

DECLARATION OF RESTRICTIONS,
GRANT OF EASEMENTS
AND COMMON FACILITIES MAINTENANCE AGREEMENT
[City Center at South Ogden Shopping Center]

THIS DECLARATION OF RESTRICTIONS, GRANT OF EASEMENTS AND COMMON FACILITIES MAINTENANCE AGREEMENT ("Declaration") is made as of the 27th day of October, 1995 by SOUTH OGDEN CITY CENTER, LLC, a Utah limited liability company ("Declarant"); ASSOCIATED FOOD STORES, INC., a Utah corporation ("AFS"); and CROMPTON/CLARK INC., a Utah corporation ("Crompton/Clark").

A. City Center Subdivision. Declarant is the owner of parcels 1 through 9 inclusive of:

City Center at South Ogden ^{Commercial} Subdivision, a replat of Blocks 22, 23 and 24, Lake View Addition, located in a portion of the Southeast quarter of Section 5, Township 5 North, Range 1 West, Salt Lake Base and Meridian, as such plat is recorded in the records of the Weber County, Utah Recorder (the "City Center Subdivision")

and on which Declarant plans to develop and build the Shopping Center, as defined and described herein. Crompton/Clark is the owner of parcel 10 of the City Center Subdivision, which shall also be part of the Shopping Center and which is presently developed with a restaurant and related facilities.

B. Parcels. The Shopping Center is currently divided into ten contiguous parcels, as designated on the Site Plan (as hereafter defined). Though Declarant currently owns nine parcels in fee simple, some parcels shall be leased to long-term tenants and Declarant plans later to sell certain of the parcels.

C. Intent. Declarant and Crompton/Clark desire to restrict the Shopping Center to the terms and provisions of this Declaration in order to provide for (i) the orderly development and operation of the Shopping Center, (ii) the construction of compatible improvements in the Shopping Center, (iii) common easements for ingress and egress of pedestrian and vehicular traffic, (iv) reciprocal parking rights, (v) procedures for the maintenance of the Shopping Center, and (vi) such other matters as are provided herein.

D. Exclusive. AFS is a long-term lessee of the Grocery Store Parcel, defined herein. AFS intends to operate or allow its sublessee to operate a grocery supermarket on the Grocery Store Parcel and therefore has negotiated with Declarant and Declarant has consented that, subject to certain conditions set forth herein, there shall not be operated in the Shopping Center any other grocery supermarket or other grocery retail operation.

NOW THEREFORE, Declarant and Crompton/Clark do hereby make and consent to this Declaration as follows:

1. PRELIMINARY

1.1 Definitions:

1.1.1 "AFS": Associated Food Stores, Inc.

1.1.2 "Approving Person": As defined in Section 15.7.

1.1.3 "Building Area(s)": All those areas on each Parcel shown as Building Area on the Site Plan, together with those portions of the Expansion Area which are from time to time covered by a building or other commercial structure.

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1.1.4 "Building Limit Lines": All that area on each Parcel which is within the area defined by the Building Limit Lines as shown on the Site Plan.

1.1.5 "Center Monument Sign": The monument sign to be located on the Grocery Store Parcel, near the intersection of Riverdale Road and 36th Street, as shown on the Site Plan.

1.1.6 "Center Pylon Sign(s)": Three pylon signs, or each of them, to be located as shown on the Site Plan. One of the pylon signs will be located on Pad C near the entrance to the Shopping Center from Riverdale Road, and one will be located on the Retail Shop C Parcel near the entrance to the Shopping Center from Washington Blvd. The third pylon sign, which Declarant may erect, will be located on Pad D near the intersection of Riverdale Road and 37th Street. This third sign is also currently depicted on the Site Plan as a tenant pylon sign.

1.1.7 "City": South Ogden City.

1.1.8 "City Center Subdivision": As defined in Recital A.

1.1.9 "Collection Costs": As defined in Section 10.1.

1.1.10 "Common Facilities": All those areas on each Parcel which are not Building Area together with those portions of the Building Area on each Parcel which are not from time to time actually covered by a building or other commercial structure or which cannot under the terms of this Declaration be used for buildings, including, without limitation, all malls; sidewalks; walkways; aisles and driveways providing ingress and egress to the stores, offices, buildings and parking areas and to and from adjacent streets and highways; all parking areas; trash facilities; the storm water retention basin, if applicable; unloading areas (except for truck docks and ramps which are for the exclusive use of a particular tenant); shrubbery; plantings and other landscaping; the illuminating and mechanical equipment used exclusively in connection with any of the foregoing; all utility lines and facilities and all sewers servicing the Common Facilities to the perimeter walls of any building in the Shopping Center; the Center Pylon Signs; the Center Monument Sign; the Pad Monuments; and all other portions of the Shopping Center designated by the Owners from time to time as Common Facilities. Canopies which extend over the Common Facilities, together with any columns or posts supporting the same, shall be deemed to be a part of the building to which they are attached and not a part of Common Facilities.

1.1.11 "Common Facilities Budget": As defined in Section 6.1.1.

1.1.12 "Common Facilities Charge": As defined in Section 6.4.1.3.

1.1.13 "Common Facilities Lien": As defined in Section 11.1.

1.1.14 "Common Facilities Maintenance": As defined in Section 5.1.

1.1.15 "Condemnation Award": As defined in Article 14.

1.1.16 "Consenting Owner": The Owner(s) of the Grocery Store Parcel, the Retail Shops A Parcel, the Retail Shops B Parcel, and the Retail Shop C Parcel and for the limited purposes described below, the Owner of the Lion's Den Parcel; subject to the following terms and conditions:

1.1.16.1 Any Lessee (whose lease, sublease, assignment, or a memorandum thereof is of record in Weber County, State of Utah) of more than 15,000 square feet of Building Area on any Parcel, with an initial lease term of at least fifteen (15) years, may be appointed by any Consenting Owner by

notice of record in Weber County to act as the Consenting Owner and cast the vote, give the consent, or otherwise exercise all the rights of a Consenting Owner hereunder with respect to said Parcel, in place of the Consenting Owner or the Owner so long as it is a Lessee of said Parcel. The Owner and Consenting Owner of the Grocery Store Parcel, namely Declarant, does hereby appoint AFS the Consenting Owner as to the Grocery Store Parcel, and this Declaration when recorded shall be notice of such appointment.

1.1.16.2 Only the Grocery Store Parcel, the Retail Shops A Parcel, the Retail Shops B Parcel, the Retail Shop C Parcel and the Lion's Den Parcel (for the limited purposes set forth below) may have a Consenting Owner.

1.1.16.3 The Owner of the Lion's Den Parcel shall be a Consenting Owner only for the purpose of giving consent (i) under the fourth sentence of Section 2.2, to changes in the sizes and arrangements of Common Facilities on the Lion's Den Parcel; (ii) under Section 2.4.1.1, to the location of any construction staging on the Lion's Den Parcel; (iii) under Article 4, relating to the operation of parking facilities in Common Facilities on the Lion's Den Parcel; (iv) under Section 4.7, to the location of recycling facilities on the Lion's Den Parcel; (v) under Section 6.6.3, to construction relating to Common Facilities on the Lion's Den Parcel; and (vi) under Section 15.6, to any modifications of the Declaration that would eliminate or modify the required consent of the Owner of the Lion's Den Parcel to the matters set forth in this paragraph.

1.1.17 "Contracting Party": As defined in Section 2.4.1.2.

1.1.18 "Crompton/Clark": Crompton/Clark Inc., a Utah corporation.

1.1.19 "Declarant": South Ogden City Center, LLC, a Utah limited liability company; its successors; and any Consenting Owner to whom South Ogden City Center, LLC or such successor assigns the rights of Declarant hereunder.

1.1.20 "Declaration": As defined in the first unnumbered paragraph.

1.1.21 "Default Rate": A rate of interest equal to the lesser of (i) the highest rate allowed by law, or (ii) the Prime Rate.

1.1.22 "Defaulting Party": As defined in Section 10.1.

1.1.23 "Deficiencies": As defined in Section 10.2.

1.1.24 "Employee Parking Areas": Those areas shown on the Site Plan as "Employee Parking Areas."

1.1.25 "Environmental Laws": As defined in Section 12.3.2.

1.1.26 "Existing Buildings": As defined in Section 2.3.6.

1.1.27 "Expansion Area": Any real property that is included within the boundaries of 36th Street, 37th Street, Riverdale Road and Washington Boulevard, South Ogden City, Weber County, Utah but that is not part of the Shopping Center. The Expansion Area includes parcels 11, 12 and 13 of the City Center Subdivision.

1.1.28 "Floor Area": The total number of square feet of ground floor space in a building, whether or not actually occupied, excluding basement, subterranean, balcony and mezzanine space. Floor Area

shall be measured from the exterior line of the exterior walls and from the center line of any party or common interior walls without deduction for columns, walls or other structural or non-structural components.

1.1.29 "Hazardous Substance": As defined in Section 12.3.2.

1.1.30 "Lessee": Any person which has entered into a lease for a portion of the Shopping Center. "Lessee" does not include a sublessee, licensee or concessionaire of a Lessee except for a sublessee of the entire leasehold for a term of fifteen years or more or the remaining term of the lease of a Lessee, whichever is less.

1.1.31 "Lienholder": Any mortgagee under a mortgage or a trustee or beneficiary under a deed of trust constituting a lien on any Parcel.

1.1.32 "Management Fee": As defined in Section 6.4.1.

1.1.33 "Manager": As defined in Section 5.2.

1.1.34 "Nondefaulting Party": As defined in Section 10.1.

1.1.35 "Operating Costs": As defined in Section 6.2.

1.1.36 "Owner": The record holder of fee simple title to a Parcel, its heirs, personal representatives, successors and assigns.

1.1.37 "Pad A Pylon Sign": The tenant pylon sign, which shall not be a Center Pylon Sign, to be located on Pad A at the corner of 36th Street and Washington Boulevard, as shown on the Site Plan; provided, however, that Declarant may relocate the Pad A Pylon Sign within Pad A as part of Declarant's development of the Shopping Center.

1.1.38 "Pad Monuments": Monument signs, or each of them, to be located on each Pad, approximately as shown on the Site Plan as a "Pad __ sign" for Pads B, C and D and as a "Tenant Monument" on Pad E and Pad A.

1.1.39 "Pad(s)": Pad A, Pad B, Pad C, Pad D, and Pad E all as more particularly described as lots of the City Center Subdivision plat and as shown on the Site Plan.

1.1.40 "Parcel(s)": The "Grocery Store Parcel," "Retail Shops A Parcel," "Retail Shops B Parcel," "Retail Shop C Parcel," "Lion's Den Parcel," and Pads A, B, C, D, and E, all as more particularly described as parcels of the City Center Subdivision plat and as shown on the Site Plan. Parcels shall also include parcels of the Expansion Area that are added to the Shopping Center pursuant to Section 1.5.

1.1.41 "person": Individuals, partnerships, limited liability companies, firms, associations, corporations, trusts, governmental agencies, administrative tribunals or any other form of business or legal entity.

1.1.42 "Prime Rate": The rate of interest which shall be two percent (2%) above the reference rate or prime rate of interest charged from time to time to corporate borrowers of the highest credit standing by First Security Bank of Utah, N.A.

1.1.43 "RDA": South Ogden City Redevelopment Agency.

- 1.1.44 "Real Estate Taxes": As defined in Section 8.1.
- 1.1.45 "receipt": As defined in Section 15.11.2.
- 1.1.46 "Requesting Person": As defined in Section 15.7.
- 1.1.47 "Restrictions": The easements, covenants, restrictions, liens and encumbrances contained in this Declaration.
- 1.1.48 "Seasonal Sales Area": As shown on the Site Plan.
- 1.1.49 "Service Facilities": Loading docks, trash enclosures, bottle storage areas and other similar service facilities.
- 1.1.50 "Shopping Center": All of the Parcels in the aggregate, as if all were one parcel.
- 1.1.51 "Site Plan": The site plan attached hereto as Exhibit "A" and incorporated herein by this reference, as the same may be amended from time to time in accordance with the provisions of this Declaration.

1.2 Parties: Declarant is the Owner of all Parcels except the Lion's Den Parcel and the Consenting Owner of the Retail Shops A Parcel, the Retail Shops B Parcel and the Retail Shop C Parcel. AFS is Lessee and Consenting Owner of the Grocery Store Parcel. Crompton/Clark is the Owner and Consenting Owner of the Lion's Den Parcel.

1.3 Lion's Den Subordination. On the date that this Declaration is recorded in the records of the Weber County, Utah Recorder, Crompton/Clark shall cause the Lienholder on the Lion's Den Parcel to subordinate its lien against such Parcel to this Declaration by signing the counterpart signature page that is attached hereto.

1.4 Easements with Expansion Area. From time to time, Declarant, in its sole discretion, (i) may obtain grants of easements from the owners of the Expansion Area for purposes of access, utilities, landscape maintenance, fire sprinkler systems or otherwise for the benefit of the Shopping Center, which by reference to this section shall constitute part of the Restrictions benefitting the Shopping Center; and (ii) may grant similar easements across Common Facilities owned by Declarant for the benefit of the Expansion Area; provided, however, that such easements may not interfere with the Restrictions. Notwithstanding any provisions in this Declaration to the contrary, Declarant may grant temporary or permanent easements to provide access to the west side of parcels 11 and 12 of the City Center Subdivision from public roads adjacent to the Shopping Center, which easements may burden driveways in the Common Facilities and may convert one parking space on the east side of the Retail Shop C Parcel to provide an access lane for parcel 11 and one parking space on the east side of the Retail Shop C Parcel to provide an access lane for parcel 12.

1.5 Expansion. In the Declarant's sole and absolute discretion and on one or more occasions, Declarant may amend the Declaration unilaterally so as to admit all or part of the Expansion Area into the Shopping Center, subject to the following terms and conditions:

1.5.1 Amendment. The admission shall be evidenced by an amendment to the Declaration that (i) refers to this Section, (ii) sets forth a legal description of the Expansion Area being admitted, (iii) subjects the admitted Expansion Area and the Owner of the Expansion Area to all of the terms and provisions of the Declaration; (iv) modifies the Site Plan to reflect Building Limit Lines, Building Area, permissible Floor Area and Common Facilities within the Expansion Area, in accordance with this Section; (v) is signed and

acknowledged by Declarant and the Owner of fee simple title to the admitted Expansion Area; and (vi) is recorded in the office of the Weber County, Utah Recorder.

1.5.2 Existing Liens. The Lienholder of any financing instruments encumbering the admitted Expansion Area must subordinate the lien of such instruments to this Declaration. All real property taxes against the admitted Expansion Area must be current.

1.5.3 Effect of Admission. From and after the date of the recording of the amendment described in Section 1.5.1, the admitted Expansion Area shall be treated in all respects as part of the Shopping Center.

