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CONSTRUCTION, OPERATION AND RECIPROCAL  
EASEMENT AGREEMENT

UNIVERSITY MALL SHOPPING CENTER  
OREM, UTAH

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CONSTRUCTION, OPERATION AND RECIPROCAL  
EASEMENT AGREEMENT

THIS CONSTRUCTION, OPERATION AND RECIPROCAL EASEMENT AGREEMENT, made and entered into as of the 2<sup>ND</sup> day of OCTOBER, 1971, by and between UNIVERSITY MALL, INC., a Utah corporation, hereinafter referred to as "Developer", ZIONS COOPERATIVE MERCANTILE INSTITUTION, a Utah corporation, hereinafter referred to as "ZCMI" and J. C. PENNEY PROPERTIES, INC., a Delaware corporation, hereinafter referred to as "Penney".

W I T N E S S E T H:

WHEREAS, Developer is the owner of certain tracts of land located in the City of Orem, County of Utah, State of Utah, being described in Parts I, IV and V of Exhibit A attached hereto and by this reference made a part hereof, and being shown and hereinafter referred to as "Developer Tract", "Future SC-1" and "Future Phase 2" upon the plot plan attached hereto as Exhibit B and by this reference made a part hereof.

WHEREAS, ZCMI is the owner of a certain tract of land located in the City of Orem, County of Utah, State of Utah, being described in Part III of Exhibit A, and being shown on Exhibit B, said tract of land being hereinafter referred to as the "ZCMI Tract"; and

WHEREAS, Penney is the owner of a certain tract of land located in the City of Orem, County of Utah, State of Utah, being described in Part II of Exhibit A, and being shown on Exhibit B as the "Penney Tract", said tract of land being hereinafter referred to as the "Penney Tract"; and

WHEREAS, under even date herewith, Penney \_\_\_\_\_ and Developer entered into a certain SALE AND PURCHASE AGREEMENT in writing; and

WHEREAS, the Parties hereto desire to establish a general plan for the protection, development, maintenance and improvement of, and to make an integrated use of, the tracts of land possessed by each and to develop and improve the premises designated as the Developer Tract, the ZCMI Tract and the Penney Tract, and at some future date, Future SC-1 and Future Phase 2 (if added as hereinafter provided), said Developer Tract, ZCMI Tract, Penney Tract and Future Tracts being hereinafter collectively referred to as the "Shopping Center Site", as a regional shopping center hereinafter referred to as the "Center" or "Shopping Center", (for the purposes of this REA these two terms shall be synonymous), of the so-called "Enclosed Mall" type for the mutual benefit of said Parties and of all said Tracts and of every portion thereof; and

WHEREAS, Penney desires to cause to be constructed and thereafter to cause to be operated, as a part of the Center a retail facility, as the same shall exist from time to time, in one or more buildings or installations, hereinafter collectively called "Penney Store", together with other improvements, all hereinafter called "Penney Improvements", to be located on a portion or portions of the Penney Tract, which portions, sometimes hereinafter collectively called the "Penney Store Site", are shown on Exhibit B; and

WHEREAS, ZCMI desires to cause to be constructed and thereafter to operate, or cause to be operated, as a part of the Center, a retail facility, as the same shall exist from time to time, in one or more buildings or installations, hereinafter collectively called "ZCMI Store", together with other improvements, all hereinafter called "ZCMI Improvements", to be located on a portion or portions of the ZCMI Tract, which portions, sometimes hereinafter collectively called the "ZCMI Store Site", are shown on Exhibit B; and

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WHEREAS, Developer desires to construct and operate or cause to be operated, as a part of the Center, one or more buildings or installations, as the same shall exist from time to time, for retail occupancy and other occupancy as hereinafter provided, in both Mall Stores, as hereinafter defined, and Non-Mall Stores, as hereinafter defined, in \_\_\_\_\_ accordance with this Construction, Operation and Reciprocal Easement Agreement (hereinafter called "REA"), and in addition thereto to erect, construct and operate the Enclosed Mall (as hereinafter defined); such buildings and improvements being hereinafter collectively called "Developer Improvements", and to be located on portions of the Developer Tract, as shown on Exhibit B; and

WHEREAS, Developer, ZCMI and Penney each desire to grant to the other Parties to the REA certain easements in, to, over and across their respective Tracts; and

WHEREAS, the Parties to this REA desire to make certain mutual provisions for the construction, maintenance and operation of the Common Area (as said term is hereafter defined) and other buildings and improvements upon the Shopping Center Site, and to make certain other covenants and agreements as hereinafter more specifically set forth.

NOW, THEREFORE, in consideration of the foregoing, and the covenants and agreements on the part of each Party to the others, as hereafter set forth, IT IS AGREED, as follows:

I. DEFINITIONS

As used in this REA, the following terms shall have the following respective meanings:

- A. The term "Allocable Share" refers to that part of the annual costs and expenses of operating, maintaining and repairing the Enclosed Mall payable by each respective Party to this REA for each accounting period.

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Allocable Share

Automobile  
Parking  
Areas

B. The term "Automobile Parking Areas" shall expressly include all areas devoted to the use of the parking of motor vehicles and all amenities relating thereto, and in addition thereto shall include all vehicular ingress and egress routes within the Shopping Center Site, landscaped and decorative features located thereon or therein, as the case may be.

Common  
Area

C. The term "Common Area" refers to all areas within the boundaries of the Shopping Center Site which are made available as hereinafter provided for the common use, convenience and benefit of Developer and all Occupants (as hereinafter defined), and Permittees (as hereinafter defined) of Developer and such Occupants.

Such Common Area shall include, but not be limited to, utility lines and systems (beyond five (5) feet from buildings or the curb line, whichever is greater), Automobile Parking Areas, sidewalks, malls, including the Enclosed Mall, common pedestrian walkways, stairways, exit corridors, escalators and other vertical transportation, restrooms not located within the premises of any Occupant, and similar areas, and in addition maintenance and security offices and equipment sheds to which free access may not be allowed except to authorized persons.

The Common Area shall not include any buildings, areas or facilities which are constructed and used for the use of any single Occupant, as provided herein, gasoline sales areas, or within any building, truck parking, turn-around or dock areas, but shall specifically include any elevator, escalator, dumbwaiter, toilet or other similar facility in or adjacent to any building serving two or more occupants.

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Common Building Component

D. The term "Common Building Component" shall mean any single improvement, which is located partly on a Tract of land in the Center, the fee interest in which is owned by one Party and partly on a Tract of land in the Center, the fee interest in which is owned by another Party.

Developer Improvements

E. The term "Developer Improvements" shall refer to and include Mall Stores, Non-Mall Stores, all Malls, buildings and other improvements, situated within the Developer Tract.

Developer Mall Stores

F. The terms "Developer Mall Stores" and "Mall Stores" refer to the stores in the buildings located on the Developer Tract which abut on the Enclosed Mall.

Developer Non-Mall Store

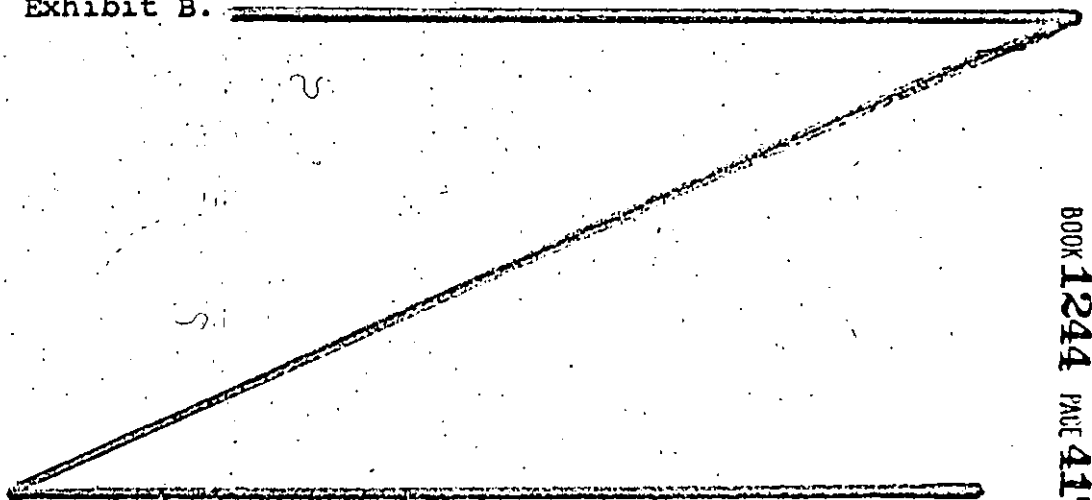
G. The terms "Developer Non-Mall Stores" and "Non-Mall Stores" refer to the stores in the buildings located on the Developer Tract which do not abut on the Enclosed Mall.

ZCMI Court

H. The term "ZCMI Court" refers to that portion of the Enclosed Mall designated as such on Exhibit B.

Enclosed Mall

I. The term "Enclosed Mall" refers to the portion or portions of the malls located in the Center which are constructed so that climatic control may be provided therein, and which are designated "H/AC MALL" on Exhibit B.



*[Handwritten signature]* *(WS)*

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Floor  
Area

J. The term "Floor Area" refers to the aggregate of:

1. The actual number of square feet of floor space in any building located on the Shopping Center Site exclusively appropriated for use by an Occupant or Developer, including any recessed store front areas adjacent to Enclosed Mall, whether or not actually occupied, including basement space and subterranean areas, and balcony and mezzanine space within the exterior face line of the exterior walls (including basement walls), except party and interior common walls as to which the center thereof instead of the exterior faces thereof shall be used, of all floors; plus
2. The actual number of square feet of any outdoor area as may be permitted and is used by an Occupant other than on a temporary basis to display and/or sell merchandise or services, excluding gas sales areas;

provided, however, that the term "Floor Area" shall not include the following:

- (a) Truck ramps, loading and delivery areas, whether or not situated within a building or enclosure.
- (b) Equipment rooms or areas to house heating, air conditioning and other mechanical equipment, electrical vaults and meter rooms; storage areas for maintenance equipment for the common areas; telephone equipment rooms; and rooms for the storage of supplies for common areas.
- (c) Common areas.
- (d) Signs.

No deduction shall be made from Floor Area computed under the foregoing definition by reason of columns, stairs, escalators, elevators, dumbwaiters, conveyors or other interior construction or equipment within the building involved.

A determination by the Project Architect (as hereinafter defined) made in accordance with the foregoing definition shall be conclusive (subject to Arbitration in the event of dispute) as to the number of square feet of Floor Area in each instance in which a determination thereof shall be required under the provisions of this REA. Notwithstanding anything to the contrary contained in this REA, during the period of any damage, destruction, razing, rebuilding, repairing, replacement or reconstruction to, on or of any building in the Center, the Floor Area of such building shall be deemed to be the same as the Floor Area of such building immediately prior to such period, and upon the completion of the rebuilding, repairing, replacement or reconstruction of such building, the Project Architect shall make a new determination of Floor Area for such building as in the foregoing provisions of this Section provided.

Lease

K. The term "Lease" refers to the lease, sublease, deed or other instrument or arrangement whereunder Occupant has acquired rights with respect to the use and occupancy of any Floor Area during the term of this REA.

Occupant

L. The term "Occupant" refers to Penney, ZCMI and to any person, firm, partnership, corporation, association or other business entity from time to time entitled to the use and occupancy of Floor Area in

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the Center under a Lease (as hereinabove defined) whereunder each Occupant acquires his or its status as such.

Operating

M. The term "Operating" or "Operation" as used herein shall mean that the respective Stores are open to the general public for retail business, or shall be temporarily not so open for retail business by reason of any provision of Section XVI or Section XVIII, or during any period of reconstruction of any such Store pursuant to the provisions of Section XIV, or by reason of such reasonable interruptions as may be incident to the conduct of a similar business.

Operator

N. The term "Operator" as used herein shall mean the Party or Parties responsible for the maintenance of the Common Area or any part thereof under the provisions of Section XI.

Penney Court

O. The term "Penney Court" refers to that portion of the Enclosed Mall designated as such on Exhibit B.

Party

P. The term "Party" shall include Developer, ZCMI and Penney and any successors acquiring any interest in or to any portion of the Shopping Center, except as is otherwise provided in subparagraphs 1, 2, 3 and 4 of this paragraph P. For all purposes of this REA, J. C. Penney Company, Inc. has the status of a Party as respects the Penney Tract so long as J. C. Penney Company, Inc. is a lessee or sublessee thereof.

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The exceptions to a successor becoming a Party upon any transfer or conveyance of the whole or any part of the interest of any Party in and to such Party's Tract are as follows:

1. The transferring Party retains the entire beneficial interest in the Tract or portion thereof so conveyed under the terms of a deed of trust or mortgage.

2. The transfer or conveyance is followed immediately by a leaseback of the same Tract or portion thereof by such Party, or an affiliate thereof (a sale and leaseback), in which event only the lessee thereof shall have the status of Party, so long as the lease in question has not expired or been terminated.

3. The transfer or conveyance is by way of lease, other than as provided in 2 above, or is by way of lease other than from a subsidiary corporation to its parent provided that such parent corporation owns one hundred percent (100%) of the outstanding voting stock of such subsidiary corporation.

4. The successor acquires by such transfer or conveyance:

(a) Less than all of a Party's Tract or Tracts or interest therein; provided, however, in the event that Developer conveys a portion of Developer's Tract to a department store Occupant of the future third store location, said department store Occupant shall thereupon be a Party; or

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(b) An undivided interest, such as that of joint tenant, or tenant in common, in such Party's Tract or Tracts, or as partner or joint venturer in such Party's interest in its Tract or Tracts.

In the circumstances described in this subparagraph 4, the Persons holding all of the interests in such Tract or Tracts are to be considered in the aggregate as a single Party. In order that other Parties shall not be required with respect to said Tract or Tracts to obtain the action or agreement of, or to proceed against, more than one Person in carrying out or enforcing the terms, covenants, provisions and conditions of this REA, then in the circumstances described in subparagraph 4(a) above, the Persons holding the interest of the Party in and to not less than seventy percent (70%) of said Tract or Tracts in question, and in the circumstances described in subparagraph 4(b) above, Persons holding not less than seventy percent (70%) in interest in such Party, or the holders of undivided interests totaling not less than seventy percent (70%) of the entire estate in and to said Tract or Tracts in question, shall designate one of their number as such Party's Agent to act on behalf of all such Persons. If any Tract or Tracts is owned by Persons owning an undivided interest therein under any form of joint or common ownership, then in the determination of such seventy percent (70%) in interest, each such owner of such undivided interest shall be deemed to represent a percentage in interest of the whole of such ownership equal to his fractional interest in such Tract or Tracts. Any interest owned by any Person who is a minor or is otherwise suffering under any legal disability shall be disregarded in the making of such designation unless there is at such time a duly appointed guardian or other legal representative fully empowered to act on behalf of such Person.

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In the absence of such written designation, the acts of the Party whose interest is so divided or held in undivided interests (whether or not he retains any interest in the Tract or Tracts in question) shall be binding upon all Persons having an interest in said Tract or Tracts in question, until such time as written notice of such designation is given and recorded in the office of the County Recorder, County of Utah, State of Utah, in which said Tract or Tracts are located, and a copy thereof is served upon each of the other Parties by registered or certified mail; provided, however, in the following instances all of the other Parties, acting jointly, or in the failure of such joint action, any other Party at any time may make such designation of the Party's Agent and notice thereof shall be given and recorded as above provided:

- (i) If at any time after any designation of a Party's Agent, in accordance with the provisions of this subparagraph 4, there shall for any reason be no duly designated Party's Agent of whose appointment all other Parties have been notified as herein provided; or
- (ii) If a Party's Agent has not been so designated and such notice has not been given thirty (30) days after any other Party shall become aware of any change in the ownership of any portion of the Shopping Center; or
- (iii) If the designation of such Party's Agent earlier than the expiration of such thirty (30) day period shall be reasonably necessary to enable any other Party to comply with any of its obligations under this REA or to take any other action which may be necessary to carry out the purposes of this REA.

The conveyance, transfer or assignment by any Party shall not act as a release or discharge of that Party from any liabilities, covenants or duties under the REA.

WB

The exercise of any powers and rights of a Party under this REA by such Party's Agent shall be binding upon all Persons having an interest in any such Tract or Tracts owned by such Party. Such Party's Agent shall, so long as such designation remains in effect, be a Party hereunder and the remaining Persons owning such Tract or Tracts shall be deemed not to be Parties. The other Parties shall have the right to deal with and rely upon the acts or omissions of such Party's Agent in the performance of this REA; but such designation shall not, however, relieve any Person from the obligations created by this REA.

Any Person designated a Party's Agent pursuant to the provisions of this subparagraph 4 shall be the agent of his principals, upon whom service of any process, writ, summons, order or other mandate of any nature, of any court in any action, suit or proceeding arising out of this REA, or any demand for arbitration may be made, and service upon such Party's Agent shall constitute due and proper service of any such matter upon his principal. Until a successor Party's Agent has been appointed and notice of such appointment has been given pursuant to the provisions of this subparagraph 4, the designation of a Party's Agent shall remain irrevocable.

Upon any transfer or conveyance, which transfer or conveyance would create a new Party, pursuant to the terms hereof, then the powers, rights and interest herein conferred upon such new Party with respect to the Tract so conveyed, shall be deemed assigned, transferred or conveyed to such transferee or grantee, and the obligations herein conferred upon such new Party shall be deemed assumed by such transferee or grantee with respect to the Tract so acquired.

Permittees

Q. The term "Permittees" as used in this REA shall mean and refer to Developer and all Occupants and their sub-tenants and concessionaires and all of their respective officers, directors, employees, agents, contractors, customers, visitors, invitees and licensees.

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Person  
or  
Persons

R. The words "Person" or "Persons" shall both include individuals, partnerships, trusts, firms, associations and corporations or any other form of business entity.

Phase I

S. The term "Phase I" refers to the buildings and other improvements initially located on the Tract of land described in Part VI of Exhibit A hereto.

Phase 2

T. The term "Phase 2" refers to the buildings and other improvements located on the Tract of land described in Part IV of Exhibit A hereto.

Project  
Architect

U. The term "Project Architect" refers to Daverman Associates, Inc. or such other architect or architects, duly licensed to practice in the State of Utah, as may from time to time be designated by Developer, subject to the approval of Penney and ZCMI, for the planning of the Common Area improvement work and other matters to be performed by it pursuant to this REA.

Store  
or  
Stores

V. The term "Store" or "Stores" refers to the Penney Store and/or the ZCMI Store and/or the Developer Stores as the context may appropriately require. Such reference to the Penney Store shall include the Penney TBA, and to the ZCMI Store shall include the ZCMI TBA, except where expressly excluded.

TBA

W. The term "TBA" shall refer to any facilities for the sale of tires, batteries, accessories, motor vehicle fuel products and/or motor vehicle servicing and repairs.

Termination  
Date



X. The term "Termination Date" refers to the date on which this REA shall terminate pursuant to the terms and provisions of Section XXX hereof.

Tract  
or  
Tracts



Y. The term "Tract" or "Tracts" refers to the Developer Tract, the ZCMI Tract and the Penney Tract, as the context may appropriately require.



## II EASEMENTS

A. Developer hereby reserves to itself the right to grant easements over the Common Area of the Developer Tract to Occupants and Permittees and does hereby grant to Penney and ZCMI for their respective uses and for the use of their respective Permittees in common with all others entitled to use the same, non-exclusive easements, in, to and over the Common Area of the Developer Tract, for ingress to and egress from the Penney Tract and the ZCMI Tract, respectively, for the passage and parking of vehicles and passage and accommodation of pedestrians on such portions of the Common Area of the Developer Tract as are set aside, maintained and authorized for such use pursuant to this REA, and for the doing of such other things as are authorized or required to be done on the Common Area of the Developer Tract pursuant to this REA. Developer reserves the right to eject or cause the ejection from the Common Area of the Developer Tract of any Person or Persons not authorized, empowered or privileged to use the Common Area of the Developer Tract. Notwithstanding the foregoing, Developer reserves the right to close off the Common Area of its Tract for such reasonable period or periods of time as may be legally necessary to prevent the acquisition of prescriptive rights by anyone. Notwithstanding the reservation herein provided for, and the right to grant easements, it is expressly understood and agreed that such reservation and the right to grant easements is limited to non-exclusive use of the surface for the foregoing purposes and exclusive or non-exclusive uses under the surface for passage of utilities. No Floor Area, except within approved kiosks subject to the limitations herein contained, and except as to approved expansion areas to be developed as permitted in this REA, shall be erected and constructed within any part of the Common Area of the Developer Tract. Any easement granted pursuant to the provisions \_\_\_\_\_

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of this Section II A may be abandoned and terminated by execution of any agreement so abandoning or terminating the same by the Parties who own the dominant estates. Any relocation of any easement shall be made at the expense of the Parties requesting such relocation.

B. Penney with respect to the Penney Tract does hereby reserve the right to grant easements in the Common Area of the Penney Tract to Occupants and Permittees, and does hereby grant to Developer and ZCMI for their respective uses and the use of their respective grantees and Permittees, in common with all others entitled to use the same, non-exclusive easements in, to and over the Common Area of the Penney Tract, for ingress to and egress from the Penney Tract for the passage and parking of vehicles, and the passage and accommodation of pedestrians on such respective portions of the Common Area of the Penney Tract, as are set aside, maintained and authorized for such use pursuant to this REA, and for doing such other things as are authorized or required to be done on such Common Area. Penney reserves the right to eject or cause the ejection from the Common Area of the Penney Tract of any Person or Persons not authorized, empowered or privileged by Penney to use the same. Notwithstanding the foregoing, Penney reserves the right to close off the Common Area of its Tract for such reasonable period or periods of time as may legally be necessary to prevent the acquisition of prescriptive rights by anyone. Notwithstanding the reservation herein provided for, and the right to grant easements, it is expressly understood and agreed that such reservation and the right to grant easements is limited to non-exclusive use of the surface for the foregoing purposes, and exclusive or non-exclusive uses under the surface for passage of utilities. No Floor Area shall be erected and constructed

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within any part of the Common Area of the Penney Tract, except in the area designated as "Penney TBA Expansion" on Exhibit B. Any easement granted pursuant to the provisions of this Section II B may be abandoned and terminated by execution of an agreement so abandoning or terminating the same by the Party or Parties who own the dominant estates. Any relocation of any easement shall be made at the expense of the Parties requesting such relocation.

C. ZCMI with respect to the ZCMI Tract does hereby reserve the right to grant easements in the Common Area of the ZCMI Tract to Occupants and Permittees and does hereby grant to Developer and Penney for their respective uses, and the use of their respective grantees and Permittees, in common with all others entitled to use the same non-exclusive easements in, to and over the Common Area of the ZCMI Tract, for ingress to and egress from the ZCMI Tract for the passage and parking of vehicles, and the passage and accommodation of pedestrians on such respective portions of the Common Area of the ZCMI Tract as are set aside, maintained and authorized for such use pursuant to this REA, and for doing such other things as are authorized or required to be done on such Common Area. ZCMI reserves the right to eject or cause the ejection from the Common Area of the ZCMI Tract of any Person or Persons not authorized, empowered or privileged by ZCMI to use the same. Notwithstanding the foregoing, ZCMI reserves the right to close off the Common Area of its Tract for such reasonable period or periods of time as may legally be necessary to prevent the acquisition of prescriptive rights by anyone. Notwithstanding the reservation herein provided for, and the right to grant easements, it is expressly understood and agreed that such reservation and the right to grant easements is limited to non-exclusive use of the surface for the foregoing purposes, and exclusive or non-exclusive uses

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under the surface for passage of utilities. No Floor Area shall be erected and constructed within any part of the Common Area of the ZCMI Tract, except in the area designated as Future Expansion Area on Exhibit B. Any easement granted pursuant to the provisions of this Section II C may be abandoned and terminated by execution of an agreement so abandoning or terminating the same by the Party or Parties who own the dominant estates. Any relocation of any easement shall be made at the expense of the Parties requesting such relocation.

D. Developer hereby grants to Penney and ZCMI, respectively, easements in, to, over, under and across the Developer Tract for the following purposes:

1. Non-exclusive easements in the Common Area portion of Developer Tract for the installation, operation, flow and passage, use, maintenance, repair, relocation and removal of sewers (including underground storm sewers), water and gas mains, electrical power lines, telephone lines and other utility lines, all of such sewers, mains and lines to be underground, serving in the case of Penney, buildings or improvements on the Penney Tract, and in the case of ZCMI, buildings or improvements on the ZCMI Tract.

The location of all easements of the character described in this Section II D 1 shall be subject to the prior approval of the Party whose Tract the easement shall burden.

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2. Exclusive easements for the construction, re-construction, erection, removal and maintenance on, to, over, under and across the Developer Tract, of Common Building Components, and to a distance of 14 feet, of footings, steps, wells and supports, canopies, flagpoles, roof and building overhangs, awnings, alarm bells, signs, lights and lighting devices and other similar appurtenances to the Penney Store or the ZCMI Store, as the case may be appropriate, as are shown in the working drawings for such Store, approved by Developer pursuant to the provisions of Section IV of this REA, or pursuant to any other written agreement hereafter executed between Developer and any grantee of the easement referred to in this subdivision 2.

Penney and ZCMI, respectively, covenant and agree that their exercise of such easements shall not result in damage or injury to the buildings or other improvements of Developer and shall not unduly interfere with the business operation conducted by Developer in the Center. The exercise of the easement rights referred to in this Section II D shall be in conformity with the provisions of Section III of this REA. Any improvements within any such exclusive easement shall be deemed a part of improvements of the Party granted such easement.

E. Penney with respect to the Penney Tract hereby grants:

1. To Developer and ZCMI non-exclusive easements in, to, over, under and across the Common Area of the Penney Tract for the purpose of the installation, operation, flow and passage, use, maintenance, repair, relocation and removal of sewers (including underground storm sewers), water and gas mains, electrical power lines, telephone lines and other utility lines, all

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of such sewers, mains and lines to be underground, serving in the case of Developer, the Developer Improvements, and in the case of ZCMI, the ZCMI Store.

The location of all easements of the character described in this Section II E 1 shall be subject to the approval of Penney.

2. To Developer exclusive easements for the purpose of the construction, reconstruction, erection, removal and maintenance on, to, over, under and across the Penney Tract of Common Building Components, and to a distance of 14 feet, of footings, supports, canopies, flagpoles, roof and building overhangs, awnings, alarm bells, signs, lights and lighting devices and other similar appurtenances to the Developer Improvements, as are shown in the working drawings for such Improvements, approved by Penney, pursuant to the provisions of Section IV of this REA, or pursuant to any other written agreement hereafter executed between Penney and any grantee of the easement referred to in this subdivision 2.

Developer and ZCMI, respectively, covenant and agree that their exercise of such easements shall not result in damage or injury to the buildings or other improvements of Penney and shall not interfere with the business operation conducted by Penney in the Center. The exercise of the easement rights referred to in this Section II E shall be in conformity with the provisions of Section III of this REA. Any improvements within any such exclusive easement shall be deemed a part of improvements of the Party granted such easement.

