessments, settlements, penalties, fines, judgments, losses, costs (including reasonable legal fees and reasonable consultants’ fees and respective expenses), charges and expenses.

“Party” means GGP and Spinco individually, and “Parties” means GGP and Spinco collectively, and, in each case, their respective successors and permitted assigns.

“Reduced Availability” means an amount equal to the reduction in borrowing availability under GGP’s then current senior credit facility to the extent such reduction in availability relates to any or all of the Spinco Bonds.

“Separation Agreement” shall have the meaning set forth in the Preamble.

“Spinco” shall have the meaning set forth in the Preamble.

“Spinco Bond Financing Fee” means, as of the applicable date, the sum of (A) (i) the average daily balance of the Reduced Availability during the preceding calendar month with respect to each Spinco Bond that resulted in Reduced Availability during such time, in the aggregate, multiplied by (ii) an annual percentage rate of 2.0% plus (B) (i) the average daily balance of the Spinco Bond Exposure during the preceding calendar month with respect to each Spinco Bond that did not result in Reduced Availability during such time, in the aggregate, multiplied by (ii) an annual percentage rate of 1.0%.

“Spinco Bonds” shall have the meaning set forth in the Recitals.

“Spinco Bond Exposure” means an amount equal to the exposure of the GGP Group related to a particular Spinco Bond, which amount is initially set forth in the column titled “Bond Remaining Exposure” in the spreadsheet attached hereto as Exhibit A, and which amount Spinco may, in good faith consultation with GGP, update from time to time to reflect reductions in such exposure; provided, however, that Spinco shall provide GGP with evidence supporting the amount of any such reduction that is reasonably acceptable, in form and substance, to GGP; provided, further, that the amount of any Spinco Bond Exposure shall be reduced by the amount of any collateral posted hereafter by Spinco or any other member of the Spinco Group pursuant to Section 2.08 or otherwise.

“Sureties” shall have the meaning set forth in the Recitals.

## ARTICLE II

### OBLIGATIONS WITH RESPECT TO SPINCO BONDS

Section 2.01. Bond Payments; Indemnification. Spinco shall, and shall cause its applicable Subsidiaries that are the principal obligors under the Spinco Bonds to:

(a) pay directly (if requested by GGP), or promptly reimburse GGP for the payment hereafter of, all premiums, including any renewal premiums, with respect to the Spinco Bonds as they become due; provided, that, with respect to any Spinco Bond that is terminated, the premium payable by Spinco shall be pro rated for the month of termination, and no premium payments shall thereafter be due in respect of such Spinco Bond;

(b) indemnify GGP and each other member of the GGP Group from and against, and pay to GGP or the applicable member of the GGP Group the amount of, any and all Losses arising out of or related to the Spinco Bonds, whether pursuant to the Indemnity Agreements or

otherwise (except to the extent attributable to the GGP Group's gross negligence or willful misconduct with respect to administering the applicable Surety relationship); and

(c) pay to GGP or its designee the Spinco Bond Financing Fee, monthly in arrears on or before the tenth day of each month.

Section 2.02. Taxes. Without limiting any provisions of this Agreement, Spinco shall pay any sales, use and other similar taxes imposed on, or payable with respect to, any amounts, including the Spinco Bond Financing Fee, payable by it pursuant to this Agreement; provided, however, that Spinco shall not pay, or be responsible for, any applicable income, franchise or gross receipts taxes imposed on, or payable with respect to, any amounts, including the Spinco Bond Financing Fee, payable by it pursuant to this Agreement.

Section 2.03. Spinco Covenants. Spinco shall, and shall cause its Subsidiaries that are the principal obligors under the Spinco Bonds to:

(a) use commercially reasonable efforts to replace, as promptly as practicable following the date of this Agreement, each of the Spinco Bonds with a new surety bond, letter of credit or similar instrument (or otherwise discharge or terminate such Spinco Bond in a manner) that does not involve any recourse to any member of the GGP Group; provided, however, that, no later than twenty-four (24) months following the Plan Effective Date, Spinco shall replace, or cause the replacement of, each of the Spinco Bonds with a new surety bond, letter of credit or similar instrument (or otherwise discharge or terminate such Spinco Bond in a manner) that does not involve any recourse to any member of the GGP Group;

(b) use commercially reasonable efforts to cause the face amount of each outstanding Spinco Bond to be reduced from time to time during the term of this Agreement to reflect the then-remaining exposure under such Spinco Bond; and

(c) perform all work in accordance with the obligations underlying the Spinco Bonds.

