

2391096

CONSTRUCTION, OPERATION AND
RECIPROCAL EASEMENT AGREEMENT
(Fashion Place)
(Murray, Utah)

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JUN 14 1971

WESTERN STATES TITLE

Recorded at Request of

at [Signature] P.O. Box 9146, Salt Lake City, Utah

Dep. Date

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CONSTRUCTION, OPERATION AND
RECIPROCAL EASEMENT AGREEMENT

(Fashion Place - Murray, Utah)

THIS CONSTRUCTION, OPERATION AND RECIPROCAL EASEMENT
AGREEMENT, made and entered into as of this 14th day of
June, 1977, by and between FASHION PLACE ASSOCIATES,
a limited partnership in which Ernest W. Hahn, Inc., a California
corporation, is the general partner, hereinafter referred to as
"Developer;" SEARS, ROEBUCK AND CO., a New York corporation,
hereinafter referred to as "Sears;" and AUERBACH COMPANY, a Utah
corporation, hereinafter referred to as "Auerbach."

W I T N E S S E T H:

RECITALS

WHEREAS, Developer is the owner and ground lessee of
certain tracts of land located in the County of Salt Lake, State
of Utah, being described in Part I of Exhibit A attached hereto,
and by this reference made a part hereof, and shown upon the plot
plan attached hereto as Exhibit B, and by this reference made a
part hereof, said tracts of land being collectively hereinafter
referred to as the "Developer Tract;" and

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

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

WHEREAS, the parties hereto desire to make an integrated use
of the tracts of land owned or leased by each and to develop and improve

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the premises designated as the Developer Tract, the Auerbach tract, and the Sears Tract (said tracts being hereinafter collectively referred to as the "Shopping Center Site") as a regional shopping center, hereinafter referred to as the "Center" or "Shopping Center" of the so-called "Enclosed Mall" type; and

WHEREAS, Developer desires to construct and Auerbach desires thereafter to operate, or cause to be operated, as a part of the Center a retail facility, as the same shall exist from time to time, in a building hereinafter called "Auerbach Store," to be located on the Auerbach Tract, which is sometimes hereinafter called the "Auerbach Store Site" and is shown on Exhibit B; and

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

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

WHEREAS, Developer, Auerbach and Sears each desire to grant to the other Parties to this REA certain easements in, to,

over and across the Developer Tract, the Auerbach Tract, and the Sears Tract, respectively; and

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

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

ARTICLE I

DEFINITIONS

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

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

Such Common Area shall include, but not be limited to, utility lines and systems, "Automobile Parking Area" (as hereinafter defined), access roads, driveways, sidewalks, malls, including, from and after completion of its construction, the Enclosed Mall, pedestrian walkways and stairways, emergency exit corridors between fire resistant walls required by building codes and not contained within any area exclusively appropriated for the use of any single Occupant, rest rooms, if any, not located within the premises of any Occupant, and in addition, a Common Area maintenance office and Common Area equipment sheds to which free access may not be allowed

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except to authorized persons, and all improvements thereon, hereinafter sometimes referred to as common improvements, or Common Area improvements, interchangeably. The Common Area shall include, but not be limited to, all items of Common Area shown on Exhibit B, and shall also include sidewalks and curbs and landscaping and related facilities adjacent to buildings constructed by a Party from and after completion of construction thereof.

The Common Area shall not include truck parking, turn-around and dock areas, or the depressed portions of truck tunnels or ramps serving Floor Area (as hereinafter defined), as shown on Exhibit B.

B. Termination Date. The term "Termination Date" refers to the date on which this REA shall terminate pursuant to the terms and provisions of Article XXVII hereof.

C. Common Area Maintenance Cost. The term "Common Area Maintenance Cost" refers to and means the total of all moneys paid out during an Accounting Period (as hereinafter defined) for reasonable costs and expenses directly relating to the maintenance, repair and management of the Common Area (which term, for the purposes of this Article I, C only, shall include any employee parking areas located upon land outside the Shopping Center Site which may be from time to time provided, with the written approval of Developer, Auerbach and Sears). Common Area Maintenance Cost shall exclude any Enclosed Mall Operation and Maintenance expense, but shall include maintenance, replacement and reconstruction work as shall be required to preserve the utility of the Common Area in accordance with the provisions of Article X.

Common Area Maintenance Cost shall further include, but not be limited to, all rental charges for equipment and cost of small tools and supplies; all costs of policing, security protection, traffic direction, control and regulations of Automobile Parking.

Area; all cost of cleaning and removal of ice, snow, rubbish, dirt and debris from the Common Area; the cost of landscape maintenance and supplies incident thereto; all charges for utilities services utilized in connection therewith, together with all costs of maintaining lighting fixtures in the Automobile Parking Area, and all premiums for public liability and property damage insurance carried by Operator or Operator's Nominee (as hereinafter defined) covering the Common Area.

No capital expenditures in any one calendar year shall be made without prior written approval of all Parties participating therein; provided, however, there may be expended for replacement of capital items in any one calendar year sums not to exceed an aggregate of \$10,000.00 without prior approval. All work to be performed shall be in accordance with the provisions of Article X hereof.

In lieu of any other charge for indirect costs (including but not limited to the cost of the operation of any office, accounting services and other services not directly involved with maintenance and operation), Common Area Maintenance Cost shall include an allowance to Operator for Operator's supervision of the Common Area equal to three percent (3%) of the total of the aforementioned cost and expense of work performed by Operator, or under its direct supervision for each accounting Period; provided that if all or any part of the activities or work involved in the operation, maintenance and repair of the Common Area or its equipment is provided or performed on behalf of Operator by any other Person and not by Operator, the amount paid by Operator to such other Person for such activities or work may be included in Common Area Maintenance Cost (notwithstanding that such amount may include reasonable overhead and/or profit to such other Person), but only to the extent that such amount so paid to such other Person shall be for items of cost and expense which would be permitted pursuant to this Article I, C with respect to such activities or work if performed by Operator with its own employees, plus a reasonable fee to such Person;

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and Operator shall note on its statements of costs referred to in Article X, D hereof, that such activities and work were not performed by Operator with its own employees. If an Operator's Nominee is nominated by Operator, Operator shall not be entitled to said three percent (3%) allowance.

Any cost of capital items which may be incurred shall be excluded from computation of the supervision percentage to be paid to Operator or to Operator's Nominee, as the case may be. Nothing in this Article I, C contained shall be deemed to preclude any additional or different charges being made pursuant to any lease between Developer and any Occupant.

D. Accounting Period. The term "Accounting Period" refers to any period commencing January 1 and ending on the next following December 31, except that the first Accounting Period shall commence as to each Party, respectively, as to its Tract, on the date such Party opens for business in its main Store building (but in no event later than the date required for such opening pursuant to Article VII B hereof), and shall end on and include the next following December 31, and as respects each Party hereto, its last Accounting Period shall end on and include Termination Date, or such earlier date as may be appropriate pursuant to Article X, F of this REA, as respects a Party or Parties invoking the provisions of said Article X, F. Any portion or portions of the Common Area Maintenance Cost relating to a period of time only part of which is included within the first Accounting Period or the Last Accounting Period of a Party hereto shall be prorated on a daily basis as respects such Party.

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

1. The actual number of square feet of floor space in any building located on the Shopping Center Site exclusively appropriated for use by an Occupant or Developer, whether or not actually occupied,

including basement space and subterranean areas, and balcony and mezzanine space within the exterior facade (or Enclosed Mall facade) or line of the exterior walls (including basement walls), except party and interior common walls as to which the center thereof instead of the exterior faces thereof shall be used, of all floors; plus

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2. The actual number of square feet of any outdoor area appropriated for use by an Occupant to display and/or sell merchandise; provided, however, that the term "Floor Area" shall not include the following:

- (a) The second level of any multi-deck stock areas;
- (b) Physically separated areas used exclusively to house mechanical, electrical and telephone equipment, which equipment is a part of building systems;
- (c) Any Center management office;
- (d) Merchants Association office;
- (e) A Community Hall;

provided that the sum of (c), (d) and (e) shall not exceed an aggregate of 3,000 square feet;

- (f) Any employee cafeteria;
- (g) A United States Post Office not exceed 2,000 square feet;

(h) Emergency exit corridors between fire resistant walls required by building codes and not contained within any area exclusively appropriated for the use of any single Occupant;

(i) All truck loading areas, truck tunnels and truck parking, turn-around and dock areas and ramps and approaches to such truck loading areas, truck tunnels and truck parking, turn-around and dock areas;

(j) Gas island areas under canopies.

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

A determination by the Project Architect (as hereinafter defined) shall be conclusive as to the number of square feet of Floor Area in each instance in which a determination thereof shall be required under the provisions of this REA. Notwithstanding anything to the contrary contained in this REA, during the period of any damage, destruction, razing, rebuilding, repairing, replacement or reconstruction to, on or of any building in the Center, the Floor Area of such building shall be deemed to be the same as the Floor Area of such building immediately prior to such period, and upon the completion of the rebuilding, repairing, replacement or reconstruction of such building, the Project Architect shall make a new determination of Floor Area for such building as in the foregoing provisions of this Article I, E provided. If any Party shall dispute any determination of Floor Area, the matter shall be determined by arbitration pursuant to Article XXIII hereof.

F. TBA. The term "TBA" shall refer to the building located on the Sears Tract, designated on Exhibit B as the "TBA," and intended initially to be used as a department for the sale of automobile tires, batteries and accessories, motor vehicle fuel products, servicing and mechanical repair of motor vehicles (exclusive of body and fender repairs) and merchandise and services related thereto. Said department shall be operated for such purposes, if at all, under the name of Sears for five (5) years after the date of opening for business of the Sears Store, but thereafter may be so operated, if at all, for any purpose permitted under this REA and under any trade name which Sears may elect to utilize.

G. Occupant. The term "Occupant" refers to Auerbach, Sears and to any Person from time to time entitled to the use and occupancy of Floor Area in the Center under a lease (as hereinafter defined) whereunder each Occupant acquires his or its status as such.

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

I. Project Architect. The term "Project Architect" refers to LEACH, CLEVELAND & ASSOCIATES, or such other architect or architects as may be from time to time designated by any two of the three Parties hereto, one of which must in all events be the Developer, for the planning of the Common Area improvement work.

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

K. Allocable Share. The term "Allocable Share" refers to that part of Common Area Maintenance Cost allocable to each respective Party to this REA for each Accounting Period, to be computed by multiplying the Common Area Maintenance Cost by a fraction, the numerator of which shall be the maximum allowable Floor Area as set forth in Article VIII A hereof located on each respective Tract, and the denominator of which shall be the maximum allowable total Floor Area as determined pursuant to Article VIII A hereof on the Tracts of the Parties.

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

M. Operator. The term "Operator" as used herein shall mean the Party or other Person(s) responsible for the maintenance of the Common Area, or any part thereof, under the provisions of Article X.

N. Tract/Tracts. The term "Tract" or "Tracts" refers to the Developer Tract and/or the Auerbach Tract and/or the Sears Tract, as the context may require.

O. Store/Stores. The term "Store" or "Stores" refers to the Auerbach Store and/or the Sears Store, as the context may require.

P. Enclosed Mall. The term "Enclosed Mall" refers to the portions of the malls located in the Center which are constructed so that climatic control may be provided therein, which are designated on Exhibit B.

Q. Enclosed Mall Operation and Maintenance Expense.

The term "Enclosed Mall Operation and Maintenance Expense" refers to an amount equal to the actual annual cost paid out in connection with the Enclosed Mall for utility expenses for lighting; operation of air conditioning and heating equipment; premiums on fire, extended coverage, public liability, property damage, vandalism and plate glass insurance for the Enclosed Mall improvements and equipment; all costs of policing, security protection, control and regulation of the Enclosed Mall; maintenance, repair and replacement of mechanical equipment, including automatic door openers (except automatic doors opening to the Stores or Mall Stores), lighting fixtures (including replacement of tubes and bulbs), air conditioning and heating equipment; fire sprinkler system; repair, maintenance and cleaning of the floor and any floor covering of the Enclosed Mall; repair, maintenance and cleaning of the Enclosed Mall structure, including ceiling, roof, skylights, windows, and all other items of expense which would not be incurred if the Mall were not enclosed. The term "Enclosed Mall Operation and Maintenance Expense" shall not include any item of expense not heretofore enumerated. Developer may, however, cause any or all services to be provided by an independent contractor or contractors. Nothing herein contained shall be deemed to limit Developer as to adding additional cost factors in any Lease, or other side written agreements, which it may have with any Occupant.

R. Mall Stores. The term "Mall Stores" refers to the buildings located on the Developer Tract and abutting on the Enclosed Mall.

S. Non-Mall Stores. The term "Non-Mall Stores" refers to the buildings located on the Developer Tract which do not abut on the Enclosed Mall.

T. Automobile Parking Area. All Common Area used for the parking of motor vehicles (including multiple decked parking), incidental and interior roadways, perimeter sidewalks, walkways, curbs and landscaping within or adjacent to areas used for parking of motor vehicles, together with all improvements which at any time are erected thereon, subject to the provisions of Article II shall be referred to as "Automobile Parking Area".

U. Party. The term "Party" shall mean each of the Persons between whom this REA has been entered into or any successor Person acquiring any interest in or to any portion of the Shopping Center, except as is otherwise provided in subparagraphs 1, 2, 3 and 4 of this paragraph U of Article I.

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

1. The transferring Party retains the entire possessory interest in the Tract or portions thereof so conveyed by way of a deed of trust or mortgage.
2. The transfer or conveyance is followed immediately by a leaseback of the same Tract or portion thereof by such party or an affiliate thereof (a sale

and leaseback), in which event only the lessee thereof shall have the status of Party so long as the lease in question has not expired or been terminated.

3. The transfer or conveyance is by way of lease, other than as provided in 2 above.

4. The successor acquires by such transfer or conveyance:

- (a) Less than all of a Party's Tract or Tracts; or
- (b) An undivided interest, such as that of joint tenant, or tenant in common, in such Party's Tract or Tracts.

In the circumstances described in this subparagraph 4, the Persons holding all of the interests in such Tract or Tracts are to be jointly considered a single Party. In order that other Parties shall not be required with respect to said Tract or Tracts to obtain the action or agreement of, or to proceed against, more than one Person in carrying out or enforcing the terms, covenants, provisions and conditions of this REA, then in the circumstances described in subparagraphs 4(a) and 4(b) above, the Persons holding the interest of the Party in and to not less than seventy percent (70%) of said Tract or Tracts in question shall designate one of their number as such Party's Agent to act on behalf of all such Persons. If any Tract or Tracts

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is owned by Persons owning an undivided interest therein under any form of joint or common ownership, then in the determination of such seventy percent (70%) in interest, each such owner of such undivided interest shall be deemed to represent a percentage in interest of the whole of such ownership equal to his fractional interest in such Tract or Tracts. Any interest owned by any Person who is a minor or is otherwise suffering under any legal disability shall be disregarded in the making of such designation unless there is at such time a duly appointed guardian or other legal representative fully empowered to act on behalf of such Person.

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

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any time may make such designation of the Party's Agent:

(i) If at any time after any designation of a Party's Agent, in accordance with the provisions of this subparagraph 4, there shall for any reason be no duly designated Party's Agent of whose appointment all other Parties have been notified as herein provided; or

(ii) If a Party's Agent has not been so designated and such notice has not been given thirty (30) days after any other Party shall become aware of any change in the ownership of any portion of the Shopping Center; or

(iii) If the designation of such Party's Agent earlier than the expiration of such thirty (30) day period shall be reasonably necessary to enable any other Party to comply with any of its obligations under this REA or to take any other action which may be necessary to carry out the purposes of this REA.

The exercise of any powers and rights of a Party under this REA by such Party's Agent shall be binding upon all Persons having an interest in any such Tract or Tracts owned by such Party. Such Party's Agent shall, so long as such designation remains in effect, be a Party hereunder and the remaining Persons owning such Tract or

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Tracts shall be deemed not to be Parties. The other Parties shall have the right to deal with and rely upon the acts or omissions of such Party's Agent in the performance of this REA; but such designation shall not, however, relieve any Person from the obligations created by this REA.

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

Upon any transfer or conveyance, which transfer or conveyance would create a new Party, pursuant to the terms hereof, then the powers, rights and interest herein conferred upon such new Party with respect to the Tract so conveyed, shall be deemed assigned, transferred or conveyed to such transferee or grantee, and the obligations herein conferred upon such new Party shall be deemed assumed by such transferee or grantee with respect to the Tract so acquired as respects all such obligations to be performed from and after the date of such assignment, transfer or conveyance and any matters disclosed by the estoppel certificates referred to in Article XXIX hereof.

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V. Developer Improvements. The term "Developer Improvements" refers to the Enclosed Mall, the Mall Stores and the Non-Mall Stores.

W. Parking Index. The term "parking index" refers to the relationship of the number of marked parking spaces in the Automobile Parking Area to each 1,000 square feet of Floor Area.

ARTICLE II

EASEMENTS

A. Non-exclusive Easements for Automobile Parking and Incidental Uses

Each Party hereby reserves to itself (i) the right to grant easements to Permittees over the Common Area of its respective Tract (a) for ingress to and egress from the respective Tract, (b) for the passage and parking of vehicles and passage and accommodation of pedestrians on such respective portions of the Common Area of each such Tract as are set aside, maintained and authorized for such uses pursuant to this REA, and (c) for the doing of such other things as are authorized or required to be done on the Common Area pursuant to this REA; and (ii) the right to grant to other Parties the right to grant such easements over the Common Area of its said Tract.

Each Party does hereby also grant to the other Parties hereto the right to grant such easements to Permittees over the Common Area of its said Tract.

