

John M. Guthery*
Thomas M. Haase
James B. Gessford***
Rex R. Schultze***
Daniel F. Kaplan
Gregory H. Perry
Joseph F. Bachmann*
Riko E. Bishop
R.J. Shortridge*
Jeanette Stull
Corey L. Stull*
Joshua J. Schauer*
Shawn P. Dontigney
Derek A. Aldridge**
Dyana N. Wolkenhauer



PERRY, GUTHERY, HAASE & GESSFORD, P.C., L.L.O.

233 South 13th Street, Suite 1400 * Lincoln, Nebraska 68508
Telephone (402) 476-9200 * Fax (402) 476-0094
www.perrylawfirm.com

Of Counsel
Edwin C. Perry

Ernest B. Perry (1876-1962)
Arthur E. Perry (1910-1982)
R.R. Perry (1917-1999)

*Also Admitted in Iowa
** Also Admitted in Kansas
*** Also Admitted in Wyoming

Attached are the following agreements:

1. Purchase and Sale Agreement (PSA);
2. Site Development Agreement (SDA);
3. Operations, Maintenance and Easement Agreement and Covenants, Conditions and Restrictions (OMEC);

NOTE: Except for the Contract Price in Section 2 of the PSA, negotiations are continuing and the final agreements to be presented at the March 27, 2012 meeting for approval may contain some modifications.

**OPERATIONS, MAINTENANCE AND EASEMENT AGREEMENT
AND COVENANTS, CONDITIONS AND RESTRICTIONS**

This OPERATIONS, MAINTENANCE AND EASEMENT AGREEMENT AND COVENANTS, CONDITIONS AND RESTRICTIONS (this “**Agreement**”) is made as of _____, 2012, by and between LANCASTER COUNTY SCHOOL DISTRICT 001, a/k/a, Lincoln Public Schools, a Class IV school district under the laws and statutes of the State of Nebraska (“**LPSD**”), and CP LINCOLN O Street, LLC, a Delaware limited liability company (“**CP**”).

RECITALS

A. LPSD is the fee simple owner of certain real estate located in the City of Lincoln, Lancaster County, Nebraska, legally described on **Exhibit A** attached hereto (the “**LPSD Property**”). The LPSD Property is designated as Outlots A and B (collectively, the “**Outlots**” or individually an “**Outlot**”) and Lot 1 (the “**LPSD Office Property**”) on **Exhibit A** and on the site plan attached hereto as **Exhibit C** (the “**Site Plan**”). LPSD intends to construct an office building and related improvements on the LPSD Office Property. LPSD and its successors in interest as owner of the LPSD Property are referred to collectively herein as the “**LPSD Owner.**”

B. On or about the date of this Agreement, LPSD conveyed to CP fee simple title to certain real estate located in the City of Lincoln, Lancaster County, Nebraska, legally described on **Exhibit B** attached hereto (the “**CP Property**”). The CP Property is designated as Lots 2 and 3 on the Site Plan. CP intends to construct certain retail improvements on the CP Property. “**CP Owner,**” as referred to herein, shall mean collectively all persons and/or entities with a fee title ownership interest in all or a part of the CP Property. There shall be only one CP Owner for purposes of this Agreement regardless of the number of persons or entities that hold title to a portion of the CP Property. LPSD Owner and CP Owner are collectively referred to as the “**Owners**” and individually as an “**Owner.**” The LPSD Property and the CP Property are collectively referred to as the “**Properties**” or the “**Development**” and individually as a “**Property.**”

C. In connection with the conveyance of the CP Property to CP, LPSD and CP each desire to establish (a) access and drivelane easements; (b) parking area easements; (c) utility and drainage easements; (d) temporary construction easements; (e) maintenance, repair and replacement obligations of LPSD Owner and CP Owner; (f) building envelopes for the construction on the LPSD Office Property and the CP Property; and (g) restricted and prohibited uses applicable to the Development.

NOW THEREFORE, in consideration of the mutual covenants and conditions contained herein, the parties agree as follows:

ARTICLE 1 ACCESS EASEMENT

1.1 CP Access Easement. LPSD hereby grants and conveys to CP, for the use and benefit of CP Owner and CP's Permittees (as defined below), a perpetual, irrevocable, non-exclusive right, privilege and access and drivelane easement over and across all driveways, accessways, ramps, sidewalks and walkways now or hereafter located on Outlots A and B (collectively, the "**CP Access Easement Areas**") for the limited use and purpose of vehicular and pedestrian ingress and egress to, from and among the CP Property, Outlots A and B, and all public streets contiguous to the LPSD Property or the CP Property. "**CP's Permittees**" shall mean CP Owner's successors, assigns, grantees, tenants, and subtenants, and all persons who now or hereafter own or hold any possessory interest in the CP Property, and the concessionaires, agents, employees, customers, visitors, contractors, licensees and invitees of any of them.

1.2 Future CP Access Easement. In the event that LPSD Owner ever has legal and physical access to South Cotner Boulevard from the LPSD Office Property, then: (a) the access easement granted under this Article 1 shall be deemed automatically extended to include a perpetual, irrevocable, non-exclusive right, privilege and access easement over and across all driveways, accessways, ramps, sidewalks and walkways then or thereafter located on the LPSD Office Property for the purpose of ingress and egress to and from South Cotner Boulevard and accessways, and (b) the CP Access Easement Areas shall be deemed to include such LPSD Office Property driveways, accessways, ramps, sidewalks and walkways solely for such purpose.

ARTICLE 2 CP PARKING EASEMENTS

2.1 Exclusive Parking and Retail Easement. LPSD hereby grants and conveys to CP, for the use and benefit of CP Owner and CP's Permittees, a perpetual, irrevocable, exclusive easement for parking and related retail uses on Outlot B. With prior written approval of LPSD Owner, CP Owner and CP's Permittees may be permitted to conduct related retail uses on Outlot B, which shall be exercised in compliance with any applicable requirements of the *[insert full name of PUD and recording information]* (the "PUD"), and may include: (a) the construction, maintenance, repair, replacement and use on Outlot B of landscaping, signage (including, without limitation, pylon signage and temporary signage), shopping cart corrals, kiosks, and other improvements related to retail operations; (b) use of Outlot B for farmers' markets, charitable events, and other festivals and events sponsored by any tenant occupying all or most of the building(s) located on Lot 3 (an "**Anchor Tenant**"), so long as access aisles onto Outlot B from Lyncrest Drive are not unreasonably obstructed; and (c) to not permit any person or group of persons to engage in any activity (including, but not limited to, picketing, leafleting, handbilling or soliciting) on Outlot B that interferes with, obstructs, disrupts, or otherwise limits Anchor Tenant's store operations or access to Anchor Tenant's premises, or otherwise limits exercise of the rights granted to CP Permittees under this Agreement. Notwithstanding the foregoing, CP Owner and CP's Permittees shall have no right to erect buildings on Outlot B, and any parking and wayfinding signage on Outlot B shall be reviewed and approved by both Owners, with such approval not to be unreasonably withheld, conditioned or delayed.

