

ORDINANCE NO. 2008-59

AN ORDINANCE OF THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS, BY APPROVING AMENDED DEVELOPMENT STANDARDS FOR A SINGLE LOT WITHIN THE STONECREEK CROSSING SUBDIVISION; AND INCLUDING PROCEDURAL PROVISIONS.

RECITALS:

1. On November 13, 2008, the City Planning and Zoning Commission held a public hearing regarding a request to amend the building standards for one of the lots in the StoneCreek Crossing Subdivision, by allowing the use a composite roof, reclaimed wood siding, and a split rail fence on the building that will be constructed on that lot. The amendment also includes an allowance for shared parking with other businesses in the developed center.

2. Subsequent to the public hearing on that date, the Planning and Zoning Commission considered and voted to approve the requests on November 13, 2008, and recommended that the requests be approved by the City Council.

3. The City Council held a public hearing on December 2, 2008, regarding the requests.

4. All requirements of Chapter 1, Development Procedures, of the City Land Development Code pertaining to Future Land Use Map Amendments and Zoning Map amendments have been met.

5. The City Council hereby finds and determines that the adoption of the following ordinance is in the interest of the public health, morals, welfare and safety.


BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN MARCOS, TEXAS:

SECTION 1. The October 2008 Amendment to the Stone Creek Crossing Planned Development District attached hereto as Exhibit 1 is approved.

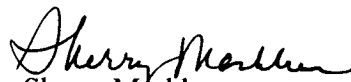
SECTION 3. After its original passage, this ordinance will be subject to reconsideration at the next regular City Council meeting. If this ordinance is not reconsidered, or if it is reconsidered and approved, notice of its adoption will be published in a newspaper of general circulation in the City. This ordinance will take effect upon publication of this notice.

PASSED, APPROVED AND ADOPTED on December 2, 2008, subject to reconsideration at the next regular City Council meeting scheduled for December 16, 2008


Reconsidered: yes____ / no_x____ If yes:____ approved
____ denied date:_____


Susan Narvaiz
Mayor

Attest:


Sherry Mashburn
City Clerk

Approved:


Michael Cosentino
City Attorney

PUBLISHED IN THE SAN MARCOS DAILY RECORD ON SUNDAY, JANUARY 4, 2009.

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Zoning ordinance no. 2007-18
Administrative Amendment Approval: July 17, 2007
City Council Amendment Approval:
Zoning ordinance no.

**STONECREEK CROSSING
Planned Development District
Site Development Standards**

**PDD Amendment
October 2008**

This Agreement and Development Plan (this "Agreement") is made and entered by and between the City of San Marcos, Texas and the Property Owner(s). For the purposes of this Agreement, the term Owner will mean the State of Texas and Creekside Square, Ltd., By: Direct Holdings, L.L.C., and their respective successors and assigns; provided, however, upon sale, transfer or conveyance of portions of the hereinafter described property, the duties and obligations of the Owner, as it relates to such transferred property, will be assumed by the new owner, and the transferring Owner will have no further liability relating to the transferred property.

Property Owner: State of Texas for the use and benefit of the Permanent School Fund
General Land Office
1700 North Congress Avenue
Austin, Texas 78701-1495
512-463-9382
512-463-6311 (fax)

**Property Owner &
Master Developer** Creekside Square, Ltd.
By: Direct Holdings, L.L.C.
Attn: Jon Andrus
301 Congress Avenue, Suite 120
Austin, Texas 78701
512-320-4100
512-320-4101 (fax)
cc: Steve Golden
Drenner & Golden Stuart Wolff, LLP
300 Convent Street, Suite 2650
San Antonio, TX 78205

Property: 119.165 acre tract of land out of and part of the Veramendi Survey
Number 1, Abstract Number 17 in Hays County, Texas as described in
Exhibit 1.

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1.0 PURPOSE AND INTENT

The intent of this document is to define responsibilities, limitations and accepted deviations from the city's code for the development and operation of the subject property. The document is binding on the owners and master developer listed above as well as all assigns and heirs. An Operation and Easement Agreement (the "O.E.A.") delegating an "Operator" will be created covering all land and properties addressed in this PDD and subject to the terms here-in utilizing the base form of O.E.A. attached as *Exhibit 2*. The O.E.A. will be expressly subject to the terms of this PDD (as hereafter defined), but shall contain such modifications from the form attached as *Exhibit 2* as the parties thereto may desire to incorporate therein.

- 1.1 The StoneCreek Crossing Planned Development District (the "PDD" or "StoneCreek Crossing PDD") is submitted to the City of San Marcos for the purpose of securing development rights, procedures and standards to govern the future use and development of the subject property. The PDD is not submitted as a Development Plan under Section 31.161 of the Natural Resources Code, V.T.C.A. Upon adoption of the PDD the State of Texas (its successors and heirs) waive any right to invoke the processes afforded under Section 31.161 et seq. The PDD and any amendments will be the controlling mechanism for future development unless mutually revoked by all parties involved.
- 1.2 The PDD provides specific development standards and processes which will apply to all platted or re-platted lots within the overlay district.
- 1.3 When not specifically detailed in this Agreement, all development within the PDD will comply with the Land Development Code as of the date of submittal of development plans.
- 1.4 The StoneCreek Crossing PDD will be adopted to establish zoning standards and development regulations while ensuring a superior project is developed. The StoneCreek Crossing project will incorporate a mix of both local and destination-oriented commercial uses such as retail stores, restaurants and banks. The proposed commercial uses are compatible with surrounding land uses and consistent with development along the Interstate Highway 35 corridor. The project will provide a mix of retail, pedestrian circulation, efficient vehicular flow, wet ponds and a considerable amount of open space. It will be designed in an architecturally appealing style.
- 1.5 This PDD overlay allows for flexible design while providing the following "bonuses" in excess of the City of San Marcos Land Development Code (the "Code" or the "Land Development Code"). These items and other elements will be further expanded upon in this PDD agreement.

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- Pedestrian connectivity is provided via paths along portions of the channel, paths along portions of the wet ponds and a path along the west side of Barnes Drive. Sidewalks will be provided along all front facades of commercial buildings. Connectivity will be provided over/across the channel in two locations, and cross-walks will be provided at the major intersections along Barnes Drive.
- Increased environmental protection is provided via improved mitigation and water quality with pollutant removal increased by approximately 20% above Code.
- Specific building materials and design guidelines are detailed and apply to the entire project. These standards meet or exceed Code.
- Portions of the site will exceed required landscaping. Wet ponds will be a site amenity and will be bordered by canopy trees, ornamentals and shrubs. Pathways will also surround portions of the ponds and seating areas will be provided. Shopping center entrances will have enhanced landscaping.
- Transportation access will be improved by the construction of the Barnes Drive, provision of transit amenities and the installation of a traffic light at the intersection of Barnes Drive and McCarty Road.

- 1.6 The PDD provides details of the proposed development consistent with the approved StoneCreek Crossing Concept Plan, the existing base zoning and the land use designations. The concept plan is provided as an exhibit and will be supplemented and ultimately replaced by final plats at the time of their approval. Additionally, Exhibits (renderings, sign exhibits, site presentations and other such materials) are provided as support for the PDD text. These materials merely provide an illustrative description of the project's intent and execution for use in the review and approval of subsequent development documents. The language of the PDD and the Exhibit's provide for variations of the final product to the extent that they are consistent with the character and purpose of these documents. The initial project will be designed and developed in accordance with the approved Concept Plan, Final Plats and the terms of this Agreement. The Owner and/or Developer will retain the right to request amendments to the Concept Plan, Final Plats and Agreement as needed. So long as this PDD remains in effect, subsequent redevelopment, remodeling and reuse of the property shall be consistent with the standards established herein as the same may exist from time to time, subject to variances that may be obtained consistent with the intent of this PDD.

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2.0 LAND USE SUMMARY

- 2.1 This site is currently zoned General Commercial (GC) and Mixed Use (MU) and designated as Commercial and Mixed Use on the City of San Marcos' Future Land Use Map. The breakdown as developed is as follows:

GC property:	105.612 ac.
MU property:	5.791 ac.
R.O.W.:	7.762 ac.

- 2.2 Permitted, conditional and prohibited uses are detailed in the chart attached as *Exhibit 3*. Since this project and the PDD are predicated upon a commercial use, some of the uses specified on *Exhibit 3* that are not typically found in comparable commercial developments may require amendments to development standards and plans included in the PDD at the time of adoption. The O.E.A. use restrictions shall be interpreted as private restrictions enforceable by parties to that agreement.
- 2.3 Based on the Land Development Code, site development standards applicable to the base zoning districts are detailed in the chart shown as *Exhibit 4*. This chart explains differences in other standards addressed in other portions of the PDD.
- 2.4 Bank or Savings and Loans with drive-thrus will be allowed up to four drive-thru lanes plus an additional drive-thru for an ATM machine.
- 2.5 Per the Land Development Code and attached Land Use Chart, a Conditional Use Permit will be required for the on-premise consumption of alcohol.

3.0 BUILDING MATERIALS AND DESIGN.

- 3.1 General design standards: The buildings and other improvements constructed for the project will follow the City's design requirements and design concepts (as generally illustrated in some of the exhibits) found in the region and local vernacular. The project will include several building front façade designs that will carry the theme throughout the site. The buildings constructed for the StoneCreek Crossing project will have 90% masonry walls as defined below, exclusive of store fronts and other openings. Furthermore, at least 33% of all walls facing streets and main parking areas will be either stone or brick on buildings initially constructed for single-tenant occupants containing 100,000 square feet or more¹. Additionally, in-line commercial buildings will have at

¹ Due to building size, tenants over 100,000 square feet were unable to meet the 50% brick and stone requirement for walls facing streets. The intent of providing masonry and requiring percentages of storefronts to be brick or stone will still be met, but is proposed at 33% to accommodate the needs of tenants over 100,000 square feet.

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least 50% of all walls facing streets and main parking areas will be either brick or stone.

Finally, exterior walls of any free standing building such as a restaurant, financial institution or small retail establishment will be 60% stone or brick exclusive of storefronts and other openings.

The following building materials and building material percentages are permitted on Lot 6 of the Amended Plat of Lot 5, Block 2 Stone Creek Crossing Phase 1, "the Chap's lot":

Fiber-cement board	16%
Reclaimed wood	61%
Brick/Stone (Autumn Blend)	12%
Paint	11%

Percentage calculations shall be determined based upon the actual wall area on the buildings; windows, doors, etc. do not count towards the required percentages of stone or brick². Landscaping, softscape features, site furnishings and signage will employ compatible materials and compatible designs to further the perception theme.

3.2 For this project, "Masonry" will be defined to include the following:

- (A) Natural stone (Synthetic stone is prohibited). Natural stone will come from sources within the region and may be used in varying sizes and shapes throughout the project. 'Autumn Blend' and 'Texas Tumbleweed' sandstone blends from quarries near Lometa, Texas will be used separately and as blends along with size and coursing variations to add interest and complexity to the overall appearance.
- (B) Brick. Brick will be chosen in natural colors, such as 'Austin Common,' to be compatible with the indigenous stone. A maximum of three brick "color" and/or blends may be used in conjunction with the natural stone to add another layer of scale and texture to the design possibilities.
- (C) Stucco/Plaster/Synthetic Stucco will be used in detail applications only. In general, Stucco/Plaster/Synthetic Stucco will be integrally colored in hues and tones pulled from and compatible with the natural colors found in the stone. However, other colors may be introduced in specific small areas when necessary to accomplish the design.

² This language is added to make clear the calculation of brick and stone percentages does not include doors, windows, etc.

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- (D) Concrete. Architectural Concrete may be exposed, sandblasted or textured and painted. Concrete Masonry Units used on exterior walls will be integrally colored. Plain cement block is not allowed if visible on the exterior.

3.3 Other wall materials. The 10% of exterior walls not included in the masonry requirements discussed above may be covered with a variety of materials that could include but not be limited to non-reflective corrugated steel panels, wood, prefinished metal panels, glass block or other materials that are compatible with the overall design and use for the specific area in which they are placed.

3.4 Roofing. Front facades will contain roof elements to accentuate features on a building. Materials for the façade roof areas include the following:

- (A) Standing Seam Metal Panels in either Preweathered Galvalume or Prefinished Painted Finishes. No reflective finishes are allowed.
- (B) Clay Tile may also be used on some of the slope roof elements. Color blends will be chosen to be compatible with the other natural materials present.

The following additional roof material is permitted on Lot 6 of the Amended Plat of Lot 3, Block 2 Stone Creek Crossing Phase I, "the Chip's? lot":

Composition asphalt shingle

- (C) Other canopies, trellis, pergolas, and awnings will also be incorporated into the front façade and sidewalk areas. In some cases these may be no more than minor shading devices, but in other situations they may be large enough to provide shade for outdoor seating. Permitted materials for these include steel, wood and canvas.
- (D) Screening on roofs will be per the General Screening requirements, Section 6.1.2.4 of the Land Development Code.

3.5 Storefronts. The majority of the storefronts will be framed with typical prefinished aluminum components. The color of the finishes may vary as the façade materials vary from stone to brick, etc. in an attempt to add variety and interest at the pedestrian level. Glass will be clear and/or lightly tinted with no reflective type glazing allowed.

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- 3.6 Railings. Guardrails, handrails, and any other miscellaneous site related railings that may be required per code or for aesthetic reasons may be constructed of masonry or metal.

The following additional railing material is permitted on Lot 6 of the Amended Plat of Lot 5, Block 2 Stone Creek Crossing Phase 1, "the Chay's lot":

Split-rail cedar

- 3.7 Architectural renderings are included as *Exhibit 5*, and they will provide an example of the building materials and design elements required for the project.

4.0 LANDSCAPING.

- 4.1 Per the Land Development Code, a minimum of 10% of the total developable site area of the PDD will be landscaped. Calculations will be based on the total developable area 110.505 acres, rather than each individual lot. Clustering of elements will be allowed and encouraged around wet ponds, environmentally sensitive areas, shopping center entrances and pedestrian areas within the project to enhance the project aesthetics. However, the parking lot landscape standards set forth in Chapter 6, Article I of the Code shall be adhered to.
- 4.2 Two wet ponds will be provided adjacent to the drainage channel and bordered by Barnes Drive and IH-35. A meandering walking path will be provided along portions of the drainage channel and wet ponds along with enhanced landscaping including, a minimum, 1 canopy tree and 4 five gallon shrubs or ornamentals for every 50 linear feet of trail. Clustering will be encouraged to enhance seating areas and pedestrian-orientation. A conceptual landscape plan detailing the wet ponds is attached as *Exhibit 6* and included in the Qualified Watershed Protection Plan Phase II.
- 4.3 Mitigation landscaping is provided in the drainage channel and makes up approximately 8.66 acres. This area will be developed in accordance with the approved Qualified Watershed Protection Plans, Phases I and II. The mitigation landscaping will include a channel that has been designed to restore wetlands and provide for higher quality wetlands than currently exist. The design will incorporate a meandering flow line of the main channel and will be planted with the naturalized native wetland vegetation. The existing wetland plantings will be scraped and replanted in the drainage channel in order to preserve the wetland environment. The channel will also incorporate small depressions to encourage the capture and treatment of water that is found in a natural wetland

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environment. A list of wetland plantings is included in the approved Qualified Watershed Protection Plan Phase II.

- 4.4 Landscaping will be increased at the intersections of public streets and at driveways entering from the IH-35 frontage road. Additional trees, shrubs and other plant material will be added to give visual prominence to the intersections. Plantings will coordinate with signage, sidewalks, lighting and traffic visibility lines of sight.
- 4.5 A Unified Landscape Plan will be completed by a certified landscape architect and will be submitted as part of the site development permit plans. Landscaping will be installed by the Owner and/or Developer in accordance with the approved phasing plan and maintained per the approved Operation and Easement Agreement by the "Operator" of the shopping center. Any redevelopment or revisions of site plans must attain at least the same performance level as the originally submitted landscape plan.

5.0 SCREENING & COMPATIBILITY.

- 5.1 General screening will be as provided in Section 6.1.2.4 of the Land Development Code. Additional screening of the service areas along the west facades parallel to or along the railroad will be provided. Where space permits, the screening will be accomplished with evergreen plantings of trees and tall shrubs. If space does not allow for trees, a six foot tall wall and/or fence will be erected. Plantings, fences and walls will be placed in an attempt to maximize screening of the actual dock, dumpster and delivery door areas along the western walls.
- 5.2 Compatibility will be achieved between the mixed-use tract and the adjacent single family area through the following:
 - a) an 8 foot wall constructed of stone or concrete masonry units to provide a buffer³; and
 - b) if any land use over 30 feet in height is developed on the site, a 25 foot setback will be provided along residential properties⁴.

6.0 PARKING, ACCESS & MOBILITY.

- 6.1 Each lot will self-park and meet the requirements of Section 6.2 of Land Development Code. However, cross-parking will be included as part of the O.E.A. and filed with Hays County and will allow for cross-parking within the

³ This language is reworded but the standard was not altered.

⁴ The compatibility buffer is extended to apply to any land use, not just hotels, that exceed 30 feet in height.

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shopping center. A copy of the agreement will be submitted to the City of San Marcos after recordation.

As necessary to meet parking requirements on each lot, shared parking agreements are permitted. Shared parking agreement(s) must meet requirements of the Land Development Code and the overall parking calculations for the shopping center and may not conflict with the O.E.A. parking requirements.

All Shared Parking Agreements may be reviewed and approved administratively based upon the following criteria set forth in the Land Development Code:

- Both lots or tracts are under the same ownership; or
- It can be established that two or more uses, applying jointly and concurrently for the special exception, will be sharing a parking area that is on property that is not under the same ownership and an arrangement is documented through a long-term lease, agreement, or other written agreement. Such exception may be granted only if the agreement provides that either:
 - o The shared parking area has a capacity of at least the minimum number of spaces for the use of having the greatest minimum requirement and all uses have their primary need for parking during offsetting periods so that the parking area will be utilized by only one principal use at a time; or
 - o The parking area exceeds the requirements for the use on which the shared spaces are located sufficient to allow both uses full compliance when both properties' needs are combined in the parking requirement calculation.

- 6.2 Access for this project will be shared between lots. Shared access will be addressed in the O.E.A. The agreement will apply across the entire site.
- 6.3 This project will be developed in accordance with the approved StoneCreek Crossing Traffic Impact Analysis (TIA) and applicable TxDOT regulations.
- 6.4 The Barnes Drive extension will be constructed during the first phase of the development and will be constructed based on the recommendations in the approved StoneCreek Crossing TIA.
- 6.5 Per the TIA, a traffic light is required at McCarty Lane and Barnes Drive. The City of San Marcos staff will install this traffic light at the expense of the Developer.
- 6.6 Sidewalks will be provided throughout the site in accordance with the Land Development Code, Section 7.4.2 and the City of San Marcos Engineering Design Manual and will also be constructed in accordance with ADA requirements. Additionally, sidewalks will be provided along all retail storefronts and will be a minimum of 6 feet in width.

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- 6.7 An 8 foot stabilized granite trail will be provided as per the public improvement construction plans submitted to the City of San Marcos on June 15, 2007 along the west side of Barnes Drive and around portions of the wet ponds and channel encouraging pedestrian-orientation⁵. A minimum, 6 foot sidewalk will be provided along the east side of Barnes Drive.
- 6.8 Pedestrian connectivity will be provided across and around portions of the channel by means of a sidewalk or pathway, and a railing will be provided for aesthetics and safety.
- 6.9 Striped, cross-walks will be provided at the intersections along Barnes Drive to enhance connectivity and provide for pedestrian safety.
- 6.10 A bus stop, including a bench and sheltered-cover, will be provided along Barnes Drive in a location chosen by Developer and/or Owner and agreed upon by all jurisdictions.

7.0 SIGNAGE.

- 7.1 Joint-tenancy signs will be allowed within this project due to the project's size and the nature of the Barnes Drive extension bisecting the project. Signage along IH-35 and McCarty Lane will be necessary for users within the entire project, especially those users occupying the commercial in-line space at the rear of property.
 - a. Billboards will not be allowed;
 - b. Joint tenancy signs are the property of the Owner and/or "Operator" designated in the O.E.A. which is responsible for maintenance and compliance with this code;
 - c. No signage permanent or temporary, not addressed here-in, will be allowed;
 - d. All sign permits will be submitted in accordance with the sign package here-in and the O.E.A.; and
 - e. Notwithstanding anything herein to the contrary, the Owner of any single-tenant building containing more than 100,000 square feet will not be required to submit its signage plans to the Operator under the O.E.A., but rather, such Owner shall only be required to submit such signage plans to the City of San Marcos for approval. All signage within the StoneCreek project must adhere to the sign regulations below. Review

⁵ The public improvement construction plans have been submitted to the City, and the granite trail shall be constructed per the plans on file.

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by the City of San Marcos will be based upon the approved PDD and the signage requirements herein⁶.

7.2 Detailed freestanding signage requirements for this project are listed below. The location of each sign may alter slightly. However, the height and total square footages will not exceed the maximum detailed below⁷. Additionally, a unified signage plan and signage renderings are attached as *Exhibit 7*.

- (A) 1 Joint-use (up to 4 tenants), monument sign on McCarty Lane
Height: 7 ft.
Sign Area: 33 total sq. ft.
- (B) 5 Joint-use (2 tenants), monument signs (4 along IH-35 and 1 on McCarty Lane)
Height: 7 ft.
Sign Area: 32 total sq. ft.
- (C) 1 Joint-use, monument wall sign (up to 8 tenants) on IH-35
Height: 7 ft.
Sign Area: 200 total sq. ft.
- (D) 1 Single-tenant, monument sign
Height: 7 ft.
Sign Area: 16 total sq. ft.
- (E) 3 Joint-use, pylon signs on IH-35
Height: 40 ft.
Sign Area: 252 total sq. ft.

7.3 In compliance with lighting and glare standards detailed in the Land Development Code, all signs will have backlit lighting, landscape lighting or low lighting.

7.4 All attached and freestanding signs will be constructed in accordance with the City of San Marcos' requirements.

⁶ This language is intended to provide clarification that the sign plans must be submitted to the City and will be reviewed and approved based on the signage plan and requirements in the approved PDD.

⁷ Sign square footages decreased for all signs except for the monument wall sign (C). The square footage was increased from 150 square feet to 200 square feet to allow eight (8) 5X5 sign panels on the wall sign. The allowance for joint-use, wayfinding signs along Barnes Drive was removed along with the allowance of one (1) monument sign for each lot not included on the joint tenancy sign. A revised master sign plan is submitted and attached to this amendment to reflect the square footages included herein.

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8.0 ENVIRONMENTAL PROTECTION.

- 8.1 The proposed development will provide detention for the 2-, 25, and 100-year storm event at or below the pre-developed discharge level, which exceeds the City of San Marcos regulations.
- 8.2 Water quality for the proposed site will be provided by wet ponds abutting the proposed channelization of the unnamed Tributary of Cottonwood Creek that bisects the site. Current City of San Marcos water quality standards require detention of the 2-year storm event with pollutant removal efficiencies of approximately 70%. The proposed wet pond system will remove approximately 90% of the on-site pollutant load which exceeds the current criteria of the City of San Marcos.
- 8.3 Wetland mitigation will be provided through the channel in conjunction with the approved Qualified Watershed Protection Plan Phase II.
- 8.4 A single drainage easement will be recorded and will apply to the entire site allowing for drainage across lot lines into the appropriate wet ponds as described in the O.E.A.

9.0 LIGHTING.

- 9.1 **General Sight Lighting.** General site lighting refers to illumination of large portions of the parking areas. Fixture types used for general sight illumination will be I.E.S. Full Cut Off Classification so that the source of the illumination is shielded from view to the maximum extent possible. Light source will be metal halide with a maximum wattage of 400 per fixture.

Site lighting shall be maintained until ½ hour after closing or until 10:00 p.m. which ever is later. After this time, lighting shall be reduced to half of the maximum level⁸. In addition, areas designated on site plans for employee parking may be maintained at full levels of illumination for 1 1/2 hours after closing and shall be reduced to half the maximum level thereafter⁹. Security lighting, attached to a building for illumination of doors, exits, docks, service areas and limited portions of store fronts, may be operated from dusk until dawn

⁸ Extends lighting hours based on tenants varying hours of operation. This ensures lighting is maintained until ½ hour after store closing, rather than ½ hour after 10:00.

⁹ For employee safety, this provision is added to allow lighting to be maintained 1 ¼ hours after closing in employee parking areas as designated on the site plan.

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at levels adequate for safe ingress/egress and to maintain surveillance, by either patrol or camera, of the premises¹⁰.

West of Barnes Drive, exclusive of Mixed-use Tract: Light poles within this lot will be no higher than 35 feet. Light sources will be hooded luminaries, thus reducing disability glare and consequent interference. This lot will be lit with an overall average light intensity of 3 foot candles.

East of Barnes Drive and Mixed-use Tract: Light poles within these lots will be no higher than 25 feet above finish grade. An average light intensity of 2 foot candles will apply.

Average lighting intensity will be calculated across all lit areas in each of the two areas specified above. Photometric calculations will be included in the site development permit plans prepared by Developer or Owner. Any future revisions to the accepted plans must conform to the overall permitted intensities.

Along Barnes Dr.: A lighting plan is attached as *Exhibit 8*. Lighting along Barnes Drive will be constructed based on this plan. Final numbers and/or locations of poles and fixtures will be coordinated with underground utility locations, landscape features, etc. before final installation. Fixture types may be substituted with products of equal design and performance as possibly dictated by availability and cost. Photometrics on the ground will be equal to those shown on the Conceptual Lighting Plan. A final Photometric Plan will be provided upon completion of the coordination mentioned above."

- 9.2 Pedestrian lighting. Pedestrian lighting references those areas along building fronts, plazas, outdoor dining areas, boulevards, and areas where a smaller scale light is appropriate. Subject to compliance with the requirements of Section 9.1 hereof, the pedestrian site lighting will be accomplished in the aforementioned areas with fixtures mounted no higher than 16 feet above grade and metal halide lamps of no more than 175 W¹¹. Pedestrian lighting will be I.E.S. Cut Off Classification.

Pedestrian lighting should be provided along building facades on 16 foot poles if freestanding. The total average of all lights pedestrian freestanding, wall mounted, under canopy and parking lot lighting should be no more than the intensities addressed in 9.1.

10.0 IMPERVIOUS COVER.

¹⁰ This provision is added to address security lighting based on safety and tenant requirements.

¹¹ Metal halide lamps are permitted at 175W, rather than the approved 150W, to accommodate tenant requirements.

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- 10.1 Impervious cover will be calculated across the entire site and will not exceed 75%. The impervious coverage will be based on the assumptions in the Qualified Watershed Protection Plans, Phases I and II. Impervious cover calculations will be kept on a project-wide basis at the responsibility of the Developer and/or Owner and will be included in the site development permit plans.

11.0 PHASING.

- 11.1 A project phasing plan will be submitted for approval prior to any final platting or site preparation permit to allow for both flexibility in completion and compliance with all aspects of this PDD and applicable provisions of the Code. The project phasing plan will include public utilities, permanent drainage and water quality facilities and adequate access to public streets for fire and customer services necessary to service the Property. The project phasing plan shall take into account off-site improvements that may be necessary for development of the Property. Additionally, the project phasing plan shall assign responsibility for construction of any specific features that may be shared between lots. The project phasing plan will be subject to the approval of the City which approval shall not be unreasonably withheld, delayed or conditioned so long as such project phasing plan is consistent with this PDD and the applicable provisions of the Code. If the City has objections to the project phasing plan the City will provide written notice of its objections with reasonable specificity within thirty (30) days following its receipt of the project phasing plan. The phasing plan may be updated and amended administratively upon proof that equal or superior performance of the above objectives is met.
- 11.2 The first phase of project development will, at a minimum, include the construction of all major infrastructure, i.e. the Barnes Drive extension, the public road south of the channel, public utilities south of the channel and other improvements to provide adequate fire flow, drainage channel and water quality ponds.
- 11.3 Subsequent phases of development shall address each component of the City's site preparation permit in accordance with the phasing plan requirements in 11.1 above.

12.0 PLATTING.

- 12.1 Three-to-one lot ratio regulations will not apply to lots west of Barnes Drive.

City Council Approval: March 20, 2007

Zoning ordinance no. 2007-18

Administrative Amendment Approval: July 17, 2007

City Council Amendment Approval:

Zoning ordinance no.

12.2 Irregular lot configurations are permitted to accommodate parking for each lot. It is understood this may limit certain uses on lots.

12.3 Side setbacks do not apply to GC zoned lots west of Barnes Drive, exclusive of individual pad lots.

12.4 Up to 2 flag lots may be allowed as an exception to platting standards on GC zoned lots west of Barnes drive. This exception will be approved administratively as part of subsequent platting to accommodate a major user, such as a theater or hotel.

13.0 REVISIONS AND VARIANCES TO THE PDD & CONCEPT PLAN.

13.1 Approval of this PDD shall be conditioned upon approval of a final plat in conformance with the standards set forth herein. All subsequent site preparation permits, building plans and re-plats shall be subject to compliance with these standards. Deviation from these standards shall be handled as follows:

Minor Revisions. The Director of Planning and Development Services may administratively approve minor revisions to the PDD or its Concept Plan to enable approval of an amending plat if the Director determines there are no significant or major effects to (i) areas that are part of a final plat or (ii) the overall intent of the PDD and its Concept Plan. The Planning Director's approval of any minor revision will be in writing. The following will be considered a minor revision, subject to limitations in the Land Development Code:

- (A) Minor changes up to 10% from adopted policy in Code will be considered a minor revision to the PDD and may be administratively approved without amendment to the PDD document if the Planning Director determines the basic layout of the project and the overall intent of the project remains the same and functions as well as before the revision.
- (B) A minor change in the configuration of a lot, if the Planning Director determines the basic layout of the project remains the same and functions as well as before the revision.
- (C) All other minor adjustments to the PDD and its Concept Plan, that the Planning Director deems does not substantially change the plan, may be approved administratively.

Major Revisions and variances:

City Council Approval: March 20, 2007

Zoning ordinance no. 2007-18

Administrative Amendment Approval: July 17, 2007

City Council Amendment Approval:

Zoning ordinance no.

- (A) Proposed changes to development standards, lot size or configuration not determined to be minor by the Director shall cause an application for amendment to the PDD. Such amendment shall follow procedures set forth in the City Code. Upon approval of such major revisions a replat will be required.
- (B) Variances or special exceptions to the standards of this PDD or the City Code in effect shall not be allowed without mutual consent of the City and the shopping center "Approving Parties" in control through the O.E.A. Such variances, if allowed, shall follow the procedures set forth in the City Code.

14.0 MAINTENANCE.

14.1 Maintenance for this project will be enforced through the O.E.A. The O.E.A. will dictate all maintenance requirements and responsibilities within the project. The Operator shall confer and coordinate with the City with respect to the failure of the Property to comply with the maintenance standard set forth in this PDD or the applicable provisions of the Code. Notwithstanding the foregoing, if the Operator designated in the O.E.A. does not or, if following termination of the O.E.A. an owner of the Property does not timely perform required maintenance in accordance with the terms of this PDD and applicable portions of the Code, the City shall have the right to enforce against the owner of any non-conforming portion of the Property all remedies available to it under the Code for such failure. In addition, with respect solely to the shared drainage and water quality facilities, the City shall have the right to enforce against any owner of the Property benefited by any pond not being properly maintained all remedies available to the City under the Code for such failure, provided that each owner's liability for such failure shall be limited to the ratio, expressed as a percentage, that the land area of its parcel bears to the total land area of all land serviced by the affected detention pond.

14.2 Specific maintenance obligations of the O.E.A. are as follows:

- Common areas (including maintenance of certain features situated in adjoining public rights of way and easements)
- Drive and public parking areas
- Debris and refuse
- Directional signs and markers
- Lighting
- Landscaping
- Obstructions
- Sidewalks

City Council Approval: March 20, 2007

Zoning ordinance no. 2007-18

Administrative Amendment Approval: July 17, 2007

City Council Amendment Approval:

Zoning ordinance no.

- Security Measures
- Signage
- Detention and Drainage Easements

Per the O.E.A., the "Operator" of shopping center must maintain all property in a manner equal to or superior to city codes. Prior to obtaining any final plat for any portion of the Property, a license agreement with the Developer shall be executed setting forth responsibilities and minimum standards for maintenance of certain public easements and right of ways to be more fully described therein. The license agreement shall require prior written City approval before modification of improvements situated in public easements and rights of way maintained by Developer thereunder. Developer's obligations under the agreement shall be assignable to the Operator under the O.E.A.

15.0 MISCELLANEOUS.

- 15.1 Cross-site calculations and transfers will be kept on a project-wide basis at the responsibility of Developer and/or Owner and will be submitted with each site development permit in order to compute impervious cover and landscape calculations.
- 15.2 The Developer and/or Owner understands and acknowledges the Property will be bound by the provisions of these development standards as though they were conditions, restrictions and limitations on the use of the Property under the City's zoning ordinances.
- 15.3 These covenants run with the title to the Property and are binding on the Developer, Owner and their successors and assigns.

16.0 CONSTRUCTION.

- 16.1 Any building constructed on the site that implements provisions of the applicable International Building Code, 'Unlimited Building Area', shall meet all the following requirements:
 - 1. The building will be constructed to the requirements of Type II-B as defined in the applicable International Building Code.
 - 2. The building will be provided with an automatic fire extinguishing system in accordance with the applicable International Building Code.
 - 3. When any building abuts an unlimited area building the buildings shall each have walls that are entirely structurally independent of one

City Council Approval: March 20, 2007

Zoning ordinance no. 2007-18

Administrative Amendment Approval: July 17, 2007

City Council Amendment Approval:

Zoning ordinance no.

another. These separation walls shall be constructed with a minimum of either 5-1/2" concrete, 7-5/8" concrete masonry units, or an equal approved by the Chief Building Official.

4. Buildings constructed under the applicable International Building Code, 'Unlimited Building Area', along with any building adjoining it, shall be completely surrounded and adjoined by public ways or yards not less than 60 feet in width¹².

¹² This language is added to clarify and define Unlimited Building Area and the construction and building requirements as they relate to the fire code Type II-B construction.

EXHIBIT 1
Property Legal Description

0.496 ACRES
J.M. VEREMENDI SURVEY NO. 1
CALDERON TRACT

FN NO. 06-412 (ACD)
AUGUST 1, 2006
BPI JOB NO. 1161-04

DESCRIPTION

OF A 0.496 ACRE TRACT OUT OF THE J.M. VERAMENDI SURVEY, ABSTRACT NO. 17, SITUATED IN HAYS COUNTY, TEXAS, BEING A PORTION OF THAT CERTAIN 1 ACRE TRACT CONVEYED TO SANTOS CALDERON AND WIFE, MARIA AVIGAIL CALDERON, BY DEED OF RECORD IN VOLUME 364, PAGE 283, OF THE DEED RECORDS OF HAYS COUNTY, TEXAS; SAID 0.496 ACRE TRACT BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING, at a 1/2-inch iron rod with cap found on the northerly right-of-way line of McCarty Lane (R.O.W. varies), at the northwesterly corner of that certain 0.009 acre tract conveyed to the County of Hays by Deed of record in Volume 2589, Page 754, of the Official Public Records of Hays County, Texas, being on the westerly line of said 1 acre tract, also being on the easterly line of that certain tract conveyed to Pablo H. Vasquez and wife, San Juana Vasquez, by Deed of record in Volume 344, Page 72, of said Deed Records, for the southwesterly corner hereof;

THENCE, N45°56'51"E, leaving said northerly right-of-way line, along the easterly line of said Vasquez tract, being the westerly line of said 1 acre tract, for the westerly line hereof, a distance of 267.60 feet to a calculated point at the southwesterly corner of that certain 0.51 acre tract conveyed to Gumesindo Ramirez, Jr. and wife, Rosa Ramirez, by Deed of record in Volume 499, Page 628, of the Real Property Records of Hays County, Texas, for the northwesterly corner hereof;

THENCE, S44°15'06"E, leaving the easterly line of said Vasquez tract, over and across said 1 acre tract, along the southerly line of said 0.51 acre tract, for the northerly line hereof, a distance of 81.28 feet to a calculated point on the easterly line of said 1 acre tract, being the southeasterly corner of said 0.51 acre tract, also being on the westerly line of that certain 1 acre tract conveyed to Gumesindo Ramirez and Silvestre Ramirez, by Deed of record in Volume 368, Page 577, of said Deed Records, for the northeasterly corner hereof;

THENCE, S45°56'51"W, along the westerly line of said Ramirez 1 acre tract, being the easterly line of said Calderon 1 acre tract, for the easterly line hereof, a distance of 264.08 feet to a 1/2-inch iron rod with cap found on said northerly right-of-way line of McCarty Lane, being the northeasterly corner of said 0.009 acre tract, for the southeasterly corner hereof;

FN NO. 06-412(ACD)
AUGUST 1, 2006
PAGE 2 OF 2

THENCE, N46°43'59"W, along said northerly right-of-way line, being the northerly line of said 0.009 acre tract, over and across said Calderon 1 acre tract, for the southerly line hereof, a distance of 81.37 feet to the POINT OF BEGINNING, and containing an area of 0.496 acres (21,607 square feet) of land, more or less, within these metes and bounds.

BEARING BASIS: TEXAS COORDINATE SYSTEM, SOUTH CENTRAL ZONE, NAD 83(93), UTILIZING LCRA MONUMENT NO(S). A-669, A-670, AZ-66 AND SMA2

I, ABRAM C. DASHNER, A REGISTERED PROFESSIONAL LAND SURVEYOR, DO HEREBY CERTIFY THAT THE PROPERTY DESCRIBED HEREIN WAS DETERMINED BY A SURVEY MADE ON THE GROUND UNDER MY DIRECTION AND SUPERVISION. A SURVEY EXHIBIT WAS PREPARED TO ACCOMPANY THIS FIELDNOTE DESCRIPTION.

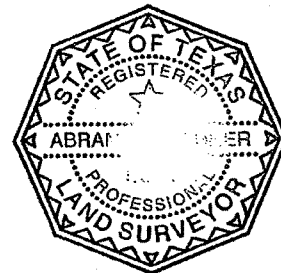
BURY & PARTNERS, INC.
ENGINEERING SOLUTIONS
3345 BEE CAVES ROAD, SUITE 200
AUSTIN, TEXAS 78746



ABRAM C. DASHNER
NO. 5901
STATE OF TEXAS

8-1-06

DATE



1.009 ACRES
J.M. VERAMENDI SURVEY
VASQUEZ TRACT

FN NO. 06-413 (ACD)
AUGUST 1, 2006
BPI JOB NO. 1161-04

DESCRIPTION

OF A 1.009 ACRE TRACT OUT OF THE J.M. VERAMENDI SURVEY, ABSTRACT NO. 17, SITUATED IN HAYS COUNTY, TEXAS, BEING A PORTION OF THAT CERTAIN 1 ACRE TRACT CONVEYED TO PABLO H. VASQUEZ AND WIFE, SAN JUANA VASQUEZ, BY DEED OF RECORD IN VOLUME 344, PAGE 72, OF THE DEED RECORDS OF HAYS COUNTY, TEXAS; SAID 1.009 ACRE TRACT BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING, at a 1/2-inch iron rod with cap found on the northerly right-of-way line of McCarty Lane (R.O.W. varies), at the northeasterly corner of that certain 0.008 acre tract conveyed to the County of Hays by Deed of record in Volume 2582, Page 134, of the Official Public Records of Hays County, Texas, being on the easterly line of said 1 acre tract, also being on the westerly line of that certain 1 acre tract conveyed to Santos Calderon and wife, Maria Avigail Calderon, by Deed of record in Volume 364, Page 283, of said Deed Records, for the southeasterly corner hereof;

THENCE, N46°43'59"W, leaving the westerly line of said Calderon 1 acre tract, along said northerly right-of-way line, being the northerly line of said 0.008 acre tract, over and across said Vasquez 1 acre tract, for the southerly line hereof, a distance of 81.84 feet to a calculated point at the northwesterly corner of said 0.008 acre tract, being on the westerly line of said Vasquez 1 acre tract, also being on the easterly line of that certain tract conveyed to Agapito Ortunio and Georgia Ortunio, by Deed of record in Volume 260, Page 235, of said Deed Records, for the southwesterly corner hereof, from which a 1/2-inch iron rod with cap found on said northerly right-of-way line, being the southwesterly corner of that certain tract conveyed to Agapito Ortunio and Georgia Ortunio, by Deed of record in Volume 248, Page 488, of said Deed Records bears N46°43'59"W, a distance of 100.32 feet;

THENCE, N45°56'51"E, leaving said northerly right-of-way line, along the easterly lines of said Ortunio Volume 260, Page 235 tract, those certain tracts conveyed to Joe Antonio Quintero and Isabel Quintero by Deeds of record in Volume 262, Page 148; Volume 271, Page 391; and Volume 293, Page 554, all of said Deed Records, and that certain tract conveyed to Pablo H. Vasquez and wife, San Juana Vasquez, by Deed of record in Volume 307, Page 168, of said Deed Records, also being the westerly line of said Vasquez 1 acre tract, for the westerly line hereof, a distance of 537.76 feet to a calculated point on the southerly line of that certain 113.133 acre tract conveyed to the State of Texas, by Deed of record in Volume 2752, Page 303, of said Official Public Records, being the northeasterly corner of said Vasquez Volume 307, Page 168 tract, also being the northwesterly corner of said Vasquez 1 acre tract, for the northwesterly corner hereof, from which a 1/2-inch iron rod found on the easterly

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AUGUST 1, 2006
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right-of-way line of the M.K.&T. railroad, being the southwesterly corner of said 113.133 acre tract, also being the northwesterly corner of said Vasquez Volume 307, page 168 tract bears N46°32'01"W, a distance of 359.50 feet;


THENCE, S46°32'01"E, along the southerly line of said 113.133 acre tract, being the northerly line of said Vasquez 1 acre tract, for the northerly line hereof, a distance of 81.83 feet to a calculated point at the northeasterly corner of said Vasquez 1 acre tract, being the northwesterly corner of that certain 0.51 acre tract conveyed to Gumesindo Ramirez, Jr. and wife, Rosa Ramirez, by Deed of record in Volume 499, Page 628, of the Real Property Records of Hays County, Texas, for the northeasterly corner hereof, from which a 1/2-inch iron rod found at the northeasterly corner of that certain 0.626 acre tract conveyed to Jesus Campusano and wife, Aurora Campusano, by Deed of record in Volume 1268, Page 878, of said Official Public Records bears S46°32'01"E, a distance of 286.75 feet;

THENCE, S45°56'51"W, leaving the southerly line of said 113.133 acre tract, along the westerly lines of said 0.51 acre tract and said Calderon 1 acre tract, being the easterly line of said Vasquez 1 acre tract, for the easterly line hereof, a distance of 537.42 feet to the POINT OF BEGINNING, and containing 1.009 acres (43,972 square feet) of land, more or less, within these metes and bounds.

