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CALLEN B. PESHELL, Recorder
Filed By RGL
For TITLE WEST
TOOELE COUNTY CORPORATION

When Recorded Return to:
Amsource Tooele, LC
Attn: John R. Gaskill
10 West 100 South
Salt Lake City, Utah 84101

GRANT OF EASEMENTS,
DECLARATION OF RESTRICTIONS
AND COMMON FACILITIES MAINTENANCE AGREEMENT
[Tooele Towne Center]

THIS GRANT OF EASEMENTS, DECLARATION OF RESTRICTIONS AND COMMON FACILITIES MAINTENANCE AGREEMENT ("**Declaration**") is made as of the 12th day of November 1999 by AMSOURCE Z-VALUE, LLC, a Utah limited liability company hereinafter referred to as the "**Declarant**."

A. Shopping Center. Declarant is the owner or long-term lessee of property located in Tooele County, Utah, which is described on Exhibit "A" which is attached hereto and incorporated herein by reference (the "**Shopping Center Land**"). Declarant plans to develop and build the Shopping Center, as defined and described herein, on the Shopping Center Land. Except as set forth in "D" below, all of the Parcels and all of the Shopping Center Land shall be subject to this Declaration.

B. Phases. The Shopping Center is currently divided into two (2) contiguous phases, designated on the Site Plan (as hereafter defined) as "Phase 1" and "Phase 2." Declarant currently owns in fee simple Phase 1 and Phase 2 except for that portion of Phase 1 described as Area 4 on Exhibit "A" and depicted as the "Arrellano Property" on the Site Plan, which Declarant is attempting to acquire (the "Non-Owned Land"). Phase 1 currently contains fifteen (15) Pads or Parcels as shown on the Site Plan. Some parcels might later be leased to long-term tenants or sold to other parties.

C. Intent. The Declarant desires to restrict the Shopping Center in accordance with 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.

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D. Non-Owned Land. Declarant will use commercially reasonable efforts to acquire the Non-Owned Land. Once Declarant or any successor or assignee of the balance of the Shopping Center Land acquires the Non-Owned Land it shall thereafter be subject to this Declaration.

NOW THEREFORE, the Declarant does hereby make and consent to this Declaration as follows:

1. PRELIMINARY

1.1 Definitions:

1.1.1 **“Alternate Site Plan”:** As defined in Section 13.2.2.4.

1.1.2 **“Approving Person”:** As defined in Section 15.7.

1.1.3 **“Associated Expansion Area”:** The area shown as such on the Site Plan. The Owner of the Associated Parcel shall have the right, at its option, to expand the building into the Associated Expansion Area located partially on the Associated Parcel and partially on Shops Parcel “B” or to allow its Lessee or sublessee to do so pursuant to its lease.

1.1.4 **“Associated Control Area”:** That area in front of Lessee’s building marked and shown as such on the Site Plan.

1.1.5 **“Associated Parcel”:** The parcel identified as the “Associated Parcel” on the Site Plan.

1.1.6 **“Building Area(s)”:** All that area on each Parcel which is within the area defined by the Building Limit Lines as shown on the Site Plan.

1.1.7 **“Building Limit Lines”:** Lines defining the Building Area as shown on the Site Plan.

1.1.8 **“Center Monument Sign(s)”:** Monument signs, if any, which will be located in areas allowed by the City and approved by the Consenting Owners.

1.1.9 **“City”:** The City of Tooele, Utah.

1.1.10 **“Collection Costs”:** As defined in Section 10.1.

1.1.11 **“Common Facilities”:** All those areas on each Parcel which are not Building Areas, 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; the storm water retention basin, if applicable; unloading areas (except for trash facilities, 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 Parcels to the perimeter walls of any building in the Shopping Center; the Center Monument Signs; 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.

1.1.12 **“Common Facilities Budget”**: As defined in Section 6.1.1.

1.1.13 **“Common Facilities Charge”**: As defined in Section 6.4.1.4.

1.1.14 **“Common Facilities Lien”**: As defined in Section 11.1.

1.1.15 **“Common Facilities Maintenance”**: As defined in Section 5.1.

1.1.16 **“Condemnation Award”**: As defined in Article 14.

1.1.17 **“Consenting Owner”**: The Owner of the Associated Parcel and Declarant (so long as the Declarant is the Owner of at least one Parcel) as well as the following:

1.1.17.1 Any Lessee, as defined herein (whose lease, sublease, assignment, or a memorandum thereof is of record in Tooele County, State of Utah) of more than 20,000 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 Tooele 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. Declarant, being the Owner of the Associated Parcel, hereby irrevocably appoints Associated Food Stores, Inc., its successors and assigns, to be the Consenting Owner for the Associated Parcel.

1.1.17.2 Any purchaser from Declarant of a Parcel containing two (2) or more Acres so long as that Parcel is used as a site for a building of more than 20,000 square feet..

1.1.18 **“Contracting Party”**: As defined in Section 2.4.1.2.

1.1.19 **“Declarant”**: Amsource Z-Value, L LC, a Utah limited liability company its successors; and any Owner to whom the Declarant or such successor assigns all of its rights to be the 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) four percent over 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." Said areas may be modified by Declarant in its reasonable judgment so long as they do not unreasonably interfere with or restrict parking in the Associated Control Area or access to delivery areas on the Associated Parcel but shall never be located in the Associated Parcel delivery access areas or the Associated Control Area.

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

1.1.26 **"Floor Area"**: With respect to the commercial space in the Shopping Center, Floor Area shall mean 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, unless that space is used as selling area. 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. With respect to the office buildings in the Shopping Center, Floor Area shall mean the total number of leasable square feet as determined using the latest BOMA standards.

1.1.27 [Intentionally Left Blank]

1.1.28 [Intentionally Left Blank]

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

1.1.30 [Intentionally Left Blank]

1.1.31 **"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 (15) years or more or the remaining term of the lease of a Lessee, whichever is less.

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

1.1.33 **"Macey's"**: Macey's, Inc, a Utah corporation, initial sublessee of the Associated Parcel, which will operate a grocery store under the name of "Macey's" and its

successors or assigns. Nothing in this Declaration shall be deemed to require that the grocery store be operated or that it be operated under the name Macey's.