1.5.4 Remodeling and Replacement of Existing Buildings. All Existing Buildings and improvements on the admitted Expansion Area as of the date of recording the amendment described in Section 1.5.1 shall be entitled to the benefits of, and shall be subject to the restrictions of, Section 2.3.6 as if such Expansion Area had been listed in such section; provided, however, that:

1.5.4.1 In order for Existing Buildings on Expansion Areas to qualify for the benefit of this Section 1.5.4, the Expansion Area must be admitted into the Shopping Center within five years after the date of this Declaration, unless such date is extended by the approval of the Consenting Owners. If an Expansion Area with an Existing Building is admitted to the Shopping Center after the applicable date, then the Existing Building must comply with all of the requirements of this Declaration, including, without limitation, the requirements of Section 2.3.

1.5.4.2 References in Section 2.3.6 to the condition of the Existing Buildings as of the date of the Declaration shall be changed to the condition of the Existing Buildings on the date of recording the amendment described in Section 1.5.1.

1.5.4.3 Without the Consenting Owners' approval, which shall not be withheld unreasonably, any remodeling (of the type referred to in Section 2.3.6) of the Existing Buildings on the admitted Expansion Area may not (i) increase the Floor Area of any Existing Building to an area greater than the Floor Area of such building existing on the date of recording the amendment described in Section 1.5.1; or (ii) increase by more than five feet the height of any Existing Building existing on the date of recording the amendment described in Section 1.5.1. If parcel 12 of the City Center Subdivision is combined with Pad E, as described in Section 1.5.5.1, then the permissible Floor Area of the two Parcels shall be combined.

1.5.4.4 If an Existing Building on any admitted Expansion Area is removed after the date of recording the amendment referred to in Section 1.5.1, then the Building Limit Lines, Building Area, permissible Floor Area, Common Facilities and height of buildings and other improvements for the Expansion Area shall be subject to the approval of the Consenting Owners, which consent shall not be withheld unreasonably.

1.5.5 Site Plan. Declarant shall modify the Site Plan to reflect the admission of the Expansion Area, subject to the following terms and conditions:

1.5.5.1 Any parcel of the City Center Subdivision that is admitted as an Expansion Area shall be treated as a Pad and a separate Parcel; provided, however, that Declarant, in its sole discretion, either (i) may combine parcels 11 and 12 of the City Center Subdivision into a single Parcel and Pad under this Declaration; (ii) may alter the division line between parcels 11 and 12 of the City Center Subdivision so as to create two separate Pads and Parcels of approximately equal size; (iii) may combine parcel 12 of the City Center Subdivision with Pad E to form a single Parcel and Pad under this Declaration and may leave parcel 11 of the City Center Subdivision as a separate Pad and Parcel; or (iv) may leave parcels 11 and 12 of the City

Center Subdivision as separate Pads and Parcels. Strips and small pieces of Expansion Area shall form part of the Parcel or Pad to which they are adjacent.

1.5.5.2 Subject to the provisions of Section 1.5.4 with respect to Existing Buildings on Expansion Areas, which shall control in the event of a conflict with this Section 1.5.5.2, the Building Limit Lines, Building Area, permissible Floor Area, Common Facilities and height of buildings and other improvements for the Expansion Area shall be subject to the approval of the Consenting Owners, which approval shall not be withheld unreasonably. If parcel 12 of the City Center Subdivision is combined with Pad E to form a single Parcel and Pad, then subject to the approval of the Consenting Owners, which approval shall not be withheld unreasonably, Declarant may redesign the location of the Pad E Building Limit Lines and the Pad E Building Area in order to reflect a combined Pad.

1.5.5.3 Any parcel of the City Center Subdivision that is admitted as an Expansion Area shall be entitled to have a Pad Monument located thereon, but unless the Consenting Owners approve otherwise, not a free-standing pylon sign (any such free-standing sign on the Expansion Area must be removed as a condition of the Expansion Area's being admitted to the Shopping Center).

2. BUILDING AND COMMON FACILITIES DEVELOPMENT

2.1 Building Location: All buildings and other structures (except those permitted in Section 2.3.6 below) shall be placed or constructed upon the Parcels only in the Building Areas; subject to the following terms and conditions:

2.1.1 **Supports.** Canopies, eaves and roof overhangs (including columns or posts supporting same), normal foundations, utility cabinets and meters, signs and doors for ingress and egress may project from the Building Area into the Common Facilities.

2.1.2 **Standard.** All of the foregoing shall be constructed and maintained in accordance with all local, state and federal laws, rules and regulations applicable thereto.

2.1.3 **Change of Building Area.** Upon the prior, written consent of the Consenting Owners, the Building Area upon a Parcel may be changed, provided the Consenting Owners shall not unreasonably withhold their consent; however, a Consenting Owner may withhold its consent if a material impairment of visibility of the Shopping Center or of such Consenting Owner's building(s), access to and from the Shopping Center or any area of the Shopping Center, or a reduction in the number, or a material change in the location, of parking spaces would result from any such change.

2.1.4 **Specific Permitted Changes.** Notwithstanding the foregoing provisions of this Section 2.1, the Owner(s) of the following Parcels, as applicable, may:

2.1.4.1 When constructing or causing the construction of buildings on Pad A, Pad B, Pad C, Pad D, Pad E and the Retail Shops A Parcel locate the buildings thereon on any place within the Building Limit Lines, provided, however, such Owner(s) may not increase the size of any building shown on the Site Plan for such Parcels (except such Owner(s) may alter the square footage of the buildings placed on Pad C and Pad D from the square footage shown on the Site Plan as long as the buildings on Pads C and D are built within the Building Limit Lines and do not exceed Nine Thousand (9,000) square feet in the aggregate); and

2.1.4.2 When constructing or causing the construction of buildings on the Retail Shops B Parcel and Retail Shop C Parcel reshape, reconfigure, or combine the buildings on such parcels (including without limitation by increasing or decreasing the amount of space in either building), provided,

however, that (a) the buildings located thereon are located within the Building Limit Lines, (b) the square footage of the buildings on the Retail Shops B Parcel and the Retail Shop C Parcel does not in the aggregate exceed Sixteen Thousand (16,000) square feet, and (c) the building on the Retail Shops B Parcel may not at any time include a shop with Floor Area greater than Two Thousand Four Hundred (2,400) square feet on such Parcel, or with approximate frontage width exceeding forty feet on such Parcel, without the prior, written consent of the Consenting Owner of the Grocery Store Parcel, which shall not be unreasonably withheld but which may take into account the number and location of available parking spaces, the effect on the retail business operation such Consenting Owner plans for the Grocery Store Parcel, and any other matter such Consenting Owner deems relevant, in its reasonable discretion, to its use of the Grocery Store Parcel. In the event that an Owner(s) takes any of the actions described in the preceding sentence, such Owner(s) shall reconfigure any affected Common Facilities reasonably and appropriately.

2.1.5 Restrictions on Hampering Access. No alteration from the Site Plan shall materially change (i) the Grocery Store Parcel Consenting Owner's ability to conduct its business, (ii) access from public streets to the Grocery Store Parcel or to and from parking in the Shopping Center, as shown on the Site Plan, or (iii) the visibility of any building built on the Grocery Store Parcel.

2.1.6 Parking. Declarant and Owners agree to maintain at all times a parking ratio in the Shopping Center of five (5) finished, striped parking spaces for each One Thousand (1,000) square feet of finished Floor Area.

2.1.7 No Additional Buildings. Neither Declarant nor Owner(s) shall build additional buildings in the Shopping Center except as are depicted on the Site Plan.

2.2 Common Facilities: The Common Facilities are hereby reserved for the use of all Owners of the Shopping Center, their tenants, contractors, employees, agents, customers, licensees and invitees and the subtenants, contractors, employees, agents, customers, licensees and invitees of such tenants. The Common Facilities may be used for vehicular driving, parking (except that there shall be no multi-level parking), pedestrian traffic, directional signs, permitted signage, sidewalks, walkways, landscaping, perimeter walls and fences, parking lot lighting, recycle centers, utilities and Service Facilities and for no other purpose unless otherwise specifically provided in this Declaration. The Common Facilities shall be constructed in accordance with the Site Plan and shall be kept and maintained as provided for herein. The sizes and arrangements of the Common Facilities improvements, including, without limitation, service drives and parking areas, striping, traffic directional arrows and signs, concrete bumpers, parking lot lighting, perimeter walls and fences, and landscaped areas, together with necessary planting, may not be materially changed without the prior written consent of the Consenting Owners. Notwithstanding the foregoing, the Owners and/or Lessees of the Lion's Den Parcel and Pad A may share Service Facilities with each other, including, without limitation, the sharing of a trash enclosure straddling the boundary line between such Parcels.

2.3 Type and Design of Building:

2.3.1 Quality and Compatibility. Each building in the Shopping Center, now and in the future, shall be of first quality construction and architecturally designed so that its exterior elevations (including, without limitation, signs and color) will be architecturally and aesthetically compatible and harmonious with all other buildings in the Shopping Center as determined by the Consenting Owners, subject to the following:

2.3.1.1 No building may be constructed nor the exterior of any existing building changed in any way (including, without limitation, signs and color) without the prior, written approval of the Consenting Owners as to the exterior elevations (including, without limitation, signs and color) of the building to be constructed or modified. However, the standard signs and logos of AFS or Macey's, Inc., as a sublessee

of AFS, as such logos and signs may exist from time to time, and the opening, closing or relocation of any door, shall not require approval.

2.3.1.2 Before the construction of any building or any modification of an existing building which requires approval is commenced, sufficient information shall be sent to the Consenting Owners to enable the Consenting Owners to make a reasonable determination as to the architectural and aesthetic compatibility of said building or modification with all other buildings in the Shopping Center. No Consenting Owner may arbitrarily or unreasonably withhold its approval of the proposed building or modification if it is architecturally and aesthetically compatible and harmonious with all other buildings in the Shopping Center. Each Consenting Owner must approve or disapprove the proposal within thirty (30) days after the receipt of the proposal, and, if such Consenting Owner disapproves the proposal, it shall provide a written explanation in reasonable detail of its reason for disapproval. If a Consenting Owner (even though it rejects or disapproves the proposal) fails to provide such explanation within the thirty (30) day period, such Consenting Owner shall be deemed to have approved same provided that, when the approval was sought, the one seeking the approval stated in writing to the one whose approval was sought that, if a disapproval with explanation was not made within the thirty (30) day period, approval would then be deemed to have been given. If the proposal is disapproved as provided herein, then an alternative proposal may be submitted, which alternative proposal shall be handled in the same manner as the initial proposal. No approval or deemed approval of the architectural and aesthetic compatibility of any building or modification of a building shall waive any requirement that all buildings be built of first quality construction or any other requirement applicable under this Declaration.

2.3.2 **Sprinkler Systems.** Every building either shall be equipped with automatic sprinkler systems which meet all applicable building codes (or other similar systems which meet all applicable building codes) or shall be constructed in such a manner as not adversely to affect the fire rating (for insurance purposes) of any building built upon any other Parcel. The purpose of this Section 2.3.2 is to allow buildings built on each Parcel to be fire-rated as separate and distinct units without deficiency charge.

2.3.3 **Structural Integrity.** No building shall be built in such a manner as adversely to affect the structural integrity of any other building in the Shopping Center.

2.3.4 **Height.** All buildings on Pads B, C, and D shall be single story with mezzanine permitted and shall not exceed twenty-two (22) feet in height including mechanical fixtures and equipment and screening for same and measuring from the finished grade at the centerline of the south wall of the buildings. No building on the Grocery Store Parcel, Retail Shops A Parcel, Retail Shops B Parcel, and Retail Shop C Parcel shall exceed one (1) story above finished grade and thirty-five (35) feet in height including mechanical fixtures and equipment and screening for same and measuring from the finished grade at the centerline at the front side of the buildings (i.e., the side of the building facing the customer parking lot). The building on Pad E may not exceed two (2) stories above the lowest part of the finished grade on Pad E and thirty-five (35) feet in height including mechanical fixtures and equipment and screening for same and measuring from the centerline of the wall on the lowest part of the finished grade on Pad E. If the Existing Building on the Lion's Den Parcel is removed, then no replacement building on the Lion's Den Parcel shall exceed two (2) stories or shall exceed twenty-two (22) feet in height including mechanical fixtures and equipment and screening for same and measuring from the finished grade at the centerline of the east wall of the building. If the Existing Building on Pad A is removed, then no replacement building on Pad A shall exceed one (1) story or shall exceed twenty-two (22) feet in height including mechanical fixtures and equipment and screening for same and measuring from the finished grade at the centerline of the north wall of the building. No mezzanine or basement area shall be used for the sale or display of merchandise. Any variance from the criteria set forth in this Section 2.3.4 must be consented to in writing by the Consenting Owners.

2.3.5 Building Maintenance. Each Owner shall maintain or cause to be maintained the exterior of any building located on such Owner's Parcel(s) in a quality and condition comparable to that of first class shopping centers of comparable size and nature located in the same geographic area as the Shopping Center. All Service Facilities shall be attractively screened from view from the parking areas.

2.3.6 Existing Buildings. Each Consenting Owner hereby consents to the construction, design, signs, color, number of stories and height of the buildings (the "Existing Buildings") on the Lion's Den Parcel and Pad A existing on the date of this Declaration, and any future remodeling of the Existing Buildings so long as (i) such remodeling is of first quality construction and is consistent with the design and appearance of either the Existing Buildings (as they exist on the date of this Declaration) or other buildings in the Shopping Center at the time the remodeling commences; (ii) any such remodeling on Pad A does not increase the Floor Area of the building on Pad A beyond that permitted by the Site Plan; (iii) any such remodeling on the Lion's Den Parcel does not increase the Floor Area of the building on the Lion's Den Parcel beyond a total of 7,000 square feet; and (iv) except upon the prior, written consent of the Consenting Owners, any such remodeling shall not raise the height of such buildings more than five feet. Notwithstanding the foregoing, such buildings shall be required to comply with, and shall be entitled to the benefits of, Sections 2.1.1, 2.1.2, 2.1.5 and 2.1.6. If the Existing Building on the Lion's Den Parcel is removed, then no replacement building on the Lion's Den Parcel shall exceed a Floor Area of 7,000 square feet.

2.4 Construction Requirements:

2.4.1 Timing and Manner of Work. All work performed in the construction, maintenance, repair, replacement, alteration or expansion of any building, sign or Common Facilities improvements located in the Shopping Center shall be effected as expeditiously as possible and in such a manner as not unreasonably to interfere, obstruct or delay (i) access to or from the Shopping Center, or any part thereof, to or from any public right-of-way, (ii) customer vehicular parking in that portion of the improved Common Facilities located in front of any building constructed in the Shopping Center, or (iii) the receiving of merchandise by any business in the Shopping Center including, without limitation, access to Service Facilities. In addition:

2.4.1.1 Staging for the construction, replacement, alteration or expansion of any building, sign or Common Facilities improvements located in the Shopping Center including, without limitation, the location of any temporary buildings or construction sheds, the storage of building materials, and the parking of construction vehicles and equipment shall be limited to that portion of the Shopping Center approved in writing by the Consenting Owners; however, to the extent possible, the staging area must be self-contained on the Parcel where construction activity is to occur.

