

are permitted pursuant to the terms of Section 8.03 of the Operating Agreement.

ARTICLE IX

ADVERTISING AND PROMOTIONAL SERVICE

Section 9.01. Advertising and Promotional Service. On or before one (1) year after the Opening Date and thereafter, at the option of the Developer, the Developer shall either (i) establish an advertising and promotional service to furnish and maintain professional advertising and sales promotions for the benefit of the Shopping Center or (ii) form or cause to be formed a merchants' association for the purpose of developing a joint program of public information for and promotion of the Shopping Center. The Developer shall use its best efforts to provide in its leases of portions of the Developer Facilities to national, regional and local retail tenants that each of the tenants thereunder shall participate in said advertising and promotional service or become members of the merchants' association, as the case may be, and pay a share of the expenses thereof in accordance with the by-laws thereof. Penney shall participate in said advertising and promotional service or become and remain a member of the merchants' association whichever service is provided by the Developer for the duration of its operating covenant provided (i) the Developer makes an annual contribution with respect thereto in an amount equal to twenty-five percent (25%) of the aggregate annual contributions required to be made by all other members of the merchants' association or participants in said service, as the case may be, (ii) the requirements of Section 9.02 or 9.03 hereof are observed and (iii) all of the Department Stores and not less than eighty percent (80%) of all the retail tenants leasing and occupying space in the Developer Facilities shall participate in said advertising and promotional service or join and remain members of the merchants'