2.2 Shared Parking Easement. The parking easement described in Section 2.1 includes the areas shown on Exhibit D. The parking easement also includes that area identified on Exhibit D as 1-hour parking stalls. Both Owner's and their respective Permittee's shall be allowed to use the 1-hour parking area, subject to that time limitation. *[To be discussed.]*

2.3 No Parking Charges. No charge or other validation for parking on Outlots A or B may be made unless agreed upon by CP Owner and LPSD Owner and permitted by applicable law.

2.4 Lighting. The Owners covenant and agree that all of Outlots A and B shall be kept fully illuminated, with illumination no less than the lesser of (a) an average of five (5) foot candles per square foot or (b) the maximum illumination permitted under applicable law, each day from dusk until one (1) hour after the normal close of business of any tenant of the CP Property. Each Owner further agrees to keep any exterior building security lights in the Development, plus any lighting for driveways and accessways in the Development, illuminated from dusk until dawn. CP Owner shall be solely responsible for all electricity charges for parking lot lighting in Outlot B. The Project Managers shall be responsible for developing a cost allocation for electricity charges for parking lot lighting in Outlot A.

2.5 Parking Rules and Restrictions. Parking rules and restrictions may be established and enforced by the Owners in accordance with Section 8.4 of this Agreement.

ARTICLE 4 UTILITY AND DRAINAGE EASEMENTS

4.1 Utility Easement. LPSD hereby grants, sells, bargains and conveys to CP, for the use and benefit of CP Owner and CP's Permittees, a perpetual, irrevocable, non-exclusive easement, appurtenant to the CP Property, over, across and under all driveways, accessways, parking areas, sidewalks and walkways now or hereafter located on Outlots A and B (the "**Utility Easement Area**") for the installation, construction, maintenance, repair, replacement, removal, use and enjoyment of water, sewer, electrical, gas, telephone, information technology, storm drainage, and other utility lines, facilities and systems and lines (the "**Utility Systems**") which may now or hereafter service the CP Property. LPSD specifically grants to the local water supplier, cable television provider, data service provider, telephone company, sanitary and/or storm sewer district or company, electric company, natural gas supplier and other utility providers easements across the Utility Easement Area for ingress, egress, installation, reading, replacing, repairing and maintaining utility meters and boxes. The easement provided for in this Section 4.1 shall in no way affect, avoid, extinguish or modify any other recorded easement on Outlots A and B.

4.2 Installation of Utility Systems. CP Owner may install or relocate Utility Systems within the Utility Easement Area that serve a building on the CP Property, provided such new Utility Systems are located, to the extent reasonably practical, within the areas of existing Utility Systems, and such new or relocated Utility Systems do not unreasonably interfere with LPSD

Owner's use of Outlots A and B in accordance with this Agreement. With respect to CP Owner's installation or relocation of any Utility Systems or performance of maintenance, repair, replacement or removal on existing Utility Systems on Outlots A and B, CP Owner shall: (a) prior to such installation, relocation, maintenance, repair, replacement or removal (collectively, "**Utility Work**"), provide LPSD Owner with copies of the plans depicting the location of the proposed or existing Utility System and describing the work to be performed thereon and give LPSD Owner the opportunity to review, comment on and approve the plan, such approval not to be unreasonably withheld, conditioned, or delayed, (b) perform such Utility Work in a good and workmanlike manner and in accordance with all applicable laws, (c) exercise reasonable efforts to minimize any resulting disturbance of LPSD Owner's use of the LPSD Property in accordance with this Agreement and comply with any reasonable rules and regulations imposed by LPSD Owner, and (d) after such Utility Work, restore any affected portions of Outlots A and B (including any affected improvements) to substantially the same condition in which they were found prior to the exercise of such easement rights.

4.3 Drainage Easement. LPSD hereby grants, sells, bargains and conveys to CP, for the use and benefit of CP Owner and CP's Permittees, an easement upon, over, above, under and across Outlots A and B for the incidental diversion of storm water runoff from the CP Property.

ARTICLE 6 LPSD OWNER'S RETAINED RIGHTS

6.1 LPSD Owner's Retained Rights.

(a) LPSD Office Property. The easement rights granted under this Agreement shall not be deemed to extend to the LPSD Office Property, except to the extent described in Section 1.2 and **Error! Reference source not found.** above as to the physical access to South Cotner Boulevard.

(b) Outlot A. LPSD Owner reserves the following rights, subject to Section 6.2 below: (i) the right of LPSD Owner and LPSD's Permittees (as defined below) to use and occupy Outlot A for pedestrian and vehicular access, parking, signage and related uses; and (ii) the right of LPSD Owner to grant easements or rights to use Outlot A to parties other than CP Owner and CP's Permittees. "**LPSD's Permittees**" shall mean LPSD Owner's successors, assigns, grantees, tenants, and subtenants, and all persons who now or hereafter own or hold any possessory interest in the LPSD Property, and the concessionaires, agents, employees, customers, visitors, contractors, licensees and invitees of any of them.

(c) Outlot B. LPSD Owner reserves the following rights, subject to Section 6.2 below: (i) the right of LPSD Owner and LPSD's Permittees to use the CP Access Easement Areas on Outlot B for the limited use and purpose of vehicular and pedestrian ingress and egress to, from and among the LPSD Office Property, Outlot A, and all public streets contiguous to the LPSD Property or the CP Property; (ii) the right of

LPSD Owner and LPSD Permittees to use the 1-hour shared parking area described in Section 2.2; and (iii) the right of LPSD Owner to grant easements or rights to use Outlot B to parties other than CP Owner and CP's Permittees.

(d) Site Name. LPSD Owner reserves the right, upon consultation with CP Owner, to develop the name to be used for the Development.

6.2 Reasonable Use of Easements. CP Owner and CP's Permittees may only use the easements granted herein in such a manner as not to unreasonably interfere with, obstruct or delay (a) the conduct and operations of the business of LPSD Owner or LPSD's Permittees at any time conducted on the LPSD Office Property or Outlot A and (b) the exercise of the retained rights of LPSD Owner and LPSD's Permittees in this Agreement. In addition, LPSD Owner and LPSD's Permittees may only exercise rights retained hereunder in such a manner as not to unreasonably impair, interfere with, obstruct or delay (a) the conduct and operations of the business of CP Owner or CP's Permittees at any time conducted on the CP Property or (b) the exercise of the rights granted to CP Owner and CP's Permittees in this Agreement.