2.4.1.2 Unless otherwise specifically stated herein, the person contracting for the performance of such work ("Contracting Party") shall, at its sole cost and expense, promptly repair and restore or cause promptly to be repaired and restored to its prior condition all buildings, signs and Common Facilities improvements damaged or destroyed in the performance of such work. Except for tenant improvements and except for the initial construction of AFS's store and other buildings in the Building Areas, no construction may take place between November 15th and the following January 2nd except as set forth in Sections 2.5 and 6.6.3.2 below.

2.4.2 Liens. The Contracting Party shall not permit any liens to stand against any Parcel for any work done or materials furnished in connection with the performance of the work described in Section 2.4.1 above; subject to the following:

2.4.2.1 The Contracting Party may contest the validity of any such lien, but upon a final determination of the validity thereof, the Contracting Party shall cause the lien to be satisfied and released of record.

2.4.2.2 The Contracting Party shall, within thirty (30) days after receipt of written notice from an Owner or Lessee, cause any such outstanding lien or claim of lien to be released of record or transferred to bond in a manner reasonably satisfactory to the person giving notice, failing which such Owner or Lessee shall have the right, at the Contracting Party's expense, to transfer said lien to bond.

2.4.2.3 The Contracting Party shall indemnify, defend and hold harmless the Owners, Consenting Owners, and occupants of the Shopping Center from any and all liability, claims, damages, expenses (including reasonable attorney's fees incurred in or before any action, at trial, on appeal or in bankruptcy court), liens, claims of liens, judgments, proceedings and causes of action, arising out of or in any way connected with the performance of such work, unless caused by the negligent or willful act or omission of the otherwise indemnified person, its tenants, subtenants, agents, contractors or employees.

2.4.3 **Incidental Encroachments.** The parties acknowledge and agree that incidental encroachments upon the Common Facilities may occur as a result of the use of ladders, scaffolds, store front barricades and similar facilities in connection with the construction, maintenance, repair, replacement, alteration or expansion of buildings, signs and Common Facilities improvements located in the Shopping Center, all of which are permitted hereunder so long as all activities requiring the use of such facilities are expeditiously pursued to completion and are performed in such a manner as to minimize any interference with use of the improved Common Facilities or with the normal operation of any business in the Shopping Center.

2.4.4 **Insurance.** During the course of any construction or repair as to any building on a Parcel, the person responsible for such construction or repair shall obtain and maintain:

2.4.4.1 Comprehensive public liability insurance (as to which the other Owners and Consenting Owners shall be additional insureds) on an "occurrence basis" against claims for "personal injury" including, without limitation, bodily injury, death or property damage occurring on, in or about the Shopping Center and the adjoining streets, sidewalks and passageways, with such insurance to be in single limit coverage in the minimum amount of \$5,000,000.00;

2.4.4.2 Workers' compensation insurance for all employees of the entity conducting such construction who are engaged in such construction, in the amounts established by law; and

2.4.4.3 "Builder's completed value all risk" insurance against "all risks of physical loss" including collapse and transit coverage, during construction or repair, with deductibles not to exceed \$5,000.00, covering the total value of work performed and equipment, supplies and materials furnished.

2.4.5 **Condition Pending Construction.** Each Owner shall maintain the Building Area of any Parcel in the Shopping Center held for future construction of building improvements in a clean condition, free from weeds, and either landscaped and/or covered with gravel base; provided, however, that on or before the date which will be three (3) years after the date that the building on the Grocery Store Parcel first opens for business, each Owner shall either: (i) install an asphalt cap on such Parcel; (ii) install landscaping and a sprinkling system on such Parcel; or (iii) commence or cause to be commenced construction of a building upon such Parcel and thereafter diligently pursue such construction to completion.

2.5 **Casualty and Condemnation:** In the event all or any portion of any building in the Shopping Center is (i) damaged or destroyed by fire or other casualty, or (ii) taken or damaged as a result of the exercise of the power of eminent domain or any transfer in lieu thereof, the Owner of such building shall promptly restore or cause to be restored the remaining portion of such building or, in lieu thereof, shall remove or cause to be removed the damaged portion of such building together with all rubble and debris related thereto. All Building Areas on which buildings are not reconstructed following a casualty or condemnation shall be graded or caused to be graded by the Owner thereof to the level of the adjoining property and in such a

manner as not adversely to affect the drainage of the Shopping Center or any portion thereof, and shall be covered by a one inch asphalt dust cap (or a compacted gravel base).

3. EASEMENTS

3.1 Ingress, Egress and Parking: Each Owner, as grantor, hereby grants to each other Owner and to its tenants, contractors, employees, agents, customers, licensees and invitees, and the subtenants, contractors, employees, agents, customers, licensees and invitees of such tenants, for the benefit of each Parcel, a nonexclusive easement for ingress and egress by vehicular and pedestrian traffic and vehicular parking upon, over and across that portion of the Common Facilities located on the grantor's Parcel(s), except for those areas devoted to Service Facilities or drive-up or drive-through customer service facilities. The rights of ingress and egress set forth in this Section 3.1 shall apply to the Common Facilities for each Parcel.

3.2 Utility Lines and Facilities:

3.2.1 Grant. Each Owner, as grantor, hereby grants to each other Owner and Consenting Owner, for the benefit of each Parcel belonging to the other Owners or in which Consenting Owners have an interest, as applicable, as grantees, a nonexclusive easement under, through and across the Common Facilities of the grantor's Parcel(s) for the installation, operation, maintenance, repair and replacement of water drainage systems or structures, water mains, storm and sanitary sewers, water sprinkler system lines, telephones, electrical conduits or systems, gas mains and other public or private utilities. In connection therewith:

3.2.1.1 All such systems, structures, mains, sewers, conduits, lines and other utilities shall be installed and maintained below ground level or surface of such easements except for ground-mounted electrical transformers and such other facilities as are required to be above ground by the utility providing such service (including temporary service required during the construction, maintenance, repair, replacement, alteration or expansion of any buildings or improvements located in the Shopping Center).

3.2.1.2 The installation, operation, maintenance, repair and replacement of such easement facilities shall not unreasonably interfere with the use of the improved Common Facilities or with the normal operation of any business in the Shopping Center. The grantee shall bear all costs related to the installation, operation, maintenance, repair and replacement of such easement facilities, shall repair to the original specifications any damage to the Common Facilities resulting from such use, and shall provide as-built plans for all such facilities to the Owners or, if applicable, the Consenting Owners, of all Parcels upon which such utility lines and facilities are located, within thirty (30) days after the date of completion of construction of same.

3.2.2 Relocation. At any time and from time to time the Owner or Consenting Owner of a Parcel shall have the right to relocate on its Parcel any utility line or facility installed pursuant to the foregoing grant of easement which is then located in the land of such Owner or Consenting Owner, provided that any such relocation (i) shall be performed only after sixty (60) days notice of the Owner's or Consenting Owner's intention to undertake the relocation shall have been given to the Owner and, if applicable, the Consenting Owner, of each Parcel served by the utility line or facility, (ii) shall not unreasonably interfere with or diminish utility service to the Parcels served by the utility line or facility, (iii) shall not reduce or unreasonably impair the usefulness or function of the utility line or facility, (iv) shall be performed without cost or expense to the Owner, Consenting Owner, or occupant of any other Parcel, and (v) shall provide for the original and relocated area to be restored to the original specifications. The Owner or Consenting Owner performing such relocation shall provide as-built plans for all such relocated utility lines and facilities to the Owners or, if applicable, the Consenting Owners, of all Parcels served by all such utility lines and facilities within thirty (30) days after the date of completion of such relocation.

3.2.3 Additional Grants. Each Owner agrees to grant such additional easements as are reasonably required by any public or private utility for the purpose of providing the utility lines and facilities described herein provided such easements are not otherwise inconsistent with the provisions of this Declaration, and provided that such easements do not interfere with or limit use of Building Areas as shown on the Site Plan.

3.3 Signs: Each Owner, as grantor, hereby grants to the other Owners and to each Lessee, for the benefit of each Parcel belonging to the other Owners or in which a Lessee has an interest, as applicable, as grantees, an easement under, through and across the Common Facilities of the grantor's Parcel(s) for the installation, operation, maintenance, repair and replacement of the free-standing signs referred to in Section 4.3 of this Declaration and all utility lines and facilities appurtenant thereto. Except where otherwise specifically stated herein to the contrary, the grantee(s) shall bear all costs related to the installation, maintenance, repair and replacement of its free-standing sign and appurtenant facilities, shall repair to the original specifications any damage to the Common Facilities resulting from such use and shall provide as-built plans for all such facilities to the Owners of all Parcels upon which such facilities are located within thirty (30) days after the date of completion of construction of same.

3.4 Building Encroachments: Each Owner, as grantor, hereby grants to the other Owners and Lessees, for the benefit of each Parcel belonging to the other Owners or in which a Lessee has an interest, as applicable, as grantees, an easement for any portion of any building or structure located on any such Parcel which may encroach into or over the grantor's adjoining Parcel(s), provided the easement for footings, piers, piles, grade beams and building encroachments does not exceed four (4) feet, and provided that the encroachments do not diminish the buildable area of the servient parcel. The easements granted in this Section 3.4 shall survive this Declaration and shall last so long as the encroaching building is standing following its initial construction or following its reconstruction where such building is substantially restored to its prior condition following a casualty or condemnation.

4. OPERATION OF COMMON FACILITIES

4.1 Parking:

4.1.1 Charges. There shall be no charge for parking in the Common Facilities without prior written consent of the Consenting Owners or unless otherwise required by law.

4.1.2 Parking Spaces. The Shopping Center shall at all times contain the greater of (i) five (5) parking spaces per 1,000 square feet of the total Floor Area within the Shopping Center, or (ii) the minimum number of parking spaces required by law.

4.2 Employee Parking. The employees, contractors, agents, officers and partners of all Owners, Consenting Owners, Lessees and occupants of the Shopping Center shall use only the Employee Parking Areas for parking. Upon notification, an Owner shall cause its employees and agents to park only in the Employee Parking Areas. In no event shall any employee of any occupant of the Shopping Center park in front (to the north) of and within two hundred (200) feet of the building located on the Grocery Store Parcel, except within the Employee Parking Areas. The Consenting Owners may from time to time expand the Employee Parking Areas in the Shopping Center by written notice to all Owners and occupants of space within the Shopping Center. The authority herein granted shall be exercised in such manner as not to discriminate against any Owner or occupant of the Shopping Center.

4.3 Signs:

4.3.1 **Location, Design, Content, and Costs.** Subject to governmental approval, (i) free-standing Center Pylon Signs shall be erected and maintained, one each on Pad C and the Retail Shops C Parcel, and one free-standing Center Pylon Sign may be erected and maintained on Pad D; (ii) a Center Monument Sign shall be erected and maintained on the Grocery Store Parcel; (iii) Pad Monuments may be placed on each of Pad E, Pad D, Pad C, Pad B, and Pad A; and (iv) a Pad A Pylon Sign may be erected and maintained on Pad A, subject to the following terms and conditions:

4.3.1.1 The cost of constructing, maintaining, repairing and replacing the Center Pylon Signs, Center Monument Sign, and Pad Monuments structures (excluding electrical hookup to the Common Facilities meter) shall be paid by the parties entitled to display designations (other than the Shopping Center designation) thereon in the proportion that the total square footage of each occupant designation or designations bears to the total square footage of all designations entitled to be displayed thereon. The cost of constructing, maintaining, repairing and replacing the Pad A Pylon Sign shall be paid by the Owner of Pad A; provided, however, that nothing contained herein shall prevent the Owner of Pad A from shifting such expense to the Lessee or other occupant of Pad A.

4.3.1.2 Each person displaying a designation on the Center Pylon Signs, Center Monument Sign, Pad A Pylon Sign and/or Pad Monuments shall supply and maintain its own sign fascia and can (in the case of pylon signs) and sign (in the case of Pad Monuments). The design of the Center Pylon Signs, the Center Monument Sign, the Pad A Pylon Sign and Pad Monuments structures shall be subject to the fascia used; provided, however, that (i) AFS or its sublessee may use such standard fascia as they from time to time use generally in carrying on their businesses; and (ii) without the consent of all Consenting Owners, the Center Pylon Sign on Pad D may not be higher than 23 feet above finished grade.

4.3.1.3 Declarant shall be entitled to have the top designation on the Center Pylon Signs for the Shopping Center name. The occupant of the Grocery Store Parcel shall be entitled to have the second designation on the Center Pylon Signs, after the Shopping Center designation; the occupant of the Lion's Den Parcel shall be entitled to have the designation immediately below the Grocery Store Parcel designation on the Center Pylon Signs; and the occupant of the Retail Shop C Parcel shall be entitled to have the designation immediately below (or to the right side) of the Lion's Den Parcel designation on the Center Pylon Signs. Notwithstanding the foregoing, the Center Pylon Sign located on Pad D shall not list the occupants of the Grocery Store Parcel, the Lion's Den Parcel or Retail Shop C but instead shall be used for advertising the businesses in the Shopping Center's retail shops, as determined by Declarant from time to time. The Pad A Pylon Sign shall advertise only the business conducted on Pad A. The Center Monument Sign may contain a reference to City and/or the Shopping Center.

4.3.1.4 The Pad Monument on each Pad may advertise only the business of the tenant or occupant on such Pad. Pad Monuments may not be higher than six feet above the finished landscape of the immediately surrounding area and may not be longer than 25 feet.

4.3.1.5 No later than thirty (30) days after two Center Pylon Signs are installed advertising the business on the Lion's Den Parcel, the Owner of such Parcel shall remove the existing free-standing sign on the Lion's Den Parcel.

4.3.2 **Restrictions and Types.** Other than as set forth in this Section 4.3, there shall be no other signs, except directional signs and signs on buildings, in the Shopping Center. All exterior building signs on all buildings in the Shopping Center shall be restricted to identification of the business or service/product located or provided therein. No exterior building sign shall be placed on penthouse walls, extend above the building silhouette line or be painted on the exterior building surface, without the approval of the Consenting

Owners. No exterior building or free-standing sign shall utilize flashing, moving or audible lights or appurtenances.

4.4 Protection of Common Facilities: Each Owner and Lessee shall have the right to take such steps as it deems necessary to prevent those persons not authorized by this Declaration to use the Common Facilities from using the Common Facilities for ingress, egress and parking. Such steps shall include, without limitation, the construction of fences, walls or barricades along the boundary lines of any portion of the Shopping Center, except along the common boundary line of any Parcel with any other Parcel.

4.5 Exterior Sales: No portion of the Common Facilities may be used by an occupant of a Parcel for the display and/or sale of merchandise and services, except as follows:

4.5.1 Sidewalks. An occupant of a Parcel may use the sidewalks directly in front of the store of such occupant for the sale of merchandise and services, provided that all such merchandise and services exhibited for sale (and the sidewalk, during periods in which such merchandise or services are being displayed) must be kept in a safe, neat, clean and attractive manner, including sweeping and removal of snow, ice or other debris.