1.1.34 **"Management Fee"**: As defined in Section 6.4.1.

1.1.35 **"Manager"**: As defined in Section 5.2.

1.1.36 **"Nondefaulting Party"**: As defined in Section 10.1.

1.1.37 **"Operating Costs"**: As defined in Section 6.2.

1.1.38 **"Owner"**: The record holder of fee simple title to a Parcel, its heirs, personal representatives, successors and assigns. An Owner may assign its rights as an Owner only for purposes of notice and voting hereunder to a long-term lessee (over fifteen (15) years) of its Parcel by a document duly recorded in the property records of Tooele County and delivered to the Manager, but so long as that assignment is in effect, the fee owner shall have no rights as an Owner to receive notice or vote hereunder. Notwithstanding such an assignment, the fee owner and the Parcel shall remain liable for all obligations of an Owner hereunder.

1.1.39 **"Pad"**: Pad shall mean any of Pads A through I, Shops A-1, Shops B-2, Anchor B-2, Anchor C-2 and the Associated Parcel as shown on the Site Plan, all of which Pads shall collectively be referred to as the "Pads" or "Parcel(s)."

1.1.40 **"Pad Pylon Sign(s)"**: Pad Pylon Signs shall be allowed only in locations approved by the City and the Consenting Owners. A Pad Pylon Sign shall not be a Center Pylon or Monument Sign and may advertise only the business on the Pad on which the sign is located or to which the sign pertains.

1.1.41 **"Pad Monument Signs"**: Monument signs, to be located on each Pad in locations approved by the City and Consenting Owners.

1.1.42 **"Pad(s)"**: See 1.1.39, above.

1.1.43 **"Parcel(s)"**: See 1.1.39, above.

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

1.1.45 **"Phase(s)"**: Phase 1 and Phase 2 as shown on the Site Plan.

1.1.46 **"Prime Rate"**: The rate of interest which shall be two percent (2%) above the prime rate of interest reported from time to time on the financial page of the Wall Street Journal. Should, for any reason, the Wall Street Journal cease to publish such prime rate, the Prime Rate shall

be two percent (2%) above the prime rate or other reference rate charged from time to time to corporate borrowers of the highest credit standing by First Security Bank of Utah, N.A.

1.1.47 **“Real Estate Taxes”**: As defined in Section 8.1.

1.1.48 **“Receipt”**: As defined in Section 15.11.2.

1.1.49 **“Requesting Person”**: As defined in Section 15.7.

1.1.50 **“Restrictions”**: The easements, covenants, restrictions, liens and encumbrances contained in this Declaration.

1.1.51 **“Seasonal Sales Area”**: As shown on the Site Plan.

1.1.52 **“Service Facilities”**: Loading docks, trash enclosures, bottle storage areas and other similar service facilities.

1.1.53 **“Shopping Center”**: All of the Parcels in the aggregate, as if all were one parcel, together with all improvements located thereon and all appurtenances thereunto pertaining.

1.1.54 **“Shopping Center Land”**: All of the Parcels in the aggregate, as if all were one Parcel.

1.1.55 **“Site Plan”**: The site plan attached hereto as Exhibit “B” 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 Subordination. As of the date that this Declaration is recorded in the records of the Tooele County, Utah, Recorder, the Owner of each Parcel shall cause each Lienholder, to the extent there is any, on the Owner’s Parcel to subordinate its lien against such Parcel to this Declaration by signing and acknowledging a counterpart signature page for the Acknowledgment and Consent of Lender that is attached hereto. All of those executed counterpart pages shall be attached to and recorded with this Declaration.

2. BUILDING AND COMMON FACILITIES DEVELOPMENT

2.1 Building Location: All buildings and other structures shall be placed or constructed upon the Parcels only within 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 of the particular Parcel.

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, with respect to any Parcel in Phase 1, the Building Area upon a Parcel in Phase 1 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. Declarant may change any Building Area in Phase 2 without the consent of the Consenting Owners as long as, when fully improved, access, as hereinafter defined, exists to and from Phase 1 across Phase 2. Access in the preceding sentence shall mean a commercially reasonable, traffic lane or lanes connecting with the principal north-south traffic lane or lanes on Phase 1.

2.1.4 **Specific Permitted Changes.** Notwithstanding the foregoing provisions of this Section 2.1, the Owner of any Parcel, when constructing or causing the construction of buildings on that Parcel, may locate the buildings thereon on any place within the Building Limit Lines, provided, however, such Owner may not increase the size of any building in Phase 1 beyond the square footage shown on the Site Plan for such Parcel except as may be specifically set forth hereinafter with respect to certain Pads.

2.1.5 **Restrictions on Hampering Access.** No alteration from the Site Plan shall materially change (i) the Associated Parcel and/or Lessee's ability to conduct its business, (ii) access from public streets known as 10th North and Main Street to the Associated Parcel or to and from parking in Phase 1 of the Shopping Center, as shown on the Site Plan; or (iii) the visibility of any building built on the Associated Parcel.

2.1.6 **Parking.** All Owners in the Shopping Center shall maintain on each of their Parcels, at all times a parking ratio equal to or better than shown on the Site Plan which is a minimum of five (5) finished, striped parking spaces for each one thousand (1,000) square feet of Floor Area. The size of the parking spaces must satisfy the requirements of the City and must be approved by the Consenting Owners.

2.1.7 **No Additional Buildings.** Neither Declarant nor Owner(s) shall build additional buildings in Phase 1 of the Shopping Center except as are depicted on the Site Plan except as may be specifically set forth hereinafter with respect to certain Pads.

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 in Phase 1, 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 of Phase 1. There shall be constructed and permanently maintained along the dividing line between Phase 1 and Phase 2 a continuous landscape island open only at both ends as shown on the Site Plan.