Section 2.04. No Right to Set-Off. Spinco shall pay in full all amounts required pursuant to Section 2.01 hereof and shall not set off, counterclaim or otherwise withhold any amount owed to any member of the GGP Group under this Agreement on account of any obligation owed by members of the GGP Group to members of the Spinco Group that have not been finally adjudicated, settled or otherwise agreed upon by the Parties in writing.

Section 2.05. Notices. Each party agrees to promptly provide to the other party a copy of all written notices or other written correspondence received by such party or any member of such party's Group with respect to any Spinco Bond or any Indemnity Agreement related to any Spinco Bond.

Section 2.06. Indemnification Procedures. The provisions of Article V of the Separation Agreement shall govern claims for indemnification under this Agreement.

Section 2.07. Dispute Resolution. The provisions of Article VIII of the Separation Agreement shall govern resolution of any dispute, controversy or claim arising out of this Agreement.

Section 2.08. Request for Discharge or Posting of Collateral under Indemnity Agreements. In the event that a Surety under any Indemnity Agreement shall take any steps to require, in accordance with the terms of such Indemnity Agreement, that GGP (or a GGP affiliate that is bound by such Indemnity Agreement) post any collateral, in whatever form such collateral is required, GGP shall notify Spinco of such requirement, and Spinco shall promptly provide, or cause to be provided, the required collateral to such Surety in accordance with the terms of such Indemnity Agreement, or otherwise make provision acceptable to the Surety in accordance with the terms of such Indemnity Agreement, and Spinco shall promptly reimburse GGP for any amounts incurred or paid by GGP and its affiliates in connection with Spinco's non-compliance with such requirement to post collateral. Similarly, if any Surety shall require, in accordance with the terms of the applicable Indemnity Agreement, that GGP (or a GGP affiliate that is bound by such Indemnity Agreement) procure the discharge of the Surety from any Spinco Bond, GGP shall, or shall cause a GGP affiliate to, procure the discharge of such Surety from such Spinco Bond in the manner required by the applicable Indemnity Agreement, and Spinco shall promptly reimburse GGP for any amounts incurred or paid by GGP and its affiliates in connection with the procurement of such discharge. For the purposes of clarity, this Section 2.08 is not intended to and shall not be construed to expand the express obligations of GGP (or any affiliate thereof) under any Spinco Bond, and in no event shall this Section 2.08 be interpreted to require GGP or an affiliate thereof, or Spinco or an affiliate thereof, to provide any collateral to, or secure any discharge of, a Surety except in accordance with, and pursuant to the terms of, the applicable Spinco Bond, the related Indemnity Agreement or this Agreement, as applicable.

Section 2.09. Return of Collateral. Any collateral posted prior to the date hereof by any member of the GGP Group or by any member of the Spinco Group, and any collateral posted on or after the date hereof by any member of the GGP Group, in each case in connection with the Spinco Bonds, shall, upon release, be returned to GGP (or its designees) and shall belong to GGP (or such designee) as its sole and separate property. Any collateral posted on or after the date hereof by any member of the Spinco Group in connection with the Spinco Bonds shall, upon release, be returned to Spinco (or its designees) and shall belong to Spinco (or such designee) as its sole and separate property.

### **ARTICLE III**

#### **TERM AND TERMINATION**

Section 3.01. Term and Termination. This Agreement shall commence immediately upon the Plan Effective Date and shall terminate as to each Spinco Bond listed on Exhibit A upon the earlier to occur of: (i) the earliest date on which such Spinco Bond has been discharged, replaced or otherwise terminated, as demonstrated to GGP's reasonable satisfaction by competent legal evidence; and (ii) the mutual written agreement of the Parties to terminate this Agreement in its entirety.

Section 3.02. Effect of Termination. Upon termination of this Agreement, Spinco shall have no obligation to pay any fees or charges set forth in Section 2.01; provided, that Spinco shall remain obligated to GGP for the Spinco Bond Financing Fees and any other charges set forth in Section 2.01 owed and payable on or prior to the effective date of termination. Upon a termination of this Agreement, Section 2.01(b) (including liability in respect of any indemnifiable Losses under this Agreement arising or occurring on or prior to the date of termination), Article IV and liability for all due and unpaid Spinco Bond Financing Fees and any other charges set forth in Section 2.01 shall continue to survive indefinitely.