ARTICLE 7 REPAIR AND MAINTENANCE COVENANTS

7.1 Repair and Maintenance Responsibilities. CP Owner will, at its own cost and expense, operate, repair and maintain, and keep in neat, clean, safe, good and orderly condition, the CP Property and Outlot B, and LPSD Owner will, at its own cost and expense, operate, repair and maintain, and keep in neat, clean, safe, good and orderly condition, the LPSD Office Property and Outlot A, including, without limitation, for both Owners and the property they are required to maintain:

- (a) keeping surfaces of all areas in a clean, uncluttered, orderly and sanitary condition, including parking stalls, other paved surface areas and green spaces;
- (b) removing, in a timely and prudent manner, snow, ice, and other debris;
- (c) repairing, replacing and renewing any defective, worn, rutted or broken paving, concrete and asphalt, including curbs, pans, gutters, manhole covers, and utility vault covers;
- (d) maintaining, replacing, and renewing any landscaping, including sod, trees, shrubs, plants, flowers, or other intended vegetation, and mulch, rock or other intended ground cover, as may be reasonably necessary;
- (e) maintaining, renewing and repainting any parking space striping and any other vehicular and/or pedestrian traffic control or informational emblems;
- (f) maintaining, repairing, and replacing any lights, light poles, light fixtures, building signage, building signage lights, any vehicular and/or pedestrian traffic control or informational signage, any trash receptacles;

(g) maintaining, repairing and replacing, as necessary, any sidewalks, accessways, driveways or concrete, and

(h) maintaining, repairing and replacing, as necessary, any utility lines or facilities (including, without limitation, storm sewer facilities) located within the Outlots and which serve both Properties (any lines or facilities which serve only one Property shall be maintained by the Owner whose Property is served thereby).

All of such work shall be performed according to the highest reasonable standard for first-class shopping centers in the Lincoln metropolitan area where the Development is located. The work described in this Section 7.1 is referred to herein as the **“Repair and Maintenance Work.”**

7.2 Conditions to Repair and Maintenance Work. Each Owner will undertake any Repair and Maintenance Work for which such Owner is responsible under Section 7.1 above, in accordance with the following. All Repair and Maintenance Work shall be conducted in a safe manner, and any and all Repair and Maintenance Work shall be done in a manner so as to minimize, to the extent reasonably possible, any disruption of access, passage and use on, over, and across Outlot A and Outlot B and any disruption of the use of the LPSD Office Property and the CP Property.

(a) Except in the event of an emergency or as may be required by applicable laws, any Repair and Maintenance Work undertaken on Outlot A (i) if possible shall be done only during times when tenants of the CP Property are not open for business, or (ii) if such work cannot be performed during times when such tenants are not open for business, then, after LPSD Owner gives reasonable notice to CP Owner, it shall be done during hours that such tenants are open for business in a manner does not unreasonably impair access or parking for such tenants, and (b) shall not be done during the months of November or December of any year.

(b) Except in the event of an emergency or as may be required by applicable laws, any Repair and Maintenance Work undertaken on Outlot B (i) if possible shall be done only during times when the LPSD Office Property is not open for business, or (ii) if such work cannot be performed during times when such LPSD Office Property is not open for business, then, after CP Owner gives reasonable notice to LPSD Owner, it shall be done during hours that such LPSD Office Property is open for business in a manner that does not unreasonably impair access or parking for LPSD’s Permittees and employees, and (b) shall not be done during the months of November or December of any year.

(c) After completion of any Repair and Maintenance Work on any portions of Outlot A or Outlot B, the property on, over, under or through which such work was done shall be left in a clean and good condition, with all debris removed therefrom, with trenches and cuts properly filled, with any plants, shrubbery or other landscaping which may have been disturbed by such work restored to its former condition. All Repair and Maintenance Work shall be performed in accordance with all applicable regulations, statutes, ordinances and laws.

7.3 Mechanics' Liens. If, pursuant to any work, improvement or repair undertaken by, through or under any Owner (the "Responsible Owner"), any mechanic's lien claim is recorded against the Property of another Owner, then the Responsible Owner shall cause such lien claim to be released and discharged of record (by payment, bonding or other available process) within twenty (20) days after the recordation of the claim. If such release and discharge is not timely secured, then the affected Owner, at its election and without obligation to do so, may secure the release and discharge of the lien claim through its own efforts, whether by payment, bonding or otherwise, and the affected Owner shall be entitled to recover from the Responsible Owner all costs and expenses the affected Owner may incur in connection therewith (with these reimbursable costs and expenses to be due and owing within ten (10) days after demand). Furthermore, any Responsible Owner shall indemnify, defend and hold harmless any affected Owner whose Property is encumbered by the pertinent lien claim from and against any liability, loss, damage, cost or expense, including attorneys' fees, incurred or arising on account of or in relation to the offending lien claim. The foregoing rights and remedies in favor of any affected Owner shall be cumulative with and in addition to the other rights and remedies afforded to the affected Owner by Nebraska statutes or other provisions of law.

7.4 Failure to Perform Repair and Maintenance Work. If either Owner fails to perform any Repair and Maintenance Work it is required to perform hereunder, the other Owner may, at its option, give such defaulting Owner written notice of such failure. If the defaulting Owner fails to commence the required performance within ten (10) days from the date of such written notice or thereafter fails to diligently prosecute such performance to completion, or if the defaulting Owner fails to complete the required performance within thirty (30) days from the date of the notice, then the other Owner is entitled, but not obligated, to enter upon the applicable Property or Outlot during reasonable hours and perform such Repair and Maintenance Work, at the defaulting Owner's sole cost and expense. Notwithstanding the foregoing, if either Owner fails to provide snow, ice or other debris removal or any other maintenance required hereunder that is required to prevent a dangerous condition, the other Owner may perform such maintenance without providing advance notice, except that the performing Owner shall use reasonable efforts to contact the defaulting Owner prior to commencing such performance. Subject to the notice and cure requirement in this Section 7.4, each Owner shall have the right to prosecute any proceedings at law, under statute or in equity against any Owner or Permittee defaulting, breaching or violating this Article 7 of the Agreement. The remedies available under this Section shall include, but not be limited to, *ex parte* applications for temporary restraining orders, preliminary injunctions and permanent injunctions and actions for specific performance of such Owner's obligations and/or damages. All costs and expenses reasonably incurred by any Owner to cure a default of a defaulting Owner under the provisions hereof shall be assessed against and paid by the defaulting Owner (with these costs and expenses to be due and owing within ten (10) days after demand). If any monetary obligation hereunder (including any monetary obligation under Section 7.3 above) is not paid when due, the same shall bear interest thereon at the lesser of (a) eighteen percent (18%) per annum or (b) the maximum rate permitted by applicable law.

ARTICLE 8 ADMINISTRATION

8.1 Project Managers. At all times, the LPSD Owner and the CP Owner shall have designated (and each Owner may at any time replace) a project manager (each, a “**Project Manager**”) who shall be responsible for making day-to-day decisions, and coordinating with the other Project Manager, with respect to Repair and Maintenance Work and the allocation of any shared expenses. Each Owner shall pay all costs and expenses of its own Project Manager. The Project Managers shall have regular meetings as mutually agreed upon by the Owners. The Project Managers shall keep a record of all business conducted and agreed upon, and of any and all transactions and proceedings occurring at the meetings or as a result of this Agreement.