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. Notwithstanding the foregoing: (a) the standard signs and logos of the occupant of the Associated Parcel, and any other lessee that is a Consenting Owner or a national franchise or business as such logos and signs may exist from time to time, shall not require approval; (b) the opening, closing or relocation of any door, shall not require approval; (c) after the initial building is constructed on the Associated Parcel, subsequent changes to that building shall require the consent of the Consenting Owners; provided, however, that if the color and/or elevations of the building on the Shops A-1 and B-2 and Anchor C-2 and have been patterned after or integrated with the building on the Associated Parcel, then the Consenting Owner of the Associated Parcel shall reasonably consult and cooperate with the Owner of the Shops A-1 and B-2 and Anchor C-2 before making changes that would adversely affect the patterning and integration; and (d) subject to all other restrictions contained herein and except for the requirements of paragraph 13.2.2.2, the standard building elevations of a national franchise business located on the perimeter Pads in the Shopping center shall not require Consenting Owner 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 and otherwise complies with the requirements of this Declaration. 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 reasons 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 Phase 1, except the building on the Associated Parcel and any addition to the building built on the Associated Expansion Area, shall be single story with mezzanine permitted and shall not exceed twenty-two (22) feet in height (except that a McDonalds may be built to a height of 25 feet on either Pad B, C or D), 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 buildings on the Associated Parcel and Associated Expansion Area shall not exceed one (1) story above finished grade and twenty-eight (28) 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). Buildings in line with the buildings on the Associated Parcel may be up to the same height as the buildings on the Associated Parcel. 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 Limitation Affecting Phase 2. If Phase 2 is used for commercial purposes, all of the buildings in Phase 2 shall be located at the South end of Phase 2 with the parking areas in front.

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. All Common Facilities shown on the Site Plan for a Parcel shall be constructed and installed in advance of or in connection with the construction of the building on the Parcel. 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 the store on the Associated Parcel and other buildings in the Building Areas, no construction may take place between November 1st and the following February 1st 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 attorneys' 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 Owners 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 Three Million Dollars (\$3,000,000.00);

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 Five Thousand Dollars (\$5,000.00), covering the total value of work performed and equipment, supplies and materials furnished.

2.4.5 **Condition Pending Construction.** Each Owner of any Pad in Phase 1, at its expense, 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 Associated Parcel first opens for business, each

Owner, at its expense, 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. Each owner of any Pad, Parcel or part of Phase 2 shall maintain its Pad, Parcel or part of Phase 2 in a clean condition, free from weeds, pending construction of development thereon.

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, egress and parking 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 serviced 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 Non-Owned Land. The Non-Owned Land shall not be subject to the burdens or entitled to the benefits of this Declaration until acquired by Declarant or its successors or assigns. Should the Non-Owned Land be acquired by Declarant or its successors or assigns it shall be subject to and benefitted by all of the easements, restrictions, rights and obligations, as well as all of the other terms and conditions contained herein as if it had been owned by Declarant at the time of recording of this Declaration.

3.4 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.

3.5 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: (i) an easement for any portion of any building or structure located on any such Parcel which may unintentionally encroach into or over the grantor's adjoining Parcel(s) by not more than six (6) inches; (ii) an easement for any footings, piers, piles, or grade beams of any building or structure located on any such Parcel which may intentionally or unintentionally encroach into or over the grantor's adjoining Parcel(s) provided the easement for footings, piers, piles, grade beams does not exceed three (3) feet; (iii) 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) finished, striped parking spaces for each one thousand (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 on the Associated Parcel in front of (i.e., the side of the building facing the main customer parking lot on the Associated Parcel) and within two hundred (200) feet of the building located on the Associated 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 and the approval of the Consenting Owners with respect to location, size and design (i) Center Monument or Pylon Signs shall be erected and maintained in the Shopping Center; and (ii) Pad Monument Signs may be placed on each of the Pads, subject to the following terms and conditions:

4.3.1.1 The cost of constructing, maintaining, repairing and replacing the Center Monument or Pylon Signs (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 Pylon Signs and Pad Monument Signs shall be paid by the Owner of the Pad on which the sign is located or to which it pertains; provided, however, that nothing contained herein shall prevent the Owner of the Pad from shifting such expense to the Lessee or other occupant of the Pad.

4.3.1.2 Each person displaying a designation on the Center Monument or Pylon Signs shall supply and maintain its own sign fascia and can. The design of the Center Monument Signs structures shall be subject to the fascia used; provided, however, that the operators of the store on the Associated Parcel may use such standard fascia as they from time to time use generally in carrying on their businesses.

4.3.1.3 The occupant of the Associated Parcel shall be entitled to a designation on the Center Monument or Pylon Signs with forty percent (40%) of the sign space (exclusive of the Shopping Center Designation) at the top of the sign just below the shopping center designation. The Center Monument or Pylon Signs may be used by not more than three additional occupants of the Shopping Center who are Consenting Owners but no one additional user may have more than thirty (30%) percent of the sign space (exclusive of the Shopping Center designation).

4.3.1.4 The Pad Monument Sign on each Pad may advertise only the business of the tenant or occupant on such Pad. Pad Monuments may not be higher than six (6) feet above the finished landscape of the immediately surrounding area and may not be longer than twenty (20) feet.

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 reasonable 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, provided such steps do 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 steps. Such steps may 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 and except along any street frontage.

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 Associated 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 be permitted by City ordinances and 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 one hundred twenty (120) 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 Associated 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 Associated Parcel.

4.5.3 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 Associated Parcel, shall be kept on during those dawn, dusk and nighttime hours that fall within the hours of operation of the store on the Grocery Store Parcel, which may be 24 hour operation; 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. Parking lot lighting in the Common

Facilities, shall be metered separately from the Parcels and the electricity therefor shall be paid as a Common Facilities Charge. Notwithstanding the foregoing, the occupant of the Associated Parcel shall be responsible for payment of the electricity costs for the lighting in Associated Control Area from twelve o'clock midnight to six o'clock a.m. and the lighting on the balance of the center may be reduced to three (3) foot candles between those same hours.

4.7 Flag. The Consenting Owner of the Associated Parcel shall have the exclusive right in the Shopping Center, subject to compliance with applicable laws and regulations, to erect, at its sole expense, a flagpole on the Associated 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 original quality of the materials being repaired or replaced, so as to maintain the architectural and aesthetic harmony of the Shopping Center as a whole. Notwithstanding other provisions of the Declaration, Common Facilities in Phase 2 of the Shopping Center shall not be maintained hereunder until the same have been completed under at least equal specifications to those in Phase 1 and until at least one Parcel in Phase 2 has a completed building and is obligated to share in Common Facilities Charges under paragraph 6.4.2 below. This operation, maintenance and repair (i) shall be performed and carried out promptly and in a first class and workmanlike manner, 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; (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 Monument Signs, except as otherwise provided in this Declaration with regard

to sign fascia and cans which shall be supplied and maintained by the businesses designated thereon. The Owner of each Pad shall pay the cost of so maintaining the Pad Monument Signs on the Owner's Pad.)