Each Party does hereby also grant to the other Parties hereto for their respective uses and for the use of their respective Permittees in common with all others entitled to use the same, easements in, to, and over the Common Area of its said Tract. Each Party hereby reserves the right to eject or cause the ejection from the Common Area of its Tract of any Person or Persons not authorized, empowered or privileged to use the Common Area of such Tract.

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Notwithstanding the foregoing, each Party reserves the right to close off the Common Area of its Tract for such reasonable period or periods of time as may be legally necessary to prevent the acquisition of prescriptive rights by anyone; provided, however, that prior to closing off any portion of the Common Area as herein provided, such Party shall give notice to each other Party of its intention so to do and shall coordinate such closing with all other Parties so that no unreasonable interference with the operation of the Shopping Center shall occur. Notwithstanding the reservation herein provided for, and the right to grant easements, it is expressly understood and agreed that such reservation and the right to grant easements is limited to non-exclusive use of the surface, and exclusive or nonexclusive uses under the surface, for passage of utilities. No Floor Area shall be erected and constructed within any part of the Common Area of any such Tract except as shall have been approved by the Parties, or as shown on Exhibit B.

B. Utilities

Each Party hereby grants to the other, respectively, non-exclusive easements in, to, over, under and across its respective Tract for the installation, operation, flow and passage, use, maintenance, repair, relocation and removal of sewers (including underground storm sewers), water and gas mains, electrical power lines, telephone lines and other utility lines, all of such sewers, mains

and lines ("utility facilities") to be underground, serving the respective Tracts of the Parties.

Each easement of the character described in this Article II B shall, as to the location thereof, be subject to the approval of the Party whose Tract such easement traverses.

C. Construction Easements

Each Party with respect to its Tract hereby grants to all other Parties nonexclusive easements in, to, over, under and across the Common Area of each such Tract for the purpose of the development and construction thereof, pursuant to the provisions of Articles V, VI and VII of this REA, and for the construction, reconstruction, erection, removal and maintenance on, to, over, under and across each Tract, to a maximum distance of 14 feet, of footings, supports, canopies, flag poles, roof and building overhangs, awnings, alarm bells, signs, lights and lighting devices and other similar appurtenances ("construction elements") to the building of any Party, as the case may be appropriate, as are shown in the working drawings for such building, approved by the Parties pursuant to the provisions of Article III of this REA, or pursuant to any other written agreement hereafter executed between such Parties. Each Party covenants and agrees, respectively, that its exercise of such easements shall not result in damage or injury to the buildings or other improvements of any other Party, and shall not interfere with the business operation conducted by any other Party in the Center. The exercise of the rights referred to

in this Article II C shall be in conformity with Article III of this REA.

D. Indemnity

The Parties hereto each severally covenant and agree to indemnify and hold harmless each other and the Tract of any other Party against liability, loss, damage, costs or expenses, including attorneys' fees, on account of claims of lien of laborers or materialmen, or others, for work performed or supplies furnished in connection with the Developer Improvements, or for the Auerbach or Sears Stores, respectively, or Common Area work performed by any Party on its Tract, and in the event any Tract shall become subject to any such lien on account of work performed or supplies furnished in connection with any other Tract or Tracts, then the Owner or Owners of such Tract or Tracts, as may be appropriate, shall at the request of the Party owning the Tract which is subject to such lien, promptly cause such lien to be released and discharged of record either by paying the indebtedness which gave rise to such lien, or posting such bond or other security as shall be required by law to obtain such release and discharge.

E. Dominant and Servient Estates

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

Any easement granted pursuant to the provisions of this Article II may be abandoned or terminated by execution of an agreement so terminating or abandoning the same, by the owners of the dominant and servient estates.

ARTICLE III

EXERCISE OF EASEMENTS

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

1. The grantee of any of the utility easements referred to in Article II B shall be responsible as between the grantor and the grantee thereof for the installation, maintenance and repair of all sewers, pipes and conduits, mains and lines and related equipment installed pursuant to such grant. Any such maintenance and repair shall be performed only after two week's notice to the grantor of the grantee's intention to do such work, except in the case of emergency, and any such work shall be done at grantee's sole cost and expense and in such manner as to cause as little disturbance in the use of the Common Area as may be practicable under the circumstances.

2. At any time the grantor of any of the utility easements granted pursuant to the said Article II B shall have the right to relocate on the land of the grantor any such sewers, pipes and conduits and related equipment then located on the land of the grantor, provided that such relocation shall be performed only after

thirty (30) days' notice of the grantor's intention to so relocate shall be given to the grantee and such relocation (i) shall not interfere or diminish the utility services to the grantee, (ii) shall not reduce or unreasonably impair the usefulness or function of such utility, and (iii) shall be performed at the sole cost and expense of grantor.

3. The easements granted by Article II A hereof shall terminate and expire on Termination Date.

4. The easements granted by Article II B shall be perpetual.

5. The easements granted by Article II C shall remain in existence so long as the Stores (or Mall Stores or Non-Mall Stores) of the grantee shall be in existence in the Center, except to the extent that the same physically relate to the buildings and improvements of the grantor of any such easements, in which event such easements shall remain in existence only so long as the Stores (or Mall Stores or Non-Mall Stores) of both the grantor and the grantee of such easements shall be in existence in the Center. Interruption in service of any such easements shall be permitted as a result of any cause or event referred to in Article XV A hereof.

ARTICLE IV

PLANS

A. The Project Architect shall prepare the improvement plans, including the general architectural concept of the Shopping Center, for the integrated development of all Common Area of the Shopping Center. Developer and Sears shall be consulted frequently during the course of the preparation of such improvement plans, and if either Developer or Sears has a preference as to a particular type of installation, it shall furnish to the Project Architect detailed drawings of such installation or portion thereof for incorporation in the improvement plans. From time to time during the course of the preparation of such plans, the Project Architect shall cause progressive working drawings of such plans to be submitted to Developer and Sears for review and recommendation.

Such improvement plans shall include:

1. Schematic improvement plans which shall within thirty (30) days following the execution of this REA be submitted by the Project Architect to Developer and Sears for their review and approval. Such schematic improvement plans shall include elevations, perspective renderings reflecting design concepts, layout of parking and other Common Area improvements.
2. Preliminary improvement plans which shall within sixty (60) days following the approval of the schematic improvement plans by Developer and Sears, be submitted to Developer and Sears by the Project Architect for their review and approval. Such preliminary improvements plans shall

be developed from Exhibit B and the approved schematic improvement plans and shall conform to said schematic improvement plans and to the requirements of this REA and shall include, without limitation:

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

(b) The location of all facilities for common use where the fixing of such location is reasonably possible, and if precise location cannot be shown, specifications for such locations shall be set forth.

(c) A comprehensive rough grading plan for the entire Shopping Center, including the size and dimensions of all facilities for common use; storm sewers,

including area drains, surface drainage installations and taps for building connections, and sanitary sewers for common use, including taps for building connections.

(d) A composite parking layout for the entire Shopping Center, including paving, striping, bumpers, curbs, location of electroliers and lighting systems, designating areas which may be separately illuminated from time to time at the request of any Party.

(e) A composite landscaping plan as prepared by a landscape architect, specifying overall plant materials and planting.

(f) The conditions, standards and architectural treatment under which such improvements shall be located, constructed or installed. Such conditions, standards or architectural treatment shall not be less than the minimum requirements of the County of Salt Lake, or other governmental agency having jurisdiction of the performance of the work in the Shopping Center, and shall provide that sewers, drainage, utility lines and conduits shall not be constructed or maintained above the ground level of the Common Area.

(g) The improvement plans shall not include any Floor Area but shall designate the general location of

all Floor Area and other areas not included within the definition of "Floor Area" or "Common Area."

(h) Improvement of adjacent streets as required by governmental agencies and other off-site improvements.

(i) Design and working drawings for storm sewers and area drains, including extensions thereof off the Shopping Center Site, sanitary sewers, water, telephone, gas, electric power and other utility lines, conduits and systems, including taps for commercial connections within five (5) feet of the building face, may be prepared by the utility companies responsible for such installations or the Project Architect or other architects or engineers, and shall be subject to the approval in writing by Developer and Sears.

(j) The location and extent of perimeter sidewalks.

If either Developer or Sears does not specify any objection or make a proposal that would add to or change the schematic or preliminary improvement plans to the Project Architect, with a copy to the other, within thirty (30) days from such date of submission, such plans shall be deemed to be satisfactory for further development. If there is such objection or proposal from either Developer or Sears, the Project Architect shall call a meeting of Developer and Sears to be held within forty-five (45) days from such date of submission to resolve and adjust any objection or proposal with reference to such improvement plans. All objections or proposals shall be considered at such meeting with a view of developing such improvement plans in their final form at such meeting. If at such meeting Developer and Sears are unable to agree unanimously, all matters of disagreement shall be resolved by the arbitration procedures of Article XXIII.

Within sixty (60) days from the date of approval of the preliminary improvement plans, the Project Architect shall submit

final improvement plans to Developer and Sears for review and approval; such final improvement plans shall be developed from the approved preliminary improvement plans.

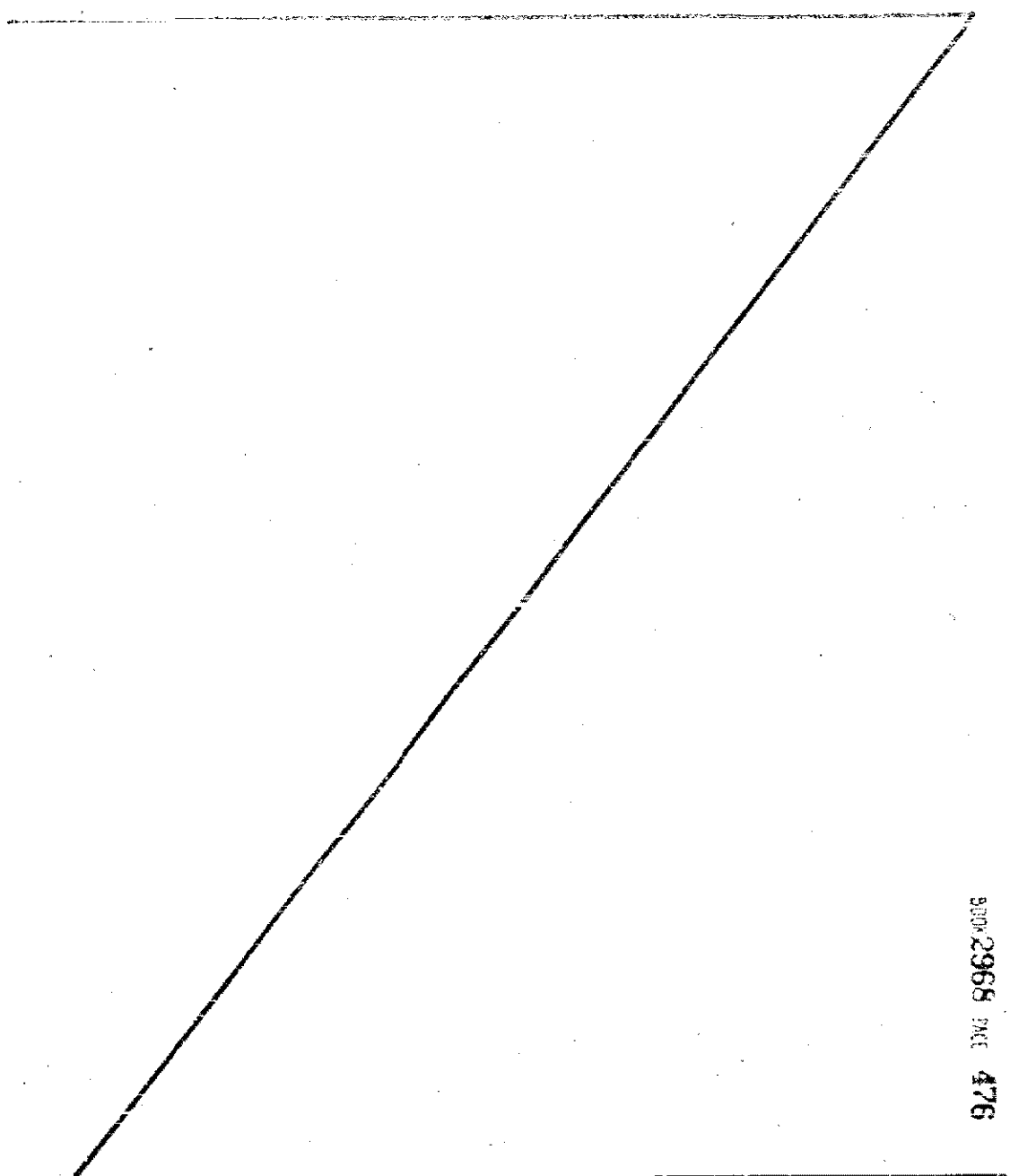
If Developer or Sears does not specify any objection or make a proposal that would add to or change the final improvement plans to the Project Architect, with a copy to the other, within thirty (30) days from such date of submission, such plans shall be deemed to be satisfactory for final development. If there is such objection or proposal from either Developer or Sears, the Project Architect shall call a meeting of Developer and Sears to be held within forty-five (45) days from such date of submission, to resolve and adjust any objections or proposal with reference to such final improvement plans. All objections or proposals shall be considered at such meeting with a view to developing the final improvements plans in their final form at such meeting. If at such meeting Developer and Sears are unable to agree unanimously, all matters of disagreement shall be resolved by the arbitration procedures of Article XXVIII. To the extent possible, all work shall continue during any period of arbitration.

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

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

Changes may be made in approved improvement plans only by the agreement in writing of Developer and Sears.

All improvement plans shall be stamped "approved," dated, and certified by the Project Architect and maintained by it in a



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safe and convenient place. In the event of designation of another Project Architect, all improvement plans and other records relating thereto shall be delivered to the new Project Architect at the time of such designation.

C. In the preparation of all improvement plans, the following general design data, without limitation, shall be followed, as minimums, unless governmental specifications for such work establish higher standards:

1. Sewer and other utility lines, conduits or systems shall not be constructed or maintained above the ground level of the Shopping Center Site unless such installations are within enclosed structures approved by the Parties, and shall conform with requirements of the County of Salt Lake, City of Murray, or other applicable governmental or private agency having jurisdiction of the work.

2. Street improvements shown on Exhibit B respecting future and existing streets and roads adjacent to the Shopping Center shall be made in accordance with the requirements of the County of Salt Lake, or the City of Murray, or other governmental agency having jurisdiction of the same.

3. Lighting for Automobile Parking Area shall be provided by fixtures of such type as the Parties shall approve, with area controls with electric time switches

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on a 7-day program, sufficient to produce a minimum of $3/4$ of 1 foot candle of lighting and an average of $1-1/2$ foot candle of lighting, all measured thirty (30) inches above the adjacent ground or such other minimum foot candle of lighting as may be mutually approved by Developer and Sears.

4. The maximum slope in parking areas (which shall not be interrupted with retaining walls or embankments forming a break in grade, except as shown on Exhibit B hereof) shall not exceed three percent (3%) unless otherwise shown on the approved improvement plans.

5. All sidewalks and unenclosed malls shall be of concrete or other approved materials, and the surface of the parking areas and access roads shall be paved with concrete or by installing a suitable base, surfaced with a bituminous asphaltic wearing surface.

6. The surface of that portion of the Enclosed Mall devoted to pedestrian traffic shall be installed in a continuous plane without steps. The maximum slope in such surface shall not exceed one-half ($1/2$) of one percent (1%), unless otherwise shown on the approved improvement plans.

7. All fire protective systems shall be installed in accordance with the requirements of the National or Pacific Boards of Fire Underwriters, and any more stringent requirements of inspection firms used by the respective Parties, and any additional requirements of local authorities having jurisdiction over such installation.

8. The heating, ventilating and cooling system of the Enclosed Mall shall be constructed so as to operate and be capable of maintaining an inside dry bulb temperature

of 72° Fahrenheit for heating with outside temperatures at 5° Fahrenheit dry bulb, and the cooling system shall be capable of maintaining 72° Fahrenheit dry bulb and 50% humidity inside conditions with outside conditions of 97° Fahrenheit dry bulb and 67° Fahrenheit wet bulb. The entire system shall be automatically controlled.

9. The quality of (i) the construction, (ii) the construction components, (iii) the decorative elements (including landscaping and irrigation systems for the landscaping) and (iv) the furnishings, and the general architectural character and general design (including, but not by way of limitation, landscaping and decorative elements), the materials selection, the decor and the treatment values, approaches and standards of the Mall shall be comparable, at minimum, to the qualities, values, approaches and standards (as of the date hereof) of the Enclosed Mall at Montclair Plaza Shopping Center located in Montclair, California, with appropriate modifications because of differing weather conditions expected in Murray, Utah.

10. The finished surface of the Mall shall be established at the same elevation as the first floor of the adjoining retail store building at all points adjoining such buildings.

D. In order that the Shopping Center shall be designed and controlled so as to present an architectural conformity as to each Tract as to the whole, Developer, Auerbach and Sears shall within sixty (60) days after the execution of this REA, cause to be delivered to the Project Architect and to each other Party hereto, one copy of their proposed plans as respects the exterior design of

their respective Stores or improvements, and agrees to cause their respective architects thereafter to work with the Project Architect so that the exterior of the Stores and the exterior of the Mall Stores will present an harmonious architectural appearance.

E. Anything contained in this Article IV to the contrary notwithstanding, the Parties agree that with respect to the portions of the Enclosed Mall and the Common Area of the Shopping Center located in the immediate vicinity of the Auerbach Store, which portions of said Enclosed Mall and Common Area are cross-hatched on Exhibit B, Auerbach shall have the right to approve or disapprove the improvement plans for said areas. Any objections and/or proposals Auerbach may have to any such plans shall be resolved as provided for in Paragraph A of this Article IV; provided, however, any additional construction cost resulting from changes in such improvement plans made at the request of Auerbach shall be paid for by Auerbach. Auerbach agrees that it shall act reasonably in exercising its right of approval of such improvement plans.

