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**OPERATING AGREEMENT**

**By and Between**

**OAK PARK INVESTMENT, L.P.  
as Operator**

**and the**

**CITY OF OVERLAND PARK, KANSAS  
as Owner**

**November 14, 2002**

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## OPERATING AGREEMENT

THIS OPERATING AGREEMENT (the "Agreement") is made and executed as of the 14<sup>th</sup> day of November, 2002, by and between OAK PARK INVESTMENT, L.P., a Delaware limited partnership ("Operator"), and the CITY OF OVERLAND PARK, KANSAS, a municipal corporation and city of the first class ("Owner").

### RECITALS:

- (a) Capitalized terms used and not otherwise defined in this Operating Agreement shall have the meanings set forth in Exhibit A attached hereto.
- (b) Owner owns a leasehold estate in a portion of the real estate (the "Parking Garage Site") commonly known as Oak Park Shopping Center (the "Shopping Center"), located at 95th and Quivira, in the City. The Shopping Center is more particularly described on Exhibit B attached hereto. The Parking Garage Site is more particularly described in Exhibit C attached hereto, as said Exhibit C may be revised upon completion of a final survey.
- (c) Owner has agreed to plan, develop, acquire, construct, improve, furnish and/or equip certain improvements thereon, as more particular described on Exhibit D attached hereto (the "Parking Garage Improvements") on the Parking Garage Site pursuant to the provisions hereof and Operator has agreed to operate the Parking Garage Improvements for the benefit of the public (the Parking Garage Site and the Parking Garage Improvements, together hereinafter referred to as the "Parking Garage Facility").
- (d) Owner and Operator have entered into a Disposition and Development Agreement dated as of April 15, 1996 (the "DDA"), in order to reduce to written agreement the duties and responsibilities of both parties relating to the public development and construction of the Parking Garage Improvements and the private development and construction of a certain portion of the Shopping Center as more particularly described on Exhibit E attached hereto (the "Developer's Parcel") and the public responsibility for traffic control and parking availability.
- (e) Owner and Operator entered into an Operating Agreement dated November 14, 1997 that by its terms expires on the date hereof, and now desire to enter into this subsequent Agreement.

NOW, THEREFORE, in consideration of mutual covenants, the parties hereto agree as follows:

## ARTICLE I

### DEFINITIONS, PREMISES, TERM AND ACCEPTANCE

**Section 1.01. [Reserved].**

**Section 1.02. Enumerated Terms.** The terms enumerated in this Section shall have the meanings ascribed thereto in the indicated Sections:

	<u>Section</u>
Term	1.05
Rebuilding Work	6.03(a)
Net Insurance Proceeds	6.03(b)
Default	7.01
Notice	10.01

**Section 1.03. Parking Garage Facility.** Operator hereby agrees to operate for Owner, and Owner hereby agrees to permit Operator, for the Term, for the Fee, and upon all of the other provisions of this Agreement, to operate the Parking Garage Facility subject to Unavoidable Delays.

**Section 1.04. Execution of this Agreement.** This Agreement shall be executed by the parties hereto and this Agreement shall be dated the date of the issuance of the Certificate of Substantial Completion.

**Section 1.05. Term.** The term of this Agreement (the "Term") shall be a period of ten (10) years commencing from the date hereof and ending on the tenth anniversary of the date of this Agreement.

**Section 1.06. Cancellation.** Notwithstanding the Term of this Agreement, the Owner shall have the right to cancel this Agreement without penalty or cause at the end of three (3) years, upon sixty (60) days written notice to the Operator.

## ARTICLE II

### FEE

**Section 2.01. Fee.** Owner shall pay to Operator as the Fee for operating the Parking Garage Facility for the entire Term, the sum of One Dollar (\$1.00) and other valuable consideration, the receipt and sufficiency of which are hereby acknowledged.

## ARTICLE III

### IMPOSITIONS AND UTILITIES

**Section 3.01. Payment.** Operator shall, during the Term, pay and discharge all Impositions, if any.

**Section 3.02. Utility Charges.** Operator shall pay all fees for water service, sewer service, solid waste disposal, gas, electricity, light, heat, steam, power, telephone and other communication services, and any and all other utility services supplied to the Parking Garage Facility.