F. ZCMI with respect to the ZCMI Tract hereby grants:

1. To Developer and Penney non-exclusive easements in, to, over, under and across the Common Area of the ZCMI Tract for the purpose of the installation, operation, flow and passage, use, maintenance, repair, relocation and removal of sewers (including underground storm sewers), water and gas mains, electrical power lines, telephone lines and other utility lines, all of such sewers, mains and lines to be underground, serving in the case of Developer, the Developer Improvements, and in the case of Penney, the Penney Store.

The location of all easements of the character described in this Section II E 1 shall be subject to the approval of ZCMI.

2. To Developer exclusive easements for the purpose of the construction, reconstruction, erection, removal and maintenance on, to, over, under and across the ZCMI Tract of Common Building Components, and to a distance of 14 feet, of footings, supports, canopies, flagpoles, roof and building overhangs, awnings, alarm bells, signs, lights and lighting devices and other similar appurtenances to the Developer Improvements, as are shown in the working drawings for such Improvements, approved by ZCMI pursuant to the provisions of Section IV of this REA, or pursuant to any other written agreement hereafter executed between ZCMI and any grantee of the easement referred to in this subdivision 2.

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Developer and Penney, respectively, covenant and agree that their exercise of such easements shall not result in damage or injury to the buildings or other improvements of ZCMI and shall not interfere with the business operation conducted by ZCMI in the Center. The exercise of the easement rights referred to in this Section II F shall be in conformity with the provisions of Section III of this REA. Any improvements within any such exclusive easement shall be deemed a part of improvements of the Party granted such easement.

G. Penney with respect to the Penney Tract hereby grants to Developer non-exclusive easements, in, to, over, under and across the Common Area of the Penney Tract for the purpose of the development and construction thereof pursuant to the provisions of Section VI of this REA. The exercise of the rights referred to in this Section II G shall be in conformity with Section III of this REA.

H. ZCMI with respect to the ZCMI Tract hereby grants to Developer non-exclusive easements in, to, over, under and across the Common Area of the ZCMI Tract for the purpose of the development and construction thereof pursuant to the provisions of Section VI of this REA.

The exercise of the easement rights referred to in this Section II H shall be in conformity with Section III of this REA.

I. The Parties hereby grant each to the other non-exclusive easements appurtenant to such Party's property for the purpose of furnishing connection, support and/or attachment (including, without limitation, walls, slabs and structural systems of an improvement) to any building component owned by another Party where such building component constitutes a Common Building Component.

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J. The Parties hereto each severally covenant and agree to indemnify and hold harmless each other Party and the Tract of any other Party against liability, loss, damage, costs or expenses, including reasonable attorneys' fees, on account of claims of lien of laborers or materialmen, or others, for work performed or supplies furnished in connection with the Developer Improvements, or the Penney Improvements, or the ZCMI Improvements, respectively, and in the event that any Tract shall become subject to any such lien on account of work performed or supplies furnished in connection with any other Tract or Tracts, then the Party or Parties so causing such work to be performed shall, upon request of the owner of the Tract subject to such lien, promptly cause such lien to be released and discharged of record either by paying the indebtedness which gave rise to such lien, or posting such bond or other security as shall be required by law to obtain such release and discharge.

Developer agrees to indemnify and hold harmless Penney and the Penney Tract and ZCMI and the ZCMI Tract from and against any mechanics', materialmen's and/or laborers' liens, and all costs, expenses and liabilities in connection therewith arising out of the construction performed by Developer in respect to the Common Area pursuant to the provisions of Sections V and VI hereof (whether performed prior to or after the execution of this REA), provided that the respective Party so indemnified is not in default in paying its respective pro-rata share of the cost thereof, as provided for in Section VI hereof, and that in the event that any Tract shall become subject to any such lien, Developer shall, upon request, promptly cause such lien to be released and discharged of record, either by paying the indebtedness which gave rise to such lien, or posting such bond or other securities as shall be required to discharge the lien, if established.

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K. Each easement granted pursuant to the provisions hereof is expressly for the benefit of the Tract of the grantee and the Tract so benefited shall be the dominant estate and the Tract upon which such easement is located shall be the servient estate.

L. Upon completion of the construction of the utility facilities identified in Section II D 1, Section II E 1 and Section II F 1, the Parties hereto shall join in the execution of an agreement, in recordable form pursuant to the provisions of Section XIX, appropriately identifying the type and location of each respective utility facility referred to in said Sections.

M. Upon completion of construction of the construction elements referred to in Section II D 2, Section II E 2 and Section II F 2, the Parties to this REA shall join in the execution of an agreement, in recordable form pursuant to the provisions of Section XIX, appropriately identifying the nature and location of each such construction element.

N. Any easement granted pursuant to the provisions of this Section II shall, in event of relocation, be abandoned or terminated by execution of a Quitclaim Deed so abandoning or terminating the same, by the owner of the dominant estate. Any relocation of any easement shall be made at the expense of the Party or Parties requesting such relocation.

### III EXERCISE OF EASEMENTS

A. The exercise of the easements granted pursuant to Section II hereof shall be subject to the following provisions:

1. The grantee of any of the utility easements referred to in subdivision 1 of each of Sections II D, II E and II F shall be responsible (as between the grantor and the grantee thereof) for the installation, maintenance and repair of all sewers, pipes and conduits, mains and lines and related equipment installed pursuant to such grant.

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Any such maintenance and repair shall be performed only after two weeks' notice to the grantor of the grantee's intention to do such work, except in the case of emergency, and any such work shall be done at grantee's sole cost and expense and in such manner as to cause as little disturbance in the use of the Common Area as may be practicable under the circumstances and the surface area affected by such work shall be restored by grantee to the condition it was in prior to such work.

2. The grantor of any of the utility easements granted pursuant to subdivision 1 of each of Sections II D, II E and II F shall have the right to relocate on the land of the grantor any such sewers, mains and lines and related equipment then located on the land of the grantor, provided that such relocation shall be performed only after thirty (30) days' notice of the grantor's intention to so relocate shall be given to the grantee and such relocation: (i) shall not interfere or diminish the utility services to the grantee; (ii) shall not reduce or unreasonably impair the usefulness or function of such utility; and (iii) shall be performed at the sole cost and expense of grantor.

3. The easements granted by Sections II A, II B, II C, II D, II E and II F hereof shall terminate and expire on the Termination Date (except as provided in the following paragraph 4).

4. The easements granted by subdivision 2 of Sections II D, II E, II F and by subdivision II I shall remain in existence so long as the Stores or Enclosed Mall of the grantee shall be in existence in the Center, except to the extent that the same physically relate to the buildings and improvements of the grantor of any such easements (other than easements for footings), in which event such easements

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shall remain in existence only so long as the Stores of both the grantor and the grantee of such easements shall be in existence in the Center. Interruption in service of any such easements shall be permitted as a result of acts of force majeure.

5. The easements granted by Sections II G and II H shall terminate and expire upon completion of the development and construction made pursuant to Sections V and VI of this REA.

#### IV PLANS

A. Daverman and Associates, Inc., 200 Monroe, N.W., Grand Rapids, Michigan 49502, is hereby designated as the Project Architect. The Parties, acting unanimously, shall have the right from time to time to remove, designate or re-designate the Project Architect. The Project Architect shall prepare the improvement plans, including the general architectural concept of the Shopping Center and the integration therewith of all Common Areas of the Shopping Center; provided, however, that the design specifications and supervision of construction of automobile parking areas and utility systems may be provided and performed by Rollins, Brown and Gunnell, Inc., engineers, or other engineers designated by Developer, subject to approval in each case of each of the Parties. The Parties shall be consulted frequently during the course of the preparation of such improvement plans, and if any Party has a preference as to a particular type of installation, it shall furnish to the Project Architect and Developer detailed drawings of such installation or portion thereof for incorporation in the improvement plans. The Parties shall promptly after execution of this REA, furnish to the Project Architect and Developer all necessary and pertinent information relative to the design of their Store buildings as it relates to work to be included in the improvement plans. From time to time during the course of the preparation of such plans, the Project Architect or Developer shall cause progressive working drawings of such plans to be submitted to the Parties for review, approval and recommendation.

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Such improvement plans shall include:

1. Schematic improvement plans which shall, within sixty (60) days following the execution and delivery of this REA, be submitted by the Project Architect to the Parties for their review and approval. Such schematic improvement plans shall include elevations, perspective renderings reflecting design concepts, layout of parking and other Common Area improvements.

2. Preliminary improvement plans which shall, within sixty (60) days following the approval of the schematic improvement plans by all of the Parties, be submitted to the Parties by the Project Architect for their review. Such preliminary improvement plans shall be developed from Exhibit B and the approved schematic improvement plans and shall conform to said schematic improvement plans and to the requirements of this REA and shall include, without limitation:

- (a) All access roadways, exterior boundary walls or fences, project signs, malls (walkways along the perimeter of commercial area buildings shall be designed by the building architect of such Party, subject to the approval of the Project Architect), curbs, curb cuts, entrance driveways, interior roadways, Automobile Parking Areas, utility loop systems and lines to serve common improvements and such common improvements as the Parties may designate, sewer, storm and other drainage lines or systems, including extensions thereof, situated outside the Shopping Center to connect to established public systems, and fire hydrants, lighting facilities and other similar facilities for common use.

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- (b) The location of all facilities for common use where the fixing of such location is reasonably possible, and if precise location cannot be shown, specifications for such locations shall be set forth.
- (c) Rough and finish grading plans for the entire Shopping Center, including all facilities for common use; storm sewers, including area drains, surface drainage installations and taps for building connections, and sanitary sewers for common use, including taps for building connections.
- (d) A composite parking layout for the entire Shopping Center, including paving, striping, bumpers, curbs, location of electroliers and lighting systems, designating areas which may be separately illuminated from time to time at the request of any Party.
- (e) A composite landscaping plan as prepared by landscape architect, specifying overall plant materials and planting.
- (f) The conditions, standards and architectural treatment under which such improvements shall be located, constructed or installed. Such conditions, standards or architectural treatment shall not be less than the minimum requirements of the County of Utah, or other governmental agency having jurisdiction of the performance of the work in the Shopping Center, and shall provide that sewers, drainage, utility lines and conduits shall not be constructed or maintained above the ground level of the Common Area, except above ground transformer pads in areas approved in writing by the Parties.

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- (g) The improvement plans shall not include any Floor Area, but shall designate the general location of the Floor Areas where such locations have been established.
- (h) Improvement of adjacent streets as required by governmental agencies and other off-site improvements.
- (i) Design drawings for storm sewers and area drains, including extensions thereof off the Shopping Center Site, sanitary sewers, water, telephone, gas, electric power and other utility lines, conduits and systems, including taps for commercial connections at the curb line of adjacent buildings; said drawings and working drawings therefor may be prepared by the utility companies responsible for such installations, or the Project Architect or other architects or engineers, and shall be subject to the approval in writing by the Parties.
- (j) The location and extent of perimeter sidewalks at the buildings; such perimeter sidewalks shall be installed by the Party upon whose Tract they are situated and when installed shall become a part of the Common Area.

If a Party does not specify any objection or make a proposal that would add to or change the schematic or preliminary improvement plans to the Project Architect, with a copy to each other Party, within forty-five (45) days from such date of submission, such plans shall be deemed to be satisfactory for further development. If there is such objection or proposal from any Party, the Project Architect shall call a meeting of all Parties to be held within thirty (30) days from such date

of submission to resolve and adjust any objection or proposal with reference to such improvement plans. All objections or proposals shall be considered at such meeting with a view of developing such improvement plans in their final form at such meeting. If at such meeting the Parties are unable to agree unanimously, all matters of disagreement shall be resolved by the arbitration procedures of Section XXVI.

During the preparation of the preliminary improvement plans, or simultaneously with the submittal of the preliminary improvement plans for the approval of the Parties, the Project Architect or Developer shall submit said improvement plans to all governmental authorities, utility companies and districts for their approval. As soon as all necessary approvals are obtained, the Project Architect or Developer shall prepare a schedule for the completion of all improvement plans and the actual work contained therein. Said schedule shall be consistent with and not at variance from the required progress of the common improvement work set forth under Section VI hereof as it relates to the construction start and completion dates of the Parties' Store buildings set forth in Sections V, VII and VIII of this REA.

In accordance with said schedule and following the approval of the preliminary improvement plans, the Project Architect or Developer shall submit final improvement plans in the form of working drawings and specifications to the Parties for review and approval; such final improvement plans shall be developed from the approved preliminary improvement plans.

If a Party does not specify any objection or make a proposal that would add to or change the final improvement plans to the Project Architect or Developer, with a copy to each other Party, within forty-five (45) days from such date of submission of such plans or such schedule for completion of plans, such plans and/or schedules, as the case may be, shall be deemed to be satisfactory for final development.

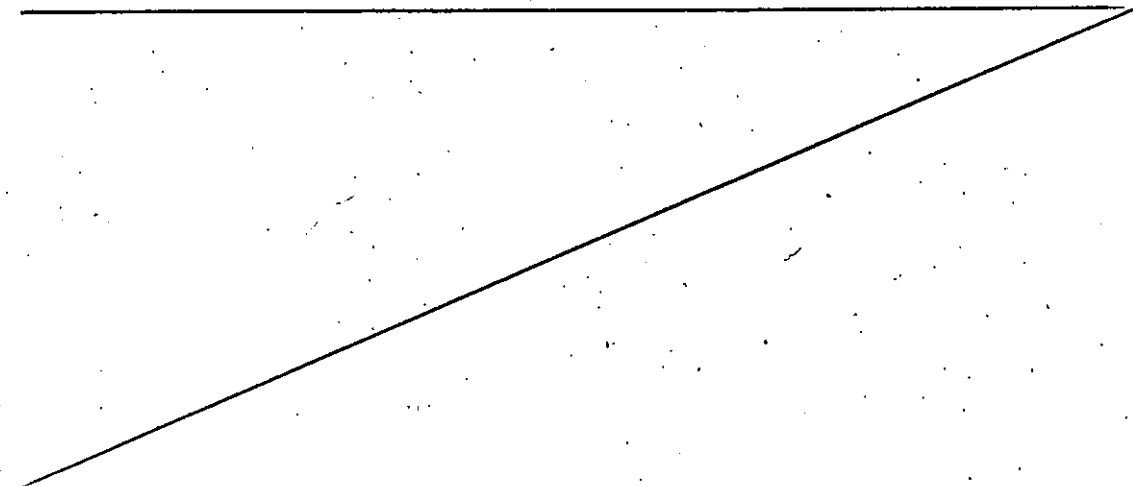


If there is such objection or proposal from any Party, the Project Architect shall call a meeting of all Parties to be held within thirty (30) days from such date of submission, to resolve and adjust any objections or proposal with reference to such final improvement plans and/or schedule. All objections or proposals shall be considered at such meeting with a view to developing the final improvement plans and/or schedule therefor in their final form at such meeting. If at such meeting the Parties are unable to agree unanimously, all matters of disagreement shall be resolved by the arbitration procedures of Section XXVI.

B. Additional improvement plans may be developed by the Project Architect or Developer for the future development of the Common Areas, or may be developed by others and submitted to the Project Architect for approval. Upon such preparation or approval by the Project Architect, as the case may be, such plans shall be submitted to Developer, ZCMI and Penney for their approval in writing.

To provide continuity and harmonious architectural treatment in the development or approval of such plans, prior approved improvement plans shall be followed as a guide in any such additional plans and in the establishment of conditions, standards and architectural treatment under which unimproved areas (if any) shall be improved or additional improvements shall be made to previously improved areas.

C. Changes may be made in the approved improvement plans only by agreement in writing of all of the Parties.



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D. In order that the Shopping Center shall be designed and constructed so as to present an architectural conformity as to each Tract to the whole, Developer, ZCMI and Penney shall within one hundred twenty (120) days after the execution and delivery of this REA, cause to be delivered to the Project Architect, and to each other Party hereto, one copy of the schematics of their proposed plans as respects the exterior design of their respective Stores or improvements, and agree to cause their respective architects thereafter to consult with the Project Architect in coordinating their respective plans, so that the buildings to be erected and constructed will be in architectural conformity with the approved general architectural concept of the Shopping Center. Notwithstanding anything herein contained, Developer hereby waives the right to approve the plans and specifications for the Penney Stores and the ZCMI Stores and Penney hereby waives its right to approve the ZCMI Stores and ZCMI hereby waives its right to approve the Penney Stores.

E. Notwithstanding anything contained in the provisions of this Section IV, Penney and ZCMI, respectively, shall have the reasonable right of approval of the design of that portion of the Enclosed Mall shown on Exhibit B hereof, abutting the Penney Store and the ZCMI Store within 100 feet thereof respectively.

V CONSTRUCTION OF DEVELOPER IMPROVEMENTS  
BY DEVELOPER

A. Developer agrees on a date as soon as reasonably possible after approval of plans and specifications with respect thereto but not later than November 1, 1971, to commence construction of the Mall Stores and the Enclosed Mall, subject to the provisions of Section XVI hereto. Such improvements shall be deemed to have commenced upon the date that Developer shall commence the construction of the foundations of such improvements. Developer agrees to use its best efforts to complete on or before November 1, 1972, but shall complete the improvements on or before June 1, 1973, \_\_\_\_\_

and shall complete same on or before the date upon which either Penney or ZCMI shall open its store for business, provided that such obligation shall be subject to the provisions of Section XVI hereof. The term "complete" shall mean as to Developer Mall Stores finishing of roof, exterior walls and mutually approved barricades between unopened stores and the Enclosed Mall.

In the event Developer shall have failed to have completed the Enclosed Mall prior to the date when the first to open of Penney or ZCMI shall have opened their respective Store for business, then in addition to any other right Penney or ZCMI may have, Penney and/or ZCMI, as the case may be, shall have the right to enter upon the Developer Tract and complete such improvements, or so much thereof as Penney or ZCMI, respectively, deems in its judgment shall be required for the operation of their respective Store, such work to be performed at Developer's expense. In the event Penney or ZCMI performs any work on Developer's behalf, as hereinabove provided, Penney or ZCMI, as the case may be, shall submit an itemized statement to Developer of actual expenses so incurred and the amount thereof shall be immediately due and payable. Such statement of account shall bear interest at the average of the prime rate of interest charged by the majority of major banks in Salt Lake City at the date of such expenditure for bank loans plus 1% per annum (not exceeding the maximum rate permitted by law) until paid. Such Party shall have the right to deduct the amount so payable with interest from any sum then due or thereafter becoming due by such Party to the Developer. If the amount so stated is not paid within thirty (30) days, the Party performing the work, by serving a written notice upon Developer describing the Developer Tract, the nature of the work performed and the cost thereof, and recording a copy of such notice in the office of the County Recorder of Utah County, shall establish a lien upon the Developer's Tract in the amount stated in the recorded notice. No lien shall exist until such notice

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is recorded. The priority of such lien shall be determined as of the date of filing the same of record. Such lien shall also secure the reasonable costs and expenses of enforcing the same, plus interest and attorneys' fees.

B. All work of construction of the Developer Improvements shall be made substantially in accordance with final Developer Improvement plans.

C. The Enclosed Mall shall be constructed in accordance with plans and specifications approved by the Parties, insofar as it relates to the plans for attachment to the building or improvements of any of such Parties. In any determination of the reasonableness of disapproval for any plan for such attachment, insurance requirements to enable any such Party to obtain superior risk insurance, building code requirements, seismic loading, sprinkler protection requirements, increased or decreased costs of construction of the structure to which attachment is to be made, and the proposed type of facade of the structure to which attachment is to be made shall be relevant circumstances in resolving questions that may arise in such attachment. There shall be no seismic loading or structural stress on either the Penney or ZCMI Store Building by reason of the attachment of the Enclosed Mall to such building and there shall be no seismic loading or structural stress on either the Enclosed Mall or Developer Mall Stores by reason of the attachment of the Penney or ZCMI Store building to such improvements. The Enclosed Mall shall provide for sprinkler protection within the ceiling planes, and at all windows and doors abutting the Enclosed Mall facades of the Penney Store and ZCMI Store consistent with requirements to permit superior risk insurance for each of said Stores.

The Parties further recognize that the air conditioning specifications of their respective buildings and the Enclosed Mall are critical and that the same shall be so designed, constructed, operated and maintained as not to cause a robbing of air from one to the other.

In order to develop such plans and specifications as to the physical relationship of the Enclosed Mall to the Penney and ZCMI Store buildings, Penney and ZCMI shall, within thirty (30) days of written request by Project Architect, submit detailed information in connection with the requirements for superior risk insurance rating and other adjacent design, which will enable the Developer to include in its plans for the Enclosed Mall all necessary building components, including heat and smoke venting hatches, roof curbs therefor, sprinkler protection, and structural provisions for mall facade facing, if any. The cost of all such building components directly relating to Penney's requirements shall be borne by Penney and those directly relating to ZCMI's requirements shall be borne by ZCMI.

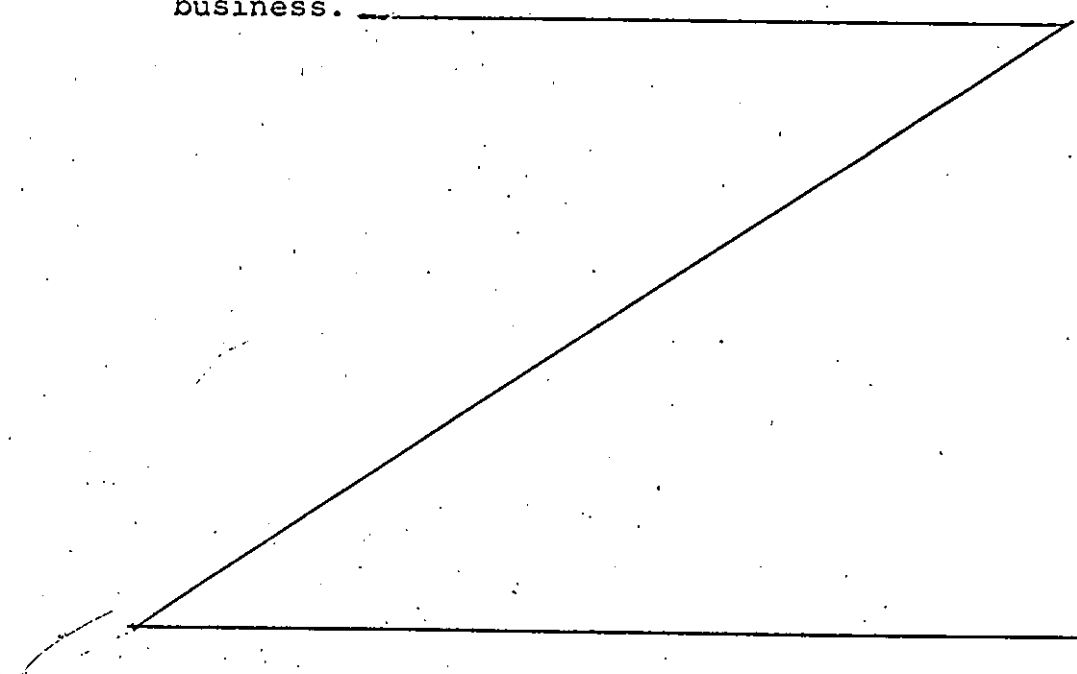
D. With reference to the improvements to be erected and constructed by Developer pursuant to this Section V, the following provisions shall prevail:

1. There shall be erected within the area designated for Mall Stores as Buildings A, B, C, D, E, F and G on Exhibit B hereto Mall Stores which shall have the levels and approximate dimensions designated on Exhibit B, and which shall contain not less than 240,000 square feet of Floor Area and not more than 300,000 square feet Floor Area.

2. In addition, Developer shall have the right, subject to the limitations elsewhere set forth in this REA and hereinafter set forth in this subparagraph 2, to construct a Future Department Store, Future Developer Mall Stores and Future Enclosed Mall within the areas so designated on Exhibit B hereto. It is understood and agreed

that any of such future construction shall be subject to the following:

- (a) The Future Department Store shall contain not less than 80,000 square feet of Floor Area in the aggregate, nor more than 150,000 square feet of Floor Area in the aggregate.
- (b) The Future Department Store shall contain not less than 40,000 square feet of Floor Area on any one floor, nor shall more than two-thirds (2/3rds) of the total Floor Area of the Future Department Store be located on any one floor.
- (c) None of the future construction set forth in this subparagraph 2 shall be erected by Landlord unless all of such construction shall be erected simultaneously therewith.
- (d) Developer shall add such additional contiguous parking to the Shopping Center as necessary to maintain an aggregate of not less than six (6) cars per 1,000 square feet of Floor Area within the Developer Tract.
- (e) The Future Enclosed Mall must be completed and heating and/or air conditioning operable (as appropriate to the season of the year) at or about the time the Future Department Store opens for business.



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VI CONSTRUCTION OF COMMON AREAS

A. Concurrently with the construction of the Developer Improvements pursuant to Section V hereof, and subsequent to the approval of the improvement plans provided for in Section IV A, and subject to the provisions of Sections V B and XVI, Developer, as Contracting Party (unless any Party shall in writing request that its property be removed from the arrangement providing the services of the Contracting Party, in which event such Party shall act as the Contracting Party as to its Tract), shall enter into a written contract for and shall do or cause to be done all on-site work required to construct the "common improvement work" in Phase I (excluding the Enclosed Mall and walkways provided for in Section VI B 5 and also excluding the off-site work provided for in Section VI B 10) provided for in the improvement plans, and (except to the extent work is to be performed by others) such contract shall be entered into with a general contractor chosen by the Parties for such common improvement work and shall be subject to prior written approval by the Parties.

In the event it is deemed advisable by any Party to segregate any part of the common improvement work to the extent such segregation is practical and/or possible, the Contracting Party or the Project Architect shall obtain several (but need not obtain more than six) competitive bids from qualified contractors approved by the Parties for such common improvement work.

In the event the Parties shall be unable to agree upon any bids or sub-bids to be approved, the lowest bids or sub-bids from an approved and bondable contractor submitted for each common work or part thereof shall be deemed to be the approved bid or bids and a contract or contracts for the performance of such common work shall be let to such bidder.

The bid documents and contract or contracts under which such common improvement work is to be performed shall be subject to the approval of the Parties and executed by the Contracting Party. Such contract or contracts shall include provisions requiring a bond of a contractor (subject to waiver thereof by all of the Parties) covering performance, completion and labor and material payment with respect to that portion of the common improvement work to be performed by each contractor, naming the contractor as principal and the Parties jointly and severally as obligees in the form, and with the corporate surety or sureties, approved by the Parties, which bond will cover the full amount of the contract price and all of which bonds shall aggregate one hundred percent (100%) of the amount of the construction contract price for the common improvement work.

Contracting Party shall perform such services in connection with the common improvement work as are commonly performed by an owner's representative; provided, however, that each of the Parties hereto reserves all rights of approval over subcontractors as it would otherwise have if it were acting independently of the Contracting Party.

In the event during the course of construction there shall be any change in the plans and specifications for such construction, which shall entail so-called "extra work" by the contractor, such changes and the amount to be paid to such contractor for such extra work shall first be approved in writing by all Parties.