ARTICLE V

CONSTRUCTION OF IMPROVEMENTS BY DEVELOPER

A. Subject to any delays applicable under the provisions of Article XV A hereof, Developer agrees, on a date as soon as reasonably possible after approval of plans and specifications, to commence construction of the Developer Improvements. Developer shall be deemed to have commenced the construction referred to in the preceding sentence upon the date that Developer shall commence the construction of the foundations of the Developer Improvements. Developer agrees to complete the Developer Improvements, to the

extent hereinafter provided for on or before the date Sears and Auerbach shall be open for business, as provided in Article VII; provided that such obligation shall be subject to the provisions of Article XV, A hereof.

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

C. On or before the date Sears and Auerbach shall open for business, but in no event earlier than April 1, 1972, Developer shall have (i) completed all exterior walls and roofs of all Mall Stores, (ii) at least 60% of the Floor Area of the Mall Stores shall concurrently open for business, and (iii) the entire Enclosed Mall, together with all related cross-malls shall be completely functional and operating, including being air-conditioned, heated, ventilated, lighted, decorated and landscaped and free from obstructions.

D. The Enclosed Mall shall be constructed by Developer at its cost and expense in accordance with plans and specifications approved by the Parties, including any plans for attachment thereof to the building or improvements of any such Party. In any determination of the reasonableness of disapproval for any plan for such attachment, insurance requirements to enable such Party to maintain its usual fire and extended coverage insurance, at the lowest possible premium, building code requirements, increased or decreased costs of construction of the structure to which attachment is to be made, and the proposed type of facade of the structure to which attachment is to be made shall be relevant circumstances in resolving questions that may arise in such attachment. There shall be no seismic loading or structural stress placed upon any Store by the Enclosed Mall structure, and the same shall be self-supporting. The Enclosed Mall shall provide for sprinkler protection within the ceiling plane, and at all

windows and doors of the Stores.

The parties further recognize that the air conditioning and heating specifications of their respective buildings and the Enclosed Mall are critical and that the same shall be so designed, constructed, operated and maintained as not to drain conditioned air from, nor discharge or return air into the Enclosed Mall or Stores, as the case may be, and Developer agrees that Occupants of the Mall Stores shall be similarly required not to drain conditioned air from, nor discharge residue or return air into the Enclosed Mall.

E. The buildings designated on Exhibit B as Buildings "J" and "K" are not intended by Developer to be constructed with the initial development of the Shopping Center and the floor area of such buildings have not been included in the calculation of Developer's maximum allowable floor area for purposes of this REA. Developer agrees that if either or both of such buildings are constructed in the Shopping Center at some future time, such construction shall be completed in accordance with the provisions of this Article V, and further, that prior to commencing any such construction Developer shall be required to provide to the Shopping Center, at Developer's sole cost and expense such additional Common Areas and Automobile Parking Areas as are initially located on the building sites for such Buildings "J" and "K", and such additional Common Areas and Automobile Parking Areas as are required in order to maintain the Parking Index provided for in Article VI E of this REA. The Common Areas and Automobile Parking Areas Developer shall propose to provide to the Shopping Center, as herein required, shall be subject to the approval of both Auerbach and Sears.

ARTICLE VI

CONSTRUCTION OF COMMON AREA

A. Upon approval of the improvement plans provided for in Article IV A, and subject to the provisions of Article XV, Developer

and Sears shall jointly enter into written contracts for all onsite and offsite work required to construct the "common improvement work," (as defined in Article VI B) provided for in said improvement plans (excluding the construction of the Enclosed Mall provided for in Article V). Prior to the letting of any such contracts, not less than three (3) competitive bids for each common improvement work shall be obtained from a list of qualified contractors, prepared by the Project Architect and approved by the Parties. Each such contract shall expressly provide for severable liability of Developer and Sears as to its proportionate share of the cost of such contract.

The bid documents and contract or contracts under which such common improvement work is to be performed shall be subject to the approval of Developer and Sears. Such contract or contracts shall include provisions requiring a bond of a contractor (subject

to waiver thereof by Developer and Sears) covering performance, completion and labor and material payment with respect to that portion of the common improvement work to be performed by each contractor, naming the contractor as principal and Developer and Sears, jointly and severally, as obligees, in the form, and with the corporate surety or sureties approved by Developer and Sears, which bond will cover the full amount of the contract price and all of which bonds shall aggregate 100% of the amount of the construction contract price for the common improvement work. Prior to the commencement of any work on the common improvement work or any other work jointly under the contract for such improvement, Developer shall file the contract for such work and record the bond covering the same pursuant to Section 14-2-1 and 14-2-2 of the Utah Code Annotated.

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

In the event Developer or Sears shall fail to reject such change in writing, within twenty (20) days from the date of submission of such change, such change shall be deemed to have been approved by such Party. In the event there shall be any deletion from the plans and specifications or changes which shall result in a decrease in cost, such decrease shall be reflected in the amount to be paid to the contractor under such contract.

During the course of construction, statements of expenditure shall be submitted by the contractor for approval to the Project Architect. The Project Architect shall certify its approval of such statements, including the percentage of work performed under the contract to Developer and Sears, unless Developer or Sears hereto

shall have selected some other method of approval. Upon approval of such statements of expenditure, Developer and Sears shall immediately pay its "Proportionate Share" thereof to the contractor. Developer or Sears may withhold payment of any item contained in such statement of expenditure which is disapproved or questioned as to the amount, but shall pay for the balance of such statement of expenditure. Any disapproval shall be made in writing by the Party so disapproving, and a copy of such disapproval shall be furnished to the Project Architect, the contractor, and the other Party within twenty (20) days following the receipt of the certified statement of the Project Architect.

B. As used hereinafter in this REA, the term "Proportionate Share" refers to that part of the cost and expense to Developer and Sears of the work hereinafter in this Article VI described, relative to the Shopping Center and the Common Area portion thereof allocable to Developer and Sears, to be computed on the basis that the maximum allowable Floor Area of each of said Parties, respectively (for purposes of this computation, the maximum allowable floor area of the Auerbach Store shall be combined with and added to the floor area of the Developer), bears to the total maximum allowable Floor Area of Developer, Sears and Auerbach. The maximum allowable Floor Area for the purpose of this Article VI of Developer and Sears shall be as follows:

Developer (which figure includes - 500,175
the maximum allowable floor
area of the Auerbach Store)

Sears - 281,175

The aforesaid "common improvement work" shall consist of the following items of work reasonably necessary to complete the Shopping Center:

1. Preliminary development of the Shopping Center Site, including, but not limited to the following:

(a) Preliminary and master planning.

(b) Preparation of flood control reports and analysis of the Shopping Center Site and related areas.

(c) Design and construction of off-site and/or on-site storm drains, and planning of appropriate off-site and on-site improvements for development by Developer or public bodies and contributions toward design and construction thereof.

(d) Design and construction of off-site and on-site improvements for the general benefit of the Shopping Center site.

(e) Underground or off-site relocation of overhead utility facilities.

(f) Rough grading of the Developer, Sears and Auerbach Tracts, which shall include the building pads and excavations for all buildings.

2. The design, construction and improvement of the Common Area, including, but not limited to, the following:

- (a) Fill requirements for the Common Area, including excavations, if any, to develop the same.
- (b) Finish grading of the Common Area.
- (c) All paving, striping and lighting of the Common Area, including electric time clock controls.
- (d) Facilities for surface and subsurface drainage
- (e) Malls, other than the Enclosed Mall (the Enclosed Mall being heretofore separately provided for in Article V, above), sidewalks, curbs and curb faces exclusive of perimeter sidewalks, curbs and landscaped areas which are a part of each Party's store plans and building contract.
- (f) Landscaping of the Common Area, including related water systems and related electric time clocks (except landscaping and related facilities adjacent to the buildings which are a part of the Store Plans and the building contracts of each Party, and except those related to construction connected with the Enclosed Mall).
- (g) Common sewer, gas, electrical, water and telephone facilities to the curb line of the respective buildings, but in no event closer than five (5) feet to said building, notwithstanding the fact that such common facilities may serve the Developer Improvements and Stores, in addition to the Common Area.

(h) All Common Area amenities such as benches, trash baskets, public telephones, drinking fountains, bicycle racks, decorative features and similar facilities for the comfort or benefit of the Permittees, together with institutional signs, symbols, directories and similar notices for and to the Center, including signs during construction, which signs shall be of such size, form and content as the Parties shall approve.

(i) All architectural and engineering costs and construction bonds and insurance shall be considered a part of the work for the purposes of cost.

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

D. The performance of the common improvement work under any such contract shall be scheduled by the Project Architect in consultation with Developer and Sears to coordinate such common improvement work with the commercial work of Developer and Sears.

E. There shall be available within the Common Area at all times from and after the completion of the construction thereof a parking index of not less than 5.5 automobile parking spaces for each 1000 square feet of Floor Area within the Center. Each parking

space, regardless of angles of parking, shall have a width of 9 feet on center, where possible, and a minimum width of 8 feet 6 inches on center, measured at right angles to the side line of the parking space. Parking lanes or bays (which include two rows of parking spaces and incidental driveway) shall have the following minimum and preferred widths at the angle of the parking designated below

DEGREES	MINIMUM	PREFERRED
45°	48'	52'
52½°	50'	52'
60°	52'	54'
90°	60'	62'

Each Party severally agrees with the others to take no action which would reduce the parking index below that specified herein.

F. The construction of the Common Area, Enclosed Mall, and the construction of the Store on the Auerbach Tract and the Store and TBA on the Sears Tract, as the case may be, which may be integrated, shall nevertheless be deemed to be a separate and distinct work and improvement.

ARTICLE VII

CONSTRUCTION OF THE AUERBACH AND SEARS STORES

Subject to the provisions of this Article VII and to any delays applicable under the provisions of Article XV hereof, Developer agrees, as soon as reasonably possible after the completion of the approved final Store Plans for the Auerbach Store, to cause construction of the Auerbach Store to be commenced, and thereafter diligently prosecuted to completion, so said Store shall be open to the general public for business on or before August 1, 1972.

Subject to the provisions of this Article VII, and to any delays applicable under the provisions of Article XV hereof, Sears agrees, as soon as reasonably possible after the completion of its

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approved final Store Plans, to cause construction of the Sears Store to be commenced, and thereafter diligently prosecuted to completion, so said Store shall be open to the general public for business on or before August 1, 1972.

All work to be performed pursuant to the provisions of this Section VII shall be in accordance with the final store plans and in accordance with the requirements of this REA.

ARTICLE VIII

FLOOR AREA, USE, OPENING DATES, OPERATION, SIZE AND HEIGHT LIMITATIONS

A. Notwithstanding anything to the contrary contained in this REA, it is agreed that at all times following the opening date of the respective Stores, or improvements, as the case may be, and subject to the provisions of Articles XII, XV and XVII hereof, during the term of this REA:

1. The Auerbach Store shall contain not less than 82,236 square feet of Floor Area or more than 102,795 square feet of Floor Area.

2. The Sears Store, including its TBA facility, shall contain not less than 275,552 square feet of Floor Area or more than 281,175 square feet of Floor Area.

3. The Developer Improvements shall contain not less than 317,904 square feet of Floor Area or more than 397,380 square feet of Floor Area.

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

C. Neither the Center nor any part thereof shall be thereon constructed, maintained or used for any purpose other than the following:

Retail, office and service establishments common to first-class regional shopping centers containing

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enclosed air conditioned malls in which Sears has a store, including, without limitation, financial institutions, brokerage offices, restaurants, automotive service stations (in non-mall buildings only) travel and other agencies; but excluding automobile body and/or fender repair work, automobile sales or display area (except for auto displays in connection with approved Merchants Association promotions), bowling alley, skating rink, car washing establishment, veterinary hospital, mortuary, commercial laundry plant and similar service establishments, unless specifically approved in writing by the Parties. Office use shall not include a building used primarily for general office purposes.

D. Auerbach and Sears understand that Developer intends that Building 1 on Exhibit B is intended to be used for the purpose of a theatre, and that Buildings 6, 7 and 8 on said Exhibit B are intended to be used as a convenience type shopping center, including the operation of a foods supermarket and a super drug store. The Parties agree that the aforementioned theatre, foods supermarket and super drug store use are approved for said Buildings 1, 6, 7 and 8 and shall not be in violation of the foregoing paragraph of this Article VIII C.

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

1. Any public or private nuisance.
2. Any noise or sound that is objectionable due to intermittence, beat, frequency, shrillness or loudness.
3. Any obnoxious odor.
4. Any noxious, toxic, caustic, or corrosive fuel or gas.

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

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

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

8. Any "second hand" store, Army, Navy or Government "surplus" store (except for sales of antiques).

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

10. Any drilling for and/or removal of subsurface minerals.

11. Any dumping, disposal, incineration or reduction of garbage or refuse.

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

F. No kiosk shall be permitted except with the approval of all Parties, and no merchandise shall be displayed, sold or offered for sale outside of the physical limits of Floor Area.

ARTICLE IX

GENERAL CONSTRUCTION REQUIREMENTS

A. Each Party performing work severally agrees to perform its respective work so as not to cause any increase in the cost of constructing the remainder of the Shopping Center Site or any part thereof which is not reasonably necessary, and so as not to unreasonably interfere with any construction work being performed on the remainder of the Shopping Center Site or any part thereof, or with the use,

occupancy or enjoyment of the remainder of the Shopping Center Site or any part thereof by any other Party to this REA, and any other Occupant of the Shopping Center Site, and the Permittees of any other Party to this REA and such other Occupants.

B. From and after the opening of the buildings of any Party abutting on the Enclosed Mall, each other Party thereafter erecting or constructing any building shall erect and construct a barricade at least eight (8) feet in height surrounding the building or buildings so being constructed. Such construction barricade shall be kept in place, in good condition and repair, until the building so being constructed is secure from unauthorized intrusion. All barricades shall be painted in colors approved by the Project Architect.

C. Prior to the commencement of the work to be performed by any Party to this REA, each Party shall submit to the Project Architect for approval (which approval shall not be unreasonably withheld): (i) a plot plan of the Center showing, as respects the buildings and improvements to be constructed by it, material and equipment storage sites, construction shacks and other temporary improvements, and workmen's parking area; and (ii) a time schedule indicating the approximate date or dates upon which each portion of the Center used for the purposes referred to in the preceding subdivision (i) shall cease to be so used by such Party. Within ten days after the submission of such plot plan and such time schedule the Project Architect shall notify the Party submitting the same, whether the same are approved or disapproved, provided that a failure to give such notice shall constitute approval thereof

by the Project Architect. If the Project Architect shall disapprove the plot plan and/or the time schedule (specifying the reasons for such disapproval), the Party submitting the same shall promptly revise the same in only those respects that the Project Architect shall reasonably request as requisite to its approval.

D. Each Party performing work agrees that all construction to be performed hereunder shall be done in a good and workmanlike manner, with first class materials and in accordance with all applicable laws, rules, ordinances and regulations. Each Party shall pay all costs, expenses, liabilities and liens arising out of or in any way connected with the construction performed by it; provided, however, that nothing herein shall be deemed to prevent liens by way of construction or permanent loans. Developer shall, upon demand, deliver to the other Party or Parties demanding the same, evidence of completion of such work in compliance with all applicable laws, ordinances, regulations and rules in compliance with the final Developer plans, approved pursuant to Section IV C hereof, and that all such costs, expenses, liabilities and liens arising out of or in any way connected with such construction have been fully paid and discharged of record, or contested and bonded, in which event any judgment or other process issued in such contest shall be paid and discharged before execution thereof.

E. Each Party performing work, as respects its respective construction, shall use reasonable efforts to cause its architects and contractors to cooperate and coordinate its construction with the architects, contractors and construction work of the other Parties hereto to the extent reasonably practicable, to achieve the objectives set forth in Section IX C.

F. Wherever under the terms of this REA any Party is permitted to perform any work upon the Shopping Center Site, it is expressly understood and agreed that such Party will not permit any

mechanics' or materialmen's, or other similar liens to stand against the Shopping Center Site upon which such labor or material has been furnished in connection with any such work performed by any such Party. Such Party may bond and contest the validity of any such lien, but upon final determination of the validity and the amount thereof, such Party shall immediately pay any judgment rendered, with all proper costs and charges, and shall have the lien released at such Party's expense.

ARTICLE X

MAINTENANCE OF COMMON AREA

A. Developer is hereby designated as the initial Operator of the Common Area. Except as hereinafter expressly provided, from and after the completion of construction of the Common Area, Operator shall maintain, or cause to be maintained the same in good order, condition and repair, subject to payment by Developer, Auerbach and Sears of its respective Allocable Share of Common Area Maintenance Cost as hereinbefore provided; and Operator shall have the right to select from time to time a Person or Persons other than Operator (herein called "Operator's Nominee") to operate and maintain the Common Area; provided that such nomination shall not diminish Operator's responsibility for maintaining the Common Area.

Without limiting the generality of the foregoing, Operator, in the maintenance of the Common Area, shall observe the following standards:

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

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

3. Maintain such appropriate parking area entrance, exit and directional signs, markers and lights in the Center as shall be reasonably required and in accordance with the practices prevailing in the operation of first-class regional shopping centers in which Sears has a store.

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

5. Repaint striping, markers, directional signs, etc., as necessary to maintain in first-class condition.

6. Maintain landscaping as necessary to keep in a first-class and thriving condition.

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

8. Employ and/or contract for employment of courteous personnel for Common Area patrol, such personnel also includes security guards during store hours and such other hours as are deemed necessary. The provisions of this paragraph 8 may be waived by the Parties from time to time.

9. Maintain and keep in a sanitary condition public rest rooms, if any, and other common use facilities.

10. Clean, repair and maintain all utility systems that are part of the Common Area to the extent that the same are not cleaned, repaired and maintained by public utilities.