4.5.2 Seasonal Sales Area. The occupant of the Grocery Store Parcel shall be permitted to use the Seasonal Sales Area for seasonal sales of merchandise from time to time, but not continuously, provided that (i) such sales shall not interfere with the free movement of vehicular traffic within the Shopping Center or with access to or from the Shopping Center, or any part thereof, to or from any public right-of-way; (ii) such occupant maintains the Seasonal Sales Area in a safe, neat and clean condition including sweeping and removal of snow, ice or other debris, to the extent such maintenance is required during periods in which such occupant is making use of the Seasonal Sales Area or to the extent such use by the occupant prohibits Manager from fulfilling Common Facilities Maintenance; (iii) sales shall be limited to not more than four (4) occasions (and one sale location per occasion) per calendar year for a cumulative total of not more than sixty (60) days duration per calendar year; (iv) all booths, stands, displays and other structures erected in connection with such sales shall be promptly removed by the occupant of the Grocery Store Parcel upon termination of said activities; and (v) the Common Facilities shall be promptly repaired to their condition immediately prior to said sale at the sole cost and expense of the occupant of the Grocery Store Parcel.

4.5.3 Retail Shop C Parcel. The occupant of the Retail Shop C Parcel (if, and only if, there is only one occupant of the Retail Shop C Parcel) shall be permitted to make sales of merchandise and/or services on the Retail Shop C Parcel from the parking lot on the east (but not south) of the building on the Retail Shop C Parcel subject to the following restrictions: (i) the location shall not be closer than one hundred (100) feet from any of the north customer entrance doors of the building on the Retail Shops B Parcel; (ii) sales shall be limited to not more than four (4) occasions (and one sale location per occasion) per calendar year for a cumulative total of not more than sixty (60) days duration per calendar year; (iii) the sales area shall be limited to not more than twenty (20) parking spaces or an equivalent area on the Retail Shop C Parcel; (iv) no more than one such sale shall be conducted at any time on the Retail Shop C Parcel; (v) all booths, stands, displays and other structures erected in connection with such sales shall be promptly removed by the occupant of the Retail Shop C Parcel upon termination of said activities; (vi) the Common Facilities shall be promptly repaired to their condition immediately prior to said sale at the sole cost and expense of the occupant of the Retail Shop C Parcel; (vii) such sales shall not interfere with the free movement of vehicular traffic within the Shopping Center or with access to or from the Shopping Center, or any part thereof, to or from any public right of way; and (viii) all such merchandise and services exhibited for sale (and the sidewalk, during periods in which such merchandise or services are being displayed) must be kept in a safe, neat, clean and attractive manner, including sweeping and removal of snow, ice or other debris.

4.5.4 **Occupant.** For purposes of this Section 4.5 only, "occupant" shall mean the Owner or Lessee of the applicable Parcel, or, if none of these occupies the Parcel, then such person as occupies the Parcel provided that the Owner, Consenting Owner, or Lessee shall remain responsible and liable to see that any external sales conducted pursuant to this Section 4.5 comply with the requirements set forth herein.

4.6 **Lighting:** The lighting in the Common Facilities, including the lighting in the parking lot of the Grocery Store Parcel, shall be kept on during those dawn, dusk and nighttime hours that fall within the regular business hours of the Shopping Center, and in any event until 11:00 p.m. at night, provided, however, that such hours need not be maintained in the event of failure of power, restrictive governmental law or regulations, riots, insurrection, war, act of God, or other reason of a like nature not the fault of the party responsible for such lighting, in which instance performance of the foregoing covenant shall be excused. As noted elsewhere in this Declaration, the parking lot lighting on each Parcel, including the Grocery Store Parcel, shall be metered separately from that in the remainder of the Shopping Center and the electricity therefor shall be paid for by the Lessee or occupant of the Parcel, or by the Owner of the Parcel, if there is no Lessee or occupant of the Parcel. Any Owner who requires that the lighting in the Shopping Center or a section of the Shopping Center be kept on at times different than regular business hours shall request such in advance from the party controlling such parking lot lighting in the Shopping Center; shall pay for the costs of such extra lighting; and shall reimburse the party controlling the lighting of such Parcel.

4.7 **Recycling Facilities:** One or more recycling centers may be installed in parking areas of the Shopping Center subject to the consent of the Consenting Owners as to the appearance and location thereof. All recycling centers shall be of tasteful design and composition and shall be located only at such place(s) as approved by the Consenting Owners. Any recycling centers shall be maintained in clean condition free from refuse and material stacked on the ground or elsewhere other than in a depository intended for such material.

4.8 **Flag.** The Consenting Owner of the Grocery Store Parcel (or Manager in the absence of such Consenting Owner) shall have the right, subject to compliance with applicable laws and regulations, to erect, at its sole expense, a flagpole on the Grocery Store Parcel as shown on the Site Plan, as applicable, and, without limitation, to display the American flag thereon as it deems appropriate.

5. MAINTENANCE AND REPAIR OF COMMON FACILITIES.

5.1 **Operation of the Common Facilities:** The Common Facilities shall be operated and maintained in compliance with all applicable governmental laws, rules, regulations, orders and ordinances, the provisions of this Declaration, and in a safe, sound condition, clean and free of rubbish, debris, or other hazards to persons using the same. Except as set forth herein, Manager shall be responsible to operate and maintain all Common Facilities improvements and to repair and replace the same with materials at least equal to the quality of the materials being repaired or replaced, so as to maintain the architectural and aesthetic harmony of the Shopping Center as a whole. This operation, maintenance and repair (i) shall be performed and carried out promptly and in a first class and workmanlike manner comparable to that of first class shopping centers of comparable size and nature located in the Salt Lake - Ogden, Utah area; (ii) shall be referred to herein as the "Common Facilities Maintenance"; and (iii) shall include but not be limited to the following:

5.1.1 **Drive and Parking Areas.** Maintaining, repairing, cleaning and replacing all blacktop, paved surfaces and curbs in a smooth and evenly covered condition, and such work shall include, without limitation, sweeping, restriping, resealing and resurfacing. (For the purpose of this section, an overlay of the drive and parking areas shall be considered a maintenance item.)

5.1.2 **Debris and Refuse.** Periodic removal of all papers, debris, filth, refuse, ice and snow, including sweeping to the extent necessary to keep the Common Facilities in a first-class, clean and orderly condition. All sweeping shall be done at appropriate intervals during such times as shall not interfere with

the conduct of business or use of the Common Facilities by persons intending to conduct business with occupants of the Shopping Center.

5.1.3 Sign and Markers. Placing, cleaning, keeping in repair, replacing, and repainting any appropriate directional signs or markers, including any handicapped parking signs, and also the Center Pylon Signs, and the Center Monument Sign, except as otherwise provided in this Declaration with regard to sign facia and cans which shall be supplied and maintained by the businesses designated thereon. (The cost of so maintaining the Pad A Pylon Sign shall be borne by the Owner of Pad A pursuant to the provisions of Section 4.3.1.1. The Owner of each Pad shall pay the cost of so maintaining the Pad Monument on the Owner's Pad.)

5.1.4 Lighting. Maintaining, cleaning and replacing Common Facilities lighting facilities, including lamps, ballasts and lenses; provided, however, that from and after the date on which a Building is constructed on a Parcel on which lighting facilities are located, the Owner of that Parcel shall be responsible for Common Facilities Maintenance for such lighting facilities, as set forth in this Section.

5.1.5 Landscaped Areas. Maintaining all landscaped areas, including landscaping and planters adjacent to exterior walls of buildings, in an attractive and thriving condition, and replacing shrubs and other landscaping as necessary; provided, however, that if any occupant requires "special" landscaping (i.e., beyond the standard landscaping requirements for the remainder of the Shopping Center), the cost of installation, replacement and maintenance of such special landscaping shall be borne solely by such occupant and shall not be included in Operating Costs.

5.1.6 Common Utilities. Maintaining, cleaning, replacing, and repairing any and all common utility lines, including any sprinkling systems and common area water lines; and payment of all electrical, water and other utility charges or fees for service furnished to such Common Facilities, including lighting for the Center Pylon Signs, the Center Monument Sign and prior to the construction of a building on a Parcel, parking lot lighting for that Parcel. From and after the date on which a building is constructed on a Parcel, as contemplated by Section 6.4.2, lighting for parking lots or Pad Monuments located on a Parcel shall be separately metered as between the Parcel and the remainder of the Shopping Center and shall be paid for by the Lessee or occupant of the Parcel, or by the Owner of the Parcel if there is no Lessee or occupant of the Parcel.

5.1.7 Obstructions. Keeping the Common Facilities free from any obstructions including those caused by the sale or display of merchandise, unless such obstruction is permitted under the provisions of this Declaration.

5.1.8 Sidewalks. Maintaining, cleaning and replacing of all sidewalks, including those adjacent and contiguous to buildings located within the Shopping Center. Sidewalks shall be cleaned and swept at appropriate intervals during such time as shall not interfere with the conduct of business or use of the Common Facilities.

5.1.9 Traffic. Regulation of traffic at entrances and exits to the Shopping Center and within the Shopping Center as conditions reasonably require in order to maintain an orderly and proper traffic flow. Notwithstanding anything to the contrary, each Owner and/or Lessee, as the case may be, shall maintain and repair, at its sole cost, in a clean, sightly and safe condition any exterior shipping/receiving dock area, any truck ramp or truck parking area, and any refuse, compactor or dumpster area on or intended to service such Owner or Lessee's Parcel or Building Area.

5.1.10 Insurance. Obtaining and paying premiums for insurance coverage on the Common Facilities as provided in Section 6.5.

5.1.11 **Walls.** Maintaining, repairing and replacing, when necessary, all Common Facilities walls, fences, or barricades.

Until the building on the Grocery Store Parcel has been completed and the initial lessee (or such lessee's sublessee) of such building opens for business, each Owner, at its expense, shall perform all Common Area Maintenance on improved portions of that Owner's Parcel.

5.2 Manager: The person who is responsible for the operation and maintenance of the Common Facilities from time to time shall be referred to herein as "Manager" and shall be selected and operate as follows:

5.2.1 Initial Manager. Initially, Declarant shall either operate and maintain the Common Facilities as Manager (either directly or through an affiliate of Declarant, including without limitation, The Haws Companies) or enter into a contract with a qualified Manager.

5.2.2 Duties. Manager shall perform the Common Facilities Maintenance and shall maintain the Common Facilities in accordance with the requirements of any lease of a Consenting Party who is a Lessee.

5.2.3 Replacement by Consenting Owner Action. Declarant, with the approval of the Consenting Owners, shall have the right to replace Manager. In addition, the Consenting Owners, by unanimous written consent, may remove and replace Manager. If a Consenting Owner is Manager, then the remaining Consenting Owners may not remove and replace Manager as to any Parcel(s) for which such Manager is Consenting Owner, but the other Consenting Owner(s) may remove Manager and appoint another Manager for the remaining Parcels (unless such Manager is Declarant or an affiliate of Declarant, in which case this sentence confers no right to remove and replace Manager).

5.2.4 Replacement for Cause. Notwithstanding any other provision of this Section 5.2, the Consenting Owner of the Grocery Store Parcel may, at its option and in its sole discretion, for cause resulting from Manager's failure to do or cause to be done the Common Facilities Maintenance promptly and in a first class and workmanlike manner, and upon notice to Manager and failure of Manager to cure such cause within ten (10) days after notice thereof (or, if such cause is not reasonably curable within a ten (10) day period, then failure to cure such within a reasonable period of time provided Manager gives notice of its intent to cure and thereafter diligently pursues such cure to completion), (i) cure such default (Manager shall reimburse the Consenting Owner of the Grocery Store Parcel reasonable amounts spent by such Consenting Owner to effect such cure), and/or (ii) assume the Common Facilities Maintenance with respect to the Grocery Store Parcel, with the effective date of such assumption being sixty (60) days after the Consenting Owner of the Grocery Store Parcel gives Manager written notice of its intent to assume such duties. In the event the Consenting Owner assumes the obligation to perform the Common Facilities Maintenance pursuant to the provisions of this paragraph, such Consenting Owner shall perform such maintenance at such Consenting Owner's expense, and Manager shall not interfere in any way with the performance of such duties by such Consenting Owner or any Lessee of the Grocery Store Parcel, or any agent or delegee of the same. The Consenting Owner of the Grocery Store Parcel may also terminate its election to perform Common Facilities Maintenance within the Grocery Store Parcel by giving at least one hundred twenty (120) days prior written notice to the then current Manager, in which event Manager shall take over the Common Facilities Maintenance for the Grocery Store Parcel.

5.3 Promulgation of Rules: The Consenting Owners may, by unanimous agreement, promulgate such reasonable, non-discriminatory rules and regulations to govern the use of the Common Facilities as they may deem appropriate, including the regulation of employee parking.

5.4 License to Carry Out Intent of this Declaration: Each Owner hereby grants to Manager, its agents and employees a license to enter upon its Parcel to discharge the duties to perform the Common Facilities Maintenance.

6. COMMON FACILITIES COSTS

6.1 Common Facilities Budget: A budget for Common Facilities costs shall be formulated and made effective in the following manner, as applicable:

6.1.1 Submission for Review. At least sixty (60) days prior to the beginning of each calendar year, or at least thirty (30) days prior to the completion of construction of the first building in the Shopping Center, Manager shall submit to the Owners an estimated budget ("Common Facilities Budget") for the projected Operating Costs, Management Fee and Common Facilities Charges for the ensuing calendar year (or, in the case of an initial partial calendar year, that ensuing partial year). The Common Facilities Budget shall identify separate cost estimates for major categories in accordance with good shopping center management practice.

6.1.2 Bids. In determining the Common Facilities Budget, Manager shall submit major items of Common Facilities maintenance work for competitive bid to responsible bidders. Upon an Owner's request, the names of the bidders and their respective bids shall be furnished to such Owner together with the Common Facilities Budget, and the contract shall be awarded to the low bidder unless Manager shall otherwise reasonably determine.

6.1.3 Approval by Owners. The Owners shall give written notice to Manager of their approval or disapproval of the Common Facilities Budget before the later of December 10th or thirty (30) days after receipt of such Budget. Failure to give notice of approval or disapproval shall be deemed to be approval. If an Owner timely objects to the Common Facilities Budget or any element thereof by specifying such objection and the reason therefor, the Common Facilities Budget shall not be deemed approved until such objection is resolved. Manager and the objecting Owner shall seek to resolve such objection between them. If the objection relates to any bid(s) and the Owner requests that such item(s) be re-bid, Manager shall do so, and the lowest responsible bid (as determined by Manager) in each category of the previous and new bids shall be accepted. If the objecting Owner and Manager cannot agree, the matter shall be referred to all Owners for resolution. If the Owners cannot agree, the matter shall be referred to binding arbitration in accordance with the provisions of this Declaration.

6.1.4 Options Upon Disagreement. If a Common Facilities Budget is not fully approved by December 10 of any calendar year, Manager may elect either (i) to proceed with its duties in accordance with the Common Facilities Budget for the previous year, subject to adjustment when the current Budget is actually approved; or (ii) to terminate its Common Facilities Maintenance obligation with respect to the portion of the Common Facilities located on the Parcel of any objecting Owner(s) by giving written notice on or before December 15. If notice is given, Manager shall perform Common Facilities Maintenance for the balance of the Shopping Center, and the Owner disapproving the Common Facilities Budget shall perform Common Facilities Maintenance on that Owner's Parcel commencing the following January 1.