8.2 Dispute Resolution. *[Dispute resolution process to be discussed.]*

8.3 Coordination of Repair and Maintenance Work. CP Owner and LPSD Owner will, to the extent reasonably practicable, coordinate all Repair and Maintenance Work. Though Section 7.1 provides that each Owner will be responsible for performing Repair and Maintenance Work with respect to the portions of the Development identified therein, CP and LPSD acknowledge that the Owners may agree to have a third party provide repair and maintenance services for all or part of the Development on a contract basis, or may agree to have one Owner perform Repair and Maintenance Work for both Owners on such terms and in consideration for such fees to which the Owners agree. CP and LPSD further acknowledge that some operating costs or expenses for the Outlots may be incurred by one of the Owners for the benefit of both Owners (e.g., electricity charges for parking lot lighting in Outlot A) and in such event, the Project Managers shall mutually determine, allocate and agree on a method of payment for same.

8.4 Parking Rules and Restrictions. The Owners upon mutual agreement may establish and enforce parking and drivelane rules and regulations for Outlot A and Outlot B that are consistent with the rights granted hereunder. In addition, the Owners may make reasonable arrangements for towing or “booting” any violators of such restrictions on Outlot A and Outlot B and may take other steps permitted by law to enforce such restrictions. Each Owner will establish and enforce parking policies for their employees with respect to Outlots A and B that will prohibit any use of parking areas in Outlot B (except for any shared parking on Outlot B in accordance with Section 2.2) by employees of LPSD Owner or of tenants of the LPSD Property, and will prohibit any use of parking areas on the LPSD Office Property or on Outlot A (except for any shared parking on Outlot A in accordance with Section 2.2) by employees of CP Owner or of tenants of the CP Property. LPSD Owner may post signs on Outlot A (with costs of such signage to be shared equally by LPSD Owner and CP Owner) and on the LPSD Office Property (at LPSD Owner’s cost), and CP Owner may post signs on Outlot B (at CP Owner’s cost), in each case restricting parking in accordance with this Agreement. All wayfinding and parking signage (including signs restricting parking) shall be reviewed and approved by both Owners, with such approval not to be unreasonably withheld, conditioned or delayed.

ARTICLE 9 BUILDINGS AND STANDARDS

9.1 Buildings and Standards. The building envelopes for the LPSD Office Property and for the CP Property are shown on the Site Plan and no change shall occur in such envelopes without both Owners' mutual written consent [*need to discuss building envelope boundaries and restricting building to such envelopes*]. Each Owner will provide the other Owner with copies of its building plans for review (but neither Owner shall have approval rights with respect to the other Owner's plans), and the Owners will work in good faith to attempt to ensure that all buildings in the Development are architecturally harmonious. In addition, the Owners will comply with all requirements relating to building materials and standards that are set forth in the PUD.

9.2 Site Plan. Neither Owner shall amend the Site Plan without the prior written consent of the Owner, and neither Owner will unreasonably withhold, condition or delay its consent to any such amendment. The withholding of consent by CP Owner to any Site Plan amendment shall be deemed reasonable if the basis for such withholding arises from obligations of CP Owner to Anchor Tenant; provided that CP Owner provide to LPSD Owner reasonable evidence of such obligations to Anchor Tenant. Notwithstanding the foregoing, CP Owner shall not withhold its consent to any amendment to the Site Plan that affects only the building area and loading dock of the LPSD Office Property.

ARTICLE 10 TAXES, ASSESSMENTS AND FEES

10.1 Taxes, Assessments and Fees. CP Owner shall be responsible for and shall pay, prior to delinquency, all real estate, personal property or any other governmental taxes, assessments, fees or costs levied or assessed upon or with respect to the CP Property and Outlot B, and its buildings and other improvements or activities located thereon, as and when the same become due and payable.

10.2 Outlot B Delinquency. Should any real estate, personal property or other governmental taxes, assessments, fees or costs levied or assessed on or with respect to Outlot B become delinquent or should any federal, state or local tax lien attach to Outlot B, LPS Owner may give CP Owner written notice of such delinquency or tax lien. If CP Owner fails to cure such delinquency or tax lien within ten (10) days from the date of such written notice, then LPS Owner is entitled, but not obligated, to pay the costs and expenses necessary to cure such delinquency or tax lien on Outlot B. All costs and expenses reasonably incurred by LPS Owner to cure any delinquency or tax lien on Outlot B shall be assessed against and paid by CP Owner (with these costs and expenses to be due and owing within ten (10) days after demand). If any monetary obligation hereunder is not paid when due, the same shall bear interest thereon at the lesser of (a) eighteen percent (18%) per annum or (b) the maximum rate permitted by applicable law. In addition, LPS owner shall have the right to prosecute any proceedings at law, under statute or in equity against CP Owner defaulting, breaching or violating this Article 10 of this Agreement. The remedies available to LPS Owner under this Section shall include, but not be limited to, *ex parte* applications for temporary restraining orders, preliminary injunctions and

permanent injunctions and actions for specific performance of CP Owner's obligations and/or damages.

ARTICLE 11 INSURANCE

11.1 Insurance. *[To be reviewed by both parties' insurance providers.]*

(a) In connection with its operation, repair and maintenance of Outlot B, CP Owner shall maintain commercial general liability insurance for Outlot B, including contractual liability coverage, naming LPSD Owner as an additional insured and providing coverage with a combined bodily injury, death and property damage limit of \$1,000,000.00 or more per occurrence, with umbrella coverage of \$5,000,000.00, and a retention or deductible of no more than \$50,000. Upon request, CP Owner shall provide LPSD Owner with a certificate of insurance and endorsement to such policy evidencing the type and amount of the insurance coverage required hereunder and a certified copy of an endorsement naming LPSD Owner and LPSD Owner's lender as additional insureds and stating that such insurance is primary upon request. All certificates of insurance shall provide for 30 days' prior written notice to LPSD Owner and LPSD Owner's lender of any cancellation, reduction or non-renewal thereof.

(b) In connection with its operation, repair and maintenance of Outlot A, LPSD Owner shall maintain commercial general liability insurance for Outlot A, including contractual liability coverage, naming CP Owner as an additional insured and providing coverage with a combined bodily injury, death and property damage limit of \$1,000,000.00 or more per occurrence, with umbrella coverage of \$5,000,000.00, and a retention or deductible of no more than \$50,000. Upon request, LPSD Owner shall provide CP Owner with a certificate of insurance and endorsement to such policy evidencing the type and amount of the insurance coverage required hereunder and a certified copy of an endorsement naming CP Owner and CP Owner's lender as additional insureds and stating that such insurance is primary upon request. All certificates of insurance shall provide for 30 days' prior written notice to CP Owner and CP Owner's lender of any cancellation, reduction or non-renewal thereof.