## ARTICLE IV

### USE

**Section 4.01. Use.** Owner shall operate the Parking Garage Facility solely as a public parking facility. Neither Operator nor Owner shall impose any parking or user charges in connection with the use of the Parking Garage Improvements; provided, however, Operator may, without the consent of Owner, impose common area and other charges on tenants in the Shopping Center with respect to operation and maintenance of the Parking Garage Facility, but Operator may not impose any parking charges on the operators of vehicles actually parking in the Parking Garage Facility. Owner agrees that the Parking Garage Facility will be open and available for use during all times any part of the Shopping Center is open to the public for business.

## ARTICLE V

### REPAIRS, CONSTRUCTION AND LIENS

**Section 5.01. Repair and Maintenance.** After completion of construction of the Parking Garage Improvements, the Operator shall, subject to the provisions of Section 5.02 and Section 6.03 hereof, keep the Parking Garage Facility in good condition and repair, subject to ordinary wear and tear, and shall make, and shall have the right to make, all repairs to the Parking Garage Improvements and all replacements thereof as it shall deem necessary or appropriate and shall cause the Parking Garage Facility to comply with all requirements of Governmental Authorities.

**Section 5.02. Construction and Alterations.** Owner, at its sole cost and expense, (a) has constructed the Parking Garage Improvements in accordance with the DDA, and (b) shall perform such maintenance, repairs or other work as necessitated by defects which are covered by Owner's maintenance and performance bonds and/or contractor guarantees.

## ARTICLE VI

### INDEMNIFICATION; INSURANCE AND DESTRUCTION OF PARKING GARAGE FACILITY

#### Section 6.01. Indemnification.

- (a) Except as to damage caused by the intentional or negligent act or omission of Owner, its agents or employees, Operator shall defend and hold Owner harmless from and against any and all claims and damages, including reasonable attorneys' fees, arising after the commencement of the Term and any orders, decrees or judgments which may be entered therein, brought for damages or alleged damages resulting from any injury to person or property or from loss of life sustained on the Parking Garage Facility.
- (b) Upon payment to Owner of Operator's full liability to Owner hereunder with respect to any such occurrence, Operator shall be subrogated to any rights of Owner against other parties to the extent of the payments so made. Owner shall promptly notify Operator of any claims asserted against Owner on account of any occurrence to which the foregoing indemnity relates. Operator shall defend any action or proceeding based on any such claim in its own name or the name of Owner, at Operator's cost, with attorneys of Operator's selection and Owner shall cooperate in such defense if requested by Operator. Owner may, if it sees fit, participate in any such defense, but

Operator shall not be required to reimburse Owner for any costs or expenses (including fees of Owner's counsel) unless such costs or expenses were incurred at Operator's request.

**Section 6.02. Insurance.** Notwithstanding the provisions of this Section 6.02, Section 14 of the Ground Lease shall govern as long as the Landlord under the Ground Lease and the Operator under this Operating Agreement are the same party. In the event the Landlord and the Operator are not the same party, without action on anyone's part, the provisions of this Section 6.02 shall come into effect simultaneously with the occurrence of the Landlord and the Operator not being the same party.

- (a) Operator shall maintain in force during the Term with insurance carriers authorized to do business in the State, the following insurance with respect to the Parking Garage Facility and its operation:
  - (i) Commercial general liability insurance, naming Owner as an additional insured, against claims for bodily injury, death and property damage occurring upon, in or about the Parking Garage Facility. Such insurance shall provide for a limit of not less than \$10,000,000 single-limit coverage per occurrence for bodily injury, personal injury and property damage; and
  - (ii) Commercial property insurance (formerly known as "all-risk" insurance) with a special broad form causes-of-loss form on the Parking Garage Improvements insuring Owner and Operator, as their respective interests may appear, and against loss or damage by such other, further and additional risks as Operator may elect. All such insurance shall be in an amount not less than the principal amount outstanding on the Bonds and the interest thereon.
- (b) The insurance coverage required to be carried by Operator, as set forth in this Section, may be carried in whole or in part (i) under any plan of self-insurance which Operator may from time to time have in force and effect so long as the amount self-insured does not exceed \$100,000, or (ii) under a "blanket" policy or policies of Operator or affiliates of Operator.