5.1.4 Lighting. Maintaining, cleaning and replacing Common Facilities lighting facilities, including lamps, ballasts and lenses.

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 type of landscaping originally installed as part of the Common Facilities on the Associated Parcel), 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 Facilities 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 Monument Signs and parking lot lighting.

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's 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.

At its expense, each Owner of a Parcel shall maintain the Building Area of the Parcel held for future construction of building improvements in accordance with the provisions of Section 2.4.5; provided,

however, that if an asphalt cap or landscaping is installed on the Building Area pursuant to Section 2.4.5, then thereafter Manager shall perform Common Facilities Maintenance on the Building Area until it is improved with a building.

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) or enter into a contract with a qualified Manager.

5.2.2 Replacement by Consenting Owner Action. Declarant, with the approval of the Consenting Owners, shall have the right to replace Manager. In addition, the Consenting Owner of the Associated Parcel may remove and replace Manager for reasonable cause by giving the existing Manager at least sixty (60) days’ advance written notice.

5.2.3 Cure of Manager’s Default. Notwithstanding any other provision of this Section 5.2, the Consenting Owner of the Associated 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) cure such default. Manager shall reimburse the Consenting Owner of the Associated Parcel reasonable amounts spent by such Consenting Owner to effect such cure.

5.2.4 Resignation. Upon giving the Consenting Owners at least sixty (60) days’ advance written notice, Manager may resign as Manager, whereupon the Declarant (if not the Manager) with approval of the Consenting Owners shall appoint a replacement Manager. If the Declarant is the resigning Manager, the Consenting Owners shall appoint a replacement Manager. The replacement Manager may, but need not be, a Consenting Owner.

5.3 Promulgation of Rules: The Consenting Owners may consent to the promulgation of 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 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.

6.1.5 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 Two Thousand Dollars (\$2,000.00), 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 to be reimbursed appropriately or refunded at year end as provided herein.

6.1.6 Unforeseen Items. Manager shall be entitled to reimbursement of actual expenses for any reasonably 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 Three Thousand Dollars (\$3,000.00) in any calendar year.

6.1.7 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.

6.1.8 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.

6.1.9 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, including, without limitation, reimbursements of out-of-pocket expenses described in Section 6.1.8;

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 Three Million (\$3,000,000.00) 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 willful misconduct of Manager and its agents and employees, or to the extent recoverable by Manager, resulting from the negligence or willful misconduct 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 provided Manager has received funds as budgeted for such payment from the Owners; or (vii) costs required to be paid by individual Owners, as described in Section 2.4.5, the full paragraph following Section 5.1.11 and Section 12.3.

6.3.2 **Capital Expenses.** At the option of the Consenting Owner of the Associated Parcel, 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 either (a) amortized over the reasonable lifetime of such capital addition or replacement in accordance with generally accepted accounting principles; or (b) paid in full in the year in which the Operating Expense is incurred. If the Operating Cost is amortized, then 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 pursuant to Section 6.8.

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 Five Thousand Dollars (\$5,000.00), and fees paid to others for management duties.

6.4.1.2 There shall be no Management Fee payable to Manager during any period of time during which Manager delegates or contracts out substantially all of the management of the Common Facilities Maintenance; provided, however, that notwithstanding the foregoing, if Manager engages one of its affiliates to manage the Common Facilities Maintenance, then either Manager or the affiliate, but not both, may collect the Management Fee.

6.4.1.3 If an Owner is responsible for or assumes Common Facilities Maintenance with respect to the Owner's Parcel, as outlined in Section 6.8, then such Owner's share of Operating Costs shall equal Zero Dollars (\$0) from the date of such responsibility or assumption and during the period the Owner is obligated to perform such Common Facilities Maintenance, although during such period the Owner shall pay Operating Costs for Common Facilities Maintenance on the Owner's Parcel and the Owner's pro-rata share of any general Operating Costs, such as liability insurance.

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

6.4.1.5 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 the building or buildings on the particular Parcel by the total Floor Area of all of the Parcels in the Shopping Center. Provided, however, that until a building in Phase 2 is completed and a certificate of occupancy issued no Floor Area applicable to Phase 2 shall be used in such calculations. Until such time as a building is constructed in Phase 1 of the Shopping Center, the Floor Area of each building in the Shopping Center shall be deemed to be the footprint of each building as shown on the Site Plan not including pads H and I or Anchor B-2, Anchor C-2 or Shops B-2. The Floor Area shown on the Site Plan for Pads H and I and Shops B-2 shall be included in the calculation before buildings are constructed thereon if and when Declarant or its successors or assigns acquires the Arellano Property as shown on the Site Plan. Anchor B-2 and Anchor C-2 shall not be included until buildings are built thereon.

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, and such amount is more than one month's budgeted Common Facilities Charge to Lessee, the excess will be refunded to such Owner together with said annual statement, otherwise the amount will be applied to the next month's Common Facilities Charge. 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 three percent (3%) or more Manager shall pay for the reasonable cost and expenses of such audit (but not to exceed Five Hundred Dollars (\$500.00)) 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 Associated Parcel has been completed and the initial occupant of such building opens for business, each Owner shall pay all Operating Costs for Common Facilities Maintenance on that Owner's Parcel; provided, however, that Owners shall be required to pay their pro-rata share of any general Operating Costs, 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 Three Million Dollars (\$3,000,000.00) 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 (2) 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, remodeling 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 in Phase I be closed or substantially closed from November 1st to the next March 31st. After the initial construction of the building on the Associated 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 the 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 (a) shall maintain, at its expense, the improved Common Facilities from time to time located on its Parcel; and (b) shall pay the Owner's pro-rata share of any general Operating Costs, such as liability insurance (the Owners shall cooperate with each other in procuring liability insurance for Common Facilities, as contemplated by Section 6.5). Required 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 the non-Common Facilities on its Parcel with a single limit of not less than Three Million Dollars (\$3,000,000.00) and with a deductible not in excess of Five Thousand Dollars (\$5,000.00). 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. Liability insurance for Common Facilities shall be obtained and maintained pursuant to Sections 6.5 and 6.8.