In the event a Party shall fail to reject such change in writing within thirty (30) days from the date of submission of such change, such change shall be deemed to have been approved by such Party. In the event there shall be any deletion from the plans and specifications or changes which shall result in a decrease in cost, such decrease shall be reflected in the amount to be paid to the contractor under such contract.

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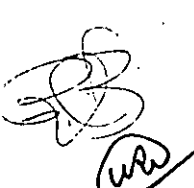


During the course of construction, statements of expenditure shall be submitted by the contractor for approval to the Project Architect. The Project Architect or Site Engineer shall certify its approval of such statements, including the percentage of work performed under the contract, to the Parties, unless the Parties hereto shall have selected some other method of approval. Upon receipt and approval of such statements of expenditure, together with a statement setting forth the determination of their respective Proportionate Share (as such term is hereinafter defined in this Section VI), Penney and ZCMI shall promptly pay their respective Proportionate Share thereof to Developer. Any disapproval shall be made in writing by the Party so disapproving, and a copy thereof shall be furnished to the Project Architect, the contractor and to all other Parties within twenty (20) days following the receipt of the certified statement of the Project Architect. Site Engineer will be used in lieu of Project Architect for Common Area work outside building areas.

B. The aforesaid work relative to the Center and the Common Area portion thereof shall not include any improvement work on the Enclosed Mall, but shall consist of the design, construction and improvement of the remainder of the Common Area, including, but not necessarily limited to the following:

1. Clearing, rough grading, fill and compaction requirements for the Common Area, including excavations, if any, to develop the same, and including excavating and rough grading for the buildings of the Parties to the extent design information relating thereto is available to Project Architect at the time design work on this phase of construction is in progress.
2. Finish grading of the Common Area.
3. All paving, striping and lighting of the Common Area.

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4. Facilities for surface and sub-surface drainage.

5. Malls (however, the cost of the Enclosed Mall shall be separately stated and shall be paid for solely by Developer), sidewalks and curbs located within the Common Area, and curbs at building perimeters, exclusive of sidewalks adjacent to buildings which shall be constructed pursuant to and as part of the building contracts of adjacent buildings.

6. Landscaping of the Common Area, including lighting and related water systems and related electric time clocks, and landscaping of the strip of land between the Shopping Center boundary and Brigham Young University Diagonal 1300 South on the south and U. S. Highway 89-91 on the west.

7. Common sewer, gas, electrical, water and telephone facilities to the curb line of the respective buildings, or to such other line or point as may be physically possible in light of slopes of excavation of buildings, notwithstanding the fact that such common facilities may also serve the Developer Improvements, the Penney Store and/or the ZCMI Store.

8. All Common Area amenities, such as benches, trash baskets, drinking fountains, bicycle racks, decorative features, and similar facilities for the comfort or benefit of the general public shopping in the Center, together with directional and parking area signs, symbols, directories and similar notices for and to the Center, including signs during construction, shall be of such size, form and content as the Parties shall approve (excluding any in the Enclosed Mall).

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9. Notwithstanding the foregoing, all cost and expenses, including architectural and engineering costs with respect to the erection and construction of any temporary enclosure for the Enclosed Mall and the removal thereof at the time of the completion of the Enclosed Mall and its attachment to the originally uncompleted Store, shall be borne by the Party constructing such Store.

10. Notwithstanding anything contained in this REA, the entire cost of any off-site improvements shall be paid by Developer at its sole cost and expense and shall not be subject to reimbursement by Penney.

Developer, however, agrees to submit to Penney and ZCMI for their mutual approval all plans and specifications relating to off-site work to be performed for the benefit of the Shopping Center.

The cost of the common improvement work shall refer to and include:

- (a) The actual cost and expense of the performance of the common improvement work, as set forth in subparagraphs 1 through 10 above.
- (b) The architectural, engineering, design, and other professional and service fees and charges required by governmental agencies as a condition of the issuance of a building permit with respect to the common improvement work and in the preparation of the improvement plans pursuant to contracts approved by the Parties.
- (c) The fees of the contractor or contractors with respect to the common improvement work performed under contracts approved by the Parties.

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Payments or disbursements for the common improvement work shall be made in accordance with the provisions of the contract with the Project Architect or the procedures established by the Parties with the Contracting Party.

The Proportionate Share of the cost of the categories of common improvement work shall be determined for by each of the Parties on the following basis:

These cost ratios calculated as of the date of execution of this REA are:

|           | <u>Acres</u>  | <u>Percent</u> |
|-----------|---------------|----------------|
| Penney    | 13.200        | 22.7606        |
| ZCMI      | 15.796        | 27.2368        |
| Developer | <u>28.999</u> | <u>50.0026</u> |
| TOTAL     | 57.995        | 100.0000       |

If Developer (i) elects to cause any of the items of On-Site Improvement work to be constructed on the Phase 2 Tract; or (ii) causes any On-Site work to be constructed on Phase I Tract designed for the sole benefit of Phase 2 Tract; or (iii) causes any of such On-Site work which is constructed on Phase I to be designed and installed with a capacity greater than that required to serve the initial Phase I improvements or for the benefit of Phase 2 Tract resulting in an increase in the cost of any such on-site work over and above the cost therefor which would have been incurred if such work had been constructed solely on or solely to service Phase I (excluding the Future Department Store and/or Future Stores as shown on Exhibit B hereto), Developer shall pay any such additional cost or increase in cost, as the case may be. The Project Architect shall determine any such additional cost or increase in cost and his determination shall be subject to review and approval by the Parties.

If the utility service for Phase I is designed and installed with capacity to serve Developer Phase 2 Tract in addition to Phase I, the portion of such cost attributable to Developer Phase 2 Tract shall be determined on the basis of

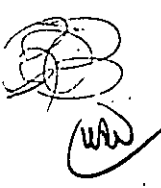
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Maximum Allowable Floor Area permitted on each such Tract (for the purpose of this paragraph only, Maximum Allowable Floor Area permitted on Phase 2 Tract shall be 100,000 square feet).

In the event that Penney or ZCMI individually as Contracting Party, shall perform any of the work hereinabove provided for as to its respective Tract, as provided for herein, the cost of any portion of the work performed by a Party, as a Contracting Party, on its respective Tract shall be borne by such Party and shall not be included in the cost of the common improvement work as provided for hereinabove. In the event any Party so performs such work as hereinabove provided for, said Party shall be credited for the cost of such portion of the work allocated thereto under the contract entered into by the Developer as Contracting Party for the common improvement work against its contribution to be made under said contract as hereinabove provided. The cost and expense of the Enclosed Mall shall be excluded from the provisions of this Section VI.

In the event that after having approved any portion of the work and contract therefor, and after some portion of the work has been performed, any Party shall require a change in design or specification and that Party shall be responsible for the actual cost of revising or reconstructing such portion of work as is required to be performed to accommodate such change in design or specification.

C. The Developer or Project Architect shall keep accurate records and books of account, in such form as the Parties reasonably and compatibly shall direct, of the cost of such work and shall keep such records for a period of at least two (2) years from and after the completion of the common improvement work, and each Party, or its duly authorized agent, shall, at the cost and expense of such Party, have the right during said two (2) year period to audit such records and books of account. In the event any such audit shall disclose any error in the determination of the cost of the common improvement work and/or Proportionate Share of any Party or Parties, then the adjustment necessary to correct such error or errors shall promptly be made.



D. The performance of the common improvement work under any such contract shall be scheduled by the Project Architect in consultation with all Parties, to coordinate such common improvement work with the commercial work of such Parties. It is expressly understood and agreed that all common improvement work shall be substantially completed not less than thirty (30) days prior to the opening of the first to open of the Penney Store or the ZCMI Store.

E. Subject to the provisions of Section XVI hereof, there shall be constructed within the Common Area, Automobile Parking Areas containing not less than six (6)--- automobile parking spaces for each 1,000 square feet of Floor Area within the Center.

Subject to the provisions of Paragraph A of Section IX hereof, each Party, upon completion of construction of any future expansion Floor Area on its Tract, shall provide in the aggregate not less than six (6) automobile parking spaces for each 1,000 square feet of Floor Area constructed or maintained on its respective Tract. Each parking space shall have a minimum width of 9 feet 6 inches; provided, however, at the time of any expansion on Exhibit B hereto, any Party requiring narrower spaces to comply with parking requirements hereto shall have the right at its respective sole cost and expense to restripe the parking spaces within its portion of the Common Area to a minimum width of 9 feet. Parking lanes or bays (which include two rows of parking spaces and incidental driveway) shall have a minimum width of 65 feet. All parking spaces shall be at a 90 degree angle to driveways.

The following minimum requirements shall be applicable to the Automobile Parking Areas:

1. The maximum slope in any portion of said areas shall not exceed three percent (3%), unless otherwise shown in the approved improvement plans.

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2. Lighting shall be provided for Mercury Vapor fixtures (or other fixtures approved by the Parties on the improvement plans) with area controls as approved by the Parties and with electric time switches on a seven-day program, sufficient to produce a minimum maintained 1-1/2 foot candle of lighting, or such other minimum as shall be mutually approved by the Parties.

F. Common Area improvements shall meet the following requirements:

1. All sidewalks, unenclosed malls and pedestrian aisles shall be of concrete or other approved materials, and the surface of the Automobile Parking Areas and access roads shall be paved in accordance with the following:

- (a) All parking areas shall contain a minimum 2 inch asphaltic wearing surface and 6 inch gravel base, or other mutually approved base.
- (b) All roadways and loading ramps shall be surfaced with a minimum 3 inch asphaltic wearing surface and 5 inch gravel base.

2. All fire protective systems shall be installed in accordance with the requirements of local authorities having jurisdiction over such installation, and any additional requirements of any qualified inspection firm representing any Party with respect to its improvements; for example, National or Regional Boards of Fire Underwriters, or Factory Mutual.

3. The surface of that portion of the Enclosed Mall devoted to pedestrian traffic shall be installed in accordance with improvement plans approved by the Parties.

4. The finished surface of the Enclosed Mall shall be established at the same elevation as the first floor of the abutting retail store building at all access points, present or future, abutting such buildings.

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5. The quality of (i) the construction, (ii) the construction components, (iii) the decorative elements (including landscaping and irrigation systems for the landscaping) and (iv) the furnishings, and the general architectural character and general design (including, but not by way of limitation, landscaping and decorative elements), and materials selection, the decor and the treatment values, approaches and standards of the Enclosed Mall shall be comparable, at minimum to the qualities, values, approaches and standards (as of the date of opening) of an Enclosed Mall in high quality regional Shopping Centers in the Western United States.

#### VII CONSTRUCTION OF PENNEY STORE

A. Penney agrees as soon as reasonably possible after completion of its approved final plans and specifications for the Penney Store, but not later than December 15, 1971, to cause construction of the Penney Store to be commenced and thereafter to use its best efforts to complete on or before February 1, 1973, but shall complete no later than July 1, 1973, provided that such obligation shall be subject to the provisions of Section XVI hereof. Anything herein to the contrary notwithstanding, Penney is not obligated to commence construction until Developer has commenced construction of the Developer Improvements, as provided for in Section V hereof.

B. The Penney Store shall have not less than 140,000 square feet of Floor Area, shall be two stories in height, together with a penthouse, and may contain such other features, including, but not limited to, an enclosed or open loading dock as Penney may determine. In no event shall the total Floor Area of the Penney Store and TBA exceed 168,000 square feet of Floor Area. All work performed pursuant to this Section VII shall be made in accordance with the approved final Store plans and the other requirements of this REA.

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C. Penney shall have the right to erect Penney's TBA building in the area shown on Exhibit B. Such building shall be not more than one story in height and shall contain not more than 16,000 square feet of Floor Area.

D. Plans and specifications of the Penney Store and TBA shall be prepared by Penney as soon as reasonably possible after Penney has obtained a survey showing the location of the property lines within the Center, sewer and utility line plans, and the topography of the land showing all proposed finished grades, and Penney shall have received soil reports and analysis basis on test borings, and other data pertaining to the site as may be reasonably required for the preparation of such plans and specifications.

All such plans and specifications shall be submitted to Developer for Developer's review and approval as to exterior design thereof, for the purpose of coordinating the Penney Store with the design of the Mall Stores.

E. Developer shall make available to Penney, and Penney shall reimburse Developer for Developer's cost and expenses for installing and providing water and electricity in such quantities as are reasonably necessary for Penney's use during construction, unless such utilities are available directly from the suppliers thereof.

#### VIII CONSTRUCTION OF ZCMI STORE

A. ZCMI agrees as soon as reasonably possible after completion of its approved final plans and specifications for the ZCMI Store, but not later than September 1, 1971, to cause construction of the ZCMI Store to be commenced and thereafter to use its best efforts to complete on or before November 1, 1972, but shall complete no later than June 1, 1973, provided that such obligation shall be subject to the provisions of Section XVI hereof. Anything herein to the contrary notwithstanding, ZCMI is not obligated to commence construction until Developer has commenced construction of the Developer's Improvements, as provided for in Section V hereof.

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B. The ZCMI Store shall not be less than 140,000 square feet of Floor Area, shall not be less than two stories nor more than three stories in height, and may contain such other features, including, but not limited to, a loading dock as ZCMI may determine. In no event shall the total Floor Area of the ZCMI Store, together with TBA and all outdoor sales areas, exceed 228,000 square feet. All work performed pursuant to this Section VIII shall be made in accordance with the approved final Store plans and the other requirements of this REA.

C. Plans and specifications of the ZCMI Store shall be prepared by ZCMI as soon as reasonably possible after ZCMI has been furnished a survey showing the location of the property lines within the Center, sewer and utility line plans, and the topography of the land showing all proposed finished grades, and ZCMI shall have received soil reports and analysis basis on test borings, and other data pertaining to the site as may be reasonably required for the preparation of such plans and specifications.

All such plans and specifications shall be submitted to Developer for Developer's review and approval as to exterior design and structural nature thereof, for the purpose of coordinating the ZCMI Store with the structural nature and design of the Mall Stores.

D. Developer shall make available to ZCMI, and ZCMI shall reimburse Developer for Developer's cost and expenses for water and electricity in such quantities as are reasonably necessary for ZCMI's use during construction, unless such utilities are available directly from the suppliers thereof.

IX. FLOOR AREA AND AUTOMOBILE PARKING AREA  
REQUIREMENTS AND LIMITATIONS

A. Subject to the provisions of Section XVI hereof, there shall be available at all times after the completion of construction required under Section VI hereof, within the Common Area on each of the Developer Tract, ZCMI Tract, and Penney Tract, respectively, Automobile Parking Areas containing

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not less than 6.0 automobile parking spaces for each 1,000 square feet of Floor Area within each such respective Tract. In addition, each Party, after any future expansion Floor Area is constructed on its Tract and as a condition precedent to the opening thereof for business, shall provide not less than 6.0 automobile parking spaces for each 1,000 square feet of Floor Area constructed on its respective Tract, including such future expansion Floor Area.

B. Notwithstanding anything to the contrary contained in this REA, but subject to the maximum square footages of Section VII hereof, it is agreed that at all times following the opening date of the respective Stores, or improvements, as the case may be, and subject to the provisions of Sections XIV, XVI and XVIII hereof, during the term of this REA:

1. The Penney Store shall contain not less than 140,000 square feet of Floor Area, or more than 153,000 square feet of Floor Area, together with a TBA facility containing not more than 16,000 square feet. Initial building areas shall be as shown on Exhibit B. Any expansion may be in the area designated therefor on Exhibit B.

2. The ZCMI Store shall contain not less than 140,000 square feet of Floor Area, plus a TBA facility of not to exceed 8,000 square feet of Floor Area such that the total Floor Area shall be not more than 228,000 square feet. Initial building areas shall be as shown on Exhibit B. Any expansion shall be in the area designated therefor on Exhibit B.

3. The Developer Improvements shall contain not less than 240,000 square feet of Floor Area, or more than 300,000 square feet of Floor Area in the Mall Stores, excluding the Future (Third) Department Store and other future expansion in Phase I as shown on Exhibit B hereto. Initial building areas shall be as shown on Exhibit B. Any expansion shall be in the areas designated therefor on Exhibit B.

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4. The heights of buildings in the Center shall not exceed those specified in Exhibit C attached hereto and by this reference made a part hereof.

C. Neither the Shopping Center Site nor any part thereof shall be used, and no building or other improvement shall be thereon constructed, maintained or used for any purpose other than the following:

Retail and wholesale incidental thereto, office and service establishments, including, without limitation, financial institutions, motion picture theater, brokerage offices, restaurants, travel and other agencies, but excluded are automotive sales agency, used car lot, bowling alley, veterinary hospital, mortuary, commercial laundry plant, unless specifically approved in writing by the Parties. No building within Developer Mall Store Area shall be used primarily for office purposes other than banks, savings and loan associations, other financial institutions, insurance agency and other offices as are approved from time to time by the Parties. There shall be no skating rink within the Developer's Mall Stores Area, nor Developer's Future Mall Stores Area. There shall be no car wash within the initial Developer's Tract as described on Exhibit A, Part I hereto, nor on Developer's Future SC-1 Tract as described on Exhibit A, Part V hereto.

D. Except as otherwise prohibited by this REA, or by law, any part and/or all of the Shopping Center Site (excluding Common Areas) may be used for any commercial or business operation, use or purpose which is expressly authorized herein, or which is common to first-class regional shopping centers and which is not prohibited by this REA or by law.

E. No use or operation will be made, conducted or permitted on or with respect to all or any part of the Shopping Center Site, which use or operation is obnoxious to or out of harmony with the development or operation of a first-class regional shopping center, including, but not limited to, the following:

1. Any public or private nuisance.
2. Any noise or sound that is objectionable due to intermittence, beat, frequency, shrillness or loudness.
3. An obnoxious odor.

4. Any noxious, toxic, caustic or corrosive fuel or gas.

5. Any dust, dirt or fly ash in excessive quantities.

6. Any unusual fire, explosion or other damaging or dangerous hazard.

7. Any warehouse (but any area for the storage of goods intended to be sold at any retail establishment in the Center shall not be deemed to be a warehouse), assembly, manufacture, distillation, refining, smelting, agriculture or mining operations.

8. Any trailer court, labor camp, junk yard, stock yard, or animal raising (other than pet shop).

9. Any drilling for and/or removal of sub-surface substances.

10. Any dumping or disposal of garbage or refuse except normal day disposal by occupants.

11. Any fire or bankruptcy sale or auction house operation.

F. No retail or business establishment, including any to be located within any kiosk, shall be located within any portion of the Enclosed Mall without the approval of Penney and ZCMI, except for any kiosk in a location so approved. The provisions of this Paragraph F have no application to Developer Mall Stores.

ZCMI and Penney approve the locations for the six (6) kiosks within the Enclosed Mall as shown on Exhibit B hereto. Developer agrees that Penney shall have the right to approve the exterior design, finish, height and occupancy of the two (2) kiosks closest to its Store, such approval not to be unreasonably withheld, and that ZCMI shall have the right to approve the exterior design, finish, height and occupancy of the two (2) kiosks closest to its Store, such approval not to be unreasonably withheld. Developer agrees that the two (2) kiosks closest to the center court shall not exceed 8 feet in height.

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X GENERAL CONSTRUCTION REQUIREMENTS

A. Each Party severally agrees to perform its respective work so as not to cause any increase in the cost of constructing the remainder of the Shopping Center Site or any part thereof which is not reasonably necessary, and so as not to unreasonably interfere with any construction work being performed on the remainder of the Shopping Center Site, or any part thereof, or with the use, occupancy or enjoyment of the remainder of the Shopping Center Site, or any part thereof, by any other Party to this REA, and any other Occupant of the Shopping Center Site, and the Permittees of any other Party to this REA and such other Occupants. Each Party severally agrees to take such safety measures as may be reasonably required to protect the other Parties to this REA and the other Occupants of the Shopping Center Site and the Permittees of the Shopping Center Site, and the property of each from injury or damage caused by or resulting from the performance of such work by such Party.

B. From and after the opening of the buildings of any Party abutting on the Enclosed Mall, each other Party thereafter erecting or constructing any building shall erect and construct a barricade surrounding the building or buildings so being constructed. Such construction barricade shall be kept in place, in good condition and repair, until the building so being constructed is secure from unauthorized intrusion. All barricades shall be of materials and colors approved by the Project Architect.

C. Prior to the commencement of the work to be performed by any Party to this REA, each Party shall submit to the Project Architect for approval (which approval shall not be unreasonably withheld): (i) a plot plan of the Center showing, as respects the buildings and improvements to be constructed by it, material and equipment storage sites; construction shacks and

other temporary improvements, and workmen's parking area; and (ii) a time schedule indicating the approximate date or dates upon which each portion of the Center used for the purposes referred to in the preceding subdivision (i) shall cease to be so used by such Party. Within ten (10) days after the submission of such plot plan and such time schedule, the Project Architect shall notify the Party submitting the same, whether the same are approved or disapproved, provided that a failure to give such notice shall constitute approval thereof by the Project Architect. If the Project Architect shall disapprove the plot plan and/or the time schedule (specifying the reasons for such disapproval), the Party submitting the same shall promptly meet with the Project Architect to resolve their difference.

D. Penney, ZCMI and Developer, each as respects its respective construction, shall use all reasonable efforts to cause its architects and contractors to cooperate and coordinate its construction with the architects, contractors and construction work of the other Parties hereto to the extent reasonably practicable, to achieve the objectives set forth in Section X C.

Each Party further agrees that all construction performed hereunder shall be done in a good and workmanlike manner, with first-class materials, and in accordance with all applicable laws, rules, ordinances and regulations. Each Party shall pay all costs, expenses, liabilities and liens arising out of or in any way connected with such construction; provided, however, that nothing herein contained shall be deemed to prevent liens by way of construction or permanent loans.

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E. In the event any mechanics' liens are filed against the Tract of any Party, the Party permitting, or causing such lien to be filed hereby covenants to either pay the same and have it discharged of record, promptly, or to take such action as may be required to reasonably and legally object to such lien, and in all events agrees to have such lien discharged prior to the foreclosure of such lien. Upon request of any other Party, the Party permitting or causing such lien to be filed, agrees to furnish such security as may be required, to and for the benefit of such other Party, and to permit a report of title to be issued by any title insurance and trust company designated by such other Party relating to the requesting Party's Tract without showing thereon the effect of such lien.

XI OPERATION AND MAINTENANCE OF COMMON AREA

A. Subject to the reimbursement hereinafter provided and upon completion of the Common Area Improvements, Developer shall operate and maintain, or cause to be operated and maintained, all the Common Areas and all of the improvements of the Common Areas located within the Shopping Center Site and shall at all times maintain the parking index required under Paragraph A of Section IX of this REA, and shall keep the same in good order, condition and repair, and reasonably clean and free of rubbish and other hazards to persons using such areas.

Without limiting the generality of the foregoing, Developer, in the maintenance of the Common Areas, shall:

1. Maintain the surface of the Automobile Parking Area and sidewalks level, smooth and evenly covered with the type of surfacing material originally installed thereon, or such substitute thereof as shall be in all respects equal thereto in quality, appearance and durability.

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2. Remove all papers, debris, filth and non-store refuse from the Center and wash or thoroughly sweep paved areas as required.

3. Maintain such appropriate Automobile Parking Area entrance, exit and directional signs, markers and lights in the Center as shall be reasonably required and in accordance with generally accepted standards for regional shopping centers in the geographic area.

4. Clean lighting fixtures of the Center (as contrasted with those appurtenant to premises of Occupants) and relamp as needed.

5. Repaint striping, markers, directional signs, etc., as necessary to maintain in good condition.

6. Maintain landscaping as necessary to keep it in a good condition.

7. Clean signs of the Center (as contrasted with those of Occupants), including relamping and repairs being made as required.

8. Maintain all of the Common Areas free from any unnecessary obstructions. It is expressly understood and agreed that all sale or display of merchandise shall be within Floor Area and that there shall be no such display or sale of merchandise in any portion of the Common Areas, other than in approved kiosks, and gasoline sales areas. It is expressly understood and agreed, however, that in the event of promotional activities for the Shopping Center as a whole approved by the Parties, the provisions hereof may be waived during the period of such promotional event.

9. Pay all electrical, water and other utility charges or fees for services furnished to such Common Areas.

10. Maintain such utility lines or system which is to be used in whole or in part to provide service for common or commercial facilities erected, constructed or installed on the Tract of one or more of other Parties to the extent the same are not maintained by public utilities.

11. Police Common Areas as reasonably required.

12. Depreciation of maintenance equipment.

13. Perform such other acts as shall be deemed advisable for the proper maintenance of the Common Areas.

B. The operation of the Common Areas by the Parties shall be governed by the rules and regulations set forth in Paragraph A of Exhibit E hereto as they may be amended from time to time by the Parties. Unless Developer, ZCMI and Penney otherwise consent and agree in writing, no charge of any type shall be made or collected from any Occupant, or the Permittees of any Occupant, for parking, or the right to park vehicles in the Automobile Parking Area, except such Common Area maintenance charges as may be provided for in any lease agreement with any Occupant.

Neither Developer, Penney, ZCMI nor the Permittees of Penney, ZCMI or Developer shall be prohibited or prevented from so parking so long as space is available in the Automobile Parking Area, and so long as they do not violate the reasonable rules and regulations covering the use of the Automobile Parking Area promulgated from time to time by the Parties. Developer, ZCMI and Penney may by mutual agreement prescribe certain sections within the Common Area, or on other land outside the Common Area within a reasonable distance from the nearest boundary of the Center, for use as parking space by the Occupants of the Center, and the employees, tenants, agents, contractors, licensees and concessionaires of such Occupants. Each Party shall require its employees and the employees of its agents, contractors,

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licensees and concessionaires to use only such sections as so prescribed for parking. Each Party agrees to use reasonable efforts to enforce the provisions hereof. It is understood and agreed that each of the Parties may exclude employee parking from any other portion of the Center.

Penney and ZCMI shall pay as their respective share of the cost of maintaining the common facilities, excluding the Enclosed Mall, as aforesaid, an amount determined by multiplying such expenses by a fraction, having as its numerator the number of square feet of Floor Area in the buildings situated on their respective premises weighted on a basis of one hundred percent (100%) for ground Floor Area and fifty percent (50%) for all other Floor Area, and as its denominator the number of square feet of Floor Area similarly weighted of all buildings situated within the entire shopping center; provided, however, that the amount to be paid by Penney and by ZCMI for each year during the term hereof shall in no event exceed an amount computed by multiplying the number of square feet of Floor Area similarly weighted within the Penney Improvements as to Penney's share, and the number of square feet of Floor Area similarly weighted within the ZCMI Improvements as to ZCMI's share, by fifteen cents.

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At any time after the opening date, either department store may serve notice upon Developer and the other department store that the department store serving such notice elects to maintain the common facilities (excluding the Enclosed Mall) on its Site on and after a date which shall be not less than sixty (60) days after service of such notice.