**Section 6.03. Damage or Destruction and Insurance Proceeds.** Notwithstanding the provisions of this Section 6.03, Section 15 of the Ground Lease shall govern as long as the Landlord under the Ground Lease and the Operator under this Operating Agreement are the same party. In the event the Landlord and the Operator are not the same party, without action on anyone's part, the provisions of this Section 6.03 shall come into effect simultaneously with the occurrence of the Landlord and the Operator not being the same

party.

- (a) If at any time during the Term the Parking Garage Improvements or any part thereof shall be damaged or destroyed by any casualty insured under the policy referred to in Section 6.02(a)(ii) hereof, then Operator, at its sole cost and expense, shall, at its election made within 120 days after such casualty occurs, either (i) proceed with reasonable diligence (subject to a reasonable time allowance for the purpose of adjusting such loss and to Unavoidable Delays) to repair, restore, replace or rebuild the same as nearly as possible to its condition and character immediately prior to such damage or destruction such repair, restoration, replacement or rebuilding, including temporary repair or the protection of other property pending the completion thereof, being sometimes referred to in this Section as the "Rebuilding Work;" or (ii) terminate this Agreement, whereupon the Net Insurance Proceeds shall be paid first to pay the principal of, premium if any, and interest on the Bonds, and any excess after such payment shall be paid to Operator.
- (b) If Operator shall elect to proceed with the Rebuilding Work, then all insurance money paid on account of such damage or destruction under the policies of insurance covering such loss, if any, less the cost, if any, incurred in connection with the adjustment of the loss and the collection thereof (the "Net Insurance Proceeds"), shall be deposited into escrow with an insurance trustee (which shall be a bank, trust company or mortgagee of Operator), and shall be applied toward Operator's obligations of repair, restoration or reconstruction of any Parking Garage Improvements damaged or destroyed by casualty giving rise to the insurance claim and shall be paid out by the insurance trustee from time to time as the Rebuilding Work shall progress, in amounts designated by certification by independent architects licensed to do business in the State showing the application of the amounts as payments for the Rebuilding Work. If the Net Insurance Proceeds are not adequate for the Rebuilding Work, Operator shall pay, out of funds other than the Net Insurance Proceeds, the amount by which the cost of the Rebuilding Work will exceed the Net Insurance Proceeds. Any Net Insurance Proceeds in excess of the cost of Operator's obligations of repair, restoration or reconstruction, shall, upon the completion of the Rebuilding Work, be paid to Operator or, at Operator's option, may be used to pay the principal of, premium if any, and interest on the Bonds. Operator shall pay to the insurance trustee all reasonable fees for its services.
- (c) If the damage or destruction results from a casualty not insured under the policy referred to in Section 6.02(a)(ii) hereof, Operator may, but shall not be required to, perform the Rebuilding Work, in whole or part. In the event the

Operator elects not to perform the Rebuilding Work, Operator may elect to terminate this Agreement.

- (d) In the event the Operator elects not to perform the Rebuilding Work pursuant to this Section 6.03, the Owner may elect to terminate this Agreement upon the partial or total destruction of the Parking Garage Improvements.