## ARTICLE IV

### GENERAL PROVISIONS

Section 4.01. Notices. All notices, requests, claims, demands and other communications under this Agreement shall be in writing and shall be given or made (and shall be deemed to have been duly given or made upon receipt) by delivery in person, by overnight courier service, by facsimile or electronic transmission with receipt confirmed (followed by delivery of an original via overnight courier service) or by registered or certified mail (postage prepaid, return receipt requested) to the respective Parties at the following addresses (or at such other address for a Party as shall be specified in a notice given in accordance with this Section 4.01):

- (i) if to GGP:

General Growth Properties, Inc.  
110 N. Wacker Drive  
Chicago, IL 60606  
Attention: General Counsel  
Facsimile: (312) 960-5485

- (ii) if to Spinco:

Spinco, Inc.  
[INSERT ADDRESS]

- (iii) in each case, with a copy to:

Weil, Gotshal & Manges LLP  
767 Fifth Avenue  
New York, NY 10153  
Attention: Gary Holtzer and Marcia Goldstein  
Facsimile: (212) 310-8007

Section 4.02. Severability. If any term or other provision of this Agreement is invalid, illegal or incapable of being enforced under any Law or as a matter of public policy, all other conditions and provisions of this Agreement shall nevertheless remain in full force and effect so long as the economic or legal substance of the transactions contemplated by this Agreement is not affected in any manner materially adverse to any Party. Upon such determination that any term or other provision is invalid, illegal or incapable of being enforced, the Parties shall negotiate in good faith to modify this Agreement so as to effect the original intent of the Parties as closely as possible in a mutually acceptable manner in order that the transactions contemplated by this Agreement be consummated as originally contemplated to the greatest extent possible.

Section 4.03. Entire Agreement. Except as otherwise expressly provided in this Agreement, this Agreement, the Separation Agreement and the other Transaction Documents constitute the entire agreement of the Parties with respect to the subject matter of this Agreement and supersede all prior agreements and undertakings, both written and oral, between or on behalf of the Parties with respect to the subject matter of this Agreement.

Section 4.04. No Third-Party Beneficiaries. This Agreement is for the sole benefit of GGP and the members of the GGP Group and Spinco and the members of the Spinco Group and their respective successors and permitted assigns and nothing in this Agreement, express or implied, is intended to or shall confer upon any other Person any legal or equitable right, benefit or remedy of any nature whatsoever.

Section 4.05. Governing Law. This Agreement (and any claims or disputes arising out of or related to this Agreement or to the transactions contemplated by this Agreement or to the inducement of any Party to enter into this Agreement or the transactions contemplated by this Agreement, whether for breach of contract, tortious conduct or otherwise and whether predicated on common law, statute or otherwise) shall in all respects be governed by, and construed in accordance with, the Laws of the State of New York, including all matters of construction, validity and performance, in each case without reference to any conflict of Law rules that might lead to the application of the Laws of any other jurisdiction.

Section 4.06. Amendment. No provision of this Agreement may be amended, supplemented or modified except by a written instrument making specific reference to this Agreement, signed by all the Parties.

Section 4.07. Rules of Construction. Interpretation of this Agreement shall be governed by the following rules of construction: (a) words in the singular shall be held to include the plural and vice versa, and words of one gender shall be held to include the other gender as the context requires; (b) references to the terms Article, Section and paragraph are references to the Articles, Sections and paragraphs of this Agreement unless otherwise specified; (c) references to “\$” shall mean U.S. dollars; (d) the word “including” and words of similar import when used in this Agreement shall mean “including without limitation,” unless otherwise specified; (e) the word “or” shall not be exclusive; (f) references to “written” or “in writing” include in electronic form; (g) provisions shall apply, when appropriate, to successive events and transactions; (h) the headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement; (i) GGP and Spinco have each participated in the negotiation and drafting of this Agreement and if an ambiguity or question of interpretation should arise, this Agreement shall be construed as if drafted jointly by the Parties and no presumption or burden of proof shall arise favoring or burdening either Party by virtue of the authorship of any of the provisions in this Agreement or any interim drafts of this Agreement; (j) a reference to any Person includes such Person’s successors and permitted assigns; (k) any reference to “days” means calendar days unless business days are expressly specified; and (l) when calculating the period of time before which, within which or following which any act is to be done or step taken pursuant to this Agreement, the date that is the reference date in calculating such period shall be excluded, if the last day of such period is not a business day, the period shall end on the next succeeding business day.