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 an Owner, Declarant or Manager, (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., or (v) 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 (other than a sales tax on rent if imposed) if imposed in lieu of Real Estate Taxes.

8.2 Tax Obligations: If the applicable Parcel constitutes a separate tax lot or parcel, 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 Tooele 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 first Lienholder or purchaser at a foreclosure sale of a first mortgage or first 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, Declarant or any nondefaulting Owner or Consenting Owner pursuant to the provisions of this Declaration ("**Nondefaulting Party**," which term shall include Declarant and 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) 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 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 and Section 12.3.5 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 for a Common Facilities Lien against the Defaulting Party's Parcel or interest therein in the office of the Tooele County, Utah Recorder. Such claim for a 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 a claim for a 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 or an interest therein from time 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 attorneys' fees and reasonable attorneys' 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, each 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 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 attorneys' fees and reasonable attorneys' 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. As long as the Associated Parcel is occupied as a grocery store or supermarket and for a period of twelve (12) months thereafter, to the extent lawful, there shall not be operated in the Shopping Center, and no part of the Shopping Center except on the Associated Parcel, shall be used for (i) a grocery store, supermarket or convenience store (except that one convenience store containing not more than two thousand five hundred (2,500) square feet, plus the square footage of any in-store fast food service such as Burger King or McDonalds, selling grocery items for consumption off the premises may be located in the Shopping Center); (ii) a bakery; (iii) a pharmacy; or (iv) a delicatessen (except that sandwich-type shops such as Blimpies or Subway are allowed). The provisions in this Section 13.1 shall not apply to the sale of restricted items where the sale of such items is incidental to and does not constitute more than ten percent (10%) of the business of the seller.

13.2 Prohibited Uses. No sit down type restaurant (with waiter/waitress service as distinguished from the traditional fast food restaurants which promote fast service and mainly take out dining such as McDonalds, Burger King and Wendy's), shall be located on any part of Phase 1 except that a total of one (1) such restaurant may be located on either Pad A or Pad F, and one (1) on Pad G, H or I so long as they self park. One may be located in the north end of Shops A-1 with parking to be all to the North, and the entrance facing North and limited to three thousand (3,000) square feet. A sit down restaurant may be located in Phase 2 so long as it has its own parking not impacting Phase 1. 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 fifteen percent (15%) of gross revenues in any one month), an adult or pornographic book or video store, flea market, a gasoline or service station (except gasoline may be sold in conjunction with a permitted convenience store in Phase 2); for an automotive maintenance or repair facility, warehouse, coin operated 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 a warehouse or 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:

13.2.2.1 the warehouse restriction shall not apply where the use is incidental to the Owner's or Lessee's normal use;

13.2.2.2 one (1) national franchise Jiffy-Lube or Midas Muffler type operation may be located on either Pad A, F, G, H, or I and one (1) national franchise Goodyear type tire store may be located on Pad A, H or I provided that the Consenting Owners approve the exterior architectural presentation of the buildings and further provided that no outside storage of tires or materials will be allowed and no overnight parking of cars will be allowed. If either operation is not a national franchise operation, the operator must be approved by the Consenting Owners.

13.2.2.3 One (1) un-manned, self-serve car wash may be located on Pad G, H or I provided that the Consenting Owners approve the exterior architectural presentation of the building and further provided that no outside storage of materials will be allowed and no overnight parking of cars will be allowed.

13.2.2.4 A Walgreens or Rite Aid type nationally operating store with a pharmacy may be placed on the combination of pads E, F, and G in place of any other use on those three Pads as shown on the Alternate Site Plan attached hereto as Exhibit B-1. If such a store is placed on this site, then the Alternate Site Plan shall become the Site Plan for all purposes hereunder. Such a store may have a height equal to the standard national plan of the store.

13.2.2.5 Pads A and B may be combined to provide for a permitted use in the area of Pad A but with a total square footage of building not to exceed ten thousand (10,000) square feet, but if used for a sit down restaurant the square footage cannot exceed six thousand (6,000) square feet.

13.2.2.6 Pads C and D may be combined to provide for a permitted use in the area of Pad D but with a total square footage not to exceed seven thousand (7,000) square feet, but if used for a sit down restaurant the square footage cannot exceed six thousand (6,000) square feet.

13.2.2.7 Pads G-1 and G-2 may be combined but the total building square footage on the combination shall not exceed that shown on the Site Plan

13.2.2.8 If Declarant sells the Shopping Center within five (5) years and Pad C has not been built upon, nothing may thereafter be built upon Pad C.

13.2.2.9 Phase 2 may be used for a bowling alley or a gym-health spa type use but those uses shall be limited to a combined total of thirty (30,000) square feet, and only if an additional access to and from Main street is obtained so as to be a primary access to Phase 2. Any such use shall be placed at the south end of Phase 2, with parking in front. Phase 2 in its entirety may also be used for high density residential or for professional offices without any additional access to Main Street.

13.2.2.10 The square footage building limitation noted on the Site Plan for Pads A through I may be increased by a maximum of ten percent (10%) in order to accommodate a specific Pad tenant. However, any increase in building square footage for a particular Pad must have a corresponding decrease in square footage on Pads A through F so that the total square footage of the buildings on Pads A through I does not exceed that shown on the Site Plan.

13.2.2.11 In the event that a building on Pad G-1, G-2, H or I is developed at a square footage less than that shown on the Site Plan, the remaining square footage may be added to buildings on the remaining Pads (G-1, G-2, H or I) but the buildings on Pads G-1 and G-2 cannot increase by more than the ten percent (10%) limitation in Section 13.2.2.10 and the buildings on Pads H and I cannot increase by more than twenty five percent (25%) including any increase due to Section 13.2.2.10.

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 for fifty (50) years and shall be thereafter automatically renewed for successive terms of ten (10) years unless terminated by a termination notice from Parcel Owners and first mortgage Lien Holders owning or having first mortgage (including trust deed) liens upon, more than seventy-five percent (75%) of the land area in the Shopping Center, which termination notice shall be executed by said Parcel Owners and mortgage holders and recorded in the records of the Tooele County Recorder at least one (1) year before the termination of the primary term or any renewal term.