BEARING BASIS: TEXAS COORDINATE SYSTEM, SOUTH CENTRAL ZONE, NAD 83(93), UTILIZING LCRA MONUMENT NO(S). A-669, A-670, AZ-66 AND SMA2

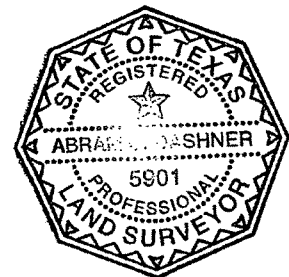
I, ABRAM C. DASHNER, A REGISTERED PROFESSIONAL LAND SURVEYOR, DO HEREBY CERTIFY THAT THE PROPERTY DESCRIBED HEREIN WAS DETERMINED BY A SURVEY MADE ON THE GROUND UNDER MY DIRECTION AND SUPERVISION. A SURVEY EXHIBIT WAS PREPARED TO ACCOMPANY THIS FIELDNOTE DESCRIPTION.

BURY & PARTNERS, INC.
ENGINEERING SOLUTIONS
3345 BEE CAVES ROAD, SUITE 200
AUSTIN, TEXAS 78746


ABRAM C. DASHNER
NO. 5901
STATE OF TEXAS

8-1-06

DATE



1.018 ACRES
J.M. VERAMENDI SURVEY
RAMIREZ TRACTS

FN NO. 06-411(ACD)
AUGUST 1, 2006
BPI JOB NO. 1161-04

DESCRIPTION

OF A 1.018 ACRE TRACT OUT OF THE J.M. VERAMENDI SURVEY, ABSTRACT NO. 17, SITUATED IN HAYS COUNTY, TEXAS, BEING A PORTION OF THE FOLLOWING TRACTS: THAT CERTAIN 1 ACRE TRACT CONVEYED TO GUMESINDO RAMIREZ AND SILVESTRE RAMIREZ, BY DEED OF RECORD IN VOLUME 368, PAGE 577, OF THE DEED RECORDS OF HAYS COUNTY, TEXAS; THAT CERTAIN 1/2 ACRE TRACT CONVEYED TO GUMESINDO RAMIREZ AND SILVESTRE RAMIREZ, BY DEED OF RECORD IN VOLUME 419, PAGE 400, OF THE REAL PROPERTY RECORDS OF HAYS COUNTY, TEXAS; SAID 1.018 ACRE TRACT BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

TRACT 1
0.679 ACRES

BEGINNING, at a 1/2-inch iron rod with cap found on the northerly right-of-way line of McCarty Lane (R.O.W. varies), at the northwesterly corner of that certain 0.010 acre tract conveyed to the County of Hays, by Deed of record in Volume 2599, Page 617, of the Official Public Records of Hays County, Texas, being on the westerly line of said 1 acre tract, also being on the easterly line of that certain 1 acre tract conveyed to Santos Calderon and wife, Maria Avigal Calderon, by Deed of record in Volume 364, Page 283, of said Deed Records, for the southwest corner hereof;

THENCE, N45°56'51"E, leaving said northerly right-of-way line, along the easterly line of said Calderon tract, being the westerly line of said Ramirez tract, for the westerly line hereof, a distance of 359.67 feet to a calculated point at the southwest corner of that certain 0.50 acre tract conveyed to Gumesindo Ramirez, Jr. and wife, Rosa Ramirez, by Deed of record in Volume 1988, Page 294, of said Official Public Records, being on the easterly line of that certain 0.51 acre tract conveyed to Gumesindo Ramirez, Jr. and wife, Rosa Ramirez, by Deed of record in Volume 499, Page 628, of said Real Property Records, for the northwesterly corner hereof;

THENCE, S46°29'31"E, leaving the easterly line of said Ramirez 0.51 acre tract, along the southerly line of said 0.50 acre tract, for the northerly line hereof, a distance of 82.30 feet to a calculated point on the easterly line of said Ramirez 1 acre tract, being on the westerly line of said 1/2 acre tract, for the northeasterly corner hereof;

THENCE, S45°56'51"W, leaving the southerly line of said 0.50 acre tract, along the westerly line of said 1/2 acre tract, being the easterly line of said Ramirez 1 acre tract, for the easterly line hereof, a distance of 359.32 feet to a 1/2-inch iron rod with cap found on said northerly right-of-way line of McCarty Lane, being the northeasterly corner of said 0.010 acre tract, for the southeasterly corner hereof;

THENCE, N46°43'59"W, along said northerly right-of-way line, being the northerly line of said 0.010 acre tract, over and across said Ramirez 1 acre tract, for the southerly line hereof, a distance of 82.31 feet to the **POINT OF BEGINNING**, and containing 0.679 acres (29,558 square feet) of land, more or less, within these metes and bounds.

TRACT 2
0.339 ACRES

BEGINNING, at a 1/2-inch iron rod with cap found on the northerly right-of-way line of McCarty Lane (R.O.W. varies), at the northwesterly corner of that certain 0.005 acre tract conveyed to the County of Hays, by Deed of record in Volume 2599, Page 617, of the Official Public Records of Hays County, Texas, being on the westerly line of said 1/2 acre tract, also being on the easterly line of said Ramirez 1 acre tract, for the southwest corner hereof;

THENCE, N45°56'51"E, leaving said northerly right-of-way line, along the easterly line of said 1 acre tract, being the westerly line of said 1/2 acre tract, for the westerly line hereof, a distance of 359.32 feet to a calculated point on the southerly line of that certain 0.50 acre tract conveyed to Gumesindo Ramirez, Jr. and wife, Rosa Ramirez, by Deed of record in Volume 1988, Page 294, of said Official Public Records, for the northwesterly corner hereof;

THENCE, S46°29'31"E, leaving the easterly line of said 1 acre tract, over and across said 1/2 acre tract, along the southerly line of said 0.50 acre tract, for the northerly line hereof, a distance of 41.17 feet to a calculated point on the easterly line of said 1/2 acre tract, being the southeasterly corner of said 0.50 acre tract, also being on the westerly line of that certain 0.626 acre tract conveyed to Jesus Campusano and wife, Aurora Campusano, by Deed of record in Volume 1268, Page 878, of said Official Public Records, for the northeasterly corner hereof, from which a 1/2-inch iron rod found on said westerly line bears N45°56'51"E, a distance of 177.41 feet;

THENCE, S45°56'51"W, along the westerly line of said 0.626 acre tract, being the easterly line of said 1/2 acre tract, for the easterly line hereof, a distance of 359.15 feet to a 1/2-inch iron rod with cap found on said northerly right-of-way line of McCarty Lane, being the northeasterly corner of said 0.005 acre tract, for the southeasterly corner hereof;

FN NO. 06-411(ACD)
AUGUST 1, 2006
PAGE 3 OF 3

THENCE, N46°43'59"W, along said northerly right-of-way line, being the northerly line of said 0.005 acre tract, over and across said 1/2 acre tract, for the southerly line hereof, a distance of 41.17 feet to the POINT OF BEGINNING, and containing 0.339 acres (14,775 square feet) of land, more or less, within these metes and bounds.

BEARING BASIS: TEXAS COORDINATE SYSTEM, SOUTH CENTRAL ZONE, NAD 83(93), UTILIZING LCRA MONUMENT NO(S). A-669, A-670, AZ-66 AND SMA2

I, ABRAM C. DASHNER, A REGISTERED PROFESSIONAL LAND SURVEYOR, DO HEREBY CERTIFY THAT THE PROPERTY DESCRIBED HEREIN WAS DETERMINED BY A SURVEY MADE ON THE GROUND UNDER MY DIRECTION AND SUPERVISION. A SURVEY EXHIBIT WAS PREPARED TO ACCOMPANY THIS FIELDNOTE DESCRIPTION.

BURY & PARTNERS, INC.
ENGINEERING SOLUTIONS
3345 BEE CAVES ROAD, SUITE 200
AUSTIN, TEXAS 78746



ABRAM C. DASHNER
NO. 5901
STATE OF TEXAS

8-1-06
DATE



1.011 ACRES
J.M. VERAMENDI SURVEY
RAMIREZ TRACTS

FN NO. 06-431(ACD)
AUGUST 1, 2006
BPI JOB NO. 1161-04

DESCRIPTION

OF A 1.011 ACRE TRACT OUT OF THE J.M. VERAMENDI SURVEY, ABSTRACT NO. 17, SITUATED IN HAYS COUNTY, TEXAS, BEING ALL OF THAT CERTAIN 0.50 ACRE TRACT CONVEYED TO GUMESINDO RAMIREZ, JR. AND WIFE, ROSA RAMIREZ, BY DEED OF RECORD IN VOLUME 1988, PAGE 294, OF THE OFFICIAL PUBLIC RECORDS OF HAYS COUNTY, TEXAS; ALSO BEING ALL OF THAT CERTAIN 0.51 ACRE TRACT CONVEYED TO GUMESINDO RAMIREZ, JR. AND WIFE, ROSA RAMIREZ, BY DEED OF RECORD IN VOLUME 499, PAGE 628, OF THE REAL PROPERTY RECORDS OF HAYS COUNTY, TEXAS; SAID 1.011 ACRE TRACT BEING MORE PARTICULARLY DESCRIBED, IN TWO PARTS, BY METES AND BOUNDS AS FOLLOWS:

TRACT 1
0.504 ACRES

COMMENCING, for reference, at a 1/2-inch iron rod with cap found on the northerly right-of-way line of McCarty Lane (R.O.W. varies), at the northeasterly corner of that certain 0.005 acre tract conveyed to the County of Hays, by Deed of record in Volume 2599, Page 617, of the Official Public Records of Hays County, Texas, being on the easterly line of that certain 1/2 acre tract conveyed to Gumesindo Ramirez and Silvestre Ramirez, by Deed of record in Volume 419, Page 400, of said Real Property Records, also being on the westerly line of that certain 0.626 acre tract conveyed to Jesus Campusano and wife, Aurora Campusano, by Deed of record in Volume 1268, Page 878, of said Official Public Records;

THENCE, N45°56'51"E, leaving said northerly right-of-way line, along the easterly line of said 1/2 acre tract, being the westerly line of said 0.626 acre tract, a distance of 359.15 feet to a calculated point for the **POINT OF BEGINNING** and southeasterly corner hereof;

THENCE, N46°29'31"W, leaving the westerly line of said 0.626 acre tract, over and across said 1/2 acre tract and that certain 1 acre tract conveyed to Gumesindo Ramirez and Silvestre Ramirez, by Deed of record in Volume 368, Page 577, of the Deed Records of Hays County, Texas, along the southerly line of said 0.50 acre tract, for the southerly line hereof, a distance of 123.46 feet to a calculated point at the southwesterly corner of said 0.50 acre tract, being on the westerly line of said 1 acre tract, also being on the easterly line of said 0.51 acre tract, for the southwesterly corner hereof;

THENCE, N45°56'51"E, along the easterly line of said 0.51 acre tract, being the westerly line of said 1 acre tract, also being the westerly line of said 0.50 acre tract, for the westerly line hereof, a distance of 177.79 feet to a calculated point at the northeasterly corner of said 0.51 acre tract, being the northwesterly corner of said 1 acre tract and said 0.50 acre tract, also being on the southerly line of that certain 113.133 acre tract conveyed to the State of Texas, by Deed of record in Volume 2752, Page 303, of said Official Public Records, for the northwesterly corner hereof, from which a 1/2-inch iron rod found at the southwesterly corner of said 113.133 acre tract, being on the easterly line of the M.K.&T. Railroad right-of-way, bears N46°32'01"W, a distance of 522.68 feet;

THENCE, S46°32'01"E, along the southerly line of said 113.133 acre tract, being the northerly line of said 1 acre tract and said 0.50 acre tract, for the northerly line hereof, a distance of 123.47 feet to a calculated point at the northeasterly corner of said 1 acre tract and said 0.50 acre tract, being the northwesterly corner of said 0.626 acre tract, for the northeasterly corner hereof, from which a 1/2-inch iron rod found at the northeasterly corner of said 0.626 acre tract bears S46°32'01"E, a distance of 81.93 feet;

THENCE, S45°56'51"W, leaving the southerly line of said 113.133 acre tract, along the westerly line of said 0.626 acre tract, being the easterly line of said 1 acre tract and said 0.50 acre tract, at 0.47 feet passing a 1/2-inch iron rod found, continuing for a total distance of 177.88 feet to the **POINT OF BEGINNING**, and containing 0.504 acre (21,936 square feet) of land, more or less, within these metes and bounds.

TRACT 2
0.507 ACRES

COMMENCING, for reference, at a 1/2-inch iron rod with cap found on the northerly right-of-way line of McCarty Lane (R.O.W. varies), at the northwesterly corner of that certain 0.010 acre tract conveyed to the County of Hays, by Deed of record in Volume 2599, Page 617, of the Official Public Records of Hays County, Texas, being on the easterly line of that certain 1 acre tract conveyed to Santos Calderon and wife, Maria Avigail Calderon, by Deed of record in Volume 364, Page 283, of the Deed Records of Hays County, Texas, also being on the westerly line of that certain 1 acre tract conveyed to Gumesindo Ramirez and Silvestre Ramirez, by Deed of record in Volume 368, Page 577, of said Deed Records;

THENCE, N45°56'51"E, leaving said northerly right-of-way line, along the easterly line of said Calderon 1 acre tract, being the westerly line of said Ramirez 1 acre tract, a distance of 264.08 feet to a calculated point at the southeasterly corner of said 0.51 acre tract, for the POINT OF BEGINNING and southeasterly corner hereof;

THENCE, N44°15'06"W, leaving the westerly line of said Ramirez 1 acre tract, over and across said Calderon 1 acre tract, along the southerly line of said 0.51 acre tract, for the southerly line hereof, a distance of 81.28 feet to a calculated point at the southwesterly corner of said 0.51 acre tract, being on the westerly line of said Calderon 1 acre tract, also being on the easterly line of that certain 1 acre tract conveyed to Pablo H. Vasquez and wife, San Juana Vasquez, by Deed of record in Volume 344, Page 72, of said Deed Records, for the southwesterly corner hereof;

THENCE, N45°56'51"E, along the easterly line of said Vasquez 1 acre tract, being the westerly line of said Calderon 1 acre tract and said 0.51 acre tract, for the westerly line hereof, a distance of 270.14 feet to a calculated point at the northeasterly corner of said Vasquez 1 acre tract, being the northwesterly corner of said Calderon 1 acre tract and said 0.51 acre tract, also being on the southerly line of that certain 113.133 acre tract conveyed to the State of Texas, by Deed of record in Volume 2752, Page 303, of said Official Public Records, for the northwesterly corner hereof, from which a 1/2-inch iron rod found at the southwesterly corner of said 113.133 acre tract, being on the easterly line of the M.K.&T. Railroad right-of-way, bears N46°32'01"W, a distance of 441.33 feet;

THENCE, S46°32'01"E, along the southerly line of said 113.133 acre tract, being the northerly line of said Calderon 1 acre tract and said 0.51 acre tract, for the northerly line hereof, a distance of 81.36 feet to a calculated point at the northeasterly corner of said Calderon 1 acre tract and said 0.51 acre tract, being the northwesterly corner of said Ramirez 1 acre tract and said 0.50 acre tract, for the northeasterly corner hereof, from which a 1/2-inch iron rod found at the northeasterly corner of that certain 0.626 acre tract conveyed to Jesus Campusano and wife, Aurora Campusano, by Deed of Record in Volume 1268, page 878, of said Official Public Records, bears S46°32'01"E, a distance of 205.39 feet;


FN NO. 06-431(ACD)
AUGUST 1, 2006
PAGE 4 OF 4

THENCE, S45°56'51"W, leaving the southerly line of said 113.133 acre tract, along the westerly line of said Ramirez 1 acre tract, and in part along the westerly line of said 0.50 acre tract, being the easterly line of said Calderon 1 acre tract and said 0.51 acre tract, for the easterly line hereof, a distance of 273.38 feet to the POINT OF BEGINNING, and containing 0.507 acre (22,089 square feet) of land, more or less, within these metes and bounds.

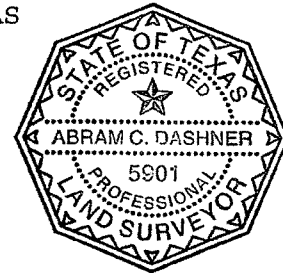
BEARING BASIS: TEXAS COORDINATE SYSTEM, SOUTH CENTRAL ZONE, NAD 83(93), UTILIZING LCRA MONUMENT NO(S). A-669, A-670, AZ-66 AND SMA2

I, ABRAM C. DASHNER, A REGISTERED PROFESSIONAL LAND SURVEYOR, DO HEREBY CERTIFY THAT THE PROPERTY DESCRIBED HEREIN WAS DETERMINED BY A SURVEY MADE ON THE GROUND UNDER MY DIRECTION AND SUPERVISION. A SURVEY EXHIBIT WAS PREPARED TO ACCOMPANY THIS FIELDNOTE DESCRIPTION.

BURY & PARTNERS, INC.
ENGINEERING SOLUTIONS
3345 BEE CAVES ROAD, SUITE 200
AUSTIN, TEXAS 78746


ABRAM C. DASHNER
NO. 5901
STATE OF TEXAS

8-1-06
DATE



1.808 ACRES
J.M. VERAMENDI SURVEY NO. 1
VILLEGAS TRACTS

FN NO. 06-409 (ACD)
AUGUST 1, 2006
BPI JOB NO. 1161-04

DESCRIPTION

OF A 1.808 ACRE TRACT OUT OF THE J.M. VERAMENDI SURVEY, ABSTRACT NO. 17, SITUATED IN HAYS COUNTY, TEXAS, BEING A PORTION OF THE FOLLOWING THREE TRACTS: THAT CERTAIN TRACT CONVEYED TO JOSE VILLEGAS AND WIFE, ERMELINDE TOBIAS VILLEGAS, BY DEED OF RECORD IN VOLUME 589, PAGE 3, OF THE REAL PROPERTY RECORDS OF HAYS COUNTY, TEXAS; THAT CERTAIN TRACT CONVEYED TO ERMELINDE TOBIAS VILLEGAS AND JOSE VILLEGAS, BY DEED OF RECORD IN VOLUME 591, PAGE 758, OF SAID REAL PROPERTY RECORDS; AND THAT CERTAIN TRACT CONVEYED TO ERMELINDE TOBIAS VILLEGAS AND JOSE VILLEGAS, BY DEED OF RECORD IN VOLUME 743, PAGE 856, OF SAID REAL PROPERTY RECORDS; SAID 1.808 ACRE TRACT BEING MORE PARTICULARLY DESCRIBED, IN THREE PARTS, BY METES AND BOUNDS AS FOLLOWS:

TRACT 1 0.382 ACRES

COMMENCING, for reference, at a 1/2-inch iron rod found at the southwesterly corner of Lot 1, Block 1, San Marcos Outlet Park, a subdivision of record in Volume 9, Page 399, of the Plat Records of Hays County, Texas, being the southern most southeasterly corner of that certain 113.133 acre tract conveyed to the State of Texas, by Deed of record in Volume 2752, Page 303, of the Official Public Records of Hays County, Texas, also being on the northerly line of that certain remainder tract conveyed to KBLB Partners, by Deed of record in Volume 1266, Page 132, of said Official Public Records, and being the northeasterly corner of that certain 0.75 acre access easement of record in Volume 1473, Page 700, of said Official Public Records;

THENCE, along the northerly lines of said access easement of record, said Villegas Volume 743, Page 856 tract, and said Villegas Volume 591, Page 758 tract, being the southerly line of said 113.133 acre tract, the following two (2) courses and distances:

- 1) N46°40'55"W, a distance of 59.82 feet to a PK nail found in the base of a fence post at the northwesterly corner of said access easement of record and said remainder tract, being the northeasterly corner of said Villegas Volume 743, Page 856 tract;
- 2) N46°32'01"W, a distance of 115.75 feet to a 1/2-inch iron rod found at the northwesterly corner of said Villegas Volume 591, Page 758 tract, being the northeasterly corner of that certain 0.626 acre tract conveyed to Jesus Campusano and wife, Aurora Campusano, by Deed of record in Volume 1268, Page 878, of said Official Public Records;

THENCE, S46°01'07"W, leaving the southerly line of said 113.133 acre tract, along the easterly line of said 0.626 acre tract, being the westerly line of said Villegas Volume 591, Page 758 tract, a distance of 266.72 feet to a 1/2-inch iron rod found at an angle point in the easterly line of said 0.626 acre tract, being the northeasterly corner of said Villegas Volume 589, Page 3 tract, for the **POINT OF BEGINNING** and northeasterly corner hereof;

THENCE, S45°54'50"W, continuing along the westerly line of said Villegas Volume 591, Page 758 tract, being the easterly line of said Villegas Volume 589, Page 3 tract, for the easterly line hereof, a distance of 270.04 feet to a 1/2-inch iron rod with cap found on the northerly right-of-way line of McCarty Lane (R.O.W. varies), being the northeasterly corner of that certain 0.007 acre tract conveyed to the County of Hays, by Deed of record in Volume 2580, Page 437, of said Official Public Records, for the southeasterly corner hereof;

THENCE, N46°43'59"W, along said northerly right-of-way line, being the northerly line of said 0.007 acre tract, over and across said Villegas Volume 589, Page 3 tract, for the southerly line hereof, a distance of 61.93 feet to a 1/2-inch iron rod with cap found at the northwesterly corner of said 0.007 acre tract, being on the westerly line of said Villegas tract, also being on the easterly line of said 0.626 acre tract, for the southwesterly corner hereof;

THENCE, N46°00'23"E, leaving said northerly right-of-way line, along the easterly line of said 0.626 acre tract, being the westerly line of said Villegas tract, for the westerly line hereof, a distance of 270.22 feet to a 1/2-inch iron rod found at the northwesterly corner of said Villegas tract, for the northwesterly corner hereof;

THENCE, S46°34'47"E, continuing along the easterly line of said 0.626 acre tract, being the northerly line of said Villegas tract, for the northerly line hereof, a distance of 61.49 feet to the **POINT OF BEGINNING**, and containing 0.382 acres (16,652 square feet) of land, more or less, within these metes and bounds.

TRACT 2
1.006 ACRES

COMMENCING, for reference, at a 1/2-inch iron rod found at the southwesterly corner of Lot 1, Block 1, San Marcos Outlet Park, a subdivision of record in Volume 9, Page 399, of the Plat Records of Hays County, Texas, being the southern most southeasterly corner of that certain 113.133 acre tract conveyed to the State of Texas, by Deed of record in Volume 2752, Page 303, of the Official Public Records of Hays County, Texas, also being on the northerly line of that certain remainder tract conveyed to KBLB Partners, by Deed of record in Volume 1266, Page 132, of said Official Public Records, and being the northeasterly corner of that certain 0.75 acre access easement of record in Volume 1473, Page 700, of said Official Public Records;

THENCE, along the northerly lines of said access easement of record, said Villegas Volume 743, Page 856 tract, and said Villegas Volume 591, Page 758 tract, being the southerly line of said 113.133 acre tract, the following two (2) courses and distances:

- 1) N46°40'55"W, a distance of 59.82 feet to a PK nail found in the base of a fence post at the northwesterly corner of said access easement of record and said remainder tract, being the northeasterly corner of said Villegas Volume 743, Page 856 tract;
- 2) N46°32'01"W, a distance of 34.10 feet to a calculated point at the northwesterly corner of said Villegas Volume 743, Page 856 tract, being the northeasterly corner of said Villegas Volume 591, Page 758 tract, for the **POINT OF BEGINNING** and northeasterly corner hereof;

THENCE, S45°57'57"W, leaving the southerly line of said 113.133 acre tract, along the westerly line of said Villegas Volume 743, Page 856 tract, being the easterly line of said Villegas Volume 591, Page 856 tract, for the easterly line hereof, a distance of 536.47 feet to a 1/2-inch iron rod with cap found on the northerly right-of-way line of McCarty Lane (R.O.W. varies), being the northeasterly corner of that certain 0.010 acre tract conveyed to the County of Hays, by Deed of record in Volume 2580, Page 437, of said Official Public Records, for the southeasterly corner hereof;

THENCE, N46°43'59"W, along said northerly right-of-way line, being the northerly line of said 0.010 acre tract, over and across said Villegas Volume 591, Page 758 tract, for the southerly line hereof, a distance of 81.66 feet to a 1/2-inch iron rod with cap found at the northwesterly corner of said 0.010 acre tract, being on the westerly line of said Villegas Volume 591, Page 758 tract, also being on the easterly line of said Villegas Volume 589, Page 3 tract, for the southwesterly corner hereof;

THENCE, N45°54'50"E, leaving said northerly right-of-way line, along the easterly line of said Villegas Volume 589, Page 3 tract, being the westerly line of said Villegas Volume 591, Page 758 tract, for a portion of the westerly line hereof, a distance of 270.04 feet to a 1/2-inch iron rod found at the northeasterly corner of said Villegas Volume 589, Page 3 tract, being the southeasterly corner of that certain 0.626 acre tract conveyed to Jesus Campusano and wife, Aurora Campusano, by Deed of record in Volume 1268, Page 878, of said Official Public Records, for an angle point hereof;

THENCE, N46°01'07"E, along the easterly line of said 0.626 acre tract, continuing along the westerly line of said Villegas Volume 591, Page 758 tract, for the westerly line hereof, a distance of 266.72 feet to a 1/2-inch iron rod found on the southerly line of said 113.133 acre tract, being the northeasterly corner of said 0.626 acre tract, also being the northwesterly corner of said Villegas Volume 591, Page 758 tract, for the northwesterly corner hereof;

THENCE, S46°32'01"E, along the southerly line of said 113.133 acre tract, being the northerly line of said Villegas Volume 591, Page 3 tract, a distance of 81.65 feet to the **POINT OF BEGINNNING**, and containing 1.006 acres (43,838 square feet) of land more or less, within these metes and bounds.

TRACT 3
0.420 ACRES

COMMENCING, for reference, at a 1/2-inch iron rod found at the southwesterly corner of Lot 1, Block 1, San Marcos Outlet Park, a subdivision of record in Volume 9, Page 399, of the Plat Records of Hays County, Texas, being the southern most southeasterly corner of that certain 113.133 acre tract conveyed to the State of Texas, by Deed of record in Volume 2752, Page 303, of the Official Public Records of Hays County, Texas, also being on the northerly line of that certain remainder tract conveyed to KBLB Partners, by Deed of record in Volume 1266, Page 132, of said Official Public Records, and being the northeasterly corner of that certain 0.75 acre access easement of record in Volume 1473, Page 700, of said Official Public Records;

THENCE, N46°40'55"W, along the northerly line of said access easement of record, being the southerly line of said 113.133 acre tract, a distance of 59.82 feet to a PK nail found in the base of a fence post at the northwesterly corner of said access easement of record, being the northeasterly corner of said Villegas Volume 743, Page 856 tract, for the **POINT OF BEGINNING** and northeasterly corner hereof;

THENCE, S45°57'57"W, leaving the southerly line of said 113.133 acre tract, along the westerly line of said access easement of record, being the easterly line of said Villegas Volume 743, Page 856 tract, for the easterly line hereof, a distance of 536.35 feet to a 1/2-inch iron rod with cap set on the northerly right-of-way line of McCarty Lane (R.O.W. varies), being the northeasterly corner of that certain 0.004 acre tract conveyed to the County of Hays, by Deed of record in Volume 2580, Page 437, of said Official Public Records, for the southeasterly corner hereof, from which a 1/2-inch iron rod with cap found at an angle point in said northerly right-of-way line bears S46°43'59"E, a distance of 306.59 feet;

THENCE, N46°43'59"W, along said northerly right-of-way line, being the northerly line of said 0.004 acre tract, over and across said Villegas Volume 743, Page 856 tract, for the southerly line hereof, a distance of 34.11 feet to a 1/2-inch iron rod with cap found at the northwesterly corner of said 0.004 acre tract, being on the westerly line of said Villegas Volume 743, Page 856 tract, also being on the easterly line of said Villegas Volume 591, Page 758 tract, for the southwesterly corner hereof;


THENCE, N45°57'57"E, leaving said northerly right-of-way line, along the easterly line of said Villegas Volume 591, Page 758 tract, being the westerly line of said Villegas Volume 743, Page 856 tract, for the westerly line hereof, a distance of 536.47 feet to a calculated point on the southerly line of said 113.133 acre tract, being the northeasterly corner of said Villegas Volume 591, Page 758 tract, also being the northwesterly corner of said Villegas Volume 743, Page 856 tract, for the northwesterly corner hereof;

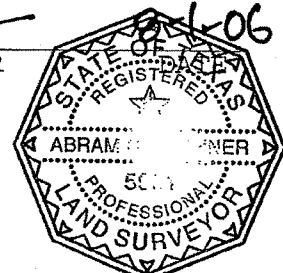
THENCE, S46°32'01"E, along the southerly line of said 113.133 acre tract, being the northerly line of said Villegas Volume 743, Page 856 tract, a distance of 34.10 feet to the **POINT OF BEGINNING**, and containing 0.420 acres (18,274 square feet) of land, more or less, within these metes and bounds.

BEARING BASIS: TEXAS COORDINATE SYSTEM, SOUTH CENTRAL ZONE, NAD 83 (HARN), UTILIZING LCRA MONUMENT NO(S). A-669, A-670, AZ-66 AND SMA2

I, ABRAM C. DASHNER, A REGISTERED PROFESSIONAL LAND SURVEYOR, DO HEREBY CERTIFY THAT THE PROPERTY DESCRIBED HEREIN WAS DETERMINED BY A SURVEY MADE ON THE GROUND UNDER MY DIRECTION AND SUPERVISION. A SURVEY EXHIBIT WAS PREPARED TO ACCOMPANY THIS FIELDNOTE DESCRIPTION.

BURY & PARTNERS, INC.
ENGINEERING SOLUTIONS
3345 BEE CAVES ROAD, SUITE 200
AUSTIN, TEXAS 78746


ABRAM C. DASHNER
NO. 5901
STATE OF TEXAS



0.624 ACRES
J.M. VERAMENDI SURVEY
CAMPUSANO TRACT

FN NO. 06-410 (ACD)
AUGUST 1, 2006
BPI JOB NO. 1161-04

DESCRIPTION

OF A 0.624 ACRE TRACT OUT OF THE J.M. VERAMENDI SURVEY, ABSTRACT NO. 17, SITUATED IN HAYS COUNTY, TEXAS, BEING A PORTION OF THAT CERTAIN 0.626 ACRE TRACT CONVEYED TO JESUS CAMPUSANO AND WIFE, AURORA CAMPUSANO, BY DEED OF RECORD IN VOLUME 1268, PAGE 878, OF THE OFFICIAL PUBLIC RECORDS OF HAYS COUNTY, TEXAS; SAID 0.624 ACRE TRACT BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING, at a 1/2-inch iron rod found at the northeasterly corner of said 0.626 acre tract, being on the southerly line of that certain 113.133 acre tract conveyed to the State of Texas, by Deed of record in Volume 2752, Page 303, of said Official Public Records, also being the northwesterly corner of that certain tract conveyed to Ermelinde Tobias Villegas and Jose Villegas, by Deed of record in Volume 591, Page 758, of the Real Property Records of Hays County, Texas, for the northeasterly corner hereof, from which a 1/2-inch iron rod found at the southern most southeasterly corner of said 113.133 acre tract, being the southwesterly corner of Lot 1, Block 1, San Marcos Outlet Park, a subdivision of record in Volume 9, Page 399, of the Plat Records of Hays County, Texas bears the following two (2) courses and distances:

- 1) S46°32'01"E, a distance of 115.75 feet to a PK nail found in the base of a fence post;
- 2) S46°40'55"E, a distance of 59.82 feet;

THENCE, S46°01'07"W, leaving the southerly line of said 113.133 acre tract, along the westerly line of said Villegas tract, being a portion of the easterly line of said 0.626 acre tract, for a portion of the easterly line hereof, a distance of 266.72 feet to a 1/2-inch iron rod found at the northeasterly corner of that certain tract conveyed to Jose Villegas and wife, Ermelinde Tobias Villegas, by Deed of record in Volume 589, Page 3, of said Real Property Records, for an angle point;

THENCE, leaving the westerly line of said Villegas Volume 591, Page 758 tract, along the northerly and westerly lines of said Villegas Volume 589, Page 3 tract, being a portion of the easterly line of said 0.626 acre tract, for the easterly line hereof, the following two (2) courses and distances:

- 1) N46°34'47"W, a distance of 61.49 feet to a 1/2-inch iron rod found at an angle point;

- 2) S46°00'23"W, a distance of 270.22 feet to a 1/2-inch iron rod with cap found on the northerly right-of-way line of McCarty Lane (R.O.W. varies), being the northeasterly corner of that certain 0.002 acre tract conveyed to the County of Hays, by Deed of record in Volume 2612, Page 710, of said Official Public Records, for the southeasterly corner hereof;

THENCE, N46°43'59"W, along said northerly right-of-way line, being the northerly line of said 0.002 acre tract, over and across said 0.626 acre tract, for the southerly line hereof, a distance of 19.84 feet to a 1/2-inch iron rod with cap found at the northwesterly corner of said 0.002 acre tract, being on the westerly line of said 0.626 acre tract, also being on the easterly line of that certain tract conveyed to Gumesindo Ramirez and Silvestre Ramirez, by Deed of record in Volume 410, Page 400, of said Real Property Records, for the southwesterly corner hereof;


THENCE, N45°56'51"E, leaving said northerly right-of-way line, along the easterly line of said Ramirez tract and that certain 0.50 acre tract conveyed to Gumesindo Ramirez, Jr. and wife, Rosa Ramirez, by Deed of record in Volume 1988, Page 294, of said Official Public Records, being the westerly line of said 0.626 acre tract, for the westerly line hereof, at 536.56 feet passing a 1/2-inch iron rod found, and continuing for a total distance of 537.03 feet to a calculated point on the southerly line of said 113.133 acre tract, being the northeasterly corner of said 0.50 acre tract, also being the northwesterly corner of said 0.626 acre tract, for the northwesterly corner hereof;

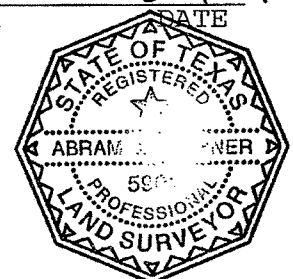
THENCE, S46°32'01"E, along the southerly line of said 113.133 acre tract, being the northerly line of said 0.626 acre tract, a distance of 81.93 feet to the **POINT OF BEGINNING**, and containing 0.624 acres (27,181 square feet) of land, more or less, within these metes and bounds.

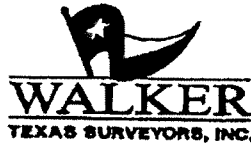
BEARING BASIS: TEXAS COORDINATE SYSTEM, SOUTH CENTRAL ZONE, NAD 83(93), UTILIZING LCRA MONUMENT NO(S). A-669, A-670, AZ-66 AND SMA2

I, ABRAM C. DASHNER, A REGISTERED PROFESSIONAL LAND SURVEYOR, DO HEREBY CERTIFY THAT THE PROPERTY DESCRIBED HEREIN WAS DETERMINED BY A SURVEY MADE ON THE GROUND UNDER MY DIRECTION AND SUPERVISION. A SURVEY EXHIBIT WAS PREPARED TO ACCOMPANY THIS FIELDNOTE DESCRIPTION.

BURY & PARTNERS, INC.
ENGINEERING SOLUTIONS
3345 BEE CAVES ROAD, SUITE 200
AUSTIN, TEXAS 78746


ABRAM C. DASHNER
NO. 5901
STATE OF TEXAS





P. O. Box 324
Cedar Park, Texas 78630-0324
(512) 259-3361 Phone
(512) 259-3381 Fax

PERIMETER DESCRIPTION
113.133 ACRE TRACT OF LAND
J.M. VERAMENDI SURVEY NO. 1, ABSTRACT NO. 17
HAYS COUNTY, TEXAS

BEING A 113.133 ACRE TRACT OF LAND OUT OF AND PART OF THE J.M. VERAMENDI SURVEY NUMBER 1, ABSTRACT NUMBER 17 IN HAYS COUNTY, TEXAS, SAID 113.133 ACRE TRACT BEING OUT OF AND PART OF A CALLED 121.52 ACRE TRACT OF LAND CONVEYED TO CAPITAL FORESIGHT LIMITED PARTNERSHIP, RECORDED IN VOLUME 1336, PAGE 595 OF OFFICIAL PUBLIC RECORDS OF HAYS COUNTY, TEXAS. SAID 113.133 ACRE TRACT OF LAND BEING MORE PARTICULARLY DESCRIBED BY METES AND BOUNDS AS FOLLOWS:

BEGINNING, at a 1/2" Iron Rod found (Capped "Byrn") for the East corner of said 121.52 acre tract, in the West line of Interstate Highway No. 35 (300' Right-of-Way per Volume 9, Page 399 of the Hays County, Texas Plat Records), also being the South corner of a called 3.15 acre tract of land conveyed to Gulf Business Forms, Inc. as recorded in Volume 357, Page 703 of the Hays County, Texas Deed Records, for the East corner hereof;

THENCE, with the common line of said 121.52 acre tract and said Interstate Highway No. 35, South 43°34'50" West, a distance of 2931.79 feet to a 1/2" Iron Rod found (Capped "Byrn") in the West line of said Interstate Highway No. 35, being the East corner of Lot 1, Block 1 of "San Marcos Outlet Park", a subdivision in Hays County, Texas, recorded in Volume 9, Page 399 of the Hays County, Texas Plat Records, for the South corner hereof;

THENCE, leaving the West line of said Interstate Highway No. 35, with the Northeast line of said Lot 1, Block 1 of "San Marcos Outlet Park", North 45°57'47" West, a distance of 730.65 feet to a 1/2" Iron Rod found (Capped "Byrn") for the North corner of said Lot 1, Block 1 of "San Marcos Outlet Park", being an interior point hereof;

THENCE, with the Northwest line of said Lot 1, Block 1 of "San Marcos Outlet Park", South 43°34'29" West, a distance of 499.98 feet to a 1/2" Iron Rod found (Capped "Byrn") for the West corner of said Lot 1, Block 1 of "San Marcos Outlet Park", being the North corner of the residual of a called 9.438 acre tract of land conveyed to KBLB Partners as recorded in Volume 1266, Page 132 of the Real Property Records of Hays County, Texas, also being the East corner of a called 0.75 acre tract of land conveyed to Capital Foresight as recorded in Volume 1473, Page 700 of the Real Property Records of Hays County, Texas, also being in the Southwest line of said 121.52 acre tract, for an exterior corner hereof;

THENCE, with the common line of said 0.75 acre tract and said 121.52 acre tract, **North 45°56'28" West**, a distance of 59.84 feet to a "Mag" Nail found in concrete for the North corner of said 0.75 acre tract, being an angle point of the said 121.52 acre tract, also being the East corner of the residual of a called 20 acre tract of land conveyed to Tereso Tobias as recorded in Volume 139, Page 383 of the Hays County, Texas Deed Records, for an angle point hereof;

THENCE, with the common line of said 121.52 acre tract and the residual of said 20 acre tract (said tract having been cut into numerous small parcels all of which as referenced on the separate sketch of this survey), **North 45°49'24" West**, a distance of 843.66 feet to a 1/2" Iron Rod found (Capped "Byrn") for the North corner of said 20 acre tract, being the West corner of said 121.52 acre tract, also being in the Southeast line of the Missouri, Kansas and Texas Railroad as recorded in Volume 41, Page 12 of the Hays County, Texas Deed Records, for the West corner hereof;


THENCE, with the common line of said 121.52 acre tract and said Missouri, Kansas and Texas Railroad, **North 46°39'52" East**, a distance of 3437.82 feet to a 1/2" Iron Rod found in the Southeast line of said Missouri, Kansas and Texas Railroad, for the North corner of said 121.52 acre tract, being the West corner of Lot 1 of "Thermon Industrial Park No. 2", a subdivision in Hays County, Texas, recorded in Volume 5, Page 6 of the Hays County, Texas Plat Records, for the North corner hereof;

THENCE, with the common line of said 121.52 acre tract and said Lot 1 of "Thermon Industrial Park No. 2" and the said 3.15 acre Gulf Business Forms, Inc. tract, **South 45°46'49" East**, a distance of 1449.17 feet back to the place and **POINT OF BEGINNING**, containing 113.133 Acres of land.