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11. Take such action as may be reasonable and necessary to deal with snow, ice and other adverse weather conditions affecting the Common Area.

B. Operator agrees to indemnify and hold harmless Developer, Auerbach and Sears, and their respective Tracts from and against any mechanics', materialmen's and/or laborers' liens, and all costs, expenses and liabilities in connection therewith arising out of the maintenance performed by Operator in respect to the Common Area pursuant to the provisions of this Article X hereof (whether performed prior to or after the execution of this REA), and that in the event any Tract shall become subject to any such lien, Operator shall, at the request of the Party in interest of such Tract, promptly cause such lien to be released and discharged of record, either by paying the indebtedness which gave rise to such lien, or posting such bond or other securities as shall be required by law to obtain such release and discharge.

C. Except as provided in Article I K, unless Developer, Auerbach and Sears otherwise consent and agree in writing, no charge of any type shall be made to or collected from any Occupant or the Permittees of Developer or any Occupant, for parking or the right to park vehicles in the parking area, except such Common Area Maintenance charges as may be provided for in any lease agreement with any Occupant. The Permittees of Auerbach and Sears shall not be prohibited or prevented from so parking so long as space is available in the parking area, and so long as they do not violate the reasonable rules and regulations covering the use of the parking areas promulgated from time to time by Developer and approved by Auerbach and Sears. Developer, Auerbach and Sears shall, by mutual agreement, prescribe certain sections within the Common Area or on other

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land outside the Common Area within a reasonable distance from the nearest boundary of the Center for use as parking space by the Occupants of the Center, and the employees, tenants, agents, contractors, licensees and concessionaires of such Occupants. Each Party shall use reasonable efforts to require its employees (and the employees of its agents, contractors, licensees and concessionaires) and its Occupants (and the employees, agents, contractors, licensees and concessionaires of such Occupants) to use only such sections as are so prescribed for parking. No such employee parking areas shall be provided within 200 feet of any building fronting on the Enclosed Mall, without the consent of the Party on whose Tract such parking is provided.

D. Each Party shall, commencing on the first day of its first Accounting Period, pay to Operator on account of its Allocable Share, the amount of 1¢ per square foot of Floor Area, and shall pay a like amount on the first day of each calendar month thereafter. At the end of each three month period Operator shall render to each Party a full and complete statement of the cost of maintenance and operation of the Common Area, and in the event any Party shall have paid more than its Allocable Share, Operator shall promptly refund to the Parties so paying in excess of its Allocable Share the amount thereof. Should any Party have paid less than its Allocable Share during said preceding three month period, then and in that event, the Party so paying less than its Allocable Share shall pay to Operator, within ten (10) days following the rendition of said statement, the deficiency in its Allocable Share. Operator shall maintain separate and complete books and records accurately covering and reflecting all items affecting or entering into determination of the re-

spective Allocable Share of each Party for each Accounting Period, and shall keep the same for a period of three years after the end of each such Accounting Period. Any such accounting shall reflect the daily changes which may exist from time to time in the Floor Area in the Center.

The Operator shall be required to deliver an audit each Accounting Period, by a certified public accountant reasonably acceptable to the Parties, to each of the Parties hereto, the reasonable cost of which shall be included in the Common Area Maintenance Cost.

Each Party shall have the right, exercisable upon five days' notice to Operator to make one audit as to each Accounting Period of such books and records as are relevant to any such statement or statements. In the event that any such audit shall disclose any error in the determination of the Allocable Share of any Party or Parties, appropriate adjustment shall promptly be made between the Parties hereto to correct such error. Operator shall deliver to each Party for each Accounting Period an audit, certified by a certified public accountant, of Common Area Maintenance Cost.

At the close of the first full year of operation of the Common Areas, a determination shall be made as to the costs of such operation during said period, and in the event such determination shall show that the 1/4 estimated payment shall be more or less than that reasonably required for such maintenance, then and in that event such 1/4 estimated payment shall be adjusted to meet the requirements of such cost; thereafter, such determination shall be made each two years during the term of this REA and adjustments made accordingly.

E. In the event that Auerbach and Sears shall at any time or from time to time be dissatisfied with Operator's performance of its obligations under Article X A hereof (including the expenses of the maintenance and operation), or in the event that Developer is not the Operator, then if two or more of the Parties are so dissatisfied, such Parties shall have the right (provided that none of such Parties is in default hereunder) to give Operator

notice of such dissatisfaction, specifying the particulars in respect of which Operator's said performance is deemed by such Parties to be unsatisfactory. If during the thirty (30) day period from the date of such notice Operator's said performance shall continue to be unsatisfactory, such Parties shall have the right (provided that none of such Parties is in default hereunder) to give Operator a second notice of such dissatisfaction, specifying the particulars in respect of which Operator's said performance is deemed by such Parties to be unsatisfactory, and if during the fifteen (15) day period from the date of such second notice Operator's said performance shall continue to be unsatisfactory, such Parties shall have the right to cause to be taken over from Operator by another Operator ("Substitute Operator"), effective on the first day of the next succeeding calendar month, the maintenance, management and operation of the Common Area and of any and all improvements located thereon, and if such right shall be so exercised, then effective upon said first day of such next succeeding calendar month the provisions of Articles X A and X B shall be construed, to the extent that they relate to such next succeeding and all subsequent Accounting Periods, as though each reference therein to Operator were a reference to the Substitute Operator so taking over the maintenance, management and operation of the Common Area and as though each reference therein to Developer, Auerbach and Sears included a reference to Operator (unless the context shall obviously otherwise require); provided, however, that anything herein to the contrary notwithstanding, such take-over of the maintenance, management and operation of the Common Area shall not (i) obligate Auerbach or Sears to pay any cost or expense in respect of the maintenance, management and operation of the Common Area except the Allocable Share of each such respective Party (which shall

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continue at all times to be governed by the provisions of Article I K hereof), or (ii) relieve Developer of its obligation to pay all costs and expenses of maintenance, management and operation of the Common Area except the respective Allocable Share of Auerbach or Sears, and provided further that such take-over by such Substitute Operator shall not relieve the Developer of the obligation to keep, perform and observe any of the other terms, provisions and conditions of this REA contained to be kept, performed and observed by the Developer other than those relating to the maintenance, management and operation by Developer as Operator of the Common Area. Developer covenants and agrees promptly to pay to such Substitute Operator upon demand, any sum which Developer shall be obligated to pay to such entity pursuant to this Article X E. In the event that the maintenance, management and operation of the Common Area shall be taken over from the Developer as provided in this Article X E, and the Developer shall have failed to make the payments herein required to be made to the Substitute Operator, then any and all sums payable to the Developer by any and all Occupants of the Mall Stores and Non-Mall Stores in respect of its or their prorata shares of Common Area Maintenance Cost, as specifically defined herein, exclusive of any taxes in respect of the Mall Stores, Non-Mall Stores and Enclosed Mall, collected by the Developer, together with the right to enforce payment of and to collect the same shall be deemed assigned to the Substitute Operator without the necessity of the execution of any further instrument of assignment thereof by Developer, other than this REA; and such Substitute Operator shall thereafter remain responsible for such maintenance, man-

agement and operation of the Common Area throughout the remainder of the term of this REA unless Developer shall at any time or times thereafter resume the maintenance, management and operation of the Common Area, or a further Substitute Operator is appointed by at least two of the Parties. Notwithstanding the fact that this paragraph E refers to the collective action of Auerbach and Sears, it is understood and agreed that such joint action is required only so long as each of Auerbach and Sears is operating their respective Stores in the Center and is not in default under the terms of this REA. In the event that either one of Auerbach or Sears is not operating its Store in the Center, or is in default under the terms of this REA, then in either of said events the rights hereinabove prescribed, which may be exercised jointly, may be exercised individually by the Party then so operating its Store, or which is not then in default, as the case may be.

Notwithstanding the foregoing, any notice of default given pursuant to this Article X E may by its terms be inclusive or exclusive of that portion of the Common Area within the Enclosed Mall as is covered by Enclosed Mall Operation and Maintenance Expense. In the event that such notice is exclusive of such items, then and in that regard Developer shall continue to perform the services of Operator with respect to such items. In the event that such notice shall be inclusive of such items, then and in that event the Substitute Operator shall perform the functions required for the operation and maintenance of such items; provided, however, that such take-over of the maintenance, management and operation of the Enclosed Mall shall not (i) obligate Auerbach or Sears to pay any cost or expense in respect of the maintenance, management and operation of the Enclosed Mall (except as they may have agreed

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by separate agreement with Developer with respect thereto) or (iii) relieve Developer of its obligation to pay all costs and expenses of the maintenance, management and operation of the Enclosed Mall, or otherwise relieve Developer of the obligation to keep, perform and observe any of the other terms, provisions and conditions of this REA contained to be kept and performed by Developer, other than those relating to the maintenance, management and operation by Developer of the Enclosed Mall.

F. Any Party shall have the right upon not less than ninety (90) days written notice given to the Operator, to withdraw its Tract from the maintenance and operation provisions hereinafter prescribed for the Operator; effective as of the end of the then Annual Accounting Period. Any such withdrawal shall not affect the agreements hereinabove provided with respect to the other Parties not so terminating the arrangements with Operator; provided, however, that the Allocable Share of the Parties remaining under such agreements shall be determined on a direct pro rata basis that the Floor Area of each of such remaining Parties bears to the aggregate Floor Area of all of such remaining Parties. The Party so withdrawing its Tract from the provisions of such agreements agrees that effective upon its withdrawal of its Tract, it will perform all of the functions of the Operator with respect to its Tract, and pay all costs and expenses in connection with the operation and maintenance of the Common Area on its Tract. In the event that the Party so withdrawing its Tract from the provisions of such agreements respecting joint maintenance and operation shall be the Party which at the time of such withdrawal is acting as the Operator,

it shall give notice of its withdrawal to each other Party at the time hereinabove prescribed for the giving of notices of withdrawal of its Tract, and the remaining Parties shall designate another Operator and if no such designation shall have been made prior to the commencement of the next annual Accounting Period, then each Party shall act as Operator as respects its Tract, as though each had given notice as prescribed above. In the event that Auerbach shall elect to withdraw its Tract from the provisions of such agreements, in addition to performing all of the function of the Operator with respect to the portion of the Shopping Center Site comprising the Auerbach leasehold estate (the Auerbach Tract), Auerbach shall also perform such functions and pay all costs and expenses in connection with the operation and maintenance of the Common Area on the portion of the Shopping Center Site described in Part IV of Exhibit A and designated on Exhibit B as the "Auerbach Common Area Tract."

G. It is agreed that Operator shall have a lien upon each Tract to secure the payment of each Party of its respective Allocable Share; provided, however, that any such lien shall, in the case of Auerbach and Sears be subordinated in the case of the Auerbach Tract and the Sears Tract, in the same manner and to the same extent as are the respective covenants of Auerbach and Sears pursuant to the provisions of Article XXII hereof, and in the case of Developer be subordinate to the lien of any first mortgage or first deed of trust encumbering the right, title and interest of Developer in and to the Developer Tract and/or the Developer Improvements.

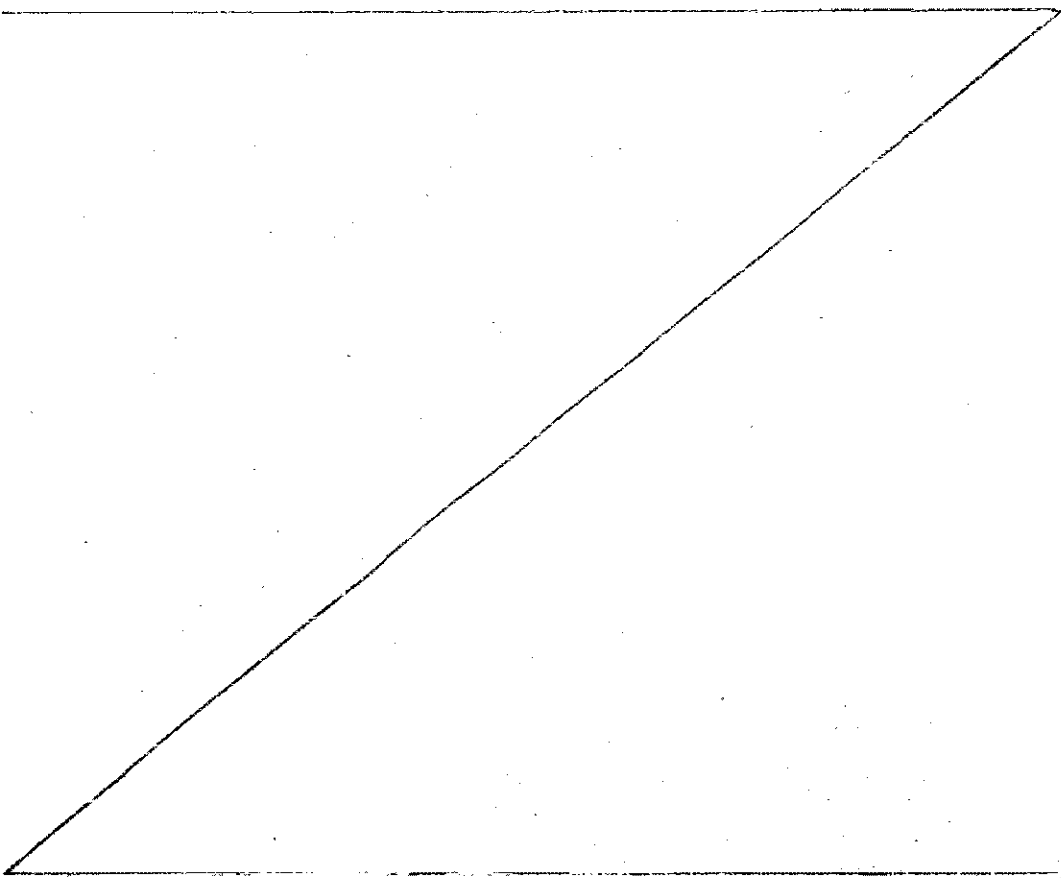
H. Anything herein to the contrary notwithstanding, any Party hereto shall have the right to maintain and operate the Common Areas on its own Tract, from the beginning of its need for maintenance

and operation, provided that it shall have given notice of such intention to all Parties hereto, on or before May 1, 1972.

ARTICLE XI

INDEMNIFICATION AND PUBLIC LIABILITY INSURANCE

A. Each Party covenants to, and does hereby (and Operator shall) indemnify and hold harmless each other Party, respectively, from and against all claims and all costs, expenses and liabilities incurred in connection with all claims, including any action or proceedings brought thereon, arising from or as a result of the death of, or any accident, injury, loss or damage whatsoever caused to, any natural person, or to the property of any person as shall occur in or about the Common Area for which



each such Party is the Operator, excluding the negligent act or omission of each indemnified Party, or any licensee or concessionaire of such Party, or the agents, servants or employees of such Party, or of any licensee or concessionaire of the agents, servants or employees of such Party wherever the same may occur.

B. Each Party, severally, covenants to, and does hereby indemnify and hold harmless each of the other Parties from and against all claims and all costs, expenses and liabilities incurred in connection with all claims, including any action or proceedings brought thereon, arising from or as a result of the death of, or any accident, injury, loss or damage whatsoever caused to, any natural person, or to the property of any person as shall occur in or about the Store or Mall Stores or Non-Mall Stores of the indemnifying Party, excluding the negligent act or omission of each indemnified Party, or any licensee or concessionaire of such Party, or the agents, servants or employees of such Party or of any licensee or concessionaire of the agents, servants or employees of such Party wherever the same may occur.

C. The Operator shall at all times during the term of this REA maintain, or cause to be maintained, in full force and effect, the following insurance covering the Common Area within the Center with a financially responsible insurance company or companies (Best's Triple A): comprehensive public liability insurance, including coverage for any accident resulting in personal injury to or death of any person and consequential damages arising therefrom for not less than \$2,000,000 per occurrence and comprehensive property damage insurance for not less than \$250,000 per occurrence. Operator shall furnish to all other Parties on or before the effective date of any such policy, evidence

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that the insurance referred to in this Article XI C is in force and effect and that the premiums therefor have been paid. Such insurance shall name all other Parties as additional insureds thereunder, and shall provide that the same may not be cancelled without at least ten (10) days' prior written notice being given by the insurer to all other Parties. Such insurance shall expressly insure the indemnity of Operator contained in Article XI A. In the event that there shall be at any time more than one Operator, then and in that event the indemnity provided in Article XI A, and insurance required to be carried in this Article XI C shall be required of the Operator of the Developer Tract and shall cover the entire Common Area.

D. Each Party shall, severally, at all times during the term of this REA, maintain in full force and effect the following insurance covering the Floor Area of each Party on its Tract, with a financially responsible insurance company or companies (Best's Triple A): comprehensive public liability insurance for any accident resulting in bodily injury to or death of any person and consequential damages arising therefrom, with limits of \$1,000,000 per person and \$2,000,000 per occurrence, and comprehensive property damage insurance for not less than \$250,000.

Such insurance may be carried under a policy or policies covering other liabilities and locations of the Parties, or a subsidiary, successor, affiliate or controlling corporation of such Parties; provided, however, that the insurance hereinbefore in this Article XI D referred to may be carried under any plan of self-insurance from time to time maintained by any Party, on condition that the Party so self-insuring has and maintains adequate reserves or assets for

the risks so self-insured against, and that any Party so self-insuring shall furnish to any other Party hereto requesting the same, an affidavit of the adequacy of said reserves or assets, (a net worth of \$20,000,000.00, or more, shall in all instances conclusively be deemed to be adequate for the purposes of this Section). Each Party shall severally furnish to any other Party hereto requesting the same, evidence that the insurance referred to in this Article XI D is in full force and effect and that the premiums therefor have been paid. All policies of insurance carried by any Party pursuant to this Article XI D shall name each of the other Parties hereto as additional insureds, and (ii) shall provide that the same may not be cancelled without at least ten (10) days' prior written notice being given by the insurer to each of the other Parties hereto.