11.2 Indemnity and Hold Harmless. CP agrees that CP Owner will defend, protect, indemnify and hold harmless LPSD Owner from and against all claims or demands, including any action or proceeding brought thereon, and all costs, losses, expenses and liabilities of any kind or nature, including reasonable attorneys' fees and cost of suit, asserted or incurred in connection with or arising out of the performance, or failure to perform, its duties or obligations under this Agreement with respect to the operation, maintenance or repair and operation of the CP Property or Outlot B, however, the foregoing obligation shall not apply to claims or demands based on the negligence or the willful act or omission of LPSD Owner. In the event it is determined that LPSD Owner was not at fault, then CP Owner shall reimburse LPSD Owner for all reasonable expenses and/or costs incurred by LPSD Owner defending against such claim or demand. LPSD agrees that LPSD Owner will defend, protect, indemnify and hold harmless CP Owner from and against all claims or demands, including any action or proceeding brought thereon, and all costs, losses, expenses and liabilities of any kind or nature, including reasonable

attorneys' fees and cost of suit, asserted or incurred in connection with or arising out of the performance, or failure to perform, its duties or obligations under this Agreement with respect to the operation, maintenance or repair and operation of the LPSD Office Property or Outlot A, however, the foregoing obligation shall not apply to claims or demands based on the negligence or the willful act or omission of CP Owner. In the event it is determined that CP Owner was not at fault, then LPSD Owner shall reimburse CP Owner for all reasonable expenses and/or costs incurred by LPSD Owner defending against such claim or demand.

ARTICLE 12 DAMAGE OR DESTRUCTION; CONDEMNATION

12.1 Damage or Destruction of Buildings. If all or a portion of a building on a Property is damaged or destroyed, the Owner of such Property agrees that it will, with all due diligence, and at its sole cost and expense, either (a) repair, restore and rebuild such building to its condition existing prior to such damage or destruction, subject to the provisions hereof, or with such changes, alterations or additions as conform with the PUD, or (b) tear down and remove all portions of such damaged or destroyed building and related improvements, including the debris resulting therefrom, and otherwise clean and restore the area affected by such casualty to a level and clean condition.

12.2 Damage or Destruction of Easement Areas. If all or any portion of the parking or accessway improvements on Outlots A or B is damaged or destroyed, the Owner who is responsible for Repair and Maintenance Work on such Outlot shall be responsible for restoring, repairing and rebuilding such improvements to substantially their condition existing prior to such damage or destruction, subject to the provisions hereof, with all due diligence, at such Owner's sole cost and expense. If the responsible Owner fails to perform such repairs and restoration, the other Owner may, at its option, give the defaulting Owner written notice of such failure. If the responsible Owner fails to commence the required performance within ten (10) days from the date of such written notice or thereafter fails to diligently prosecute such performance to completion within thirty (30) days from the date of such notice (or such longer period not to exceed ninety (90) days as is reasonably necessary to complete such performance), the other Owner is entitled, but not obligated, to enter upon such Outlot and perform such repair, restoration or rebuilding at the responsible Owner's sole cost and expense.

12.3 Condemnation. *[Subject to review by local counsel.]*

(a) If all or any part of Outlot A is taken by eminent domain, condemnation or similar process by a duly constituted authority, the award for the value of the Outlot A land and improvements so taken shall belong to LPSD Owner (and to LPSD Owner's mortgagees and tenants, as their interests may appear), and CP Owner shall have no right to claim any portion of such award, except that CP Owner (and CP Owner's mortgagees and tenants, as their interests may appear) shall be entitled to any award granted for the loss of easement or other rights to the extent of any damage resulting from the severance of the land or improvements so taken. In the event of a partial taking of Outlot A, LPSD Owner agrees to restore the improvements located on Outlot A as nearly as possible to the condition existing prior to the taking to assure the continued ability of CP Owner and

CP's Permittees to exercise the easement rights granted hereunder to the extent reasonably feasible.

(b) If all or any part of Outlot B is taken by eminent domain, condemnation or similar process by a duly constituted authority, the award for the value of the Outlot B land and improvements so taken shall belong to CP Owner (and to CP Owner's mortgagees and tenants, as their interests may appear), and LPSD Owner shall have no right to claim any portion of such award, except that LPSD Owner (and LPSD Owner's mortgagees and tenants, as their interests may appear) shall be entitled to any award granted for the loss of any access rights retained under this Agreement to the extent of any damage resulting from the severance of the land or improvements so taken. In the event of a partial taking of Outlot B, CP Owner agrees to restore the access improvements located on Outlot B as nearly as possible to the condition existing prior to the taking to assure the continued ability of LPSD Owner and LPSD's Permittees to exercise the access rights reserved under Section 6.1(c), to the extent reasonably feasible.

ARTICLE 13 USE RESTRICTIONS

13.1 Uses and Operations Prohibited By PUD. *[Subject to review by local counsel.]* No uses or operations prohibited by the PUD will be made, conducted or permitted on or with respect to all or any part of the LPSD Property or the CP Property at any time.

13.2 Noxious and Offensive Activities. No noxious or offensive activity shall be conducted or permitted upon any lot within the Development, or anything which is or may become an annoyance or nuisance to neighbors or which endangers the health or unreasonably disturbs the quiet of the occupants of the adjoining lots.

13.3 School Uses. The LPSD Property shall not at any time be used as a "school," as that term is defined in Nebraska Administrative Code Title 237, Chapter 2, § 012.01 or for purposes of Nebraska Revised Statute § 53-177, or as a day care facility. LPSD Owner acknowledges that one or more tenants of the CP Property may desire to sell alcoholic beverages, and that this restriction is intended to prevent the use of the LPSD Property from interfering with the ability of such tenants to obtain the liquor licenses necessary to sell alcoholic beverages.

13.4 No Grocery Use. LPSD Owner shall not permit on any of the LPSD Property any grocery store or supermarket, including, without limitation, any natural or organic foods oriented grocery store or supermarket (such as, without limitation, Trader Joes).

13.5 Other Prohibited Uses. Neither Owner shall use, or allow the use of, the Development, for any of the Prohibited Uses (herein so called) set forth on **Exhibit E** attached hereto.

ARTICLE 14
NATURE OF EASEMENTS, RESTRICTIONS AND RIGHTS GRANTED

14.1 Easements and Restrictions Appurtenant. Except as provided elsewhere herein to the contrary, each and all of the easements, covenants, restrictions and rights granted or created herein are appurtenances to the burdened Property, and may not be sold, transferred, assigned or encumbered except as an appurtenance to such Property. The Property that is benefited by such easements, covenants, restrictions and rights shall constitute the dominant estate, and the Property that is burdened by such easements, covenants, restrictions and rights shall constitute the servient estate.

14.2 Nature and Effect of Easements and Restrictions. Except as provided elsewhere herein to the contrary, each and all of the easements, covenants, restrictions and rights contained in this Agreement:

- (a) are made for the direct benefit of the Owners of the respective Properties and their Permittees;
- (b) constitute covenants running with the land; and
- (c) shall bind every person or entity having any fee, leasehold, financing or other interest in any portion of any Development at any time or from time to time to the extent that such portion is affected or bound by the easement, covenant, restriction or provision in question or to the extent that such easement, covenant, restriction or provision is to be performed on such portion.