Bearing basis for this tract is based upon the Texas State Plane Coordinate System, NAD83/93 HARN, Texas South Central Zone (U.S. Survey Feet).

This perimeter description is a part of and accompanies a separate sketch of this survey.

Surveyed under the direction and supervision of the undersigned:


Charles G. Walker
Registered Professional Land Surveyor
Number 5283
341001.doc

June 15, 2005
Date of field survey

Exhibit "B"
Permitted Exceptions

1. Easement executed by G.M. Jackson, to Texas Public Utilities Company, dated July 10, 1925, recorded in/under 90/342 of the Real Property Records of Hays County, Texas. (Easement or right-of-way for an electric transmission and distribution line, and all necessary or desirable appurtenances, together with all rights recited therein)
2. Easement executed by Jasba GmbH, a German limited company, to City of San Marcos, dated August 9, 1993, recorded in/under 1015/570 of the Real Property Records of Hays County, Texas. (Easement and right-of-way for electric transmission and/or distribution lines, and all necessary or desirable appurtenances, together with all rights recited therein)
3. Easement executed by Capital Foresight Limited Partnership, to City of San Marcos, a Municipal Corporation, filed June 29, 1998, recorded in/under 1427/909 of the Real Property Records of HAYS County, Texas, (a nonexclusive private easement for public utilities, and free ingress, egress and regress, together with all rights recited therein)
4. Easement executed by Capital Foresight Limited Partnership, to City of San Marcos, a Municipal Corporation, filed June 29, 1998, recorded in/under 1427/915 of the Real Property Records of Hays County, Texas, (a nonexclusive private easement for public utilities, and free ingress, egress and regress, together with all rights recited therein)
5. Easement executed by Capital Foresight Limited Partnership a Nevada Limited Partnership, to KBLB Partners, a Texas General Partnership composed of E.W. Richardson, K.K. Blewett, and Kevin Blewett, dated October 19, 1998, recorded in/under 1472/568 of the Real Property Records of Hays County, Texas. (Easement for drainage, together with all rights recited therein)
6. Easement executed by Capital Foresight Limited Partnership, to City of San Marcos, Texas, dated December 8, 2003, recorded in/under 2367/477 of the Real Property Records of Hays County, Texas. (Easement for wastewater pipe line and related appurtenances including utility facilities, together with all rights recited therein)
7. Deed Dedicating Drainage And Public Utility Easement executed by Capital Foresight Limited Partnership, to City of San Marcos, dated October 9, 2001, recorded in/under 2683/653 of the Real Property Records of Hays County, Texas.
8. Terms, conditions and stipulations contained in Public Improvement Construction And Financing Agreement executed by and between City of San Marcos, Texas, and Financial Management Group, a Partnership comprised of Heinz Schwaderlapp, et al, dated May 16, 1985, recorded in/under 549/234 of the Real Property Records of Hays County, Texas.

Exhibit "B"
Permitted Exceptions - Continued

9. Subject property lies within the boundaries of Edwards Underground Water District.
10. Overhead utility line(s) with poles and guys located along the northeast property line as shown on the survey prepared by Charles G. Walker R.P.L.S. No. 5283, dated June 15,2005.
11. Any rights, claims and/or easements in connection with the two sewer cleanouts lying outside of the utility easement traversing the subject property as shown on the survey prepared by Charles G. Walker R.P.L.S. No. 5283, dated June 15,2005.
12. Unrecorded lease agreements dated March 10, 2000 by and between Capital Foresight, LP, a Nevada Limited Partnership, as lessor and Gunnarson Outdoor Advertising, Inc. and Ivar L. Gunnarson, individually as Lessee.
13. To the extent that it affects the Land, all laws, codes, regulations, ordinances of any governmental or quasi governmental entity that have not been objected to by Buyer.

After recording return to:

Texas General Land Office
P.O. Box 12873
Austin, Texas 78711-2873

Attn: Dewayne Naumann
Asset Management Division

Filed for Record in:
Hays County
On: Aug 19,2005 at 03:32P
Document Number: 05024201
Amount: 26.00
Receipt Number - 131204
By:
Dlisa Martinez, Deputy
Lee Carlisle, County Clerk
Hays County

* 512.463.5001
* 512.463.5102

EXHIBIT 2
Draft “Base Form”
Operation and Easement Agreement

(Current Version)

OPERATION AND EASEMENT AGREEMENT

BETWEEN

TARGET CORPORATION

AND

CREEKSIDE SQUARE, LTD.

For
StoneCreek Crossing Shopping Center

_____, 2007

**OPERATION AND EASEMENT AGREEMENT
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EXHIBITS

- Exhibit A** Legal Description of Target Tract
- Exhibit B** Legal Description of Developer Tract
- Exhibit C** Design of Signs
- Exhibit D** Architectural Theme
- Exhibit E** Submission Guidelines
- Exhibit X** Site Plan

OPERATION AND EASEMENT AGREEMENT

THIS OPERATION AND EASEMENT AGREEMENT ("OEA") is made and entered into as of the _____ day of _____, 2007, between TARGET CORPORATION, a Minnesota corporation ("Target") and CREEKSIDE SQUARE, LTD., a Texas limited partnership ("Developer").

WITNESSETH

WHEREAS, Target is the owner of a certain tract of land legally described in Exhibit A attached hereto and identified as the "Target Tract" on Exhibit X (the "Site Plan") attached hereto; and

WHEREAS, Developer is the owner of a certain tract of land legally described in Exhibit B attached hereto and identified as the "Developer Tract" on the Site Plan; and

WHEREAS, the Target Tract and the Developer Tract (collectively, the "Shopping Center") are contiguous and adjacent to each other as shown on the Site Plan; and

WHEREAS, the signatories hereto intend to develop and operate their respective Tracts in conjunction with each other as integral parts of a retail shopping complex, but not a planned or common interest development/community, and in order to effectuate the common use and operation of their respective Tracts they desire to enter into certain covenants and agreements, and to grant to each other certain reciprocal easements, in, to, over, and across their respective Tracts.

NOW, THEREFORE, in consideration of the premises, the covenants and agreements hereinafter set forth and in furtherance of the parties' understanding, it is agreed as follows:

ARTICLE I - DEFINITIONS

1.1 Approving Party

"Approving Party" shall mean the Party designated from time to time to make certain decisions and/or give certain approvals pursuant to the terms of this OEA. There shall be one (1) Approving Party representing the Developer Tract and one (1) Approving Party representing the Target Tract. Each Approving Party shall have absolute discretion to make the decisions and/or give the approvals expressly designated to be made and/or given on behalf of the real estate represented by such position regardless of whether the Approving Party then owns all or less than all of the Developer Tract or the Target Tract, as the case may be. The Party designated as Approving Party for the Developer Tract shall have the right to assign such status to any other Party owning a Tract within the Developer Tract; provided, however, if such assignment is not made in writing, then the status of Approving Party for the Developer Tract shall automatically be deemed assigned to the Party acquiring the last portion of the Developer Tract owned by the

Party then holding the status of Approving Party for the Developer Tract. The Party designated as Approving Party for the Target Tract shall have the right to assign such status to any other Party owning a Tract within the Target Tract; provided, however, if such assignment is not made in writing, then the status of Approving Party for the Target Tract shall automatically be deemed assigned to the Party acquiring the last portion of the Target Tract owned by the Party then holding the status of Approving Party for the Target Tract. Developer shall be the initial Approving Party for the Developer Tract; Target shall be the initial Approving Party for the Target Tract.

1.2 Building

“Building” shall mean any permanently enclosed structure placed, constructed or located on a Tract, which for the purpose of this OEA shall include any building appurtenances such as stairs leading to or from a door, transformers, trash containers or compactors, canopies, supports, loading docks, truck ramps, and other outward extensions of such structure.

1.3 Building Area

“Building Area” shall mean the limited areas of the Shopping Center within which Buildings may be constructed, placed or located. Building Areas are designated on the Site Plan. One or more Buildings may be located within a Building Area.

1.4 Common Area

“Common Area” shall mean all areas within the exterior boundaries of the Shopping Center, exclusive of (i) any Building and (ii) any Outside Sales Area during the period such area is used for sales, display and/or storage purposes.

1.5 Constant Dollars

“Constant Dollars” shall mean the value of the U.S. dollar to which such phrase refers, as adjusted from time to time. An adjustment shall occur on the 1st day of June of the sixth (6th) full calendar year following the date of this OEA, and thereafter at five (5) year intervals. Constant Dollars shall be determined by multiplying the dollar amount to be adjusted by a fraction, the numerator of which is the Current Index Number and the denominator of which is the Base Index Number. The “Base Index Number” shall be the level of the Index for the year this OEA commences; the “Current Index Number” shall be the level of the Index for the year preceding the adjustment year; the “Index” shall be the Consumer Price Index for All Urban Consumers, published by the Bureau of Labor Statistics of the United States Department of Labor for U.S. City Average, All Items (1996=100), or any successor index thereto as hereinafter provided. If publication of the Index is discontinued, or if the basis of calculating the Index is materially changed, then the Approving Parties shall substitute for the Index comparable statistics as computed by an agency of the United States Government or, if none, by a substantial and responsible periodical or publication of recognized authority most closely approximating the result which would have been achieved by the Index.

1.6 Detention Areas

“Detention Areas” shall mean the two (2) stormwater detention ponds to be situated within the Shopping Center and designated as “Stormwater Pond” on the Site Plan attached hereto as Exhibit X.

1.7 Floor Area

“Floor Area” shall mean the aggregate of the actual number of square feet of space (i) contained on each floor within a Building, including any mezzanine or basement space, as measured from the exterior faces of the exterior walls or store front and/or the center line of any common walls; provided, however, that the following areas shall not be included in such calculation: space attributable to any multi-deck, platform, rack or other multi-level system used solely for the storage of merchandise which is located above ground floor; any space used solely for Building utilities or mechanical equipment; (ii) exceeding fifteen thousand (15,000) square feet within an Outside Sales Area and (iii) used for outdoor seating for customers of Restaurants and/or other food service businesses. Within thirty (30) days after receipt of a request therefor, a Party shall certify to the requesting Party the amount of Floor Area applicable to such Party’s Tract. If any Party causes an as-built survey to be prepared with respect to any portion of the Shopping Center, such Party shall furnish a copy of such survey to the other Parties for informational purposes only.

During any period of rebuilding, repairing, replacement or reconstruction of a Building, the Floor Area previously attributable to that Tract shall be deemed to be the same as existed immediately prior to such period. Upon completion of such rebuilding, repairing, replacement or reconstruction, the Party owning such Tract shall cause a new determination of Floor Area for such Tract to be made in the manner described above, and such determination shall be sent to any other Party requesting the same.

1.8 Governmental Authorities

“Governmental Authorities” shall mean any federal, state, county, city or local governmental or quasi-governmental authority, entity or body (or any departmental agency thereof) exercising jurisdiction over a particular subject matter.

1.9 Governmental Requirements

“Governmental Requirements” shall mean all applicable laws, statutes, ordinances, codes, rules, regulations, orders, and applicable judicial decisions or decrees, as presently existing and hereafter amended, of any Governmental Authorities.

1.10 Occupant

“Occupant” shall mean any Person from time to time entitled to the use and occupancy of any portion of a Building in the Shopping Center under an ownership right or under any lease, sublease, license, concession, or other similar agreement.

1.11 Operator

“Operator” shall mean the Person, if any, designated from time to time by the Approving Parties to maintain and operate the Common Area of the Shopping Center. The Person designated as Operator shall serve in such capacity until he resigns upon 60-days prior written notice, or is removed by the Approving Parties. The Approving Parties hereby designate Direct Property Management, LLC as the initial Operator, and Direct Property Management, LLC hereby accepts such appointment. During any period an Operator is not designated, each Party shall maintain and operate its own Tract pursuant to Article IV hereof.

1.12 Outside Sales Area

“Outside Sales Area” shall mean those areas, if any, designated on the Site Plan which from time to time may be used for sales, display and/or storage purposes; provided, however, with respect to any Outside Sales Area located outside of a Building Area, the Parties acknowledge and agree that the actual location of such Outside Sales Area may vary from time to time, subject to the approval of the Approving Parties. During the period an Outside Sales Area is: (i) used for sales, display and/or storage purposes, such area shall not be considered part of the Common Area, and (ii) not used for sales, display and/or storage purposes, such area shall be considered part of the Common Area; provided, however, if the Outside Sales Area is located within a Building Area, such area may be used for the location of Buildings.

1.13 Party

“Party” shall mean each signatory hereto and its respective successors and assigns during the period of such Person’s fee ownership of any portion of the Shopping Center. A Party transferring all or any portion of its fee interest in the Shopping Center shall give notice to all other Parties and the Operator, if any, of such transfer and shall include in such notice at least the following information:

- (A) The name and address of the new Party;
- (B) A copy of the legal description of the portion of the Tract transferred by such Party; and
- (C) If the new Party is the designated Approving Party.

Each Party shall be liable for the performance of all covenants, obligations and undertakings applicable to the Tract or portion thereof owned by it that accrue during the period of such ownership, and such liability shall continue with respect to any portion of the Tract transferred by such Party until the notice of transfer set forth above is given. Until such notice of transfer is given, the transferring Party shall (for the purpose of this OEA only) be the transferee’s agent. Once the notice of transfer is given, the transferring Party shall be released from all obligations pertaining to the portion of the Tract transferred arising subsequent to the notice of transfer. For the purpose of this Section only, if the notice of transfer is given pursuant to the provisions of

Section 6.4, the effective date of such notice shall be the date such notice is sent. Notwithstanding anything to the contrary, if a notice of transfer is given, any payment made by a Party to the transferor within thirty (30) days of such notice shall be deemed properly paid, and the transferor and transferee shall resolve any necessary adjustments and/or prorations regarding such payment between themselves.

If a Tract is owned by more than one (1) Party, the Party or Parties holding at least fifty-one percent (51%) of the ownership interest in such Tract shall designate in writing one (1) Person to represent all owners of the Tract and such designated Person shall be deemed the Person authorized to give consents and/or approvals pursuant to this OEA for such Tract.

Nothing contained herein to the contrary shall affect the existence, priority, validity or enforceability of any lien permitted hereunder which is recorded against the transferred portion of the Shopping Center prior to receipt of such notice of transfer by the Party filing such lien.

1.14 Permittee

“Permittee” shall mean all Occupants and the officers, directors, employees, agents, contractors, customers, vendors, suppliers, visitors, invitees, licensees, subtenants, and concessionaires of Occupants insofar as their activities relate to the intended development, use and occupancy of the Shopping Center. Persons engaged in civic, public, charitable or political activities within the Shopping Center, including but not limited to the activities set forth below, shall not be considered Permittees:

- (A) Exhibiting any placard, sign or notice.
- (B) Distributing any circular, handbill, placard or booklet.
- (C) Soliciting memberships or contributions for private, civic, public charitable or political purposes.
- (D) Parading, picketing or demonstrating.
- (E) Failing to follow regulations established by the Parties relating to the use and operation of the Shopping Center.

1.15 Person

“Person” shall mean any individual, partnership, firm, association, corporation, limited liability company, trust, or any other form of business or Governmental Authority.

1.16 Phase 1 and Phase 2

“Phase 1” shall mean that portion of the Developer Tract situated in a southerly direction from the Drainage Channel as depicted on the Site Plan; and “Phase 2” shall mean that portion of the Developer Tract situated in a northerly direction from the Drainage Channel as depicted on the Site Plan.

1.17 Primary Building Area

“Primary Building Area” shall mean those specifically designated Building Areas on the Site Plan that collectively provide protection for the type of “unlimited area” Building referred to in Section 3.3.4 hereof.

1.18 Restaurant

“Restaurant” shall mean any operation or business which requires a governmental permit, license and/or authorization to prepare and/or serve food for either on or off-site consumption; provided, however, notwithstanding anything contained herein to the contrary, a supermarket, grocery store or similar operation shall not be deemed a Restaurant.

1.19 Shopping Center East and West

“Shopping Center East” shall mean that portion of the Developer Tract situated in an easterly direction from Barnes Drive as depicted on the Site Plan; and “Shopping Center West” shall mean that portion of the Developer Tract situated in a westerly direction from Barnes Drive as depicted on the Site Plan.

1.20 Tract

“Tract” shall mean that portion of the Shopping Center owned by a Party.

1.21 Utility Lines

“Utility Lines” shall mean those facilities and systems for the transmission of utility services, including the drainage and storage of surface water. “Common Utility Lines” shall mean those Utility Lines which are installed to provide the applicable service to both the Developer Tract and the Target Tract. “Separate Utility Lines” shall mean those Utility Lines which are installed to provide the applicable service to either the Developer Tract or the Target Tract. For the purpose of this OEA, the portion of a Utility Line extending between a Common Utility Line and a Building shall be considered a Separate Utility Line. Utility Lines installed pursuant to this OEA shall only provide service necessary for the development and/or operation of the Shopping Center.

ARTICLE II - EASEMENTS

2.1 Ingress, Egress and Parking

2.1.1 During the term of this OEA, each Party hereby grants and conveys to each other Party for its use and for the use of its Permittees, in common with others entitled to use the same, a non-exclusive easement for the passage and parking of vehicles over and across the parking and driveway areas of the grantor's Tract, as the same may from time to time be constructed and maintained for such use, and for the passage and accommodation of pedestrians over and across the parking, driveways and sidewalk areas of the grantor's Tract, as the same may from time to time be constructed and maintained for such use. The easement herein established shall be appurtenant to and for the benefit of each grantee's Tract, and shall be binding on, enforceable against and burden each grantor's Tract. Such easement rights shall be subject to the following reservations as well as the other applicable provisions contained in this OEA:

- (A) Each Party reserves the right to close-off any portion of its Tract for such reasonable period of time as may be legally necessary, in the opinion of such Party's counsel, to prevent the acquisition of prescriptive rights by anyone; provided, however, that prior to closing-off any portion of its Tract, such Party shall give written notice to each other Party of its intention to do so, and shall attempt to coordinate such closing-off with each other Party so that no unreasonable interference with the passage of pedestrians or vehicles shall occur.
- (B) Each Party reserves the right at any time and from time to time to exclude and restrain any Person who is not a Permittee from using its Tract.
- (C) Each Party reserves the right to temporarily erect or place barriers in and around areas on its Tract which are being constructed and/or repaired in order to insure either safety of Persons or protection of property.

2.1.2 In addition to the general easement specified in Section 2.1.1, the Parties hereby grant and convey to each other Party for its use and for the use of its Permittees, in common with others entitled to use the same, and subject to the reservations set forth in Section 2.1.1(A) and (B), a non-exclusive, perpetual easement for the passage and accommodation of pedestrians and vehicles (but not for parking purposes) upon, over and across that portion of each grantor's Tract designated on the Site Plan as the Permanent Drives (collectively, the "Permanent Drive"); such Permanent Drive to be approximately thirty 30 feet wide (curb to curb), and to contain two (2) lanes, one in each direction. The easement herein established shall be appurtenant to and for the benefit of each grantee's Tract, and shall be binding on, enforceable against and burden each grantor's Tract. During the term of this OEA, each portion of the Permanent Drive shall be maintained in accordance with the provisions governing the maintenance of the parking and driveways on each grantor's Tract, and such Permanent Drive shall not be relocated without the approval of all grantees. After the termination of this OEA,

any grantor may, at its expense, relocate the portion of the Permanent Drive located upon its Tract so long as the relocated portion remains reasonably direct and ties into/connects with the other portions of the Permanent Drive on the immediately adjacent Tracts. Notice of such relocation shall be provided to each grantee at least thirty (30) days prior to relocation of such Permanent Drive.

After the termination of this OEA, that portion of the grantor's Tract on which the Permanent Drive is located shall be maintained in a safe, clean and good state of repair and condition by the grantor, at its sole cost and expense. In the event the grantor shall fail to perform the required maintenance, any grantee, after at least thirty (30) days prior notice to the grantor, shall have the right, but not the obligation, to cause such maintenance to be performed. If such curative measures are taken the grantor shall, upon demand, immediately pay to the grantee curing such default, all costs and expenses incurred with respect to such curative action. In addition, such grantee shall have the right to create a lien upon the grantor's Tract in order to secure payment of the amount expended by such grantee to perform such maintenance, plus Interest at the rate set forth in Section 6.2 hereof.

2.2 Utilities

2.2.1 Each Party hereby grants and conveys to each other Party non-exclusive, perpetual easements in, to, over, under, along and across those portions of the grantor's Tract (exclusive of any portion located within Building Areas) necessary for the installation, operation, flow, passage, use, maintenance, connection, repair, relocation, and removal of Utility Lines serving the grantee's Tract. The initial location of any Utility Line shall be subject to the prior written approval of the Party whose Tract is to be burdened thereby. Such easement area shall be no wider than necessary to reasonably satisfy the requirements of a private or public utility company, or five (5) feet on each side of the centerline if the easement is granted to a Party. The grantee shall provide to the grantor a copy of an as-built survey showing the location of such Utility Line. All Utility Lines shall be underground except:

- (A) Ground mounted electrical transformers;
- (B) As may be necessary during periods of construction, reconstruction, repair or temporary service;
- (C) As may be required by Governmental Authorities;
- (D) As may be required by the provider of such utility service; and
- (E) Fire hydrants.

At least thirty (30) days prior to utilizing the easement granted herein, the grantee shall provide the grantor with a written statement describing the need for such easement, shall identify the proposed location of the Utility Line, the nature of the service to be provided, the anticipated

commencement and completion dates for the work. Prior to commencing any work on a grantor's Tract, including any emergency work, the grantee shall provide to the grantor evidence of insurance coverage as required by Section 5.4.2.

2.2.2 Any Party electing to install a Separate Utility Line shall obtain all permits and approvals and shall pay all costs and expenses with respect to the initial construction and all subsequent maintenance, relocation or abandonment of the Separate Utility Line. The Separate Utility Line shall be maintained in a safe, clean and good state of repair and condition. The grantee shall perform such work in compliance with all Governmental Requirements, as quickly as possible and after normal business hours whenever possible. Except in the case of a maintenance emergency where such work may be initiated after reasonable notice, the grantee shall provide the grantor with at least fifteen (15) days prior notice before commencement of any work. The grantee of any Separate Utility Line agrees to defend, protect, indemnify and hold harmless the grantor from and against all claims or demands, including any action or proceeding brought thereon, and all costs, losses, expenses and liabilities of any kind relating thereto, including reasonable attorneys' fees and cost of suit, arising out of or resulting from the exercise of the right to install, maintain and operate the Separate Utility Line; provided, however, the foregoing obligation shall not apply to claims or demands based on the negligence or the willful act or omission of the grantor.

2.2.3 Except as may otherwise be agreed, the Parties (the "Cooperating Parties") electing to install a Common Utility Line shall obtain all permits and approvals and shall pay all costs and expenses with respect to the initial construction thereof. Once constructed, Operator shall maintain, replace and/or relocate the Common Utility Line in a safe, clean and good state of repair and condition, and in compliance with all Governmental Requirements, as quickly as possible and after normal business hours whenever possible. All costs incurred with respect to the maintenance, relocation or abandonment of the Common Utility Line shall be either included in Common Area Maintenance Costs so long as the Shopping Center is operated and maintained by Operator, or allocated between the Cooperating Parties based on the process established below for maintenance and operation of the Common Utility Line if there is no Operator. If there is no Operator, then any Cooperating Party shall have the right to maintain, repair or replace the Common Utility Line without submission of a Budget or estimate of expenditures, except as hereinafter provided. If a Cooperating Party, in performing maintenance, repair or replacement of a Common Utility Line, is likely to incur costs of more than Twenty Thousand Dollars (\$20,000) in Constant Dollars for such work in any one instance (or series of related or repeated circumstances), such Cooperating Party shall first notify the other Cooperating Parties required to pay a portion of such costs, in which case the Cooperating Parties shall prepare a list of qualified bidders, shall seek competitive bids from the list of qualified bidders before performing the work and shall select the lowest, responsive qualified bidder to perform the work. If a list of bidders is not jointly prepared within fifteen (15) days of the request for bidders, the Cooperating Party desiring to perform the work may prepare the list (containing not less than three bidders) for such other Cooperating Parties' approval, which approval shall not be unreasonably withheld, from which bids will be solicited. After a Cooperating Party has incurred any costs for maintaining, repairing or replacing a Common Utility Line, it may send a statement of such costs, increased by an amount equal to the Administration Fee (defined in Section 4.2.2), together with a copy of any

invoice reflecting a charge exceeding \$500.00 to each Cooperating Party benefiting from such Common Utility Line. Each Cooperating Party shall pay within thirty (30) days after receipt of the statement of costs either its allocable share of such costs as agreed upon when the Common Utility Line was installed, or if no separate cost sharing agreement was made, then in accordance with the sharing of Common Area Maintenance Costs. Except in the case of a maintenance emergency where such work may be initiated after reasonable notice, the grantor shall be provided with at least fifteen (15) days prior notice before commencement of any work.

2.2.4 Each Party hereby grants and conveys to each other Party owning an adjacent Tract the perpetual right and easement to discharge surface storm water drainage and/or runoff from the grantee's Tract over, upon and across the Common Area of the grantor's Tract, upon the following conditions and terms:

- (A) The grades and the surface water drainage/retention system for the Shopping Center shall be initially constructed in strict conformance with the plans and specifications approved by the Approving Parties; and
- (B) No Party shall alter or permit to be altered the surface of the Common Area or the drainage/retention system constructed on its Tract if such alteration would materially increase the flow of surface water onto an adjacent Tract either within the aggregate or by directing the flow of surface water to a limited area. All surface water collection, retention and distribution facilities shall be deemed a Common Utility Line.

2.2.5 In the event a Party fails to perform its obligations under Section 2.2, any grantor shall have the right to claim a default pursuant to Section 6.1 and avail itself of all the provisions therein contained, including the right to lien a Defaulting Party's Tract, and receive Interest on all sums expended to cure such default.

2.2.6 The grantor shall have the right to relocate a Utility Line on its Tract upon thirty (30) days prior written notice to the grantee(s), provided that such relocation:

- (A) Shall not be commenced during the months of November, December or January;
- (B) Shall not interfere with or diminish the utility service to the grantee during the grantee's business hours; and if an electrical line/computer line is being relocated, then the grantor and grantee shall coordinate such interruption to eliminate any detrimental effects;
- (C) Shall not reduce or unreasonably impair the usefulness or function of such Utility Line;

- (D) Shall be performed without cost or expense to the grantee;
- (E) Shall be completed using materials and design standards which equal or exceed those originally used; and
- (F) Shall have been approved by the provider of such utility service and the appropriate Governmental Authorities.

Documentation of the relocated easement area, including the furnishing of an “as-built” survey to all grantees, shall be at the grantor’s expense and shall be accomplished as soon as possible following completion of such relocation.

2.3 Construction, Maintenance and Reconstruction

2.3.1 In order to accommodate any Building improvements which may inadvertently be constructed beyond a Tract’s boundary line, each Party grants to each other Party owning an adjacent Tract, an easement, not to exceed a maximum lateral distance of six (6) inches, in, to, over, under, and across that portion of the grantor’s Tract adjacent to such common boundary line for the maintenance and replacement of such encroaching Building improvements.

2.3.2 In the event a constructing Party (the “Constructing Party”) determines that it is necessary to place underground piers, footings and/or foundations (“Subsurface Construction Elements”) across the boundary line of its Tract, the Constructing Party shall advise the Party owning the adjacent Tract (the “Adjacent Party”) of the Constructing Party’s construction requirements and shall provide plans and specifications relating thereto to the Adjacent Party, including proposed construction techniques for the Subsurface Construction Elements. Each Adjacent Party hereby grants and conveys to each Constructing Party for the benefit of its Tract an easement, not to exceed a maximum lateral distance of five (5) feet, in, to, under, and across that portion of the Adjacent Party’s Tract not theretofore occupied by any then existing structure, for the installation, maintenance and replacement of such Subsurface Construction Elements; provided, however, that the Constructing Party shall have no right to use such easement if the Adjacent Party is able to provide the Constructing Party a reasonable alternative construction method for the placement of the Subsurface Construction Elements entirely on the Constructing Party’s Tract.

The Adjacent Party reserves the right to require the Constructing Party to modify the design specifications for the Subsurface Construction Elements in order to permit the Adjacent Party the opportunity to utilize the same in connection with the construction of its Building so that each Party shall be able to place its Building immediately adjacent to the common boundary line. If a common Subsurface Construction Element is used by the Constructing Party and the Adjacent Party, each shall assume and pay its reasonable share of the cost and expense of the design and construction thereof. In the event any Building utilizing a common Subsurface Construction Element is destroyed and not replaced or is removed, the common Subsurface

Construction Element shall remain in place for the benefit of the other Building utilizing the same.

2.3.3 The easements established under Sections 2.3.1 and 2.3.2 shall be appurtenant to and for the benefit of each grantee's Tract, and shall be binding on, enforceable against and burden each grantor's Tract. Notwithstanding such easement grant, nothing herein shall diminish or waive the right of a grantor to recover damages resulting from a grantee's failure to construct its Building within its Tract in the case of Section 2.3.1, or within the easement area limits in the case of Section 2.3.2. Such easements in each instance shall:

- (A) Continue in effect for the term of this OEA and thereafter for so long as the Building utilizing the easement area exists (including a reasonable period to permit reconstruction or replacement of such Building if the same shall be destroyed, damaged or demolished).
- (B) Include the reasonable right of access necessary to exercise and enjoy such grant upon terms and with the limitations described in Section 3.1.5.

2.3.4 With respect to Buildings constructed along the common boundary line between Tracts, nothing herein shall be deemed to create or establish:

- (A) A "common" or "party" wall to be shared with the adjacent Building.
- (B) The right for a Building to receive support from or apply pressure to the adjacent Building.

2.4 Sign Easement

2.4.1 Developer hereby grants and conveys to Target, its successors and assigns as the owner of the Target Tract, a perpetual nonexclusive easement for the right and privilege to place or affix identification panel(s) in the position (both sides) specified in Exhibit C attached hereto on (i) the three Shopping Center pylon sign structures ("Shopping Center Pylon Signs") to be located on that portion of the Developer Tract identified on the Site Plan as Pylon Sign E1, E2 and E3; and (ii) the Four Tenant Monument Sign to be located on that portion of the Developer Tract identified on the Site Plan as "Four Tenant Monument Sign A" (collectively, the "Center Sign Areas"); the easement grant shall include reasonable access over, across and upon the Developer Tract to permit such panel(s) to be installed, replaced, maintained and operated. Developer reserves the right to grant additional panel easements, subject to the restrictions set forth in Section 5.3.1, for the remaining panel areas specified on Exhibit C, and each such additional grant shall recognize the easement right and privileges granted herein to Target, and shall specify which panel space on the sign structure is the subject of the easement grant. In the event a sign structure is not in place within the Center Sign Areas during the term of the OEA, or at any time thereafter, then the aforesaid easement grant shall also include the right for Target to construct, reconstruct, replace, maintain and operate a sign structure within the Center Sign

Areas, together with reasonable access over, under, upon, through and across the Developer Tract to install, replace, maintain, repair and operate a separate Utility Line pursuant to the terms and provisions set forth in Section 2.2 above in order to provide such sign structure and panels with power. If Target elects to construct the sign structure, the design thereof shall be as specified on Exhibit C, or another design approved either during the term of the OEA by the Approving Parties and the Parties entitled to place panels on the sign structure pursuant to Section 5.3.1, or following the expiration of the OEA, by the Persons entitled to place panels on the sign structure pursuant to easement grants. The foregoing easement, together with all rights and privileges specified, shall be for the benefit of the Target Tract and shall be binding on, enforceable against and burden the Developer Tract. Target shall have the right to release the easement, and upon such release Target shall remove its panel(s) and thereafter have no further rights, duties or responsibilities with respect to the sign structure.

During the term of this OEA, the right of other Occupants to place panels on the sign structure, the maintenance and/or replacement of the sign structure, and any relocation of the sign structure shall be governed by the provisions of Section 5.3.1 hereof. Developer (or Target if it has constructed the sign structure) shall be entitled to receive the portion of any condemnation award relating to the sign structure, including any relocation benefits, and the Person receiving the award shall cause a new sign structure to be constructed in accordance with Exhibit C in a replacement location acceptable to the Approving Parties. If the award received for the sign structure is less than the cost to replace the sign structure, the Parties entitled to place panels on the sign structure shall pay the deficiency based on the panel area allocated to each pursuant to Exhibit C, or the then approved design, even if such panel area is not used. The award (whether paid separately or as part of a lump sum) attributable to each panel taken shall belong to the owner thereof.

Following the termination of this OEA, the maintenance and/or replacement of each sign structure shall be performed by a Person designated by the majority of the grantees entitled to place panels on the particular sign structure, and all maintenance (including cost of providing power) and/or replacement costs shall be separately billed to the grantees based on the panel area allocated to each, even if such panel area is not used. Each Person attaching a panel to the sign structure shall cause such panel (including any backlit lighting) to be maintained at its sole cost and expense in a safe condition and in a good state of repair and pursuant to Governmental Regulations. In the event the area upon which the sign structure is located is taken by condemnation, the owner of the land upon which the sign structure is located shall designate a replacement area with comparable visibility as close to the original location as is reasonably possible. The Person then maintaining the sign structure shall be entitled to receive the portion of the condemnation award relating to the sign structure taken, including any relocation benefits, and such Person shall cause a new sign structure to be constructed in the replacement location in accordance with the design criteria set forth in Exhibit C, or any other design criteria approved by the grantees entitled to place panels on the sign structure pursuant to the easement grant. If the award received for the sign structure is less than the cost to replace the sign structure, the grantees entitled to place panels on the sign structure shall pay the deficiency based on the panel area allocated to each pursuant to the easement grants, even if such panel area is not used. The

award (whether paid separately or as part of a lump sum) attributable to each panel taken shall belong to the owner thereof.

2.5 Restriction

No Party shall grant any easement for the benefit of any property not within the Shopping Center; provided, however, that the foregoing shall not prohibit the granting or dedicating of easements by a Party on its Tract to Governmental Authorities or to public utility companies.

ARTICLE III - CONSTRUCTION

3.1 General Requirements

3.1.1 Each Party agrees that all construction activities performed or authorized by it within the Shopping Center shall be performed in compliance with all Governmental Requirements. All construction shall utilize new materials and shall be performed in a good, safe, workman-like manner.

3.1.2 Each Party further agrees that any construction activities performed or authorized by it shall not:

- (A) Cause any unreasonable increase in the cost of constructing improvements upon another Party's Tract.
- (B) Unreasonably interfere with construction work being performed on any other part of the Shopping Center.
- (C) Unreasonably interfere with the use, occupancy or enjoyment of any part of the remainder of the Shopping Center by any other Party or its Permittees.
- (D) Cause any Building located on another Tract to be in violation of any Governmental Requirements.

3.1.3 Each Party agrees to defend, protect, indemnify and hold harmless each other Party from and against all claims and demands, including any action or proceeding brought thereon, and all costs, losses, expenses and liabilities of any kind relating thereto, including reasonable attorneys fees and cost of suit, arising out of or resulting from any construction activities performed or authorized by such indemnifying Party; provided, however, that the foregoing shall not be applicable to either events or circumstances caused by the negligence or willful act or omission of such indemnified Party, its licensees, concessionaires, agents, servants, employees, or anyone claiming by, through, or under any of them, or claims covered by the release set forth in Section 5.4.3.

3.1.4 In connection with any construction, reconstruction, repair or maintenance on its Tract, each Party reserves the right, at its expense, to create a temporary staging and/or storage area on its Tract at such location as will not unreasonably interfere with access between such Tract and the other areas of the Shopping Center. Prior to the commencement of any work which requires the establishment of a staging and/or storage area on its Tract, a Party shall give at least thirty (30) days prior notice to the Approving Parties, for their approval, of the proposed location of such staging and/or storage area. If substantial work is to be performed, the constructing Party shall, at the request of any Approving Party, fence such staging and/or storage area. Notwithstanding the foregoing, if a business is operating on the Target Tract then no other Party's staging and/or storage area shall be located within one hundred (100) feet of the Target Tract, unless such area is located within a Building Area. If the Approving Parties do not approve the proposed location of the staging and/or storage area, the requesting Party shall modify the proposed location of the staging and/or storage area to satisfy the reasonable requirements of the Approving Parties. All storage of materials and the parking of construction vehicles, including vehicles of workers, shall occur only on the constructing Party's Tract, and all laborers, suppliers, contractors and others connected with such construction activities shall use only the access points located upon the constructing Party's Tract. Upon completion of such work, the constructing Party shall, at its expense, restore any damaged Common Area to a condition equal to or better than that existing prior to commencement of such work.

3.1.5 Each Party hereby grants and conveys to each other Party and to such Party's contractors, materialmen and laborers a temporary license for access and/or use over and across the Common Area of the grantor's Tract as shall be reasonably necessary for the grantee to construct and/or maintain improvements upon the grantee's Tract; provided, however, that such license shall be in effect only during such periods of time when actual construction and/or maintenance is being performed and provided further that the use of such license shall not unreasonably interfere with the use and operation of the Common Area by the other Parties or their Permittees. Prior to exercising the rights granted herein, the grantee shall first provide the grantor with a written statement describing the need for such license and shall identify the area of use. Each grantee physically using a portion of the grantor's Tract in connection with the construction and/or maintenance of the grantee's Tract shall furnish a certificate of insurance showing that its contractor has obtained the minimum insurance coverage required by Section 5.4.2, shall promptly pay all costs and expenses associated with such work, shall diligently complete such work as quickly as possible, and shall promptly clean the area, and restore and/or repair the affected portion of the grantor's Tract to a condition which is equal to or better than the condition which existed prior to the commencement of such work. Notwithstanding the foregoing, in the event a dispute exists between the contractors, laborers, suppliers and/or others connected with such construction activities, each Party shall have the right to prohibit the contractors, laborers, suppliers and/or others working for another Party from using the Common Area on its Tract.

3.2 Common Area

The Parties have agreed that the Common Area shall be constructed as shown on the Site Plan; provided, however, no fence or other barrier which would prevent or unreasonably obstruct

the passage of pedestrian or vehicular travel shall be erected or permitted within or across the Common Area, exclusive of the limited curbing and other forms of traffic control depicted on the Site Plan, permitted staging and/or storage areas and Outside Sales Areas. Contemporaneously with the construction of a Building upon its Tract, the constructing Party shall cause the Common Area on its Tract necessary to serve such Building to be substantially completed no later than the day the first Occupant of such Tract opens for business with the public. Such work shall be done in accordance with Governmental Requirements, in a good and workmanlike manner and in accordance with good engineering standards; provided, however, the following minimum general design standards shall be complied with throughout the term of this OEA:

3.2.1 The lighting system shall use a lamp source of metal halide, and shall be designed to produce a minimum maintained lighting intensity measured at grade at all points of at least:

- (A) 5 footcandles at curb in front of the entrance to any Building.
- (B) 3 footcandles at entry drives to the Shopping Center.
- (C) 3 footcandles in the general parking areas.
- (D) 2 footcandles at the perimeter of the parking areas.

Each Party may elect to control the lighting system located on its Tract. The type and design of the Common Area light standards shall be approved by the Approving Parties.

3.2.2 The slope in the parking area shall not exceed a maximum of three percent (3%) nor be less than a minimum of one percent (1%) and shall not exceed a maximum of one and one-half percent (1.5%) within one hundred fifty feet (150') of Target's Building entrance, and the slope at all entrances to the Shopping Center shall not exceed a maximum of five percent (5%), unless Approving Parties agree to a different standard.