6.1.5 Implementing Budget. After the Common Facilities Budget is approved, Manager shall contract with the approved low bidders, pay all of the Operating Costs, and use its best efforts to perform the Common Facilities Maintenance in accordance with the Common Facilities Budget.

6.1.6 Emergency Repairs. Notwithstanding the foregoing, Manager shall have the right to make emergency repairs to the Common Facilities to prevent injury or damage to person or property or to prevent disruption in the use of the Common Facilities, provided that Manager shall nevertheless advise the

Owners of such emergency condition as soon as reasonably possible, including any corrective measure(s) taken and the cost thereof. If the cost of said emergency action exceeds \$2,000, Manager may charge a supplemental billing to the Owners, together with evidence supporting such, and the parties responsible for payment of Operating Costs shall pay their proportionate share thereof within thirty (30) days. If the emergency cost is less than \$2,000, then such costs shall be included as Operating Costs to be reimbursed appropriately or refunded at year end as provided herein.

6.1.7 Unforeseen Items. Manager shall be entitled to reimbursement of actual expenses for unforeseen non-emergency items not included in the Common Facilities Budget without first obtaining each Owner's approval so long as such Owner's proportionate share of the cumulative amount of such items does not exceed \$1,000 in any calendar year.

6.1.8 Disagreement over Unbudgeted Items. In the event of a good faith disagreement between Manager and any Owner over the amount of or validity of any unbudgeted Common Facilities Charge billed to such Owner by Manager, such Owner may pay such amount under protest, and such Owner's sole remedy shall be to refer such disagreement to binding arbitration in accordance with the provisions of this Declaration.

6.1.9 Reimbursement. Manager shall be reimbursed for all of its out-of-pocket expenses incurred in performing Common Facilities Maintenance to the extent such expenses are provided for in the approved Common Facilities Budget, or incurred as emergency repairs or unforeseen items as provided above, plus a Management Fee on such amounts.

6.1.10 Minimizing Operating Costs. Manager agrees to perform its Common Facilities Maintenance on a nonprofit basis with an end to keeping Operating Costs at a reasonable minimum. Notwithstanding, if Manager employs its own personnel to perform parking lot sweeping, snow removal, refuse removal or other like actions for which Manager incurs Operating Costs, Manager shall be entitled to collect for such services its actual direct and indirect costs (including amortization on equipment, if any), as estimated by Manager and approved by the Owners, provided that the total charge is not greater than the lowest available bid from an outside contractor for a comparable service.

6.2 Operating Costs: The following expenses shall be referred to as "Operating Costs":

6.2.1 General. Costs for performing Common Facilities Maintenance;

6.2.2 Employees. The expenses (including without limitation hourly compensation paid to or on behalf of employees, and based upon competitive hourly rates) of Manager for work done at the Shopping Center in performing the Common Facilities Maintenance;

6.2.3 Third Parties. The expenses incurred to unrelated third parties in performing the Common Facilities Maintenance;

6.2.4 Liability Insurance. Comprehensive general liability insurance premiums on the Common Facilities in an amount of not less than \$5,000,000 as provided in Section 6.5 below and casualty insurance on the Common Facilities; and

6.2.5 Real Estate Taxes. Real Estate Taxes on the Shopping Center, unless paid separately pursuant to Article 8 below.

6.3 Adjustment to Operating Costs: The Operating Costs shall be adjusted to reflect the following:

6.3.1 **Exclusions.** There shall not be included in the Operating Costs the following: (i) any service, administration or overhead charge in addition to the actual cost of maintenance (except that the Management Fee may be charged to Owners in accordance with the provisions of Section 6.4); (ii) any bonuses to Shopping Center or Manager's employees; (iii) interest or payments on any of Manager's or Declarant's construction or permanent financing for the Shopping Center or ground lease payments; (iv) expenses resulting from the negligence or acts of Manager and its agents and employees, or to the extent recoverable by Manager, resulting from the negligence or acts of other tenants in or the customers and invitees of the Shopping Center; (v) legal and leasing fees related to the development of, or the leasing or enforcement of leases in, the Shopping Center; (vi) interest or penalties on any bill owing to Manager's failure timely to pay such bill; and (vii) costs related to the testing or remediation of any Hazardous Substance, unless and to the extent that the basis for such testing or remediation was caused by a person or persons who are not able to be determined or who are unable to pay for such testing and remediation.

6.3.2 **Capital Expenses.** Any expense or cost for a capital addition or replacement to the Common Facilities or any other element of Operating Costs (including, without limitation, equipment to maintain the Common Facilities, blacktop replacement, paving replacement, and curb, gutter, sidewalk or adjoining street repair required by a municipal authority or assessment district), which is expected to have a lifetime exceeding three (3) years, shall be amortized over the reasonable lifetime of such capital addition or replacement in accordance with generally accepted accounting principles, and only the applicable annual amortized amount shall be an Operating Cost for the year in question. Amortization shall include interest at the Prime Rate. The Owner of the Parcel as to which the Operating Cost is incurred which is to be amortized, if any, shall pay the expense in the first instance and shall be reimbursed, on a prorata basis, by Manager as Manager is paid therefor by Owners and by an Owner or Consenting Owner who has assumed the obligation to perform the Common Facilities Maintenance for a Parcel.

6.4 **Common Facilities Charge:**

6.4.1 **Determination.** Each Owner shall pay to Manager its prorata share of the Operating Costs (as calculated pursuant to Section 6.4.2) plus its prorata share of a management fee (the "Management Fee") equal to Ten Percent (10%) of the Operating Costs, which Management Fee may be charged to Owners in addition to the Operating Costs as defined herein, subject to the following terms and conditions:

6.4.1.1 Operating Costs for the purpose of computing the Management Fee, shall not include any charges for insurance premiums and real estate and personal property taxes, depreciation, capital expenditures in excess of \$4,000, and fees paid to others for management duties. Notwithstanding the foregoing provisions of this Section 6.4, there shall be no Management Fee payable to Manager during any period of time during which Manager substantially delegates or contracts out (other than to affiliates of Manager, including, without limitation, The Haws Companies as an affiliate of Declarant) the performance of the Common Facilities Maintenance.

6.4.1.2 If an Owner assumes Common Facilities Maintenance with respect to the Owner's Parcel, as outlined above in Section 5.2, then such Owner's share of Operating Costs shall equal Zero Dollars (\$0) from the date of such assumption and during the period the Owner performs such Common Facilities Maintenance, although during such period the Owner shall pay Operating Costs for Common Facilities Maintenance on the Owner's Parcel.

6.4.1.3 The amount due from each Owner pursuant to this Section 6.4.1 is referred to as the "Common Facilities Charge."

6.4.1.4 In the event of a disagreement between Manager and an Owner over the amount of or validity of any Common Facilities Charge billed to such Owner by Manager, the Owner shall

have the right to protest said amount in controversy and to refer such matter to binding arbitration in accordance with the provisions of this Declaration. No single non-budgeted capital expenditure in excess of FIVE THOUSAND DOLLARS (\$5,000.00) shall be made without the prior written consent of the Owners, which consent shall not be unreasonably withheld or delayed.

6.4.2 Prorata Share. The prorata share of Operating Costs and Management Fee for each Parcel shall be equal to a percentage derived by dividing the total Floor Area of all of the buildings for which construction has been completed on such Parcel by the total Floor Area of all buildings for which construction has been completed in the Shopping Center. As construction of additional Floor Area is completed, each Parcel's proportionate share shall be adjusted. Completion of construction for purposes of this Section 6.4.2 shall mean (i) in the case of general retail buildings, when the building shell is completed and ready for initial installation of the occupant's improvements, and (ii) in the case of a build-to-suit building, when the initial lessee/occupant opens for business. After completion of construction of the total Floor Area of all buildings in the Shopping Center, the proportionate share of any Parcel as outlined herein shall be fixed regardless of whether any buildings on which construction is completed are leased, occupied or vacant.

6.4.3 Payment. Each Owner shall pay its Common Facilities Charge monthly in advance (on or before the first day of each month) based on Manager's reasonable estimates, which must be provided to each Owner in writing only once each year and shall be deemed to be in effect until further written notice. Within sixty (60) days following the close of each calendar year, Manager will furnish to each Owner a statement of the actual amount of Operating Costs, the Management Fee, and such Owner's Common Facilities Charge based on actual expenditures for the previous calendar year. If the actual amount of an Owner's Common Facilities Charge is less than the total amount paid by such Owner for such period, the excess will be refunded to such Owner together with said annual statement. If the actual amount of an Owner's Common Facilities Charge exceeds the amount paid by such Owner for such period, the Owner shall pay to Manager the amount shown as due thereon within thirty (30) days following the receipt of Manager's statement. If at any time or times it reasonably appears to Manager that the amount of such Owner's Common Facilities Charge for the current calendar year will vary from Manager's estimate, Manager may, by written notice to the Owner, revise Manager's estimate for such year, and subsequent monthly payments by the Owner for such year will be based upon Manager's reasonably revised estimate.

6.4.4 Audit. Manager's annual statement shall include reasonable detail as to each Operating Cost and the related Management Fee incurred throughout the year. Each Owner shall have the right to audit Manager's records relating to Operating Costs, Management Fees and Common Facilities Charges within one (1) year after the end of each year upon ten (10) days written notice to Manager. If such audit should reveal an overstatement of actual expenses by two percent (2%) or more Manager shall pay for the reasonable cost and expenses of such audit (but not to exceed \$300.00) and refund any excess amount paid by the Owner within thirty (30) days after written notice thereof.

6.4.5 Commencement of Charges. Notwithstanding the provisions of this Section 6.4 to the contrary, until the building on the Grocery Store Parcel has been completed and the initial lessee of such building opens for business, each Owner shall pay all Operating Costs for Common Area Maintenance on that Owner's Parcel; provided, however, that Owners shall be required to pay their pro-rata share of any general Operating Expenses, such as liability insurance.

6.5 Common Facilities Liability Insurance: As a part of the Operating Costs, Manager shall obtain and maintain general public liability insurance insuring Manager and naming the Owners and Consenting Owners as additional named insureds against any claims for personal injury, death or property damage occurring in, upon or about the Common Facilities, including contractual liability. Such insurance shall be written with a financially responsible insurer licensed to do business in the State of Utah, and shall contain an endorsement requiring thirty (30) days' written notice to any named insured before cancellation

or change in the coverage, scope or amount of the policy. The limits of liability of all such insurance shall be not less than \$5,000,000.00 single liability limit for both personal injury and property damage. If the limits of such insurance become inadequate due to the changes in overall price level or the size of claims being experienced, Manager and the Consenting Owners shall negotiate in good faith new limits based on shopping center industry practices for similarly situated and comparable shopping centers. At the request of any Owner, Consenting Owner or Lessee, Manager shall cause a certificate of insurance to be issued and delivered to such person evidencing the insurance required hereunder. If Manager shall not have collected sufficient amounts from occupants of the Shopping Center during prior time periods to pay the premium of the Common Facilities liability insurance, the Owners agree to pay Manager the Owners' relative shares thereof within two (2) weeks of Manager's written demand therefor accompanied by evidence of the premium amount, but not more than two weeks before such premium will be due.

6.6 Manager's Rights: Manager shall have the following rights, among others, in carrying out the Common Facilities Maintenance:

6.6.1 Rules. To establish and enforce reasonable rules and regulations concerning the maintenance, management, use and operation of the Common Facilities, so long as such rules and regulations do not violate or contradict the terms of this Declaration or any rules and regulations agreed to by the Consenting Owners pursuant to Section 5.3 of this Declaration;

6.6.2 Close Off Facilities. From time to time to close off any of the Common Facilities to whatever extent required in the reasonable judgment of Manager and its counsel or the Owners to prevent a dedication of any of the Common Facilities or the accrual of any rights by any person or the public to the Common Facilities, provided such closure does not deprive any Owner or Lessee of the substantial benefit and enjoyment of the Shopping Center and further provided any such Owner or Lessee shall be given thirty (30) days prior written notice of such closure.

6.6.3 Construction. From time to time to perform such construction relating to the renewal, restoration, remodelling or replacement of the Common Facilities as is authorized or required of Manager as part of the Common Facilities Maintenance; provided, however that:

6.6.3.1 No such construction shall be performed without the prior, written consent of all of the Consenting Owners as to the nature, manner of proceeding and timing of such construction, which consent shall not be unreasonably withheld, except (i) such prior written consent shall not be required in the case of an emergency, but notice shall be given the Owners in such event as soon as feasibly possible, and (ii) no consent or approval will be required if such construction does not interfere with the business(es) on the affected Parcels.

6.6.3.2 In no event shall the Common Facilities be closed or substantially closed from November 1st to the next January 2nd. After the initial construction of AFS's building on the Grocery Store Parcel, no significant construction, repair or maintenance work other than normal maintenance shall be performed in the Common Facilities from November 1st of any calendar year to the following January 2nd without the Consenting Owners' prior written consent. The Consenting Owners will give their consent if such construction activity will not interfere with their businesses or, if applicable, with business of the occupant of the Parcel in which such Consenting Owner has an interest, in such Consenting Owners' (or the occupants') reasonable judgment. To the extent that work is conducted during such time periods, Manager agrees to minimize the disturbance to businesses in the Shopping Center.

6.7 Conflict Between Declaration and Leases: In the event of any conflict between this Declaration and any leases in the Shopping Center, the provisions of this Declaration shall prevail except as between an Owner and any Lessee(s) and any other occupants of a Parcel and as between the sublessor and

sublessees and occupants of a Parcel, in which case nothing contained herein (i) shall excuse the performance of any obligations under the applicable leases, subleases, or occupancy agreements affecting such Parcel, or (ii) shall limit or prevent any Owner or Consenting Owner from passing on to its Lessees and other occupants of its Parcel or the Parcel in which it has an interest all or some of the obligations accruing to such Owner, Consenting Owner, and/or such Parcel pursuant to this Declaration.

6.8 Maintenance Arrangement in the Absence of a Manager: If and when there shall be no Manager appointed pursuant to this Declaration, each Owner shall maintain, at its expense, the improved Common Facilities from time to time located on its Parcel. Such maintenance shall include, but shall not be limited to, the Common Facilities Maintenance.

7. INSURANCE FOR THE SHOPPING CENTER

7.1 Hazard Insurance: Each Owner shall obtain and maintain "all risk" insurance covering all of the buildings and improvements located on its Parcel, in an amount equal to no less than ninety percent (90%) of the full replacement cost thereof.