14.3 Transfer of Title; Effect of Sale. The acceptance of any sale, assignment, transfer, or other conveyance of title or any other interest in the Development or portion thereof from either Owner of all or any part of its interest in a Property shall be deemed to cause the grantee, assignee or transferee to assume and agree to perform, if applicable under this Agreement, each and every obligation of an Owner under this Agreement with respect to any such Property or portion thereof.

14.4 No Merger. Notwithstanding the current vesting of fee title to the Development, and notwithstanding any future vesting of title (fee or ground leasehold) to two or more Properties or Outlots in the same party, such commonality of ownership interests shall not give rise to any extinguishment or merger of the easements established under this Agreement or any other provisions hereof, it being the controlling and dominant intent of the parties hereto that no such merger or extinguishment shall occur, and that all such easements and provisions of this Agreement shall remain in full force and effect regardless of any commonality of ownership interests in the various Properties and Outlots. Except as otherwise expressly provided herein, any such easement or other provision of this Agreement may be extinguished as it applies to a particular Property only by the mutual written consent of all Owners who are benefited and burdened by the pertinent provision as applied to the given Property, which consent must be recorded in the Real Estate Records.

14.5 Effect of Breach Upon Purchasers and Mortgagees.

(a) No Termination. The breach of this Agreement shall not entitle any Owner to cancel, rescind or otherwise terminate this Agreement, or any conditions, covenants, easements or restrictions hereunder.

(b) Mortgagee Protection. This Agreement, and the rights, privileges, covenants, agreements and easements hereunder with respect to each Owner and each Property, shall be superior and senior to any bona fide lien hereafter placed upon any Property, including without limitation, the lien of any mortgage, deed of trust, or other security interest, and any lien heretofore placed upon any Property that is subordinated by the holder of such lien by a signed instrument recorded in the Real Estate Records (a “**Subordinated Prior Lien**”). Notwithstanding the foregoing, no breach hereof shall defeat, render invalid, diminish or impair the lien of any mortgage, deed of trust or security interest made in good faith and for value, but all of the covenants and restrictions, easements and conditions and other provisions, terms and conditions contained in this Agreement shall be binding upon and effective against any Owner (including any mortgagee or beneficiary under a deed of trust) who acquires title to any Property or any portion thereof by foreclosure, trustee’s sale, deed in lieu of foreclosure or otherwise through a mortgage, deed of trust or other lien hereafter placed on a Property or through a Subordinated Prior Lien.

ARTICLE 15
MISCELLANEOUS

15.1 No Partnership. None of the terms or provisions of this Agreement shall be deemed to create a partnership between or among any Owners or their Permittees in their respective businesses or otherwise, nor shall it cause them to be considered joint venturers, partners or members of any joint enterprise.

15.2 Third Party Beneficiaries. This Agreement is not intended, nor shall it be construed, to create any third party beneficiary rights in any other person, unless expressly otherwise provided herein.

15.3 Amendment. This Agreement may be canceled, changed, modified or amended in whole or in part only by written and recorded instrument executed by all parties hereto, or their successors in interest. No Permittee will be required to join in the execution of or consent to any act of the Owners taken pursuant to this Section.

15.4 Estoppel Certificate. Any Owner may, at any time and from time to time, in connection with the sale, lease or transfer of such Owner’s Property or portion thereof, in connection with the financing or refinancing of such Owner’s Property, or as otherwise necessary for business purposes, deliver written notice to the other Owner requesting such Owner to certify in writing that to the knowledge of the certifying Owner, the requesting Owner is not in default in the performance of its obligations under this Agreement, or, if in default, to describe therein the nature and amount of any and all defaults and with respect to such other reasonable business matters directly related to this Agreement. Each Owner receiving such

request shall execute and return such certificate within twenty (20) days following the receipt thereof. Failure by an Owner to execute and return such certificate within the specified period shall be conclusively deemed an admission on such Owner's part that the Owner requesting the certificate is conclusively deemed current with respect to its obligations under this Agreement and not in default in the performance of such Owner's obligations under this Agreement. The Owners acknowledge that such certificate or deemed admission may be relied upon by purchasers, transferees, tenants and lenders.

15.5 Approvals. Unless provision is made for a specific time period, approval shall be deemed given if (a) the Owner receiving the request for approval has neither approved nor disapproved within thirty (30) days after receipt (or deemed receipt under Section 15.7) of such request (or within such other time period as may be specified in this Agreement for approval), and (b) the requesting Owner has delivered a second notice (titled as such) to such Owner, reminding such Owner of such request for approval, and the Owner receiving such second notice has neither approved nor disapproved the original request within three (3) days after receipt (or deemed receipt) of such second notice. Approval by any Owner to or of any act or request by the other Owner shall not be deemed to waive or render unnecessary approval to or of any similar or subsequent acts or requests.

15.6 Not A Public Dedication. Nothing herein contained shall be deemed to be a gift or dedication of any portion of the LPSD Property or the CP Property, or any portion thereof, to the general public for the general public or for any public use or purpose whatsoever, it being the intention and understanding of the parties that this Agreement shall be strictly limited to and for the purposes herein expressed for the maintenance and operation of private property solely for the benefit of the Owners and their Permittees.

15.7 Notices. Any notice required or permitted to be sent pursuant to this Agreement shall be in writing and shall be deemed received (a) within the same business day when personally delivered; (b) within the same business day when sent by confirmed facsimile transmission or other electronic delivery (e.g. email); (c) three days after having been deposited in a U.S. Postal Service depository and sent by registered or certified mail, return receipt requested, with all required postage prepaid, and addressed; or (d) the next business day after deposit with Federal Express or a similar overnight courier service, with delivery charges for morning delivery on the next business day prepaid. Either party may change its address or other listed information below for notices by written notice to the other party in accordance with this Section 15.7:

If to LPSD Owner: Lancaster County School District 001
3801 S. 14th Street
Lincoln, Nebraska 68501
Attention: Mark Shepar, Associate Superintendent for
Business Affairs
Telephone: (402) 436-1000
Facsimile: (402) 458-3285
Email: mshepar@LPSD.org

With a copy to: Perry, Guthery, Haase, and Gessford
233 South 13th Street, Suite 1400
Lincoln, Nebraska 68508
Attention: James B. Gessford, Attorney for the Board of
Education or successor
Telephone: (402) 476-9200
Facsimile: (402) 476-0094
Email: jgessford@perrylawfirm.com

If to CP: CP Lincoln O Street, LLC
c/o Continuum Partners, LLC
7171 W. Alaska Drive
Lakewood, Colorado 80226
Attention: Roger Pecsok and Daniel J. Murphy
Telephone: (303) 573-0050
Facsimile: (303) 573-0011
Email: roger.pecsok@continuumllc.com;
dan.murphy@continuumllc.com

With a copy to: Continuum Partners, LLC
7171 W. Alaska Drive
Lakewood, Colorado 80226
Attention: Lenn A. Moldenhauer, Esq.
Telephone: (303) 573-0050
Facsimile: (303) 573-0011
Email: lenn.moldenhauer@continuumllc.com

Upon at least five (5) days' prior written notice, each party shall have the right to change its address to any other address within the United States of America. Informal communications between LPSD Owner and CP Owner under this Agreement may be made by their respective Project Managers as designated from time to time; however, the same shall not qualify as written notice.