3.2.3 All sidewalks and pedestrian aisles shall be concrete or other materials approved by the Approving Parties; the automobile parking areas, driveways, and access roads shall be designed in conformity with the recommendations of a licensed soils engineer approved by the Approving Parties, which design shall require the installation of a suitable base and surfacing with an asphaltic concrete or concrete-wearing material.

3.2.4 Utility Lines that are placed underground shall be at depths designated by consultants approved by the Approving Parties. If surface water retention and/or detention areas are located outside of the general parking areas, such retention and/or detention areas shall be fenced or otherwise secured to impede public access thereto.

3.2.5 The parking area on the Target Tract, and on each separate Tract and/or legally subdivided parcel of land (regardless of ownership) comprising the Developer Tract shall contain sufficient ground level parking spaces, without reliance on parking spaces that may be available on another portion of the Shopping Center in order to comply with the greater of Governmental Requirements or the following minimum requirements:

- (A) Four and one-half (4.5) parking spaces for each one thousand (1,000) square feet of Floor Area in all portions of the Shopping Center except Shopping Center East (as defined in Section 1.19 above), and four (4) parking spaces for each one thousand (1,000) square feet of Floor Area in Shopping Center East, exclusive of any Restaurant parking requirements set forth below.
- (B) If a business use contains a drive-up unit (such as a remote banking teller or food ordering/dispensing facility), then there shall also be created space for stacking not less than five (5) automobiles for each drive-up unit.
- (C) For each single Restaurant that has less than five thousand (5,000) square feet of Floor Area, then ten (10) parking spaces for each one thousand (1,000) square feet of Floor Area devoted to such use; for each single Restaurant that has at least five thousand (5,000) square feet of Floor Area but less than seven thousand (7,000) square feet of Floor Area, then twelve and one-half (12½) parking spaces for each one thousand (1,000) square feet of Floor Area devoted to such use; and for each single Restaurant that has seven thousand (7,000) square feet or more of Floor Area, then fifteen (15) parking spaces for each one thousand (1,000) square feet of Floor Area devoted to such use.

If an Occupant operates a Restaurant incidental to its primary business purpose, then so long as such incidental operation continues, the portion of the Floor Area occupied by such Restaurant shall be excluded from the application of (C), (D) and (E) above. For the purpose of this clause only, a Restaurant shall be an "incidental operation" if it occupies less than seven percent (7%) of the Occupant's Floor Area and does not have a separate customer entry/exit door to the outside of the Building. In the event an Occupant utilizes Floor Area for Restaurant and other purposes, only the portion of Floor Area allocated for Restaurant purposes shall be subject to the increased parking requirements set forth above.

In the event of a condemnation of part of a Tract or a sale or transfer in lieu thereof that reduces the number of usable parking spaces on such Tract below that which is required herein, the Party whose Tract is so affected shall use its best efforts (including using proceeds from the condemnation award or settlement) to restore and/or substitute ground-level parking spaces in order to comply with the parking requirements set forth in this OEA. If such compliance is not reasonably possible, such Party shall not be deemed in default hereunder, but such Party shall not

be permitted to expand the amount of Floor Area located on its Tract. If such Floor Area is thereafter reduced other than by casualty, then the Floor Area on such Tract may not subsequently be increased unless the parking requirements set forth above are satisfied.

Temporary unavailability of parking spaces caused by uses or promotions permitted under this OEA shall not result in or be deemed a violation of this Section 3.2.5.

3.2.6 No Party shall make changes to the improved Common Area on its Tract without the approval of the Approving Parties, except that each Party hereby reserves the right, from time to time without obtaining the consent or approval of any other Party, to make at its own expense any insignificant change, modification or alteration in the portion of the Common Area on its Tract, including the installation of convenience facilities such as mailboxes, public telephones, cart corrals, benches, bike racks, directional and/or parking information signs, provided that:

- (A) The accessibility of such Common Area for pedestrian and vehicular traffic (as it relates to the remainder of the Shopping Center) is not unreasonably restricted or hindered, and all parking stalls and rows and vehicular traffic lanes shall remain generally as shown on the Site Plan.
- (B) There shall be maintained at all times within such Common Area a sufficient number of vehicular parking spaces to meet the parking requirements set forth in Section 3.2.5; provided, however, that no more than two percent (2%) of the parking spaces depicted on the Site Plan for such Tract shall be eliminated.
- (C) No Governmental Requirements shall be violated as a result of such action; any and all Governmental Requirements applicable to such modifications shall be satisfied by the Party performing the same; and such action shall not result in any other Party being in violation of any Governmental Requirements.
- (D) No change shall be made in the access points between the Common Area and the adjacent public streets; provided, however, that additional access points may be created with the approval of the Approving Parties.
- (E) At least thirty (30) days prior to making any such change, modification or alteration, the Party desiring to do such work shall deliver to each Approving Party copies of the plans therefor, and provided further that such work shall not occur during the months of October, November, December or January.

The provisions of this Section 3.2.6 do not apply to any changes, modifications or alterations of Common Area located within Building Areas which result from or arise out of the construction, expansion or maintenance of Buildings or Outside Sales Areas.

3.3 Building Improvements

3.3.1 Building(s) shall only be located within the Building Areas designated on the Site Plan. While it is acknowledged and agreed that no Party shall have an obligation to commence construction of any Building on its Tract, each Party agrees that once it has commenced construction of a Building, such Building shall be completed within a reasonable time. If the Site Plan contains a caption that specifically establishes the maximum Floor Area to be located within a Building Area, such designated Floor Area shall not be exceeded.

If the number of "square feet" of building space within the Shopping Center is restricted by Governmental Requirements, the Parties hereby allocate the permitted square footage as follows: (i) to the Target Tract, the number of square feet necessary to accommodate 127,000 square feet of Floor Area, plus any Outdoor Sales Area; and (ii) to the Developer Tract, the balance of such permitted square footage. The Parties understand that the calculation of Building sizes shown on the Site Plan is based on the definition of "Floor Area" set forth in this OEA, and further that such term is unique to this OEA and is not intended to mirror the definition of "square feet" set forth in codes/regulations established by the local Governmental Authorities.

3.3.2 The Approving Parties have agreed upon an architecturally compatible theme for the exterior of all Buildings to be constructed, placed or located within the Shopping Center, as represented by the Building elevations (the "Theme") attached hereto as Exhibit D. Each Party agrees that any Building located on its Tract shall comply with such Theme, shall not have backlit lighting for any awning or canopy forming a part thereof, and shall comply with the other requirements of the OEA. Notwithstanding the foregoing, the exterior architectural elevations of any Building situated on a pad (as depicted on the Site Plan) and occupied by a "national or regional chain" (as hereinafter defined) may conform to the typical exterior building elevations utilized by such national or regional chain in the majority of its other stores so long as those national or regional chains incorporate in their exterior building elevations materials and other design elements of the Theme, provided that Target shall have approved such exterior architectural elevations, which approval shall not be unreasonably withheld. For purposes of this Section 3.3.2, "national or regional chain" shall mean any business that operates fifty (50) or more stores in the United States. In order to insure compliance with such Theme, each Party shall, at least thirty (30) days prior to the commencement of any work on its Tract, submit to the Approving Parties for approval detailed plans ("Plans") as required by Exhibit E attached hereto covering the initial construction of each Building and any additions, remodeling, reconstruction or other alteration thereto which changes the exterior thereof; provided, however, the Approving Parties waive the requirement for the submission of Plans for the initial Building to be constructed on the Target Tract if such Building reflects a prototype "Target" retail store. If an Approving Party should reject the Plans for not complying with the Theme, the submitting Party and the Approving Parties shall mutually consult to establish approved Plans for the proposed work. The Approving Parties shall not withhold approval of the Plans or recommend changes in

the Plans if the plans conform to the Theme and other requirements of the OEA. In no event shall an Approving Party require any other Party to utilize design standards superior to those utilized by the Approving Party in the construction of any Buildings on its Tract. Approval of Plans by the Approving Parties shall not constitute assumption of responsibility for the accuracy, sufficiency or propriety thereof, nor shall such approval constitute a representation or warranty that the Plans comply with Governmental Requirements. No material deviation shall be made from the approved Plans.

3.3.3 The Parties hereby specifically consent to the placement of Buildings along their respective common boundary lines, and each Party agrees to support any request by another Party for a side-yard or setback variance if the same is required in order to accommodate such construction. The second Party to construct a Building along a common boundary line shall:

- (A) Cause such construction to be completed in such a manner that the improvements on the adjoining Tract are not damaged, and so that the wall, roof, foundation or other structure portion of one Building does not receive support from, nor apply pressure to the other Building.
- (B) Undertake and assume the obligation of completing and maintaining the nominal attachment (flashing and seal) of its Building to that of the existing Building on the adjoining Tract, it being the intent of the Parties to establish and maintain the appearance of one (1) continuous Building complex.

Along the common boundary line between the Developer Tract and the Target Tract, the separation of Building walls shall be no less than two (2) inches. Target agrees to use reasonable efforts to locate its Building wall at least one (1) inch from the common boundary line, but in no event more than two (2) inches therefrom. Developer agrees to use reasonable efforts to locate its Building wall at least one (1) inch from the common boundary line, but in no event more than two (2) inches therefrom.

3.3.4 The Parties acknowledge that Target initially proposes to construct on the Target Tract a Building which is classified as an "unlimited area building" under certain building codes; the term "unlimited area building", as used in this document, refers to a building that is allowed to exceed area limitations stipulated in the applicable building code, not by virtue of its construction type, but as a condition of its isolation on the property and by its inclusion of a sprinkler system. The Parties agree that all Buildings constructed within the Primary Building Area shall comply with the following requirements:

- (A) No Building shall be constructed within sixty (60) feet of the Building Area on an adjoining Tract unless such Building, hereinafter referred to as the "Adjacent Building," shall be located immediately adjacent to the

common boundary line and is attached to the Building, if any, on the adjacent Tract in accordance with Section 3.3.3.

- (B) If an Adjacent Building exists, then no Building shall be located within sixty (60) feet of the Adjacent Building unless such Building is attached to the Adjacent Building in accordance with Section 3.3; the Adjacent Building and all other Buildings on the Tract that are attached to the Adjacent Building and to each other are hereinafter referred to as the "Building Group".
- (C) Any Building that is not part of the Building Group shall be located at least sixty (60) feet distant from the Building Group.
- (D) The Adjacent Building or the Building Group, as the case may be, shall comply with the building code requirements applicable to an "unlimited area building", including without limitation the installation of an approved sprinkler system for fire protection.
- (E) Any Building constructed within the Primary Building Area shall be equipped with a fire sprinkler system and shall meet all other governmental building code requirements.

In addition to the requirements set forth above, the Parties agree that no Building shall initially be placed or constructed on their respective Tracts in a manner which will, based on then existing Governmental Requirements, either preclude the construction on the Primary Building Areas of an "unlimited area building", or cause an existing "unlimited area building" thereon to no longer be in conformance with applicable building code requirements, it being understood and agreed, however, that subsequent changes in Governmental Requirements shall not obligate a Party to modify or alter its existing Building.

If required by any Governmental Authorities, each Party agrees to join in a recordable declaration which confirms the existence of a sixty (60) foot clear area around the Primary Building Areas.

3.3.5 No Building shall exceed one (1) story, nor the following height restrictions:

- (A) On the Target Tract - 34 feet
- (B) On the Developer Tract - 30 feet; except that the building in Phase 1 identified as "JC Penney Co." on the Site Plan and any building in the Shopping Center West portion of Phase 2 that

exceeds 75,000 square feet of Floor Area and is occupied by a single tenant or user shall not exceed 34 feet, and if a Theatre building is constructed in Phase 2 it shall not exceed 45 feet, provided that the Theatre building may have architectural features that do not exceed 55 feet.

The height of any Building shall be measured perpendicular from the finished floor elevation to the top of the roof structure, including any screening, parapet, penthouse, mechanical equipment or similar appurtenance located on the roof of such Building. Any Party shall have the right to install, maintain, repair, replace and remove Communications Equipment (defined below) on the top of the Building on its Tract which may extend above the height limits established above; provided, however, such Communication Equipment shall be screened to reduce visibility thereof by customers as required pursuant to Governmental Requirements. As used herein, the phrase "Communications Equipment" means such things as satellite and microwave dishes, antennas and laser heads, together with associated equipment and cable.

3.4 Liens

In the event any mechanic's lien is recorded against the Tract of one Party as a result of services performed or materials furnished for the use of another Party, the Party permitting or causing such lien to be so recorded agrees to cause such lien to be discharged within fifteen (15) days after the entry of a final judgment (after all appeals) for the foreclosure of such lien. Notwithstanding the foregoing, upon request of the Party whose Tract is subject to such lien, the Party permitting or causing such lien to be recorded agrees to promptly cause such lien to be released and discharged of record, either by paying the indebtedness which gave rise to such lien or by posting bond or other security as shall be required by law to obtain such release and discharge. Nothing herein shall prevent the Party permitting or causing such lien to be recorded from contesting the validity thereof in any manner such Party chooses so long as such contest is pursued with reasonable diligence. In the event such contest is determined adversely (allowing for appeal to the highest appellate court), such Party shall promptly pay in full the required amount, together with any interest, penalties, costs, or other charges necessary to release such lien of record. The Party permitting or causing such lien agrees to defend, protect, indemnify and hold harmless the other Party and its Tract from and against all claims and demands, including any action or proceeding brought thereon, and all costs, losses, expenses and liabilities of any kind relating thereto, including reasonable attorneys' fees and cost of suit, arising out of or resulting from such lien.

ARTICLE IV - MAINTENANCE AND REPAIR

4.1 Utility Lines

Utility Lines shall be maintained as provided in Section 2.2.

4.2 Common Area

4.2.1 Subject to the joint maintenance provision set forth in Section 4.2.2, each Party shall cause to be operated and maintained including any replacement due to ordinary wear and tear, at its sole cost and expense, the Common Area on its Tract in a sightly, safe condition and good state of repair. The unimproved Common Area shall be mowed and kept litter-free. The minimum standard of maintenance for the improved Common Area shall be comparable to the standard of maintenance followed in other first class retail developments of comparable size in the Hays County, Texas metropolitan area; notwithstanding the foregoing, however, the Common Area shall be operated and maintained in compliance with all applicable Governmental Requirements, and the provisions of this OEA. All Common Area improvements shall be repaired or replaced with materials at least equal to the quality of the materials being repaired or replaced so as to maintain the architectural and aesthetic harmony of the Shopping Center as a whole. Such operation, maintenance and repair obligation shall include but not be limited to the following:

- (A) Drive and Parking Areas. Maintaining all paved surfaces and curbs in a smooth and evenly covered condition, including, without limitation, replacement of base, skin patch, resurfacing and resealing. (For the purpose of this Section, an overlay of the drives and parking areas shall be considered a maintenance item.)
- (B) Debris and Refuse. Periodically removing papers, debris, filth, refuse, ice and snow (2" on surface), including vacuuming and broom-sweeping at least 5 times per week, but in any event to the extent necessary to keep the Common Area in a first-class, clean and orderly condition; provided, however, that trash and/or garbage removal from a Party's Building shall not be considered a Common Area Maintenance Cost (defined below) since such removal obligation is covered by Section 4.3.1. All sweeping shall be at appropriate intervals during such times as shall not interfere with the conduct of business or use of the Common Area by Permittees.
- (C) Directional Signs and Markers. Maintaining, cleaning and replacing any appropriate directional, stop or handicapped parking signs or markers; restriping parking lots and drive lanes at least every 24 months, but in any event as necessary to maintain parking space designation and traffic direction; and keeping clearly marked fire lanes, loading zones, no parking areas and pedestrian cross-walks.
- (D) Lighting. Maintaining, cleaning and replacing Common Area lighting facilities, including light standards, wires, conduits, lamps, ballasts and lenses, time clocks and circuit breakers, illuminating the Common Area pursuant to Section 5.2.1; provided however, exterior Building lighting fixtures, including any lighting fixtures associated with a canopy or other architectural feature forming a part of such Building, shall be considered a

part of such Building, and the maintenance and replacement of such fixtures, and the cost of illumination, shall be the obligation of the Party upon whose Tract such fixtures are located.

- (E) Landscaping. Maintaining and replacing all landscape plantings, trees and shrubs in an attractive and thriving condition, trimmed and weed-free; maintaining and replacing landscape planters, including those adjacent to exterior walls of Buildings; providing water for landscape irrigation through a properly maintained system, including performing any modifications to such system to satisfy governmental water allocation or emergency requirements. If any Party or Occupant requires "special" landscaping (i.e. flowers, shrubs, trees, etc.) beyond the standard landscaping requirements for the remainder of the Shopping Center, or if landscaping additions/modifications are required as a result of a Building addition, expansion or remodel, the cost of installation, replacement and maintenance of such special or required landscaping shall be borne solely by such Party or Occupant, as the case may be, and shall not be included in Common Area Maintenance Costs.
- (F) Obstructions. Keeping the Common Area free from any obstructions, including those caused by the sale or display of merchandise, unless such obstruction is permitted under the provisions of this OEA.
- (G) Sidewalks. Maintaining, cleaning and replacing sidewalks, including those adjacent and contiguous to Buildings. Sidewalks shall be steam-cleaned at least monthly and pressure washed periodically in the interim, shall be swept at appropriate intervals during such time as shall not interfere with the conduct of business or use of the Common Area, and shall be cleared of ice or snow (after each snow fall of 2" or more).
- (H) Security Measures. Providing professional supervisory personnel for the Common Area, if reasonably required.
- (I) Traffic. Supervising traffic at entrances and exits to the Shopping Center and within the Shopping Center as conditions reasonably require in order to maintain an orderly and proper traffic flow.
- (J) Detention Areas. Maintaining the Detention Areas and keeping the same free from obstructions and debris and in compliance with all applicable Governmental Requirements.

- (K) Retaining Wall. Maintaining in good condition and repair the retaining wall to be constructed by Developer on the Target Tract at the location depicted on the Site Plan.

Notwithstanding anything contained herein to the contrary, each Party shall have the obligation to operate, maintain, and repair, at its sole cost and expense, in a clean, sightly and safe condition, the following items (if any) located on its Tract: any exterior shipping/receiving dock area; any truck ramp or truck parking area; any recycling center or similarly designated area for the collection of items intended for recycling; and any refuse, compactor or dumpster area.

4.2.2 Prior to Operator commencing any operation and/or maintenance duties, Operator shall obtain, and thereafter maintain during the period of such operation and/or maintenance performance, the insurance required by Section 5.4.4. Commencing on the earlier of thirty (30) days prior to the date specified by the Occupant of the Target Tract that it intends to open for business with the general public, or the date the Approving Parties designate in writing, Operator shall operate and maintain the Common Area of the Shopping Center in accordance with the requirements of Section 4.2.1., exclusive of any replacement of "capital" improvements due to ordinary wear and tear, which replacement shall be the responsibility of the Party owning the affected Tract. At least 30 days prior to any major work in the parking lots or drive areas, Operator shall advise the Approving Parties of the scope thereof, and the proposed commencement and completion dates; except in an emergency, such major work shall not be performed between October and the following January. Operator shall expend only such funds as are reasonably necessary for the operation and maintenance of the Common Area, including the performance of other obligations imposed on Operator pursuant to Section 5.3.1 hereof, and shall promptly pay such costs ("Common Area Maintenance Costs") when incurred. Within thirty (30) days following the commencement of such maintenance and operation, Operator shall provide the Approving Parties an estimated budget for the balance of the current calendar year containing the information required by Section 4.2.3, and each Party agrees to pay its share of Common Area Maintenance Costs actually incurred during the balance of such year, plus the Administration Fee (defined below), in accordance with Section 4.2.4. Operator may hire companies affiliated with it to perform the maintenance and operation of the Common Area, but only if the rates charged by such affiliates are competitive with those of other companies furnishing similar services in the metropolitan area in which the Shopping Center is located, it being agreed that this provision shall be construed strictly against Operator. Each Party hereby grants to Operator, its agents, contractors and employees, a license to enter upon such Party's Tract to discharge Operator's duties to operate, maintain and repair the Common Area. For the purpose of this OEA, Common Area Maintenance Costs shall not include:

- (A) Any late charges or fees; any cost, fee, fine, penalty or similar charge arising out of or resulting from any violation by Operator or anyone else relating to the Shopping Center.
- (B) Any charge for electricity for Building accent lighting or Building security lighting. Also, with respect to any Party that separately pays the cost of

power to illuminate the Common Area on its Tract, any charge for the cost of power to illuminate any portion of the Common Area on the balance of the Shopping Center.

- (C) With respect to any Party that separately pays the cost of water for irrigating the landscaping upon its Tract, any charge for the cost of water for irrigating any portion of landscaping on the balance of the Shopping Center.
- (D) Unless approved in advance with the Approving Parties in their sole discretion, any costs for promotional, marketing, seasonal or holiday events of any type (including, without limitation, costs of promotional equipment, banners, decorations and/or lighting, or the cost of set up, take down or storing any of the foregoing).
- (E) Unless approved in advance with the Approving Parties in their sole discretion, any costs to clean up or repair the Common Area resulting from any promotional, marketing, seasonal or holiday activities, or from construction, maintenance or replacement of a Party's Buildings; any cost to remove trash and/or garbage from a Building, such removal obligation being the responsibility of the Party owning the Building.
- (F) Any costs resulting from or arising out of the repair or replacement of items covered by warranties or guaranties including, but not limited to, such as site improvements, signs, trees, plants or other landscaping.
- (G) Real property taxes and assessments on the Common Area.
- (H) Operator's profit, administrative and overhead costs including, but not limited to: office space, equipment and utilities; legal, insurance, accounting and administrative service; Operator's personnel who are not permanently located at the Shopping Center; premiums relating to bonding over mechanic's liens; and costs relating to hiring, training, screening, drug testing and/or background checks of personnel.
- (I) Any fee or charge relating to the management and/or supervision of the operation of the Common Area, or any part thereof, paid to a third party, commercial management company or similar provider.
- (J) Entertainment, transportation, meals and lodging of anyone.
- (K) Any fee, assessment or charge to a Party that separately pays such kind of imposition for fire hydrants located on its Tract.

In lieu of Operator's profit, administrative, indirect and overhead costs, Operator shall be permitted to charge an amount ("Administration Fee") computed by multiplying the Common Area Maintenance Costs (exclusive of utility charges, and the portion of single purpose expenditures that exceed \$25,000) by five percent (5%). If any of Operator's personnel at the Shopping Center perform services, functions or tasks in addition to Common Area duties, then the cost of such personnel shall be equitably allocated according to time spent performing such duties.

4.2.3 Operator shall, at least ninety (90) days prior to the beginning of each calendar year during the term of this OEA, submit to the Approving Parties an estimated budget ("Budget") for the Common Area Maintenance Costs and the Administration Fee for operating and maintaining the Common Area for the ensuing calendar year. In the event an Approving Party believes the charge for a particular function is excessive, such Approving Party shall notify Operator of such belief, and thereupon Operator shall obtain no fewer than two (2) competitive bids for such function. Unless the existing provider's cost is lower, the lowest acceptable bidder shall be utilized as soon as the contract with the existing provider can be terminated without penalty. The Budget shall be in a form and content reasonably acceptable to the Approving Parties and shall identify separate cost estimates for at least the categories specified under Section 4.2.1, plus:

- (A) The Administration Fee.
- (B) Rental or purchase of equipment and supplies used in maintaining or repairing the Common Area.
- (C) Depreciation or trade-in allowance applicable to items purchased for Common Area purposes.
- (D) Maintenance of sign structure(s) pursuant to Section 5.3.1.
- (E) Maintenance of Common Utility Line(s) pursuant to Section 2.2.3.

If an item of maintenance or replacement is to be accomplished in phases over a period of calendar years during the term of this OEA, such as resurfacing of the drive and/or parking areas, then the Budget shall separately identify the cost attributable to the applicable calendar year (including the portion of the Common Area affected) and shall note the anticipated cost and timing (indicating the portion of the Common Area affected) of such phased work during succeeding calendar years. The cost of approved "phased" work shall be paid by the Parties approving the same, or their successors or assigns, as the case may be, notwithstanding that when such work is performed a Party may not then be participating in the joint maintenance of the Common Area.

If an Approving Party disapproves the proposed Budget, it shall consult with the other Approving Party and Operator to establish a final approved Budget. If a Budget is not approved by December 1st of any calendar year, Operator shall have the right to terminate its maintenance obligation with respect to the Common Area located on the Tract of the disapproving Approving Party by written notice given prior to December 10th of such calendar year. If such notice is given, commencing on the following April 1st, such Approving Party shall (i) maintain and operate the Common Area on its Tract at its expense; and (ii) contribute towards the costs of the specified maintenance and operation functions performed by Operator set forth in Section 4.2.7 as though it was a withdrawing Party; and Operator shall maintain and operate the balance of the Common Area covered by its maintenance obligations; during the period from January 1st to March 31st, such Approving Party shall pay its share of maintenance of the Common Area pursuant to Section 4.2.4. If such notice is not given, then Operator shall continue to maintain and operate all of the Common Area for the next calendar year. Approval of the Budget, or any of the line items comprising a part thereof, shall not be considered a waiver of a Party's right to audit and/or contest, challenge or dispute the Reconciliation (defined in Section 4.2.4).

Operator shall use its diligent, good faith efforts to operate and maintain the Common Area in accordance with the Budget. Notwithstanding the foregoing, Operator shall have the right to make emergency repairs to the Common Area to prevent injury or damage to Persons or property, it being understood that Operator shall nevertheless advise each Party of such emergency condition as soon as reasonably possible, including the corrective measures taken and the cost thereof. If the cost of the emergency action exceeds \$10,000.00 in Constant Dollars, then Operator shall submit a supplemental billing to each Party, together with evidence supporting such cost, and each Party shall pay its share thereof within thirty (30) days after receipt of such billing. If the cost limitation set forth above is not exceeded then such costs shall be included as part of the Common Area Maintenance Costs for that year.

4.2.4 Common Area Maintenance Costs and the Administration Fee shall be allocated based on the size of each Tract, as follows:

(A) Prior to the occupancy of any Building within Phase 2:

- | | | |
|------|------------------------|--------|
| (i) | To the Developer Tract | 84.43% |
| (ii) | To the Target Tract | 15.57% |

(B) Subsequent to the occupancy of any Building within Phase 2:

- | | | |
|------|------------------------|--------|
| (i) | To the Developer Tract | 90.85% |
| (ii) | To the Target Tract | 9.15% |

In the event an existing Tract is divided, the Party causing such division shall, at its expense, prorate the allocation of Common Area Maintenance Costs and the Administration Fee attributable to the original Tract between the newly created Tracts, file a recorded declaration confirming such allocation and deliver a copy of such declaration to Operator and each other Party. Each Party shall pay to the Operator in equal monthly payments, in advance, the share of the Common Area Maintenance Costs and the Administration Fee attributable to such Party's Tract based either upon the amount set forth in the approved Budget or, if a Budget is not approved, then the lesser of the amount set forth in the unapproved Budget or the monthly payment established for such Party for the prior year. Notwithstanding the provision for determining the amount of payment set forth in the immediately preceding sentence, in the event a Budget is not approved because Operator elected not to submit a Budget for consideration, and such election continues so that no Budget is submitted at least sixty (60) days prior to the beginning of the calendar year, then each Approving Party not receiving a Budget shall have the right to use its reasonable judgment to determine the amount of the Budget for the next calendar year, and each Party represented by such Approving Party shall pay to Operator monthly payments attributable to such Party's Tract, based on the amount of the Budget established by that Approving Party. Within sixty (60) days after the end of each calendar year, Operator shall provide each Party with a statement certified by an authorized Person, together with supporting invoices and other materials setting forth the actual Common Area Maintenance Costs paid by Operator for the operation and maintenance of the Common Area (such statement and supporting data are collectively called the "Reconciliation"), the Administration Fee, and the share of the aggregate thereof that is attributable to each Party's Tract. The Reconciliation shall separately identify cost categories specified in Sections 4.2.1 and 4.2.3, and shall be in a form reasonably acceptable to the Approving Parties. If the amount paid with respect to a Tract for such calendar year shall have exceeded the share allocable to such Tract, Operator shall refund by check the excess to the Party owning such Tract at the time the Reconciliation is delivered, or if the amount paid with respect to a Tract for such calendar year shall be less than the share allocable to such Tract, the Party owning such Tract at the time such Reconciliation is delivered shall pay the balance of such Party's share to Operator within thirty (30) days after receipt of such Reconciliation, less any amounts disputed in writing, it being understood and agreed that the 30-day period only establishes the period for payment, and is not to be construed as an acceptance of the Reconciliation. If Operator does not timely submit the Reconciliation, then such Party's payment period shall be extended an additional 30 days. If Operator does not refund amounts shown by the Reconciliation to be owed a Party, then such Party may offset the refund owed, plus Interest, against payments for Common Area Maintenance Costs and Administration Fee due for any future period. Notwithstanding anything contained herein to the contrary, if during a calendar year the Operator resigns or is replaced, the replacement Operator shall be responsible for the Reconciliation adjustments, including any reimbursement due to a Party for such calendar year; in addition, for a period of sixty (60) days after a substitution of Operator is made, any payment made by a Party to the prior Operator shall be deemed properly paid, and the old and new Operators shall resolve any necessary adjustments and/or prorations regarding such payments between themselves.

Within three (3) years after the date of receipt of a Reconciliation, each Party shall have the right to audit Operator's books and records pertaining to the operation and maintenance of the

Common Area for the calendar year covered by such Reconciliation. A Party shall notify Operator of such Party's intent to audit at least fifteen (15) days prior to the designated audit date. If such audit shall disclose any error in the determination of the Common Area Maintenance Costs, the Administration Fee or any allocation thereof to a particular Tract, the auditing Party shall provide Operator with a copy of the audit, and upon the resolution of any dispute concerning the audit, an appropriate adjustment shall be made forthwith. Notwithstanding anything to the contrary, the approval of a prior Reconciliation, or any line item comprising a part thereof, shall not be a waiver of a Party's right to challenge subsequent Reconciliations regarding such line item. The cost of any audit shall be assumed by the auditing Party unless such Party shall be entitled to a refund in excess of three percent (3%) of the amount calculated by Operator as such Party's share for the applicable calendar year, in which case Operator shall pay the reasonable cost of such audit. If Operator does not respond to the results of such audit within ninety (90) days after receipt of the audit, then the auditing Party shall have the right to offset the refund claimed, plus Interest, from the date Operator receives the audit, plus costs of the audit if appropriate, against subsequent payments due Operator; provided, however, Operator shall retain the right to dispute the results of such audit for a period of twelve (12) months following receipt of such audit, and Operator's election not to contest the results of such audit during the 12-month period shall be deemed acceptance of such audit.

4.2.5 Operator agrees to defend, indemnify and hold each Party harmless from and against any mechanic's, materialmen's and/or laborer's liens, and all costs, expenses and liabilities in connection with any such lien therewith, including reasonable attorney's fees and court costs, arising out of the maintenance and operation by Operator of the Common Area, and if any Tract shall become subject to any such lien, Operator shall promptly cause such lien to be released and discharged of record, either by paying the indebtedness which gave rise to such lien or by posting such bond or other security as shall be required by law to obtain such release and discharge.

4.2.6 Subject to the provisions of Section 2.2.3 regarding Common Utility Lines and Section 2.4 regarding sign structures, if any portion of the Common Area is damaged or destroyed by any cause whatsoever, whether insured or uninsured, during the term of this OEA, other than damage caused by ordinary use or wear and tear, the Party upon whose Tract such Common Area is located shall repair or restore such Common Area at its sole cost and expense with all due diligence; provided, however, that no Party shall be required to expend more than \$250,000 in Constant Dollars in excess of insurance proceeds which may be available (or which would have been available except for such Party's election of deductibles or self-insurance, which amount such Party shall be responsible to contribute) for such repair or restoration. Notwithstanding the limitation set forth in the preceding sentence, a Party may require the Party upon whose Tract such Common Area is located to do such restoration work if the requiring Party has agreed in writing to pay the costs in excess of \$250,000.00. Except to the extent limited by Section 5.4.3, if such damage or destruction of Common Area on its Tract is caused in whole or in part by another Party or a third Person, the Party obligated to make such repair or restoration reserves and retains the right to proceed against such other Party or third Person for indemnity, contribution and/or damages.

4.2.7 Target shall have the right, upon giving not less than sixty (60) days written notice to Operator, to take-over and assume the maintenance of the Common Area upon the Target Tract. Following the effective date of such take-over and assumption, Target shall maintain the Common Area on its Tract, and shall pay all costs and expenses incurred in connection therewith; provided, however, Operator shall continue to (i) maintain the Common Utility Lines of the Shopping Center, including any detention/retention ponds, regardless of location, (ii) maintain the Common Area supervisory program, if any, and (iii) maintain any Sign upon which a Target panel is attached. Upon such take-over and assumption, Target shall be released from the obligation to contribute towards Common Area Maintenance Costs for the balance of the Common Area, except with respect to those functions identified above for which continued participation is mandatory or elected. Target's share of such costs shall be paid in accordance with the allocation set forth in Section 4.2.4 or, with respect to Signs, Section 5.3.1. Operator shall continue to maintain the balance of the Common Area in accordance with the standards set forth herein.

Target shall have the right to cause Operator to resume the operation and maintenance of the Common Area on the Target Tract upon the satisfaction of the following conditions:

- (A) Target shall give Operator at least sixty (60) days prior notice of Target's intention to have Operator resume the operation and maintenance of the Common Area on the Target Tract; provided, however, such date for resumption shall always be the first day of a calendar quarter; and
- (B) Prior to the date established for Operator to resume the maintenance and operation thereof, Target shall, at its sole cost and expense, cause the Common Area on its Tract to be at least equal to the same condition of maintenance then existing on the other portions of the Common Area then being maintained by Operator.

Provided the above conditions are satisfied, concurrently with the designated date, Operator shall resume full operation and maintenance of the Common Area located on the Target Tract and Target shall be responsible for its share of Common Area Maintenance Costs as set forth in Section 4.2.4.

4.2.8 The owner of any Tract which is occupied by a single Occupant (an "Outlot"), upon obtaining the prior written consent of the Operator and upon the delivery of written notice to the other Parties, may take over and assume the portions of the maintenance items with respect to the Common Area located on its Tract which are Tract specific (e.g., sweeping, trash pick-up and lighting), in which event the ratios set forth in Section 4.2.4 above shall be adjusted to reflect the elimination of such Tract in the computation of the Common Area Maintenance Costs. Following the effective date of such takeover and assumption, such Owner shall maintain the Common Area on its Tract, and shall pay all costs and expenses incurred in connection therewith; provided, however, Operator shall continue to (i) maintain the Common Utility Lines of the Shopping Center, including any detention/retention ponds, regardless of

location, (ii) maintain the Common Area supervisory program, if any, (iii) maintain the Shopping Center Signs, and (iv) keep and maintain the insurance coverages required under Section 5.4(B) below. Upon such takeover and assumption, such Owner shall be released from the obligation to contribute towards Common Area Maintenance costs for the balance of the Common Area, except with respect to those functions identified above for which continued participation is mandatory, and the Owner's share of such costs shall be paid in accordance with the allocation set forth in Section 4.2.4 or, with respect to Signs, Section 5.3.1. Notwithstanding the foregoing, each Outlot Owner shall be required to contribute at a minimum six cents (\$0.06) per square foot of its land area per year towards the cost of Common Area Maintenance of the Shopping Center, such amount to be adjusted based on Constant Dollars every five (5) years, and such amount to be credited by Operator against total Common Area Maintenance Costs for such year.

4.3 Building and Outside Sales Area

4.3.1 After completion of construction, each Party covenants and agrees to maintain and keep the exterior portion of the Buildings and Outside Sales Area, if any, located on its Tract in first-class condition and state of repair, in compliance with all Governmental Requirements, and in compliance with the provisions of this OEA, including either the Theme or the exterior architectural concept approved for such Building by the Approving Parties. Each Party further agrees to store all trash and garbage on its Tract in adequate containers, to locate such containers so that they are not readily visible from the parking area, and to arrange for regular removal of such trash or garbage.

4.3.2 In the event any of the Buildings in the Shopping Center are damaged by fire or other casualty (whether insured or not), the Party upon whose Tract such Building is located shall, subject to Governmental Requirements and/or insurance adjustment delays, immediately remove the debris resulting from such casualty and provide a sightly barrier, and within a reasonable time thereafter shall either (i) repair or restore the Building so damaged to a complete unit, such repair or restoration to be performed in accordance with all provisions of this OEA, or (ii) erect another Building in such location, such construction to be performed in accordance with all provisions of this OEA, or (iii) demolish the damaged portion and/or the balance of such Building and restore the cleared area to either a hard surface condition or a landscaped condition in which event the area shall be Common Area until a replacement Building is erected. Such Party shall have the option to choose which of the foregoing alternatives to perform, but such Party shall be obligated to perform one (1) of such alternatives. Such Party shall give notice to each other Party within ninety (90) days from the date of such casualty of which alternative such Party elects.

ARTICLE V - OPERATION OF THE SHOPPING CENTER

5.1 Uses

5.1.1 The Shopping Center shall be used only for retail sales, offices, Restaurants or other commercial purposes permitted under this Agreement. "Business Office" shall mean an office which does not provide services directly to consumers; "Retail Office" shall mean an office which provides services directly to consumers, including but not limited to

financial institutions, real estate, stock brokerage and title companies, travel and insurance agencies, and medical, dental and legal clinics. No more than ten percent (10%) of the total Floor Area on the Developer Tract may be used for Retail Office and/or Business Office purposes; provided, however, that office space used by an Occupant for administrative purposes, and which is not open to the general public, shall not be considered Retail Office or Business Office for the purpose of this limitation.

5.1.2 No use shall be permitted in the Shopping Center which is inconsistent with the operation of a first-class retail shopping center. Without limiting the generality of the foregoing, the following uses shall not be permitted:

- (A) Any use which emits an obnoxious odor, noise or sound which can be heard or smelled outside of any Building in the Shopping Center.
- (B) An operation primarily used as a storage warehouse operation and any assembling, manufacturing, distilling, refining, smelting, agricultural or mining operation.
- (C) Any "second hand" store, "surplus" store, or pawn shop, provided that the prohibition against a "surplus" store shall not apply to a dollar store such as Dollar Tree.
- (D) Any mobile home park, trailer court, labor camp, junkyard, or stockyard; provided, however, this prohibition shall not be applicable to the temporary use of construction trailers during periods of construction, reconstruction or maintenance.
- (E) Any dumping, disposing, incineration or reduction of garbage; provided, however, this prohibition shall not be applicable to garbage compactors located near the rear of any Building.
- (F) Any fire sale, bankruptcy sale (unless pursuant to a court order) or auction house operation.
- (G) Any central laundry, dry cleaning plant or laundromat; provided, however, this prohibition shall not be applicable to nominal supportive facilities for on-site service oriented to pickup and delivery by the ultimate consumer as the same may be found in retail shopping centers in the metropolitan area where the Shopping Center is located.
- (H) Any automobile, truck, trailer or recreational vehicle sales, leasing, display or body shop repair operation; provided that one national tire, auto and

battery store such as that operated by Firestone, Goodyear, or Discount Tire shall be permitted within Phase 2 of the Shopping Center.

- (I) Any bowling alley or skating rink.
- (J) Any movie theater or live performance theater, other than a movie theater within the Building Area designated as "Theatre" on the Site Plan.
- (K) Any hotel, motel, short or long term residential use, including but not limited to: single family dwellings, townhouses, condominiums, other multi-family units, and other forms of living quarters, sleeping apartments or lodging rooms.
- (L) Any veterinary hospital or animal raising or boarding facility; provided, however, this prohibition shall not be applicable to pet shops. Notwithstanding the forgoing exception, any veterinary or boarding services provided in connection with the operation of a pet shop shall only be incidental to such operation; the boarding of pets as a separate customer service shall be prohibited; all kennels, runs and pens shall be located inside the Building; and the combined incidental veterinary and boarding facilities shall occupy no more than fifteen percent (15%) of the Floor Area of the pet shop.
- (M) Any mortuary or funeral home.
- (N) Any establishment selling or exhibiting "obscene" material.
- (O) Any establishment selling or exhibiting drug-related paraphernalia or which exhibits either live or by other means to any degree, nude or partially clothed dancers or wait staff; provided that the foregoing shall not prohibit a movie theatre from exhibiting films that are not adult, "X"-rated, rated NC-17 or similarly designated due to their sexually explicit content. Notwithstanding the foregoing, Cinemark USA or its successors ("Cinemark"), provided that it is operating in at least 50 other locations nationally, shall be permitted to show motion pictures or telecasts rated "X" or "NC-17" or its equivalent by the Motion Picture Association of American on an occasional basis if, in the reasonable business judgment of Cinemark, such motion picture or telecast has artistic merit or is a so-called "legitimate" film and Cinemark is concurrently showing such film in a majority of its other locations.