If either department store shall have elected to maintain the common facilities (excluding the Enclosed Mall) on its Site, (i) Developer shall not longer be required to maintain the common facilities (excluding the Enclosed Mall) on such department store's Site (ii) such department store shall maintain the common facilities (excluding the Enclosed Mall) on its Site, (iii) such department store shall no longer be obligated to reimburse Developer for any portion of any expenses incurred by Developer for maintenance of common facilities (excluding the Enclosed Mall) on the Shopping Center, and (iv) no part of the Floor Area on such department store's Site shall be included in calculating the share of Common Facilities Expense payable by the other department store.

At any time during the term of this agreement, ZCMI and/or Penney may serve upon Developer a notice advising Developer that Developer is in default in maintaining the common facilities (excluding the Enclosed Mall) of the Shopping Center in

accordance with the foregoing. A copy of such notice shall also be served simultaneously upon any institutional holder of a conventional first mortgage on the Developer Site. Unless within thirty (30) days after receipt of such notice by Developer, Developer shall have cured such default to the satisfaction of the Parties who shall have served such notice, or unless the holder of the first mortgage on Developer's Site shall have assumed maintenance of the common facilities (excluding the Enclosed Mall) on Developer's Site, then a non-profit corporation formed by both department stores ("Maintenance Corporation") may elect to take over maintenance and operation of the common facilities (excluding the Enclosed Mall) of the Shopping Center by serving notice of such intention upon Developer, which notice shall set forth the date upon which the Maintenance Corporation will commence maintenance of the common facilities (excluding the Enclosed Mall) on the Shopping Center. Together with such notice, there shall be delivered to Developer a copy of an agreement entered into between the Maintenance Corporation and both department stores which agreement shall provide for the maintenance of the common facilities (excluding the Enclosed Mall) of the Shopping Center by such Maintenance Corporation for a term of not less than two (2) years and shall provide that each department store will contribute its portion of the expenses of maintaining the common facilities (excluding the Enclosed Mall) on the Shopping Center Site determined in accordance with the foregoing, except that there be no maximum limitation on the contribution to be made by either department store and that Developer will contribute its portion of such expenses, such portion to be in that proportion which the Floor Areas of all the buildings on the Developer Site bears to the Floor Area of all of the buildings on the Shopping Center Site. If the Developer shall fail to

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pay its portion to the Maintenance Corporation in accordance with the agreement referred to herein, such amount shall be a lien upon and may be satisfied out of the rents thereafter accruing to Developer from the Tenants and Occupants of all portions of the Developer Site, and Developer shall pay over to the Maintenance Corporation all rents received from Tenants or Occupants of any part of Developer's Site until the amount due from Developer as its portion of the expenses of maintaining the common facilities (excluding the Enclosed Mall) on the Shopping Center shall have been paid in full. Such lien on rents shall be superior to any other lien or encumbrance granted by Developer on such rents, provided, however, that such lien shall be subject to the rights of the holder of any conventional institutional first mortgage on Developer's Site. If Developer shall fail to pay over such rents to the Maintenance Corporation, the Maintenance Corporation may serve notice upon the Tenants or Occupants, or any of them, on Developer's Site to pay their rent to the Maintenance Corporation until the amount due from Developer hereunder shall have been paid in full. The payment of rent by any Tenant or Occupant of Developer's Site to the Maintenance Corporation shall be deemed to be made for the account of Developer and such Tenant or Occupant shall not, by reason thereof, be deemed to be in default in the payment of rent under its lease or occupancy agreement with Developer. Any rents collected by the Maintenance Corporation in excess of the amount then due to the Maintenance Corporation pursuant to the foregoing shall be paid over to Developer.

The Maintenance Corporation shall use its best efforts to maintain the common facilities (excluding the Enclosed Mall) on the Shopping Center Site in an economical a manner as is

reasonably possible, but shall not be liable to any Party hereto.

C. Developer, as to the Enclosed Mall, shall, at its sole cost and expense but subject to the reimbursement herein-after provided, in addition to the foregoing, provide heating, cooling and ventilation for the Enclosed Mall and shall maintain the air conditioning system therein at all times when retail operations on the Developer Tract or the Penney Tract or the ZCMI Tract are open for business and in such manner so that the temperature and humidity throughout the Enclosed Mall are at a reasonably comfortable level and in any event, in accordance with the following minimum design standards:

Heating Season: A prevailing minimum temperature of approximately 65°F., with outside temperatures ranging from 0°F.

Cooling Season: A prevailing maximum temperature of 80°F. and a relative humidity of 50%.

Air conditioning design standards subject to the following requirements and conditions: An outside dry bulb temperature of 93°F., coincident with a wet bulb temperature of 66°F.

Developer shall also maintain the glass, floors, walls (excluding any portion of the walls and windows as also constitute a portion of ZCMI or Penney Store buildings) and roof of the Enclosed Mall in good condition and repair, and shall clean such areas, wash all such glass and replace all electric lamps as may be required. ZCMI and Penney shall not unduly drain conditioned air from nor unduly discharge residue or return air

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into, the Enclosed Mall and Developer shall not unduly drain conditioned air from the buildings containing the retail operations on the ZCMI Tract and the Penney Tract, and Developer agrees that Occupants of Developer Tract shall be required not to unduly drain conditioned air from nor unduly discharge return air into, the Enclosed Mall.

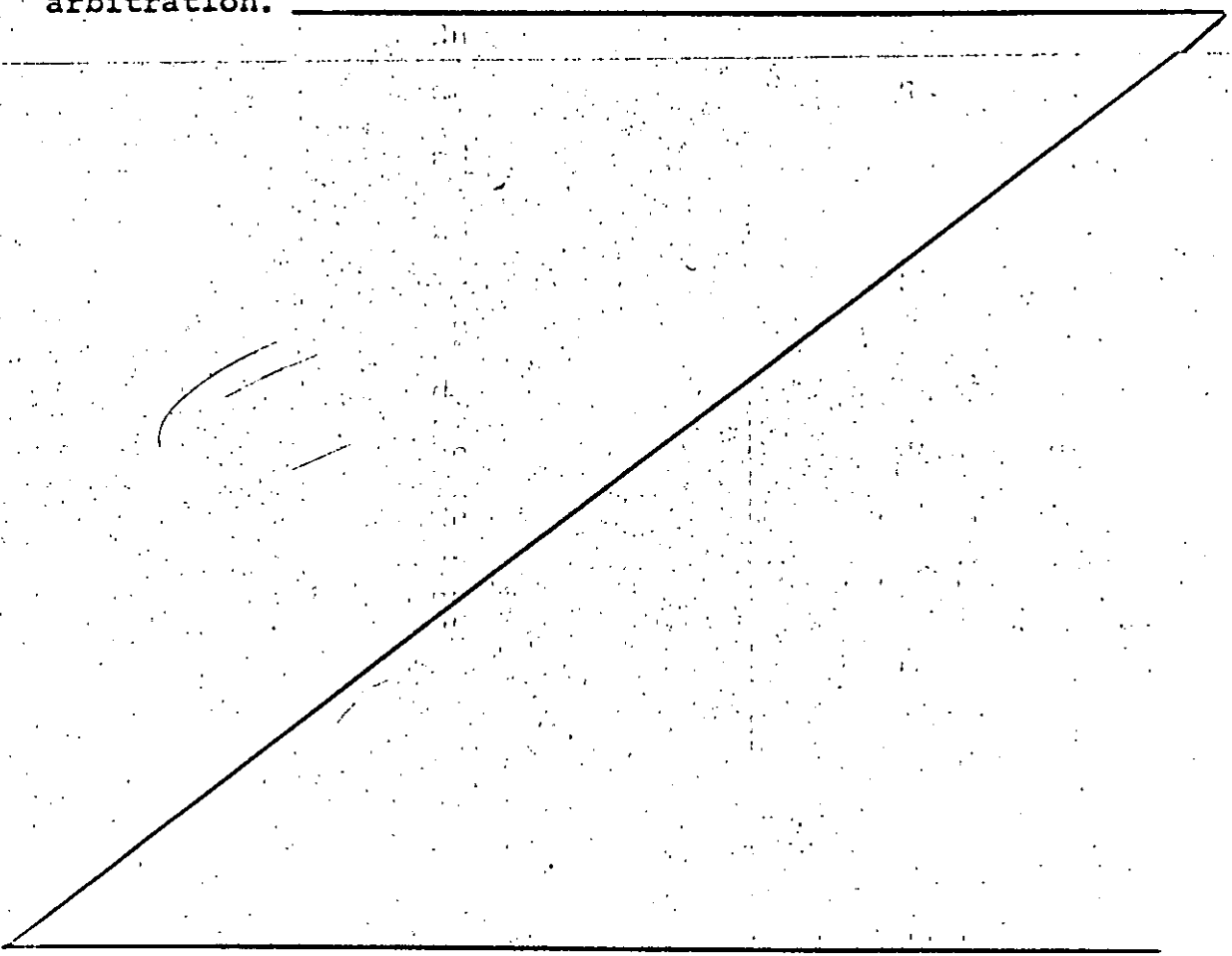
ZCMI and Penney shall pay to Developer a portion of the following specific expenses of operating and maintaining the Enclosed Mall: (i) heating, (ii) ventilating, (iii) air conditioning, (iv) lighting, (v) cleaning, (vi) maintaining the heating, ventilating and air conditioning equipment real estate taxes attributable to the Enclosed Mall property, (viii) premiums for fire and extended coverage insurance policies upon the Enclosed Mall, (ix) the cost of keeping the Enclosed Mall in good order and repair and (x) depreciation of maintenance equipment. Notwithstanding anything herein contained, no charge shall be included by Developer within the foregoing expenses for costs of construction, depreciation, interest on Landlord's investment, compensation of executives and supervisors, overhead, profit, rent or any other items properly classified as capital expenditures. Each department store shall be entitled to inspect and audit Developer's books and records and to require Developer to furnish such additional information at reasonable times for the purpose of verifying the computation of its portion of said expenses and any dispute over such portion shall be settled in accordance with the Section of this lease captioned "XXIV". Full and accurate books and records shall be maintained by Developer and retained at its office set forth at the head of this agreement for a period of at least three (3) years following the payment by ZCMI and Penney of the portion of the expenses reflected by such books and records.



Such portion payable by Penney shall be in that proportion which the number of lineal feet of its Store building abutting the Enclosed Mall bears to the number of lineal feet of all store buildings in the Shopping Center abutting the Enclosed Mall, but in no event to exceed a sum equal to five cents per square foot of Floor Area within the main level of the Penney Store building abutting the Enclosed Mall.

Such portion payable by ZCMI shall be in that proportion which the number of lineal feet of its Store building abutting the Enclosed Mall bears to the number of lineal feet of all store buildings in the Shopping Center abutting the Enclosed Mall, but in no event to exceed a sum equal to five cents per square foot of Floor Area within the main level of the ZCMI Store building abutting the Enclosed Mall.

ZCMI and Penney shall be entitled to inspect and audit Developer's books and records at reasonable times for the purposes of verifying the computation of its portion of said expenses and any dispute over such portion shall be settled by arbitration.



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Full and accurate books and records shall be maintained by Developer and retained at its office set forth at the head of this agreement, at least for three (3) years after the payment by ZCMI and Penney of the portion of the expenses reflected by such books and records.

XII INDEMNIFICATION AND PUBLIC  
LIABILITY INSURANCE

A. Each Party covenants to, and does hereby indemnify and hold harmless each other Party, respectively, from and against all claims and all costs, expenses and liabilities (including reasonable attorneys' fees) incurred in connection with all claims, including any action or proceedings brought thereon, arising from or as a result of the death of or any accident, injury, loss or damage whatsoever caused to any natural Person, or to the property of any Person, as shall occur in or about the Common Areas on the Tract of each such Party, respectively. The indemnity herein provided for shall not extend to any negligent act or omission of the other Parties, or their respective agents, servants or employees, or any negligent act or omission of such other respective Party's licensee, concessionaire, agent, servant or employee.

B. Each Party shall at all times during the term of the REA, maintain, or cause to be maintained, in full force and effect, the following insurance covering the Common Area within its Tract, with a financially responsible insurance company or companies: Comprehensive Public Liability insurance, with limits of not less than One Million Dollars (\$1,000,000.00) for each individual, and One Million Dollars (\$1,000,000.00) for each accident, and Two Hundred and Fifty Thousand Dollars (\$250,000.00) for Property Damage in the performance of its obligations under this Section. Each Party shall furnish to all other Parties, on or before the effective date of any such policy, evidence that the insurance referred to in this Section XII B is in force and effect and that the premiums therefor have been paid. Such

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insurance shall expressly insure to the extent of the limits above provided, the indemnity of such Party contained in Section XII A. A Party may carry the insurance provided for herein under any plan of self-insurance and/or under any so-called blanket policy or policies as provided in Section XIII C hereof; provided that in such event, each Party shall have the same rights and protections it would have had if insurance coverage had been provided under a policy of insurance as above set forth.

### XIII FIRE AND EXTENDED COVERAGE INSURANCE

A. Developer, as respects the Developer Improvements, including the Enclosed Mall, will carry or cause to be carried fire and extended coverage insurance in an amount at least equal to eighty percent (80%) of the replacement cost (but exclusive of the cost of excavation, foundations and footings) of the Developer Improvements, insuring against loss or damage from causes or events which from time to time are included as covered risks, under standard insurance industry practices within the classifications of fire and extended coverage, and specifically against at least the following perils: loss or damage by fire, windstorm, cyclone, tornado, hail, explosion, riot, riot attending a strike, civil commotion, malicious mischief, vandalism, aircraft and vehicle, and as to the Enclosed Mall only smoke damage and sprinkler leakage. Such insurance shall be carried with financially responsible insurance companies and may be carried

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under a policy or policies covering other property owned or controlled by Developer; provided that such policy or policies allocate to the properties required to be insured by this Section XIII A an amount not less than the amount of insurance required to be carried by Developer with respect thereto pursuant to the first sentence of this Section XIII A. Developer shall furnish to all Parties evidence that the insurance required by this Section XIII A is in force and effect and that the premiums therefor have been paid. Developer agrees that such policies shall contain a provision that the same may not be cancelled without at least ten (10) days' prior written notice being given by the insurer to other Parties hereto.

B. Penney and ZCMI, as respects the Penney and ZCMI Stores, respectively, each covenants with the other and with Developer that it will carry insurance of the classification referred to in Section XIII A, equal to eighty percent (80%) of the replacement cost thereof (exclusive of the cost of excavation, foundations and footings). Such insurance shall be carried with financially responsible fire insurance companies and may be carried under a blanket policy or policies covering other property owned or controlled by Penney or ZCMI, or a subsidiary, successor or controlling corporation of Penney or ZCMI; provided that such policy or policies is in a face amount of not less than eighty percent (80%) of replacement cost of all properties covered by such policy or policies. Penney and ZCMI shall furnish to the other Party requesting same, evidence that the insurance required to be carried by it pursuant to this Section XIII B is in full force and effect and the premiums therefor have been paid. Penney and ZCMI agree that any such policy shall contain a provision that the same shall not be cancelled without at least ten (10) days' prior written notice being given by the insurer to each of the other Parties hereto.

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C. Anything herein contained to the contrary notwithstanding, Penney and ZCMI and any future third department store leasing premises on the Developer Tract from the Developer may, at its respective election, carry the insurance required to be carried by it pursuant to said Section XII B and Section XIII B under (i) any plan of self-insurance which may from time to time be maintained in force and effect by it or any wholly-owned subsidiary of such Party and such Party guarantees or otherwise legally obligates for such self-insurance; provided, however, that such Party or the entity guaranteeing the performance of such Party of its obligations under this REA shall have and maintain an insurance reserve or assets which is adequate for the risks covered by such plan of insurance; and provided further that it shall furnish to Developer evidence of the adequacy of such reserves or assets (a net worth of \$20,000,000 or more, as shown in its latest annual audited report to shareholders, shall in all instances conclusively be deemed to be adequate for the purposes of this Section), or (ii) any so-called blanket policy or policies of insurance covering this and other locations of Penney, ZCMI and any such future third department store, respectively; or in any other manner acceptable to each of the other Parties insure against or otherwise cover the risk of damage or destruction in a manner which will assure the financial ability to perform the obligation to rebuild the improvements on its respective Tract.

D. Each Party hereby releases each of the other Parties from any liability for any loss or damage to the property of each occasioned to such property, which loss or damage is of the type generally covered by fire insurance with extended coverage. Each Party covenants that it will, to the extent such insurance endorsement is available, obtain for the benefit of each other Party a waiver of any right of subrogation which the insurer of such Party may acquire against any other Party or Parties by

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virtue of the payment of any such loss covered by such insurance. The obligation of any Party to obtain such endorsement is limited to the extent that it need not acquire the same unless the Party so requesting same shall pay any increase in the cost of such insurance.

E. Anything contained in this REA to the contrary notwithstanding, no Party to this REA shall be liable to any other Party to this REA for any loss or damage to buildings or other improvements on the Shopping Center Site, or contents thereof, caused by fire or by other risks covered by standard fire and extended coverage insurance, irrespective of any negligence on the part of such Party which may have contributed to such loss or damage.

F. Developer covenants, in connection with fire and extended coverage insurance required under Section XIII A carried by Occupants of the Developer Tract, to and with Penney and ZCMI, that it will obtain in its favor a waiver of the right of subrogation from all Occupants occupying any building on the Developer Tract. All such Occupants shall obtain for the benefit of each other Party a waiver of any right to subrogation which any insurer of such Occupancy may acquire against any other Party or Parties by virtue of the payment of any such loss covered by such insurance. All Occupants of Developer Tract by becoming such Occupants shall be determined to have specifically waived all rights against the Parties as herein provided. Penney and ZCMI covenant with Developer that any fire and extended coverage insurance policies which they may from time to time carry upon their improvements will contain a waiver of the right of subrogation against all such Occupants of the Developer Tract.

G. Developer covenants that with respect to all fire and extended coverage insurance carried by it that each policy shall expressly provided that in case of any loss which exceeds \$50,000, the amount of any claim shall be paid to such bank or trust company qualified under the laws of the State of Utah, and having its principal office in Salt Lake City, Utah or Orem, Utah, as Developer shall designate for the custody and disposition as herein provided, or shall be held by other security approved by ZCMI and Penney.

In every case of loss or damage to the buildings, all proceeds of such insurance (excluding the proceeds of any rental value, or use and occupancy insurance of Developer) shall be used with all reasonable diligence by Developer for rebuilding, repairing or otherwise reinstating the same buildings in a good and substantial manner, to the extent required to be reconstructed pursuant to the provisions of Section XIV, all according to the original plan and elevation thereof, or such modified plan conforming to the then laws and regulations as shall first have been approved in writing by the Parties hereto and any beneficiary of a first deed of trust.

Payment of the proceeds shall be made by the trustee of the funds to Developer, as follows:

1. At the end of each month, or from time to time, as may be agreed upon, against Developer's Architect's Certificate, an amount which shall be that proportion of the award held in trust which ninety percent (90%) of the payments to be made to the contractors or materialmen for work done, material supplied and services rendered during each month or other period bears to the total contract price.

2. At the completion of the work, the balance of such proceeds required to complete the payment of such work shall be paid to Developer, provided that at the time of such payment (a) there are no liens against the property by reason of such work and with respect to the time of payment of any balance remaining to be paid at the completion of the work the period within which a lien may be filed has expired, or proof has been submitted that all costs of work theretofore incurred have been paid, and (b) Developer's

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Architect shall certify that all required work is completed and proper and of a quality and class comparable to the original work required by this REA, and in accordance with the approved plans and specifications.

In the event Developer is not required to rebuild under Section XIV, then all of said funds shall be paid by the trustee to the Developer.

XIV COVENANTS AS TO REPAIR, MAINTENANCE, ALTERATIONS AND RESTORATION

A. Developer shall at all times during the term of this REA, from and after the opening for business of any of the Developer Improvements, subject to the provisions of Paragraph D 2 of this Section, keep and maintain (or cause to be kept and maintained) in good order, condition and repair all completed portions of the same. Such maintenance shall be made in accordance with the rules and regulations from time to time adopted by the Parties hereto, and such maintenance and operation, and the rules and regulations, until amended by the Parties hereto, shall be as provided in Exhibit E attached hereto and made a part hereof.

B. Penney and ZCMI, respectively, shall at all times during the term of this REA from and after the opening of business of the Penney Store and the ZCMI Store, respectively, subject to the provisions of Paragraph D 2 of this Section, keep and maintain (or cause to be kept and maintained) in good order, condition and repair the exterior of all completed portions of the respective Penney Improvements and ZCMI Improvements. Such maintenance shall be made in accordance with the rules and regulations from time to time adopted by the Parties hereto, and such maintenance and operation, and rules and regulations, until amended by the Parties hereto, shall be as provided in Exhibit E attached hereto and made a part hereof.

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C. Each Party shall, in the event of any damage or destruction to the Common Area on its Tract during the term of this REA by any cause, (unless it shall be relieved from the obligations so to do as hereinafter provided), restore, repair or rebuild the Common Area on its Tract with all due diligence, subject to the provisions of Section XVI hereof. Such restoration and repair shall be performed in accordance with the applicable requirements of subparagraph F of this Section XIV. Anything herein to the contrary notwithstanding, Developer shall have the sole obligation for the restoration of the Enclosed Mall as hereinafter provided."

D. Anything herein to the contrary notwithstanding,

1. Developer covenants to and with Penney and ZCMI, each severally, that in the event of any damage or destruction to all or any portion of the Developer Improvements it shall:

(a) In the event of such damage or destruction to the Developer Improvements occurring during the

first ten year period in which operation is required pursuant to Sections XXIII and XXIV, at its own expense, restore, repair or rebuild the Developer Improvements with all due diligence. The provisions of this subparagraph (a) shall apply regardless of the cause of such damage or destruction and whether it was insured or uninsured.

(b) In the event such damage or destruction results from a casualty of the type required to be insured against by Developer pursuant to Section XIII and occurs after the period referred to in sub-paragraph (a) preceding, at its own expense, restore, repair or rebuild the Developer Improvements with all due diligence;

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provided Developer shall be released from its obligations to restore, repair or rebuild under the provisions of this sub-paragraph (b) if both Penney and ZCMI are not at the time such damage or destruction occurs operating a retail facility or facilities as provided for in Sections XXIII and XXIV.

2. Penney and ZCMI each covenants to and with each other and to and with Developer that in the event of any damage or destruction of its respective Store or any portion thereof (exclusive of its respective TBA), Penney or ZCMI, as the case may be appropriate, shall:

(a) In the event such damage or destruction occurs prior to the end of the first ten year period of operation of a Penney and ZCMI Store pursuant to Sections XXIII and XXIV, respectively, at its own expense, restore, repair or rebuild the Penney Store or the ZCMI Store (exclusive of its TBA), as the case may be appropriate, with all due diligence of a quality comparable to the original work. The provisions of this sub-paragraph (a) shall apply regardless of the cause of such damage or destruction and whether it was insured or uninsured.

(b) In the event such damage or destruction occurs after the period referred to in subparagraph (a) preceding, be under no obligation to restore, repair or rebuild.

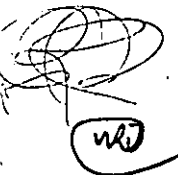
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3. Nothing herein contained shall require Penney or ZCMI to reconstruct its Store at any time during any period when Developer is not required to restore the Mall Stores or Developer is so required and is in default of performance thereof.

E. Subject to the other provisions of this REA, Developer, Penney and ZCMI may make repairs, alterations, additions or improvements to the Common Area on its respective Tract, the Developer Improvements, the Penney Improvements and the ZCMI Improvements, respectively, (and to the exterior signs on their respective stores, subject to the provisions of Section XX).

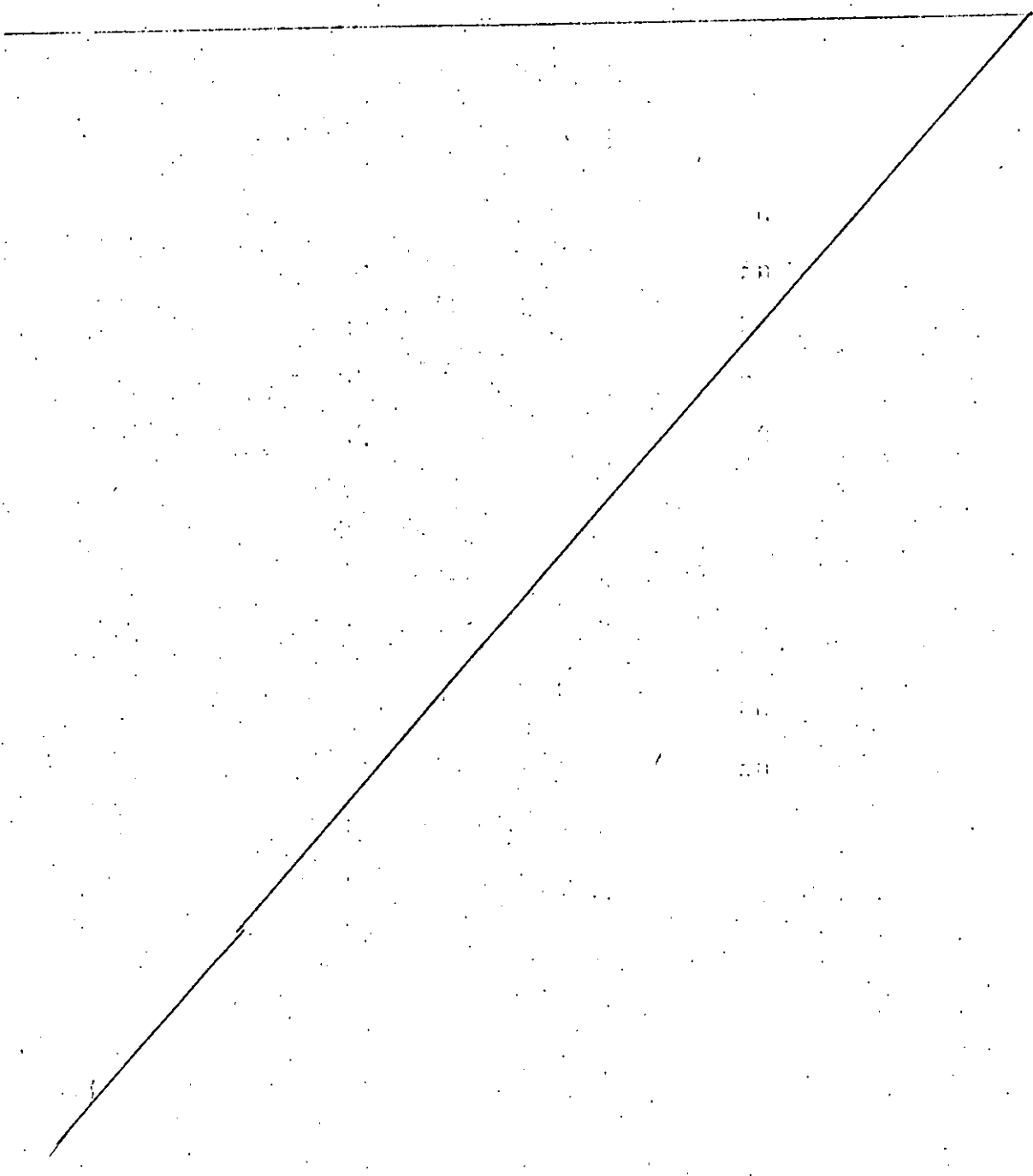
Whenever any Party is not obligated hereunder to restore, repair or rebuild any building that has been damaged or destroyed and elects not to do so, then, and in such event, such Party shall raze such building or such part thereof as has been so damaged or destroyed and clear the premises of all debris and shall cause said area to be paved at its expense; and thereafter said area shall become and be maintained as a portion of the Common Area until such time as said Party may elect to rebuild thereon; and until said rebuilding the portion so razed shall not be considered as part of Floor Area. Penney and ZCMI may each raze the whole or any part of their Store buildings at any time after the first thirty-two (32) years of the term of this REA, provided that such Party is not at such time obligated hereunder to restore such improvements. The Party shall cause the Enclosed Mall to be secured where the building has been removed so that the same shall remain enclosed and not permit the escaping of conditioned air.