**Section 6.04. Release and Waiver of Subrogation.** Notwithstanding the provisions of this Section 6.04, Section 16 of the Ground Lease shall govern as long as the Landlord under the Ground Lease and the Operator under this Operating Agreement are the same party. In the event the Landlord and the Operator are not the same party, without action on anyone's part, the provisions of this Section 6.04 shall come into effect simultaneously with the occurrence of the Landlord and the Operator not being the same party. Owner and Operator agree that if the Parking Garage Improvements and other property, tangible and intangible, at any time forming a part of or located on the Parking Garage Facility shall be damaged or destroyed by (i) a casualty covered by the insurance required by Section 6.02(a)(ii) or (ii) a casualty covered by any other property insurance maintained by Operator or Owner, and whether or not such damage or destruction or interruption was caused by the negligence of the Operator or Owner, neither Operator nor Owner shall have liability to each other on account thereof. All policies of property insurance and business interruption insurance carried by or on behalf of Operator or Owner upon the Parking Garage Facility shall be endorsed with a provision by which the insurer waives any right of subrogation.

## ARTICLE VII

### DEFAULTS, REMEDIES AND SELF-HELP

#### Section 7.01. Events of Default.

- (a) Subject to the extensions of time set forth in Section 6.3 of the DDA, failure or delay by either party to perform any term or provision of this Agreement constitutes a default under this Agreement. A party claiming a default (claimant) shall give written notice of default to the other party, specifying the default complained of.
- (b) A claimant shall not have the right under this Section 7.01 to institute proceedings against the other party nor be entitled to damages or other remedies provided herein if the other party within fourteen (14) days from receipt of such notice, with due diligence, commences to cure, correct or remedy such failure or delay and shall complete such cure, correction or



remedy within thirty (30) days from the date of receipt of such notice or if such cure, correction or remedy by its nature cannot be effected within such thirty (30) day period, such cure, correction or remedy is diligently and continuously prosecuted until completion thereof.

**Section 7.02. Self-Help.** If a default shall occur, then the non-defaulting party, without being under any obligation to do so, may, as its sole and exclusive remedies, sue for damages, avail itself of the remedies set forth in Section 10.06 or remedy such default for the account and at the expense of the defaulting party, immediately and without Notice in the case of the failure to maintain insurance or in any other emergency, or in any other case only if the defaulting party shall fail to remedy such default with all reasonable dispatch after the non-defaulting party shall have given the defaulting party Notice of such default. For this purpose the non-defaulting party and its agents shall have reasonable rights of entry on the Parking Garage Facility. Bills for any expense incurred by the non-defaulting party in connection therewith, and bills for all costs, expenses and disbursements of every kind and nature whatsoever, including reasonable attorney's fees, involved in curing the defaulting party's defaults as aforesaid and in enforcing or endeavoring to enforce the non-defaulting party's rights under this Section, shall be due and payable in accordance with the terms of said bills and, if not paid when due, the amount thereof shall immediately become due and payable. In no event shall a default be the basis for terminating this Agreement.

## ARTICLE VIII

### RESERVED

## ARTICLE IX

### ASSIGNMENT AND SUBLETTING

#### **Section 9.01. Assignment and Subletting.**

- (a) Owner may not assign, pledge, encumber, mortgage, sublet or otherwise convey or transfer any interest in this Agreement or the Parking Garage Facility without the written consent of Operator.

After the issuance of a Certificate of Occupancy pursuant to the DDA as to the Shopping Center Improvements, the Operator shall not (except to a parent, subsidiary or Affiliate or as permitted otherwise by this Agreement), assign or transfer the Operator's interest in this Agreement or make any total or partial sale, transfer, conveyance, assignment or lease of the whole or any

part of the Developer's Parcel, the Shopping Center Improvements or the Parking Garage Site without the prior written consent of the Owner, which consent shall not be unreasonably withheld, delayed or conditioned if the proposed entity is determined to be financially qualified and can demonstrate its ability to operate and maintain the Shopping Center in a manner consistent with this Agreement. Notwithstanding the foregoing restrictions, the Operator shall have the right upon thirty (30) days prior written notice to the Owner, to make such sale, transfer, conveyance, assignment or lease, without the Owner's written consent, to any entity which owns other enclosed regional mall shopping centers which are similar to the Shopping Center in size, character and quality of retailers.