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 consent of the Consenting Owners, and then only by written instrument duly executed and acknowledged by the required percentage of Consenting Owners as set forth in Section 15.7 below 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 first Lienholder unless the first 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 given in accordance with the particular provision requiring consent 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 sent 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. Except where another provision of this Declaration contain a different consent requirement by the Consenting Owners, consent of the Consenting Owners shall be deemed obtained when consent has been obtained from the following: (1) the Consenting Owner of the Associated Parcel; (ii) the Declarant so long as the Declarant is a Consenting Owner; and (iii) Consenting Owners, including the Consenting Owner of the Associated Parcel and Declarant if a Consenting Owner, of sixty (60%) percent of the building area built in the Shopping Center and qualifying to have a Consenting Owner.

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 Owners 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:

Declarant: Amsource Z-Value, LLC
 Attn: John R. Gaskill
 10 West 100 South, Suite 710
 Salt Lake City, Utah 84101

Associated: Associated Food Stores, Inc.
 Attn: Steven Miner
 1850 West 2100 South
 P.O. Box 30430
 Salt lake City, Utah 84130

with a copy to:

Kirton & McConkie
Attn: Denis R. Morrill
60 East South Temple, Suite 1800
Salt Lake City, Utah 84111-1004

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.

15.11.3 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.

15.12 Attorneys’ 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).

15.13 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.

15.14 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 Owners or other beneficiaries hereof.

15.15 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 or entity not specifically mentioned herein (such as Owner, Declarant, etc) unless otherwise expressly provided herein.

15.16 **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.

15.17 **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.

15.18 **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.

15.19 **Recordation:** This Declaration shall be recorded in the office of the Tooele County, Utah Recorder.

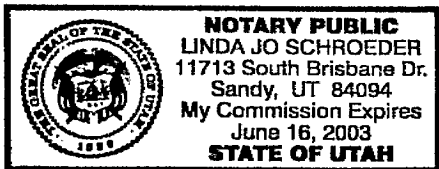
EXECUTED as of the day and year first above written.

AMSOURCE Z-VALUE, LLC,
a Utah limited liability company

By: [Signature]
Its: Kevin B Hawkins
Manager

STATE OF UTAH)
) :ss
COUNTY OF Salt Lake)

The foregoing instrument was acknowledged before me this 12th day of November 1999 by Kevin B Hawkins, as the Manager of Amsource Z-Value, LLC, a Utah limited liability company.



Linda Jo Schroeder
Notary Public
Residing at: 11713 S. Brisbane Dr.
Sandy, UT 84094

My Commission Expires:
6/16/2003

EXHIBIT "A"
to
Declaration

(Legal Description of Shopping Center)

Area 1:

Beginning at a point 33 feet South 00°15'56" East (deed South) and 555.29 feet South 89°43'06" West from the Northeast corner of Section 21, Township 3 South, Range 4 West, Salt Lake Base and Meridian, to a point on the Southerly line of a County Road, said point also being the future center line of First East Street; thence South 89°43'06" West 122.71 feet, along the South line of said County Road to the Northeast corner of that property conveyed to Albert R. Arellano by that certain Real Estate Contract recorded April 15, 1987 as Entry No. 008249 in Book 254 at page 36 to 40 of Official Records; thence South 00°15'56" East 218 feet (deed South 218 feet more or less), along the East line of said Arellano property to its Southeast corner; thence South 89°43'06" West 200 feet (deed West 200 feet more or less), along the South line of said Arellano property to its Southwest corner; thence North 00°15'56" West 218 feet (deed North 218 feet more or less), along the West line of said Arellano property to its Northwest corner, said point also being on the South line of said County Road; thence South 89°43'06" West 128.50 feet (deed West 161.5 feet more or less), along the South line of said County Road to the Northeast corner of the property conveyed to H.E.B. Auto Supply, Inc. by deed recorded July 13, 1992 as Entry No. 018738 in Book 334 at page 417 of Official Records; thence South 00°15'56" East 330 feet (deed South 330 feet more or less), along the East line of said H.E.B. property and the East line of the property conveyed to Mantes Realty Co. by deed recorded March 23, 1971 as Entry No. 293080 in Book 101 at page 440 of Official Records, to the Southeast corner of said Mantes Realty property; thence South 89°43'06" West 288.48 feet (West 229 feet more or less) to the Southwest corner of said Mantes Realty property, said point also being on the East line of State Highway; thence South 01°23'48" West 678.21 feet (deed South 685.99 feet more or less), along the East line of said State Highway to the Northwest corner of that property conveyed to Triple M Food & Fuel, Inc. by Deed recorded April 17, 1991 as Entry No. 040274 in Book 315 at page 301 of Official Records; thence North 89°38" East 275.16 feet along the North line of said Triple M property thence South 00°15'56" East 281 feet (deed South 281 feet more or less), along the East line of said Triple M property and that property conveyed to Glenn G. Oscarson, etux by deed recorded December 6, 1989 as Entry No. 030879 in Book 296 at page 767 of Official Records to the Southeast of said Oscarson property; thence South 89°38' West 20 feet (deed West 20 feet more or less), along the South line of said Oscarson property to the Northeast corner of that property conveyed to Bruce T. Steadman, etal by deed recorded December 6, 1989 as Entry No. 030882 in Book 296 at page 774 of Official Records; thence South 00°15'56" East 200 feet (deed South 200 more or less), along the East line of said Steadman property to its Southeast corner; said point also being on the North line of that property conveyed to Sandra K. Aquirre by Deed recorded May 14, 1990 as Entry No. 034153 in Book 303 at page 61 of Official Records; thence North 89°38" East 46.84 feet along the North line of said property to the Northeast Corner, said point also being on the West line of the property conveyed to Jerome H. Pearlman and Faith Pearlman, Trustees of the Jerome H. Pearlman Trust No. II recorded September 13, 1991 as Entry No. 043221 in Book 321 at page 569 to 570 of Official Records, thence North 01°03'32" East 4.51 feet to the Northeast corner of the said Pearlman property, thence South 89°59'34" East 437.30 feet

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along the North line of said Pearlman property to the extended line of First East Street, thence North 0°30'17" East 1486.31 feet along the future center line of said First East Street to the point of beginning.