F. All restoration repair, rebuilding, maintenance, alterations, additions or improvements (hereinafter collectively called "work") performed by any Party pursuant to the provisions



of this REA shall be performed in strict compliance with such of the following requirements as are applicable thereto, to wit:

1. No such work shall be commenced unless the Party desiring to perform the same has in each instance secured the prior approval of each of the other Parties hereto who are then operating, to the plans and specifications therefor, as they relate to:



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- (a) The compatibility of the exterior thereof with the balance of the improvements in the Center, and
- (b) The physical integration thereof with the Enclosed Mall.

Each Party hereto consents, without further approval, to such restoration work which conforms to the original plans and specifications.

2. All work shall be performed in a good and workman-like manner and shall strictly conform to and comply with:

- (a) The plans and specifications therefor approved as aforesaid;
- (b) All applicable requirements of laws, codes, regulations, rules and underwriters; and
- (c) To the extent applicable, the requirements of Sections IX and X.

3. All such work shall be completed with due diligence, subject to the provisions of Section XVI hereof, and at the sole cost and expense (except as herein provided to the contrary) of the Party performing the same.

G. It is recognized that from time to time during the term of this REA Developer, ZCMI and Penney may require a temporary license to use portions of the Common Area for the purposes of:

- 1. Performing maintenance thereupon, and making repairs thereto, and/or
- 2. Making construction alterations, additions and improvements, or razing and replacing the whole or any part of the Developer Improvements, the ZCMI Store and the Penney Store pursuant to this REA (the activities referred to in this subdivision 2 being hereinafter collectively referred to as "construction").

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3. Obtaining access, ingress and egress, to and from the Developer Improvements, the ZCMI Store and the Penney Store, as the case may be, to carry on such maintenance, repair and construction.

Within a reasonable time prior to the commencement of any such maintenance, repair or construction by any such Party which will substantially interrupt the normal use of the Common Areas by the Parties and Permittees, it shall submit to the others for their approval (which approval shall not be unreasonably withheld), a plot plan of the Center on which such Party shall delineate those portions of the Common Area with respect to which it reasonably requires a temporary license in connection with such maintenance, repair or construction, and such access, ingress and egress, and the Parties receiving such request shall within ten days thereafter notify the requesting Party whether it approves or disapproves of such use. At all times during any Party's use of the portion of the Common Area as aforesaid, such Party shall comply with the applicable requirements of Section X hereof, and upon cessation of such use shall promptly restore the portions of the Common Area so used to the condition in which the same were prior to the time of commencement of such use, including the clearing of such area of all loose dirt, debris, equipment and construction materials. Such Party shall also restore any portions of the Center which may have been damaged by such maintenance, repair or construction work promptly upon the occurrence of such damage, and shall at all times during the period of any such maintenance, repair or construction keep all portions of the Center, except the Developer Improvements, the ZCMI Store, and the Penney Store, as the case may be, and except the portions of the Common Area being utilized by such Party pursuant to this Section XIV G, free from and unobstructed by any loose dirt, debris, equipment or construction materials related to such maintenance, repair or construction.

H. Common Building Components.

1. Each Party owning any burdened improvement which is utilized by a benefited Common Building Component contained in an improvement owned in whole or in part by another Party:

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(a) Will maintain, at its own cost and expense, the burdened Common Building Component in such state of repair that it will continue to have the capacity to be so used in common by the benefited Common Building Component improvement in question (subject to the provisions of Section XIV H 2 (a) ).

(b) Will not cause or permit to occur any damage, loss or injury to the owner of the benefited Common Building Component, or his tenants, by or as a result of any act or negligence on its part with respect to the burdened Common Building Component in question, or any portion of the improvement owned by it which contains the burdened Common Building Component in question (subject to the provisions of the second sentence of Section XIV H 3).

2. Each Party owning any benefited improvement which utilizes any burdened Common Building Component contained in an improvement owned in whole or in part by another Party:

(a) Will not place upon the burdened Common Building Component in question any structural burden which at the time of placement thereon is in excess of the capacity of the burdened Common Building Component therefor or will prevent the use of the improvement in which the burdened Common Building Component is contained for its intended purposes; and

(b) Will not cause or permit to occur any damage, loss or injury to the improvement which contains the burdened Common building Component in question by or as a result of any act or negligence on its part with respect to the benefited Common Building Component, or any portion of the improvement owned by it which contains the benefited Common Building Component (subject to the provisions of the second sentence of Section XIV H 3) .

3. Nothing in Section XIV H 1 or 2 shall be deemed to preclude any Party owning an improvement containing either a burdened Common Building Component or a benefited Common Building Component, as the case

may be, from doing or causing to be done any work (whether of repair, alteration, restoration or otherwise) with respect to any such improvement (notwithstanding that during the course of performing such work a condition otherwise prohibited by the provisions of this Section may result) if:

(a) During the course of performance of such work the Party by whom or on whose behalf such work is being done shall, at its own cost and expense, provide such temporary facilities as may be necessary:

(i) To perform the function theretofore performed by the Common Building Component in question owned by the Party performing such work, if such work being performed adversely affects a Common Building Component owned in whole or in part by another Party, or

(ii) To increase the capacity of, or supplement, the burdened Common Building Component in question to the extent necessary so that the benefited Common Building Component will not, during the course of the performance of such work, either place on such burdened Common Building Component a burden in excess of the capacity thereof for such purpose, or otherwise prevent the use of the improvement containing such burdened Common Building Component for its intended purposes; and

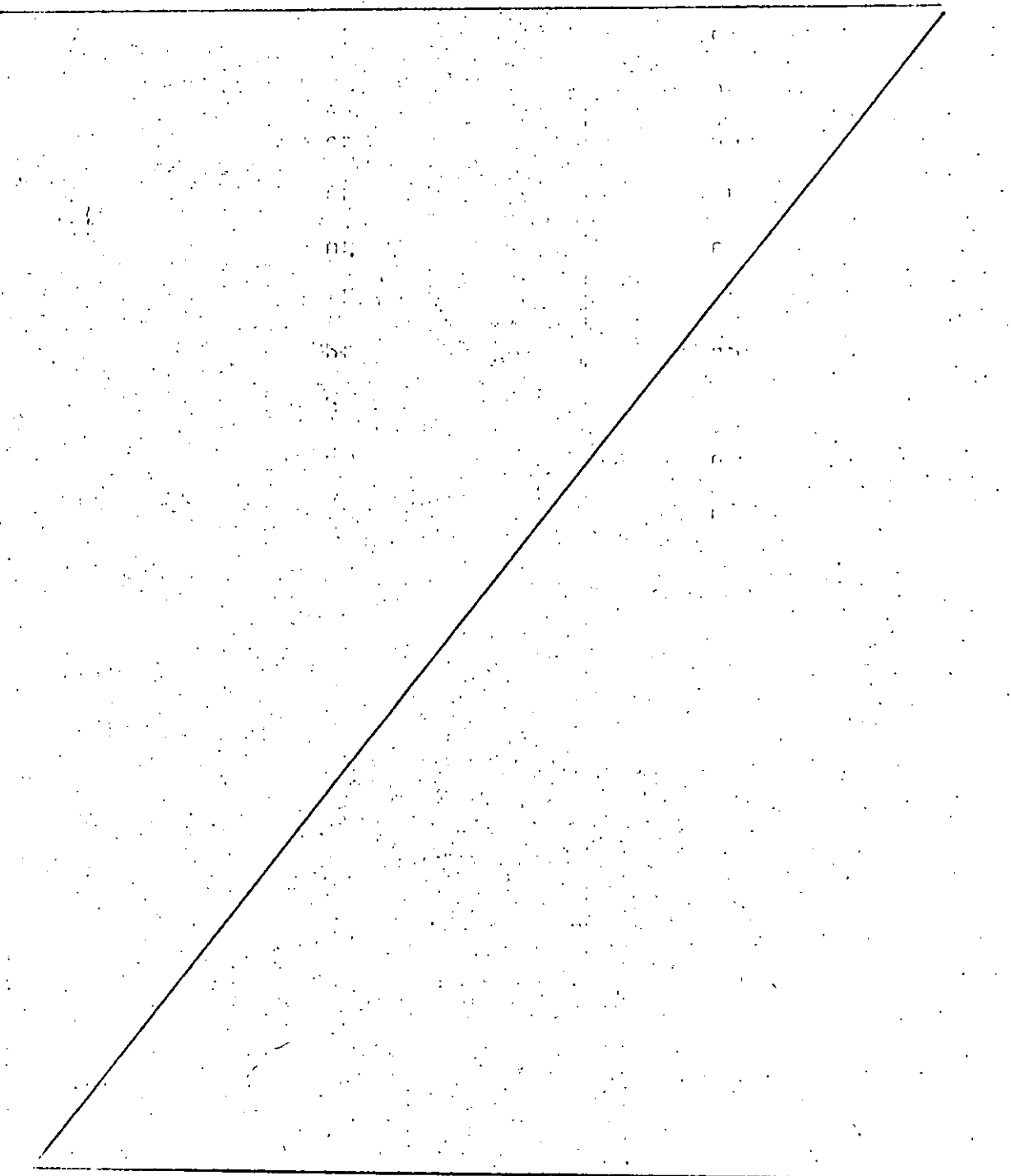
(b) At the conclusion of such work there is compliance with the provisions of item (a) of whichever subparagraphs 1 or 2 of this Section XIV H is appropriate to the improvement with respect to which the work in question was done.

Notwithstanding the provisions of item (b) of whichever subparagraphs 1 or 2 of this Section XIV H is appropriate to the improvement with respect to which the work in question was done, the owner of the improvement with respect to which the work in question was being performed shall not be liable to the owner of the other improvement affected by such work

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for any inconvenience, annoyance disturbance or loss of business to the owner of the improvement affected by the performance of such work (or his Occupants) arising out of and during the performance of such work (unless occasioned by the negligence of the owner of the improvement with respect to which the work in question was being performed, or its agents), but the owner of the improvement with respect to which such work is being performed shall exert all reasonable efforts to keep any such inconvenience, annoyance, disturbance or loss of business to the minimum reasonably required by the work in question.



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*[Handwritten initials]*

XV MERCHANTS' ASSOCIATION

A. Developer agrees to organize, form and sponsor a Merchants' Association for the promotion of the Center. Penney and ZCMI each agree to become a member of such Association and to remain a member thereof for a period of five (5) years from the date each opens its retail facility for business, provided that the other of Penney or ZCMI as the case may be, and any other major department store in the Center and not less than Occupants of 90% of the remaining Floor Area of the Developer Stores in the Center are members of said Association. Developer agrees that it will become and remain throughout the term hereof a member of such Merchants' Association. The membership of ZCMI and Penney shall expressly be conditioned upon the understanding that the initial rules and regulations, and the Articles and the initial By-Laws adopted by the Merchants' Association (which shall establish the basis for assessing member contributions) shall not be effective unless they have first been approved by ZCMI and Penney.

B. If ZCMI and Penney approve the basis for assessing member contributions to the Merchants' Association as set forth in the Articles and By-Laws, ZCMI's and Penney's obligations to make contributions or pay dues and assessments shall also be conditioned upon Developer's making contemporaneous contributions or payments to the Merchants' Association equal to twenty-five (25%) percent of amount contributed by all other members of the Association, provided, however, ZCMI and Penney shall not be required to contribute a sum in excess of the amount computed by multiplying the number of square feet of Floor Area within the Penney Store and ZCMI Store, respectively, by the figure five (\$.05) cents.



C. Developer agrees to require one hundred (100%) percent of all Occupants of the Developer Stores to become and remain members of the Association as a condition of their occupancy leases in the Center and to contribute thereto in accordance with the By-Laws of the Association. The Future (third) Department Store, if any, need only be required to maintain membership in the Merchants' Association as long as ZCMI or Penney is required to maintain such membership and to pay dues thereto at a rate per square foot of Floor Area not less than the lesser of the rates per square foot of Floor Area which ZCMI or Penney is required to pay.

XVI EXCUSE FOR NON-PERFORMANCE

A. Developer, ZCMI and Penney shall each be excused from performing any obligation or undertaking provided in this REA, except any obligation to pay any sums of money under the applicable provisions hereof (except where otherwise herein provided), in the event and as long as the performance of any such obligation is prevented or delayed, retarded or hindered by act of God, fire, earthquake, floods, explosion, actions the elements, war, invasion, insurrection, riot, mob violence, sabotage, inability to procure or general shortage of labor, equipment, facilities, materials or supplies in the open market, failure of transportation, strikes, lockouts, action of labor unions, condemnation, requisition, laws, orders of governmental or civil or military or naval authorities or any other cause, whether similar or dissimilar to the foregoing, not within the respective control of Developer, ZCMI or Penney, as the case may be.

B. Penney and ZCMI shall each be released from the performance of their respective obligations to restore their premises set forth in Section XIV or to operate their respective businesses as set forth in the provisions of Sections XXIII and XXIV for and during any period of time in which Developer shall be in default of its covenants as set forth in Sections XIV and XXII hereof

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and for and during any period of time in which no other department store Party is operating its respective business as set forth in the provisions of Sections XXIII, XXIV and XXXIV.

C. Developer shall be relieved of its obligations pursuant to Sections XIV and XXII at any time and during such time as both Penney and ZCMI shall be in default of their respective obligations under Section XXIII and XXIV.

#### XVII TAXES AND ASSESSMENTS

A. Except as hereinafter provided, Developer, ZCMI and Penney shall pay, or cause to be paid, prior to delinquency, all taxes upon its Tract, and the buildings, improvements and personalty owned by such Party in the Shopping Center Site, provided that if the taxes or any part thereof may be paid in installments, such Party may pay each such installments as and when the same become due and payable. Each Party, upon request of any other Party, shall exhibit to such other Party for examination the receipts for all taxes required to be paid by such Party, pursuant to the provisions of this Section XVII. As used herein the term "taxes" shall include all general real estate taxes and assessments levied or assessed against the Shopping Center Site, or any part thereof during the term of this REA, plus the amount of all other taxes and other governmental charges of any nature whatsoever levied against the Shopping Center Site or any part thereof during the term hereof.



B. In the event that the Tracts of Developer, ZCMI and Penney within the Center shall not be separately assessed to such Party, then and in that event, taxes and assessments shall be prorated between the Parties as respects such Tracts, or portions thereof as shall not be separately assessed, on the basis that taxes on land shall be pro-rated on a direct square footage of land and that taxes on buildings shall be pro-rated on the basis used by the respective assessors in determining the assessments. (For the purposes of this paragraph B only, in the event the Enclosed Mall is not separately assessed, the area of the Enclosed Mall shall be included within the term Floor Area.)

C. Developer, ZCMI and Penney may contest, protest, or object to any taxes, or any part thereof, or any portion of any part thereof, payable by them, as in this Section XVII provided as to the validity, applicability, or the amount thereof, provided that every such contest shall be in good faith and the respective counsel for Developer, ZCMI and Penney shall furnish to any non-contesting Party requesting the same, a written opinion that the Developer Tract, ZCMI Tract or the Penney Tract, or any portion or portions thereof, as the case may be, upon which the contested taxes have been levied, is not in danger of being lost or forfeited by reason of such contest. Developer, ZCMI and Penney covenant that its respective Tract shall not be lost or forfeited as a result of any such contest by such covenanting Party. Any costs or expenses, including attorneys' fees, which may be incurred by reason of any such protest shall be paid by the contesting Party, except that the contesting Party shall not be required to pay attorneys' fees of counsel for any other Party.

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XVIII CONDEMNATION

A. An award for damages, whether the same shall be obtained by agreement prior to or during the time of any court action or by judgment, verdict or order, or after any such court action resulting from a taking by exercise of right of eminent domain of the Shopping Center Site or any portion thereof, or resulting in a requisitioning thereby by military or other public authority for any purpose arising out of a temporary emergency or other temporary circumstances, shall be distributed between the Parties to this REA in accordance with the terms and conditions of such agreement, verdict or order, or other agreement (including any lease); provided, however, that any Party to this REA shall have the right to appeal any judgment, verdict or order to a court of last resort with respect to its respective interest therein.

B. Any such award shall be paid promptly by the persons receiving the same to a bank or Trust Company approved by the Parties, having an office in Salt Lake City, Utah, or Provo, Utah, as escrow agent, to be distributed among the Parties in accordance with the provisions of such agreement or judgment and this Section. The Parties recognize that as between them, their respective interests in any award as to a particular Tract of land within the Center which is subject to condemnation shall be determined upon the basis of the fee ownership interest of such Tract, but that any part of the award which represents severance damages arising from the creation of reciprocal easements or other rights over the various Tracts in the Center shall not be distributed in accordance with such fee ownership but shall be distributed among the Parties as provided in this Section.

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1. If the title to all or any portion of any improvement, and the land thereunder, within the Center shall be condemned, the total award therefor shall be paid to the then Party owning the land and improvement so taken who shall rebuild the said improvement to be as complete an architectural unit as possible, subject to the requirements of Section XIV hereof, provided that such a Party shall be relieved of its such obligation so to rebuild and operate if, notwithstanding such rebuilding the improvement would not be usable for its intended purposes as provided herein.

2. If title to any portion of the Common Area improvements, including the Enclosed Mall, shall be condemned, the total award therefor shall be distributed by the escrow agent in the following order of priority:

- (a) To the Party owning such improvements so taken, any and all expenses or disbursements such Party may have incurred or obligated itself for in connection with such proceedings;
- (b) To such Party (after Developer, ZCMI and Penney shall have approved complete plans and specifications for any substituted improvements and the contract or contracts for such substituted improvements) in progress payments during the

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progress of the restoration of such improvements, out of the net proceeds in condemnation so held to the extent such proceeds of such award will permit as follows: (1) at the end of each month, or from time to time, as may be agreed upon, there shall be paid, against such Party's architect certificates, an amount which shall be that proportion of the award held in trust, which ninety (90%) percent of the payments to be made to the contractors or materialmen of such Party for work done, materials supplied and services rendered during each month or other period, bears to the total contract price; and (2) at the completion of the work, the balance of such condemnation award monies required to complete the payment of such work shall be paid to such owner; provided that at the time of each payment (A) there are no liens against the property of such Party by reason of such work and that, with respect to the time of payment of any balance remaining to be paid at the completion of such work the period within which a lien may be filed has expired or that the other Parties hereto are satisfied by proof submitted by such Party that all costs of such work theretofore incurred have been paid, (B) such Party's architect shall certify

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that all work so far done is proper and of a quality and class comparable to the original work required by this REA and in accordance with the plans and specifications, and (C) such Party shall furnish to the other Party, evidence satisfactory to each other Party that all previous advances have been devoted to defray the actual cost of such work up to the amount of such cost, or that such cost has actually been paid by such Party in the amount of all such previous advances. In no event shall the escrow holder, in trust, as aforesaid, of the fund to be applied to the cost of such work, be liable for any amount in excess of the net proceeds of the award in condemnation. Should the cost of such work exceed the net proceeds of the award in condemnation, such Party shall pay such additional cost.

In the event it is necessary to construct deck parking structures to maintain required parking ratios, the Parties shall have the right of approval as to the location and architecture of parking structures above ground level for such purposes and as to the amended Plot Plan (Exhibit B) for the Shopping Center which approval shall not be unreasonably withheld. Should (i) the cost of such work be less than the net award in condemnation so held in trust, or (ii) no substituted improvements be provided, the award or the balance of said award shall be apportioned between the Parties as their respective interests may appear, it being the intent.

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that severance damages arising from the taking of such reciprocal easements and other rights shall be the sole compensable interest arising from the integration of the various Tracts into the Center which shall accrue to Parties who do not have any other property interest in the Tract so taken, except the interests created by this REA.

D. Any issue which is not resolved by any judgment in the condemnation proceeding or supplemental determination therein shall be resolved among the Parties under the provisions of Section XXVI.

E. Anything herein to the contrary notwithstanding, if all or a substantial portion of the Automobile Parking Area shall be taken by condemnation so that after such taking the parking ratio in the Center shall be reduced to less than seventy (70%) percent of the parking ratios provided for in Section IX A, then any of the Parties hereto shall have the right to terminate their respective obligations to restore, operate, repair and maintain, as provided for in this REA, by notice given to each of the other Parties within ninety (90) days after such taking. The termination of the respective obligations as herein provided shall take effect automatically sixty (60) days following the giving of such notice.

  
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XIX CORRECTION OF SITE DESCRIPTIONS

It is recognized that by reason of construction errors, the Developer Improvements, the ZCMI Store and the Penney Store may not be precisely constructed within their respective Sites as shown on Exhibit B. Developer, ZCMI and Penney severally agree to obtain, and deliver to each other, at its respective cost and expense, an "as-built" survey of the respective Tract and Store or the Developer Improvements thereon, as the case may be appropriate, as soon as reasonably possible after the completion of the construction thereof. In the event such survey shall disclose that the Store of the Party making such survey, or the Developer Improvements, as the case may be appropriate, has not been precisely constructed within its respective Site, then promptly the Parties hereto shall each join in the execution of an agreement, in recordable form, amending Exhibit B to this REA to reflect the "as-built" conditions, so as to revise the area designated for such Store Site to coincide with the as-built perimeter of the buildings and improvements constructed by the owner of such Store or improvements. Nothing herein contained shall be deemed to relieve or excuse any Party to this REA from exercising all due diligence to construct its buildings and improvements within its respective Site as shown on Exhibit B. Upon request, each burdened Party agrees to grant to the benefited Party an easement over that portion of its Tract as is required to permit any such encroachment. Upon completion of construction of the utility facilities identified in Sections II D, E and F, the Parties hereto shall join in the execution of an agreement, in recordable form, appropriately identifying the type and location of each respective utility facility referred to in said Sections II d, E and F.

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XX SIGNS

A. Attached hereto, and marked Exhibit D, are criteria for all signs to be erected within the Shopping Center Site, and no signs shall be erected in the Shopping Center Site which do not conform in all respects to said criteria. It is understood said criteria are not applicable to the standard building flat-lettered identification signs of ZCMI and Penney and of the Future (third) Department Store Occupant.

B. If any non-department Store Occupant shall request a sign not completely in accordance with the criteria, such sign shall not be erected without the written consent of Developer, ZCMI and Penney. Any change made to any initially completed sign which causes the same to violate the sign criteria is hereby prohibited, and any such change sign shall be considered as a new installation and deviation from the criteria which shall similarly require the approval of Developer, ZCMI and Penney.

XXI RULES AND REGULATIONS

Penney and ZCMI each agree to observe and comply with, and shall cause their respective Permittees to observe and comply with, and Developer shall cause its Permittees to observe and comply with, such rules and regulations related to the Center as may be adopted by the mutual agreement of the Parties hereto from time to time.

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XXII COVENANTS OF DEVELOPER

A. Developer covenants and agrees that subject to the provisions of Sections XIV and XVI of this REA, and subject to the other provisions of this Section, it will continuously manage and operate, or cause to be managed and operated, the Enclosed Mall and the Developer Mall Stores, and the Developer Non-Mall Stores, if any, in the following manner:

1. As a complex of retail stores and commercial enterprises which is a part of a first class regional shopping center development with Enclosed Mall and other related common area facilities, and for no other uses or purposes.

2. Use its best efforts to:

- (a) Have the Floor Area occupied in its entirety;
- (b) Have at all times a proper mixture and balance of Occupants; and
- (c) Require Occupants to remain open for business at least those hours as either Penney or ZCMI are open for business on their respective Tracts, subject to governmental regulations, labor union contracts, and such reasonable interruptions as may be incident to the conduct of such businesses, and subject to excuses for non-performance described in Section XVI; provided, however, nothing herein contained shall require any occupant to be open on Sunday.

3. Maintain a quality of management and operation not less than that generally adhered to in other similar regional shopping centers in comparable geographical areas of the Western United States where the Occupant of Penney and/or ZCMI Tracts from time to time are located.

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4. Under the name of University Mall Shopping Center and under no other name, without the prior approval of Penney and ZCMI, so long as Penney is the Occupant of the Penney Tract or ZCMI is the Occupant of the ZCMI Tract, respectively, which approval shall be granted or withheld in the sole and absolute judgment of Penney or ZCMI, respectively.

5. So as to have Floor Area not less than one hundred seventy-five thousand (175,000) square feet within the Mall Stores initially opened for business at the earlier of the date Penney or ZCMI opens for business, and thereafter, not less than one hundred seventy-five thousand (175,000) square feet of Floor Area within the Mall Stores, exclusive of the Floor Area within the Future (third) Department Store.

6. So as to have the Floor Area of the Future (third) Department Store, if built, to be operated for not less than the period set forth in and in accordance with the provisions of Section XXXIV hereof.

7. To cause the Enclosed Mall and the Occupants of at least one hundred seventy-five thousand (175,000) square feet of Floor Area of the Mall Stores, to the extent herein provided, to open for business as soon as reasonably practicable after the completion of the construction of the Enclosed Mall and the Mall Stores and concurrently with the opening for business of ZCMI or Penney.