7.2 Liability Insurance: Each Owner when development of its respective Parcel occurs shall also obtain and maintain comprehensive public liability insurance covering injuries to persons and property on, in or about its Parcel, with a single limit of not less than One Million Dollars (\$1,000,000.00) and with a deductible not in excess of Twenty-Five Thousand Dollars (\$25,000.00). All such policies of insurance shall be issued by solvent and responsible insurance companies authorized to do business in the State of Utah, and all such policies shall contain a waiver of the right of subrogation. Each Owner agrees to furnish Manager and the other Owners certificates evidencing the insurance coverage required under this Declaration, upon request. In addition, whenever (i) any loss, cost, damage or expense resulting, directly or indirectly, from fire, explosion or any other casualty, accident or occurrence is incurred by an Owner, and (ii) at the time such Owner is required to be covered in whole or in part by insurance with respect to such loss, cost, damage or expense, then such Owner hereby releases each other Owner from any liability the other Owner may have on account of such loss, cost, damage or expense.

8. TAXES

8.1 Real Estate Taxes: "Real Estate Taxes" shall mean, with regard to any Parcel: (i) all ad valorem real estate taxes and assessments on the land and improvements comprising the Parcel including any Common Facilities located on the Parcel (adjusted after protest or litigation), exclusive of penalties; and (ii) the expense of protesting, negotiating or contesting the amount or validity of any real estate taxes, charges or assessments, such expenses to be applicable to the tax calendar year of the Real Estate Taxes contested, protested or negotiated; provided, however, that the following shall not be regarded as "Real Estate Taxes": (i) any franchise, corporate, estate, inheritance, succession, capital levy, or transfer tax of Declarant or Manager, or (ii) any income, profits, or revenue tax, (iii) any other tax, charge, or levy upon the Shopping Center except if imposed in lieu of Real Estate Taxes, (iv) any assessments against the Shopping Center or any Parcel therein, for the initial costs of development of the Shopping Center, which Declarant elects to be placed against the Shopping Center in the form of an assessment or tax payable over a term of years; i.e., sewers initially installed, connection of utilities or fees for connecting to utilities, installation of required traffic control devices, off-site street work, etc., (v) any fees, assessments, tax, levy, charge, or the like imposed against the Shopping Center or any Parcel as a result of or relating to the participation by the City or the RDA in the purchase of or other action taken with respect to the Shopping Center, or (vi) any tax or assessment on rent or other charges payable by any occupant of the Shopping Center under any lease and imposed by state, federal, local or any other regulatory agency except if imposed in lieu of Real Estate Taxes.

8.2 Tax Obligations: Each Owner shall pay directly to the tax collector when due the Real Estate Taxes assessed against the Parcel in which the Owner has an interest, including the portion of the Common Facilities on such Owner's Parcel. Each Owner shall have the right to contest the amount or validity of all or any part of said taxes and assessments and to obtain reimbursement from its tenant(s) pursuant to agreement with such tenant(s). In the event of such contest, the contesting person shall prosecute such contest with diligence, shall take such steps as are necessary to avoid a tax sale of its Parcel and, upon final determination of such contest, shall promptly pay when due the taxes and assessments then due. In the event that the Parcels are not separate tax parcels, Manager shall, to the extent Manager has received payment therefor from the Owners, pay the Real Estate Taxes for all of such Parcels which are not separately assessed and such Real Estate Taxes shall be an element of Operating Costs allocable to and payable by the Owners as set forth in Article 6.

9. EFFECT OF SALE OF A PARCEL BY AN OWNER OR OF ASSIGNMENT BY A CONSENTING OWNER NOT AN OWNER

9.1 Sale by Owner. In the event an Owner sells all or any portion of its interest in its Parcel, such Owner shall thereupon be released and discharged from any and all obligations as Owner or Consenting Owner in connection with the property sold or conveyed by it arising under this Declaration after the sale or conveyance of title but shall remain liable for all obligations arising under this Declaration prior to the sale or conveyance of title.

9.2 Sale by Consenting Owner. In the event a Consenting Owner of a Parcel who is not also an Owner with respect to such Parcel sells or assigns all of its rights in all or any portion of the Parcel, sends notice of such to the Owner of such Parcel, and records notice of such sale or assignment in the records of Weber County, State of Utah, such Consenting Owner shall thereupon be released and discharged from any and all obligations as Consenting Owner in connection with the property the interest in which was sold or assigned by it arising under this Declaration after the sale or assignment but shall remain liable for all obligations arising under this Declaration prior to the sale or assignment.

9.3 Obligation of New Owner or Consenting Owner. The new Owner or Consenting Owner of any such Parcel or any portion thereof (including, without limitation, any Owner who acquires its interest by foreclosure, trustee's sale or otherwise) shall be liable for all obligations arising under this Declaration with respect to such Parcel or portion thereof or interest therein after the date of sale or conveyance of title or, as applicable, the sale or assignment of interest.

9.4 Miscellaneous. Nothing contained herein shall bar or restrict the operation of Articles 10 and 11 which permit the liening and foreclosure of a Parcel for certain defaults under this Declaration. Notwithstanding the foregoing to the contrary, no Lienholder or purchaser at a foreclosure sale of a mortgage or deed of trust shall be liable for any obligation arising under this Declaration prior to the sale or conveyance of title.

10. DEFAULTS

10.1 Common Facilities and Other Charges: In the event any Owner fails or refuses to pay when due its Common Facilities Charge or any other amount owed to Manager or any nondefaulting Owner or Consenting Owner pursuant to the provisions of this Declaration ("Nondefaulting Party," which term shall include Manager), which failure continues for a period of ten (10) days after receipt of written notice thereof, such failure shall constitute a default and legal action may thereafter be instituted by the Nondefaulting Party against the defaulting Owner ("Defaulting Party," which term shall apply to any Owner in default pursuant to the provisions of this Article 10) for such amount plus interest from and after the date said bill was due and payable at the Default Rate. Furthermore, the Nondefaulting Party shall have a Common Facilities Lien

on the Parcel of the Defaulting Party (or on the Defaulting Party's interest therein, as applicable) from the expiration of such ten-day period until paid, for such amount plus accrued interest as set forth above, plus any costs and expenses of pursuing any legal or other action to obtain such amount, including without limitation a reasonable attorneys fee (including without limitation such as may be incurred in any appeal or in bankruptcy court) ("Collection Costs," including all such collection costs, expenses, and fees as the Nondefaulting Party may be entitled pursuant to Section 10.4 of this Article).

10.2 Deficiencies. In the event that any Owner shall fail properly to perform Common Facilities Maintenance for Common Facilities from time to time located on its Parcel, or to obtain and maintain insurance, as required by this Declaration, any Nondefaulting Party may send written notice of such failure to the Defaulting Party. Such notice shall contain an itemized statement of the specific deficiencies (hereinafter referred to as the "Deficiencies") in the Defaulting Party's providing such insurance or performance of the Common Facilities Maintenance to be performed by it. The Defaulting Party shall have thirty (30) days after receipt of the said notice in which to correct the Deficiencies or in which to commence to correct the Deficiencies if the Deficiencies cannot be corrected within the said thirty (30) day period, and thereafter, to proceed diligently to complete the correction of the Deficiencies. (If necessary for the safety of the Shopping Center or to prevent a gap in, or a lapse of, any insurance, the thirty (30) day time period referred to above may be appropriately shortened.) In the event that the Defaulting Party shall fail or refuse to correct or to begin and continue diligently thereafter to correct the Deficiencies, as the case may be, the Nondefaulting Party may, at its option, correct the Deficiencies. In the event that the Nondefaulting Party shall exercise the said option and shall correct the Deficiencies, the Defaulting Party shall, promptly upon receipt from the Nondefaulting Party of an itemized invoice for the costs incurred by the Nondefaulting Party in correcting the Deficiencies, pay all such costs and expenses to the Nondefaulting Party, together with interest at the Default Rate from the date of the Nondefaulting Party's payment of the same until paid, plus Collection Costs. Furthermore, the Nondefaulting Party shall have a Common Facilities Lien on the Parcel of the Defaulting Party (or on the Defaulting Party's interest therein, as applicable) for such amounts.

10.3 Taxes: In the event any Owner fails to pay when due all Real Estate Taxes that the Owner is obligated to pay hereunder, which failure continues for a period of fifteen (15) days after receipt of written notice thereof from any Nondefaulting Party, such failure shall constitute a default, and any Nondefaulting Party may thereafter pay such Real Estate Taxes if such Real Estate Taxes are delinquent and the Defaulting Party has not commenced and is not duly prosecuting any contest of such taxes. The Nondefaulting Party shall then bill the Defaulting Party for the expenses incurred. The Defaulting Party shall have fifteen (15) days within which to pay the bill, together with interest at the Default Rate from the date of the Nondefaulting Party's payment of the Real Estate Taxes until paid, plus Collection Costs. If the Defaulting Party does not so pay, then the Nondefaulting Party shall have a Common Facilities Lien on the Parcel of the Defaulting Party (or on the Defaulting Party's interest therein, as applicable) for such amounts.

10.4 Legal Action: In addition to and as part of the foregoing, in the event any person initiates or defends any legal action or proceeding to enforce the provisions of Article 10 or 11 or Section 12.3.5, the prevailing party in any such action or proceeding shall be entitled to recover its Collection Costs, in accord with Sections 12.3.5 and 15.13 and the preceding sections of this Article 10.

10.5 Remedies: In addition to the remedies set forth in this Article 10 and in Article 11 of this Declaration each person entitled to enforce this Declaration shall have all other remedies provided by law to the same extent as if fully set forth herein word for word. No remedy herein conferred upon, or reserved to any person, shall exclude any other remedy herein or by law provided, but each shall be cumulative.

11. LIEN FOR COMMON FACILITIES CHARGES AND OTHER OBLIGATIONS

11.1 Procedure: The lien provided for in Article 10 above and in Section 12.3.5 below shall be referred to herein as the "Common Facilities Lien" and shall only be effective when filed for record by Manager or another Nondefaulting Party as a claim of the Common Facilities Lien against the Defaulting Party's Parcel or interest therein in the office of the Weber County, Utah Recorder. Such claim of the Common Facilities Lien shall contain at least the following:

11.1.1 Statement. A reference to this section of the Declaration, and an itemized statement of all amounts due and payable pursuant hereto, except as to Collection Costs, and, for Collection Costs, a statement that such are included in the Common Facilities Lien and will be itemized and specifically set forth at the time of foreclosure;

11.1.2 Parcel Description. A description sufficient for identification of that Parcel in which the Defaulting Party has an interest and which is the subject of the Common Facilities Lien;

11.1.3 Owner. The name of the Owner or reputed Owner of the Parcel which is the subject of the Common Facilities Lien;

11.1.4 Defaulting Party. The name of the Defaulting Party and the extent of the Defaulting Party's interest in the Parcel if the Defaulting Party is other than the Owner; and

11.1.5 Nondefaulting Party. The name and address of the Nondefaulting Party.

11.2 Priority: The Common Facilities Lien, when so established against the Parcel described in the claim of the Common Facilities Lien, shall be prior and superior to any right, title, interest, lien or claim which may be or has been acquired or attached to such Parcel after the time of filing the Common Facilities Lien; provided, however, that notwithstanding the foregoing, Common Facilities Liens shall in all cases be subordinate to each first mortgage lien that encumbers a Parcel from to time (*i.e.*, a mortgage or deed of trust that is given by the Owner of a Parcel and/or the Owner of improvements on a Parcel, that secures repayment of a loan and that is in a first priority position as to voluntary liens). The Common Facilities Lien shall be for the use and benefit of the Nondefaulting Party having a right thereto pursuant to this Declaration and may be enforced and foreclosed as a mortgage in a suit or action brought in any court of competent jurisdiction.

12. INDEMNITY

12.1 Subrogation Waiver; General Indemnity: To the extent that any liability of an Owner or Lessee to another Owner or Lessee or employees, agents, contractors, invitees, tenants, subtenants, successors and assigns is covered by insurance, each Owner or Lessee respectively waives all rights of subrogation against the other Owners or Lessees.

12.2 Indemnification: Subject to the provisions of Section 12.1, each Owner and Lessee hereby agrees to indemnify, defend and hold harmless the other Owners, Lessees and occupants from and against any and all liabilities, claims, damages, expenses (including reasonable attorney's fees and reasonable attorney's fees on any appeal), judgments, proceedings and causes of action, for injury to or death of any person or damage to or destruction of any property occurring in the interior of any building or Service Facilities constructed on the indemnifying Owner's or Lessee's Parcel or Building Area, unless caused by the negligent or willful act or omission of the otherwise indemnified person, its tenants, subtenants, agents, contractors or employees.

12.3 Hazardous Substances: Each Owner agrees as follows with respect to its Parcel(s):

12.3.1 Care of Parcel. The Owner shall not use, produce, store, release, dispose or handle in or about its Parcel or transfer to or from its Parcel (or permit any other person under its control to do such acts) any Hazardous Substance except in compliance with all applicable Environmental Laws. No Owner shall construct or use any improvements, fixtures or equipment or engage in any act on or about its Parcel that would require the procurement of any license or permit pursuant to any Environmental Law, except for (i) the routine use and sale of substances necessary to the use and occupancy of the Parcel; (ii) the pursuit of the Owner's or occupant's business on the Parcel; and (iii) for the sale to the public of substances generally handled in businesses similar to the Owner's or occupant's business, so long as the requisite licenses or permits are obtained and maintained.

12.3.2 Definitions. In this Declaration the term "Environmental Laws" shall mean any federal, state or local statute, ordinance, rule, regulation or guideline pertaining to health, industrial hygiene, or the environment, including without limitation the federal Comprehensive Environmental Response, Compensation, and Liability Act; and the term "Hazardous Substance" shall mean all substances, materials and wastes that are or become regulated or classified as hazardous or toxic, under any Environmental Law.

12.3.3 No Knowledge. To the best of the Owner's knowledge after reasonable inquiry, the Owner represents and warrants the following to the other Owners with respect to its Parcel. The representation and warranty shall be effective first at the time the Owner acquires an interest in its Parcel and shall continue while the Owner holds an interest in its Parcel. If at any time the representation or warranty is inaccurate, the Owner shall immediately give written notice thereof to the other Owners. The representations and warranties are:

12.3.3.1 Except as permitted by Environmental Laws, including, without limitation, small quantities of solvents used in cleaning grills on the Lion's Den Parcel, there are no Hazardous Substances or regulated substances thereon or to be installed thereon, whether contained in barrels, tanks, equipment (movable or fixed) or other containers; deposited or located in land, waters, or sumps; or incorporated into any structure or in any other part of the Parcel.

12.3.3.2 No asbestos-containing materials have been or will be installed or affixed to the structure on the Parcel at any time in violation of any Environmental Laws.

12.3.3.3 The Parcel and all operations thereon are not in violation of any Environmental Laws, whether they govern the existence, clean-up and/or remedy of contamination from any Hazardous Substance or regulated substances, and no governmental entity has served upon such Owner any notice claiming any violation of any such statute, ordinance or regulation.

12.3.4 Notification. If any Owner becomes aware of any condition relating to the existence, release or threatened release of any Hazardous Substance or violation of any Environmental Law on its Parcel, the cure or remediation of which is required by law or dictated by commercially reasonable business practices, such Owner shall promptly notify the other Owners and Consenting Owners in writing thereof and shall promptly cure or remediate such condition.