15.8 Construction. The provisions of this Agreement shall be construed as a whole according to their common meaning and not strictly for or against any party.

15.9 Captions; Number and Gender. The captions preceding the text of each Section are included only for convenience of reference and shall be disregarded in the construction and interpretation of this Agreement. Words used herein, regardless of the number and gender specifically used, shall be deemed and construed to include any other number (singular or plural) and any other gender (masculine, feminine or neuter), all as the context requires.

15.10 Time. Time is of the essence of this Agreement and each and every provision hereof.

15.11 Applicable Law. This Agreement shall be governed by, construed under and interpreted and enforced in accordance with the laws of the State of Nebraska.

[Remainder of page left blank; signatures follow]

DRAFT - For Discussion Only

IN WITNESS WHEREOF, the parties have caused these presents to be executed the day and year first above written.

LPSD:

LANCASTER COUNTY SCHOOL DISTRICT
001, a/k/a Lincoln Public Schools, a Class IV
school district under the laws and statutes of the
State of Nebraska

By: _____
Name: _____
Title: _____

STATE OF NEBRASKA)
) SS:
COUNTY OF LANCASTER)

Before me, a Notary Public in and for said County and State, personally appeared _____, to me personally known as the _____ of **Lancaster County School District 001, a/k/a Lincoln Public Schools**, a Class IV school district and political subdivision organized and existing under the laws of the State of Nebraska, who acknowledged his/her execution of the foregoing instrument for and on behalf of said organization.

WITNESS my hand and Notarial seal this ____ day of _____, 2012.

Notary Public
My Commission Expires: _____

DRAFT - For Discussion Only

CP:

CP LINCOLN O STREET, LLC, a Delaware
limited liability company

By: _____
Name: _____
Title: _____

STATE OF COLORADO)
) SS:
COUNTY OF _____)

The foregoing instrument was acknowledged before me this _____ day of _____,
201____, by _____, as Manager of CP Lincoln O Street, LLC, a Delaware limited
liability company.

Witness my hand and official seal.

My commission expires: _____.

Notary Public

DRAFT - For Discussion Only

EXHIBIT A
to
OPERATIONS, MAINTENANCE AND EASEMENT AGREEMENT
AND COVENANTS, CONDITIONS AND RESTRICTIONS

(Legal Description of the LPSD Property)

LPSD Office Property

Outlot A

Outlot B

DRAFT - For Discussion Only

EXHIBIT B
to
OPERATIONS, MAINTENANCE AND EASEMENT AGREEMENT
AND COVENANTS, CONDITIONS AND RESTRICTIONS

(Legal Description of the CP Property)

DRAFT - For Discussion Only

EXHIBIT C
to
OPERATIONS, MAINTENANCE AND EASEMENT AGREEMENT
AND COVENANTS, CONDITIONS AND RESTRICTIONS

(Site Plan)