- (P) Any massage parlors or similar establishments (other than massage facilities incidental to health spas or fitness centers which are covered in subparagraph (R) below).
- (Q) Any bar, tavern, Restaurant or other establishment whose reasonably projected annual gross revenues from the sale of alcoholic beverages for on-premises consumption exceeds forty percent (40%) of the gross revenues of such business.
- (R) Any health spa, fitness center or workout facility; provided that the same shall be permitted if located no closer than 300 feet to the Building Area on the Target Tract.
- (S) Any flea market, amusement or video arcade, pool or billiard hall, car wash (unless incidental to a retail fuel center situated on Lot 12 or in the portion of the Shopping Center situated to the west of the main access drive off U.S. Highway 190 as depicted on the Site Plan) or dance hall; provided that Cinemark may have up to twenty-five (25) electronic game machines and amusement devices for its customers' enjoyment.
- (T) Any training or educational facility, including but not limited to: beauty schools, barber colleges, reading rooms, places of instruction or other operations catering primarily to students or trainees rather than to customers; provided, however, this prohibition shall not be applicable to (i) on-site employee training by an Occupant incidental to the conduct of its business at the Shopping Center, or (ii) one children's educational center and/or one consumer training facility which, as to operations under clauses (i) and (ii) of this subsection, collectively do not exceed 5,000 square feet of rentable Floor Area in the aggregate and that are located no closer than 300 feet to the Building Area on the Target Tract.
- (U) Any gambling facility or operation, including but not limited to: off-track or sports betting parlor; table games such as blackjack or poker; slot machines, video poker/blackjack/keno machines or similar devices; or bingo hall. Notwithstanding the foregoing, this prohibition shall not be applicable to government sponsored gambling activities or charitable gambling activities, so long as such activities are incidental to the business operation being conducted by the Occupant.

5.1.3 No Party shall use, or permit the use of, Hazardous Materials on, about, under or in its Tract, or the balance of the Shopping Center, except in the ordinary course of its usual business operations conducted thereon, and any such use shall at all times be in compliance with all Environmental Laws. Each Party agrees to defend, protect, indemnify and hold harmless each other Party from and against all claims or demands, including any action or proceeding

brought thereon, and all costs, losses, expenses and liabilities of any kind relating thereto, including but not limited to costs of investigation, remedial or removal response, and reasonable attorneys' fees and cost of suit, arising out of or resulting from any Hazardous Material used or permitted to be used by such Party, whether or not in the ordinary course of business.

For the purpose of this Section 5.1.3, the term (i) "Hazardous Materials" shall mean and refer to the following: petroleum products and fractions thereof, asbestos, asbestos containing materials, urea formaldehyde, polychlorinated biphenyls, radioactive materials and all other dangerous, toxic or hazardous pollutants, contaminants, chemicals, materials, substances and wastes listed or identified in, or regulated by, any Environmental Law, and (ii) "Environmental Laws" shall mean and refer to the following: all federal, state, county, municipal, local and other statutes, laws, ordinances and regulations which relate to or deal with human health or the environment, all as may be amended from time to time.

5.1.4 No merchandise, equipment or services, including but not limited to vending machines, promotional devices and similar items, shall be displayed, offered for sale or lease, or stored within the Common Area; provided, however, the foregoing prohibition shall not be applicable to:

- (A) the storage of shopping carts on the Target Tract or any other portion of the Shopping Center adjacent to space operated by tenants or Occupants occupying at least 10,000 square feet of Floor Area;
- (B) the installation of an "ATM" banking facility within an exterior wall of any Building;
- (C) the seasonal display and sale of bedding plants on the sidewalk in front of any Building located on the Target Tract;
- (D) the placement of bicycle racks and landscaping planters on the sidewalk in front of any Building;
- (E) the placement of spherical bollards (Target's brand) on the sidewalk in front of any Building on the Target Tract;
- (F) temporary Shopping Center promotions, except that no promotional activities will be allowed in the Common Area without the prior written approval of the Approving Parties;
- (G) any recycling center required by law, the location of which shall be subject to the approval of the Approving Parties;

- (H) outdoor seating shown on the Site Plan, it being agreed that such area shall be included as Floor Area of the Occupant primarily benefiting therefrom, or
- (I) any designated Outside Sales Area; provided, however, with respect to any Outside Sales Area which is not included within a Building Area, such space may be used not more than three (3) times per calendar year, and the duration of such use shall be subject to the following limitations: during the period commencing on October 15th and ending on December 27th -- no limitation on the number of days of consecutive use; during the period commencing February 15th and ending on July 10th -- not more than one hundred twenty-five (125) consecutive days of use; and, during any other period -- not more than thirty (30) consecutive days of use.

5.1.5 The following use and occupancy restrictions shall be applicable to the Developer Tract:

- (A) No Restaurant shall be located thereon within three hundred (300) feet of the Building Area located on the Target Tract.
- (B) No drug store exceeding ten thousand (10,000) square feet of Floor Area shall be permitted, and no store of any size selling or offering for sale any pharmaceutical products requiring the services of a licensed pharmacist shall be permitted.
- (C) No pet shop shall be located thereon within three hundred (300) feet of the Building Area located on the Target Tract.
- (D) No gas/service station and/or other facility that dispenses gasoline, diesel or other petroleum products as fuel shall be permitted other than within that portion of Phase 2 of the Shopping Center that is situated within Shopping Center East.
- (E) No liquor store offering off-premises sale of alcoholic beverages within three hundred (300) feet of the Building Area on the Target Tract shall be permitted, nor shall any liquor store offering off-premises sale of alcoholic beverages exceeding 10,000 square feet of Floor Area be permitted.
- (F) No general merchandise discount retail store occupying in excess of 50,000 square feet of floor area shall be permitted, provided that this clause shall not be applicable to department stores such as JCPenney, Belk and Kohls; home improvement stores such as Home Depot and Lowe's;

and sports related stores such as Sportsman's Warehouse, Dick's Sporting Goods and Academy.

(G) No toy store exceeding 5,000 square feet of Floor Area shall be permitted.

5.1.6 The names "Target", "Greatland", "SuperTarget" or any variation using the name "Target" shall not be used to identify the Shopping Center or any business or trade conducted on the Developer Tract. Until the Approving Parties agree upon a name change, the Shopping Center shall be called "StoneCreek Crossing."

5.1.7 Except to the extent required by law, no Permittee shall be charged for the right to use the Common Area; provided, however, for the purpose of this provision, a tax assessment or other form of charge applicable to parking spaces or parking lots shall be deemed by the Approving Parties an imposition required by law.

5.1.8 Each Party shall use its reasonable efforts to cause the employees of the Occupants of its Tract to park their vehicles only on such Tract.

5.1.9 This OEA is not intended to, and does not, create or impose any obligation on a Party to operate, continuously operate, or cause to be operated a business or any particular business at the Shopping Center or on any Tract.

5.2 Lighting

5.2.1 After completion of the Common Area lighting system on its Tract, each Party hereby covenants and agrees to keep its Tract fully illuminated from dusk to at least 10:30 p.m. unless the Approving Parties agree upon a different time. Each Party further agrees to keep any exterior Building security lights on from dusk until dawn. During the term of this OEA, each Party grants an irrevocable license to each other Party for the purpose of permitting the lighting from one Tract to incidentally shine on the adjoining Tract.

5.2.2 It is recognized that Occupants within the Shopping Center may be open for business at different hours, and that a Party may wish to have the Common Area lights on another Tract be illuminated before or after the required time period. Accordingly, a Party ("Requesting Party") shall have the right, at any time, to require the Party that controls the lighting on such Tract ("Requested Party") to keep the Common Area lights it controls operating as stipulated by the Requesting Party, provided that the Requesting Party notifies the Requested Party of such request not less than fifteen (15) days in advance. The Requesting Party shall state the period during which it wishes such Common Area lights to be kept operating and shall pay to the Requested Party a prepayment as follows:

(A) If the period is less than thirty (30) days, then the prepayment shall be one hundred ten percent (110%) of the reasonable cost for such additional

operation (including electrical power, bulbs and manpower), as estimated by the Requested Party; and

- (B) If the period is thirty (30) days or longer, then the prepayment shall be one hundred ten percent (110%) of the reasonable cost for such additional operation (including electrical power, bulbs and manpower) for thirty (30) days, as estimated by the Requested Party, and the Requesting Party shall renew such prepayment at the end of each thirty (30) day period.

If the Requesting Party is of the opinion that the estimated prepayment established by the Requested Party is greater than one hundred ten percent (110%) of such additional operation, the Parties shall attempt to agree upon the cost of such additional operation but if they cannot do so, then the amount the Requesting Party is obligated to pay shall be estimated by the electrical utility company furnishing such power, or if the electrical utility company elects not to do so, by a reputable electrical engineer. Upon the failure of a Requesting Party to pay the estimated amount or renew a prepayment as required hereby, the Requested Party shall have the right to discontinue such additional lighting and to exercise any other remedies herein provided. Any such request for additional lighting may be withdrawn or terminated at any time by written notice from the Requesting Party, and a new request or requests for changed hours of additional operation may be made from time to time.

5.3 Occupant Signs

5.3.1 No freestanding sign shall be permitted within the Shopping Center unless constructed in one of the specific areas designated on the Site Plan, and only one (1) such sign structure may be located in each sign area. If a sign area is no longer available for use because of condemnation or Governmental Requirements, a replacement sign area may be approved by the Approving Parties, subject to the consent, which shall not be unreasonably withheld, of the Party owning the Tract to be burdened by the replacement Sign Area location. Each sign structure at the Shopping Center shall be utilized as follows:

“Center Signs”: There shall be three (3) Shopping Center Pylon Signs and one (1) Shopping Center Monument Sign, all located on the Developer Tract as shown on the Site Plan as “Pylon Sign E1”, “Pylon Sign E2”, “Pylon Sign E3” and “Four Tenant Monument Sign A”. Identification panels shall be attached to the sign structures located in each of the Center Sign Areas as depicted on Exhibit C.

“Monument Signs”: The Outlots depicted on the Site Plan shall be entitled to have the following Monument Signs at the respective locations depicted on the Site Plan: (i) the Outlot designated as PBA 17 on the Site Plan shall be entitled to have one Monument Sign identifying one Occupant of such Outlot in accordance with the Single Tenant Monument Sign D as depicted on Exhibit C; and (ii) the Occupants of the remaining Outlots shall be entitled to have their sign panels

on Monument Signs that are either the Two Tenant Monument Signs B as depicted on Exhibit C (which may identify two Occupants of the Outlots), or the Eight Tenant Monument Sign C as depicted on Exhibit C (which may identify eight Occupants of the Outlots), each of which shall be at the locations for such signs depicted on the Site Plan. Each Party whose Occupant is permitted to be identified on a Monument Sign may cause such Sign to be constructed, and once constructed, shall cause such Monument Sign to be maintained at no cost or expense to the other Parties who are not Occupants of the Outlot. No Outlot Pylon Sign shall exceed the respective height, width or length depicted on Exhibit C.

“Directional Signs”: There shall be five (5) directional signs all located on the Developer Tract at the locations shown on the Site Plan and on the map included as page 1 of Exhibit C, all as depicted as F1, F2, F3, F4 and F5 on Exhibit C.

Pursuant to the Site Development Agreement entered into by and between Target and Developer in connection with this Agreement, Developer shall cause the sign structures to be located upon the Shopping Center Sign Areas to be constructed in accordance with the criteria set forth in Exhibit C. Developer shall cause the identification panel for the Shopping Center name to be attached to the Center Sign, and Developer and Target shall cause their respective panels to be attached to each various structures when desired. Once constructed, Operator shall maintain each of the foregoing sign structures as originally constructed and such costs (including cost of providing power) shall be separately billed to each Party entitled to panels on the particular sign structure based upon the identification panel area allocated to each such Party, even if such panel area is not used; provided, however, if there is no Operator, then such maintenance shall be performed by a Person designated by the majority of Parties entitled to place panels on the particular sign structure and all costs (including cost of providing power) expended for such purpose shall be separately billed to each Party based on the identification panel area allocated to each, even if such panel area is not used.

Each Party shall cause the identification panel (including any backlit lighting) of its Occupant attached to or forming a part of the sign structure to be maintained at its sole cost and expense pursuant to Governmental Regulations, in a safe condition and in a good state of repair. In the event a Party elects not to attach an identification panel to the sign structure when initially constructed, but later decides to have its Occupant’s identification panel attached thereto, then the Party making such later decision shall pay all costs, regardless of nature or origin, necessary to permit the attachment of the identification panel to the sign structure; provided however, that none of the previously attached identification panels on such sign structure shall be required to be modified or relocated in order to permit the attachment of such additional identification panel.

The Parties hereby approve the design of the sign structures shown on Exhibit C and any identification panels indicated thereon. The Approving Parties shall have the right to approve the

design and size of all sign structures not shown on Exhibit C, including the identification panels to be attached thereto; provided, however, that the identification panel for an Occupant of more than sixty thousand (60,000) square feet of Floor Area shall not be subject to the approval of the Approving Parties so long as such identification panel is the standard prototype panel for said Occupant, as the same exists from time to time. No "reader board" type sign shall be permitted within the Shopping Center.

5.3.2 Any Occupant occupying less than fifty thousand (50,000) square feet of Floor Area may have only one (1) identification sign placed on the exterior of the Building it occupies; provided, however, that if the space occupied by any such Occupant is located at a corner of a Building or is the entire Building, then such Occupant may have one (1) identification sign on each of two (2) sides of the Building. Any Occupant occupying at least fifty thousand (50,000) square feet of Floor Area may have more than one (1) identification sign placed on the exterior of the Building it occupies.

No identification sign attached to the exterior of a Building shall be:

- (A) Placed on canopy roofs extending above the Building roof, placed on penthouse walls, or placed so as to project more than two (2) feet above the parapet, canopy or top of the wall upon which it is mounted.
- (B) Placed at any angle to the Building; provided, however, the foregoing shall not apply to any sign located under a sidewalk canopy if such sign is at least eight (8) feet above the sidewalk.
- (C) Painted on the surface of any Building.
- (D) Flashing, moving or audible.
- (E) Made utilizing exposed raceways, exposed neon tubes, exposed ballast boxes, or exposed transformers.
- (F) Made of paper or cardboard, or be temporary in nature (exclusive of contractor signs), or be a sticker or decal; provided, however, the foregoing shall not prohibit the placement at the entrance of each Occupant's space of a small sticker or decal indicating hours of business, emergency telephone numbers, acceptance of credit cards and other similar items of information.

No Occupant of less than twenty-five thousand (25,000) square feet of Floor Area shall have an exterior sign which identifies leased departments and/or concessionaires operating under such Occupant's business or trade name, nor shall such sign identify specific brands or products

for sale or services offered within a business establishment, unless such identification is used as part of the Occupant's trade name.

5.3.3 Notwithstanding anything contained herein to the contrary, each Party shall be permitted to place within the Common Area located on its Tract the temporary display of leasing information and the temporary erection of one (1) sign identifying each contractor working on a construction job on its Tract. Each Party shall have the obligation to operate, maintain and repair, in a clean, sightly and safe condition, all signs, including components thereof, located upon its Tract pursuant to Section 5.3.2 or the provisions hereof.

5.3.4 Exclusive of signs permitted by Sections 5.3.2 and 5.3.3, no other form of exterior expressions, including, but not limited to, pennants, pictures, notices, flags, seasonal decorations, writings, lettering, designs or graphics, shall be placed on or attached to the exterior of any Building.

5.4 Insurance

5.4.1 Each Party (as to its Tract only) shall maintain or cause to be maintained in full force and effect at least the minimum insurance coverages in Constant Dollars set forth below:

- (A) Commercial General Liability Insurance with a combined single limit of liability of Five Million Dollars (\$5,000,000.00) in Constant Dollars for bodily injury, personal injury and property damage, arising out of any one occurrence. The other Parties shall be "additional insureds" under such policy as it applies to the insuring Party's Tract.
- (B) Workers' compensation and employer's liability insurance:
 - (i) Worker's compensation insurance as required by any applicable law or regulation.
 - (ii) Employer's liability insurance in the amount of \$1,000,000 each accident for bodily injury, \$1,000,000 policy limit for bodily injury by disease and \$1,000,000 each employee for bodily injury by disease.
- (C) Automobile Liability Insurance for owned, hired and non-owned automobiles. The limits of liability shall not be less than \$1,000,000 combined single limit each accident for bodily injury and property damage.

Each Party agrees to defend, protect, indemnify and hold harmless each other Party from and against all claims or demands, including any action or proceedings brought thereon, and all costs, losses, expenses and liability of any kind relating thereto, including reasonable attorneys' fees and cost of suit, arising out of or resulting from the injury to or death of any Person, or damage to the property of any Person located on the Tract owned by each indemnifying Party; provided, however, the foregoing obligation shall not apply to claims or demands based on the negligence or willful act or omission of such other Party, its licensees, concessionaires, agents, servants, or employees, or the agents, servants, or employees of any licensee or concessionaire thereof. In the event it is determined that such other Party was not at fault, then the indemnifying Party shall reimburse such other Party for all reasonable costs and/or expenses incurred by it defending against such claim or demand.

5.4.2 Prior to commencing any construction activities within the Shopping Center, each Party and Operator, as the case may be, shall obtain or require its contractor to obtain and thereafter maintain so long as such construction activity is occurring, at least the minimum insurance coverages in Constant Dollars set forth below:

(A) Workers' compensation and employer's liability insurance:

- (i) Worker's compensation insurance as required by any applicable law or regulation.
- (ii) Employer's liability insurance in the amount of \$1,000,000 each accident for bodily injury, \$1,000,000 policy limit for bodily injury by disease and \$1,000,000 each employee for bodily injury by disease.

(B) Commercial General Liability insurance covering all operations by or on behalf of the contractor, which shall include the following minimum limits of liability and coverages:

- (i) Required coverages:
 - (1) Premises and Operations.
 - (2) Products and Completed Operations.
 - (3) Contractual Liability, insuring the indemnity obligations assumed by contractor under the contract documents.
 - (4) Broad Form Property Damage (including Completed Operations).

- (5) Explosion, Collapse and Underground Hazards.
 - (6) Personal Injury Liability.
 - (ii) Minimum limits of liability:
 - (1) \$1,000,000 each occurrence (for bodily injury and property damage).
 - (2) \$1,000,000 for Personal Injury Liability.
 - (3) \$2,000,000 aggregate for Products and Completed Operations.
 - (4) \$2,000,000 general aggregate applying separately to this project.
- (C) Automobile liability insurance including coverage for owned, hired and non-owned automobiles. The limits of liability shall not be less than \$1,000,000 combined single limit each accident for bodily injury and property damage. The contractor shall require each of his subcontractors to include in their liability insurance policies coverage for automobile contractual liability.
- (D) The contractor shall also carry umbrella/excess liability insurance in the amount of \$5,000,000. If there is no per project aggregate under the Commercial General Liability policy, the limit shall be \$10,000,000.

If the construction activities involve the use of another Tract, then the constructing Person shall cause (x) the owner of such Tract to be an additional insured on each policy (for the Commercial General Liability policy pursuant to a CG 2010 11-85 version Form B endorsement, or equivalent), (y) with respect to the work on such other Tract, the coverage set forth in (B) (ii) (3) above to be extended for a three (3) year period following final completion of work, and (z) each such policy to provide that the same shall not be cancelled, allowed to expire, nor reduced in amount or coverage below the requirements set forth above without at least thirty (30) days prior written notice to each insured. If any of the insurance policies are cancelled, expire or the amount or coverage thereof is reduced below the level required, then the constructing Person shall immediately stop all work on and use of the other Tract until either the required insurance is reinstated, or replacement insurance is obtained, and evidence thereof is given to the owner of such other Tract.

5.4.3 Effective upon the commencement of construction of any Building on its Tract and so long as such Building exists, a Party shall carry, or cause to be carried, property

insurance with "Special Form" coverage, in the amount of one hundred percent (100%) of full replacement cost thereof (excluding footings, foundations and excavations).

Each Party (the "Releasing Party") hereby releases and waives for itself, and each Person claiming by, through or under it, each other Party (the "Released Party") from any liability for any loss or damage to all property of such Releasing Party located upon any portion of the Shopping Center, which loss or damage is of the type covered by the insurance required to be maintained under Section 5.4.3, irrespective of the amount of such insurance required or actually carried, including any deductible or self insurance reserve. Each Releasing Party agrees to use its reasonable efforts to obtain, if needed, appropriate endorsements to its policies of insurance, and to the policies of insurance carried by its Occupants, with respect to the foregoing release; provided, however, that failure to obtain such endorsements shall not affect the release and waiver hereinabove given.

Each Party agrees to defend, protect, indemnify and hold harmless each other Party from and against all claims or demands, including any action or proceeding brought thereon, and all costs, losses, expenses and liabilities of any kind relating thereto, including reasonable attorneys' fees and cost of suit asserted by or through any Occupant of the indemnifying Party's Tract for any loss or damage to the property of such Occupant located upon the indemnifying Party's Tract, which loss or damage would have been covered by the insurance required to be maintained under Section 5.4.3.

5.4.4 During the period, if any, Operator is maintaining the Common Area, Operator shall maintain or cause to be maintained in full force and effect at least the minimum insurance coverages in Constant Dollars set forth below:

- (A) Commercial General Liability Insurance with a combined single limit of liability of Two Million Dollars (\$2,000,000.00) for bodily injury, personal injury and property damage, arising out of any one occurrence. Each Party shall be an "additional insured" under such policy applied as to Operator's operation and maintenance obligations under this OEA.
- (B) Workers' Compensation and Employer's Liability Insurance:
 - (i) Worker's compensation insurance as required by any applicable law or regulation.
 - (ii) Employer's liability insurance in the amount of \$1,000,000 for each accident for bodily injury, \$1,000,000 policy limit for bodily injury by disease and \$1,000,000 each employee for bodily injury by disease.

- (C) Automobile Liability Insurance for owned, hired and non-owned automobiles. The limits of liability shall not be less than \$1,000,000 combined single limit each accident for bodily injury and property damage.

Operator agrees to defend, protect, indemnify and hold harmless each Party from and against all claims or demands, including any action or proceeding brought thereon, and all costs, losses, expenses and liabilities of any kind, including reasonable attorneys' fees and cost of suit, asserted or incurred in connection with or arising out of the performance, or failure to perform, by Operator of its duties or obligations under this OEA with respect to the maintenance and operation of the Common Area; provided, however, the foregoing obligation shall not apply to claims or demands based on the negligence or the willful act or omission of the Party to be indemnified. In the event it is determined that such Party was not at fault, then the Operator shall reimburse such other Party for all reasonable expenses and/or costs incurred by such Party defending against such claim or demand.

5.4.5 All insurance required by a Person pursuant to Section 5.4 shall be written on an occurrence basis and procured from companies rated by Best's Rating Guide not less than A-/X, and which are authorized to do business in the state where the Shopping Center is located. All insurance may be provided under (i) an individual policy covering the Shopping Center, (ii) a blanket policy or policies which includes other liabilities, properties and locations of such Party; provided, however, that if such blanket commercial general liability insurance policy or policies contain a general policy aggregate of less than \$20,000,000 in Constant Dollars, then such insuring Party shall also maintain excess liability coverage necessary to establish a total liability insurance limit of \$20,000,000 in Constant Dollars, (iii) a plan of self-insurance, provided that any Party so self-insuring notifies the other Parties of its intent to self-insure and agrees that upon request it shall deliver to such other Parties each calendar year a copy of its annual report that is audited by an independent certified public accountant which discloses that such Party has \$250,000,000 in Constant Dollars of both net worth and net current assets, or (iv) a combination of any of the foregoing insurance programs. To the extent any deductible is permitted or allowed as a part of any insurance policy carried by a Party in compliance with Section 5.4, such Party shall be deemed to be covering the amount thereof under an informal plan of self-insurance; provided, however, that in no event shall any deductible exceed \$50,000.00 in Constant Dollars unless such Party complies with the requirements regarding self-insurance pursuant to (iii) above. Each Party and Operator, if any, agree to furnish to any Person requesting the same, a certificate(s) of insurance, or statement of self-insurance, as the case may be, or the Web address where such insurance information is contained, evidencing that the insurance required to be carried by such Party or Operator, as the case may be, is in full force and effect.

Any insurance provision that requires another Person to be added as an "additional insured" shall include the following provisions:

- (A) Shall provide that the policy shall not be canceled or reduced in amount or coverage below the requirements of this OEA, nor shall such policy be

allowed to expire without at least thirty (30) days prior written notice by the insurer to each insured and to each additional insured.

- (B) Shall provide for severability of interests.
- (C) Shall provide that an act or omission of one (1) of the insureds or additional insureds which would void or otherwise reduce coverage, shall not reduce or void the coverage as to the other insureds.
- (D) Shall provide for contractual liability coverage with respect to any indemnity obligation set forth therein.

5.5 Taxes and Assessments

Each Party shall pay, or cause to be paid prior to delinquency, all taxes and assessments with respect to its Tract, the Building, and other improvements located thereon, and any personal property owned or leased by such Party in the Shopping Center, provided that if such taxes or assessments or any part thereof may be paid in installments, each Party may pay each such installment as and when the same becomes due and payable. Nothing contained herein shall prevent any Party from contesting at its cost and expense any taxes and assessments with respect to its Tract in any manner such Party elects, so long as such contest is maintained with reasonable diligence and in good faith. At the time such contest is concluded (allowing for appeal to the highest appellate court), the contesting Party shall promptly pay all taxes and assessments determined to be owing, together with all interest, penalties and costs thereon.

ARTICLE VI - MISCELLANEOUS

6.1 Default

6.1.1 The occurrence of any one or more of the following events shall constitute a material default and breach of this OEA by the non-performing Party (the "Defaulting Party"):

- (A) The failure to make any payment required to be made hereunder within ten (10) days after the due date.
- (B) The failure to observe or perform any of the covenants, conditions or obligations of this OEA, other than as described in (i) above, within thirty (30) days after the issuance of a notice by another Party or Operator, as the case may be (the "Non-Defaulting Party") specifying the nature of the default claimed.

6.1.2 With respect to any default under Section 6.1.1(B), any Non-Defaulting Party shall have the right following the expiration of any applicable cure period, if any, but not the obligation, to cure such default by the payment of money or the performance of some other

action for the account of and at the expense of the Defaulting Party; provided, however, that in the event such default shall constitute an emergency condition, the Non-Defaulting Party, acting in good faith, shall have the right to cure such default upon such advance notice as is reasonably possible under the circumstances or, if necessary, without advance notice, so long as notice is given as soon as possible thereafter. To effectuate any such cure, the Non-Defaulting Party shall have the right to enter upon the Tract of the Defaulting Party (but not into any Building) to perform any necessary work or furnish any necessary materials or services to cure the default of the Defaulting Party. Each Party shall be responsible for the default of its Occupants. In the event any Non-Defaulting Party shall cure a default, the Defaulting Party shall reimburse the Non-Defaulting Party for all costs and expenses incurred in connection with such curative action, plus Interest as provided herein, within ten (10) days after receipt of demand therefor, together with reasonable documentation supporting the expenditures made. In the event the Defaulting Party does not reimburse the Non-Defaulting Party as set forth above, in addition to any other remedy available, the Non-Defaulting Party shall have the right to offset such amount owed against any current or future sum of money due the Defaulting Party until the full amount owed is recovered.

The right to cure the default of another Party shall not be deemed to:

- (A) Impose any obligation on a Non-Defaulting Party to do so.
- (B) Render the Non-Defaulting Party liable to the Defaulting Party or any third party for an election not to do so.
- (C) Relieve the Defaulting Party from any performance obligation hereunder.
- (D) Relieve the Defaulting Party from any indemnity obligation as provided in this OEA.

6.1.3 Costs, expenses and Interest accruing and/or assessed pursuant to Section 6.1.1(A) and/or Section 6.1.2 above shall constitute a lien against the Defaulting Party's Tract. Such lien shall attach and take effect only upon recordation of a claim of lien in the office of the Recorder of the County of the State in which the Shopping Center is located by the Party making such claim. The claim of lien shall include the following:

- (A) The name of the lien claimant.
- (B) A statement concerning the basis for the claim of lien and identifying the lien claimant as a Non-Defaulting Party.
- (C) An identification of the owner or reputed owner of the Tract or interest therein against which the lien is claimed.

- (D) A description of the Tract against which the lien is claimed.
- (E) A description of the work performed which has given rise to the claim of lien and a statement itemizing the amount thereof.
- (F) A statement that the lien is claimed pursuant to the provisions of this OEA, reciting the date and document number of recordation hereof. The notice shall be duly verified, acknowledged and contain a certificate that a copy thereof has been served upon the Party against whom the lien is claimed, by personal service or by mailing pursuant to Section 6.4 below. The lien so claimed shall attach from the date of recordation solely in the amount claimed thereby and may be enforced in any judicial proceedings allowed by law, including without limitation, a suit in the nature of a suit to foreclose a mortgage/deed of trust or mechanic's lien under the applicable provisions of the law of the State in which the Shopping Center is located.

6.1.4 Each Non-Defaulting Party shall have the right to prosecute any proceedings at law or in equity against any Defaulting Party hereto, or any other Person, violating or attempting to violate or defaulting upon any of the provisions contained in this OEA, and to recover damages for any such violation or default. Such proceeding shall include the right to restrain by injunction any violation or threatened violation by another Party or Person of any of the terms, covenants or conditions of this OEA, or to obtain a decree to compel performance of any such terms, covenants or conditions, it being agreed that the remedy at law for a breach of any such term, covenant or condition (except those, if any, requiring the payment of a liquidated sum) is not adequate. All of the remedies permitted or available to a Party under this OEA or at law or in equity shall be cumulative and not alternative, and the invocation of any such right or remedy shall not constitute a waiver or election of remedies with respect to any other permitted or available right or remedy. If a Party brings an action of law or in equity to enforce the terms and provisions of this OEA, the prevailing Party as determined by the Court in such action shall be entitled to recover reasonable attorneys' fees and court costs for all stages of litigation, including but not limited to, appellate proceedings, in addition any remedy granted.

6.2 Interest

Any time a Party or Operator, if any, shall not pay any sum payable hereunder to another Party within five (5) days of the due date, such delinquent Party or Operator shall pay interest on such amount from the due date to and including the date such payment is received by the Party entitled thereto, at the lesser of:

- (A) The highest rate permitted by law to be either paid on such type of obligation by the Party obligated to make such payment or charged by the Party to whom such payment is due, whichever is less.

- (B) The prime rate, plus three percent (3%). As used herein, “prime rate” shall mean the rate of interest published from time to time as the “Prime Rate” in the Wall Street Journal under the heading “Money Rates”; provided, however, that (i) if more than one such rate is published therein the prime rate shall be the highest such rate and (ii) if such rate is no longer published in the Wall Street Journal or is otherwise unavailable, the prime rate shall be a substantially comparable index of short term loan interest rates charged by U.S. banks to corporate borrowers selected by the Approving Parties.

6.3 Estoppel Certificate

Each Party and Operator, if any, agree that upon written request (which shall not be more frequent than three (3) times during any calendar year) of any other Party or Operator, it will issue within thirty (30) days after receipt of such request to such Party, or its prospective mortgagee or successor, an estoppel certificate stating to the best of the issuer’s knowledge as of such date:

- (A) Whether it knows of any default under this OEA by the requesting Party, and if there are known defaults, specifying the nature thereof in reasonable detail.
- (B) Whether this OEA has been assigned, modified or amended in any way by it and if so, then stating the nature thereof in reasonable detail.
- (C) Whether this OEA is in full force and effect.

Such estoppel certificate shall act to estop the issuer from asserting a claim or defense against a bona fide encumbrancer or purchaser for value to the extent that such claim or defense is based upon facts known to the issuer as of the date of the estoppel certificate which are contrary to the facts contained therein, and such bona fide purchaser or encumbrancer has acted in reasonable reliance upon such estoppel certificate without knowledge of facts to the contrary. The issuance of an estoppel certificate shall in no event subject the issuer to any liability for the negligent or inadvertent failure of the issuer to disclose correct and/or relevant information, nor shall such issuance be construed to waive any rights of the issuer to perform an audit or obtain an adjustment with respect to Common Area Maintenance Costs for any year it is entitled to do so, or to challenge acts committed by other Parties for which approval by the Approving Parties was required but not sought or obtained.

6.4 Notices

All notices, demands and requests (collectively, the “notice”) required or permitted to be given under this OEA must be in writing and shall be deemed to have been given as of the date such notice is (i) delivered to the Party intended, (ii) delivered to the then designated address of the Party intended, (iii) rejected at the then designated address of the Party intended, provided

such notice was sent prepaid, or (iv) sent by nationally recognized overnight courier with delivery instructions for “next business day” service, or by United States certified mail, return receipt requested, postage prepaid and addressed to the then designated address of the Party intended. The initial addresses of the Parties shall be:

Target: Target Corporation
Property Development
Attn: Real Estate – Existing Stores
1000 Nicollet Mall
Minneapolis, MN 55403

Developer: Creekside Square, Ltd.
c/o Direct Development
301 Congress Avenue, Suite 120
Austin, Texas 78701
Attn: Jon Andrus

and Direct Development
8150 North Central Expressway, Suite 1515
Dallas, Texas 75206
Attn: Trevor Ives

with copy to: Stephen L. Golden
Drenner & Golden, Stuart Wolff, LLP
300 Convent Street, Suite 2650
San Antonio, Texas 78205

With respect to any “notice” to Operator: As time to time designated.

Upon at least ten (10) days prior written notice, each Party shall have the right to change its address to any other address within the United States of America.

6.5 Approval Rights

6.5.1 Except as otherwise provided herein, with respect to any matter as to which a Party has specifically been granted an approval right under this OEA, nothing contained in this OEA shall limit the right of a Party to exercise its business judgment, in its sole discretion, whether or not “objectively” reasonable under the circumstances, and any such decision shall not be deemed inconsistent with any covenant of good faith and fair dealing which may be implied by law to be part of this OEA. The Parties intend by this OEA to set forth their entire understanding with respect to the terms, covenants, conditions and standards pursuant to which their obligations are to be judged and their performance measured.

6.5.2 Unless provision is made for a specific time period, each response to a request for an approval or consent required to be considered pursuant to this OEA shall be given

by the Party to whom directed within thirty (30) days after receipt thereof. Each disapproval shall be in writing and, subject to Section 6.5.1, the reasons therefor shall be clearly stated. If a response is not given within the required time period, the requested Party shall be deemed to have given its approval if the original notice stated in capitalized letters that failure to respond within the applicable time period will be deemed an approval. Notwithstanding anything contained herein to the contrary, the provisions of this Section 6.5.2 do not apply in any manner or fashion to any request which requires an amendment to this OEA, such requests being governed solely by the provisions of Section 6.8.5.

6.5.3 If the Approving Parties' approval is requested, unanimous approval must be given.

6.6 Condemnation

In the event any portion of the Shopping Center shall be condemned, or conveyed under threat of condemnation, the award shall be paid to the Party owning the Tract or the improvements taken, and the other Parties hereby waive and release any right to recover any value attributable to the property interest so taken, except that (i) if the taking includes improvements belonging to more than one (1) Party, such as Utility Lines or Signs, the portion of the award allocable thereto shall be used to relocate, replace or restore such jointly owned improvements to a useful condition, and (ii) if the taking includes easement rights which are intended to extend beyond the term of this OEA, the portion of the award allocable to each such easement right shall be paid to the respective grantees thereof. In addition to the foregoing, if a separate claim can be filed for the taking of any other property interest existing pursuant to this OEA which does not reduce or diminish the amount paid to the Party owning the Tract or the improvement taken, then the owner of such other property interest shall have the right to seek an award for the taking thereof. Except to the extent they burden the land taken, no easement or license set forth in this OEA shall expire or terminate based solely upon such taking.

6.7 Binding Effect

The terms of this OEA and all easements granted hereunder shall constitute covenants running with the land and shall bind the Tracts described herein and inure to the benefit of and be binding upon each Party. This OEA is not intended to supersede, modify, amend or otherwise change the provisions of any prior instrument affecting the land burdened hereby.

6.8 Construction and Interpretation

6.8.1 This OEA and the Exhibits hereto contain all the representations and the entire agreement between the Parties with respect to the subject matter hereof. Any prior negotiations, correspondence, memoranda or agreements are superseded in total by this OEA and the Exhibits attached hereto. This OEA has been fully negotiated at arms length between the signatories hereto, and after advice by counsel and other representatives chosen by such Parties, and such Parties are fully informed with respect thereto; no such Party shall be deemed the scrivener of this OEA; and, based on the foregoing, the provisions of this OEA and the Exhibits

hereto shall be construed as a whole according to their common meaning and not strictly for or against any Party.

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

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

6.8.4 Invalidity of any of the provisions contained in this OEA, or of the application thereof to any Person by judgment or court order, shall in no way affect any of the other provisions hereof or the application thereof to any other Person and the same shall remain in full force and effect.

6.8.5 This OEA may be amended by, and only by, a written agreement signed by all of the then current Approving Parties and shall be effective only when recorded in the county and state where the Shopping Center is located; provided, however, that no such amendment shall impose any materially greater obligation on, or materially impair any right of, a Party or its Tract without the consent of such Party. No agreement to any amendment of this OEA shall ever be required of any Occupant or Person other than the Parties, nor shall any Occupant or Person other than the Parties have any right to enforce any of the provisions hereof. Since the submission of a proposed amendment to the Parties is not an item of "consent" or "approval", each Party may consider any proposed amendment to this OEA in its sole and absolute discretion without regard to reasonableness or timeliness.

6.8.6 This OEA may be executed in several counterparts, each of which shall be deemed an original. The signatures to this OEA may be executed and notarized on separate pages, and when attached to this OEA shall constitute one (1) complete document.

6.9 Negation of Partnership

None of the terms or provisions of this OEA shall be deemed to create a partnership between or among the Parties in their respective businesses or otherwise, nor shall it cause them to be considered joint venturers or members of any joint enterprise. Each Party shall be considered a separate owner, and no Party shall have the right to act as an agent for another Party,

unless expressly authorized to do so herein or by separate written instrument signed by the Party to be charged.

6.10 Not a Public Dedication

Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Shopping Center or of any Tract or portion thereof to the general public, or for any public use or purpose whatsoever. Except as herein specifically provided, no right, privileges or immunities of any Party hereto shall inure to the benefit of any third-party Person, nor shall any third-party Person be deemed to be a beneficiary of any of the provisions contained herein.

6.11 Excusable Delays

Whenever performance is required of any Party hereunder, such Party shall use all due diligence to perform and take all necessary measures in good faith to perform; provided, however, that if completion of performance shall be delayed at any time by reason of acts of God, war, civil commotion, riots, strikes, picketing or other labor disputes, unavailability of labor or materials, damage to work in progress by reason of fire or other casualty, or any cause beyond the reasonable control of such Party, then the time for performance as herein specified shall be appropriately extended by the amount of the delay actually so caused. The provisions of this Section shall not operate to excuse any Party from the prompt payment of any monies required by this OEA.

6.12 Mitigation of Damages

In all situations arising out of this OEA, each Party and Operator, if any, shall attempt to avoid and mitigate the damages resulting from the conduct of any other Party. Each Party shall take all reasonable measures to effectuate the provisions of this OEA.

6.13 OEA Shall Continue Notwithstanding Breach

It is expressly agreed that no breach of this OEA shall (i) entitle any Party to cancel, rescind, or otherwise terminate this OEA, or (ii) defeat or render invalid the lien of any mortgage or trust deed made in good faith and for value as to any part of the Shopping Center. However, such limitation shall not affect in any manner any other rights or remedies which a Party may have hereunder by reason of any such breach.

6.14 Time

Time is of the essence of this OEA.

6.15 No Waiver

The failure of any Party to insist upon strict performance of any of the terms, covenants or conditions hereof shall not be deemed a waiver of any rights or remedies which that Party may have hereunder, at law or in equity, and shall not be deemed a waiver of any subsequent breach or default in any of such terms, covenants or conditions. No waiver by any Party of any default

under this OEA shall be effective or binding on such Party unless made in writing by such Party and no such waiver shall be implied from any omission by a Party to take action in respect to such default. No express written waiver of any default shall affect any other default or cover any other period of time other than any default and/or period of time specified in such express waiver. One (1) or more written waivers of any default under any provision of this OEA shall not be deemed to be a waiver of any subsequent default in the performance of the same provision or any other term or provision contained in this OEA. The failure of a Party to provide a Reconciliation or statement for amounts owed within a specified time shall not act as a waiver of such Party's right to collect such amount upon the later issuance of the required Reconciliation or statement.

ARTICLE VII - TERM

7.1 Term of this OEA

This OEA shall be effective as of the date first above written and shall continue in full force and effect until 11:59 p.m. on December 31, 2082; provided, however, that (i) the easements referred to in Article II hereof which are specified as being perpetual or as continuing beyond the term of this OEA shall continue in full force and effect as provided herein, and (ii) the building covenants and restrictions set forth in Section 3.3.4 (D) hereof shall continue in full force and effect so long as an "unlimited area" Building exists within the Primary Building Area. Upon the termination of this OEA, all rights and privileges derived from and all duties and obligations created and imposed by the provisions of this OEA, except as relates to the easements mentioned above, shall terminate and have no further force or effect; provided, however, that the termination of this OEA shall not limit or affect any remedy at law or in equity that a Party may have against any other Party with respect to any liability or obligation arising or to be performed under this OEA prior to the date of such termination.