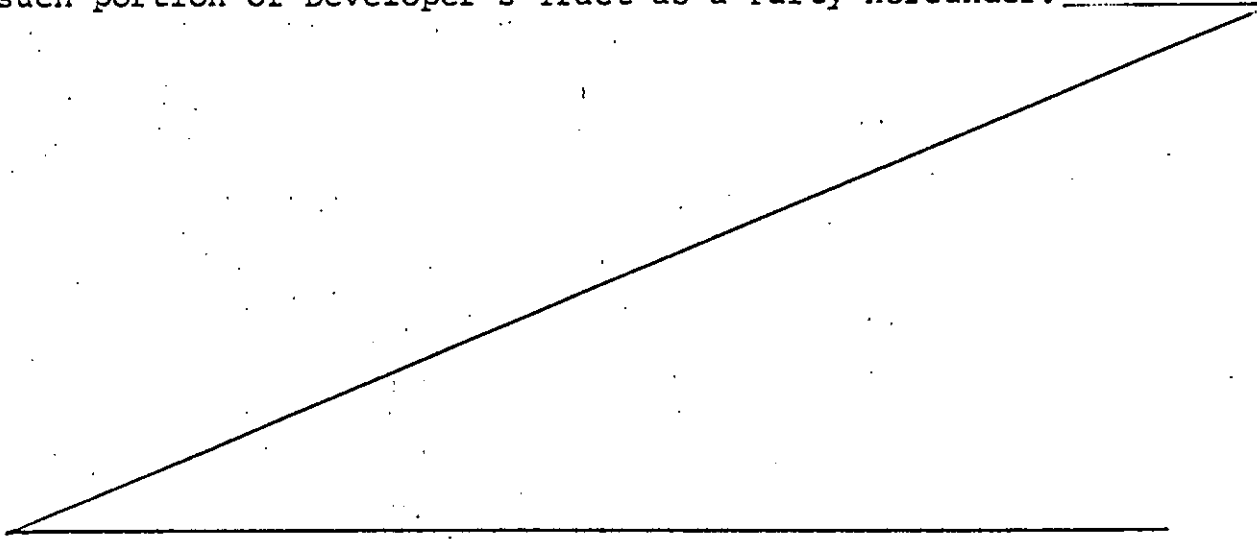
B. Except as provided in Paragraph C of this Section XXII, Developer covenants and agrees that, until completion of construction of all Common Area on the Developer Tract required to be constructed under Section VI, and until at least one hundred seventy-five thousand (175,000) square feet of Floor Area (exclusive of the Future (third) Department Store) have been constructed and

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opened for business with the public on the Developer Tract, it will not sell, assign, convey or transfer all or any part of its fee ownership in Developer Tract except as to a portion thereof for the possible Future (third) Department Store on Developer's Tract, without first notifying and offering same to Penney and ZCMI, collectively and/or singly, on the same purchase price and other terms as it has been offered or upon which it is offering for sale in a bona fide transaction. Said right and option shall be exercisable within sixty (60) days after the giving of notice thereof and shall be for an acquisition of title free and clear of all liens, claims and encumbrances, except those to which this REA is subject and those required or permitted to be placed thereon in furtherance of the obligation of the Parties under this REA, but shall be subject to this REA; provided, however, that this provision shall not prohibit a mortgage, deed of trust or sale and leaseback transaction, the proceeds of which are applied to the payment, or to reimburse Developer for the payment, of costs incurred in constructing buildings or improvements on the Developer Tract. Thereafter, if such option is not exercised, Developer may sell, assign, convey or transfer its fee interest in the Developer Tract on such terms free of such right of first refusal, subject to the provisions of this REA and, upon a conveyance to a grantee which assumes in writing all of Developer's obligations under this REA, the grantor shall be discharged from all such obligations. In the event such transaction is not consummated, each succeeding offer of purchase or sale of Developer's Tract made prior to the performance of the conditions set forth in the first sentence of this paragraph B shall be subject to such right of first refusal. Such right of refusal shall terminate upon completion of performance of the conditions set forth in the first sentence of this paragraph B.

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Notwithstanding the foregoing, Developer may sell, assign, convey or transfer its fee interest in a portion of the Developer's Tract to a Future (third) Department Store free of such right of first refusal, subject to the provisions of this REA, provided that such Future (third) Department Store Party assumes in writing in a recordable instrument all of Developer's obligations under this REA which are applicable to and binding upon the owner of such portion of Developer's Tract as a Party hereunder.



XXIII PENNEY COVENANTS

A. Penney covenants and agrees, subject to the provisions of Sections XIV, XVI, XVIII, XXII A, and XXIV A, and subject to the other provisions of this Section, as soon as reasonably practicable after the completion of construction of its Store pursuant to Section VII of this REA, but, subject as aforesaid, within one hundred fifty (150) days after completion thereof, that it will cause to be opened in its Store building (excluding the Penney TBA) a department store and related facilities of not less than one hundred forty thousand (140,000) square feet of Floor Area, under the trade name "Penneys" or other such name as a majority of the retail department stores of J. C. Penney Company, Inc. of one hundred forty thousand (140,000) square feet or more are operating under in the State of Utah. Notwithstanding the

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foregoing, it is expressly understood Penney shall not be required to cause its Store to be opened for business prior to one hundred twenty (120) days after the completion of its said Store, or during the period from November 1 of any year to February 1 of the next succeeding year, or during the period from May 1 to August 1 of any year, or during the thirty-day period immediately preceding Easter Sunday. Notwithstanding anything to the contrary contained in the preceding sentence, the covenant to operate of Penney contained in this section shall be suspended at the election of Penney, which suspension shall be effective only during the time Developer shall substantially fail to perform its covenants set forth in Section XXII A (all of such Section being subject to Sections XIV and XVI) after Penney shall have given Developer thirty days' notice of its default thereunder (and in the event of such notice Developer shall have commenced curing such default and diligently prosecutes such curing, then during such period there shall be deemed to be no default) and during such time as Developer continues to be in default after such notice; provided, however, nothing contained in the foregoing provisions of this sentence shall in any manner be construed as diminishing or be deemed to constitute a waiver of any other rights of Penney resulting from the failure of Developer to perform its covenants set forth in Section XXII hereof. The hours of business for such retail facility shall be such reasonable hours as Penney in its sole and absolute discretion may determine. The term "department store", as used in this Section XXIII shall mean a retail facility occupying substantially all of the Store building in which the same is located, and following the merchandising practices generally similar to merchandising practices of Penney

from time to time, giving consideration to the varying merchandising requirements of particular areas. Penney agrees that having caused the retail facility to be opened for business, so long as at least one hundred seventy-five thousand (175,000) square feet of Floor Area in the Mall Stores are being operated in compliance with Section XXII, it will thereafter cause said business to be operated for a period of ten (10) years as a J. C. Penney retail department store, for the next ten (10) years as a retail facility to be operated in substantially all its main store building and for the next ten (10) years to cause substantially all of the first floor of its main store to be used for retail purposes.

B. Notwithstanding anything to the contrary herein contained, Penney may:

(1) lease portions of the Penney Main Store Building or license departments thereof or grant concessions to other parties, and

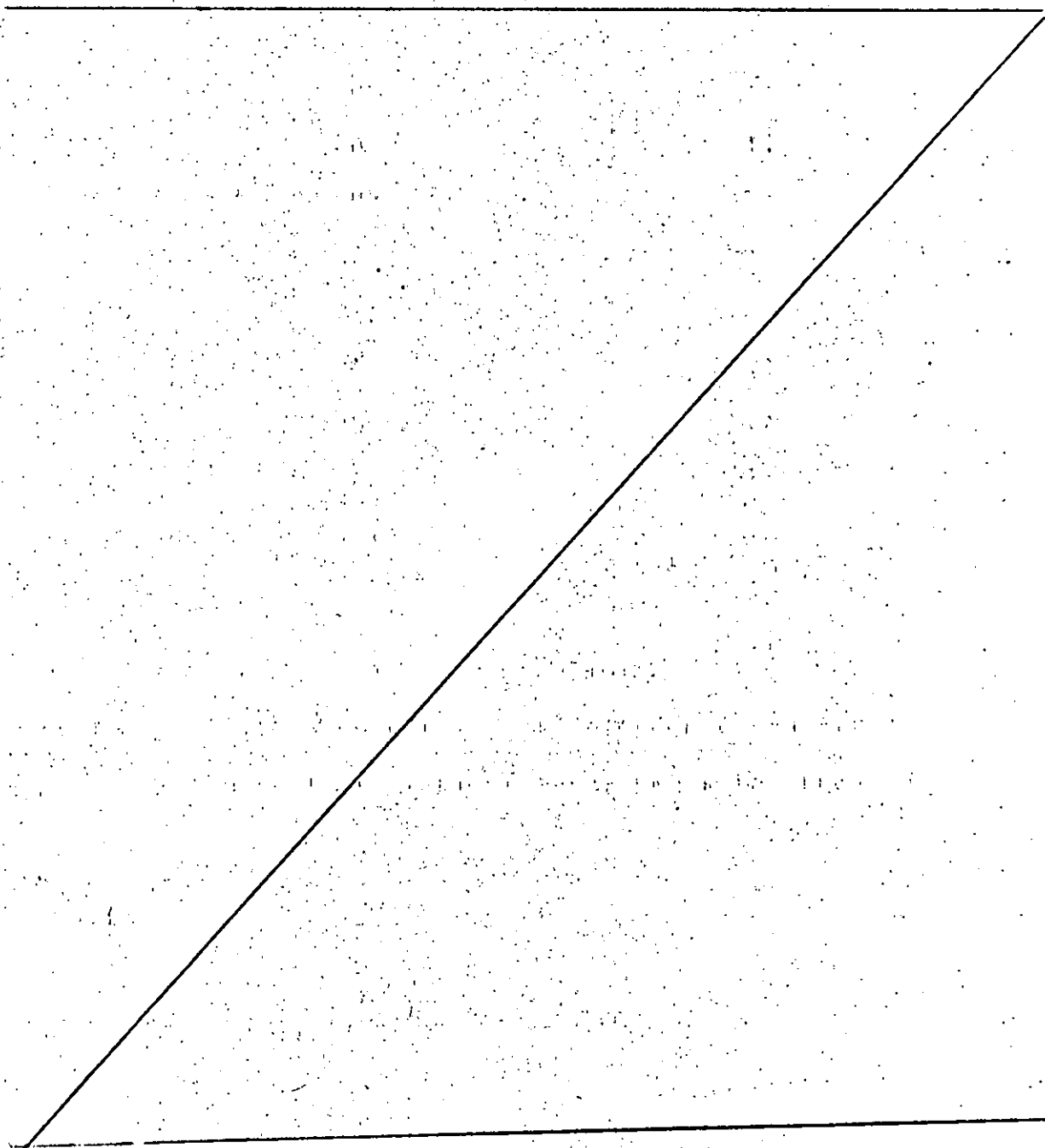
(2) lease or sell the Penney Site to any subsidiary corporation of Penney or to any corporation which may succeed to Penney's business in the State in which the Penney Site is situated or to any corporation which may, as the result of reorganization, merger, consolidation or sale of stock or assets, succeed to such business, and in either such case, Penney shall be released from all further obligations under this Agreement if such lease or sale is to a corporation which acquires all or substantially all of the assets of Penney and which, by written instrument in recordable form, expressly assumes all of Penney's obligations hereunder.

(3) mortgage its Site and/or sell and leaseback or lease and subleaseback its Site and in connection with any such transaction assign its interest in this Agreement. If any such mortgage is foreclosed or a deed delivered in lieu of foreclosure, or if Penney, having entered into a sale and leaseback or a lease and subleaseback transaction involving its Site, shall be deprived of possession of such Site by reason of its failure to comply with the terms of such leaseback or subleaseback, anyone who has acquired, or shall thereafter acquire, title to such Site or a leasehold estate therein shall hold the same free of any requirement that a J. C. Penney retail department store, retail facility and/or retail facilities be operated on such Site. The provisions of this subsection (3) shall not relieve Penney of any liability or other responsibility on account of its default thereunder, except specific performance.

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XXIV ZCMI COVENANTS

A. ZCMI covenants and agrees, subject to the provisions of Sections XIV, XVI, XVIII, XXII A, and XXIII A, and subject to the other provisions of this Section as soon as reasonably practicable after the completion of construction of its Store, pursuant to Section VII of this REA, but, subject as aforesaid, within one hundred fifty (150) days after completion thereof, that it will open in its Store building a department store and related facilities of not less than one hundred fifty thousand (150,000) square feet of Floor Area, under the trade name ZCMI.



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Notwithstanding the foregoing, it is expressly understood ZCMI shall not be required to open its Store for business prior to one hundred twenty (120) days after completion of its said Store, or during the period from November 1 of any year to February 1 of the next succeeding year, or during the thirty-day period immediately preceding Easter Sunday. Notwithstanding anything to the contrary contained in the preceding sentence, the covenant to operate of ZCMI contained in this Section shall be suspended at the election of ZCMI, which suspension shall be effective only during the time Developer shall substantially fail to perform its covenants set forth in Section XXXI A hereof, (all of such Sections being subject to Sections XIV and XVI) after ZCMI shall have given Developer thirty days' notice of its default thereunder (and in the event of such notice Developer shall have commenced curing such default and diligently prosecutes such curing, then during such period there shall be deemed to be no default); and during such time as Developer continues to be in default after such notice; provided, however, nothing contained in the foregoing provisions of this sentence shall in any manner be construed as diminishing or be deemed to constitute a waiver of any other rights of ZCMI resulting from the failure of Developer to perform its covenants set forth in Section XXII hereof. The hours of business for such retail facility shall be such reasonable hours as ZCMI in its sole and absolute discretion may determine. The term "department store", as used in this Section XXII shall mean a retail facility occupying substantially all of the Store building in which the same is located, and following the merchandising practices generally similar to merchandising practices of ZCMI from time to time, giving consideration to the varying merchandising requirements of particular areas.

ZCMI agrees that having opened its retail facility for business, so long as at least one hundred seventy-five thousand (175,000) square feet of Floor Area in the Mall Stores are being operated in compliance with Section XXII, it will thereafter operate said business for a period of ten (10) years as a ZCMI retail department store, for the next ten (10) years as a retail facility to be operated in substantially all its main store building and for the next ten (10) years to cause substantially all of the first floor of its main store to be used for retail purposes.

B. Notwithstanding anything to the contrary herein contained, ZCMI may:

(1) lease portions of the ZCMI Main Store Building or license departments thereof or grant concessions to other parties, and

(2) lease or sell the ZCMI Site to any subsidiary corporation of ZCMI or to any corporation which may succeed to ZCMI's business in the State in which the ZCMI Site is situated or to any corporation which may, as the result of reorganization, merger, consolidation or sale of stock or assets, succeed to such business, and in either such case, ZCMI shall be released from all further obligations under this Agreement if such lease or sale is to a corporation which acquires all or substantially all of the assets of ZCMI and which, by written instrument in recordable form, expressly assumes all of ZCMI's obligations hereunder.

(3) mortgage its Site and/or sell and leaseback or lease and subleaseback its Site and in connection with any such transaction assign its interest in this Agreement. If any such mortgage is foreclosed or a deed delivered in lieu of foreclosure, or if ZCMI, having entered into a sale and leaseback or a lease and subleaseback transaction involving its Site, shall be deprived of possession of such Site by reason of its failure to comply with the terms of such leaseback or subleaseback, anyone who have acquired, or shall thereafter acquire, title to such Site or a leasehold estate therein shall hold the same free of any requirement that a ZCMI retail department store, retail facility and/or retail facilities be operated on such Site. The provisions of this subsection (3) shall not relieve ZCMI of any liability or other responsibility on account of its default thereunder, except specific performance.

XXV MUTUAL COVENANTS

A. Except as provided in Paragraph C of Section XXIII and XXIV hereof, each and all of the provisions of this REA on Developer's, ZCMI's, and Penney's respective part to be performed (whether affirmative or negative in nature) are intended to and shall bind each and every person, firm, association or corporation which at the time in question is a Party hereto as a result of its ownership of an interest in the Developer Tract, ZCMI Tract and Penney Tract, respectively, and shall inure to the benefit of each and all of the respective Parties.

B. Each and all of the covenants of Developer, ZCMI and Penney, respectively, herein not to use, or permit the use of, any part of their respective Tracts contrary to the provisions of this REA are intended to, and shall bind each and every person having any fee, leasehold or other interest in any part of the Developer Tract, ZCMI Tract or the Penney Tract, as the case may be, at any time and from time to time, derived through any person, firm, association or corporation, now or hereafter comprised within each of the terms Developer, ZCMI and Penney, respectively, to the extent that such part of the Developer Tract, ZCMI Tract or Penney Tract, as the case may be, is affected or bound by the covenant in question, or that such covenant is to be performed thereon, and shall inure to the benefit of the other Parties.

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C. With respect to the various covenants (whether affirmative or negative) on the part of Developer, ZCMI and Penney, respectively, contained in this REA, which affect, or bind or are to be performed on portions of the Developer, ZCMI or Penney Tract, as the case may be, the Tracts benefited by such covenant shall, during the term of this REA, be the dominant estate and the other Tracts, or if the particular covenant affects, binds, or is to be performed on, less than the whole of such other Tracts, then with respect to the particular covenant, such portion thereof as is affected by, or bound by the particular covenant, or on which the particular covenant is to be performed shall, during the term of this REA, be the servient estate. Each and all of such covenants are imposed upon each portion of such Tract as a mutual equitable servitude in favor of all other portions of such Tract and any portion thereof.

#### XXVI ARBITRATION

A. The provisions of this section shall govern the determination of all disputes arising under Sections IV, V, VI or the recomputation provisions of Section XIII of this REA and arising under such other Sections of this REA which, by their specific provisions, are to be resolved by arbitration, and shall also govern all disputes arising from the failure or refusal of the Project Architect to approve matters submitted to him by any of the Parties pursuant to the provisions of this REA.

B. In the event that any Party notifies the Project Architect in the case of any plan or proposal prepared by or requiring the approval of the Project Architect, or the Party making the proposal (if approval of such proposal by the Project Architect is not required), of its objection in writing thereto within the period of time from the date of submission

  
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specifically provided hereunder, then upon written objection being given to all Parties to any plan or proposal submitted, in cases where approval of the Project Architect is required, the Project Architect on his own motion or at the request of any Party shall, and in all cases where Project Architect's approval is not required the Party making the proposal may, by written notice call a meeting to be held within ten (10) days from such date to be attended by all Parties, and if necessary by the Project Architect, to resolve and determine such matter. The Project Architect shall not vote. A unanimous decision of the Parties in attendance shall be required. In the event such meeting is not called or held within such period or if the matter is not thus finally determined, any Party shall have the right upon written notice to each of the other Parties to have the matter determined by one (1) arbitrator selected in accordance with and governed by the rules of the American Arbitration Association. When approval of the Project Architect is required, the arbitrator shall be a member of an architectural engineering firm experienced in and having an established reputation in the development of enclosed mall regional shopping centers, and in all cases where Project Architect's approval is not involved, the arbitrator shall be a recognized expert experienced in the operation of enclosed mall regional shopping centers. Such arbitrator, and if necessary the Project Architect, shall meet within ten (10) days after selection is completed to study and consider the plans or proposals and objections thereto. The decision of said arbitrator shall be final. Each Party shall bear its own expenses, except those relating to the services of a Project Architect or the arbitrator. Such expense shall be divided and borne equally among the Parties.

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XXVII ATTORNEY'S FEES

In the event that at any time during the term of this REA any Party or Parties hereto shall institute any action or proceeding against the other or others relating to the provisions of this REA, or any default thereunder, then, and in that event, the unsuccessful Party or Parties in such action or proceeding agree to reimburse the successful Party or Parties therein for the reasonable expenses of attorney's fees and disbursements incurred therein by the successful Party or Parties.

XXVIII NOTICES

A. Any notice, demand, request, consent, approval, designation or other communication which any Party hereto is required or desires to give or make or communicate to any other Party shall be in writing and shall be given or made, or communicated by United States registered or certified mail, addressed, in the case of Developer to:

UNIVERSITY MALL, INC.  
353 East 2nd South  
Salt Lake City, Utah 84111

and addressed in the case of Penney to:

J. C. PENNEY PROPERTIES, INC.  
c/o J. C. PENNEY COMPANY, INC.  
1301 Avenue of the Americas  
New York, New York 10019  
Attention: Real Estate Department

with copy to:

J. C. PENNEY COMPANY, INC.  
University Mall Shopping Center  
Orem, Utah

and addressed in the case of ZCMI to:

ZIONS COOPERATIVE MERCANTILE INSTITUTION  
15 South Main Street  
Salt Lake City, Utah 84111

 with copy to:

ZIONS COOPERATIVE MERCANTILE INSTITUTION  
University Mall Shopping Center  
Orem, Utah

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subject to the right of any Party to designate a different address by notice similarly given. Any notice, demand, request, consent, approval, designation or other communication so sent shall be deemed to have been given, made or communicated, as the case may be, on the date the same was deposited in the United States mail as registered or certified matter, with postage thereon fully prepaid and such notice must also comply with the requirements of XXVIII hereof.

B. The trustee under any first deed of trust or any first mortgagee or the lessee under any sale and leaseback shall be entitled to receive notice of any default by any Party, provided that such Person shall have recorded in Utah County a notice in the form herein contained and shall have delivered a copy of such notice to each Party. The form of such notice shall be as follows:

The undersigned, whose address is \_\_\_\_\_ does hereby certify that it has an interest in the tract of land described on Exhibit A attached hereto and made a part hereof and being the Tract of (Party) and is the (Trustee of Mortgagee holding the security interest in said Tract or the lessee under any sale and leaseback). In the event that any notice shall be given of the default of the Party upon whose Tract this lien applies, a copy thereof shall be delivered by certified or registered mail, postage prepaid to the undersigned, and such trustee, mortgage or lessor shall have all rights of such Party to cure such default. Failure to deliver a copy of such notice to the undersigned shall in no way affect the validity of the notice of default as it respects such Party, but shall make the same invalid as it respects the interest of the undersigned and its lien upon said property.

Giving of any notice of default or the failure to deliver a copy to any such Person shall in no event create any liability on the part of the Party so declaring a default.

#### XXIX AMENDMENT

The Parties hereto agree that the provisions of this REA may be modified or amended, in whole or in part, only with the consent of all of the Parties hereto, by declaration in



writing, executed and acknowledged by all of said Parties, duly recorded in the Office of the Recorder of the County of Utah State of Utah, but this REA may not otherwise be modified or amended, in whole or in part. It is expressly understood and agreed that no modification or amendment, in whole or in part, shall require any consent or approval on the part of any tenant or lessee of any Party to this REA.

#### XXX TERMINATION OF REA

Except as provided in Section XVIII hereof, this REA shall remain in full force and effect until forty-five (45) years from the date of this REA, and so long thereafter as at least one of Penney, ZCMI or the Future (third) Department Store is operating a department store of at least one hundred twenty thousand (120,000) square feet of Floor Area; provided, however, that this REA shall in all events terminate not later than July 31, 2032.

#### XXXI LIENS

Wherever under the terms of this REA any Party is permitted to perform any work upon the Tract of another Party, it is expressly understood and agreed that such Party will not permit any mechanics' or materialmen's, or other similar liens to stand against the Tract upon which such labor or material has been furnished in connection with any such work performed by any such Party. Such Party may contest the validity of any such lien, but upon final determination of the validity and the amount thereof, such Party shall immediately pay any judgment rendered with all proper costs and charges. The Party upon whose Tract such work is performed may require a surety bond in its favor assuring payment by such contesting Party, in which event such bond shall be furnished within thirty days subsequent to the request, or the amount of such lien shall be paid in full within such period.



XXXII TBA's

A. Nothing herein contained shall be construed to require Penney to construct its TBA. If Penney shall elect to construct its TBA, it shall not be required to carry on therein the business referred to in Section IX of this REA. Any business carried on in its TBA by Penney shall, nevertheless, be carried on as a department of its Store and under its trade name pursuant to Section XXIII, but only so long as Penney is obligated to operate its Store under Section XXIII. If Penney shall not construct its TBA or if having constructed the same it shall raze such improvements, it shall, at its expense, pave and stripe its respective TBA Site for parking purposes. In the event its TBA shall be vacant, Penney shall nevertheless maintain the same in accordance with the provisions of Section XXIII.

B. Nothing herein contained shall be construed to require ZCMI to construct its TBA. If ZCMI shall elect to construct its TBA, it shall not be required to carry on therein the business referred to in Section IX of this REA. Any business carried on in its TBA by ZCMI shall, nevertheless, be carried on as a department of its Store and under its trade name pursuant to Section XXIV, but only so long as ZCMI is obligated to operate its Store under Section XXIV. If ZCMI shall not construct its TBA or if having constructed the same it shall raze such improvements, it shall, at its expense, pave and stripe its respective TBA Site for parking purposes. In the event its TBA shall be vacant, ZCMI shall nevertheless maintain the same in accordance with the provisions of Section XXIV.

XXXIII DEDICATION

Developer, Penney and ZCMI shall each join in the execution of such instruments as may be required in order to effectuate street and road construction and widenings or the installation of public utilities by municipalities or private utilities and shall each join in the grant of dedications or easements for such purposes under and across portions of their respective Tracts of their adjacent property to the Shopping Center Site, all as and to the extent necessary to carry out the intent and purposes of this REA.

XXXIV FUTURE EXPANSION OF FLOOR AREA

A. Penney shall have the right to expand its TBA Store, horizontally, by the addition thereto of additional Floor Area in the area shown therefor and designated "Penney TBA Expansion" on Exhibit B. Penney's right to expand its Store shall be subject to the limitations provided in Section VII B & C and Sections IX, X and XIV.

B. Developer shall have the right to construct or cause to be constructed space for a Future (third) Department Store, Future Store and Future Enclosed Mall in the areas shown therefor and so designated on Exhibit B. Both the construction of such expansion Floor Area and of required additional Automobile Parking Areas shall be subject to the limitation provided in Section V D and to the requirements of Section IX, Section X and Section XIV of this REA to the fullest extent the same are applicable thereto.

The construction of said Future (third) Department Store shall be subject to the following:

8/31/71

*[Handwritten initials]*  
*[Handwritten initials]*

- (a) The Occupant of such Future (third) Department Store shall undertake by written agreement in recordable form to operate a department store in its department store building, a retail store in its Store building and to use its Store building for retail purposes for any then remaining time during each of the three ten year periods during which Penney and ZCMI under Sections XXIII and XXIV, respectively, are required to so operate under (i) their respective names, (ii) operated retail facility or, (iii) use their store building for retail purposes and to be otherwise bound by and subject and subordinate to this REA; and
- (b) Developer agrees that it shall not construct the future mall stores to the North of Penney's Store building, except in compliance with Section V D.
- (c) Any such agreement by a Future (third) Department Store Occupant to purchase a portion of Developer's Tract shall contain an assumption by such Occupant of the obligations of Developer under this REA as to the portion of Developer Tract constituting the premises demised to such Occupant under such agreement.

C. ZCMI shall have the right to expand its TBA building and main store building within the areas designated "ZCMI EXPANSION" on Exhibit B hereto by an addition containing not more than three (3) floor levels and subject at all times to the limitations provided in Section VIII B, Section IX, Section X and Section XIV.

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D. The Parties hereto do not undertake that there shall be any such future expansions in the areas so designated on Exhibit B, and until such future expansions are constructed, the areas so designated on Exhibit B shall be improved as and used for Common Areas and shall be operated and maintained as part of the Common Areas pursuant to Section XI of this REA. Said areas so long as they are improved as Common Areas shall be included in any determination of the Automobile Parking Areas required pursuant to the provisions of Paragraph A of Section IX of this REA.

XXXV PHASE 2 TRACT AND FUTURE SC-1 TRACT.