Section 4.08. Counterparts. This Agreement may be executed in one or more counterparts, and by each Party in separate counterparts, each of which when executed shall be deemed to be an original but all of which taken together shall constitute one and the same agreement. Delivery of an executed counterpart of a signature page to this Agreement by facsimile or portable document format (PDF) shall be as effective as delivery of a manually executed counterpart of this Agreement.

Section 4.09. Assignability; Divestitures. This Agreement shall not be assigned by operation of Law or otherwise without the prior written consent of GGP and Spinco, except that:

(a) each Party may assign all of its rights and obligations under this Agreement to any of its Subsidiaries; provided, that no such assignment shall release GGP or Spinco, as the case may be, from any liability or obligation under this Agreement; and

(b) in connection with the divestiture of any Subsidiary or business of Spinco to an acquiror, Spinco (or its applicable selling Subsidiary) shall, as a condition precedent to closing such transaction, cause such acquiror to replace all Spinco Bonds issued on behalf of such Subsidiary or business with a new surety bond, letter of credit or similar instrument (or otherwise discharge or terminate such Spinco Bond in a manner) that does not involve any recourse to any member of the GGP Group, and Spinco shall provide evidence in form and substance reasonably satisfactory to GGP of such replacement, discharge or termination; provided, that any and all costs and expenses incurred in connection therewith shall be borne solely by Spinco.

Section 4.10. Waiver of Jury Trial. EACH PARTY TO THIS AGREEMENT WAIVES TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN RESPECT TO ANY LITIGATION DIRECTLY OR INDIRECTLY ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT. EACH PARTY (I) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER; AND (II) ACKNOWLEDGES THAT IT AND THE OTHER PARTY TO THIS AGREEMENT HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER TRANSACTION AGREEMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION 4.10.

Section 4.11. Non-Recourse. Other than the GGP Group and the Spinco Group, no past, present or future director, officer, employee, incorporator, member, partner, stockholder, Affiliate, agent, attorney or representative of either GGP or Spinco or their respective Subsidiaries shall have any liability for any obligations or liabilities of GGP or Spinco, respectively, under this Agreement or for any claims based on, in respect of, or by reason of, the transactions contemplated by this Agreement.

*[The remainder of this page is intentionally left blank.]*

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed on the date first written above by their respective duly authorized officers.

GENERAL GROWTH PROPERTIES, INC.

By: \_\_\_\_\_

Name:

Title:

SPINCO, INC.

By: \_\_\_\_\_

Name:

Title:

**Exhibit A**

**Spinco Bonds**

Attached.

## **Exhibit B**

### **Indemnity Agreements**

1. General Indemnity Agreement, dated as of January 10, 2007, by and among General Growth Properties, Inc., GGP Limited Partnership, GGPLP, L.L.C., The Rouse Company, LP and General Growth Management, Inc., as Indemnitors, and Hartford Fire Insurance Company and its affiliates, as Sureties.
2. General Agreement of Indemnity, dated as of January 24, 2005, by and among General Growth Properties, Inc., as Indemnitor, and Safeco Insurance Company of America and certain of its affiliated insurance companies, as Sureties.
3. General Contract of Indemnity, dated as of February 2, 2005, by and among General Growth Properties, Inc. and GGP Limited Partnership, as Indemnitors, and Travelers Casualty and Surety Company of America, St. Paul Fire and Marine Insurance Company and their affiliates, as Sureties.
4. General Agreement of Indemnity, dated as of April 28, 2003, by and between General Growth Properties, Inc., as Indemnitor, and CNA Financial Corporation, as Surety.
5. General Agreement of Indemnity, dated as of June 29, 2010, by and between The Howard Research and Development Corporation, as Indemnitor, and Liberty Mutual Surety Company, as Surety.
6. Any other indemnity agreements entered into on or after the date of this Agreement, pursuant to which GGP and/or its then current Subsidiaries are obligated to make premium payments in respect of the Spinco Bonds and/or indemnify the surety party thereto from and against losses and liabilities it may incur or suffer in respect of the Spinco Bonds.