ARTICLE VIII - EXCULPATION

8.1 Certain Limitations on Remedies

None of the Persons comprising a Party (whether partners, shareholders, officers, directors, members, trustees, employees, beneficiaries or otherwise) shall ever be personally liable for any judgment obtained against a Party. Each Party agrees to look solely to the interest in the Shopping Center of a defaulting Party for recovery of damages for any breach of this OEA; provided, however, the foregoing shall not in any way impair, limit or prejudice the right of a Party:

- (A) Casualty Insurance and Condemnation Proceeds. To recover from another Party all damages and costs on account of, or in connection with, casualty insurance or condemnation proceeds which are not applied or used in accordance with the terms of this OEA.

- (B) Hazardous Substances. To recover from another Party all damages and costs arising out of or in connection with, or on account of, a breach by such Party of its obligations under Section 5.1.3.
- (C) Liability Insurance. To recover from another Party all damages and costs arising out of or in connection with, or on account of, a breach by such Party of its obligations under Section 5.4.
- (D) Taxes, Assessments and Liens. To recover from a Party all damages and costs arising out of or in connection with, or on account of, the failure by such Party to pay when due any tax, assessment or lien as specified in Section 5.5 and Section 6.1.
- (E) Fraud or Misrepresentation. To recover from another Party all damages and costs as a result of any fraud or misrepresentation by such Party in connection with any term, covenant or condition in this OEA.
- (F) Equitable Relief; Costs. To pursue equitable relief in connection with any term, covenant or condition of this OEA, including a proceeding for temporary restraining order, preliminary injunction, permanent injunction or specific performance, and recover all costs, including Interest thereon, relating to such enforcement action.

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SIGNATURE PAGE
FOR
OPERATION AND EASEMENT AGREEMENT
BETWEEN
TARGET CORPORATION
AND
CREEKSIDE SQUARE, LTD.

IN WITNESS WHEREOF, the Parties have caused this OEA to be executed effective as of the day and year first above written.

("Developer")

CREEKSIDE SQUARE, LTD., a Texas limited partnership

By: DEVCO GP, Inc., a Texas corporation, its General Partner

By: _____

Name: _____

Its: _____

STATE OF _____)
) ss.
COUNTY OF _____)

On this _____ day of _____, 2007, before me, a Notary Public within and for said County, personally appeared _____ to me personally known, being first by me duly sworn, did say that he is the _____ of DEVCO GP, Inc. and that said instrument was signed on behalf of said corporation by authority of its Board of Directors and _____ acknowledged said instrument to be the free act and deed of said corporation.

Notary Public

My commission expires: _____

SIGNATURE PAGE
FOR
OPERATION AND EASEMENT AGREEMENT
BETWEEN
TARGET CORPORATION
AND
CREEKSIDE SQUARE, LTD.

IN WITNESS WHEREOF, the Parties have caused this OEA to be executed effective as of the day and year first above written.

TARGET CORPORATION
("Target")

By: _____
Name: _____
Title: _____

STATE OF MINNESOTA)
) ss.
COUNTY OF HENNEPIN)

On this _____ day of _____, 2007, before me, a Notary Public within and for said County, personally appeared _____ to me personally known, being first by me duly sworn, did say that he is the _____ of Target Corporation and that said instrument was signed on behalf of said corporation by authority of its Board of Directors and _____ acknowledged said instrument to be the free act and deed of said corporation.

Notary Public

My commission expires: _____

SIGNATURE PAGE
FOR
CONVEYANCE AND EASEMENT AGREEMENT
BETWEEN
TARGET CORPORATION
AND
CREEKSIDE SQUARE, LTD.

The undersigned hereby executes this OEA for the limited purpose of confirming the acceptance of its appointment as the initial Operator pursuant to Section 1.11 hereof.

DIRECT PROPERTY MANAGEMENT, LLC

By: _____
Name: _____
Title: _____

STATE OF _____)
) ss.
COUNTY OF _____)

On this _____ day of _____, 2007, before me, a Notary Public within and for said County, personally appeared _____ to me personally known, being first by me duly sworn, did say that he is the _____ of Direct property Management, LLC and that said instrument was signed on behalf of said limited liability company and _____ acknowledged said instrument to be the free act and deed of said limited liability company.

Notary Public

My commission expires: _____

EXHIBIT A
LEGAL DESCRIPTION OF TARGET TRACT

EXHIBIT B
LEGAL DESCRIPTION OF DEVELOPER TRACT

EXHIBIT C
DESIGN OF SIGNS

EXHIBIT D
ARCHITECTURAL THEME

EXHIBIT E

SUBMISSION GUIDELINES

1. During the conceptual design phase, the constructing party shall submit to the other parties the following:
 - A. Site Design Documents to Indicate the Following:
 - o Parking configurations and car parking count
 - o Typical bay width and stall dimensions
 - o Drive widths
 - o Setbacks
 - o Curb cuts
 - o Spot elevations or rough contours
 - o Rough landscape scope
 - o Lighting pole locations
 - o Preliminary utility strategies
 - B. Building Design Single Line Plans to Indicate the Following:
 - o Exterior wall configuration
 - o Doors and store front extent
 - o Canopies and overhangs
 - o Probable column locations at exterior and abutting our building on interior
 - C. Exterior Elevation Drawings to Indicate the Following:
 - o Opaque wall areas with doors and store fronts
2. After approval has been granted of conceptual design phase submitted in accordance with the guidelines specified in 1 above, the constructing party shall submit final design phase plans to the other parties as follows:
 - A. Site Design Documents Delineating Information Outlined in the Concept Phase with the Following Added Detail:
 - o Refined grading plans
 - o Selected lighting fixtures and resultant lighting levels in foot candles
 - o Landscaping showing generic planting materials and locations
 - o Proposed paving section designs and location
 - o Utility layouts including hydrants and sizes proposed
 - o Proposed details for curbs, site structures, manholes, etc.
 - o Proposed site signage designs and locations
 - B. Building Design Plans Delineating Information Outlined in the Concept Phase with the Following Added Detail:
 - o Exterior wall thicknesses
 - o Structural columns or bearing walls at building exterior and proposed foundation design at adjoining wall between abutting buildings

- o Where common footings are to be shared provide wall or column load information for design of that footing
 - o Proposed roof plan showing slopes and location of penthouses or other major mechanical equipment
 - o References of key flashing details of roof to adjoining building
- C. Exterior Elevation Drawings Delineating Information Outlined in the Concept Phase with the Following Added Detail:
- o Proposed building sign standards
 - o Paint color chips and samples of other materials such as brick or concrete aggregates (glass or aluminum finishes may be annotated on the elevations)
 - o Proposed large scale details of key section conditions to show exterior design intent
 - o Major penthouses or rooftop equipment profiles
 - o Features such as special masonry patterns, bands or special materials and textures
 - o Rain leaders or scuppers
 - o Wall sections at various exterior locations including at the demising wall to the adjoining building with key vertical dimensioning
3. If a building is to have a through-the-wall pedestrian access connection to an adjoining building, then the final design phase submission shall also include (to the owner of such adjoining building) the following:
- o Plans of the pedestrian mall circulation showing any variations in floor elevations
 - o Elevations/sections of the proposed mall space showing store front sign bulkheads and key dimensions
 - o Proposed ceiling design including special features such as variations in height or skylights
 - o Floor material patterns
 - o Landscaping and mall seating areas
 - o Proposed interior sign guidelines
 - o Paint color chips and samples of other materials such as brick or concrete aggregates (glass or aluminum finishes may be annotated on the plans or elevations)
 - o Proposed large scale details of key section conditions to show interior design intent
4. The constructing party shall provide the other parties with a complete set of bid documents for the building and/or improvements to be located upon its Tract.

**EXHIBIT X
SITE PLAN**

STANDARD OEA FORM

List of OEA designations to be shown on Exhibit X (Site Plan):

<u>Section</u>	<u>Item Designated</u>
Recital	Target Tract
Recital	Developer Tract
1.3 & 3.3.1	Building Area
1.11	Outside Sales Area
1.15	Primary Building Area
2.1.2	_____ Drive(s)
2.4 & 5.3.1	Target Sign Area; Developer Sign Area; Center Sign Area;
2.1.3	Compact Parking
3.2.5	Parking Stalls and Rows, and Traffic Lanes
3.3.1	Maximum Floor Area Designations on Developer Tract

Additional Provisions (where applicable):

2.1.3	Retention/Detention Pond
2.1.4	Pedestrian Access Area
	Target No Build Easement
2.6	No Build Easement

List of OEA blanks to be completed:

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2.4.2
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3.3.3
3.3.5
4.2.1
4.2.4
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7.1
Signature Page

EXHIBIT 3
Comparison of Land Uses

Land Use Chart (as revised by Council - Effective September 19, 2006)		Non-Residential Districts Per LDC	
Class of Use	Types of Land Uses	MU	GC

PDD

Retail and Service Type Uses	Lawnmower Sales and/or Repair	C	P
Retail and Service Type Uses	Retail Store (Misc.) with Drive Thru Service	C	P
Retail and Service Type Uses	Veterinarian (Indoor Kennels)	C	P
Transportation and Automotive Uses	Auto Repair (General)	C	P
Transportation and Automotive Uses	Car Wash (Self Service; Automated)	C	P
Amusement and Recreational Uses	Amusement Devices/Arcade (Four or More Devices)	C	P
Amusement and Recreational Uses	Amusement Services or Venues (Indoors)	C	P
Amusement and Recreational Uses	Motion Picture Theater (Indoors)	C	P
Amusement and Recreational Uses	Theater (Non-Motion Picture; Live Drama)	C	P
Retail and Service Type Uses	Auto Supply Store for New and Rebuilt Parts	C	P
Retail and Service Type Uses	Garden Shop (Inside Only; no outside storage)	C	P
Retail and Service Type Uses	Home Improvement Center (10,000 s.f. or more)	C	P
Retail and Service Type Uses	Pet Store (10,000 s.f. or more)	C	P
Retail and Service Type Uses	Retail Store (Misc.) without Drive Thru Service (Under 100,000 s.f. Bldg.)	C	P
Transportation and Automotive Uses	Auto Financing and Leasing	C	P
Transportation and Automotive Uses	Auto Repair as an Accessory Use to Retail Sales	C	P
Transportation and Automotive Uses	Auto Tire Repair/Sales (Indoor)	C	P
Transportation and Automotive Uses	Full Service Car Wash (Detail Shop)	C	P
Transportation and Automotive Uses	Limousine / Taxi Service	C	P
Transportation and Automotive Uses	Lube/Oil Change/Minor Inspection	C	P
Amusement and Recreational Uses	Amusement Services or Venues (Outdoors)	C	P
Residential Uses	Residential Hall or Boarding House	C	
Residential Uses	Duplex / Two-Family / Duplex Condominiums	C	
Residential Uses	Four Family (Quadraplex) or Three Family (Tri-Plex)	C	
Residential Uses	Fraternity or Sorority Building	C	
Residential Uses	Multi-Family (Apartments)	C	
Residential Uses	Single Family Zero Lot Line / Patio Homes	C	
Institutional / Governmental Uses	Household Care Facility	C	
Industrial / Manufacturing Uses	Manufacturing Processes not Listed	C	
Residential Uses	Loft Apartments	P	C
Commercial and Wholesale Trade Uses	Caterer	P	C

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Land Use Chart (as revised by Council - Effective September 19, 2006)		Non-Residential Districts Per LDC	
Class of Use	Types of Land Uses	MU	GC

PDD

Amusement and Recreational Uses	Park and/or Playground (Private)	P	C
Personal and Business Service Uses	Tool Rental (Indoor Storage only)	P	P
Residential Uses	Caretaker's/Guard's Residence	P	P
Office Service Type Uses	Bank or Savings and Loan (w/o Drive-thru)	P	P
Office Service Type Uses	Security Monitoring Company (No Outside Storage or Installation)	P	P
Office Service Type Uses	Travel Agency	P	P
Personal and Business Service Uses	Artist or Artisans Studio	P	P
Personal and Business Service Uses	Automobile Driving School (including Defensive Driving)	P	P
Personal and Business Service Uses	Bed and Breakfast (No Permanent Residence)	P	P
Personal and Business Service Uses	Computer Sales	P	P
Personal and Business Service Uses	Laundry/Dry Cleaning (Drop Off/Pick Up)	P	P
Personal and Business Service Uses	Martial Arts School	P	P
Personal and Business Service Uses	Photocopying/Duplicating/Copy Shop	P	P
Retail and Service Type Uses	Antique Shop (household items; no outside storage)	P	P
Retail and Service Type Uses	Food service without drive-thru (Deli / café)	P	P
Retail and Service Type Uses	Convenience Store without gas sales	P	P
Retail and Service Type Uses	Food or Grocery Store without Gasoline Sales	P	P
Retail and Service Type Uses	Furniture Sales (Indoor)	P	P
Retail and Service Type Uses	Handicraft Shop	P	P
Retail and Service Type Uses	Hardware Store (Less than 10,000 s.f.)	P	P
Retail and Service Type Uses	Pharmacy	P	P
Retail and Service Type Uses	Recycling Kiosk	P	P
Retail and Service Type Uses	Restaurant/Prepared Food Sales	P	P
Retail and Service Type Uses	Temporary Outdoor Retail Sales / Commercial Promotion (4 day time limit; Permit Required by Building Official)	P	P
Amusement and Recreational Uses	Video Rental / Sales	P	P
Institutional / Governmental Uses	Adult Day Care (No Overnight Stay)	P	P
Institutional /	Assisted Living Facility/Hospice	P	P

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Land Use Chart (as revised by Council - Effective September 19, 2006)		Non-Residential Districts Per LDC	
Class of Use	Types of Land Uses	MU	GC

PDD

Personal and Business Service Uses	Tailor Shop	P	P
Retail and Service Type Uses	Art Dealer / Gallery	P	P
Retail and Service Type Uses	Bakery (Retail)	P	P
Retail and Service Type Uses	Book Store	P	P
Retail and Service Type Uses	Confectionery Store (Retail)	P	P
Retail and Service Type Uses	Consignment Shop	P	P
Retail and Service Type Uses	Florist (No Outside Plant Sales)	P	P
Retail and Service Type Uses	Needlework Shop	P	P
Retail and Service Type Uses	Pet Shop / Supplies (Less than 10,000 s.f.)	P	P
Retail and Service Type Uses	Vacuum Cleaner Sales and Repair	P	P
Retail and Service Type Uses	Woodworking Shop (Ornamental)	P	P
Amusement and Recreational Uses	Health Club (Physical Fitness; Indoors Only)	P	P
Amusement and Recreational Uses	Museum (Indoors Only)	P	P
Amusement and Recreational Uses	Park and/or Playground (Public)	P	P
Institutional / Governmental Uses	Place of Religious Assembly/Church	P	P
Institutional / Governmental Uses	Governmental Building or Use (Municipal, State or Federal)	P	P
Institutional / Governmental Uses	Post Office (Private)	P	P
Institutional / Governmental Uses	Post Office (Governmental)	P	P
Institutional / Governmental Uses	Rectory/Parsonage with Place of Worship	P	P
Institutional / Governmental Uses	School, K through 12 (Public)	P	P
Personal and Business Service Uses	Hotel/Motel	P	P
Amusement and Recreational Uses	Civic/Conference Center	P	P
Amusement and Recreational Uses	Skating Rink	P	P
Personal and Business Service Uses	Financial Services (Advice/Invest)	P	P
Personal and Business Service Uses	Studio for Radio or Television (without tower)	P	P
Retail and Service Type Uses	Bike Sales and/or Repair	P	P
Retail and Service Type Uses	Drapery Shop / Blind Shop	P	P
Amusement and Recreational Uses	Golf Course (Public)	P	P
Institutional / Governmental Uses	Retirement Home/Home for the Aged	P	P

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Land Use Chart (as revised by Council - Effective September 19, 2006)		Non-Residential Districts Per LDC	
Class of Use	Types of Land Uses	MU	GC

PDD

Type Uses			
Retail and Service Type Uses	Motorcycle Dealer (Primarily New / Repair)		P
Retail and Service Type Uses	Personal Watercraft Sales (Primarily New/Repair)		P
Retail and Service Type Uses	Retail Store (100,000 s.f. or more Bldg.)		P
Transportation and Automotive Uses	Tire Sales (Outdoors/Storage)		P
Amusement and Recreational Uses	Billiard / Pool Facility (Three or More Tables)		P
Amusement and Recreational Uses	Bingo Facility		P
Amusement and Recreational Uses	Bowling Center		P
Amusement and Recreational Uses	Dance Hall / Dancing Facility		P
Amusement and Recreational Uses	Exhibition Hall		P
Commercial and Wholesale Trade Uses	Heating and Air-Conditioning Sales / Services		P
Commercial and Wholesale Trade Uses	Plumbing Shop		P
Office Service Type Uses	Call Service Center		P
Personal and Business Service Uses	Off-Premise Freestanding Sign *does not include approved joint-tenancy signs which are permitted		P
Retail and Service Type Uses	Department Store		P
Retail and Service Type Uses	Liquor Sales (retail)		P
Retail and Service Type Uses	Major Appliance Sales (Indoor)		P
Retail and Service Type Uses	Shopping Center (Over 5 Acres)		P
Transportation and Automotive Uses	Auto Muffler Shop		P
Personal and Business Service Uses	Funeral Home		P
Retail and Service Type Uses	Auto Dealer (Primarily New/Used Auto Sales as accessory use only)		P
Retail and Service Type Uses	Building Material Sales		P
Retail and Service Type Uses	Cabinet Shop (Manufacturing)		P
Retail and Service Type Uses	Security Systems Installation Company		P
Retail and Service Type Uses	Upholstery Shop (Non-Auto)		P
Transportation and Automotive Uses	Auto Glass Repair/Tinting		P
Transportation and Automotive Uses	Auto Interior Shop / Upholstery		P
Amusement and Recreational Uses	Day Camp		P
Amusement and Recreational Uses	Driving Range		P
Amusement and	Motion Picture Studio, Commercial		P

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Land Use Chart (as revised by Council - Effective September 19, 2006)		Non-Residential Districts Per LDC	
Class of Use	Types of Land Uses	MU	GC

PDD

Recreational Uses	Film		
Amusement and Recreational Uses	Travel Trailers / RVs (Short Term Stays)		P
Amusement and Recreational Uses	RV/Travel Trailer Sales		P
Commercial and Wholesale Trade Uses	Auction Sales (Non-Vehicle)		P
Commercial and Wholesale Trade Uses	Extermination Service		P
Commercial and Wholesale Trade Uses	Feed and Grain Store		P
Commercial and Wholesale Trade Uses	Portable Building Sales		P
Commercial and Wholesale Trade Uses	Propane Sales (Retail) *May be permitted as an accessory use to a major retailer.		P
Commercial and Wholesale Trade Uses	Taxidermist		P
Industrial / Manufacturing Uses	Electronic Assembly/High Tech Manufacturing		P
Agricultural Uses	Barns and Farm Equipment Storage		
Agricultural Uses	Bulk Grain and/or Feed Storage/Processing		
Agricultural Uses	Farms, General (Crops)		
Agricultural Uses	Farms, General (Livestock/Ranch)		
Agricultural Uses	Hay, Grain, and/or Feed Sales (Wholesale)		
Agricultural Uses	Livestock Sales/Auction		
Agricultural Uses	Orchard/Crop Propagation		
Agricultural Uses	Plant Nursery (growing for commercial purposes but no retail sales on site) *May be permitted as an accessory use to a major retailer.		
Agricultural Uses	Stables (As A Business)		
Agricultural Uses	Stables (Private, Accessory Use)		
Agricultural Uses	Stables (Private, Principal Use)		
Residential Uses	HUD code—Manufactured Home		
Transportation and Automotive Uses	Auto Wrecker Service		
Transportation and Automotive Uses	Heavy Load Vehicle Sales/Repair		
Amusement and Recreational Uses	Broadcast Station (with Tower)		
Amusement and Recreational Uses	Fair Ground		
Amusement and Recreational Uses	Rodeo Grounds		
Institutional / Governmental Uses	Cemetery and/or Mausoleum		
Institutional / Governmental Uses	Electrical Generating Plant		

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Land Use Chart (as revised by Council - Effective September 19, 2006)		Non-Residential Districts Per LDC	
Class of Use	Types of Land Uses	MU	GC

PDD

Institutional / Governmental Uses	Helistop (Non-Emergency)		
Institutional / Governmental Uses	University or College		
Commercial and Wholesale Trade Uses	Bio-Medical Facilities		
Commercial and Wholesale Trade Uses	Furniture Manufacture		
Commercial and Wholesale Trade Uses	Laundry, Commercial (w/o Self Serve)		
Commercial and Wholesale Trade Uses	Manufactured Home Sales		
Commercial and Wholesale Trade Uses	Publishing/Printing Company		
Commercial and Wholesale Trade Uses	Transfer Station (Refuse/Pick-up)		
Commercial and Wholesale Trade Uses	Veterinarian (Outdoor Kennels or Pens)		
Commercial and Wholesale Trade Uses	Welding Shop		
Industrial / Manufacturing Uses	Aircraft Support and Related Services		
Industrial / Manufacturing Uses	Airport		
Industrial / Manufacturing Uses	Manufacturing		
Industrial / Manufacturing Uses	Contractor's Office/Sales, With Outside Storage including Vehicles		
Industrial / Manufacturing Uses	Distribution Center		
Industrial / Manufacturing Uses	Engine Repair/Motor Manufacturing Re-Manufacturing and/or Repair		
Industrial / Manufacturing Uses	Food Processing (no Outside Public Consumption)		
Industrial / Manufacturing Uses	Laboratory Equipment Manufacturing		
Industrial / Manufacturing Uses	Leather Products Manufacturing		
Industrial / Manufacturing Uses	Machine Shop		
Industrial / Manufacturing Uses	Marble or Stone Finishing		
Industrial / Manufacturing Uses	Motor Freight Terminal		
Industrial / Manufacturing Uses	Paint Manufacturing		
Industrial / Manufacturing Uses	Petroleum Bulk Storage		
Industrial / Manufacturing Uses	Plastic Products Molding/Reshaping		
Industrial / Manufacturing Uses	Sand/Gravel Sales (Storage or Sales)		
Industrial / Manufacturing Uses	Sign Manufacturing		

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Land Use Chart (as revised by Council - Effective September 19, 2006)		Non-Residential Districts Per LDC	
Class of Use	Types of Land Uses	MU	GC

PDD

Industrial / Manufacturing Uses	Stone/Clay/Glass Manufacturing		
Industrial / Manufacturing Uses	Wrecking/Junk Yard		
Residential Uses	Home Occupation	1	1
Residential Uses	Private Street Subdivision	2	2
Personal and Business Service Uses	Sexually Oriented Business	3	3
Institutional / Governmental Uses	Antenna (Non-Commercial)	4	4
Institutional / Governmental Uses	Antenna (Commercial)	4	4
Institutional / Governmental Uses	Broadcast Towers (Commercial)	4	4
Institutional / Governmental Uses	Cellular Communications Tower / PSS	4	4
Institutional / Governmental Uses	Franchised Private Utility (not listed)	4	4
Institutional / Governmental Uses	Radio/Television Tower (Commercial)	4	4
Industrial / Manufacturing Uses	Contractor's Temporary On-Site Construction Office (only with permit)	5	5

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Special Notes	
1	(See Chapter 4, Article 3, Division 3)
2	(See Section 7.4.1.2)
3	(See Section 18, Article 6 of the City Code)
4	(See Section 4.3.4.1)
5	(Issued by the Building Official)

EXHIBIT 4

The following Site Development Standards Comparison Chart will **replace** the current Site Development Standards Comparison Chart. Changes are highlighted in grey.

City Council Approval: March 20, 2007
 Zoning ordinance no. 2007-18
 Administrative Amendment Approval: July 17, 2007
 City Council Amendment Approval:
 Zoning ordinance no.

**STONECREEK CROSSING
 PLANNED DEVELOPMENT DISTRICT
 SITE DEVELOPMENT STANDARDS
 COMPARISON CHART**

**PDD Amendment
 October 2008**

2.3 Development Standards	GC Code	PDD	MU Code	PDD
Lot/Parcel Area, Minimum Sq. Ft.	6000	Per code	6000	Per code
Lot/Parcel Area, Maximum Acres	N/A	Per code	20	Per code
Units per acre, Maximum /Gross Acres	N/A	Per code	5.5	Per code
Lot Frontage Minimum Feet	50	Per code	50	Per code
Lot Width, Minimum Feet	50	Per code	50	Per code
Front Yard Setback, Minimum Feet	20	15 for lots east of Barnes Dr.	25	Per code
Side Setback, Minimum Feet, Interior	5	Side setbacks do not apply to GC lots west of Barnes Drive, exclusive of individual pad lots.	7.5	Per code
Side Setback, Minimum Feet, Corner	15	Per code	15	Per code
Rear Yard Setback, Minimum Feet	5	Per code	5	Per code
Lot Depth, Minimum Feet	100	Per code	100	Per code
Impervious Cover, Max %	80%	75%	60%	75% and is calculated based on the overall site
Building Height, Maximum Feet	N/A	60	30	Per code

2.4 Bank or Savings and Loans with Drive-thru

Code	PDD
	Banks or savings and loans with drive-thrus are allowed up to 4 drive-thru lanes plus one additional lane for an ATM

3.0 Building Materials and Design

Code	PDD
Permitted Wall Materials:	Permitted Wall Materials:

City Council Approval: March 20, 2007

Zoning ordinance no. 2007-18

Administrative Amendment Approval: July 17, 2007

City Council Amendment Approval:

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<p>Rustic wood Stucco/EFIS Brick Stone Stained or painted wood Glass, if 50% or less of façade Hardiplank Custom-treated tilt wall Decorative, textured or split-face concrete block</p>	<p>Natural stone (synthetic stone prohibited) Brick Stucco/Plaster/Synthetic Stucco (EFIS prohibited) Concrete or Concrete Masonry Units (CMU)</p> <p>The buildings constructed for the new StoneCreek Crossing project will have 90% masonry walls, exclusive of store fronts and other openings. At least 33% of all walls facing streets and main parking areas will be either stone or brick on buildings that exceed 100,000 square feet. Additionally, in-line commercial buildings will have at least 50% of all walls facing streets and main parking areas will be either brick or stone. Finally, exterior walls of any free standing building such as a restaurant, financial institution or small retail establishment will be 60% stone or brick exclusive of storefronts and other openings.</p> <div><p>The following building materials and building material percentages are permitted on Lot 6 of the Amended Plat of Lot 5, Block 2 StoneCreek Crossing Phase 1, "the Chay's lot":</p><table><tr><td>Fiber-cement board</td><td>16%</td></tr><tr><td>Reclaimed wood</td><td>61%</td></tr><tr><td>Brick/Stone (Autumn Blend)</td><td>12%</td></tr><tr><td>Paint-grip</td><td>11%</td></tr></table></div> <p>Percentage calculations shall be determined based upon the actual wall area on the buildings; windows, doors, etc. do not count towards the required percentages of stone or brick¹. Landscaping, softscape features, site furnishings and signage will employ compatible materials and compatible designs to further the perception theme.</p>	Fiber-cement board	16%	Reclaimed wood	61%	Brick/Stone (Autumn Blend)	12%	Paint-grip	11%
Fiber-cement board	16%								
Reclaimed wood	61%								
Brick/Stone (Autumn Blend)	12%								
Paint-grip	11%								
<p><u>Permitted Roof Materials:</u> Copper Metal sheet roofing Tile Commercial flat (built up) roof Composition roof</p>	<p><u>Permitted Roof Materials:</u> Standing seam metal panels (preweathered galvalume or prefinished painted finishes). No reflective finishes are allowed. Clay tile</p> <div><p>The following additional roof material is permitted on Lot 6 of the Amended Plat of Lot 5, Block 2 Stone Creek Crossing Phase 1, "the Chay's lot":</p><p>Composition asphalt shingle</p></div>								
<p><u>Permitted Canopy, Trellis and Pergola Materials:</u></p>	<p><u>Permitted Canopy, Trellis and Pergola Materials:</u> Steel Wood Canvas</p>								

¹ This language is added to make clear the calculation of brick and stone percentages does not include doors, windows, etc.

City Council Approval: March 20, 2007

Zoning ordinance no. 2007-18

Administrative Amendment Approval: July 17, 2007

City Council Amendment Approval:

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<u>Storefronts:</u> Limitations on glazing. Except for photovoltaic cells, mirrored glass with a reflectivity of 20 percent or more is not permitted on the exterior walls and roofs of all buildings and structures.	<u>Storefronts:</u> Framed with prefinished aluminum components Clear and/or lightly tinted glass with no reflective glazing
<u>Railings:</u>	<u>Railings:</u> Masonry Metal <div style="border: 1px solid black; padding: 5px; margin-top: 10px;"><p>The following additional railing material is permitted on Lot 6 of the Amended Plat of Lot 5, Block 2 Stone Creek Crossing Phase I, "the Chry's lot":</p><p>Split-rail cedar</p></div>

4.0 Landscaping

Code	PDD
A minimum percentage of the total lot area of property on which development, construction, or reconstruction occurs shall be devoted to landscaping. GC 10% MU 20%	A minimum percentage of the total site developable area, 110.505 acres, will be landscaped. A minimum of 10% of the developable area will be landscaped. Additionally, 8.66 acre channel will be landscaped but does not count towards the 10% developable area.
N/A	Two wet ponds will be provide and will include meandering walking paths, trees, ornamentals, shrubs and seating areas to enhance pedestrian activity.
All constructed and altered drainage channels shall be stabilized and vegetated immediately after grading.	Approximately 8.66 acres make up a drainage channel (mitigation area). This is designed in accordance with Watershed Plans, Phases I and II. It's designed to restore wetlands and provide for higher quality wetlands than currently exist. It incorporates a meandering flow line and small depressions. It will also be landscaped and include walking paths along portions for pedestrian activity and access across the channel will be provided.
N/A	Landscaping will be increased at the intersections of public streets and at driveways entering from the IH-35 frontage road. Additional trees, shrubs and other plant material will be added to give visual prominence to the intersections. Plantings will coordinate with signage, sidewalks, lighting and traffic visibility lines of sight.

City Council Approval: March 20, 2007
 Zoning ordinance no. 2007-18
 Administrative Amendment Approval: July 17, 2007
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 Zoning ordinance no.

5.0 Screening and Compatibility

Code	PDD
<p>Screening: All loading spaces and docks, outside storage areas, satellite dishes larger than 18 inches in diameter, antennas, utility boxes, mechanical equipment, and the rear of structures on double frontage lots, must be screened from view from the public street or public rights-of-way.</p>	<p>Screening: General screening will be as provided in Section 6.1.2.4 of the Land Development Code. Additional screening of the service areas along the west facades parallel to or along the railroad will be provided. Where space permits, the screening will be accomplished with evergreen plantings of trees and tall shrubs. If space does not allow for trees, a six foot tall wall and/or fence will be erected. Plantings, fences and walls will be placed in an attempt to maximize screening of the actual dock, dumpster and delivery door areas along the western walls.</p>
<p>Compatibility: Buildings shall be setback from the applicable street or property line at a width equal to or twice the required setback, i.e. 7.5 feet setback required; therefore a 15 foot setback is required.</p> <p>If a nonresidential use is adjacent to a residential use other than multi-family, such residential use shall be screened in accordance with Section 6.1.2.1. and shall include a vegetative buffer. The nonresidential use shall construct an opaque screening fence a minimum of 6 feet in height.</p>	<p>Compatibility: Compatibility will be achieved between the mixed-use tract and the adjacent single family area through the following:</p> <ul style="list-style-type: none"> a) an 8 foot wall constructed of stone or concrete masonry units to provide a buffer; and b) if any land use over 30 feet in height is developed on the site, a 25 foot setback will be provided along residential properties.

6.0 Parking, Access and Mobility

Code	PDD
<p>Parking: All required off-street parking spaces shall be located on the same lot or tract as the principal use being served by the parking area.</p>	<p>Parking: Each lot will self-park and meet the requirements of Section 6.2 of Land Development Code. However, cross-parking will be included as part of the O.E.A. and filed with Hays County and will allow for cross-parking within the shopping center. A copy of the agreement will be submitted to the City of San Marcos after recordation.</p>

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	<p>As necessary to meet parking requirements on each lot, shared parking agreements are permitted. Shared parking agreement(s) must meet requirements of the Land Development Code and the overall parking calculations for the shopping center and may not conflict with the O.E.A. parking requirements.</p> <p>All Shared Parking Agreements may be reviewed and approved administratively based upon the following criteria set forth in the Land Development Code:</p> <ul style="list-style-type: none">▪ Both lots or tracts are under the same ownership; or▪ It can be established that two or more uses, applying jointly and concurrently for the special exception, will be sharing a parking area that is on property that is not under the same ownership and an arrangement is documented through a long-term lease, easement, or other written agreement. Such exception may be granted only if the agreement provides that either:<ul style="list-style-type: none">○ The shared parking area has a capacity of at least the minimum number of spaces for the use of having the greatest minimum requirement and all uses have their primary need for parking during offsetting periods so that the parking area will be utilized by only one principal use at a time; or○ The parking area exceeds the requirements for the use on which the shared spaces are located sufficient to allow both uses full compliance when both properties needs are combined in the parking requirement calculation.
<u>Access:</u>	<u>Access:</u> Access for this project will be shared between lots. Shared access will be addressed in the O.E.A. The agreement will apply across the entire site.
<u>Sidewalks:</u>	<u>Sidewalks:</u> Sidewalks will be provided throughout the site in accordance with the Land Development Code, Section 7.4.2 and the City of San Marcos

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Zoning ordinance no. 2007-18

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	<p>Engineering Design Manual and will also be constructed in accordance with ADA requirements. Additionally, sidewalks will be provided along all retail storefronts and will be a minimum of 6 feet in width.</p> <p>An 8 foot stabilized granite trail will be provided along the west side of Barnes Drive and around portions of the wet ponds and channel encouraging pedestrian-orientation. A minimum, 6 foot wide sidewalk will be provided along the east side of Barnes Drive.</p> <p>Sidewalks will be constructed in accordance with the City of San Marcos' construction standards.</p>
<p><u>Crosswalks:</u> N/A</p>	<p><u>Crosswalks:</u> Striped, cross-walks will be provided at the intersections along Barnes Drive to enhance connectivity and provide for pedestrian safety.</p>
<p><u>Bus Stop:</u> N/A</p>	<p><u>Bus Stop:</u> A bus stop, including a bench and sheltered-cover, will be provided along Barnes Drive in a location chosen by Developer and/or Owner and agreed upon by all jurisdictions.</p>

7.0 Signage

Code	PDD
<p>The number of permanent on-premises freestanding signs is limited to one per street frontage. The following are not counted in that limitation:</p> <ul style="list-style-type: none">a) Directional signs up to 12 square feet in area, provided the number of these signs does not exceed the number of driveways; andb) Subdivision identification signs in accordance with this section.	<p>Joint-tenancy signs and off-premise signs will be allowed within this project due to the project's size and the nature of the Barnes Drive extension bisecting the project. Signage along IH-35 and McCarty Lane will be necessary for users within the entire project, especially those users occupying the commercial in-line space at the rear of property. The unified signage plan will be considered a variance to the current Land Development Code. This signage plan will not control the logos, sign-faces, etc., but will provide maximum sign area square footages, heights and number of signs allowed within the project.</p> <ul style="list-style-type: none">a) Billboards will not be allowed;b) Joint tenancy signs are the property of the Owner and/or "Operator" designated in the O.E.A. which is responsible for maintenance and compliance with this code;c) No signage permanent or temporary, not addressed here-in, will be allowed;

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	<p>d) All sign permits will be submitted in accordance with the sign package here-in and the approved O.E.A.;</p> <p>e) Notwithstanding anything herein to the contrary, the Owner of any single-tenant building containing more than 100,000 square feet will not be required to submit its signage plans to the Operator under the O.E.A., but rather, such Owner shall only be required to submit such signage plans to the City of San Marcos for approval. All signage within the StoneCreek project must adhere to the sign regulations below. Review by the City of San Marcos will be based upon the approved PDD and the signage requirements herein.</p>
<p>Sign Standards: Maximum height along IH 35: 42.5 feet Height along other roadways: 25 feet Height for monument signs: 7 feet</p> <p>Sign area along IH 35: 260 sq. ft. Sign area along other roadways: 120 sq. ft. Sign area for monument signs: 80 sq. ft.</p> <p>A multiple-occupancy premises may have a sign having an area up to:</p> <ul style="list-style-type: none">a) 80 square feet, plus 20 square feet per tenant advertised on the sign, or 260 square feet, whichever is greater, when located in the highway corridor; orb) 50 square feet, plus 10 square feet per tenant advertised on the sign, or 160 square feet, whichever is greater in all other locations.c) Each tenant may have a different size sign; each sign does not have to be the same size.	<p>Sign Standards: (A) 1 Joint-use (up to 4 tenants), monument sign on McCarty Lane Height: 7 ft. Sign Area: 33 total sq. ft.</p> <p>(B) 5 Joint-use (2 tenants), monument signs (4 along IH-35 and 1 on McCarty Lane) Height: 7 ft. Sign Area: 32 total sq. ft.</p> <p>(C) 1 Joint-use, monument wall sign (up to 8 tenants) on IH-35 Height: 7 ft. Sign Area: 200 total sq. ft.</p> <p>(D) 1 Single-tenant, monument sign Height: 7 ft. Sign Area: 16 total sq. ft.</p> <p>(E) 3 Joint-use, pylon signs on IH-35 Height: 40 ft. Sign Area: 252 total sq. ft.</p>

8.0 Environmental Protection

Code	PDD
City of San Marcos water quality standards require detention of the 2-year storm event with pollutant removal efficiencies of approximately 70%	The proposed wet pond system will remove approximately 90% of the on-site pollutant load

9.0 Lighting

City Council Approval: March 20, 2007

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City Council Amendment Approval:

Zoning ordinance no.

Code			PDD														
<u>General Site Lighting:</u> After hours lighting shall begin no later than one-half hour after closing to the public or closing of normal operations.			<u>General Site Lighting:</u> Site lighting shall be maintained until ½ hour after closing or until 10:00 p.m. which ever is later. After this time, lighting shall be reduced to half of the maximum level. In addition, areas designated on site plans for employee parking may be maintained at full levels of illumination for 1 1/2 hours after closing and shall be reduced to half the maximum level thereafter. Security lighting, attached to a building for illumination of doors, exits, docks, service areas and limited portions of a store fronts, may be operated from dusk until dawn at levels adequate for safe ingress/ egress and to maintain surveillance, by either patrol or camera, of the premises.														
<u>Overall Operational Lighting Levels:</u> <table><tr><th>Environmental Performance Zones/Specific Use or Facility</th><th>Description</th><th>Maximum Light Level Average in Horizontal Foot Candle</th></tr><tr><td>E-1</td><td>Urbanized, non residential areas along Interstate Highways</td><td>2.0</td></tr><tr><td>E-4</td><td>Designated open space</td><td>.5</td></tr><tr><td rowspan="2">Bank or service window – drive-thru</td><td>Lighting for maneuvering, ordering or preparing for a transaction</td><td>2.0</td></tr><tr><td>Lighting for transacting a purchase or exchange.</td><td>5.0</td></tr></table>			Environmental Performance Zones/Specific Use or Facility	Description	Maximum Light Level Average in Horizontal Foot Candle	E-1	Urbanized, non residential areas along Interstate Highways	2.0	E-4	Designated open space	.5	Bank or service window – drive-thru	Lighting for maneuvering, ordering or preparing for a transaction	2.0	Lighting for transacting a purchase or exchange.	5.0	<u>Overall Operational Lighting Levels:</u> West of Barnes Drive, exclusive of MU: Light poles within this lot will be no higher than 35 feet above finish grade. Light sources will be hooded luminaries, thus reducing disability glare and consequent interference. This lot will be lit with an overall average light intensity of 3 foot candles. East of Barnes Drive and Mixed-use Tract: Light poles within these lots will be no higher than 25 feet above finish grade. An average light intensity of 2 foot candles will apply.
Environmental Performance Zones/Specific Use or Facility	Description	Maximum Light Level Average in Horizontal Foot Candle															
E-1	Urbanized, non residential areas along Interstate Highways	2.0															
E-4	Designated open space	.5															
Bank or service window – drive-thru	Lighting for maneuvering, ordering or preparing for a transaction	2.0															
	Lighting for transacting a purchase or exchange.	5.0															
<u>Pedestrian Lighting:</u>			<u>Pedestrian Lighting:</u> Pedestrian lighting references those areas along building fronts, plazas, outdoor dining areas, boulevards, and areas where a smaller scale light is appropriate. Subject to compliance with the requirements of Section 9.1 hereof, the pedestrian site lighting will be accomplished in the														

City Council Approval: March 20, 2007

Zoning ordinance no. 2007-18

Administrative Amendment Approval: July 17, 2007

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	forementioned areas with fixtures mounted no higher than 16 feet above grade and metal halide lamps of no more than 175 W. Pedestrian lighting will be I.E.S. Cut Off Classification. The total average of all lights pedestrian freestanding, wall mounted, under canopy and parking lot lighting should be no more than the intensities addressed in 9.1. of this Agreement.
--	--

10.0 Impervious Cover

Code	PDD
GC: 80% MU: 60%	Impervious cover will be calculated across the entire site and will not exceed 75%. Impervious cover calculations will be kept on a project-wide basis at the responsibility of the Developer and/or Owner and will be included in the site development permit plans.