12.3.5 Right to Cure. If any Owner (a Defaulting Party) fails to perform its duty to cure or remediate as set forth herein, a Nondefaulting Party may proceed to cure after thirty (30) days written notice and failure of the Defaulting Party to commence, and thereafter diligently to prosecute, such cure, and the Nondefaulting Party shall be entitled to a reimbursement of all costs incurred in effecting such cure together with interest at the Default Rate from the date such costs were paid, plus Collection Costs. Furthermore, the Nondefaulting Party shall have a Common Facilities Lien on the Parcel of the Defaulting

Party (or on the Defaulting Party's interest therein, as applicable) for all such amounts. In case of an emergency, the person becoming aware of the condition shall attempt reasonable efforts to notify the person with the duty of cure of the condition requiring attention; however, any person may in such emergency, without notice, proceed in good faith to effect a cure, giving such notice later as soon as possible.

12.3.6 Indemnity. The Owner of each Parcel agrees to indemnify, defend and hold harmless the other Owners, Manager and occupants of all other Parcels from and against any and all liabilities, claims, damages, expenses (including reasonable attorney's fees and reasonable attorney's fees on any appeal), judgments, proceedings and causes of action, relating to or connected with any of the foregoing mentioned in this Section 12.3, for injury to or death of any person or damage to or destruction of any property occurring on or originating from said Owner's Parcel or arising out of the act or omission of such Owner, its tenants, subtenants and their successors and assigns, unless caused by the negligent or willful act or omission of the otherwise indemnified person, its agents, contractors or employees.

13. RESTRICTIONS ON USE

13.1 Exclusive Uses.

13.1.1 Grocery Store. As long as the Grocery Store Parcel is occupied by AFS, or a Lessee of AFS, or their successors and assigns, as a grocery store or supermarket, to the extent lawful, there shall not be operated in the Shopping Center, or any future Expansion Area, and no part of the Shopping Center or any Expansion Area shall be used for, (i) a grocery store, supermarket or convenience store selling grocery items for consumption off the premises, a bakery, or a delicatessen, except that any and all of the foregoing may be operated on the Grocery Store Parcel; (ii) a video rental and/or sales store (or the technological competition and/or replacement or successor format for video tapes), except that the foregoing may be operated on the Grocery Store Parcel; (iii) a pharmacy, except that the foregoing may be operated on the Grocery Store Parcel; (iv) a movie or other type of theater, massage parlor or adult or pornographic bookstore; or (v) a flea market, dance hall, or for selling, storing, or renting motor vehicles with outside display or storage, gasoline or service station, or a bar, except that the provisions in this Section 13.1 shall not apply to: (a) the sale of restricted items (except for pornographic materials) where the sale of such items is incidental to and does not constitute more than 25% of the business of the seller; (b) an ice cream or frozen dessert store; (c) a restaurant, including fast food and take-outs; or (d) a bar or tavern on the Lion's Den Parcel, so long as full food service is offered to the public as part of sales of alcoholic beverages. No store in the Shopping Center except on the Grocery Store Parcel shall rent, loan or sell videos (or the technological competition and/or replacement or successor format for video tapes), without the prior, written consent of the Consenting Owner of the Grocery Store Parcel, which may be withheld or conditioned in its sole discretion. No pharmacy may be operated anywhere in the Shopping Center other than on the Grocery Store Parcel, without the prior, written consent of the Consenting Owner of the Grocery Store Parcel, which may be withheld or conditioned in its sole discretion. A pharmacy may be operated on the Grocery Store Parcel without the consent of the Owner or Consenting Owner of any other Parcel. The restrictions against a grocery store or supermarket, a video store and a pharmacy in the Shopping Center, except on the Grocery Store Parcel, shall terminate if the Grocery Store Parcel shall not be used as a grocery store or supermarket for twelve (12) consecutive months during the term of AFS's lease of the Grocery Store Parcel from Declarant.

13.1.2 Chicken. No part of the Shopping Center except Pad B shall be used for a sit-down or fast-food restaurant featuring or specializing in the retail sale of chicken in a manner similar to that of a Kentucky Fried Chicken franchisee or operator as of the date of this Declaration; provided, however, that (i) for the purpose of this section "featuring or specializing" shall mean that such items shall be identifiable as the major menu items in terms of sales volume or public identification; (ii) the foregoing restriction shall not apply to the Grocery Store Parcel, the Retail Shops B Parcel, the Retail Shops C Parcel, Pad E and the Lion's Den Parcel (or to the Expansion Area, if such area is later added to the Shopping Center pursuant to the

provisions of the Declaration); (iii) the foregoing restriction shall terminate if Pad B ceases to be used for the purpose described above for a period longer than six months; and (iv) nothing in this paragraph shall be interpreted to preclude fast food operations in the Shopping Center that feature chicken as an incidental part of a larger menu, such as menus offered as of the date of this Declaration by Hardee's, McDonalds, Burger King or Wendy's. The restriction described in this paragraph may be released at any time through an amendment to the Declaration that (i) describes Pad B; (ii) refers to this Section; (iii) is signed and acknowledged by the Owner of fee simple title to Pad B; and (iv) is recorded in the office of the Weber County, Utah Recorder.

13.2 Prohibited Uses. No sit down type of restaurant, as distinguished from a fast food restaurant, of more than 5,000 square feet shall be located on the Retail Shops A Parcel or the Retail Shops B Parcel. No part of the Shopping Center shall be used as a bar, tavern, cocktail lounge (except as an incidental use associated with a restaurant, so long as liquor sales do not exceed 15% of gross revenues in any one month), adult book or adult video store, automotive maintenance or repair facility, warehouse, car wash, entertainment or recreational facility or training or educational facility; for the renting, leasing or selling of, or displaying for the purpose of renting, leasing or selling of, any boat, motor vehicle or trailer; or for industrial purposes; subject to the following terms and conditions:

13.2.1 Meanings of Certain Facilities. For the purposes of this Article 13, (i) the phrase "entertainment or recreational facility" shall include, without limitation, a theater, bowling alley, skating rink, gym, health spa or studio, exercise facility, fitness center, dance hall, billiard or pool hall, massage parlor, amusement arcade, game parlor or video arcade, which shall be defined as any store containing more than four (4) coin or token operated electronic games or electronic games for hire and use on the premises, or other similar activities; and (ii) the phrase "training or educational facility" shall include, without limitation, a beauty school, barber college, reading room, computer store providing training on the premises except for a computer store which provides training and education in connection with the retail sale of computers and computer equipment and software to groups of not more than ten (10) persons at one time, place of instruction or any other operation catering primarily to students or trainees as opposed to customers, or similar activities.

13.2.2 Exceptions to Prohibited Uses. Notwithstanding the foregoing provisions of this Section 13.2, (a) the warehouse restriction shall not apply where the use is incidental to the Owner's or Lessee's normal use; and (b) the restriction against a "bar, tavern, cocktail lounge" shall not apply to such uses on the Lion's Den Parcel so long as full food service is offered to the public as part of sales of alcoholic beverages.

13.3 Enforcement. If the provisions of this Article 13 shall be breached or shall be threatened to be breached, any Owner, Consenting Owner, Lessee or Manager shall be entitled to injunctive relief or any other appropriate remedy at law or in equity whether provided by statute or otherwise, as such elect.

14. CONDEMNATION

If at any time or times all or any part of the Common Facilities shall be taken or condemned by any public authority under power of eminent domain, the provisions of this Article shall apply. A voluntary sale or conveyance of all or any part of the Common Facilities in lieu of condemnation but under threat of condemnation shall be deemed to be a taking by eminent domain. All compensation, damages, and other proceeds from any such taking by power of eminent domain ("Condemnation Award") attributable to the value of any land within the Common Facilities shall be payable only to the Owner thereof (and its assigns, as per lease or otherwise) and no claim thereon shall be made by the other Owners; provided, however, that all other Owners may file collateral claims with the condemning authority over and above the value of the land and improvements located within the Common Facilities so taken to the extent of any damage suffered by their respective Building Areas resulting from severance of the appurtenant portions of the Common Facilities so taken. The Owner of the portions of the Common Facilities so condemned shall promptly repair and restore

the remaining portion of the Common Facilities so owned by such Owner as near as practicable to the condition of the same immediately prior to the condemnation and without contribution from any other Owner; provided, however, that the obligation to repair or reconstruct shall be limited such that the cost thereof shall not exceed the amount of the Condemnation Award payable to the Owner of the Common Facilities so condemned less said Owner's costs associated with the condemnation, including but not limited to attorneys' fees and court costs arising out of the condemnation proceedings.

15. GENERAL PROVISIONS

15.1 Covenants Run With the Land: Each Restriction on each Parcel shall be a burden on that Parcel, shall be appurtenant to and for the benefit of the other Parcels and each part thereof and shall run with the land.

15.2 Successors and Assigns: This Declaration and the Restrictions created hereby shall inure to the benefit of and be binding upon the Owners and Consenting Owners, their heirs, personal representatives, successors and assigns, and upon any person acquiring a Parcel, or any portion thereof, or any interest therein, whether by operation of law or otherwise, to the extent that the foregoing is consistent with the provisions of Article 9 of this Declaration. With respect to rights in or to any Parcel which have been severed from the rights or estates owned by Declarant pursuant to the terms of this Declaration, Declarant intends that such rights remain severed notwithstanding that during any time in which this Declaration is in effect Declarant or any other person may own the underlying estate or servient estate as well as the lesser right or dominant estate, respectively, so that Declarant's purposes in making this Declaration, as listed in the recitals, may be served, and any doctrine of merger of estates, or principle of law having similar effect, shall not apply to diminish any right hereunder or combine any right created or severed hereunder with any other estate or interest.

15.3 Duration: Except as otherwise provided herein, the term of this Declaration shall be perpetual.

15.4 Arbitration: As required by specific references within this Declaration to arbitration but otherwise only with the consent of the persons affected thereby, any controversy or claim arising out of or relating to this Declaration, or the breach thereof, shall be settled by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association, and judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction thereof.

15.5 Injunctive Relief: In the event of any violation or threatened violation by any person of any of the Restrictions contained in this Declaration, any or all of the Owners and Lessees of the property included within the Shopping Center shall have the right to enjoin such violation or threatened violation in a court of competent jurisdiction. The right of injunction shall be in addition to all other remedies set forth in this Declaration or provided by law.

15.6 Modification and Termination: This Declaration may not be modified in any respect or terminated, in whole or in part, except with the unanimous consent of all Consenting Owners, and then only by written instrument duly executed and acknowledged by all of the Consenting Owners and recorded in the office of the recorder of the county in which the Shopping Center is located. No modification or termination of the Declaration shall affect the rights of any Lienholder unless the Lienholder consents in writing to the modification or termination.

15.7 Method of Approval: Whenever consent or approval is required under this Declaration, such consent or approval must be unanimously given by the other person or persons from whom consent is required. The person requesting approval or consent (the "Requesting Person") shall give notice in writing

to the person or persons whose consent or approval is required (the "Approving Person"). Within thirty (30) days after receipt of said written request, each Approving Person shall notify the Requesting Person whether or not such consent or approval is granted. In the event that the Approving Person does not provide notification to the Requesting Person within thirty (30) days from the date of receipt of notice pursuant to Section 15.11.1, then the Approving Person shall be deemed to have granted consent or approval. Notwithstanding the above, this Section 15.7 shall not be interpreted to permit a modification or termination of this Declaration without the express written consent of all Consenting Owners as provided in Section 15.6 and in such situation the failure to respond or notify any Requesting Person shall not be deemed an approval or consent thereto. Approval of any act, plan, budget, or any other item or fact under this Declaration shall not constitute a waiver of any requirements, duties, or obligations of any person under this Declaration.

15.8 Not a Public Dedication: Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Shopping Center to the general public or for the general public or for any public purpose whatsoever, it being the intention of the parties that this Declaration shall be strictly limited to and for the purposes herein expressed.

15.9 Breach Shall Not Permit Termination: It is expressly agreed that no breach of this Declaration shall entitle any Owner or Lessee to terminate this Declaration, but such limitation shall not affect in any manner any other rights or remedies which such Owner or Lessee may have hereunder by reason of any breach of this Declaration. Any breach of the Declaration shall not defeat or render invalid the lien of any mortgage or deed of trust made in good faith for value, but this Declaration shall be binding upon and be effective against any Owner whose title is acquired by foreclosure, trustee's sale or otherwise.

15.10 Default: A person shall be deemed to be in default of this Declaration only upon the expiration of thirty (30) days (unless another period is specified elsewhere in this Declaration with regard to a specific kind of default, such as a payment of money, as in Section 10.1, or a payment of taxes, as in Section 10.3) from receipt of written notice from any Owner, Lessee or Manager specifying the particulars in which such person has failed to perform the obligations of this Declaration unless such person, prior to the expiration of said thirty (30) days (or other such period as is elsewhere specified), has rectified the particulars specified in said notice of default. However, such person shall not be deemed to be in default if such failure cannot be rectified within said thirty (30) day period (or other specified time period) and such person is using good faith and its best efforts to rectify the particulars specified in the notice of default.

15.11 Notices:

15.11.1 Method of Delivery. All notices given pursuant to this Declaration shall be in writing and shall be given by personal delivery, by United States mail or by United States express mail or other established express delivery service (such as Federal Express), postage or delivery charge prepaid, return receipt requested, addressed to the person and address designated below or, in the absence of such designation, to the person and address shown on the then current real property tax rolls of the county in which the Shopping Center is located. All notices to Declarant, AFS, and Crompton/Clark shall be sent to the person and address set forth below:

Declarant: SOUTH OGDEN CITY CENTER, LLC,
550 24th Street, Suite 110
Ogden, Utah 84401
Attn: Richard A. Haws, Manager

AFS: ASSOCIATED FOOD STORES, INC.
1850 West 2100 South
P.O. Box 30430

Salt Lake City, Utah 84130
Attn: Richard A. Parkinson, President

Crompton/Clark: CROMPTON/CLARK INC.
4777 Panorama Drive
Ogden, Utah 84403
Attn: Gary T. Crompton, President

The person and address to which notices are to be given may be changed at any time by any party upon written notice to the other parties. All notices given pursuant to this Declaration shall be deemed given upon receipt.

15.11.2 Receipt. For the purpose of this Declaration, the term "receipt" shall mean the earlier of any of the following: (i) the date of delivery of the notice or other document to the address specified pursuant to Section 15.11.1 above as shown on the return receipt, (ii) the date of actual receipt of the notice or other document by the person or entity specified pursuant to Section 15.11.1 above, or (iii) in the case of refusal to accept delivery or inability to deliver the notice or other document, the earlier of (A) the date of the attempted delivery or refusal to accept delivery, (B) the date of the postmark on the return receipt, or (C) the date of receipt of notice of refusal or notice of nondelivery by the sending person.

15.12 Waiver: The failure of a person to insist upon strict performance of any of the Restrictions contained herein shall not be deemed a waiver of any rights or remedies that said person may have, and shall not be deemed a waiver of any subsequent breach or default in the performance of any of the Restrictions contained herein by the same or any other person.