This prohibition shall not be deemed to prevent the granting of temporary or permanent easements or permits to facilitate the development of the Developer's Parcel or to prohibit or restrict the leasing of any part or parts of a building or structure for a term commencing upon completion. Nothing in this Section or this Agreement shall prohibit the Operator from leasing all or part of the buildings located on the Developer's Parcel as of the date of this Agreement or from leasing undeveloped portions of the Developer's Parcel so that they may be developed and occupied.

- (b) Owner shall, in the event of a sale or transfer (including without limitation as a result of foreclosure) of Operator's interest in the Ground Lease, attorn to the purchaser upon any such sale or transfer and recognize such purchaser as Operator under this Agreement. Upon the request of any interested Person, Owner shall execute, acknowledge and deliver an instrument, in form and substance satisfactory to such party, evidencing the attornment provided for in this paragraph.

## **ARTICLE X**

### **MISCELLANEOUS**

#### **Section 10.01. Notices, Etc.**

- (a) Whenever any Notice, consent, election, waiver, approval or authorization ("Notice") is required or permitted under this Agreement, the same shall be in writing, and all oral notices, consents, elections, waivers, approvals and authorizations shall be of no force or effect. All Notices by Owner to Operator shall be deemed to have been duly given if sent to Operator by certified mail (return receipt requested) or first-class mail, postage prepaid, in

duplicate, each copy to:

- (b) Oak Park Investment, L.P.  
8900 State Line Road, Suite 333  
Leawood, Kansas 66206  
Attention: Mr. Keith Copaken

with another copy to:

Lewis, Rice & Fingersh, L.C.  
1010 Walnut, Suite 500  
Kansas City, Missouri 64106  
Attention: Charles F. Miller, Esq.

or to such other address(es) as Operator may later designate in writing. All Notices by Operator to Owner shall be deemed to have been duly given if sent to Owner by certified mail (return receipt requested) or first-class mail, postage prepaid, in duplicate, each copy to Owner at:

- (c) City of Overland Park, Kansas  
8500 Santa Fe Drive  
Overland Park, Kansas 66212  
Attention: City Manager and City Clerk

or to such other address(es) as Owner may later designate by Notice.

- (d) All Notices shall be effective upon being deposited in the United States mail in the manner prescribed in paragraph (a) above. However, the time period in which a response to any such Notice must be given shall commence to run from the date of receipt by the addressee thereof as shown on the return receipt of the Notice. Rejection or other refusal to accept or the inability to deliver because of changed address of which no Notice was given, shall be deemed to be receipt of the Notice as of the date of such rejection, refusal or inability to deliver.

**Section 10.02. Entry by Operator.** Operator shall have the right, and Owner agrees to permit Operator and representatives of Operator, to enter the Parking Garage Facility at all times to enable Operator to perform its obligations under this Agreement.

**Section 10.03. Waiver.** No term, covenant, condition or default of this Agreement shall be deemed to have been waived unless such waiver be in writing signed by the party charged therewith. The consent of Operator or Owner to any act or matter must be in writing

and shall apply only with respect to the particular act or matter to which such consent is given and shall not relieve the other party from the obligation to obtain the consent of such party to any other act or matter.

**Section 10.04. Recording.** A memorandum of this Agreement is being recorded in the Office of the Register of Deeds of Johnson County, Kansas, concurrently with the execution hereof. Neither Operator nor Owner shall record this Agreement in its entirety. At the request of either party upon termination or expiration of this Agreement, the parties shall execute and record a memorandum of termination of this Agreement.

**Section 10.05. Time of Essence.** Time is hereby expressly declared to be of the essence of this Agreement and of each and every covenant, term, condition and provision hereof which relates to a date or period of time.

**Section 10.06. Injunctive Relief.** The parties shall be entitled, to the extent permitted by applicable law, to injunctive relief in case of violation or attempted or threatened violation of any of the covenants, agreements, conditions or provisions of this Agreement, or to a decree compelling performance of any of the covenants, agreements, conditions or provisions of this Agreement, or to any other remedy allowed at law or in equity other than to terminate as a result of default.