XII

FIRE AND EXTENDED COVERAGE INSURANCE

A. Developer, as respects the Developer Improvements, including the Enclosed Mall, will carry or cause to be carried fire and extended coverage insurance in an amount at least equal to eighty percent (80%) of the replacement cost (exclusive of the cost of excavation, foundations and footings), without deduction for depreciation of the building and improvements insured from causes or events which from time to time are included as covered risks under standard insurance industry practices within the classification of fire and extended coverage, and specifically against at least the following perils: loss or damage by fire, windstorm, cyclone, tornado, hail, explosion, riot, riot attending a strike, civil commotion, malicious mischief, vandalism, aircraft, vehicle, smoke damage and sprinkler leakage. Such insurance shall be carried with financially responsible insurance companies and may be carried under a

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

B. Auerbach and Sears as respects Auerbach and Sears Stores, respectively, each severally covenants with the other and with Developer that during the period of its covenant referred to in Article XXII A hereof, it will carry insurance for the risks enumerated in Article XII A equal to eighty percent (80%) of the replacement cost (exclusive of the cost of excavation, foundations and footings), without deduction for depreciation. Such insurance shall be carried with financially responsible fire insurance companies and may be carried under a policy or policies covering other property owned or controlled by Auerbach or Sears, or a subsidiary, successor or controlling corporation of Auerbach or Sears; provided that such policy or policies is in a face amount of not less than eighty percent (80%) of the replacement cost of all properties covered by such policy or policies. Auerbach and Sears shall each respectively furnish to any other Party requesting the same, evidence that the insurance required to be carried

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by it pursuant to this Article XII B is in full force and effect and that the premiums therefor have been paid. Auerbach and Sears agree that any such policy or policies shall contain a provision that the same shall not be cancelled without at least ten (10) days' written notice being given by the insurer to each of the other Parties hereto.

C. Anything herein contained to the contrary notwithstanding, Auerbach and Sears may, at their respective elections, carry the insurance required to be carried by it pursuant to said Article XII B under (i) any plan of self-insurance which it may from time to time have in force and effect; provided, however, that such Party so self-insuring shall furnish to any other Party requesting the same, evidence of the adequacy of such reserves or assets, or (ii) any so-called blanket policy or policies of insurance covering this and other locations of such Party.

D. The Parties agree to cause the Operator to carry, as respects the Common Area it is responsible to maintain, insurance of the character described in Article XII A. The cost of carrying such insurance shall be borne as an item of Common Area Expense.

E. Each Party hereby releases each of the other Parties from any liability for any loss or damage to all property, real and personal, of each located upon the Shopping Center Site, occasioned to such property, which loss or damage is of the type then covered by standard fire insurance policies with coverage at least against those risks specified in Articles XII A and XII B. Each Party covenants that it will, to the extent such insurance endorsement is available, obtain for the benefit of each other Party a waiver of any right of subrogation which the insurer of such Party may acquire against any other Party or Parties by virtue of the payment of any such loss covered by such insurance.

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F. Developer covenants to and with Auerbach and Sears that it will require all Occupants occupying any building on the Developer Tract upon which the Developer does not carry fire and extended coverage insurance, to carry fire and extended coverage insurance, including the perils specified in Article XII A hereof, on the building on the Developer Tract occupied by such Occupant with financially responsible fire insurance companies in an amount at least equal to the insurance required to be carried by Developer under Article XII A.

G. Developer covenants, in connection with fire and extended coverage insurance, to and with Auerbach and Sears, that it will obtain in their favor a waiver of the right of subrogation from all Occupants occupying any building on the Developer Tract. All Occupants of Developer Tract by becoming such Occupants shall be deemed to have specifically waived all rights of subrogation as herein provided.

H. Any mortgage, deed of trust, indenture or sale-leaseback of or with respect to any Tract shall specifically permit the application of all proceeds of the insurance referred to in this Section by the Party in interest of such Tract to the full extent and for the purposes provided in the succeeding Article XIII, and pursuant to the trust procedures set forth in Article XXX hereof.

XIII

COVENANTS AS TO REPAIR, MAINTENANCE
ALTERATIONS AND RESTORATION

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

B. The Parties agree that in the event of any damage or destruction to the Common Area (except the Enclosed Mall) during the term of this REA by any cause whatsoever, whether insured or uninsured, they shall cause the Operator (unless Operator shall be relieved from the obligation so to do as hereinafter provided) to restore, repair or rebuild the Common Area with all due diligence, subject to the provisions of Article XV A hereof. Such restoration and repair shall be performed in accordance with the applicable requirements of paragraph H of this Article XIII. Prior to the commencement of any such restoration or repair hereunder, Operator shall obtain the approval of the Parties of a budget estimate of the cost and expense of such restoration or repair (which approvals shall not be unreasonably withheld). In the event that Operator shall so restore or repair the Common Area, and in the further event that the proceeds of insurance, if any, paid to any of the Parties hereto by virtue of such damage or destruction shall be insufficient to defray the entire cost and expense of such restoration or repair (including related architectural and engineering fees) the excess over and above such insurance proceeds shall be allocated between

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the Parties on the basis that the Floor Area of each of said Parties, respectively, bears to the total Floor Area of said Parties. Payment shall be made in the same manner as payment is to be made pursuant to the provisions of Article VI.

C. Developer covenants to and with Auerbach and Sears, each severally, that in the event of any damage or destruction to all or any portion of the Enclosed Mall or the Developer Mall Stores, it shall:

1. In the event such damage or destruction occurs during the period in which operation is required pursuant to Article XXII (or in any case where the cost of restoration, repair or rebuilding is less than \$50,000), at its own expense, restore, repair or rebuild said Enclosed Mall and/or Developer Mall Stores with all due diligence.

The provisions of this Subparagraph 1 shall apply regardless of the cause of such damage or destruction and regardless of whether it was insured or uninsured.

2. In the event such damage or destruction occurs after the period referred to in 1 above, at its own expense, restore, repair or rebuild said Enclosed Mall and/or Developer Mall Stores with all due diligence; provided, however, that Developer shall be released from its obligations to restore, repair or rebuild under the provisions of this Subparagraph 2 if:

(a) Such damage or destruction was caused by a peril other than those risks required to be insured against under Article XII A; or

(b) Such damage or destruction occurs on a date which is more than sixty (60) years after the date of this REA; or

(c) Such damage or destruction occurs at a time when Developer is not assured, under the terms and provisions of this REA, of at least ten (10) years (the commencement of said ten-year period to be the date of completion of such restoration, repair or rebuilding) of operation under this REA by the Stores of Auerbach and Sears; provided, however, if there is not such assurance, Developer must request in writing such assurance or this subparagraph is inapplicable, and if such assurance is requested then the provisions of this subparagraph (c) shall not apply if, within sixty (60) days after the occurrence of such damage or destruction, both Auerbach and Sears jointly or severally give Developer written assurance (in recordable form if requested) that they will have such a ten-year period of operation, and provided further that anything herein contained in this subparagraph (c) to the contrary notwithstanding, in the event that following the destruction Developer does not obtain the assurance referred to herein from both Auerbach and Sears, but either Auerbach or Sears gives Developer such written assurance (in recordable form if requested) that they will have such a ten (10) year period of operation, the obligation of Developer for restoration shall be limited to the Floor Area in Mall Stores and the portions of the Enclosed Mall which are located immediately adjacent to whichever of the Stores of Auerbach or Sears gives such written assurance, as the case may be, and approval for such

restoration shall include leveling, paving, creation of proper exterior walls for what previously constituted common party walls, and the creation of a reasonably useful entrance and exit, with proper ingress and egress from the Enclosed Mall. All areas not restored to original use shall be leveled, cleared and maintained by the Party upon whose Tract such areas are located as Common Area unless the Parties otherwise agree.

All restoration, repair or rebuilding under either subparagraphs 1 or 2 of Article XIII C, and all conditions of the requirements of such restoration, repair or rebuilding, shall be subject to the provisions of Article XV hereof and shall be performed in accordance with the applicable requirements of subparagraph G of this Article XIII.

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

1. In the event such damage or destruction to the Sears main Store occurs within twenty (20) years of the opening of said Sears Store facilities, Sears shall, at its own expense and with all due diligence, repair, restore and rebuild such facility to at least the minimum size it is obligated to build as required by Article XXII A. In the event such damage or destruction occurs within the next seven (7) years subsequent to such twenty (20) year period, Sears shall only be required to rebuild the mall level of its Store facility to the same size as it was initially constructed.

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2. In the event such damage or destruction to the Auerbach Store occurs within thirty (30) years of the opening of the Auerbach Store facility, Auerbach shall, at its own expense and with all due diligence, repair, restore and rebuild such facility to at least the minimum size it is obligated to build as required by Article XXIII A.

3. The provisions of subparagraphs 1 and 2 shall apply regardless of the cause of such damage or destruction and regardless of whether it was insured or uninsured. All such restoration, repair or rebuilding shall be subject to the provisions of Article XV hereof and shall be performed in accordance with the applicable requirements of subparagraph H of this Article XIII.

4. In the event such damage or destruction occurs after the expiration of the respective periods referred to in the preceding paragraphs 1 and 2, Sears, as to the period referred to in paragraph 1, and Auerbach, as to the period referred to in paragraph 2, shall be under no obligation to restore, repair or rebuild; provided, however, that should the Party whose building is so damaged or destroyed not restore, repair or rebuild, then, if the Enclosed Mall is still in existence and operating, such Party shall, at its own expense, enclose that portion of the Enclosed Mall adjoining the building not restored, repaired or rebuilt.

5. Nothing herein contained shall require Auerbach or Sears to reconstruct its said Store at any time when Developer is not required to restore the Mall Stores.

E. Subject to the other provisions of this REA, Developer, Auerbach and Sears may make repairs, alterations, additions or improvements to the Common Area, Mall Stores, Non-Mall Stores, the Auerbach Store and the Sears Store, respectively (and to the exterior signs thereon, subject to the provisions of Exhibit D). Auerbach and Sears

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may raze the whole or any part thereof after the expiration of its respective operating covenant set forth in Article XXII. In the event of the razing of its main Store building, the Party razing the same shall, if the Enclosed Mall is still existing and operating, cause the Enclosed Mall to be secured where such building has been removed so that the same shall remain enclosed and not permit the escaping of air. Any such repair, alteration, addition or improvement shall be performed in accordance with the applicable requirements of paragraph G of this Article XIII.

F. Sears may at any time raze its TBA, in which event (unless and until it elects to replace the TBA in the same location), it shall, at its expense, clear such location of all debris and cause such location to be paved as a portion of the Common Area. In the event that Sears shall elect to replace the TBA in such location, the provisions of the second sentence of Article I F and the provisions of the succeeding paragraph H of this Article shall be applicable thereto. In the event that Sears shall elect not to replace its TBA, then the amount of Floor Area formerly contained therein may be replaced by Sears (either within the location shown on Exhibit B, or if not so shown, in a location or locations approved by all of the Parties in the exercise of their sole and absolute judgments) for any purpose or purposes whatsoever not restricted by this REA and in accordance with paragraph H of this Article; provided, however, that in no event shall the Floor Area of a Party exceed the minimum allowable Floor Area of such Party specified in Article VIII A hereof.

G. Whenever any Party is not obligated hereunder to restore, repair or rebuild any building that has been damaged or destroyed and elects not to do so, or in the event that the TBA shall not be operated (subject to the provisions of Article XV hereof) for a continuous period of one (1) year, then, and in either such event, such Party shall raze such building or such part thereof that has been so damaged or destroyed, as the case

may be, and clear the premises of all debris and shall cause said area to be paved at its expense; and thereafter said area shall become a portion of the Common Area until such time as said Party may elect to rebuild thereon, subject, however, to the provisions of the preceding paragraph F.

H. All restoration, repair, rebuilding, maintenance, alterations, additions or improvements (hereinafter collectively called "work") performed by any Party pursuant to the provisions of this REA shall be performed in strict compliance with such of the following requirements as are applicable thereto, to wit:

1. No such work shall be commenced unless the Party desiring to perform the same has in each instance secured the prior approval of each of the other Parties hereto who are then operating, to the plans and specifications therefor, as they relate to: (a) the general compatibility of the exterior thereof with the balance of the improvements in the Center, and (b) the physical integration thereof with the Enclosed Mall prior to the expiration of the operating covenants set forth in Article XXII, and so long thereafter as both Auerbach and Sears are open for retail business.

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2. All work shall be performed in a good and workmanlike manner and shall strictly conform to and comply with: (a) the plans and specifications therefor approved as aforesaid, (b) all applicable requirements of laws, codes, regulations, rules and underwriters, and (c) to the extent applicable, the requirements of Articles VIII and IX.

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

1. It is recognized that from time to time during the term of this REA, Developer, Auerbach and/or Sears may require a temporary license to use portions of the Common Area for the purposes of:

1. Performing maintenance upon, and making repairs to and/or

2. Making construction alterations, additions and improvements, or razing and replacing the whole or any part of the Developer Improvements and the Auerbach or Sears Stores, respectively, pursuant to this REA (the activities referred to in this subdivision 2 being hereinafter collectively referred to as "Construction"), and

3. Obtaining access, ingress and egress to and from the Developer Improvements, the Auerbach or Sears Stores, as the case may be, to carry on such maintenance, repair and construction.

Within a reasonable time prior to the commencement of any such maintenance, repair or construction the Party desiring to undertake the same shall submit to the Party owning the Tract in question, for its approval (which approval shall not be unreasonably withheld), a plot plan of the Center on which such Party shall delineate those portions of the Common Area with respect to which such Party reasonably requires a temporary license in connection with such maintenance, repair or construction, and such access, ingress and egress, and the Party upon whose Tract such work is to be performed shall within ten (10) days thereafter notify such Party whether it approves or disapproves of the use. At all times during any Party's use of the portion of the Common Area as aforesaid, such Party shall comply with the applicable requirements of Article IX hereof, and upon cessation of such use shall promptly restore the portions of the Common Area so used to the condition in which the same were prior to the time of commencement of such use, including the clearing of such area of all loose dirt, debris, equipment and construction materials. Such Party shall also restore any portions of the Center which may have been damaged by such maintenance, repair or construction work promptly upon the occurrence of such damage, and shall at all times during the period of any such maintenance, repair or construction keep all portions of the Center, except the Developer Improvements, the Auerbach or Sears Stores, as the case may be, and except the portions of the Common Area being utilized by such Party pursuant to this Article XIII free from and unobstructed by any loose dirt, debris, equipment or construction materials related to such maintenance, repair or construction.

J. Anything in this Article XIII to the contrary notwithstanding, it is expressly understood and agreed that the provisions of paragraphs B, C and D hereof shall not be applicable to any "lender" (which term shall include the lessor under sale-leaseback financing who is not a "Party" as defined in this REA) on any Tract while such lender is not in possession of and does not have title to the particular Tract. Any such lender who becomes a mortgagee in possession or who acquires title by reason of foreclosure, or the purchaser at foreclosure, may defer performance of its obligations under paragraphs B, C and D of this Article XIII for a period ending on the earlier of one (1) year from the date of any such damage or destruction or one (1) year from the date the lender became a mortgagee in possession or acquires title by reason of foreclosure or the date of purchase at foreclosure, as the case may be; provided, however, that the obligation to restore, repair or rebuild the Enclosed Mall (in case of damage to or destruction thereof caused by a casualty required to be insured against by Article XII A or by any other casualty which is in fact insured against) shall not be deferred but said Enclosed Mall shall be promptly restored, repaired or rebuilt, to the extent permitted by the insurance proceeds, in accordance with plans and specifications therefor approved by the Parties.

ARTICLE XIV

MERCHANTS ASSOCIATION

A. Developer agrees to organize, form and sponsor a Merchants Association for the promotion of the Center. Auerbach and Sears each agree to join and maintain membership in such Association; provided that each shall have first approved, in its sole and absolute discretion, the Articles and Bylaws. The Articles and Bylaws shall contain provisions relating to each of said Parties' several approval of promotions and monetary contributions.

B. Developer further agrees that it will contribute to said Merchants Association an amount not less than twenty-five percent (25%) of the total budget for any calendar year of said Association, but in no event less than \$10,000 per annum, and that the Articles and Bylaws of said Association shall so provide. Such percentage amount and such dollar figure shall each be deemed to include reasonable sums paid as salary by Developer to the promotion direction of said Association.

C. Developer further agrees to require not less than ninety-five percent (95%) of all Occupants, but not less than ninety-five percent (95%) of the Floor Area on the Developer Tract, to become members of said Association and to contribute to the cost thereof pursuant to the terms of the Articles and Bylaws of said Merchants Association. Any lease between Developer and such Occupant which provides for a maximum contribution by such Occupant, which such maximum contribution would be less than otherwise required to be paid by such Occupant pursuant to the Articles and Bylaws shall be binding only as between Developer and such Occupant, and shall not affect the contribution to be made to the Merchants Association by such Occupant or the Developer on its behalf to the extent of the difference between such maximum contribution and the amount which would otherwise be required to be paid by such Occupant.

ARTICLE XV

EXCUSE FOR NON-PERFORMANCE

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

E. Auerbach and Sears shall each be excused from the performance of their respective obligations pursuant to the provisions of Article XIII D for and during any period of time in which the Developer shall be in default of its covenants, as provided for in Article XIII or Article XXI hereof. Developer shall be excused from performance of its respective obligations pursuant to the provisions of Article XIII C during any period of time in which both Auerbach and Sears are in default of their respective covenants as provided for in Article XIII or Article XXII hereof.