Area 2:

Commencing 61 rods West and 2 rods South of the Northeast corner of Section 21, Township 3 South, Range 4 West, Salt Lake Base and Meridian; and running thence South 8 rods; thence West 18 rods; thence North 8 rods; thence East 18 rods to the point of beginning.

Area 3:

Beginning at a point 61 rods West and 10 rods South of the Northwest corner of said Section 21 and running thence South 12 rods; thence West, to the East right-of-way line of existing highway; thence North 90.6 feet along said right-of-way line to a point of tangency with a 2814.9 foot radius curve to the right; thence northerly 106 feet, more or less, along the arc of said curve to the Northerly boundary line of said parcel of land; thence East to the point of beginning.

Area 4:

Beginning at a point which is 33 feet South and 678 feet West from the Northeast Corner of Section 21, Township 3 South, Range 4 West, Salt Lake Meridian and extending thence South 218 feet; thence West 100 feet; thence North 218 feet; thence East 100 feet to the place of beginning.

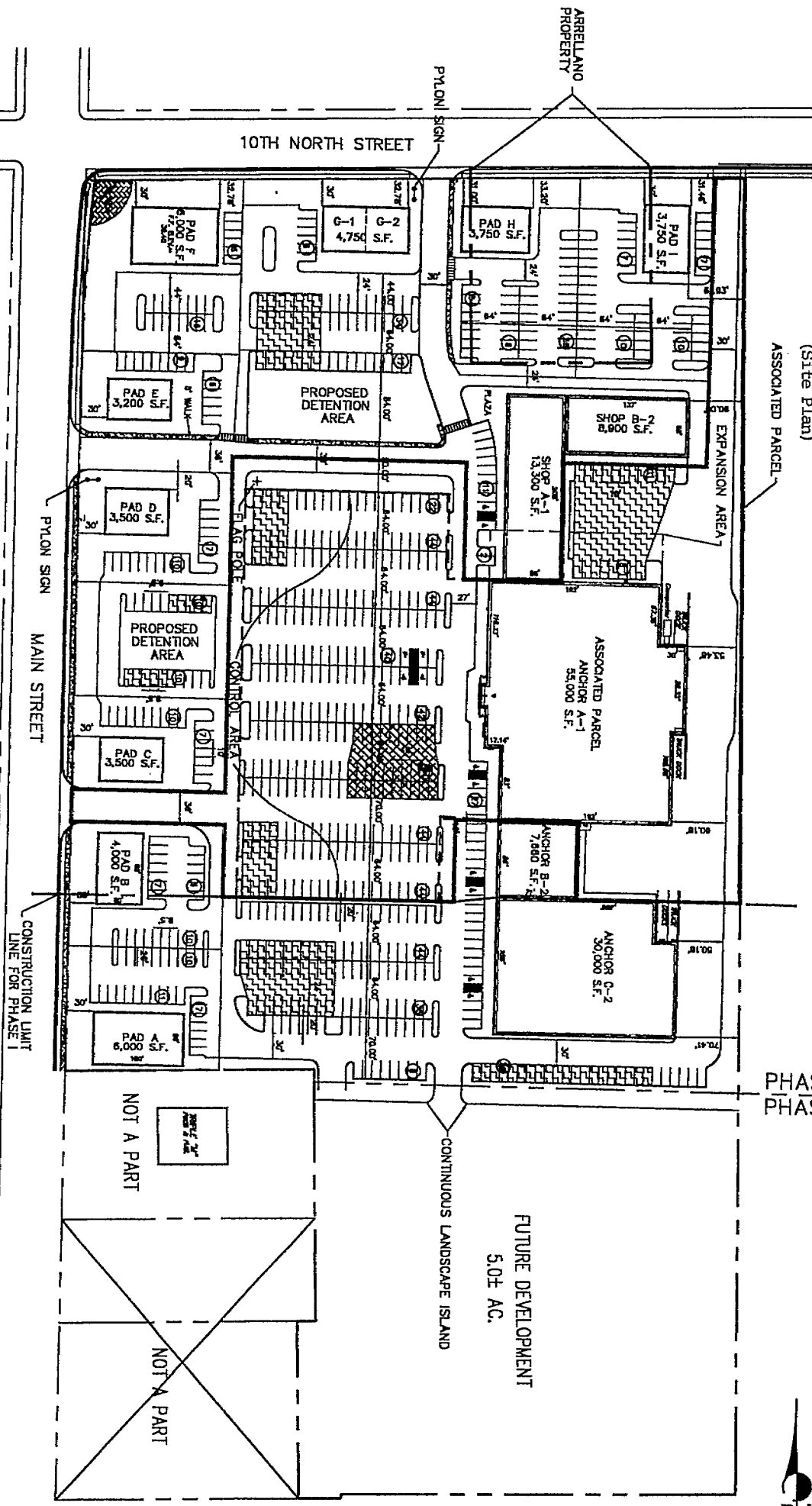
Also beginning at a point which is 33 feet South and 778 feet West from the Northeast corner of Section 21, Township 3 South, Range 4 West, Salt Lake Meridian, and extending thence South 218 feet; thence West 100 feet; thence North 218 feet; thence East 100 feet to the place of beginning.

EXHIBIT - B

EXHIBIT - B

(Site Plan)

ASSOCIATED PARCEL



PHASE I DATA

ANCHOR	BUILDING AREA -
ANCHOR A-1	54,000 S.F.
ANCHOR B-1	27,000 S.F.
ANCHOR B-2	27,000 S.F.
SHOPS A-1-1	13,500 S.F.
SHOPS A-1-2	13,500 S.F.
SHOPS B-1	8,000 S.F.
SHOPS B-2	8,000 S.F.
PAD A	4,000 S.F.
PAD B	3,500 S.F.
PAD C	3,500 S.F.
PAD D	3,500 S.F.
PAD E	3,200 S.F.
PAD F	3,200 S.F.
PAD G	4,750 S.F.
PAD H	3,750 S.F.
PAD I	3,750 S.F.
TOTAL	153,200 S.F.