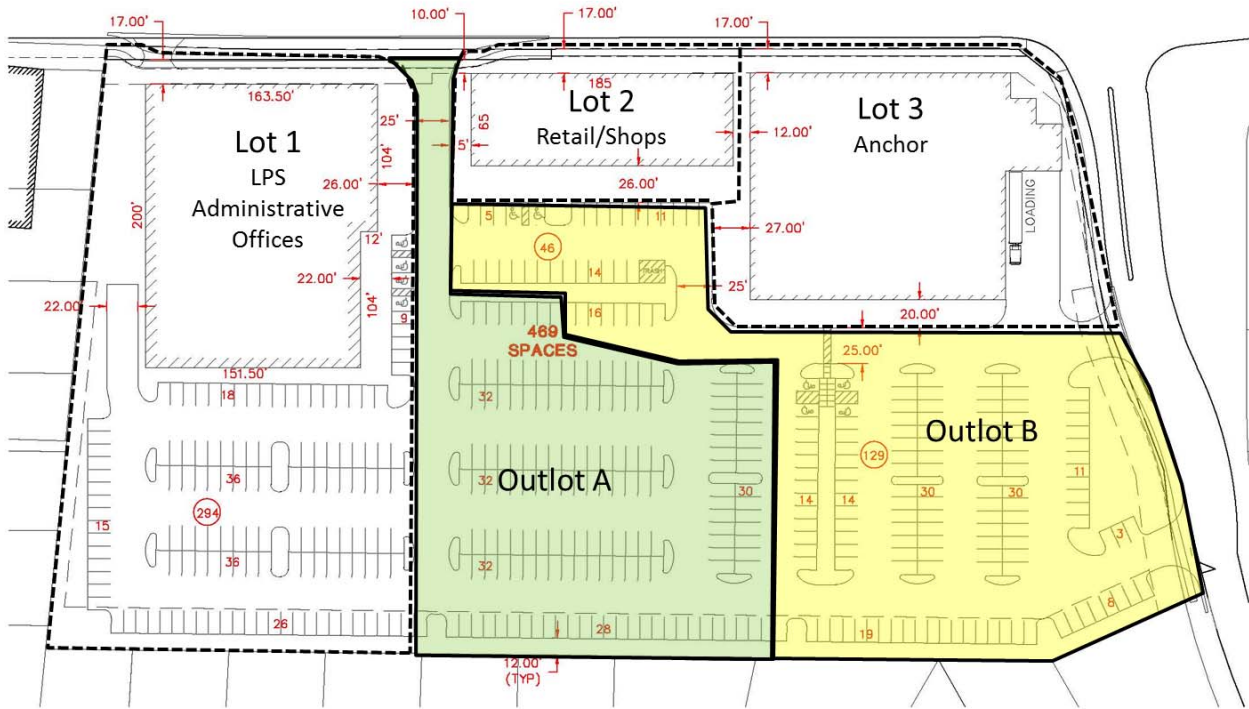


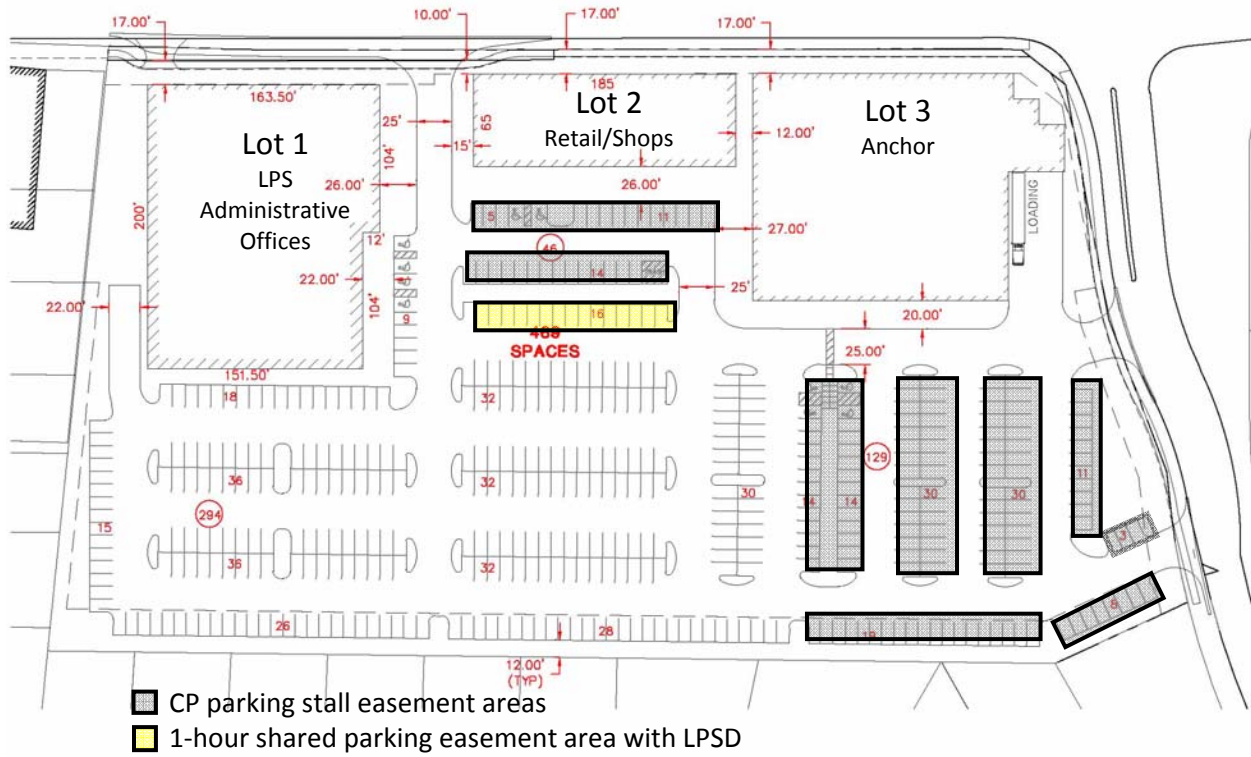
EXHIBIT D
to
OPERATIONS, MAINTENANCE AND EASEMENT AGREEMENT
AND COVENANTS, CONDITIONS AND RESTRICTIONS

(CP Parking Easement Areas)

[TO BE REVISED]

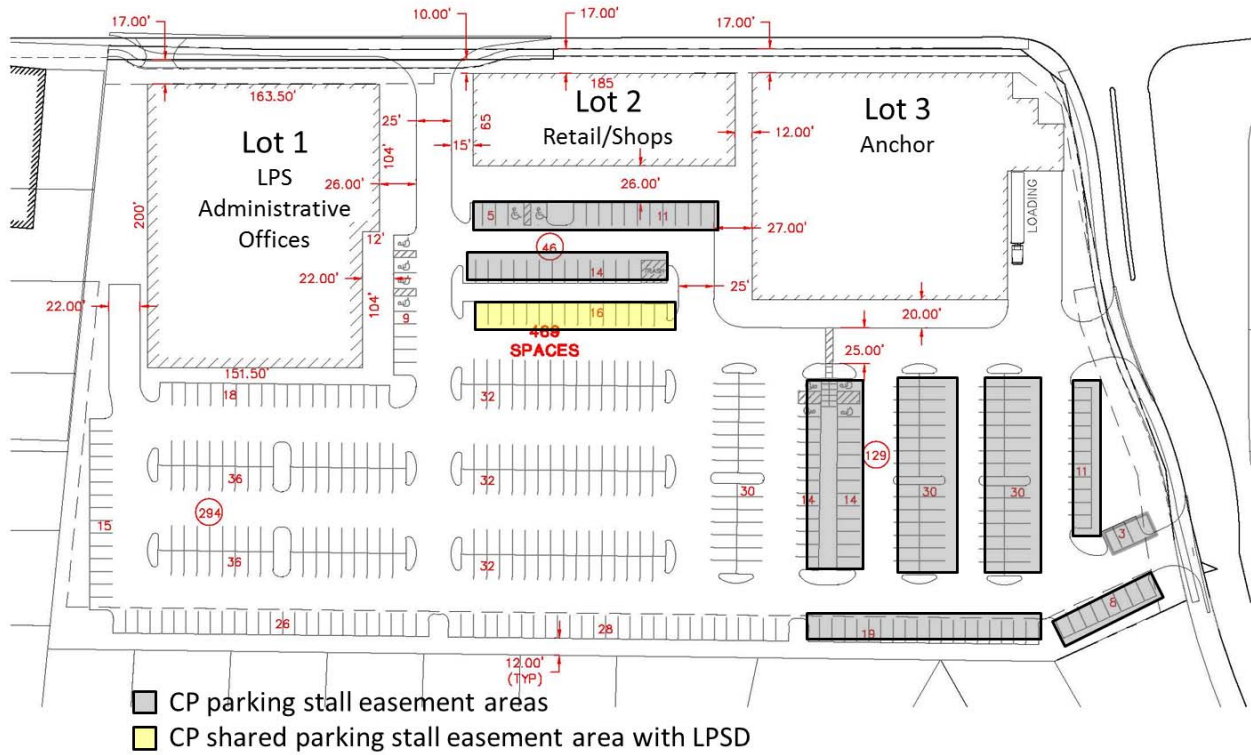
DRAFT - For Discussion Only

CP Parking Stall Easement Areas



DRAFT - FOR

CP Parking Stall Easement Areas



DRAFT - FOR

EXHIBIT E
to
OPERATIONS, MAINTENANCE AND EASEMENT AGREEMENT
AND COVENANTS, CONDITIONS AND RESTRICTIONS

(Prohibited Uses)

1. any movie theater, bowling alley, dance hall or discotheque;
2. schools of any nature (including, without limitation any cooking school or cooking classes, beauty school, barber college, reading room, place of instruction, or any other operation serving primarily students or trainees rather than retail customers);
3. any church, synagogue or other religious facility;
4. any gasoline or service station, automotive service or repair business;
5. any facility for the sale, lease or rental of automobiles, trucks, motorcycles, recreational vehicles, boats or other vehicles;
6. any manufacturing facility;
7. any dry cleaner;
8. any retail operation in which more than twenty (20%) percent of the sales area of such operation is used for the display and/or sale of clothing or goods commonly referred to as close outs, manufacturer's overruns, or excess inventory or manufacturer's seconds or imperfect merchandise;
9. any "second hand" store, used clothing or thrift store, pawn shop, salvation army type store, "surplus" store or liquidation outlet;
10. any discount retailer (such as, without limitation, "dollar" stores such as Family Dollar);
11. any mortuary or funeral parlor;
12. any coin operated laundry;
13. any children's recreational, educational or day-care facility;
14. any health club, health spa, fitness center, yoga or pilates center, weight room, gymnasium or the like;
15. any medical marijuana dispensary; or
16. any use inconsistent with the customary character of a first-class retail shopping center (such as, without limitation, any massage parlor, "head" shop, adult book shop or adult movie house, or tattoo or piercing parlor).