**Section 10.07. Construction.**

- (a) The language in all parts of this Agreement shall in all respects be construed as a whole, according to its fair meaning, and not strictly for or against either Operator or Owner. The term “including” shall be deemed to include the words “without limitation.”
- (b) This Agreement shall be governed by, and construed in accordance with, the laws of the State of Kansas.

**Section 10.08. Effect of Partial Invalidity.** If any term or provision of this Agreement or the application thereof to any Person or circumstances shall, to any extent, be invalid or unenforceable, the remainder of this Agreement, or the application of such term or provision to Persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and be enforced to the fullest extent permitted by law.

**Section 10.09. Survival of Owner's Obligations.** All obligations of Owner which by their nature involve performance in any particular after the expiration or earlier

termination of this Agreement, or which cannot be ascertained to have been fully performed until after the expiration of this Agreement shall survive the expiration or sooner termination of this Agreement.

**Section 10.10. Successors and Assigns.** This Agreement and the covenants and conditions herein contained shall be binding upon and shall inure to the benefit of the parties hereto and the respective permitted successors and assigns of Operator and Owner. All references in this Agreement to "Operator", as used in this Agreement, means only the current possessor of the Operator's interest in the Parking Garage Facility, and in the event of the sale, assignment or transfer by a possessor's interest in the Parking Garage Facility and in this Agreement, such possessor shall thereupon be released and discharged from all covenants and obligations of Operator thereafter accruing; but such covenants and obligations shall be binding upon each new possessor for the Term of this Agreement. Without limiting the foregoing, Owner agrees to execute such instruments as any such Operator may reasonably require in order to effectuate the foregoing.

**Section 10.11. No Partnership.** Nothing contained in this Agreement shall be deemed or construed by the parties hereto or by any third person to create the relationship of principal and agent or of partners or of joint venturers or of any association between Operator and Owner, and no provision contained in this Agreement nor any acts of the parties hereto shall be deemed to create any relationship between Owner and Operator other than the relationship of Operator and Owner.

**Section 10.12. Estoppel Certificate.** Owner agrees that at any time and from time to time, once or more often, upon request of Operator, Owner will promptly execute, acknowledge and deliver to Operator or such other requesting party, without charge, (a) a certificate evidencing whether or not (i) the Agreement is in full force and effect, (ii) the Agreement has been modified or amended in any respect, and identifying such modifications or amendments, if any, (iii) there are any existing defaults thereunder to the knowledge of the party executing the certificate, and specifying the nature of such defaults, if any, and (iv) such other matters as may reasonably be requested by the requesting party.

**Section 10.13. Consents.** Whenever the consent, approval or authorization of Operator is required under any provision of this Agreement, Operator may not arbitrarily withhold such consent, approval or authorization except to the extent otherwise herein specifically provided to the contrary. Whenever the consent of the City is required under the terms of this Agreement, the City Manager, acting on behalf of the City is authorized to give such consent.

**Section 10.14. Brokerage Fees.** Each party represents and promises to the other that it has not incurred or caused to be incurred any liability for real estate brokerage commissions or finder's fees in connection with the execution or consummation of this

Agreement for which the other party may be liable. Each party agrees to indemnify and hold the other harmless from and against any and all claims, liabilities and expense (including reasonable attorneys' fees) in connection with any breach of the foregoing representation or any claim made by a Person claiming to represent or be affiliated with such party.

**Section 10.15. No Merger.** There shall be no merger of this Agreement, nor of the leasehold estate upon which the Owner's interest in the Parking Garage Site is based, with the fee estate in the Parking Garage Site by reason of the fact that this Agreement, or any interest created hereby, which may be held directly or indirectly by or for the account of any Person who shall own the fee estate in the Parking Garage Site or any portion thereof, and no such merger shall occur unless and until all Persons at the time having any interest in such fee estate and all Persons having any interest in this Agreement or the interest created hereby, shall join in a written instrument effecting such merger.