PARKING STALL NOTE--

- THE SIZE OF THE PARKING STALLS IN FRONT OF ANCHOR'S WILL BE:
- (1) - THE FIRST NINE (9) STALLS FROM EAST TO WEST WILL BE 10' X 20'
 - (2) - THE BALANCE OF THE STALLS WILL BE 8'-6" X 20'

- Buildable Area; Pad not to exceed noted S.F.
- Seasonal Sales Area
- Employee parking

PROPOSED FLOOR PLAN
SCALE: 1" = 80'
ASFX-82A

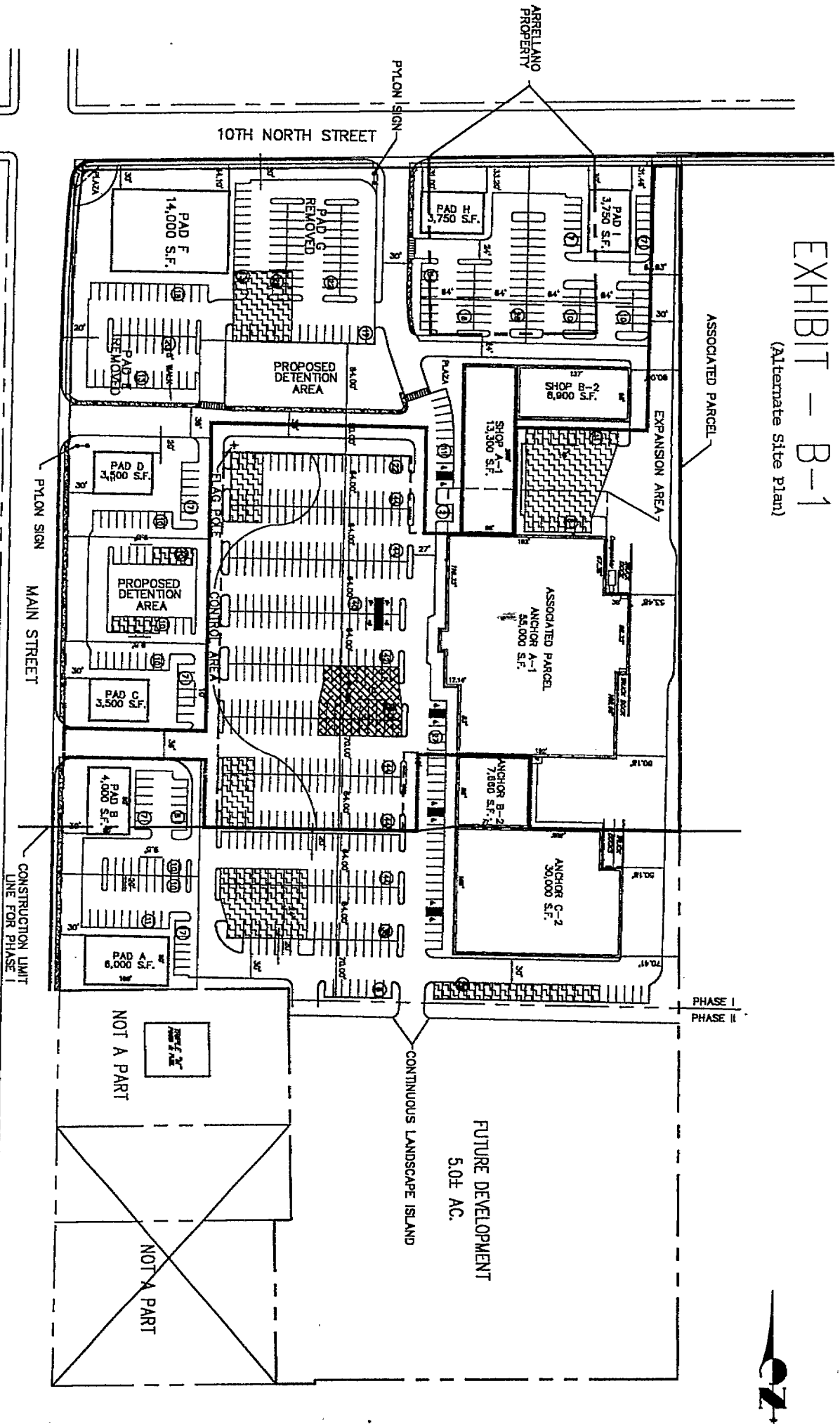
TOOELE TOWNE CENTER
10TH NORTH AND MAIN STREET
TOOELE, UTAH

Date	
Revision	

Amsource
10 West 100 South
Suite 710
Salt Lake City, Utah 84101
801-684-7000
801-632-2108 fax

EXHIBIT - B-1

EXHIBIT - B-1 (Alternate Site Plan)



PHASE I DATA

ANCHOR	AREA	SQ. FT.
ANCHOR A-1	BUILDING AREA	55,000
ANCHOR B-2	BUILDING AREA	7,800
ANCHOR C-2	BUILDING AREA	30,000
SHOPS A-1	BUILDING AREA	13,300
SHOPS B-2	BUILDING AREA	8,900
PAD A	PARKING	6,000
PAD B	PARKING	4,000
PAD C	PARKING	3,500
PAD D	PARKING	3,500
PAD E	PARKING	3,500
PAD F	PARKING	14,000
PAD G	PARKING	3,750
PAD H	PARKING	3,750
PAD I	PARKING	14,000
TOTAL		152,200

PARKING STALL NOTE -

THE SIZE OF THE PARKING STALLS IN FRONT OF UNITS WILL BE:

(1) - THE FIRST NINE (9) STALLS FROM EAST TO WEST WILL BE 10' X 20'

(2) - THE BALANCE OF THE STALLS WILL BE 8' X 20'

- Buildable Area Pod not to exceed noted S.F.
- Seasonal Sales Area
- Employee parking

PROPOSED FLOOR PLAN
SCALE: 1" = 50'
ASPTX-82

TOOELE TOWNE CENTER
10TH NORTH AND MAIN STREET
TOOELE, UTAH

Date	
Revision	

Amsource
 10 West 100 South
 Suite 710
 Salt Lake City, Utah 84101
 801-984-7000
 801-632-2106 fax