A. Developer may, by serving written notice of its intention so to do, elect to remove all or any part of its Phase 2 Tract and/or Future SC-1 Tract from the Shopping Center as a part of the Developer Tract and the provisions of this REA, except as hereinafter provided, but the right to remove Phase 2 Tract shall not have application so as to release any portion of Phase 2 Tract required to satisfy the Automobile Parking Area requirements of Paragraph A of Section IX of this REA for the Floor Area constructed in Developer's Phase I Tract. Upon election by Developer to remove any portion of Developer's Phase 2 Tract and/or Future SC-1 Tract from the Shopping Center, the portion to be so removed shall be released from all the easements, covenants and restrictions to which the Developer Tract is subject under the provisions of this REA, except as hereinafter provided, and the remainder of the Shopping Center Site (Phase I and so much of Phase 2 and/or Future SC-1 as is not removed) shall be released from all rights of the owner of Phase 2 Tract and/or Future SC-1 Tract so removed granted under the provisions of this REA.

SP  
WR

BOOK 1244 PAGE 519

ZCMI and Penney agree at Developer's request to execute, acknowledge and deliver together with Developer and to record such instrument or instruments as Developer may reasonably request to evidence the release of any part of such Phase 2 Tract and/or Future SC-1 Tract which Developer has elected to remove from the Shopping Center and from such easements, covenants and restrictions pursuant to this Paragraph A.

B. In the event Developer or its successor elects to remove all or any portion of Phase 2 Tract and/or Future SC-1 Tract, as aforesaid, ZCMI or Penney shall have the right to require Developer build and maintain a six-foot barrier satisfactory to Penney and ZCMI dividing Phase I from the Phase 2 Tract so removed so as thereafter to permanently prevent access between said Tracts. Developer agrees with Penney and ZCMI that there shall be no construction of any nature whatsoever upon either Phase 2 Tract or Future SC-1 Tract unless Developer submits an agreement in form satisfactory to Penney and ZCMI fully executed in proper form for recording and providing that the portion of said Phase 2 and/or Future SC-1 Tracts shall become a part of the Developer Tract and subject to all of the terms, covenants, provisions and conditions of this REA.



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C. The provisions of said instrument or instruments of release shall constitute covenants running with the land or equitable servitudes as between the portion of Phase II Tract so removed as the servient tenement, and the Shopping Center Site, as the dominant tenement, in accordance with the following:

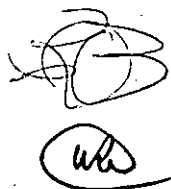
"(a) Each and all of the provisions hereof on Developer's and ZCMI's and Penney's respective part to be performed (whether affirmative or negative in nature) are intended to and shall bind each and every person, firm, association or corporation comprised within the term Developer, ZCMI and Penney, respectively, at any time and from time to time, and shall inure to the benefit of each and all of the respective parties.

(b) Each and all of the covenants of Developer herein not to use, or permit the use of, any part of the Phase II Tract contrary to the provisions hereof are intended to, and shall bind each and every person having any fee, leasehold or other interest in any part of the Phase II Tract, at any time and from time to time, derived through any person, firm, association or corporation, now or hereafter comprised within the term "Developer", to the extent that such part of the Phase II Tract is affected or bound by the covenant in question, or that such covenant is to be performed thereon, and shall inure to the benefit of the other parties hereto.



(c) With respect to the various covenants (whether affirmative or negative) on the part of Developer, contained herein, which affect, or bind, or are to be performed on portions of the Phase II Tract the Shopping Center Site (the property benefited by such covenant) shall, during the term hereof, be the dominant estate and the Phase II Tract, or if the particular covenant affects, binds, or is to be performed on, less than the whole of the Phase II Tract, then with respect to the particular covenant, such portion of the Phase II Tract as is affected by or bound by the particular covenant, or on which the particular covenant is to be performed shall, during the term hereof, be the servient estate. Each and all such covenants are imposed upon each portion of the Phase II Tract as a mutual equitable servitude in favor of the Shopping Center Site and any portion thereof."

D. Upon date of termination of the REA, the provisions of the instrument or instruments of release shall terminate and upon termination, all agreements and covenants set forth therein shall cease to be of any further force or effect. Upon termination, the parties thereto shall execute instruments, in recordable form, setting forth that all restrictions, servitudes, covenants running with the land, and easements, as set forth therein, have terminated.

  
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XXXVI MISCELLANEOUS

Waiver of  
Default

A. No waiver of any default by any Party to this REA shall be implied from any omission by any other Party to take any action in respect of such default if such default continues or is repeated. No express waiver of any default shall affect any default or cover any period of time other than the default and period of time specified in such express waiver. One or more waivers of any default in the performance of any term, provision or covenants contained in this REA shall not be deemed to be a waiver of any subsequent default in the performance of the same term, provision or covenant or any other term, provision or covenant contained in this REA. The consent or approval by any such Party to or of any act or request by any other Party requiring consent or approval shall not be deemed to waive or render unnecessary the consent or approval to or of any subsequent similar acts or requests. The rights and remedies given to any Party by this REA shall be deemed to be cumulative and no one of such rights and remedies shall be exclusive of any of the others, or of any other right or remedy at law or in equity which any such Party might otherwise have by virtue of a default under this REA, and the exercise of one such right or remedy by any such Party shall not impair such Party's standing to exercise any other right or remedy.

No  
Partner-  
ship

B. Neither anything in this REA contained nor any acts of the Parties hereto shall be deemed or construed by the Parties hereto, or any of them, or by any third person, to create the relationship of principal and agent, or of partnership, or of joint venture, or of any association between any of the Parties to this REA.

Successors C. This REA shall, except as otherwise provided herein, be binding upon and inure to the benefit of the successors and assigns of the respective Parties to this REA.

Sever-ability D. If any term, provision or condition contained in this REA shall, to any extent, be invalid or unenforceable, the remainder of this REA (or the application of such term, provision or condition to persons or circumstances other than those in respect of which it is invalid or unenforceable) shall not be affected thereby, and each term, provision and condition of this REA shall be valid and enforceable to the fullest extent permitted by law.

Govern- ing Laws E. This REA shall be construed in accordance with the laws of the State of Utah wherein the Shopping Center Site is located.

Captions F. The captions of the paragraphs of this REA are for convenience only and shall not be considered nor referred to in resolving questions of interpretation and construction.

Time of Essence G. Time is of the essence with respect to the performance of each of the covenants and agreements contained in this REA.

Terms Binding on Parties H. The terms, covenants, provisions and conditions in this REA to be kept, performed and observed by Developer, ZCMI or Penney (except with respect to the covenants of ZCMI and Penney contained in Sections XXIII and XXIV, respectively) shall be binding upon Developer, ZCMI and Penney, respectively, and their respective successors assigns and grantees.

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Release of  
Parties and  
Mortgagees

I. It shall be a condition precedent to a release of a grantor Party that at the time of any sale, transfer or conveyance of the fee interest of any Party in its Tract or part thereof, the grantee Party thereof shall deliver to each of the Parties to this REA an executed and acknowledged instrument, in recordable form, assuming the terms, conditions, covenants and agreements in this REA to be kept, observed and performed by the grantor Party of such interest in such Tract, or part thereof, and upon such occurrence such grantor Party shall, as respects the fee interest in the Tract or part thereof conveyed, thenceforth stand released and discharged from any and all liability for the keeping, performing and observing of the said terms, covenants, conditions and agreements with respect to the Tract, or part thereof, in which such interest is so conveyed except with respect to the covenants of ZCMI and Penney contained in Sections XXIII and XXIV, respectively. It shall be a condition precedent to the release and discharge of any such grantor Party that any and all amounts which shall then be due and payable by such grantor Party to any other Party to this REA shall have been paid to such other Party and that such grantor Party shall give notice to other Parties to this REA of any such sale, transfer or conveyance concurrently with the filing for record of the instrument effecting the same. Notwithstanding the provisions of this subparagraph, each signatory Party shall remain personally liable to construct its improvements in Sections V, VI, VII and VIII. No such signatory Party shall be released from such obligation upon or by any transfer of its interest in its Tract until it has completed the construction of its improvements as required by such Sections.

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Notwithstanding anything to the contrary contained in this Section or elsewhere in this REA, if any Party shall sell its entire Tract, such Party shall be released from all further liability arising under this REA in respect of any period after the later of such sale or the termination of the covenants of such Party contained in Sections XXII, XXIII or XXIV as the case may be.

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*JB* *uh*

In the event that any Party shall sell part or all of its Tract for the purpose of financing the improvements on its Tract, and shall simultaneously enter into a leaseback of not less than thirty (30) years with such fee owner, whereby the Seller shall have the possessory rights in said real property, subject to the terms of said lease, then and in that event, it is expressly understood and agreed that so long as said leaseback remains in existence the fee owner of such Tract, or portion thereof, shall for the purposes of this REA be given all of the same rights and privileges as the holder of a first deed of trust or mortgage of said real property, and such fee interest shall not be subject to any lien which might be created pursuant to any of the provisions of this REA to any greater extent than would be the holder of such deed of trust or mortgage.

In the event of any termination of such leasehold interest, and notwithstanding any language in said lease preventing a merger of title in said fee owner, such provision shall not be operative to relieve said fee owner and its respective successors or assigns of the obligations under and pursuant to the terms of this REA, exclusive of the covenants of Penney, as provided in Section XXIII, or the covenants of ZCMI, as provided in Section XXIV, respectively; provided, however, the fee interest shall not be subject to liens (arising as provided for herein) which are superior to said fee ownership and which attach thereto during the first twelve (12) months in which the fee interest and the leasehold interest shall be held by the same Party, but thereafter the fee interest shall be so subject unless during such twelve (12) month period a new lease shall have been entered into which would otherwise comply with the provisions of this paragraph or the lease shall have been assigned to a new Person, in which

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event the rights of the fee owner shall continue as though no default had taken place under said lease. In the event of the merger of the title to the fee interest and the leasehold interest is an institutional owner (bank, savings and loan association, trust company, insurance company or pension fund) as hereinabove provided for, then and in that event as respects such institutional owner the provisions of this paragraph shall be of no force or effect whatsoever. The lessee under any qualifying lease, as herein provided, shall be deemed a Party hereto so long as said lease is in existence. As used herein in this paragraph I, the term "sell" or "sale and leaseback" shall be deemed to include any lease by any Party of all or part of its Tract for the purposes of financing the improvements on its Tract and simultaneous leaseback, and the provisions of this paragraph shall apply thereto; and the terms "owner" and "leasehold" shall include a lessee and leasehold under such lease and leaseback transaction in the same manner and with like effect.

Consent

J. In any instance in which any Party to this REA shall be requested to consent to or approve of any matter with respect to which a Party's consent or approval is required by any of the provisions of this REA, and it is provided in this REA that in such instance the consent or approval of such Party may not be unreasonably withheld by such Party, and the matter of such reasonableness is made subject to arbitration by this REA, and in the further event that such Party is found pursuant to said arbitration proceedings to have unreasonably withheld such consent or approval, such Party shall not be monetarily liable to any other Party to this REA notwithstanding the finding in arbitration that such Party has unreasonably withheld its consent or approval.



Nature and  
Time of  
Approval

K. Wherever in this REA approval of any Party is required, the same shall not be unreasonably withheld, unless specific provision is made herein for the specific approval to be in the sole and absolute discretion of any Party, and unless a different time limit is provided herein, such approval or disapproval shall be given within thirty (30) days following the receipt of the item to be so approved or disapproved, or the same shall be conclusively deemed to have been approved by such Party. Any disapproval shall specify with particularity the reasons therefor; provided, however, that wherever in this REA any Party is given the right to approve or disapprove in its sole and absolute discretion it may disapprove without specifying a reason therefor. Whenever under this REA consent or approval or disapproval is required of a Party within a time period or consent or approval of such Party shall be deemed given, the notice of submission must direct the addressed Party's attention (by a statement underlined or in capital letters) to the applicable time limit. If the notice of submission does not contain such statement the applicable time limit shall not commence to run until a proper notice containing such a statement is given.

Perform-  
ance of  
Parties'  
Covenants

L. If a Party shall fail to perform any of the covenants to be performed by such Party pursuant to this REA (other than a covenant to operate a department store), or if a Party should fail to make any required payment hereunder and such Party shall fail to cure such default within sixty (60) days after either of the other Parties affected thereby shall have served upon the defaulting Party notice of such failure (or if the default is of such character as reasonably

to require more than sixty (60) days to cure and the defaulting Party shall fail to commence to cure the same within such period or shall fail to use reasonable diligence in curing such default thereafter), or if the failure of such Party relates to a matter which in Developer's or Penney's or ZCMI's judgment reasonably exercised is of an emergency nature and such failure shall remain uncured for a period of forty-eight (48) hours after Developer or Penney or ZCMI shall have served upon such defaulting Party notice of such failure, then Developer or Penney or ZCMI, as the case may be, may at its option, and in its sole discretion as to the necessity therefor, perform any such covenant, or make any such payment as the defaulting Party's attorney-in-fact (such appointment is hereby made for such purpose). Developer or Penney or ZCMI, as the case may be, by reason of so doing shall not be liable or responsible for any loss or damage thereby sustained by the defaulting Party or anyone holding under such defaulting Party.

If a Party hereto shall be compelled or shall elect to pay any sum of money or do any acts which require the payment of money by reason of the other Party's failure or inability to perform any of the terms and provisions in this REA to be by such other Party performed, then such defaulting Party shall promptly upon demand reimburse the paying Party for such sums, and all such sums shall bear interest at the then prime rate of interest for bank loans plus one (1%) percent per annum (not exceeding the maximum rate permitted by Law). Any other sums payable by a Party to the other Party hereto pursuant to the terms and provisions of this REA that shall not be paid when due shall bear interest.

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at the average of the prime rate of interest charged by the majority of major banks in Salt Lake City at the date of the expenditure for bank loans plus one (1%) percent per annum (not exceeding the maximum rate permitted by Law) from the due date to the date of payment thereof. If such demand is made, the Party having so paid shall have the right to deduct the amount thereof, together with interest as aforesaid, without liability or forfeiture, from any sums then due or thereafter becoming due from it to the defaulting Party hereunder or under any separate agreement between the Parties. If the amount so stated is not so paid the Party performing the work, by serving a written notice upon defaulting Party describing the defaulting Party's Tract, the nature of the work performed and the cost thereof, and recording a copy of such notice in the Office of the Recorder of Utah County, shall establish a lien upon the defaulting Party's Tract and its fee interest therein in the amount stated in the recorded notice. No lien shall exist until such notice is recorded. The priority of such lien shall be determined as of the date of filing the same of record. Such lien shall also secure the reasonable costs and expenses of enforcing the same, plus interest and attorneys' fees.

Any deduction made by any Party pursuant to the provisions of this Section from any sums due or payable by it hereunder shall not constitute a default in the payment thereof unless such Party fails to pay the amount of such deduction to the Party to whom the sum is owing within thirty (30) days after final adjudication that such amount is owing. The option given in this Section is for the sole protection of the Party so paying and its existence shall not release the defaulting Party from the obligation to perform the terms, provisions, covenants and conditions herein provided to be

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performed thereby or deprive the Party so paying of any legal rights which it may have by reason of any such default.

The Parties each hereby grant to the other Parties no non-exclusive rights of entry and non-exclusive easements over and under any and all parts of their respective Tracts (excluding the right to enter a Store building on the Tract of another Party except where there is located in such Store utilities or other equipment essential for the continuous operation of either a Store or Common Area on the Tract of the Party claiming the right of entry) for all purposes reasonably necessary to enable them (acting directly or through agents, contractors, or sub-contractors) so to perform any of the terms, provisions, covenants or conditions of this REA which such defaulting Party shall have failed to perform.

Injunctive  
Relief

M. In the event of any violation or threatened violation by any Party, Permittee or Occupant or any part of the Center of any of the terms, restrictions, covenants and conditions herein provided, any of the Parties shall have the right to enjoin such violation or threatened violation in a court of competent jurisdiction. Prior to the commencement of any such action, ten (10) days prior written notice of such violation shall be given to the other Party or other person responsible therefor.

Not a  
Public  
Dedication

N. Except as provided in Section XXXIII hereof nothing herein contained shall be deemed to be a gift or dedication of any portion of the Center to the general public or for the general public or for any public purpose whatsoever, it being the intention of the Parties hereto that this REA shall be strictly limited to and for the purposes herein expressed.

Breach  
Shall Not  
Permit  
Termination

O. Except as provided in Section XVI, it is expressly agreed that no breach of this REA shall entitle any Party to cancel, or rescind or otherwise terminate this REA, but such limitation shall not affect, in any manner, any other right

or remedies which the Parties may have hereunder by reason of any breach of this REA.

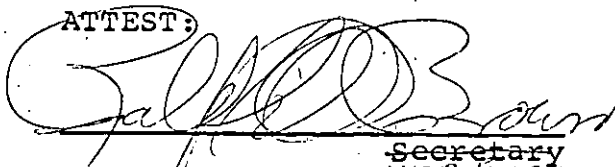
Breach Shall Not Defeat Mortgage

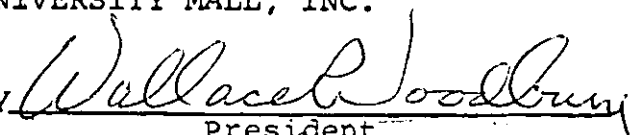
P. A breach of any of the terms, conditions, covenants or restrictions of this REA shall not defeat or render invalid the lien of any first mortgage or first deed of trust made in good faith and for value, but such term, condition, covenant or restriction shall be binding upon and effective against any of the Parties whose title to said property or any portion thereof is acquired by foreclosure, trustee's sale, or otherwise.

Estoppel Certificates

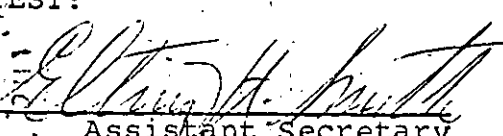
Q. Each Party will from time to time, on reasonable written request therefor from any mortgagee of any other Party, furnish to such mortgagee, without charge a certificate duly executed and acknowledged by such Party, certifying that with respect to such Party, this REA is unmodified and in full force and effect, or if there has been any modification, that the same is in full force and effect as modified, and stating any such modifications; and whether or not there is then existing any claim of default hereunder by such Party against any other Party, and if so, specifying the nature thereof.

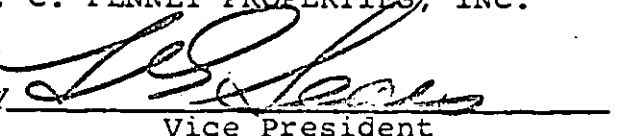
DULY EXECUTED by the Parties hereto as of the day and year first above written.

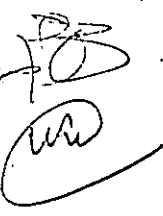
ATTEST:   
Secretary  
VICE PRES


UNIVERSITY MALL, INC.  
By   
President  
Developer




ATTEST:   
Assistant Secretary

J. C. PENNEY PROPERTIES, INC.  
By   
Vice President  
Penney



ATTEST:   
Secretary

ZIONS COOPERATIVE MERCANTILE INSTITUTION  
By   
President  
ZCMI

R: 9/2/71

STATE OF UTAH }  
COUNTY OF SALT LAKE } ss.:

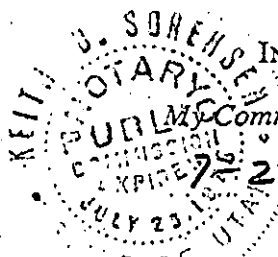
On this the 2<sup>nd</sup> day of OCTOBER, 1971, before me, a Notary Public duly authorized in and for the said County in the State aforesaid to take acknowledgments, personally appeared WALLACE R. WOODBURY and RALPH O BROWN, residing at \_\_\_\_\_, and VICE PRESIDENT President of UNIVERSITY MALL, INC., one of the corporations described in the foregoing instrument, and acknowledged that as such officer, being authorized so to do, he executed the foregoing instrument on behalf of said corporation by subscribing the name of such corporation by himself as such officer and caused the corporate seal of said corporation to be affixed thereto, as his free and voluntary act, and as the free and voluntary act of said corporation, for the uses and purposes therein set forth.

each

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

My Commission Expires:

7-25-1975



Keith B. Sorenson  
Notary Public  
RESIDING AT SALT LAKE CITY, UTAH

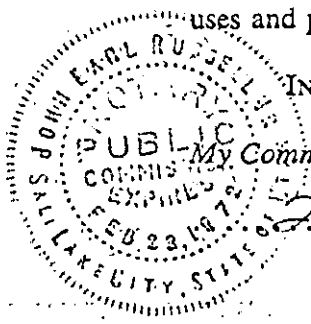
STATE OF UTAH }  
COUNTY OF SALT LAKE } ss.:

On this the 2<sup>nd</sup> day of OCTOBER, 1971, before me, a Notary Public duly authorized in and for the said County in the State aforesaid to take acknowledgments, personally appeared H. H. BENNETT, residing at \_\_\_\_\_, to me known and known to me to be President of ZIONS COOPERATIVE MERCANTILE INSTITUTION, one of the corporations described in the foregoing instrument, and acknowledged that as such officer, being authorized so to do, he executed the foregoing instrument on behalf of said corporation by subscribing the name of such corporation by himself as such officer and caused the corporate seal of said corporation to be affixed thereto, as his free and voluntary act, and as the free and voluntary act of said corporation, for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

My Commission Expires:

2-23-1972



Earl Russell  
Notary Public

STATE OF NEW YORK }  
COUNTY OF NEW YORK } ss.:

On this the 2 day of October, 1971, before me, a Notary Public duly authorized in and for the said County in the State aforesaid to take acknowledgments, personally appeared E. E. Sears, residing at 34-05 80th Street Jackson Heights, to me known and known to me to be a Vice President of J. C. PENNEY PROPERTIES, INC., one of the corporations described in the foregoing instrument, and acknowledged that as such officer, being authorized so to do, he executed the foregoing instrument on behalf of said corporation by subscribing the name of said corporation by himself as such officer and caused the corporate seal of said corporation to be affixed thereto, as his free and voluntary act, and as the free and voluntary act of said corporation, for the uses and purposes therein set forth.

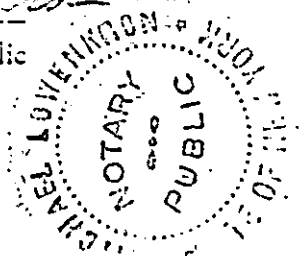
IN WITNESS WHEREOF, I hereunto set my hand and official seal.

My Commission Expires:

Michael Lowenkron

Michael Lowenkron  
Notary Public

MICHAEL LOWENKRON  
Notary Public, State of New York  
No. 31-7609525  
Qualified in New York County  
Commission Expires March 30, 1972



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EXHIBIT A

LEGAL DESCRIPTIONS

PART I

DEVELOPER TRACT

(PART 1)

BEGINNING AT A POINT WHICH IS 301.73 FEET NORTH AND 495.98 FEET WEST FROM THE SOUTHEAST CORNER OF SECTION 23, T6S, R2E, SLB, 8 M;

THENCE NORTH 00°13' WEST 199.32 FEET;  
THENCE SOUTH 89°18' EAST 46.70 FEET;  
THENCE NORTH 00°13' WEST 330.00 FEET;  
THENCE NORTH 89°18' WEST 46.20 FEET;  
THENCE NORTH 00°13' WEST 39.71 FEET;  
THENCE NORTH 85°58' WEST 906.38 FEET;  
THENCE SOUTH 00°32' WEST 256.98 FEET;  
THENCE SOUTH 89°25' EAST 79.84 FEET;  
THENCE SOUTH 00°33' EAST 149.49 FEET;  
THENCE NORTH 88°55' WEST 467.95 FEET;  
THENCE SOUTH 04°02' WEST 283.22 FEET;  
THENCE NORTH 85°58' WEST 56.57 FEET;  
THENCE SOUTH 04°02' WEST 460.00 FEET;  
THENCE SOUTH 85°58' EAST 284.07 FEET;  
THENCE SOUTH 04°02' WEST 116.43 FEET;  
THENCE SOUTH 00°59' WEST 164.29 FEET;  
THENCE NORTH 89°03' EAST 26.51 FEET;  
THENCE SOUTH 88°46' EAST 136.38 FEET;  
THENCE SOUTH 86°42' EAST 80.06 FEET;  
THENCE SOUTH 84°43' EAST 50.43 FEET;  
THENCE SOUTH 82°08' EAST 133.89 FEET;  
THENCE SOUTH 79°32' EAST 130.04 FEET;  
THENCE NORTH 04°02' EAST 284.12 FEET;  
THENCE NORTH 85°58' WEST 6.72 FEET;  
THENCE NORTH 04°02' EAST 460.00 FEET;  
THENCE SOUTH 85°58' EAST 141.50 FEET;  
THENCE NORTH 04°02' EAST 151.52 FEET;  
THENCE SOUTH 85°58' EAST 381.12 FEET  
TO POINT OF BEGINNING.  
AREA = 28.790 ACRES

(PART 2)

AND BEGINNING AT A POINT WHICH IS 554.48 FEET NORTH AND 2675.24 FEET WEST FROM THE SOUTHEAST CORNER OF SECTION 23, T6S, R2E, SLB 8 M;

THENCE SOUTH 18°31' EAST 31.64 FEET;  
THENCE SOUTH 88°44' EAST 301.25 FEET;  
THENCE NORTH 04°02' EAST 29.77 FEET;  
THENCE NORTH 88°43' WEST 115.49 FEET;  
THENCE NORTH 88°44' WEST 197.90 FEET  
TO POINT OF BEGINNING.  
AREA = 0.210 ACRES  
TOTAL AREA = 29.000 ACRES

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PART II

PENNEY TRACT

BEGINNING AT A POINT WHICH IS 540.00 FEET ALONG THE SECTION  
LINE BEARING NORTH 89°18' WEST AND 25.00 FEET NORTH FROM THE  
SOUTHEAST CORNER OF SECTION 23, T6S, R2E, SLB 8 M;

THENCE NORTH 00°13' WEST 140.00 FEET;  
THENCE SOUTH 89°18' EAST 45.00 FEET;  
THENCE NORTH 00°13' WEST 130.68 FEET;  
THENCE NORTH 85°58' WEST 381.12 FEET;  
THENCE SOUTH 04°02' WEST 151.52 FEET;  
THENCE NORTH 85°58' WEST 141.50 FEET;  
THENCE SOUTH 04°02' WEST 460.00 FEET;  
THENCE SOUTH 85°58' EAST 6.72 FEET;  
THENCE SOUTH 04°02' WEST 284.12 FEET;  
THENCE SOUTH 79°32' EAST 28.67 FEET;  
THENCE SOUTH 78°11' EAST 115.50 FEET;  
THENCE SOUTH 78°00' EAST 79.29 FEET;  
THENCE SOUTH 78°32' EAST 224.66 FEET;  
THENCE SOUTH 81°56' EAST 166.63 FEET;  
THENCE SOUTH 88°52' EAST 116.93 FEET;  
THENCE NORTH 00°39' WEST 638.53 FEET;  
THENCE NORTH 89°18' WEST 180.00 FEET;  
THENCE NORTH 62.00 FEET  
TO POINT OF BEGINNING.  
AREA = 13.200 ACRES

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PART III

ZCMI TRACT

BEGINNING AT A POINT 30.54 FEET NORTH AND 2499.41 FEET WEST OF THE SOUTHEAST CORNER OF SECTION 23, T6S, R2E, SLB 8 M;