11.0 Phasing

Code	PDD
	<p>The first phase of project development will, at a minimum, include the construction of all major infrastructure, i.e. the Barnes Drive extension, the public road south of the channel, public utilities south of the channel, drainage channel and water quality ponds.</p> <p>A project phasing plan will be submitted for approval prior to any final platting or site preparation permit to allow for both flexibility in completion and compliance with all aspects of this PDD and applicable provisions of the Code.</p>

12.0 Platting

Code	PDD
Irregularly shaped lots shall have sufficient width at the building line to meet lot width frontage requirements of the appropriate zoning district (non-residential lots shall have a minimum 50 feet of frontage), and shall provide a reasonable building pad without encroachment into front, side or rear yard setbacks or into any type of easement. Also the rear width shall be sufficient to provide access for all necessary utilities, including access for driveways and solid waste collection when	<p>Irregular lot configurations are permitted to accommodate parking for each lot. It is understood this may limit certain uses on lots.</p> <p>Three-to-one lot ratio regulations will not apply to lots west of Barnes Drive.</p> <p>Up to 2 flag lots may be allowed as an exception to platting standards on GC zoned lots west of Barnes drive. This exception will be approved</p>

City Council Approval: March 20, 2007

Zoning ordinance no. 2007-18

Administrative Amendment Approval: July 17, 2007

City Council Amendment Approval:

Zoning ordinance no.

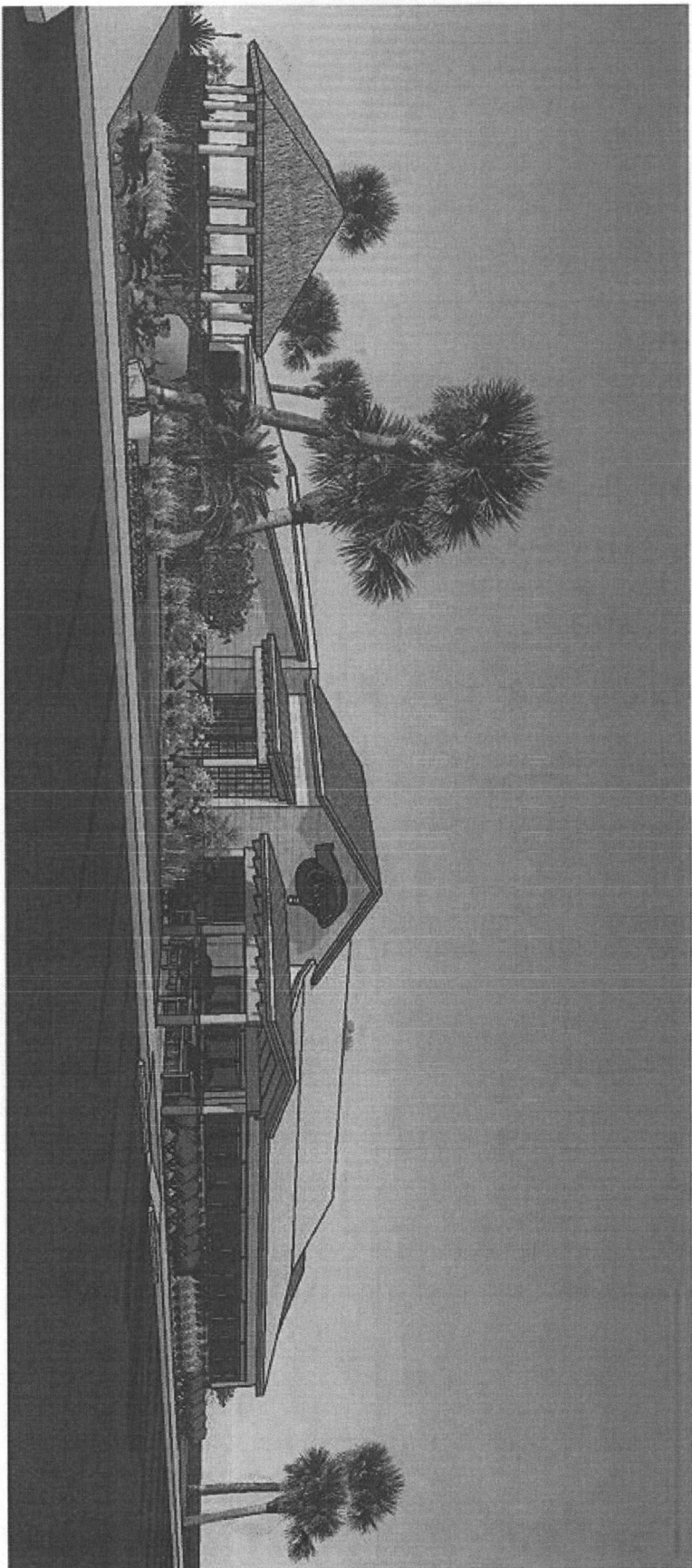
alleys are present (minimum 20-foot alley frontage).	administratively as part of subsequent platting to accommodate a major user, such as a theater..
In general, triangular, severely elongated (in excess of a 3 to 1 length to width ratio) or tapered, or flag lots shall not be permitted.	
Defers to Development Standards in 2.3 above.	Side setbacks do not apply to GC zoned lots west of Barnes Drive, exclusive of individual pad lots.

EXHIBIT 5

The following architectural renderings will be **added** to the current architectural renderings for the entire site.

STONE CREEK CROSSING - SAN MARCOS, TX

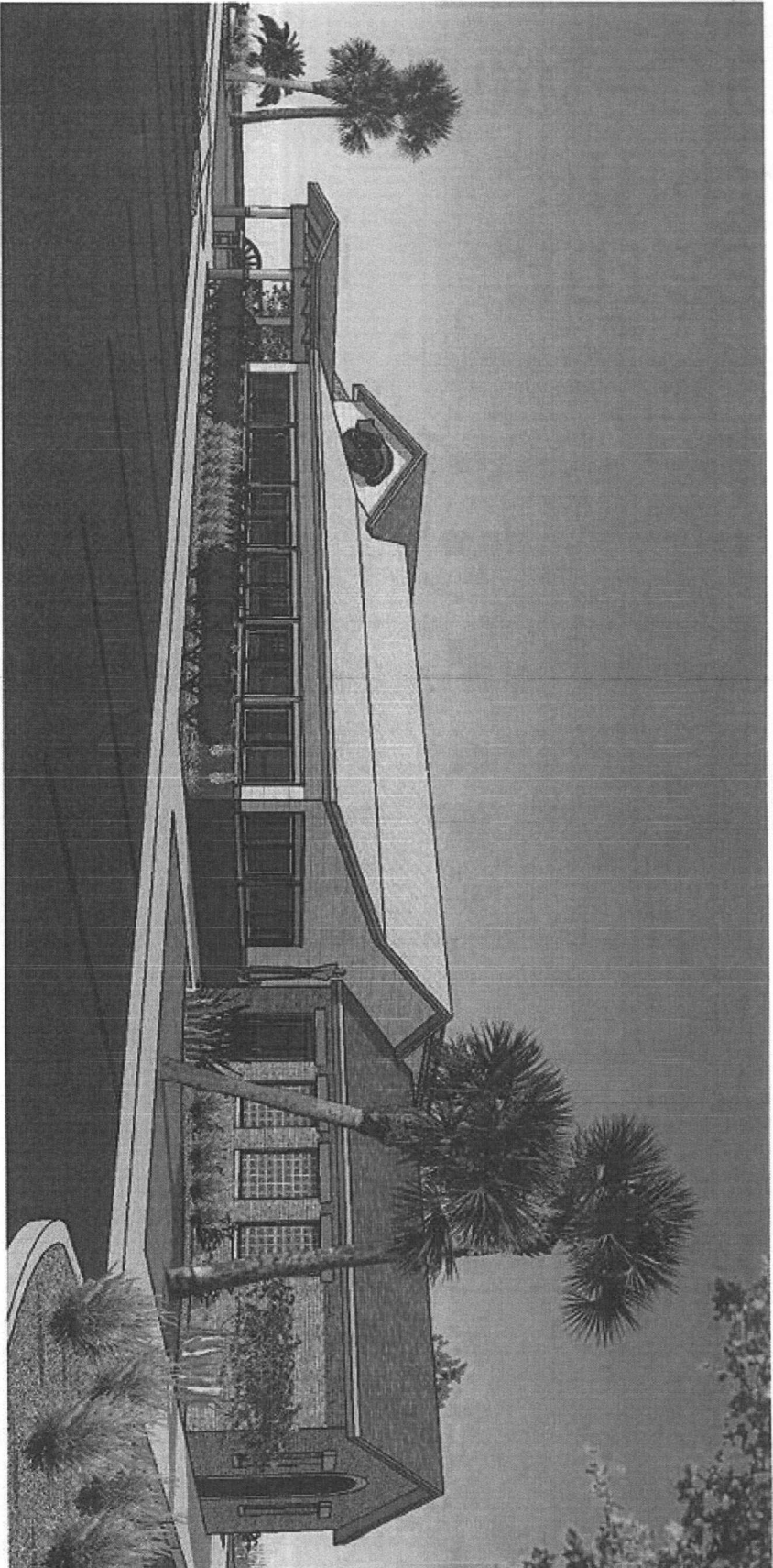
OCT 13, 2008



VIEW FROM EAST

PARKWAY
CONSTRUCTION
& ASSOCIATES
GENERAL CONTRACTOR
ARCHITECTURE

Chapman
MEXICAN FOODS



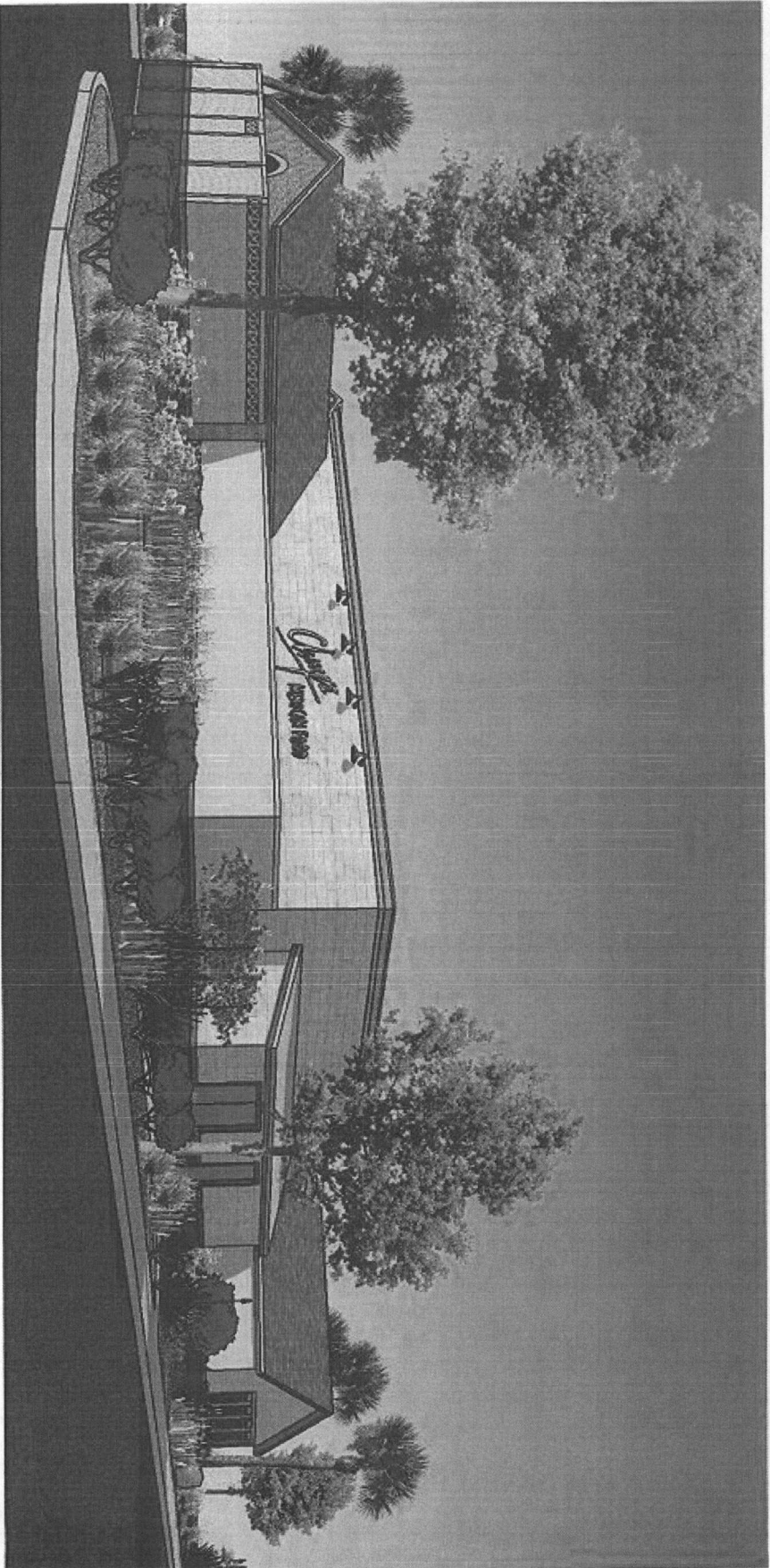
VIEW FROM NORTH

PARKWAY
CONSTRUCTION
& ASSOCIATES
GENERAL CONTRACTOR
ARCHITECTURE

Chaupe
MORGAN ROAD

STONE CREEK CROSSING - SAN MARCOS, TX

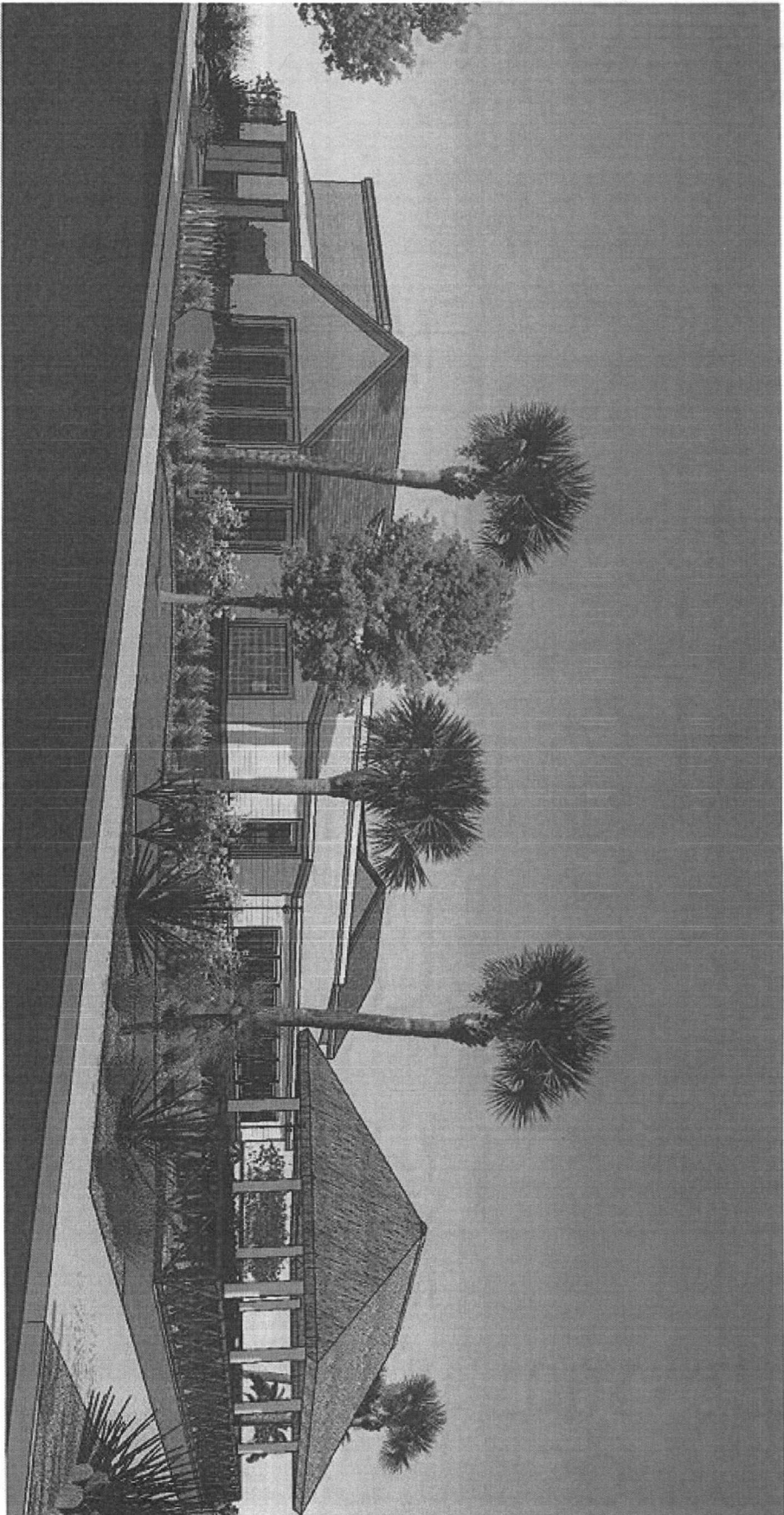
OCT 13, 2008



VIEW FROM WEST

PARKWAY
CONSTRUCTION
& ASSOCIATES
GENERAL CONTRACTOR
ARCHITECTURE

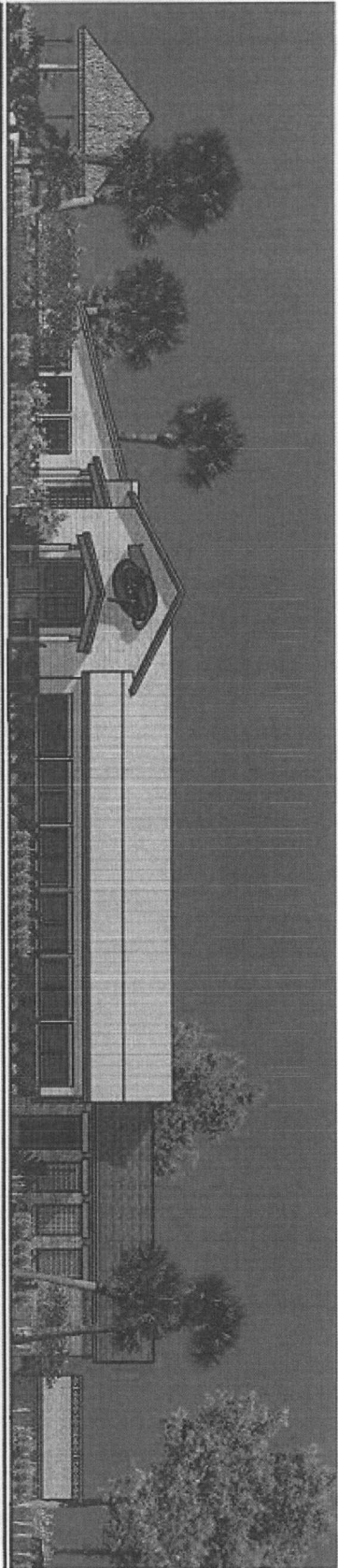
Chapelle
MANAGEMENT



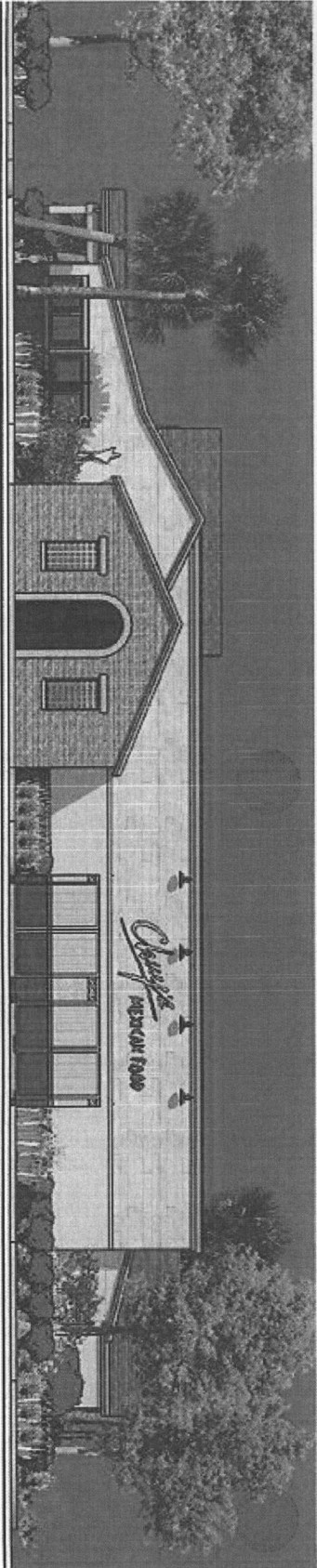
VIEW FROM SOUTH

PARKWAY
CONSTRUCTION
& ASSOCIATES
GENERAL CONTRACTOR
ARCHITECTURE

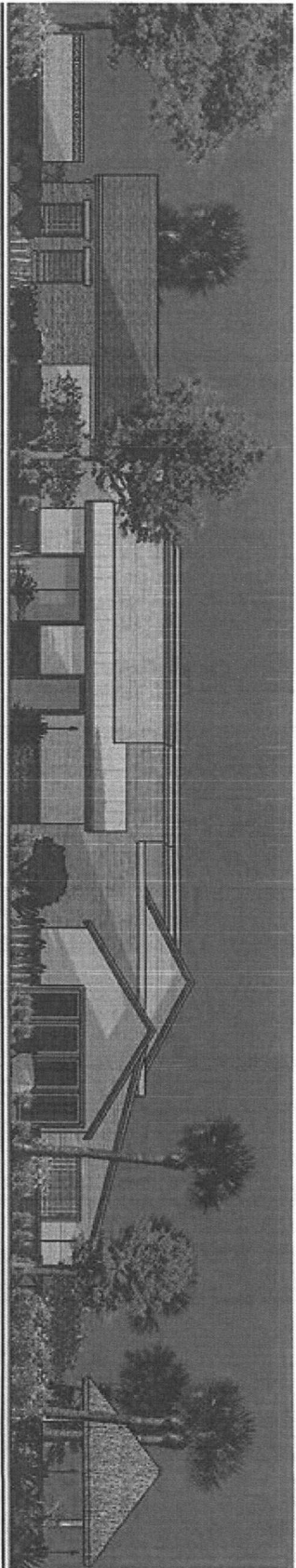
Chaupe
MEXICAN FOOD



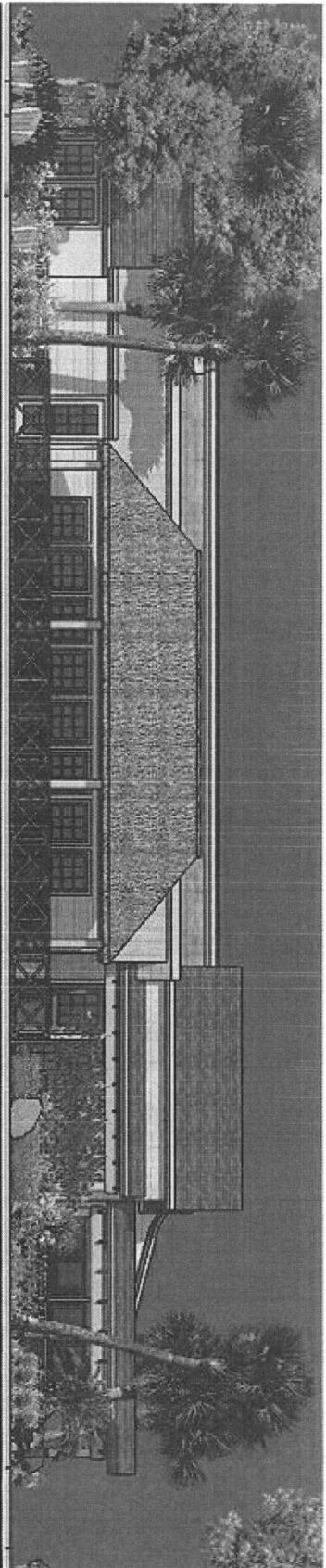
NORTHEAST ELEVATION



NORTHWEST ELEVATION

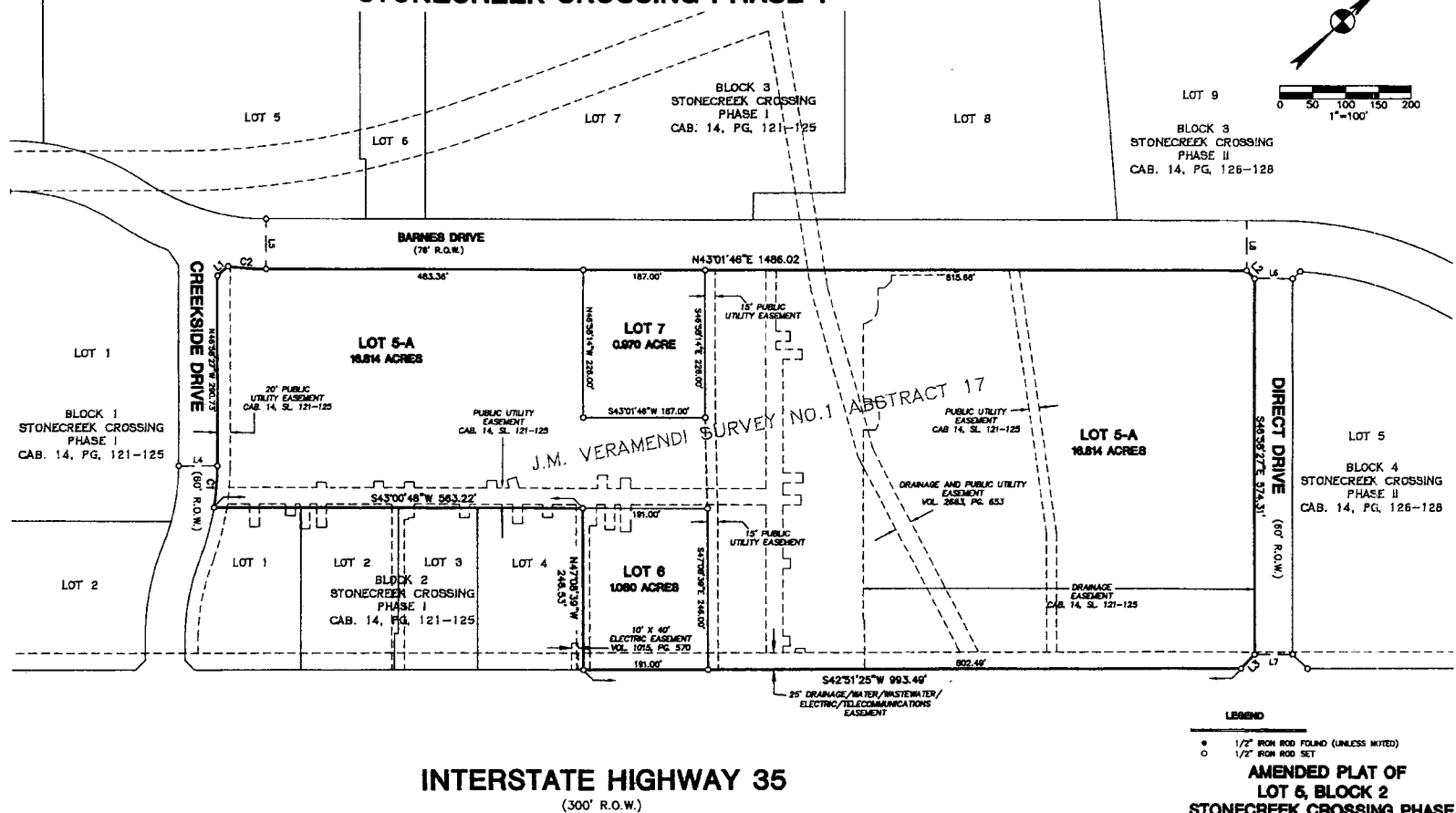


SOUTHWEST ELEVATION



SOUTHEAST ELEVATION

AMENDED PLAT OF LOT 5, BLOCK 2 STONECREEK CROSSING PHASE 1



LEGEND

- 1/2" IRON ROD FOUND (UNLESS NOTED)
- 1/2" IRON ROD SET

AMENDED PLAT OF
LOT 5, BLOCK 2
STONECREEK CROSSING PHASE 1
A 3 LOT SUBDIVISION
CONSISTING OF 18.864 ACRES

DATE: OCTOBER 2007
PREPARED BY:

b Bury+Partners
ENGINEERING SOLUTIONS

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Tel. (512)328-0011 Fax (512)328-0025
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Drawn by: ACD Approved by: ACD Project No.: 1628-02.20 File: H:\1628\02\162802PL1.dwg

AMENDED PLAT OF LOT 5, BLOCK 2 STONECREEK CROSSING PHASE 1

STATE OF TEXAS X
COUNTY OF HAYS X

KNOW ALL MEN BY THESE PRESENTS X
STONE CREEK CROSSING, L.P., A DELAWARE LIMITED PARTNERSHIP, ACTING BY AND THROUGH ITS GENERAL PARTNER STONE CREEK CROSSING GP, L.L.C., A DELAWARE LIMITED LIABILITY COMPANY, ACTING BY AND THROUGH JON ANDRUS, ITS VICE PRESIDENT, OWNER OF THAT CERTAIN TRACT OF LAND OUT OF THE J.M. VERAMENDO LEASAGE NO. 1, ABSTRACT NO. 17, SITUATED IN THE CITY OF SAN MARCOS, HAYS COUNTY, TEXAS, KNOWN AS LOT 5, BLOCK 2, STONECREEK CROSSING PHASE 1, A SUBDIVISION OF RECORD IN CABINET 14, SLIDES 121-123 OF THE PLAT RECORDS OF HAYS COUNTY, TEXAS DO HEREBY SUBDIVIDE SAID TRACTS OF LAND IN ACCORDANCE WITH THE ATTACHED PLAT TO BE KNOWN AS "AMENDED PLAT LOT 5, BLOCK 2 STONECREEK CROSSING PHASE 1", AND DO HEREBY DEDICATE TO THE PUBLIC THE USE OF THE STREETS AND EASEMENTS HEREON, SUBJECT TO ANY EASEMENTS PREVIOUSLY GRANTED BUT NOT RELEASED.

STONE CREEK CROSSING, L.P.,
A DELAWARE LIMITED PARTNERSHIP
BY: STONE CREEK CROSSING GP, L.L.C.,
A DELAWARE LIMITED LIABILITY COMPANY,
ITS GENERAL PARTNER

BY: JON ANDRUS, VICE PRESIDENT
301 CONGRESS, SUITE 220
AUSTIN, TX 78701

STATE OF TEXAS X
COUNTY OF HAYS X

BEFORE ME, THE UNDERSIGNED AUTHORITY, A NOTARY PUBLIC, ON THIS DAY PERSONALLY APPEARED JON ANDRUS, KNOWN TO ME (OR PROVED TO ME ON THE OATH OF OR THROUGH DRIVER'S LICENSE), TO BE THE PERSON AND OFFICER WHOSE NAME IS SUBSCRIBED TO THE FOREGOING INSTRUMENT AND ACKNOWLEDGED TO ME THAT THE SAME WAS THE ACT OF SAID STONE CREEK CROSSING GP, L.L.C., A DELAWARE LIMITED LIABILITY COMPANY, AS THE GENERAL PARTNER OF STONE CREEK CROSSING, L.P., A DELAWARE LIMITED PARTNERSHIP, AND THAT HE EXECUTED THE SAME AS THE ACT OF SUCH LIMITED LIABILITY COMPANY ACTING ON BEHALF OF SUCH LIMITED PARTNERSHIP FOR THE PURPOSES AND CONSIDERATION THEREIN EXPRESSED AND IN THE CAPACITIES THEREIN STATED.

GIVEN UNDER MY HAND AND SEAL OF OFFICE, THIS THE 12 DAY of November 2007.

Christina Jimenez
NOTARY PUBLIC
IN AND FOR THE STATE OF TEXAS

5-9-11
MY COMMISSION EXPIRES



ENGINEER'S CERTIFICATION:

I, CHARLES E. FOWLER JR., AM AUTHORIZED UNDER THE LAWS OF THE STATE OF TEXAS TO PRACTICE THE PROFESSION OF ENGINEERING, AND HEREBY CERTIFY THAT THIS PLAT IS FEASIBLE FROM AN ENGINEERING STANDPOINT, AND IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE.

Charles E. Fowler Jr.
CHARLES E. FOWLER JR., P.E.
TEXAS REGISTRATION NO. 85452
BURY & PARTNERS, INC.
221 WEST SIXTH STREET, SUITE 600
AUSTIN, TEXAS 78701

11-12-2007
DATE



SURVEYOR'S CERTIFICATION:

I, ABRAHAM C. DASHMER, AM AUTHORIZED UNDER THE LAWS OF THE STATE OF TEXAS TO PRACTICE THE PROFESSION OF LAND SURVEYING, AND HEREBY CERTIFY THAT THIS PLAT WAS PREPARED FROM AN ACTUAL ON THE GROUND SURVEY OF THE PROPERTY MADE UNDER MY SUPERVISION, AND IS TRUE AND CORRECT TO THE BEST OF MY ABILITIES AND THAT BOUNDARY MONUMENTS WERE PROPERLY PLACED UNDER MY SUPERVISION.

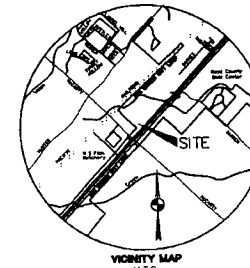
Abraham C. Dashmer
ABRAHAM C. DASHMER, R.P.L.S.
TEXAS REGISTRATION NO. 5901
BURY & PARTNERS, INC.
221 WEST SIXTH STREET, SUITE 600
AUSTIN, TEXAS 78701

11-12-07
DATE



GENERAL NOTES:

1. THE BASIS OF BEARINGS SHOWN HEREON IS THE TEXAS COORDINATE SYSTEM, NAD 83(03), CENTRAL ZONE, UTILIZING LORA PROVIDED CONTROL MONUMENTS A-866, A-670, A2-88, AND SIA2.
2. THE TRACT SHOWN HEREON LIES WITHIN ZONE "A" (AREAS INUNDATED BY 100-YEAR FLOOD), ZONE "B" (AREAS OF 500-YEAR FLOOD), AREAS OF 100-YEAR FLOOD WITH AVERAGE DEPTHS OF LESS THAN 1 FOOT OR WITH DRAINAGE AREAS LESS THAN 1 SQUARE MILE; AND AREAS PROTECTED BY LEVEES FROM 100-YEAR FLOOD), AND ZONE "C" (AREAS DETERMINED TO BE OUTSIDE 500-YEAR FLOODPLAIN), AS IDENTIFIED BY THE FEDERAL EMERGENCY MANAGEMENT AGENCY, FEDERAL INSURANCE ADMINISTRATION, AS SHOWN ON MAPS NO. 465000478 F, 465000477 F, 465000478 F, AND 465000479 F, DATED SEPTEMBER 2, 2006, FOR HAYS COUNTY, TEXAS AND INCORPORATED AREAS.
3. SIDEWALKS ARE REQUIRED ALONG ALL RIGHTS-OF-WAY IN THIS SUBDIVISION, AND SHALL BE INSTALLED AT THE TIME OF CONSTRUCTION.
4. ALL PRIVATE EASEMENTS WILL BE ABANDONED BY THIS PLAT.
5. THE EXTENSION OF BARNES DRIVE IS THE RESPONSIBILITY OF THE DEVELOPER/OWNER.
6. AN OPERATION AND EASEMENT AGREEMENT MUST BE EXECUTED ESTABLISHING RESPONSIBILITY FOR MAINTENANCE OF JOINT TENANT SIGNS, DRAINAGE, AND COMMON AREAS.
7. ALL ACCESS SHOULD BE PERMITTED AND IN ACCORDANCE WITH TxDOT ACCESS MANAGEMENT REQUIREMENTS.
8. THE LOCATION OF THE ACCESS POINTS TO IH-35 FRONTAGE MUST BE APPROVED BY TxDOT.
9. THE FOLLOWING EASEMENTS WILL BE VACATED ONCE THE PUBLIC WATER AND WASTEWATER IMPROVEMENTS FOR THE STONECREEK SUBDIVISION HAVE BEEN ACCEPTED BY THE CITY OF SAN MARCOS: VOL. 2853, PG. 653; VOL. 2367, PG. 477; VOL. 1472, PG. 585.
10. ALL LOTS IN THIS SUBDIVISION WILL HAVE SHARED ACCESS.
11. ALL LOTS WITHIN THIS SUBDIVISION MUST COMPLY WITH THE DEVELOPMENT STANDARDS SET FORTH IN THE STONECREEK PLANNED DEVELOPMENT DISTRICT AS APPROVED BY THE SAN MARCOS CITY COUNCIL, ON MARCH 20, 2007.



VICINITY MAP
N.T.S.

CURVE TABLE				
NO.	RADIUS	DELTA	ARC	CHORD
C1	325.00'	171° 46'	63.06'	145° 21' 21" W 53.79'
C2	414.00'	87° 09' 24"	158.96'	146° 20' 53" E 108.81'

LINE TABLE		
NO.	BEARING	DISTANCE
1	N02°41'44"E	22.00'
2	N88°01'10"E	17.00'
3	S62°09'27"E	20.18'
4	S42°01'01"E	60.00'
5	N48°28'15"E	78.00'
6	N43°01'02"E	60.00'
7	N52°25'12"E	60.00'
8	N48°56'14"E	78.00'

CECIL PENNINGTON
DIRECTOR OF PLANNING
CITY OF SAN MARCOS, TEXAS

Francis Serina
FRANCIS SERINA
RECORDING SECRETARY
CITY OF SAN MARCOS, TEXAS

STATE OF TEXAS X
COUNTY OF HAYS X

I, LINDA FRITSCHKE, COUNTY CLERK OF HAYS COUNTY, TEXAS, CERTIFY THAT THIS PLAT WAS FILED FOR RECORD IN MY OFFICE ON NOV. 14, 2007 AT 8:40 O'CLOCK P.M. AND RECORDED ON NOV. 14, 2007 AT 2:40 O'CLOCK P.M. IN THE PLAT RECORDS OF HAYS COUNTY, TEXAS IN BOOK 14 AT PAGE 152-157.