15.13 Attorney's Fees: In the event any person initiates or defends any legal action or proceeding to enforce or interpret any of the terms of this Declaration, the prevailing party in any such action or proceeding shall be entitled to recover from the losing party in any such action or proceeding its reasonable costs and attorneys fees (including its reasonable costs and attorneys fees on any appeal).

15.14 Severability: If any term or provision of this Declaration or the application of it to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Declaration or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable shall not be affected thereby, and each term and provision of this Declaration shall be valid and shall be enforced to the extent permitted by law.

15.15 Not a Partnership: The provisions of this Declaration are not intended to create, nor shall they be in any way interpreted or construed to create, a joint venture, partnership, or any other similar relationship between the parties.

15.16 Third Party Beneficiary Rights: This Declaration is not intended to create, nor shall it be in any way interpreted or construed to create, any third party beneficiary rights in any person not a party hereto unless otherwise expressly provided herein.

15.17 Captions and Headings: The captions and headings in this Declaration are for reference only and shall not be deemed to define or limit the scope or intent of any of the terms, covenants, conditions or agreements contained herein.

15.18 Entire Agreement: This Declaration contains the entire agreement between the parties hereto and supersedes all prior agreements, oral or written, with respect to the subject matter hereof; provided, however, that this Declaration shall not supersede the "Build and Lease Agreement" between Declarant and

AFS and any agreements referred to in such agreement, which shall remain in full force and effect. The provisions of this Declaration shall be construed as a whole and not strictly for or against any party.

15.19 Construction: In construing the provisions of this Declaration and whenever the context so requires, the use of a gender shall include all other genders, the use of the singular shall include the plural, and the use of the plural shall include the singular.


15.20 Joint and Several Obligations: In the event any party hereto is composed of more than one person, the obligations of said party shall be joint and several.

15.21 Recordation: This Declaration shall be recorded in the office of the Weber County, Utah Recorder.

15.22 Counterparts: For the convenience of the parties, this Declaration may be executed in identical counterparts, each of which shall be deemed to be an original, but all of which taken together shall constitute one and the same instrument. This Agreement shall be effective when one or more of such counterparts has been executed by each party and delivered. Signature pages from any counterpart may be assembled with signature pages from other counterparts, and a single original, with assembled signature pages, shall constitute a final, complete document and may be recorded.

EXECUTED as of the day and year first above written.

SOUTH OGDEN CITY CENTER, LLC, a Utah limited liability company


By Richard A. Haws, Manager

STATE OF UTAH)
 :SS
COUNTY OF SL)

On this 27 day of October, 1995, before me, a notary public, personally appeared RICHARD A. HAWS, personally known to me to be the person whose name is subscribed to this instrument, and acknowledged to me that he executed the same as the manager of, and on behalf of, SOUTH OGDEN CITY CENTER, LLC, a Utah limited liability company.

My Commission Expires:

5/10/99


Notary Public
Residing at: SIC, UT


vd:\GSB\MACEY\STHORNRIX.D\3
[10/26/95(1:24pm)]
RHT\DJ2884.009

COUNTERPART SIGNATURE PAGE TO
DECLARATION OF RESTRICTIONS, GRANT OF EASEMENTS AND
COMMON FACILITIES MAINTENANCE AGREEMENT
[City Center at South Ogden Shopping Center]

THIS COUNTERPART SIGNATURE PAGE is attached to and forms part of that certain "Declaration of Restrictions, Grant of Easements and Common Facilities Maintenance Agreement" that is dated as of the 27th day of October 1995 and that relates to the City Center at South Ogden Shopping Center located in South Ogden, Weber County, Utah.

DATED this 27th day of October 1995.

ASSOCIATED FOOD STORES, INC., a Utah corporation

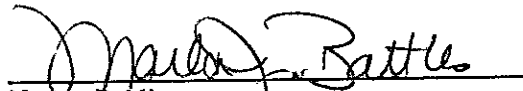

By Steven C. Miner, Vice President

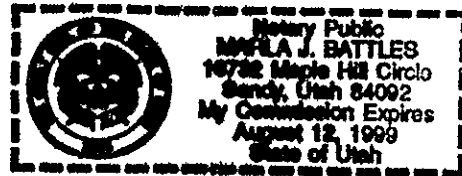
STATE OF UTAH)
 :SS
COUNTY OF SALT LAKE)

On this 27th day of October, 1995, before me, a notary public, personally appeared STEVEN C. MINER, personally known to me to be the person whose name is subscribed to this instrument, and acknowledged to me that he executed the same as the vice president of, and on behalf of, ASSOCIATED FOOD STORES, INC., a Utah corporation.

My Commission Expires:

Aug. 12, 1999


Notary Public
Residing at: Sandy, Utah

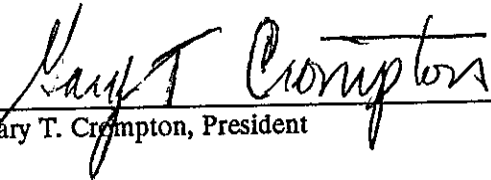


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DATED this 26th day of October 1995.

CROMPTON/CLARK INC., a Utah corporation

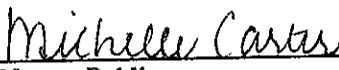

By Gary T. Crompton, President

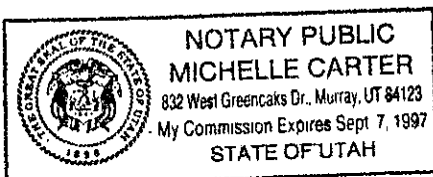
STATE OF UTAH)
 :SS
COUNTY OF SALT LAKE)

On this 26th day of October, 1995, before me, a notary public, personally appeared GARY T. CROMPTON, personally known to me to be the person whose name is subscribed to this instrument, and acknowledged to me that he executed the same as the president of, and on behalf of, CROMPTON/CLARK INC., a Utah corporation.

My Commission Expires:

9-7-97


Notary Public
Residing at: Salt Lake County, Utah



COUNTERPART SIGNATURE PAGE TO
DECLARATION OF RESTRICTIONS, GRANT OF EASEMENTS AND
COMMON FACILITIES MAINTENANCE AGREEMENT
[City Center at South Ogden Shopping Center]

THIS COUNTERPART SIGNATURE PAGE is attached to and forms part of that certain "Declaration of Restrictions, Grant of Easements and Common Facilities Maintenance Agreement" (the "Declaration") that is dated as of the 27th day of October 1995; that relates to the City Center at South Ogden Shopping Center located in South Ogden, Weber County, Utah; and that is executed by South Ogden City Center, LLC, Associated Food Stores, Inc. and Crompton/Clark Inc. All of the capitalized terms that are used in this counterpart signature page shall have the meanings that are set forth for such terms in the Declaration.

THE UNDERSIGNED, as the holder of an interest in a portion of the Shopping Center, hereby (1) joins in and consents to the Declaration; (2) consents to the recordation of the Declaration in the records of the Weber County, Utah Recorder; and (3) acknowledges that its interest in the Shopping Center shall be subject and subordinate to the provisions of the Declaration in the same manner and as fully as if its interest had been created or acquired subsequent to the date of recordation of the Declaration.

DATED this 27th day of October 1995.

FIRST SECURITY BANK OF UTAH, N.A.

By: Dennis L. Dallinger
Its: Vice President

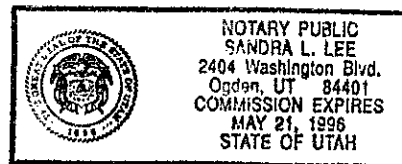
STATE OF UTAH)
) : ss.
COUNTY OF Weber)

The foregoing instrument was acknowledged before me this 27th day of October 1995 by Dennis L. Dallinger, as the Vice President of, and on behalf of, FIRST SECURITY BANK OF UTAH, N.A.

Sandra L. Lee
NOTARY PUBLIC

My Commission Expires: 5-21-96

Residing at: Ogden, UT



COUNTERPART SIGNATURE PAGE TO
DECLARATION OF RESTRICTIONS, GRANT OF EASEMENTS AND
COMMON FACILITIES MAINTENANCE AGREEMENT
[City Center at South Ogden Shopping Center]

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DATED this ___ day of October 1995.

HARMAN MANAGEMENT CORPORATION,
a Utah corporation

By: Ryan D. Duckworth
Its: Asst. Secretary

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

The foregoing instrument was acknowledged before me this 27 day of October 1995 by RYAN D. DUCKWORTH, as the ASST. SECRETARY of, and on behalf of, HARMAN MANAGEMENT CORPORATION, a Utah corporation.

Barrie G. McKay
NOTARY PUBLIC

My Commission Expires:
2-20-1998

Residing at: Provo, Utah

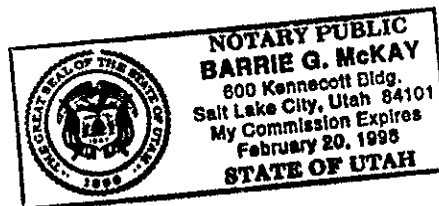


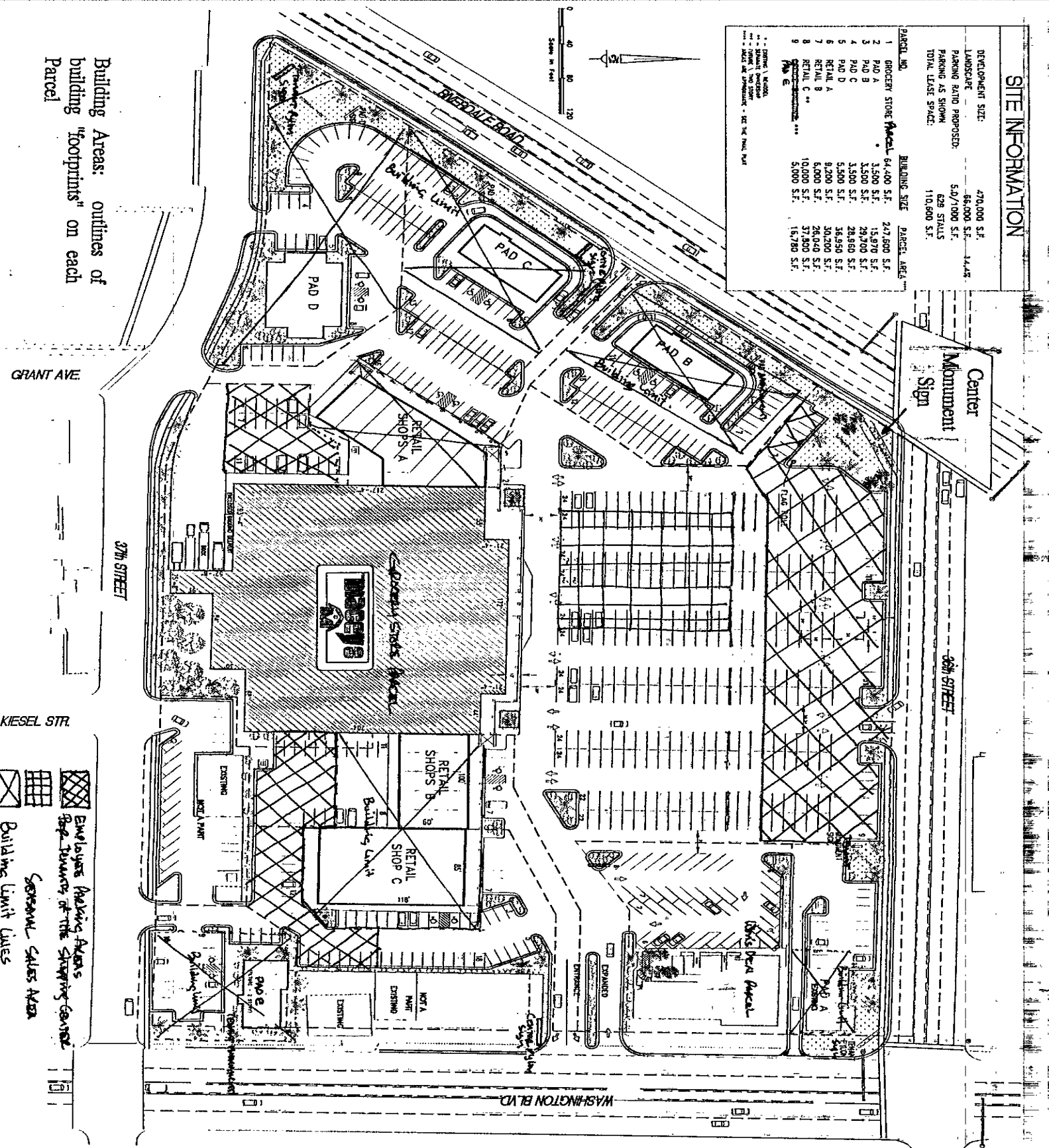
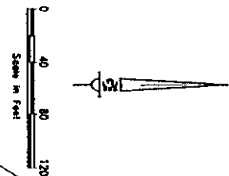
Exhibit A to Declaration of Restrictions,
Grant of Easements and Common Facilities Maintenance Agreement

SITE INFORMATION

DEVELOPMENT SIZE:	470,000 S.F.
LANDSCAPE:	56,000 S.F. 14.4%
PARKING SPACES PROPOSED:	53/7,000 S.F.
PARKING AS SHOWN:	628 STALLS
TOTAL LEASE SPACE:	110,600 S.F.

PARCEL NO.	BUILDING SIZE	PARCEL AREA
1 GROCERY STORE	64,400 S.F.	247,600 S.F.
2 PAD A	3,500 S.F.	15,970 S.F.
3 PAD B	3,500 S.F.	29,700 S.F.
4 PAD C	3,500 S.F.	28,950 S.F.
5 PAD D	5,500 S.F.	35,950 S.F.
6 RETAIL A	8,200 S.F.	30,200 S.F.
7 RETAIL B	8,000 S.F.	29,400 S.F.
8 RETAIL C	10,000 S.F.	37,300 S.F.
9	5,000 S.F.	16,750 S.F.

1. EXISTING BUILDING
2. EXISTING DEVELOPMENT
3. EXISTING PAVEMENT
4. EXISTING UTILITIES
5. EXISTING SIGNAGE
6. EXISTING DRIVEWAY
7. EXISTING DRIVEWAY
8. EXISTING DRIVEWAY
9. EXISTING DRIVEWAY



Building Areas: outlines of building "footprints" on each Parcel

GRANT AVE

37th STREET

KIESEL STR

WASHINGTON BLVD

Center Monument Sign

- Existing Parking Areas
- Base Turnouts of the Shopping Center
- General Sales Area
- Building Limit Lines

Gardner Engineering
5135 Washington Blvd
Ogden, Utah 84403
(405) 474-0702

THE HAWES COMPANIES
THE REAL ESTATE SPECIALISTS
2350 WASHINGTON BLVD.
OGDEN, UTAH 84403

SITE DEVELOPMENT PLAN
CITY CENTER
WASHINGTON BLVD. - 36th ST.
SOUTH OGDEN, UTAH

REVISIONS	
NO.	DATE

SCALE	1" = 40'
DATE	DEC 1994
DESIGN	K.S.W.
DRAWN	K.S.W.
PROJ NO.	DWG: CITY_CEN_SDC