**Section 10.16. Waiver of Jury Trial.** OWNER AND OPERATOR HEREBY WAIVE TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM BROUGHT BY EITHER OF THE PARTIES HERETO AGAINST THE OTHER IN ANY MATTERS ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT, THE RELATIONSHIP OF OPERATOR AND OWNER, OWNER'S USE AND OCCUPANCY OF THE PARKING GARAGE FACILITY, AND ANY CLAIM OF INJURY OR DAMAGE.

THIS OPERATING AGREEMENT is executed as of the date first hereinabove written.

OAK PARK INVESTMENT, L.P., a  
Delaware limited partnership

By: CWB Associates, Inc., a Kansas  
corporation, as General Partner

By: \_\_\_\_\_  
Keith Copaken  
Vice-President

“OPERATOR”

THIS OPERATING AGREEMENT is executed as of the date first hereinabove written.

CITY OF OVERLAND PARK, KANSAS

By: \_\_\_\_\_  
Ed Eilert, Mayor

“OWNER”

ATTEST:

\_\_\_\_\_  
Print  
Name: \_\_\_\_\_  
City Clerk

APPROVED AS TO FORM:

\_\_\_\_\_  
Jane Neff-Brain, Senior Assistant City Attorney



## **EXHIBIT A**

### **DEFINITIONS**

“Act” shall mean K.S.A. 12-6a01, as amended.

“Affiliate” shall mean a Person that directly or indirectly controls or is controlled by, or is under the common control of the Operator. For purposes of this definition, common control means not less than fifty-one percent (51 %) of the equitable ownership of the Affiliate.

“Basic Concept Drawings” shall mean those certain drawings as described on Appendix L attached to this Exhibit A.

“Bonds” shall mean those certain bonds issued by the City pursuant to K.S.A. 12-6a01 et seq., in the approximate principal amount of \$16,300,000, the proceeds of which will be used by the City to construct the City Improvements.

“Building Equipment” shall mean all permanently affixed equipment, apparatus, machinery, devices, fixtures, appliances and the appurtenances thereto of every kind and nature now or hereafter located in or at, and used or useful in connection with the operation of the Parking Garage Improvements, including elevators.

“Certificate of Occupancy” shall mean the certificate issued by the City permitting occupancy of the Shopping Center Improvements.

“Certificate of Substantial Completion” shall mean the certification by the City's architect to the City and Developer that all City Improvements have been substantially completed in accordance with the construction drawings and related documents.

“City” shall mean the City of Overland Park, Kansas, its successors and assigns.

“City Improvements” shall mean, collectively, the Parking Garage Improvements and the Street Improvements.

“Construction Coordinator” shall mean Oak Park Investment, L.P., a Delaware limited partnership.

“DDA” shall mean the Disposition and Development Agreement dated as of April 15, 1996, by and between the City and the Developer.

EXHIBIT A-1

“Date of Final Acceptance” shall mean the date set forth in the written instrument from the City whereby the City finally accepts the Parking Garage Improvements or the Street Improvements, as applicable.

“Developer” shall mean Oak Park Investment, L.P., a Delaware limited partnership, its successors and assigns.

“Developer's Parcel” shall mean the real property more particularly described on Exhibit D attached to the DDA.

“Governmental Authorities” shall mean all federal, state, county, municipal and local governments, and all departments, commissions, boards, bureaus, agencies and offices thereof, having or claiming jurisdiction over all or any part of the Parking Garage Site or the use thereof.

“Ground Lease” shall mean the Ground Lease dated as of April 15, 1996, by and between the Developer and the City.

“Impositions” shall mean all real estate taxes and assessments, both special and otherwise, which may be levied on the Parking Garage Site by any Governmental Authority.

“Improvements” shall mean, collectively, the City Improvements and the Shopping Center Improvements.

“Landlord” shall mean Oak Park Investment, L.P., a Delaware limited partnership, its successors and assigns.

“Master Landlord” shall mean Challenger, Inc. or its successors or assigns under the Master Lease.

“Master Lease” shall mean that certain lease between Master Landlord, as landlord, and Operator, as tenant, dated December 18, 1992, record notice of which was given by Memorandum of Lease dated December 18, 1992, recorded December 28, 1992, as Instrument No. 2201740 in Vol. 3808 at Page 728 with the Johnson County Register of Deeds.