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ARTICLE XVI

TAXES AND ASSESSMENTS

A. Each Party covenants to agree to pay before delinquency all real estate and improvement and all personal property taxes and assessments levied or assessed with respect to its Tract and the improvements and personal property thereon, subject to its right to contest the amount and/or the validity thereof in the manner provided by law.

B. In the event any Party shall fail to comply with its covenants as set forth in Article XVI A, any other Party may pay such taxes and penalties and interest thereon and shall be entitled to prompt reimbursement from the defaulting Party for the sums so expended, with interest thereon at the rate of one percent (1%) over the prime rate then being charged by First Security Bank of Utah.

ARTICLE XVII

CONDEMNATION

A. Any award for damages, whether the same shall be obtained by agreement prior to or during the time of any court action resulting from a taking by exercise of right of eminent domain of the Shopping Center Site or any portion thereof, or resulting in a requisitioning thereby by military or other public authority for any purpose arising out of a temporary emergency or other temporary circumstance, shall be the property of and paid to the Party owning the real property and/or improvements so taken, and such Party shall reconstruct its Tract as nearly as possible to the condition thereof immediately prior to such taking in accordance with the requirements and subject to the conditions of this Article and in accordance with the provisions of Article IX hereof.

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B. Anything herein to the contrary notwithstanding, if all or any substantial portion of the Automobile Parking Area shall be taken by condemnation so that after such taking the parking index in the Center shall be reduced to less than sixty percent (60%) of the parking index provided for in Article X, then this REA shall terminate. In the event that by virtue of such taking the Automobile Parking Area on a particular Tract shall be reduced to less than sixty percent (60%) of the parking index provided for in Article X, or in the event twenty-five percent (25%) or more of the then total Floor Area of a Store (exclusive of TBA) or Mall Stores, as the case may be, is so taken, then in either such event the Party affected shall have the right to terminate its respective obligations to restore, operate, repair and maintain, as provided for in this REA, by notice given to each of the other Parties within ninety (90) days after such taking. The termination of the respective obligations as herein provided shall take effect automatically sixty (60) days following the giving of such notice.

C. Nothing herein contained shall be deemed to prohibit the trustee under any deed of trust, or the beneficiary thereunder, or any mortgagee, from participating in any eminent domain proceedings on behalf of any Party, or in conjunction with any such Party.

ARTICLE XVIII

CORRECTION OF SITE DESCRIPTIONS,
DESCRIPTIONS OF EASEMENTS

A. It is recognized that by reason of construction errors, the Non-Mall Stores, the Mall Stores or Enclosed Mall, and the Stores of Auerbach and Sears may not be precisely constructed within their respective Sites as shown on Exhibit B. As soon as reasonably possible after completion of the construction of the Non-Mall Stores, the Mall Stores or Enclosed Mall, or any Store, as the case may be, Developer and Sears shall cause an "as-built" survey to be made of its Tract showing all improvements and Tract boundaries. The cost of such survey shall be paid by each such Party unless more than one shall have joined in obtaining a single survey, in which event, the cost thereof shall be divided between such Parties in such manner as they shall have agreed upon. In the event such survey shall disclose that the Store of the Party making such survey, or the Mall Stores or Enclosed Mall, as the case may be appropriate, has not been precisely constructed within its respective Site, then promptly upon request of any Party hereto, all of the Parties hereto will join in the execution of an agreement, in recordable form, amending Exhibits A and B to this REA, so as to revise the description of such Site to coincide with the as-built perimeter of the buildings and improvements constructed by the owner of such Site. Nothing herein contained shall be deemed to relieve or excuse any Party to this REA from exercising all due diligence to construct its buildings and improvements within its respective Site as shown on Exhibit B.

B. Upon completion of construction of the utility facilities referred to in Article II B, and the construction elements referred to in each of Articles II B2 and II C, the Parties hereto shall join in the execution of an as-built survey, in recordable form, appropriately identifying the type and location of each respective utility facility and construction element.

ARTICLE XIX

SIGNS

A. Attached hereto and marked Exhibit D are criteria for all signs to be erected within the Shopping Center Site, and no signs shall be erected in the Shopping Center Site which do not conform in all respects to said criteria. It is understood said criteria expressly excludes, except for specific provisions thereof, the building identification signs on the Stores of Auerbach, Sears and the Occupant of Building B on the Developer Tract. The signs on and immediately adjacent to the existing Valley Bank building, building 4 on Exhibit B, are hereby approved by each of the Parties.

B. If any Occupant shall request a sign not completely in accordance with the criteria, such sign shall not be erected without the written consent of the Parties. Any change made to any initially completed sign which causes the same to not fall within the scope of the sign criteria is hereby prohibited, and any such changed sign shall be considered as a new installation and deviation from the criteria shall similarly require the approval of the Parties.

C. The Parties understand that the criteria set forth in Exhibit D are intended primarily for signs to be erected on the Mall Stores. With respect to any signs to be erected on the Non-Mall Stores which do not comply with such criteria, and any theatre reader board sign to be erected on the Developer Tract in the Shopping Center, such signs shall be subject to approval by each of the Parties hereto.

ARTICLE XX
RULES AND REGULATIONS

A. Developer, Auerbach and Sears, each severally, agree to observe and comply with, and shall cause their respective Permittees to observe and comply with such rules and regulations related to the Center as may be adopted by the mutual agreement of the Parties hereto from time to time. The Parties hereto do hereby adopt the rules and regulations attached hereto and marked Exhibit F until such time as new and different rules and regulations shall be adopted as aforesaid.

ARTICLE XXI
COVENANTS OF DEVELOPER

A. Developer covenants and agrees that subject to the provisions of Articles XIII and XV of this REA, and subject to the other provisions of this Article, it will continuously manage and operate, or cause to be managed and operated, the Enclosed Mall and the Developer Stores, in the following manner:

1. As a complex of retail stores and commercial enterprises which is a part of a first-class shopping center development with Enclosed Mall and other related Common Area facilities.

2. Use its best efforts to:

(a) Have the Floor Area occupied in its entirety;

(b) Have at all times a proper mixture and balance of occupants; provided, however, the service facilities (facilities not primarily devoted to the sale of merchandise) shall not occupy more than five percent (5%) of the total Floor Area of the Developer Mall Stores; and

(c) Maintain a quality of management and operation not less than that generally adhered to in other similar regional shopping centers where the occupants of either the Auerbach or Sears Tracts are from time to time located.

3. Under the name of "FASHION PLACE" and under no other name without the prior approval of Auerbach and Sears so long as Auerbach is the Occupant of the Auerbach Tract as respects Auerbach, and so long as Sears is the Occupant of the Sears Tract as respects Sears, which approval shall be granted or withheld in the sole and absolute judgment of Auerbach and Sears, respectively.

4. So as to have Floor Area of not less than 264,491 square feet within the Developer Mall Stores; provided, however, that Developer need not have more floor area at any time than would be required under the provisions of Article XIII of this REA.

5. In accordance with rules and regulations prescribed in Exhibit E.

6. So as not to substantially change, modify or alter in any manner or to any extent whatever the exterior of the Developer Mall Stores without the prior approval of Auerbach and Sears.

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7. So as to operate within the confines of the Shopping Center Site as depicted on Exhibit B, and not to withdraw any real property from the Developer Tract without the prior approval of Auerbach and Sears, which approval may be granted or withheld in the sole and absolute judgment of Auerbach and Sears, respectively.

B. Each of the Stores of Auerbach and Sears has a substantial interest in the nature of the Occupants of the Mall Stores within the immediate vicinity of each such respective Store. Developer covenants and agrees it will not permit any Person to be an Occupant within the number of feet (measured from the Enclosed Mall facade of the Store of any such Party) hereinafter specified without the specific approval of such Party, both as to the Occupant and the location, to wit:

Auerbach - 100 feet (measured both to the east and to the north)

Sears - 100 feet (measured only to the north)

Each lease shall contain provisions (a) prohibiting any Person from becoming an Occupant (including, but not by way of limitation, assignees, transferees, lessees, sublessees, licensees, in excess of 25% of the Floor Area occupied by the respective Occupant) or mortgagees (except bona fide institutional mortgagees) of or through any Occupant (except by involuntary act or operation of law), unless

the occupancy of such Person has been previously approved in accordance with the provisions hereof; provided, however, the foregoing provisions of this clause (a) shall have no application to (i) bona fide mergers, consolidations or reorganizations of or through any Occupant, or (ii) any transfers or assignments to or between any affiliated corporations of any Occupant (the term "affiliated corporation" referring to any corporation of which any other corporation owns or controls more than 50% of the issued and outstanding voting stock of another corporation). Developer covenants to use reasonable efforts in good faith to require by lease covenant each Occupant to agree to limit and restrict its right to transfer or assign its respective lease or sublet the premises thereunder, or portions thereof, so that the prohibitions contained in this clause (a) shall be applicable to mergers, consolidations or reorganizations of or through the respective Occupant, and to transfers to or between any affiliated corporation; (b) requiring the Occupant to comply with the standards of maintenance, management, operation and control set forth in Exhibit E hereof; (c) requiring the Occupant to comply with the provisions of Article XIX hereof; (d) requiring all Occupants of the Mall Stores to be open for business on all days (Sundays, National Holidays and recognized State Holidays excepted) and at all hours that _____

both of the Stores of Auerbach and Sears are open for business; and (e) providing that the provisions of this paragraph B shall be enforceable by the Parties hereto, jointly and severally.

C. Each and all of the provisions of this REA on Developer's part to be performed (whether affirmative or negative in nature) are intended to and shall bind each and every person, firm, association or corporation comprised within the term Developer, at any time and from time to time, and shall inure to the benefit of Auerbach and Sears, respectively.

D. Each and all of the covenants of Developer herein not to use or permit the use of any part of the Developer Tract, contrary to the provisions of this REA, are also intended to, and shall bind, each and every other Person having any fee, leasehold or other interest in any part of the Developer Tract, at any time and from time to time, derived through any person, firm, association or corporation now or hereafter comprised within the term Developer to the extent that such part of the Developer Tract is affected or bound by the covenants in question, or that such covenant is to be performed thereon, and shall inure to the benefit of Auerbach and Sears respectively.

E. With respect to the various covenants (whether affirmative or negative) on the part of Developer contained in

this REA which affect, or bind, or are to be performed on portions of the Tract of any Party, respectively, the Tract benefiting from the covenant whether it be the Auerbach Tract, or Sears Tract, shall during the term of this REA be the dominant estate, and the Developer Tract (or if the particular covenant affects, binds, or is to be performed on less than the whole of the Developer Tract, then with respect to the particular covenant, such portion thereof as is affected by or bound by the particular covenant, or on which the particular covenant is to be performed) shall during the term of this REA be the servient estate.

ARTICLE XXII

AUERBACH AND SEARS COVENANTS

A. Auerbach covenants and agrees, subject to the provisions of Articles V, XIII, XV, XVII and XXI A4, and subject to the other provisions of this Article, that it will open its respective main Store building under the trade name of "Auerbach's" on or before the date set forth in Article VII B, having at least 102,795 square feet of Floor Area. Sears covenants and agrees, subject to the provisions of Articles V, XIII, XV, XVII and XXI A4, and subject to the other provisions of this Article, that it will open its respective main Store building under the trade name of "Sears" on or before the date set forth in Article VII B, having at least 244,801 square feet of Floor Area.

The hours of business for the respective Stores of Auerbach and Sears shall be such reasonable hours as each of said Parties shall respectively determine.

Sears further covenants, subject to Articles XIII, XV and XVII, to maintain and operate its main Store building under the trade name "Sears" and with the aforesaid minimum Floor Area for a period of twenty (20) years from and after the opening of its main Store building, and further covenants that it will operate or cause to be

operated retail facilities on the mall level for ten (10) years thereafter.

Auerbach further covenants, subject to Articles XIII, XV and XVII, to maintain and operate its main Store building under the trade name "Auerbach's" and with the aforesaid minimum Floor Area for a period of thirty (30) years from and after the opening of its main Store building.

Auerbach and Sears further each severally covenants, subject to Articles XIII, XV and XVII, that during the periods it is required to operate its main Store buildings and retail facilities on the mall level, as herein provided, each shall cause the doors of its respective main Store building to be open (during the hours its respective main Store building and the Enclosed Mall are open to the public) onto the Enclosed Mall so that the traffic may travel from its main Store building to the Enclosed Mall in an uninterrupted manner.

B. The covenants contained in Article XXII A shall, at the request of any lender on the respective Tracts referred to therein, be subordinated to the lien of any mortgage, indenture or deed of trust (including, but not by way of limitation, any blanket mortgage or deed of trust which may cover any other property or properties of such Party, whether owned in fee or as a leasehold, in addition to the property interest or interests previously referred to in this sentence) to the end that a purchaser or purchasers in any foreclosure proceedings or pursuant to any exercise of power of sale, or any grantee under a deed in lieu of foreclosure and all successors to or through any such purchaser or purchasers, or to or through any such grantee, shall take free and clear of the covenant. Each Party covenants and agrees to execute and deliver to the others, upon request therefor, such instruments, in recordable form, as shall at any time and from time to time be required (the form of which shall be in the sole and absolute judgment of counsel for such Party) in order to confirm or effect any such subordination as referred to in the preceding sentence.

C. Each and all of the provisions of this REA on the respective parts of Auerbach and Sears to be performed (whether affirmative or negative in nature) are intended to and shall bind each and every person, firm, association or corporation comprised within the term Auerbach and Sears, respectively, at any time and from time to time and shall inure to the benefit of Developer and the other Parties.

D. Each and all of the covenants of Auerbach and Sears, respectively, herein not to use or permit the use of any part of their respective Tracts, as the case may be, contrary to the

provisions of this REA, are intended to, and shall bind each and every person having any fee, leasehold or other interest in any part of such Tract, at any time and from time to time, derived through any person, firm, association or corporation, now or hereafter comprised within the term Auerbach and Sears, respectively, to the extent that such part of their respective Tracts is affected or bound by the covenant in question or that such covenant is to be performed thereon, and shall inure to the benefit of Developer.

E. With respect to the various covenants (whether affirmative or negative) on the part of Auerbach and Sears, respectively, contained in this REA, which affect or bind, or are to be performed on portions of their respective Tracts, the Tract benefited by such covenant shall, during the term of this REA, be the dominant estate, and the Tract of Auerbach or Sears, as the case may be, or if the particular covenant affects, binds or is to be performed on less than the whole of such Tract, then with respect to the particular covenant, such portion thereof as is affected by, or bound by the particular covenant, or on which the particular covenant is to be performed shall, during the term of this REA, be the servient estate.

ARTICLE XXIII

ARBITRATION

A. Any dispute (but only any such disputes) arising pursuant to the provisions of Articles IV, V, VI, or the reconstruction provisions of Article XIII of this REA, including those arising from lack of approval, controversies, or disagreements between the Parties arising from the interpretation of this REA shall be resolved by arbitration as provided herein.

B. Any Party may request a meeting to be attended by all Parties for the purpose of resolving any such dispute. If the matter is not resolved at such meeting, or the meeting is not held, any Party may within thirty (30) days from the date set for such meeting file a written request to resolve such dispute by arbitration. Within ten (10) days from the date of receipt of such notice, each Party shall select an arbitrator. Such arbitrators shall meet within ten (10) days after selection for the purpose of resolving the dispute. If a majority of such arbitrators are unable to agree, an additional arbitrator shall be selected by the designated arbitrators. If such arbitrators are unable to select such an arbitrator, such arbitrator shall be appointed by the Presiding Judge of the Third District Court of the County of Salt Lake, State of Utah, at the request of any Party. All arbitrators appointed pursuant to the provisions hereof shall be impartial and unrelated, directly or indirectly, so far as employment or services is concerned, to any of the Parties hereto.

Within ten (10) days from such appointment, all arbitrators shall meet and determine the matter in dispute and shall resolve the same and all questions pertaining thereto within twenty (20) days from the date of selection of such additional arbitrator. A majority decision shall be final at any state of the proceeding. Each Party shall bear its own expense, except that relating to the selection and services of the additional arbitrator which shall be borne equally by the Parties; provided, however, that the arbitrators may award attorneys' fees among the Parties. In any arbitration proceeding involving Section IV herëof, arbitrators having substantial experience in shopping center design and development shall be selected as arbitrators by the Parties, or otherwise.

ARTICLE XXIV
ATTORNEYS' FEES

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

ARTICLE XXV
NOTICES

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

FASHION PLACE ASSOCIATES
c/o Ernest W. Hahn, Inc.
2311 W. El Segundo Blvd.
Hawthorne, California 90250

and addressed, in the case of Auerbach to:

AUERBACH COMPANY with copy to K. Jay Holdsworth
State at Broadway Continental Bank Building
Salt Lake City, Utah Salt Lake City, Utah 84101

and addressed, in the case of Sears to:

SEARS, ROEBUCK AND CO.
900 South Fremont Avenue
Alhambra, California 91803
Attention: Vice President

and to: SEARS, ROEBUCK AND CO.
925 South Homan Avenue
Chicago, Illinois 60607
Attention: Vice President - Comptroller

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

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

The undersigned, whose address is _____ does hereby certify that it is the holder of a first lien upon the tract of land described on Exhibit A attached hereto and made a part hereof and being the Tract of _____ (Party) and is the Trustee or mortgagee holding the security interest in said Tract. In the event that any notice shall be given of the default of the Party upon whose Tract this lien applies, a copy thereof shall be delivered to the undersigned who shall have all rights of such Party to cure such default. Failure to deliver a copy of such notice to the undersigned shall in no way affect the validity of the notice of default as it respects such Party, but shall make the same invalid as it respects the interest of the undersigned and its lien upon said property.

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

ARTICLE XXVI

AMENDMENT

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

B. The provisions of this REA are for the exclusive benefit of the Parties hereto and not for the benefit of any third Person, nor shall this REA be deemed to have conferred any rights, express or implied, upon any third Person. It is expressly understood and agreed that no modification or amendment, in whole or in part, shall require any consent or approval on the part of any tenant or lessee of any Party to this REA.