THENCE SOUTH 18°31' EAST 578.02 FEET;  
THENCE NORTH 88°35' EAST 524.31 FEET;  
THENCE NORTH 89°03' EAST 165.00 FEET;  
THENCE NORTH 0°59' EAST 164.29 FEET;  
THENCE NORTH 4°02' EAST 116.43 FEET;  
THENCE NORTH 85°58' WEST 284.07 FEET;  
THENCE NORTH 4°02' EAST 460.00 FEET;  
THENCE SOUTH 85°58' EAST 56.57 FEET;  
THENCE NORTH 4°02' EAST 283.22 FEET;  
THENCE NORTH 88°55' WEST 389.32 FEET;  
THENCE NORTH 88°43' WEST 181.96 FEET;  
THENCE SOUTH 4°02' WEST 29.77 FEET;  
THENCE NORTH 88°44' WEST 301.25 FEET;  
THENCE SOUTH 18°31' EAST 31.64 FEET;  
THENCE SOUTH 88°44' EAST 289.09 FEET;  
THENCE SOUTH 4°02' WEST 190.68 FEET;  
THENCE NORTH 85°58' WEST 90.83 FEET;  
THENCE SOUTH 71°29' WEST 115.00 FEET;  
THENCE SOUTH 18°31' EAST 250.00 FEET  
TO POINT OF BEGINNING.  
AREA = 15.796 ACRES

BOOK 1224 PAGE 537

PART IV

PHASE 2 TRACT

BEGINNING AT A POINT WHICH IS 870.75 FEET NORTH AND 497.64 FEET WEST OF THE SOUTHEAST CORNER OF SECTION 23, T6S, R2E, SLB 8 M;

THENCE NORTH 00°13' WEST 453.69 FEET;  
THENCE NORTH 89°20' EAST 138.77 FEET;  
THENCE NORTH 00°30' WEST 50.00 FEET;  
THENCE SOUTH 89°30' WEST 969.56 FEET;  
THENCE SOUTH 00°16' EAST 50.00 FEET;  
THENCE NORTH 89°25' WEST 67.63 FEET;  
THENCE SOUTH 00°32' WEST 383.72 FEET;  
THENCE SOUTH 85°58' EAST 906.38 FEET  
TO POINT OF BEGINNING.  
AREA = 9.768 ACRES


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PART V

SC-1 ANNEX DESCRIPTION

BEGINNING AT A POINT WHICH IS 32.62 FEET SOUTH AND 359.98 FEET WEST FROM THE SOUTHEAST CORNER OF SECTION 23, T6S, R2E, SLB 8 M;

THENCE SOUTH 00°39' EAST 638.53 FEET;  
THENCE SOUTH 88°52' EAST 77.96 FEET;  
THENCE NORTH 89°14' EAST 109.00 FEET;  
THENCE NORTH 00°46' WEST 90.00 FEET;  
THENCE SOUTH 89°14' WEST 9.00 FEET;  
THENCE NORTH 00°46' WEST 95.00 FEET;  
THENCE SOUTH 89°14' WEST 100.00 FEET;  
THENCE NORTH 00°46' WEST 454.15 FEET;  
THENCE NORTH 89°18' WEST 76.64 FEET  
TO POINT OF BEGINNING.  
AREA = 1.576 ACRES



PART VI

TOTAL PHASE I DESCRIPTION

BEGINNING AT A POINT WHICH IS 540.00 FEET ALONG THE SECTION LINE BEARING NORTH 89°18' WEST AND 25 FEET NORTH FROM THE SOUTH-EAST CORNER OF SECTION 23, T6S, R2E, SLB 8 M;

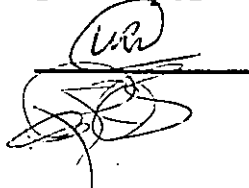
THENCE NORTH 00°13' WEST 140.00 FEET;  
THENCE SOUTH 89°18' EAST 45.00 FEET;  
THENCE NORTH 00°13' WEST 330.00 FEET;  
THENCE SOUTH 89°18' EAST 46.70 FEET;  
THENCE NORTH 00°13' WEST 330.00 FEET;  
THENCE NORTH 89°18' WEST 46.20 FEET;  
THENCE NORTH 00°13' WEST 39.71 FEET;  
THENCE NORTH 85°58' WEST 906.38 FEET;  
THENCE SOUTH 00°32' WEST 256.98 FEET;  
THENCE SOUTH 89°25' EAST 79.84 FEET;  
THENCE SOUTH 00°33' EAST 149.49 FEET;  
THENCE NORTH 88°55' WEST 857.27 FEET;  
THENCE NORTH 88°43' WEST 297.45 FEET;  
THENCE NORTH 88°44' WEST 197.90 FEET;  
THENCE SOUTH 18°31' EAST 63.28 FEET;  
THENCE SOUTH 88°44' EAST 289.09 FEET;  
THENCE SOUTH 04°02' WEST 190.68 FEET;  
THENCE NORTH 85°58' WEST 90.83 FEET;  
THENCE SOUTH 71°29' WEST 115.00 FEET;  
THENCE SOUTH 18°31' EAST 828.02 FEET;  
THENCE NORTH 88°35' EAST 524.31 FEET;  
THENCE NORTH 89°03' EAST 191.51 FEET;  
THENCE SOUTH 88°46' EAST 136.38 FEET;  
THENCE SOUTH 86°42' EAST 80.06 FEET;  
THENCE SOUTH 84°43' EAST 50.43 FEET;  
THENCE SOUTH 82°08' EAST 133.89 FEET;  
THENCE SOUTH 79°32' EAST 158.71 FEET;  
THENCE SOUTH 78°11' EAST 115.50 FEET;  
THENCE SOUTH 78°00' EAST 79.29 FEET;  
THENCE SOUTH 78°32' EAST 224.66 FEET;  
THENCE SOUTH 81°56' EAST 166.63 FEET;  
THENCE SOUTH 88°52' EAST 116.93 FEET;  
THENCE NORTH 00°39' WEST 638.53 FEET;  
THENCE NORTH 89°18' WEST 180.00 FEET;  
THENCE NORTH 62.00 FEET

TO POINT OF BEGINNING.

AREA = 57.996 ACRES

Attached to and forming part of REA dated October 2, 1971 by and between University Mall, Inc., Zions Cooperative Mercantile Institution and J. C. Penney Properties, Inc., covering premises situated at Orem, Utah.

Initialed by  
Developer



Initialed by  
ZCMI



Initialed for  
Penney

By 

BOOK 1244 PAGE 540

EXHIBIT B - Attached to and forming part of  
REA dated OCTOBER 2, 1971, by and between  
University Mall, Inc., Zions Cooperative  
Mercantile Institution and J. C. Penney  
Properties, Inc., covering premises situated  
at Orem, Utah.

Initialed by  
Developer

na  
[Signature]

Initialed by  
ZCMI

11111

14867

Initialed for  
Penney

By SBS

BOOK 1244 PAGE 541

**Book 1244**

**Page 541**

**Exhibit B**

**Entry 14867**

**Can be found  
in Hard Copy  
Book**

EXHIBIT C

BUILDING HEIGHTS LIMITS

|  |   |   |
|--|---|---|
| ZCMI STORE                                       | <del>56</del> <sup>66</sup> <u>144B</u> | feet from ground floor to top of penthouse.   |
| ZCMI TBA   | 24                                      | feet from ground floor to top of parapet.   |
| PENNEY STORE                                     | 54                                      | feet from ground floor to top of parapet.   |
| PENNEY TBA                                       | 24                                      | feet from ground floor to top of parapet.   |
| FUTURE (THIRD) DEPARTMENT STORE                  | 54                                      | feet from first floor to top of parapet.  |
| DEVELOPER MALL BUILDINGS Including Enclosed Mall | 25                                      | feet from ground floor at street level to top of parapet, except Junior Department Store 34 feet from ground floor at street level to top of parapet and Enclosed Mall 38 feet from ground floor at street level to top of parapet. |

The foregoing heights include penthouses or roof structures for the housing of elevators, stairways, tanks and fans or similar equipment required to operate a building.

Attached to and forming part of REA dated OCTOBER 2, 1971, by and between University Mall, Inc., Zions Cooperative Mercantile Institution and J. C. Penney Properties, Inc., covering premises situated at Orem, Utah.

Initialed by  
Developer

WR  
SBS

Initialed by  
ZCMI

144B

Initialed for  
Penney

By SBS

R: 9/29/71

BOOK 1244 PAGE 542

EXHIBIT "D"  
SIGN CRITERIA

A. General.

1. Approval of "store design drawings" or working drawings and specifications for Tenant's leased premises does not constitute approval of any sign work. Tenant shall submit to Landlord's Architect for approval drawings showing all proposed sign work to be erected in connection with Tenant's leased premises. Such signs shall conform to the sign criteria as outlined herein and drawings submitted for approval shall clearly show graphic as well as construction and attachment details of all signs including electrical load requirement and brightness in foot-lamberts. Erection of any signs shall be prohibited unless approved by Landlord's Architect and necessary public regulatory officials. The cost of such signs and the installation thereof shall not be included as part of Tenant's Work to which Landlord's contribution (under Section 6.02 of the Lease) shall apply.
2. It is intended that the signing of the stores in University Mall shall be developed in an imaginative and varied manner. The criteria herein below set forth shall govern.
3. a. Although previous and current signing practices of Tenant will be considered, they will not govern signs to be installed in University Mall.  
b. Landlord's written approval of Tenant's sign drawing and specifications is required. Tenant shall submit quadruplicate copies of its sign drawing and specifications for Landlord's approval prior to fabrication of sign. Such drawings shall show location of sign on storefront or designated space, giving color, materials, attachment devices and construction details.  
c. All signs shall have concealed attachment devices, clips, wiring, transformers, lamps, tubes and ballasts.

B. Criteria -- Signs on the Interior of the Mall.

1. Tenant shall be required to identify the leased premises by signs. All signs and identifying marks shall be within the limitations of the leased premises between the floor line and ceiling line. All such signs shall be subject to the requirements and limitations as outlined hereinafter and the approval of Landlord's Architect.
  - a. Signs shall not project beyond the line of the leased premises bordering "common area" more than two (2) inches if less than eight (8) feet above finished floor line or more than six (6) inches if above eight (8) feet.
  - b. The wording of signs shall be limited to the store name only.
  - c. The use of corporate crests, shields, or insignia will be permitted provided such corporate crests, shields or insignia shall not exceed the average height for sign letters.
  - d. Multiple or repetitive signing will be allowed provided the area of such signing conforms to the limitations set forth herein.
  - e. Sign letters or components shall not have exposed neon or other lamps. All light source shall be concealed by translucent material. Sign letters or components may be back-illuminated with lamps contained wholly within the depth of the letter. Maximum brightness in any event shall not exceed 100 foot-lamberts.
  - f. The average height of sign letters or components on stores containing less than 12,500 sq. ft. on one level shall not exceed 18". The average height of sign letters or components on stores containing more than 12,500 sq. ft. shall not exceed 24".
  - g. The extreme outer limits of sign letters, components or insignia shall fall within a rectangle with each of the two short sides of which shall not fall closer than 24" to the side lease lines of the leased premises; the top side of which shall not fall closer than 12" to the soffit of the mall fascia element. No part of the sign letters shall hang free of the background when such background is provided.
2. The following types of signs or sign components shall be PROHIBITED:
  - a. Signs employing moving or flashing lights.
  - b. Signs employing exposed raceways, ballast boxes or transformers.
  - c. Sign manufacturer's names, stamps or decals.
  - d. Signs employing painted non-illuminated letters.
  - e. Signs employing luminous-vacuum formed type plastic letters.
  - f. Signs of box or cabinet type employing luminous plastic panels.
  - g. Signs employing unedged or uncapped plastic letters or letters with no returns and exposed fastenings.
  - h. Paper or cardboard signs, stickers or decals hung around, on, or behind storefront glass (doors and/or windows).
  - i. Signs employing noise making devices and components.

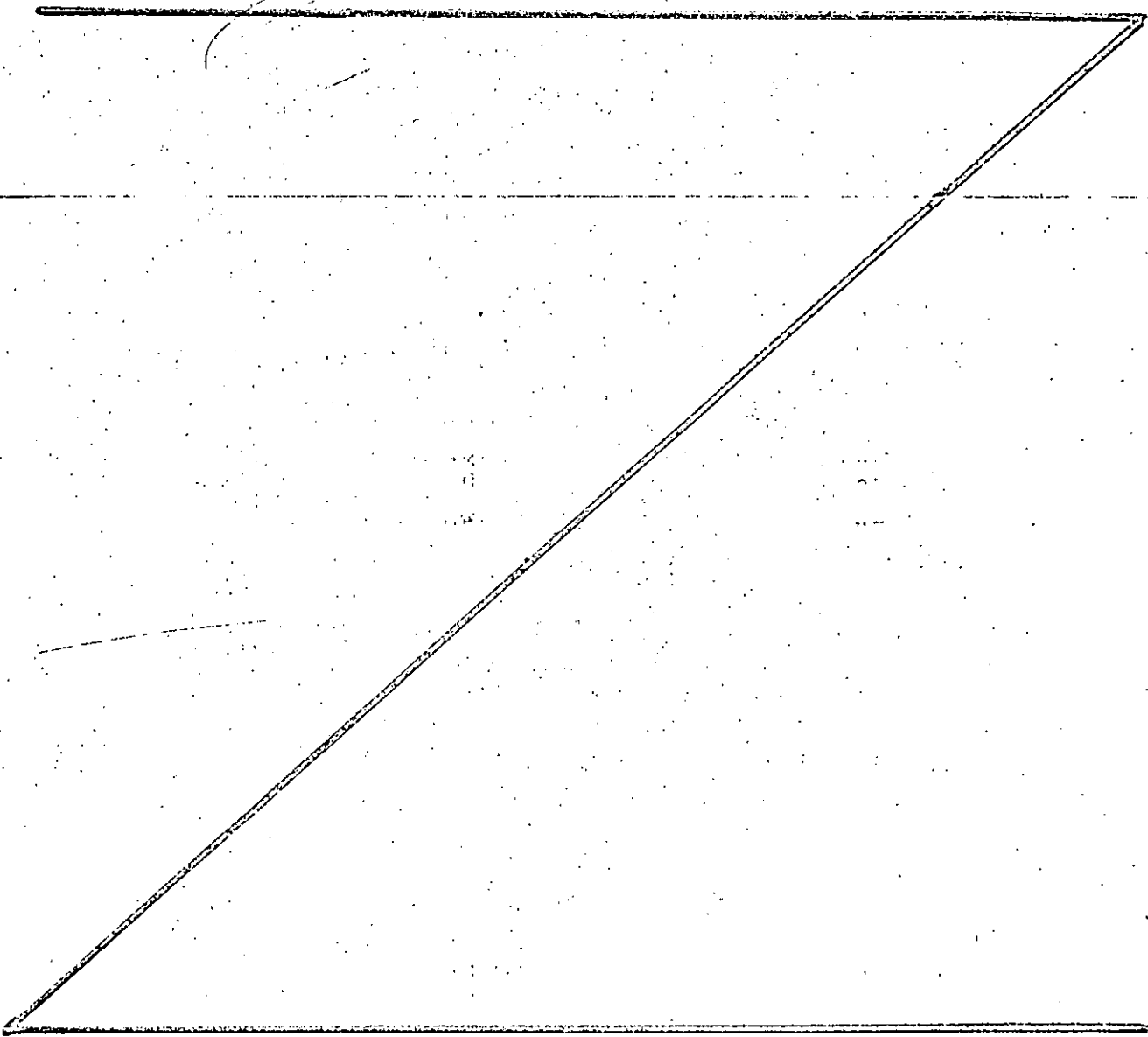


C. Criteria -- Signs on the Exterior of the Building.

1. The tenant of any leased premises having leased area in excess of 7,000 sq. ft. may erect a sign on the exterior facade of such building in an area specifically designated for such sign location and located thereon as directed by Landlord. Any such exterior sign shall be subject to the requirements and limitations as outlined hereinafter.
  - (a) All signs shall be constructed of a uniform type letter, color, finish and lighting as directed by Landlord.
  - (b) The wording of the sign shall be limited to the store name only.
  - (c) The use of corporate crests, shields, or insignia will not be permitted.
  - (d) All sign letters shall be pan-channel type with translucent covers over light source.

D. Pylon Signs

1. Not permitted except for stores with minimum 50,000 sq. ft. of floor area, and theaters.
2. Such signs to advertise "University Mall" and above uses may be permitted only if first approved by appropriate Municipal authority and Landlord's Architect.



Attached to and forming part of REA dated OCTOBER 2, 1971, by and between University Mall, Inc., Zions Cooperative Mercantile Institution and J. C. Penney Properties, Inc., covering premises situated at Orem, Utah.

Initialed by  
Developer

WR  
JS

Initialed by  
ZCMI

THB

Initialed for  
Penney

By SBS

(EXHIBIT D)

2.

R:9/23/71

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EXHIBIT E

RULES AND REGULATIONS

A. COMMON AREA

1. The surface of the Automobile Parking Area and sidewalks shall be maintained level, smooth and evenly covered with the type of surfacing material originally installed thereon, or such substitute thereof as shall be in all respects equal thereto in quality, appearance and durability.

2. All papers, debris, filth and refuse shall be removed from the Center, and paved areas shall be washed or thoroughly swept as required. All sweeping shall be at intervals before the Stores shall be open for business to the public, using motor driven parking lot vacuum cleaning vehicles where feasible.

3. All trash and rubbish containers located in the Common Area for the use of Permittees shall be emptied daily and shall be washed at intervals sufficient to maintain the same in a clean condition.

4. All landscaping shall be properly maintained, including removal of dead plants, weeds and foreign matter, and such replanting and replacement as the occasion may require.

5. All hard-surfaced markings shall be inspected at regular intervals and promptly repainted as the same shall become unsightly or indistinct from wear and tear, or other cause.

6. All sewer catch basins shall be cleaned on a schedule sufficient to maintain all sewer lines in a free-flowing condition and all mechanical equipment related to storm and sanitary sewer facilities shall be regularly inspected and kept in proper working order.



7. All asphalt paving shall be inspected at regular intervals and maintained in a first-class condition.

8. All stairways shall be: (a) swept and washed at intervals sufficient to maintain the same in a clean condition; (b) inspected at regular intervals; and (c) promptly repaired upon the occurrence of any irregularities or worn portions thereof.

9. All glass, including skylights, plate glass and/or glass-enclosed devices, shall be cleaned at intervals sufficient to maintain the same in a clean condition.

10. All surface utility facilities servicing the Common Area, including, but not by way of limitation, hose bibbs, stand-pipes, sprinklers and domestic water lines, shall be inspected at regular intervals and promptly repaired or replaced, as the occasion may require, upon the occurrence of any defect or malfunctioning.

11. All Common Area amenities, benches, and institutional, directional, traffic and other signs shall be inspected at regular intervals, maintained in a clean and attractive surface condition and promptly repaired or replaced upon the occurrence of any defects or irregularities thereto.

12. All lamps shall be inspected at regular intervals and all lamps shall be promptly replaced when no longer properly functioning.

13. The improvements on and to the Common Area shall be repaired or replaced with materials, apparatus and facilities of quality at least equal to the quality of the materials, apparatus and facilities repaired or replaced.

14. The Common Area shall be illuminated in such areas as the Parties shall determine, at least during such hours of darkness as any of the Stores shall be open for business to the public, and for a reasonable period thereafter, in order to permit safe egress from the Center by Permittees, and shall also be illuminated during such hours of darkness and in such manner as will afford reasonable security for the Stores.

15. The Parties shall use their best efforts to require their respective Permittees to comply with all regulations with respect to the Common Area, including, but not by way of limitation, posted speed limits, directional markings and parking stall markings.

16. With respect to all mechanical and electrical facilities and systems serving the Enclosed Mall, including, but not by way of limitation, the lighting facilities, vertical transportation facilities, ventilating and cooling systems, and actuated or manually operated doors, Developer shall (a) inspect the same at regular intervals, (b) promptly repair the same upon the occurrence of any failure, defect or malfunctioning and (c) as respects the said ventilating and cooling systems, maintain the same so as to comply with the performance specifications approved concurrently herewith.

17. The ventilating and cooling systems for the Enclosed Mall shall be operated in accordance with the provisions of the REA and of these Rules and Regulations, at least during the same hours and on the same days that the ventilating and cooling systems serving the Developer's Mall Stores and/or Penney Store and/or the ZCMI Store shall be operating.

18. All surfaces of the Enclosed Mall which are painted or otherwise finished shall be cleaned at regular intervals, and repainted or otherwise refinished at least once during every five-year period, and the ceiling of the Enclosed Mall shall be regularly cleaned, and painted or repainted, as necessary, giving particular attention to the areas surrounding the diffusers.

19. All of the Common Area shall be maintained free from any obstructions not required, including the prohibition of the sale or display of merchandise outside the exterior walls of buildings within the Center, including those within any recessed area, except in areas specifically designed within the said Center for such purposes.

B. FLOOR AREA

1. The Occupants of the Mall Stores shall be open for business daily, holidays excepted (but not prohibited), for at least forty (40) hours per week from and after the dates when they shall originally open for business to the general public and continuously so remain open for business at least all hours that each one or more of the department stores shall be open for business. All Mall Store Occupants shall have their window displays, exterior signs and exterior advertising displays adequately illuminated continuously during such hours as one of the department stores shall illuminate their window displays, exterior signs or exterior advertising displays; provided, however, that the foregoing provisions shall be subject, as respects any business controlled by governmental regulations or labor union contracts in its hours of operation, to the hours of operation so prescribed.

2. All Floor Area, including vestibules, entrances and returns, doors, fixtures, windows and plate glass shall be maintained in a safe, neat and clean condition.

3. All trash, refuse and waste materials shall be regularly removed from the premises of each Occupant of the Center, and until removal shall be stored (a) in adequate containers, which such containers shall be located so as not to be visible to the general public shopping in the Center, and (b) so as not to constitute any health or fire hazard or nuisance to any Occupant.

4. No portion of the Center shall be used for lodging purposes.

5. Neither sidewalks nor walkways shall be used to display, store or place any merchandise, equipment or devices.

6. No advertising medium shall be utilized which can be heard or experienced outside of the Floor Area, including, without limiting the generality of the foregoing, flashing lights, searchlights, loud speakers, phonographs, radios or television.

7. No auction, fire, bankruptcy or going-out-of-business sale shall be conducted in, at, on or about the Center or any portion or portions thereof.

8. No use shall be made of the Center or any portion or portions thereof which would (a) violate any law, ordinance or regulation, (b) constitute a nuisance, (c) constitute an extra hazardous use, or (d) violate, suspend or void any policy or policies of insurance on the Stores.

9. Developer shall use its best efforts to require Occupants of the Developer Tract to cause all trucks servicing the retail facilities of Developer Tract to load and unload prior to the hours of the Center opening for business to the general public, except in enclosed loading and unloading areas.

C. CONDUCT OF PERSONS

The Parties hereto do hereby establish the following rules and regulations for the use of roadways, walkways, Malls, Automobile Parking Areas, and other common facilities provided for the use of Permittees:

1. No person shall use any roadway, walkway or Mall, except as a means of egress from or ingress to any Floor Area and Automobile Parking Areas within the Center, or adjacent public streets. Such use shall be in an orderly manner, in accordance with the directional or other signs or guides. Roadways shall not be used at a speed in excess of 20 miles per hour and shall

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not be used for parking or stopping, except for the immediate loading or unloading of passengers. No walkway or Mall shall be used for other than pedestrian travel.

2. No person shall use any Automobile Parking Areas, except for the parking of motor vehicles during the period of time such person or the occupants of such vehicles are customers or business invitees of the retail establishments within the Center. All motor vehicles shall be parked in an orderly manner within the painted lines defining the individual parking places. During peak period of business activity, limitations may be imposed as to the length of time for parking use. Such limitations may be made in specified areas.

3. No person shall use any utility area, truck court or other area reserved for use in connection with the conduct of business, except for the specific purpose for which permission to use such area is given.

4. No employee of any business in the Center shall use any area for motor vehicle parking, except the area or areas specifically designated for employee parking for the particular period of time such use is to be made. No employer shall designate any area for employee parking, except such area or areas as are designated in writing by Developer, Penney and ZCMI.

5. No person, without the written consent of Developer, ZCMI and Penney shall in or on any part of the Common Area, except approved kiosks in the Enclosed Mall outside the ZCMI Court and Penney Court:

(a) Vend, peddle or solicit orders for sale or distribution of any merchandise, device, service, periodical, book, pamphlet or other matter whatsoever.

(b) Exhibit any sign, placard, banner, notice or other written material.

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(c) Distribute any circular, booklet, handbill, placard or other material.

(d) Solicit membership in any organization, group or association or contribution for any purpose.

(e) Parade, rally, patrol, picket, demonstrate or engage in any conduct that might tend to interfere with or impede the use of any of the Common Area by any Permittee, create a disturbance, attract attention or harass, annoy, disparage or be detrimental to the interest of any of the retail establishments within the Center.

(f) Use any Common Area for any purpose when none of the retail establishments within the Center is open for business or employment.

(g) Throw, discard or deposit any paper, glass or extraneous matter of any kind, except in designated receptacles, or create litter or hazards of any kind.

(h) Use any sound making device of any kind or create or produce in any manner noise or sound that is annoying, unpleasant, or distasteful to Occupants or Permittees.

(i) Deface, damage or demolish any sign, light standard or fixture, landscaping material or other improvement within the Center, or the property of customers, business invitees or employees situated within the Center.

The listing of specific items as being prohibited is not intended to be exclusive, but to indicate in general the manner in which the right to use the Common Area solely as a means of access and convenience in shopping at the retail establishments in the Center is limited and controlled by the Parties in the Center.

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Any Party shall have the right to remove or exclude from or to restrain (or take legal action to do so) any unauthorized person from, or from coming upon, the Center or any portion thereof, and prohibit, abate and recover damages arising from any unauthorized act, whether or not such act is in express violation of the prohibitions listed above. In so acting, such Party is not the agent of other Parties or Occupants of the Center, unless expressly authorized or directed to do so by such Party or Occupant in writing.

Attached to and forming part of REA dated OCTOBER 2, 1971, by and between University Mall, Inc., Zions Cooperative Mercantile Institution and J. C. Penney Properties, Inc., covering premises situated at Orem, Utah.

Initialed by  
Developer

WA  
[Signature]

Initialed by  
ZCMI

[Signature]

Initialed for  
Penney

By SBS

RECORDED AND INDEXED AT THE REQUEST OF:  
WESTERN STATES TITLE INS. CO.  
BOOK \_\_\_\_\_ PAGE \_\_\_\_\_  
1971 NOV - 3 PM 3:22  
NINA E. RYND  
UTAH COUNTY RECORDER  
DEPUTY [Signature]  
PR ABS IND  
144470

WESTERN STATES TITLE INS. CO.

[Signature]

(EXHIBIT E)

R: 9/2/71

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14867