Linda Fritschke by: Alisha Huggins
LINDA FRITSCHKE
COUNTY CLERK
HAYS COUNTY, TEXAS

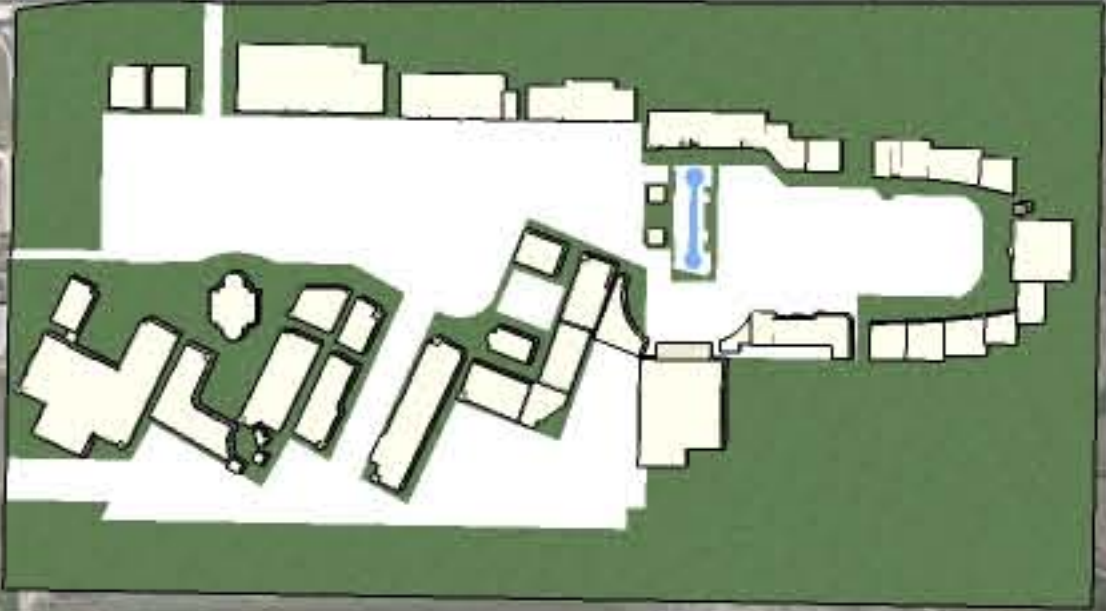


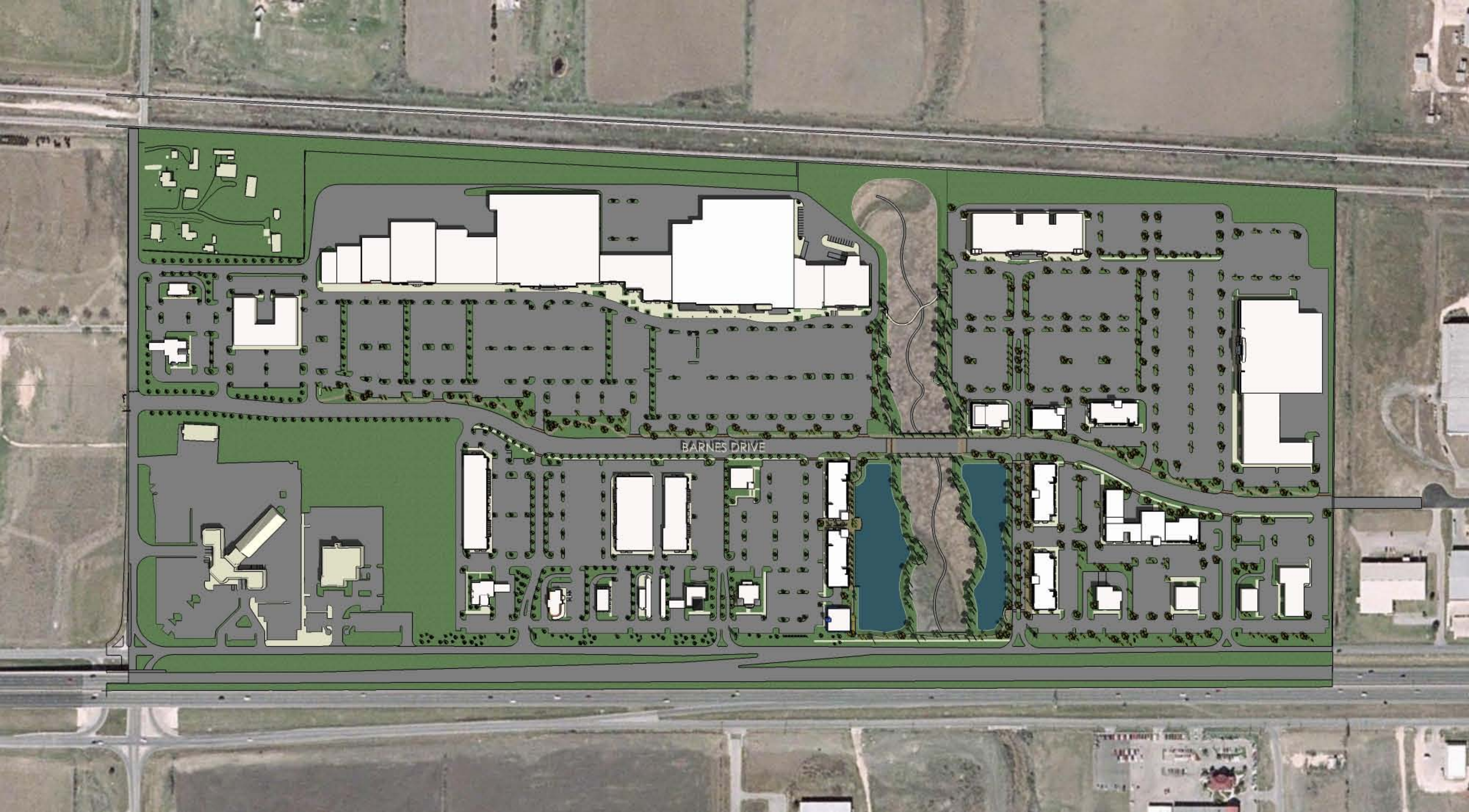
AMENDED PLAT OF LOT 5, BLOCK 2 STONECREEK CROSSING PHASE 1

A 3 LOT SUBDIVISION
CONSISTING OF 18.864 ACRES

DATE: OCTOBER 2007
PREPARED BY:

Bury & Partners
ENGINEERING SOLUTIONS
221 West Sixth Street, Suite 600, Austin Texas 78701
Tel: (512)328-9011 Fax: (512)328-8225
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JCPenney

JCPenney



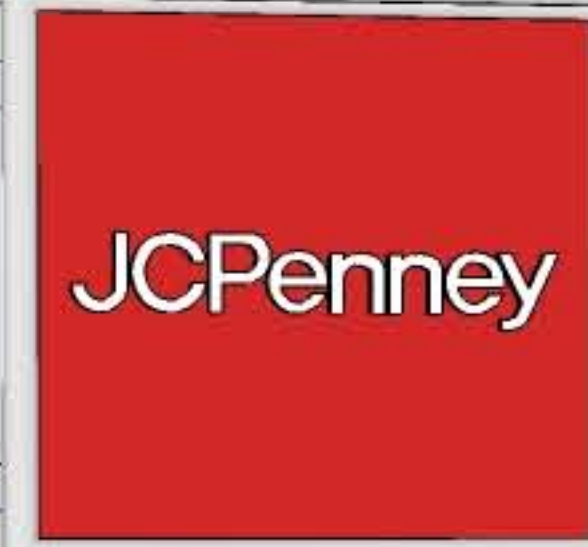




STONECREEK
CROSSING



TARGET



JCPenney



Steak 'n Shake

Bank of America

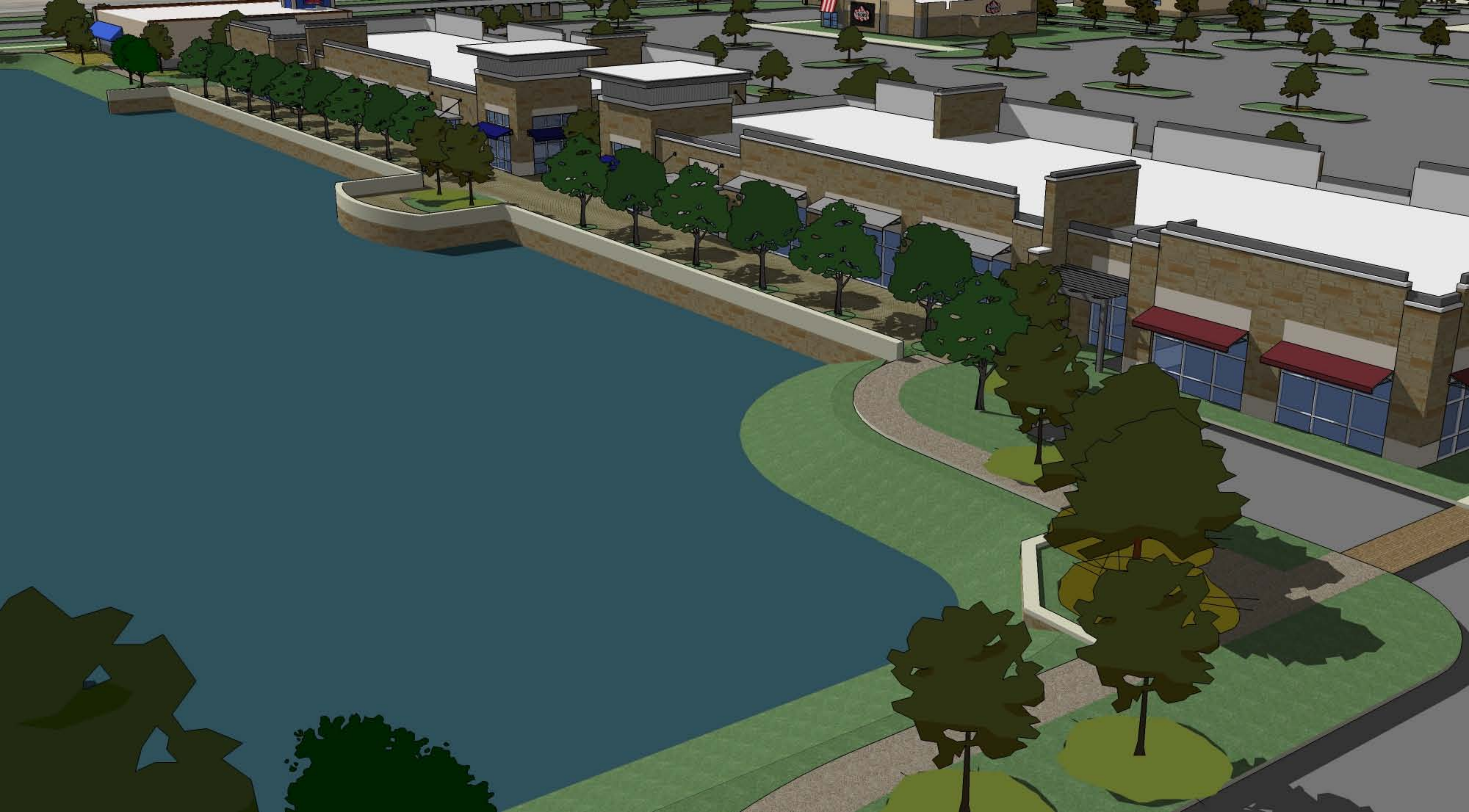


























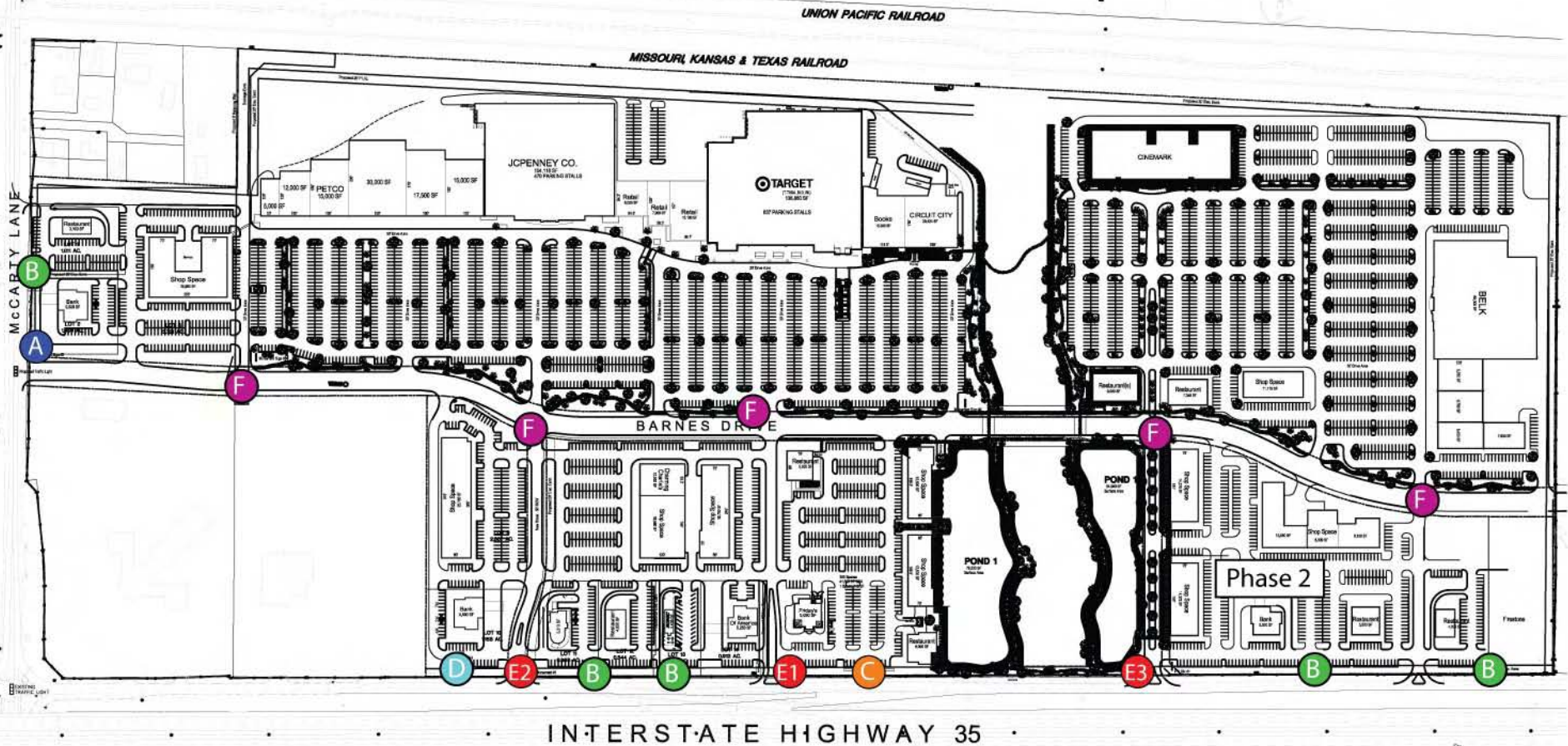




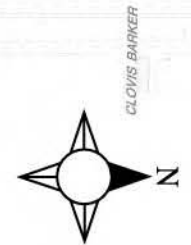
ION ART

407 A-100 RADAM AUSTIN TEXAS 78745 512.326.9333

ionart@ionart.com / www.ionart.com



- A** Four Tenant Monument Sign
- B** Two Tenant Monument Sign
- C** Eight Tenant Wall Sign
- D** Single Tenant Berm Sign
- E** Pylon Sign
- F** Wayfinding Sign

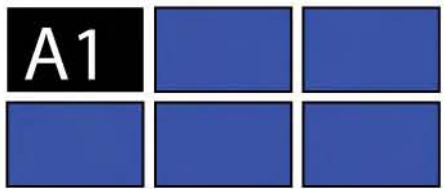
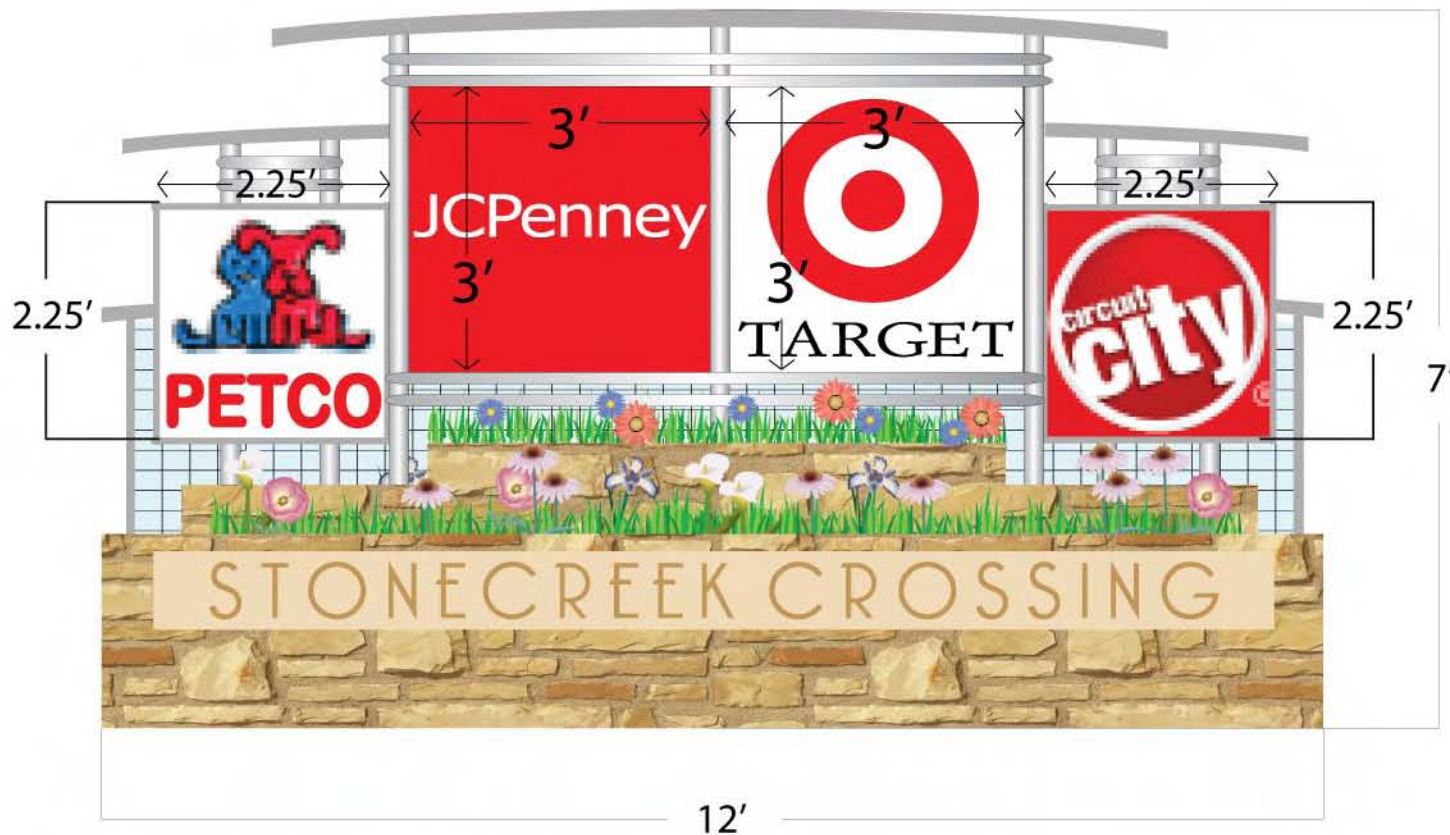


CLIENT/PROJECT: Direct Development/ StoneCreek Crossing

DATE: 01.09.07

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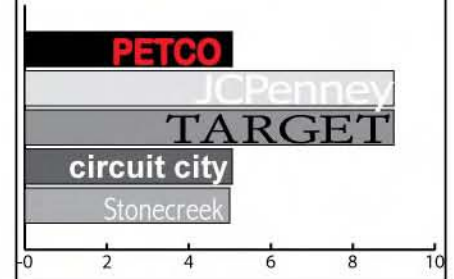
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Description

1 Joint-use (up to 4 tenants),
monument sign on McCarty
Lane
Height: 7 ft.
Sign Area: 33 total sq.ft.

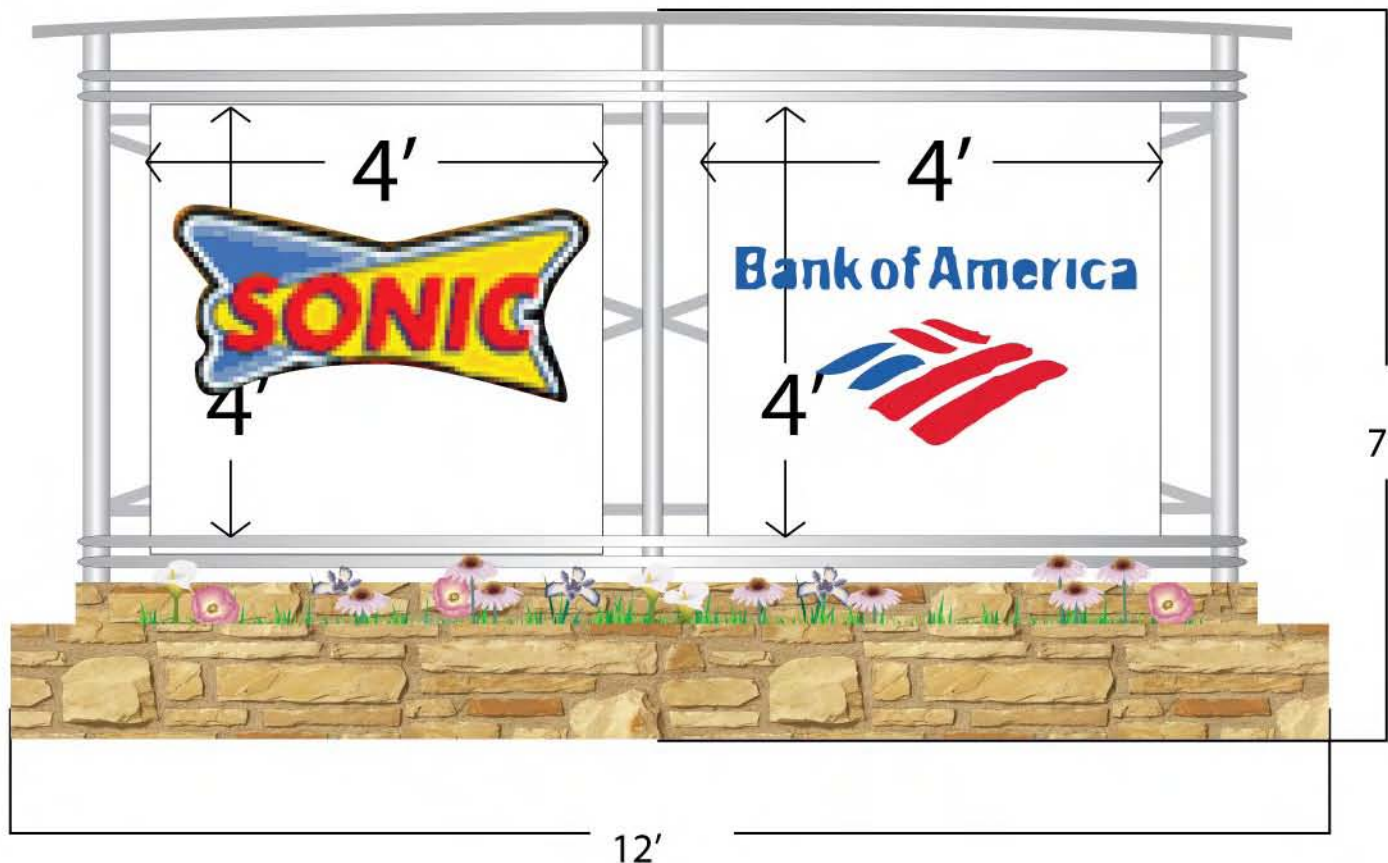
Stone planter with sand
blasted rock base
Aluminum frame sign
cabinets illuminated with
florescent lamps.
Acrylic faces with digital vinyl
prints. Steel and aluminum
accent structure



CLIENT/PROJECT: Direct Development/ StoneCreek Crossing
DATE: 01.12.07

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B1	B2	B3
B4	B5	

Description:

5 Joint-use (2 tenants)
monument signs (4 along
IH-35 and 1 on McCarty Lane)

Height: 7 ft.

Sign Area: 32 total sq.ft.

Stone planter base

Aluminum frame sign cabi-
nets Illuminated with florecent
lamps. Acrylic faces with
digital vinyl prints.

Steel and aluminum accent
structure



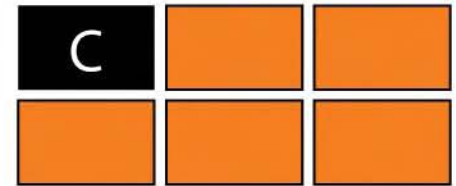
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CLIENT/PROJECT: Direct Development/ StoneCreek Crossing

DATE: 01.12.07

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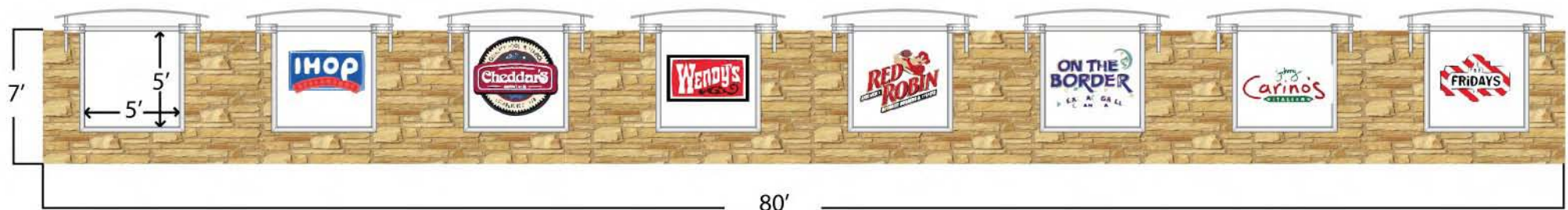
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Description:
 1 Joint-use, monument wall sign (up to 8 tenants) on IH-35
 Height: 7 ft.
 Sign Area: 125 total sq. ft.

Tenant
IHOP
RED ROBIN
CHEDDARS
RED ROBIN
WENDY'S
JOHNNY CARINO'S
TGI FRIDAY'S

7ft x 80ft rock wall
 with aluminum tube framed
 5'x5'
 aluminum frame cabinet with
 acrylic face for printed vinyl
 application lit with florecents
 or vaccum form face can be
 slid in front panel



CLIENT/PROJECT: Direct Development/ StoneCreek Crossing
 DATE: 01.12.07

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D1

Description:

1 Single-tenant, monument sign

Height: 7 ft.

Sign Area: 16 total sq. ft.

Stone base

Aluminum frame sign cabinets illuminated with fluorescent lamps. Acrylic faces with digital vinyl prints.

Steel and aluminum accent structure

CLIENT/PROJECT: Direct Development/ StoneCreek Crossing

DATE: 01.12.07

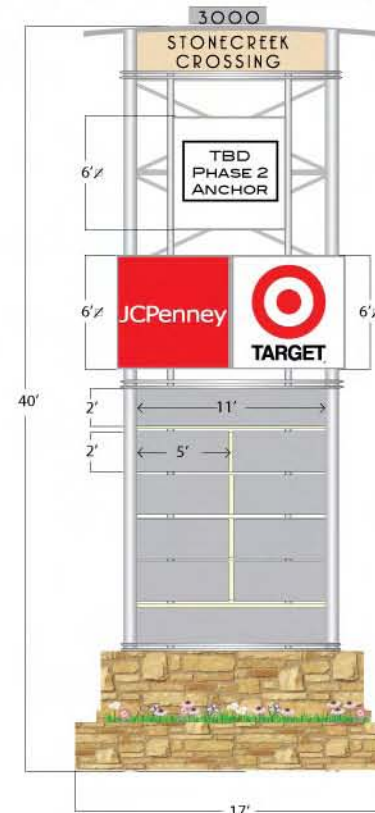
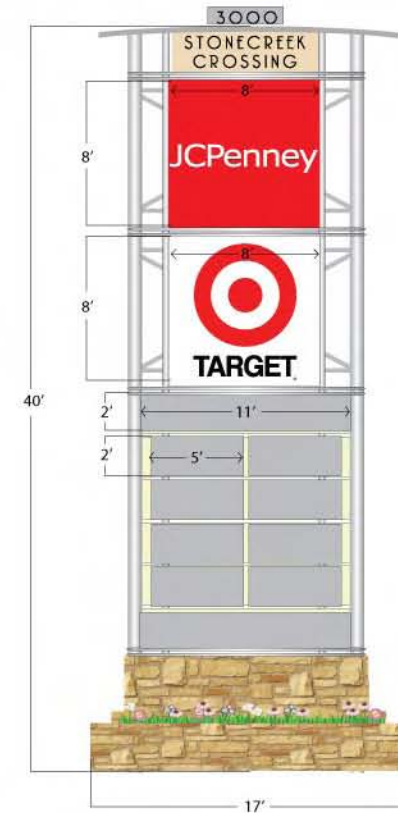
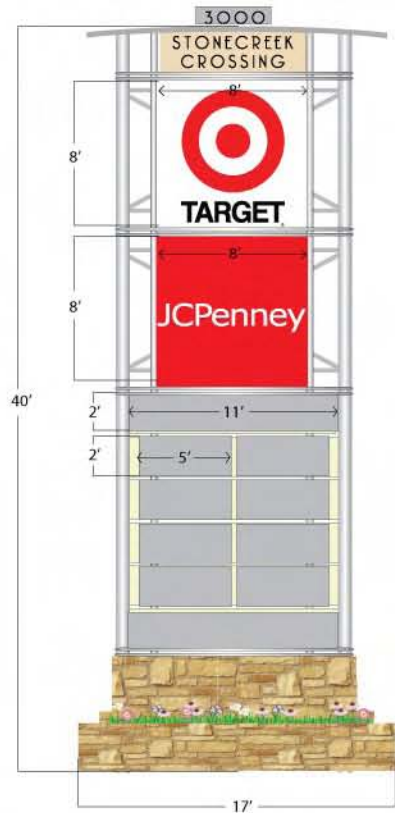
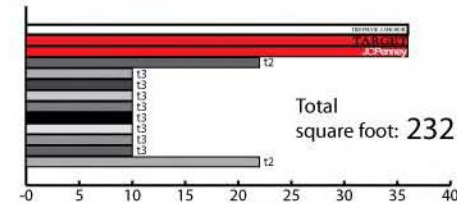
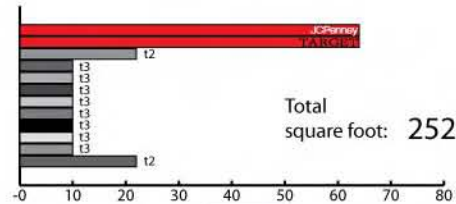
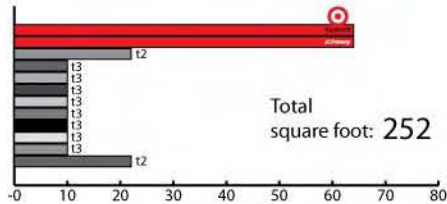
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Description: 3 Joint-use, pylon signs on
IH-35
Height: 40 ft.

E1 & E2
2 - 8'x8' Anchor Tenants
fabricated aluminum sign
cabinet with panaflex face
2 - 11'x2' Secondary Tenants

fabricated aluminum sign
cabinet with acrylic faces
8 - 5'x2' Tertiary Tenants
fabricated aluminum sign
cabinet with acrylic faces



Description continued:

E3
3 - 6'x6' Anchor Tenants (t1)
fabricated aluminum sign
cabinet with Vacuum Form
faces with printed vinyl

2 - 10'x2' Secondary Tenants
(t2) fabricated aluminum sign
cabinet with acrylic faces

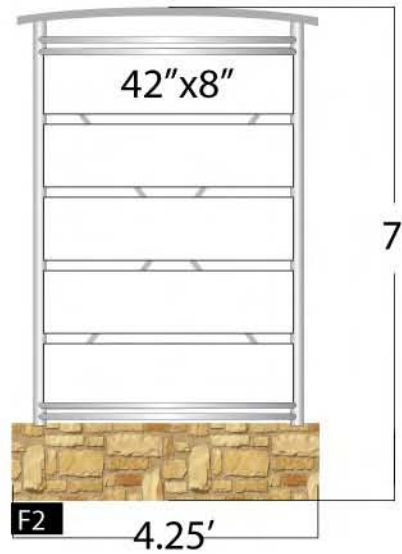
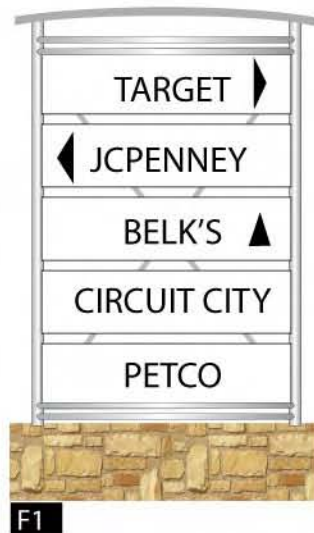
8 - 4.5'x2' Tertiary Tenants (t3)
fabricated aluminum sign
cabinet with acrylic fa

CLIENT/PROJECT: Direct Development/ StoneCreek Crossing

DATE: 01.12.07

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*tenant placement and direction is not final

F1	F2	F3
F4	F5	

Description:

5 Joint-use, wayfinding signs
along Barnes Drive

Height: 7 ft.

Sign Area: 12 total sq. ft.

stone base



Acrylic faces with digital vinyl
prints. Aluminum and Steel
accent structure.

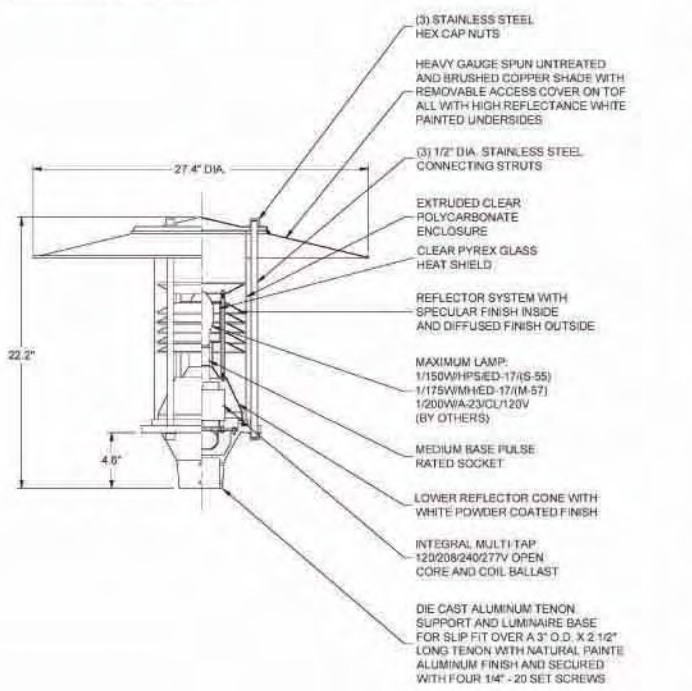
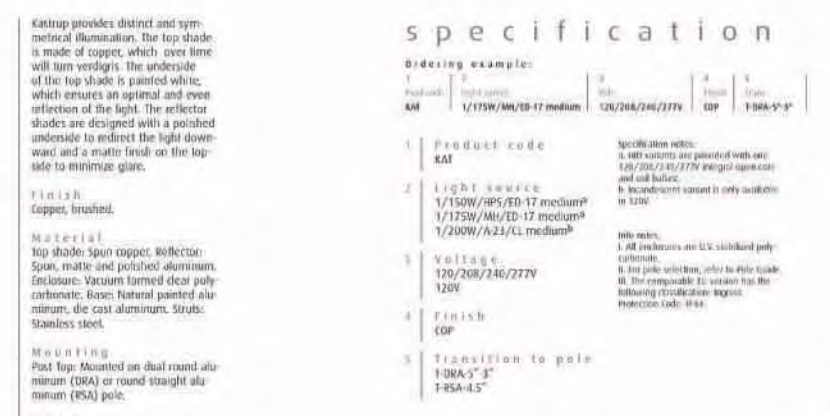
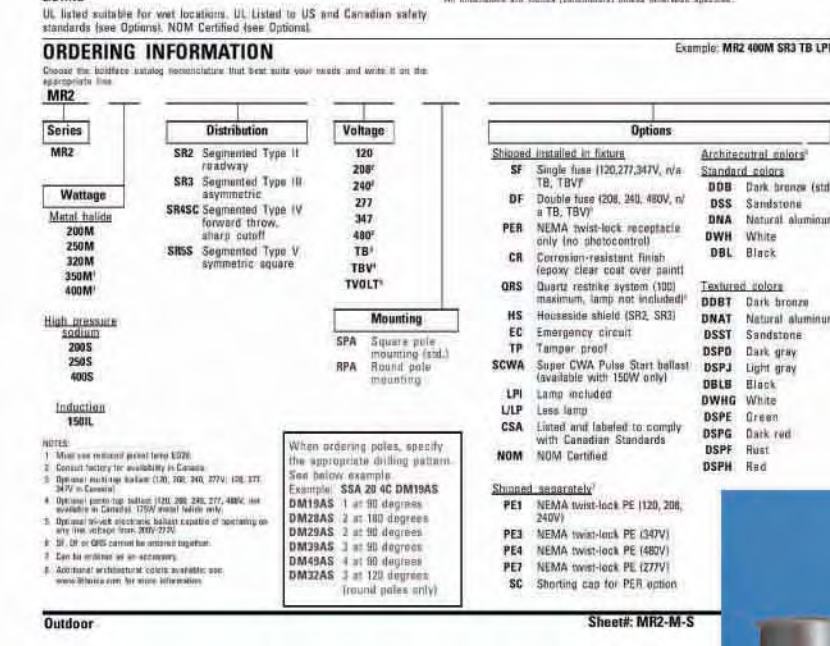
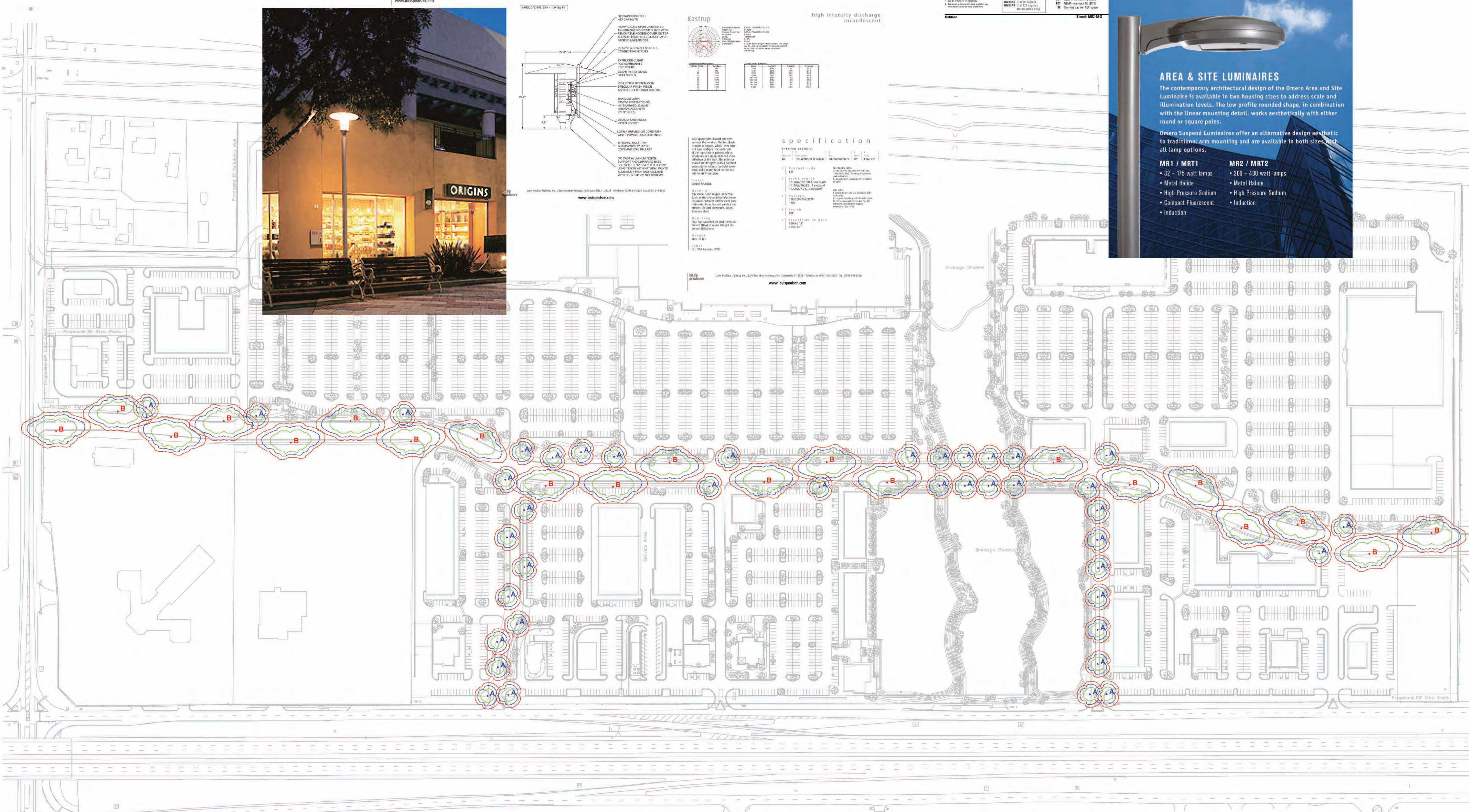
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LUMINAIRE SCHEDULE									
Symbol	Label	Qty	Catalog Number	Description	Lamp	File	Lumens	LLF	Watts
	A	41	KAT-454-COPPER	Kastруп, toshede diam = 700mm (27.56 inch.) Reflector (dish-lower, surrounded by clear polycarbonate	1/175W/MH	90528001.ies	14000	0.72	175
	B	21	MR2 400M SR2--	ARCHITECTURAL ARM-MOUNTED CUTOFF LUMINAIRE WITH SR2 REFLECTOR.	ONE 400-WATT CLEAR ED-28 METAL HALIDE, HORIZONTAL POSITION.	Lt110098.ies	32000	0.72	462

[illegible][illegible][illegible][illegible]

**CONCEPTUAL LIGHTING PLAN FOR BARNES DRIVE
STONECREEK CROSSING, SAN MARCOUS, TX**