ARTICLE XXVII

TERMINATION OF REA

A. Except as provided in Article III and Article XVII hereof, this REA shall remain in full force and effect until sixty (60) years from the date hereof, and so long thereafter as:

1. There is being operated at least 100,000 square feet of Floor Area or at least one of the Stores of Auerbach or Sears; or
2. There is being operated at least 100,000 square feet of Floor Area on any of the Tracts of Auerbach or Sears, and 100,000 square feet of Floor Area on the

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Developer Tract, and Developer is not in default under Section XXI hereof;

provided, however, that this REA shall in all events terminate not later than ninety-nine (99) years from the date hereof.

B. In the event of the termination of this REA, and any Party is operating at least 100,000 square feet of Floor Area on its Tract, and at the time of such termination the building housing such Floor Area abuts its Tract boundary line, the Party so operating such Floor Area shall continue to have an easement for ingress and egress for pedestrian traffic to and from the entrances to such structure on the Enclosed Mall, except that at the option of Developer said easement may be limited in width to 20 feet and may be limited in length so that it need not be permitted to extend into the Developer Tract for a distance of more than 20 feet past the building line of the structure so housing such Floor Area.

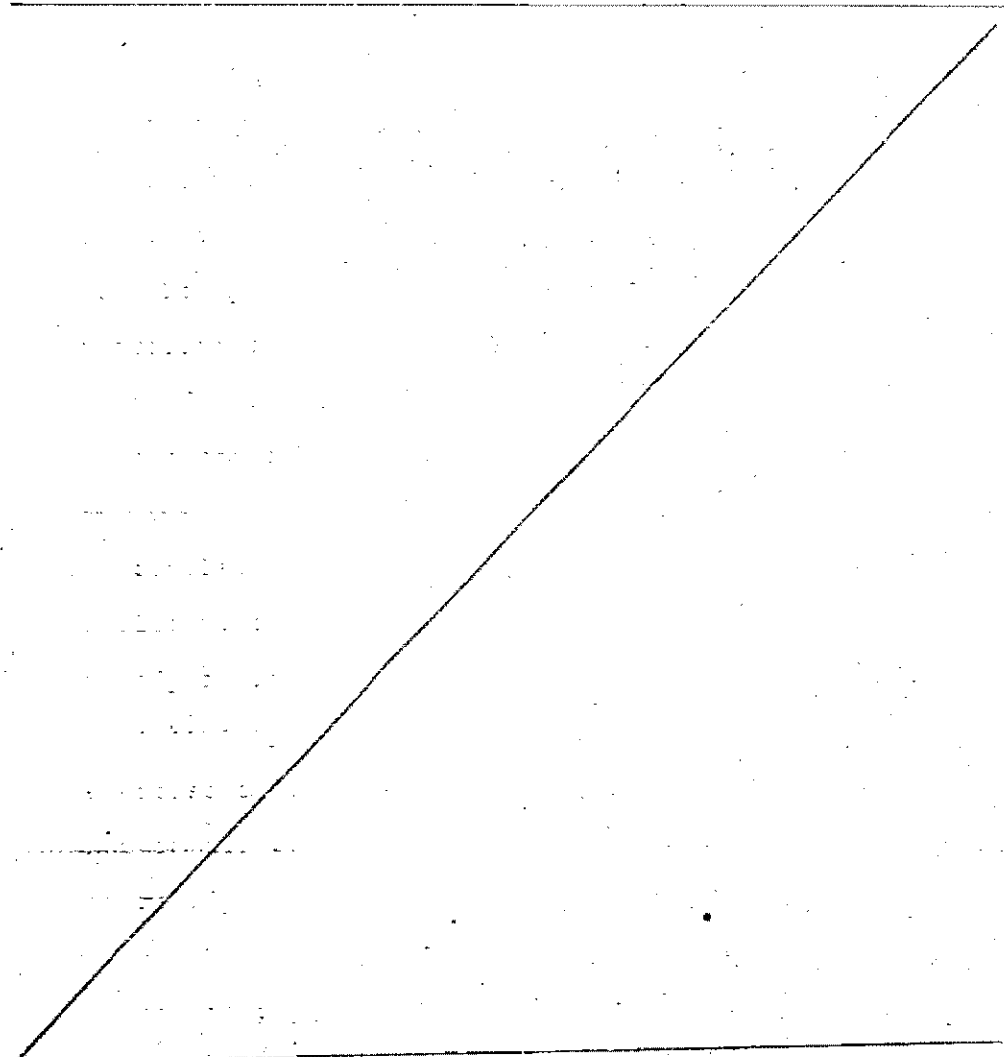
The easement herein provided for shall continue for so long as such Floor Area is in fact operating, or ninety-nine (99) years from the date hereof, whichever shall first occur. It is expressly understood and agreed that the covenant of Developer to grant such easement shall be specifically enforceable by the Party for whose benefit the same shall run, in a court of proper jurisdiction.

ARTICLE XXVIII

DEDICATION

A. The Parties hereto shall each, to the extent necessary, join in the execution of such instruments as may be required in order to effectuate street widenings or the installation of public utilities and similar easements under and across portions of their respective Tracts.

B. No Party shall dedicate any portion of its Tract, except as provided in paragraph A above, for public purposes.



ARTICLE XXIX
MISCELLANEOUS

Waiver of
Default

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

Payment
on Default

B. If pursuant to this REA any Party is compelled or elects to pay any sum of money or do any acts which require the payment of money by reason of any other Party's failure or inability to perform any of the terms and provisions in

this REA to be performed by such other Party, the defaulting Party shall promptly upon demand reimburse the paying Party for such sums, and all such sums shall bear interest at the rate of one percent (1%) over the prime rate then being charged by First Security Bank of Utah, from the date of expenditure until the date of such reimbursement. Any other sums payable by any Party to any other pursuant to the terms and provisions of this REA that shall not be paid when due shall bear interest at the rate of one percent (1%) over the prime rate then being charged by First Security Bank of Utah, from the due date to the date of payment thereof.

No Partner-
ship

C. Neither anything in this REA contained (except in connection with Article X) nor any acts of the Parties hereto shall be deemed or construed by the Parties hereto, or any of them, or by any third person, to create the relationship of principal and agent, or of partnership, or of joint venture, or of any association between any of the Parties to this REA.

Successors

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

Sever-
ability

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

Governing
Laws

F. This REA shall be construed in accordance with the laws of the State of Utah wherein the Shopping Center Site is located.

Captions

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

Time of
Essence

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

Developer
Auerbach
Sears

I. Except for the covenants set forth in Articles XXI A(4) and XXII A, the terms "Developer," "Auerbach" and "Sears" respectively, as used in this REA shall, so far as the terms, covenants, provisions and conditions of this REA to be kept, performed and observed by the Developer, Auerbach and Sears are concerned mean and refer only to the Owner or Owners from time to time of the Developer Tract, the Sears Tract and the lessee of the Auerbach Tract, as the case may be appropriate, it being understood and agreed that such terms, covenants and conditions shall be binding upon Developer, Auerbach and Sears and their respective successors and assigns only during and in respect of its or their respective successive periods in which each respectively is a Party. Notwithstanding the foregoing, it is expressly understood and agreed that the obligation to construct improvements pursuant to the requirements of Articles V, VI and VII shall be and remain the respective covenants of Developer, Auerbach and Sears, as therein set forth, and shall be covenants running with the land, in addition to being personal covenants of such Parties.

The covenant on the part _____

of Auerbach and Scars to do business is and shall remain a personal covenant of each such respective signatory, and their successors by means of merger or consolidation, but shall not mean any other person who shall acquire the interest of such Party in its respective Tract.

J. It shall be a condition precedent to a release of a grantor that at the time of any sale, transfer or conveyance of any Tract or part thereof, the grantee thereof shall deliver to each of the Parties to this REA an executed and acknowledged instrument, in recordable form, assuming the terms, conditions, covenants and agreements in this REA to be kept, observed and performed by the grantor of such Tract, or part thereof, from and after such sale, transfer or conveyance as well as any unperformed obligations of the grantor as disclosed by any offset statement furnished pursuant to Article XXIX S, then from and after the date of such sale, transfer or conveyance such grantor shall, as respects the Tract or part thereof conveyed, thenceforth stand released and discharged from any and all liability for the keeping, performing and observing of the terms, covenants, conditions and agreements referred to in the preceding Article XXIX I, which are accrued at such date whether or not known at such date. It shall be a condition precedent to the release and discharge of any such grantor that any and all amounts which shall then be due and payable by such grantor to any other Party to this REA shall have been paid to such other Party and that such grantor shall give notice to other Parties to this REA of any such sale, transfer or conveyance concurrently with the filing for record of the instrument effecting the same.

Release of
Parties
and Mort-
gages

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

In the event of any termination of such leasehold interest, and notwithstanding any language in said lease preventing a merger of title in said fee owner, such provision shall not be operative to relieve said fee owner and its respective successors or assigns of the obligations under and pursuant to the terms of this REA, exclusive of the covenants of Auerbach and Sears, as provided in Article XXII; provided, however, the fee interest shall not be subject to liens as provided for herein which are superior

to said fee ownership during the first twelve (12) months in which the leasehold interest and the fee interest shall be held by the same Party, but thereafter shall be so subject unless a new lease shall have been entered into which would otherwise comply with the provisions of this paragraph or the lease shall have been assigned to a new person, in which event the rights of the fee owner shall continue as though default had taken place under said lease. In the event of the merger of the title to the fee interest and the leasehold interest in an institutional owner as hereinabove provided for, then and in that event as respects such institutional owner the provisions of this paragraph suspending the imposition of liens upon the fee interest for such twelve-month period shall be of no force or effect whatsoever. The lessee under any qualifying lease, as herein provided, shall be deemed a Party hereto so long as said lease is in existence. As used herein in this paragraph J, the term "sell" or "sale and leaseback" shall be deemed to include any lease by any Party of all or part of its Tract for the purposes of financing the improvements on its Tract and simultaneous leaseback, and the provisions of this paragraph shall apply thereto; and the terms "owner" and "fee" shall include a lessee and leasehold under such lease and leaseback transaction in the same manner and with like effect.

Consent

K. In any instance in which any Party to this REA shall be requested to consent to or approve of any matter with respect to which Party's consent or approval is required by any of the provisions of this REA, such consent or approval shall be given in writing, and shall not be unreasonably withheld, unless the provisions of this REA with respect to a particular consent or approval shall expressly provide that the same shall be given or refused in the sole and absolute judgment of any Party. The question of reasonableness in any consent or approval shall expressly be subject to the provisions of Article XXIII of this REA.

Time of
Approval

L. Wherever in this REA approval of any Party is required, and unless a different time limit is provided herein, such approval or disapproval shall be given within thirty days following the receipt of the item to be so approved or disapproved, or the same shall be conclusively deemed to have been approved by such Party. Any disapproval shall specify with particularity the reasons therefor; provided, however, that wherever in this REA any Party is given the right to approve or disapprove in its sole and absolute discretion it may disapprove without specifying a reason therefor.

Perform-
ance of
Operator
Covenants

M. If Operator shall fail to perform any of the covenants to be performed by Operator pursuant to this REA, and if the failure of Operator relates to a matter which in the Developer's, Auerbach or Sears judgment reasonably exercised is of an emergency nature, and such failure shall remain uncured for a period of forty-eight (48) hours after the Developer, Auerbach or Sears shall have served upon Operator notice of such failure, then the Developer, Auerbach or Sears as the case may be, may at their option and in their sole discretion as to the necessity therefor, perform any such covenant, or make any such payment as Operator's attorney-in-fact. The Developer, Auerbach or Sears, as the case may be, by reason of so doing shall not be liable or responsible for any loss or damage thereby sustained by Operator or anyone holding under Operator.

If a Party hereto shall be compelled or shall elect to pay any sum of money or do any acts which require the payment of money by reason of the other Party's failure or inability to perform any of the terms and provisions in this REA to be by such other Party performed, then such defaulting Party shall promptly upon demand reimburse the paying Party for such sums, and all such sums shall bear interest at the rate of one percent (1%) over the prime rate then being charged by First Security Bank of Utah from the date of expenditure therefor. Any other sums payable by a Party to the other Party hereto pursuant to the terms and provisions of this REA that shall not be paid when due shall bear interest at the rate of one percent (1%) over the prime rate then being charged by First Security Bank of Utah from

the due date to the date of payment thereof. If such repayment shall not be made within ten (10) days after such demand is made, the Party having so paid shall have the right to deduct the amount thereof, together with interest as aforesaid, without liability or forfeiture, from any sums then due or thereafter becoming due from it to the defaulting Party hereunder, and such Party shall have a lien upon the Tract of the defaulting Party to secure such repayment, such lien to be foreclosed as provided by law, but to be subject and subordinate to the holder of any first deed of trust or mortgage upon said Tract and the interest of the fee owner pursuant to a sale and lease-back described in Article XXIX J hereof.

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

Injunctive
Relief

N. In the event of any violation or threatened violation by any Party, lessee or Occupant of any part of the Center of any of the terms, restrictions, covenants and conditions herein provided, any of the Parties shall have the right to enjoin such violation or threatened violation in a court

of competent jurisdiction. Prior to the commencement of any such action, written notice of such violation shall be given to the other Party or other person responsible therefor.

Not a
Public
Dedication

O. Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Center to the general public or for the general public or for any public purpose whatsoever, it being the intention of the Parties hereto that this REA shall be strictly limited to and for the purposes herein expressed.

Breach
Shall Not
Permit
Termination

P. It is expressly agreed that no breach of this REA shall entitle any Party to cancel or rescind or otherwise terminate this REA, but such limitation shall not affect, in any manner, any other right or remedies which the Parties may have hereunder by reason of any breach of this REA.

Breach
Shall Not
Defeat
Mortgage

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

Defined
Terms

R. Whenever in this REA a word or words has (have) initial capital letter(s) or appear(s) in quotation marks, the same has (have) the defined meaning given to it or them.

Offset
Statement

S. Each of the Parties at the request of any other shall furnish to such Party, or to any mortgagee, a statement that this REA is in full force and effect; that it has not been assigned, modified or amended in any way (or if it has, then stating the nature thereof); and that there are no known breaches thereof (or if there are, describing the same with particularity).

ARTICLE XXX

TRUST FUNDS

To the extent that the proceeds of insurance and condemnation awards received by Developer (or by the other Parties if the same shall be Persons other than the signatories hereof) shall, by the terms of this REA, be required to be devoted to repair, rebuilding or restoration as provided in Article XIII, such proceeds or awards shall be deposited in trust with a bank or trust company approved by the other Parties and shall be distributed from such trust to the Party (after the other Parties shall have approved complete plans and specifications for such repair, rebuilding or restoration) in progress payments, to the extent trust funds are available, as follows:

(i) At the end of each month, or from time to time, as may be agreed upon, there shall be paid against architect's certificates an amount which shall be that proportion of funds held in trust which 85% of the payment to be made to the contractors or materialmen of the Party for work done, materials supplied and services rendered during each month or other period, bears to the total contract price;

and

(ii) At the completion of the work, the balance of such trust funds required to complete the payment of such work shall be paid to the Party; provided that at the time of each payment

(A) there are no liens against the Party's Tract by reason of such work, and that with respect to the time of payment of any balance remaining to be paid at the completion of such work the period within which a lien may be filed has expired, or that the other Parties hereto are satisfied by proof submitted by the Party that all costs of such work theretofore incurred have been paid,

(B) the Party's architect shall certify that all work so far done is proper and of a quality and class equal to the original work required by this REA and in accordance with the plans and specifications, and (C) the Party shall furnish to the trustee under the trust evidence satisfactory to said trustee that all previous advances have been devoted to defray the actual cost of such work up to the amount of such cost, or that such cost has actually been paid by the Party in the amount of all such previous advances. In no event shall the trustee of the fund to be applied to the cost of such work be liable for any amount in excess of the net proceeds of the award in condemnation. Should the cost of such work exceed the trust fund, the Party shall pay such additional cost. If the trust fund exceeds said cost, the excess shall be paid to the Party.

ARTICLE XXXI
CHANGES IN IMPROVEMENTS DESIGNATIONS
WITHIN BUILDING SITES

Subject to the provisions of this REA respecting minimum Floor Area required to be maintained by each of the Parties and the provisions respecting the parking index to be maintained, each Party shall have the right as to its respective Tract, in those areas designated as building sites or future building sites as shown on Exhibit B, at any time, and from time to time, to designate, withdraw and redesignate as Floor Area or Common Area and shall be obligated to improve at its expense in accordance with such designation and all applicable requirements of this REA, such areas as each may from time to time select; provided, however, that a major facade of the building or buildings (excluding Non-Mail Stores and TBAs) of each Party shall always be so located as to provide a building entrance on, and to complete the enclosure of, the Enclosed Mall from and after the date of completion of the construction of the Enclosed Mall so long thereafter as physical integration with the Enclosed Mall is required.

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



FASHION PLACE ASSOCIATES,
a limited partnership,
By: ERNEST W. HAHN, INC.,
A California Corporation,

By [Signature]
Ernest W. Hahn, President

By [Signature]
Herman Maier, Secretary

AUERBACH COMPANY, a Utah corporation,

By [Signature]

SEARS, ROEBUCK AND CO a New York corporation,

By [Signature]

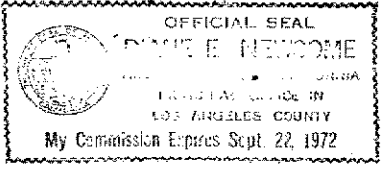
LEGAL APPROVAL

STATE OF CALIFORNIA)
COUNTY OF LOS ANGELES)

ss.