“Operating Agreement” shall mean this Operating Agreement.

“Operator” shall mean Oak Park Investment, L.P., a Delaware partnership, its successors and assigns.

#### EXHIBIT A-2

“Owner” shall mean the City of Overland Park, Kansas, its successors and assigns.

“Parking Garage Facility” shall mean, collectively, the Parking Garage Site, the Parking Garage Improvements and all appurtenances, rights, easements and privileges thereunto belonging or in any way appertaining.

“Parking Garage Improvements” shall mean those elevated parking structures more particularly described on Exhibit I attached to the DDA.

“Parking Garage Site” shall mean the real property described on Exhibit C attached to the DDA.

“Person” shall mean and include any individual, corporation, partnership, unincorporated association, trust, Governmental Authority or other entity.

“Project” shall mean, collectively, the City Improvements and the Shopping Center Improvements.

“Shopping Center” shall mean the real property described on Exhibit B attached to the DDA and the existing improvements thereon.

“Shopping Center Improvements” shall mean those improvements constructed on the Developer's Parcel as more particularly described on Exhibit L attached to the DDA.

“State” shall mean the State of Kansas.

“Street Improvements” shall mean those improvements more particularly described on Exhibit K attached to the DDA.

“Tax Year” shall mean the year in which a tax is levied.

“Tenant” shall mean the City of Overland Park, Kansas, its successors and assigns.

“Unavoidable Delays” shall mean delays caused by acts of God, riots, strikes, unavailability of materials and any other causes or events (similar or dissimilar to the foregoing) which are beyond the control of the party charged with performance thereof, and shall not mean delays caused by financial difficulties, unavailability of funds or litigation or disputes with a construction contractor.

#### EXHIBIT A-3

**APPENDIX 1 TO EXHIBIT A**

BASIC CONCEPT DRAWINGS

Site Development Plans prepared by Shafer, Kline & Warren, P.A.  
and Ramos Design Consultants:

Sheet No.	Description	Revised Date
C-1	Site Development Plan (North)	12/11/95
C-2	Site Development Plan (South)	12/11/95
C-3	Site Development Plan (Parking Decks)	12/11/95
C-4	Site Development Plan (Zoning)	12/11/95
	A Landscape Plan for Oak Park Mall Expansion prepared by Ramos Design Consultants dated	12/27/95

Undated and Unnumbered Elevation Drawings for Oak Park Mall  
Expansion prepared by Ramos Design Consultants (RDQ):

- Sheet 1: Entitled Partial south Elevation (including Nordstrom and East and West Decks) and South Elevation (Shopping Center) Sheet "41" x 132"
- Sheet 2: Entitled Partial West Elevation without Parking Deck (shown) and Partial West Elevation (with Parking Deck shown) Sheet "43" x 66"
- Sheet 3: Entitled J.C. Penney West, North and South Elevations Sheet "43" x 66"
- Sheet 4: Entitled East Elevation without Parking deck and East Elevation with Parking Deck Sheet "43" x 132"

**EXHIBIT B**

**SHOPPING CENTER**

All of Lots 2 through 12, Block 1 and Lot 1, Block 2, Oak Park Shopping Center, a subdivision of land in the City of Overland Park, Johnson County, Kansas

EXHIBIT B-1

**EXHIBIT C**

**PARKING GARAGE SITE**

EXHIBIT C-1

## **EXHIBIT D**

### **DESCRIPTION OF PARKING GARAGE IMPROVEMENTS**

The construction of two parking structures, the west structure to consist of at-grade parking plus one elevated deck, and the east structure to consist of at-grade parking plus two elevated decks, all to be located on the OAK PARK SHOPPING CENTER subdivision tract. Both structures will be constructed using a concrete structural system supported by drilled piers, with a precast concrete facade. Excavation and site grading are also included as part of the improvement. Stair and elevator towers will be constructed in each structure, and lighting, drainage, ventilation and security for the parking structures will be provided.

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