On April 6, 1971, before me, the undersigned, a Notary Public in and for said State, personally appeared Ernest W. Hahn, known to me to be the President, and Arman M. Mous known to me to be the Secretary of ERNEST W. HAHN, INC., the corporation that executed the within instrument and known to me to be the persons who executed the within instrument on behalf of said corporation, said corporation being known to me to be one of the partners of FASHION PLACE ASSOCIATES, the partnership that executed the within instrument, and acknowledged to me that such corporation executed the same as such partner and that such partnership executed the same.

WITNESS my hand and official seal.



Dore E. Newcome
Notary Public

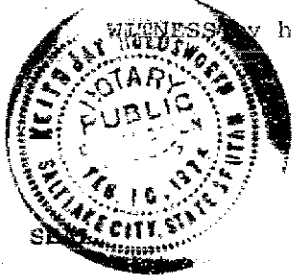
SEAL

STATE OF UTAH)
COUNTY OF SALT LAKE)

ss.

On April 6, 1971, before me, the undersigned, a Notary Public in and for said County and State, personally appeared Fred F. Auerbach, known to me to be the President, and Keith Jay Holdsworth, known to me to be the Secretary of AUERBACH COMPANY, the corporation that executed the within instrument, known to me to be the persons who executed the within instrument on behalf of the corporation therein named, and acknowledged to me that such corporation executed the same.

WITNESS my hand and official seal.



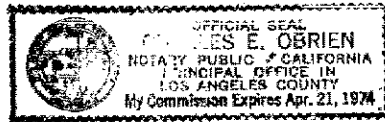
Keith Jay Holdsworth
Notary Public
Residing in Salt Lake County, Utah

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STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

On APRIL 30, 1971, before me, the under-
signed, a Notary Public in and for said County and State, personally
appeared JOHN G. LOWE, known to me to be the
VICE President, and VINCENT W. JONES
known to me to be the ASSISTANT Secretary of SEARS,
ROEBUCK AND CO., the corporation that executed the within instrument,
known to me to be the persons who executed the within instrument on
behalf of the corporation therein named, and acknowledged to me that
such corporation executed the same.

WITNESS my hand and official seal.



Charles E. O'Brien
Notary Public

SEAL

EXHIBIT "A"

FASHION PLACE SHOPPING CENTER

MURRAY, UTAH

"TRACTS"

OUTLINED ON EXHIBIT "B"

PART I DEVELOPER TRACT - 44,034 Acres
(Includes Auerbach's common area tract)

Parcel 1

Description:

Beginning at a point on the easterly line of State Street due South 1665.49' and due east 602.88' from the N.W. corner of Sec. 19, T.2 S.R.1.E., S.L.B. & M, said point of beginning also being S 2°16'10" W 1605.92' and S 87°43'50" E 65.50' from the monument in the intersection of 6100 South and State Streets; thence S 87°43'50" E 275.00'; thence N 2°16'10" E 207.50'; thence N 87°43'50" W 32.50'; thence N 2°16'10" E 14.30'; thence N 86° W 242.61' to State Street; thence S 2°16'10" W 229.13' to the point of beginning (1.410 acres).

Also:

Beginning at a point on the easterly line of State Street due South 257.93' and due east 643.67' from the N.W. corner of Sec. 19, T.2 S., R.1.E., S.L.B. & M said point of beginning also being S 2°16'10" W 197.85' and S 87°43'50" E 50.51' from the monument in the intersection of 6100 South and State Streets; thence S 87°43'50" E 150.00'; thence N 2°16'10" E 150.00' to the South line of 6100 South Street; thence East 630.55'; thence easterly along a 2671.675' radius curve to the right through a central angle of 6°25'37", a distance of 299.69' to a point of reverse curve where the bearing between curve centers is S 5°25'37" W; thence easterly along a 2437.545' radius curve to the left through a central angle of 7°02'34", a distance of 299.62'; thence N 89°23'03" E 217.02'; thence southeasterly along a 15' radius curve to the right through a central angle of 90°36'57", a distance 23.72'; thence south 103.12'; thence N 89°10'14" W 242.70' along a fence; thence south 515.32' along a fence; thence east 231.75' to a point on a 1600' radius curve, the center of which bears N 83°18'07" W; thence southwesterly along said curve through a central angle of 6°16'07", a distance of 175.98' to a point of reverse curve, where the bearing between curve centers is S 77° E; thence southerly along an 1816.638' radius curve to the left through a central angle of 10°51'45", a distance of 344.41'; thence N 87°43'50" W 274.43'; thence S 2°16'10" W 169.14'; thence N 87°43'50" W 463.50'; thence N 2°16'10" E 41.0'; thence N 87°43'50" W 327.50'; thence N 2°16'10" E 221.00'; thence N 87°43'50" W 10.00'; thence N 2°16'10" E 296.67'; thence N 87°43'50" W 120.00'; thence N 2°16'10" E 185.00'; thence N 87°43'50" W 366.08' to the easterly line of State Street; thence N 1°02'50" E 393.97' to the point of beginning. (35,211 acres)

Also:

Parcel 2

Description:

Beginning at a point on the easterly line of State Street due south 651.84' and due east 615.47' from the N.W. corner of Sec. 19, T.2 S., R.1 E., S.L.B. & M., said point of beginning also being S 2°16'10" W 621.74' and S 87°43'50" E 55.02' from the monument in the intersection of 6100 South and State Streets; thence S 87°43'50" E 150.00'; thence N 2°16'10" E 150.00' to the South line of 6100 South Street; thence East 630.55'; thence easterly along a 2671.675' radius curve to the right through a central angle of 6°25'37", a distance of 299.69' to a point of reverse curve where the bearing between curve centers is S 5°25'37" W; thence easterly along a 2437.545' radius curve to the left through a central angle of 7°02'34", a distance of 299.62'; thence N 89°23'03" E 217.02'; thence southeasterly along a 15' radius curve to the right through a central angle of 90°36'57", a distance 23.72'; thence south 103.12'; thence N 89°10'14" W 242.70' along a fence; thence south 515.32' along a fence; thence east 231.75' to a point on a 1600' radius curve, the center of which bears N 83°18'07" W; thence southwesterly along said curve through a central angle of 6°16'07", a distance of 175.98' to a point of reverse curve, where the bearing between curve centers is S 77° E; thence southerly along an 1816.638' radius curve to the left through a central angle of 10°51'45", a distance of 344.41'; thence N 87°43'50" W 274.43'; thence S 2°16'10" W 169.14'; thence N 87°43'50" W 463.50'; thence N 2°16'10" E 41.0'; thence N 87°43'50" W 327.50'; thence N 2°16'10" E 221.00'; thence N 87°43'50" W 10.00'; thence N 2°16'10" E 296.67'; thence N 87°43'50" W 120.00'; thence N 2°16'10" E 185.00'; thence N 87°43'50" W 366.08' to the easterly line of State Street; thence N 1°02'50" E 393.97' to the point of beginning. (35,211 acres)

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308.64' and S 2°16'10" W 304.89'; thence S 86°E 242.61'; thence S 2°16' 10" W 185.90'; thence S 87°43' 50" E 247.00'; thence N 2°16' 10" E 325.02'; thence N 87°43' 50" W 10.00'; thence N 2°16' 10" E 296.67'; thence N 87°43' 50" W 120.00'; thence N 2°16' 10" E 185.00'; thence N 87°43' 50" W 366.08' to the point of beginning. (7.413. Acres)

PART II AUERBACH'S TRACT

All that certain plot and parcel of land located within the shopping center which is located under Building C, under the service area adjoining Building C, and under reasonable access to and from the service area, and under abutting sidewalks and other appurtenances for reasonable access to and from Building C, all as more particularly designated on Exhibit "A" of the Auerbach's lease, and described as follows:

Starting from the N.W. corner of Parcel 2, S 87°43' 50" E, 366.08'; thence S 2°16' 10" W, 63.00' to the point of beginning; thence S 2°16' 10" W, 122.00'; thence S 87°43' 50" E, 120.00'; thence S 2°16' 10" W, 212.50'; thence N 87°43' 50" W, 212.50'; thence N 2°16' 10" E; 212.50'; thence S 87° 43' 50" E, 10.00'; thence N 2°16' 50" E, 122.00'; thence S 87°43' 50" E, 82.50' to the point of beginning, containing 1.060 Acres.

PART III SEARS TRACT - 19.259 Acres

Parcel 3

Description:

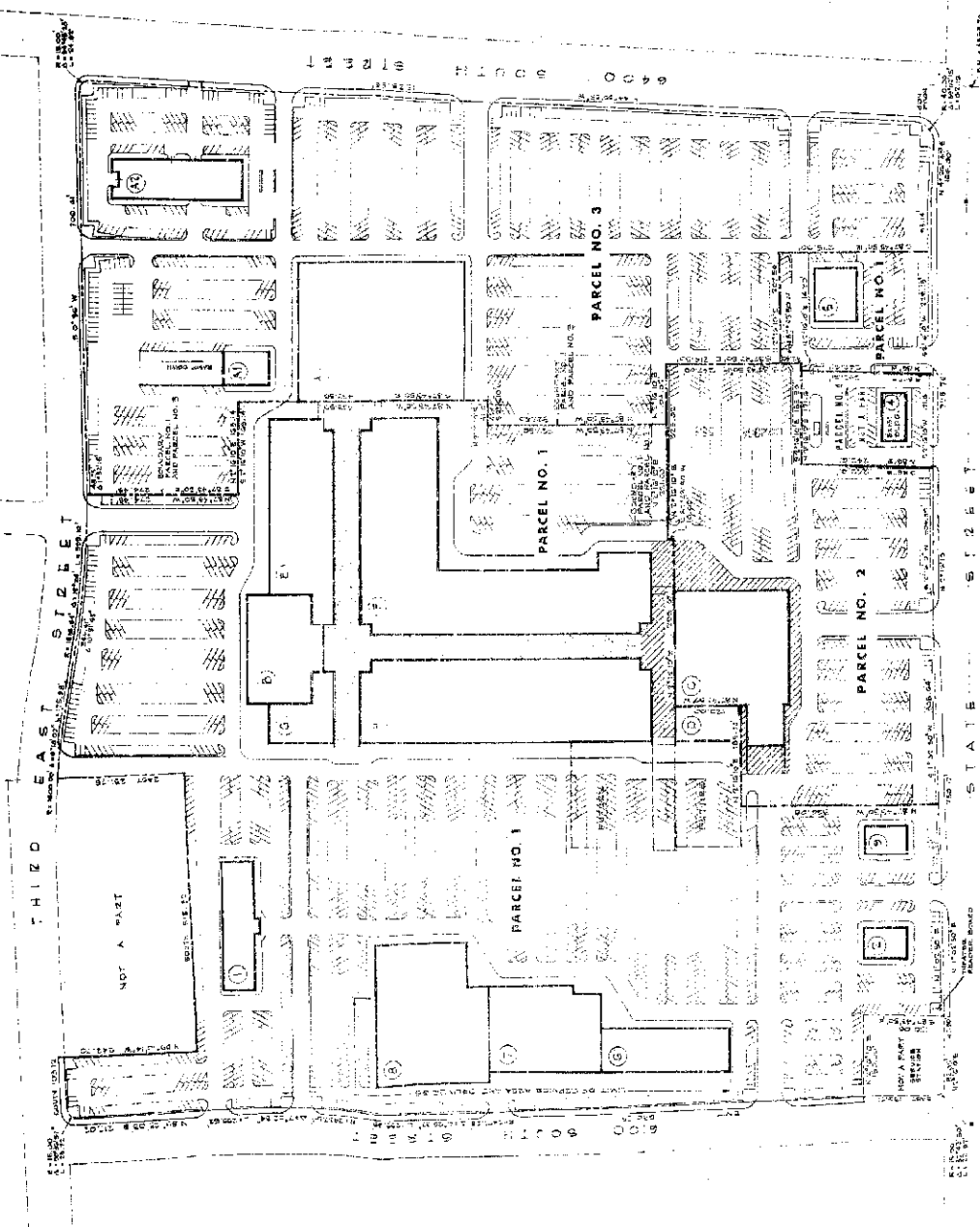
Beginning at a point on the easterly line of State Street due south 1665.49' and due east 602.88' from the N.W. corner of Sec. 19, T.2 S., R.1 E., S.L.B. & M., said point of beginning also being S 2°16' 10" W 1605.92' and S 87°43' 50" E 65.50' from the monument in the intersection of 6100 South and State Streets; thence S 87°43' 50" E 275.00'; thence N 2°16' 10" E 207.50'; thence S 87°43' 50" E 214.50'; thence N 2°16'10" E 104.02'; thence S 87°43' 50" E 327.50'; thence S 2°16' 10" W 41.00'; thence S 87°43' 50" E 463.50'; thence N 2°16' 10" E 169.14'; thence S 87°43' 50" E 274.43' to the west line of Third East Street, said point being on an 1816.638' radius curve the center of which bears S 87°51' 45" E; thence southerly along said curve to the left through a central angle of 1° 32' 15", a distance of 48.75'; thence S 0°36' W 700.61'; thence south-westerly along a 15' radius curve to the right through a central angle of 94°48' 25", a distance of 24.82' to the northerly line of 6400 South Street; thence along said northerly line N 84° 35' 35" W 1528.85'; thence northwesterly along a 40' radius curve to the right through a central angle of 89°02' 15", a distance of 62.16' to the easterly line of State Street; thence N 4°25' 40" E 106.60'; thence N 2°16' 10" E 93.14' to the point of beginning, containing 19.259 acres.

PART IV AUERBACH'S COMMON AREA TRACT - 7.413 Acres

Parcel 2

Description:

Beginning at a point on the easterly line of State Street due south 651.84' and due east 636.47' from the N.W. corner of Sec. 19, T.2 S., R.1 E., S.L.B. & M., said point of beginning also being S 2°16' 10" W 591.74' and S 87°43' 50" E 58.92' from the monument in the intersection of 6100 South and State Streets S 1°02' 50" W 308.64' and S 2°16' 10" W 304.89'; thence S 86° E 242.61'; thence S 2°16'10" W 185.90'; thence S 87°43' 50" E 247.00'; thence N 2°16'10" E 325.02'; thence N 87°43' 50" W 10.00'; thence N 2°16' 10" E 296.67'; thence N 87°43' 50" W 120.00'; thence N 2°16' 10" E 185.00'; thence N 87°43' 50" W 366.08' to the point of beginning. (7.413 Acres)



AREA SUMMARY

NO.	DESCRIPTION	AREA	PERCENT	TOTAL
1	Overall Area	50,407	100.00	50,407
2	Buildings	17,789	35.29	17,789
3	Open Space	32,618	64.71	32,618
4	Other	0	0.00	0
5	Other	0	0.00	0
6	Other	0	0.00	0
7	Other	0	0.00	0
8	Other	0	0.00	0
9	Other	0	0.00	0
10	Other	0	0.00	0
11	Other	0	0.00	0
12	Other	0	0.00	0
13	Other	0	0.00	0
14	Other	0	0.00	0
15	Other	0	0.00	0
16	Other	0	0.00	0
17	Other	0	0.00	0
18	Other	0	0.00	0
19	Other	0	0.00	0
20	Other	0	0.00	0
21	Other	0	0.00	0
22	Other	0	0.00	0
23	Other	0	0.00	0
24	Other	0	0.00	0
25	Other	0	0.00	0
26	Other	0	0.00	0
27	Other	0	0.00	0
28	Other	0	0.00	0
29	Other	0	0.00	0
30	Other	0	0.00	0
31	Other	0	0.00	0
32	Other	0	0.00	0
33	Other	0	0.00	0
34	Other	0	0.00	0
35	Other	0	0.00	0
36	Other	0	0.00	0
37	Other	0	0.00	0
38	Other	0	0.00	0
39	Other	0	0.00	0
40	Other	0	0.00	0
41	Other	0	0.00	0
42	Other	0	0.00	0
43	Other	0	0.00	0
44	Other	0	0.00	0
45	Other	0	0.00	0
46	Other	0	0.00	0
47	Other	0	0.00	0
48	Other	0	0.00	0
49	Other	0	0.00	0
50	Other	0	0.00	0

1. TOTAL AREA OF SITE: 50,407 SQ. FT.

2. BUILDING AREA: 17,789 SQ. FT.

3. OPEN SPACE: 32,618 SQ. FT.

4. OTHER: 0 SQ. FT.

5. OTHER: 0 SQ. FT.

6. OTHER: 0 SQ. FT.

7. OTHER: 0 SQ. FT.

8. OTHER: 0 SQ. FT.

9. OTHER: 0 SQ. FT.

10. OTHER: 0 SQ. FT.

11. OTHER: 0 SQ. FT.

12. OTHER: 0 SQ. FT.

13. OTHER: 0 SQ. FT.

14. OTHER: 0 SQ. FT.

15. OTHER: 0 SQ. FT.

16. OTHER: 0 SQ. FT.

17. OTHER: 0 SQ. FT.

18. OTHER: 0 SQ. FT.

19. OTHER: 0 SQ. FT.

20. OTHER: 0 SQ. FT.

21. OTHER: 0 SQ. FT.

22. OTHER: 0 SQ. FT.

23. OTHER: 0 SQ. FT.

24. OTHER: 0 SQ. FT.

25. OTHER: 0 SQ. FT.

26. OTHER: 0 SQ. FT.

27. OTHER: 0 SQ. FT.

28. OTHER: 0 SQ. FT.

29. OTHER: 0 SQ. FT.

30. OTHER: 0 SQ. FT.

31. OTHER: 0 SQ. FT.

32. OTHER: 0 SQ. FT.

33. OTHER: 0 SQ. FT.

34. OTHER: 0 SQ. FT.

35. OTHER: 0 SQ. FT.

36. OTHER: 0 SQ. FT.

37. OTHER: 0 SQ. FT.

38. OTHER: 0 SQ. FT.

39. OTHER: 0 SQ. FT.

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41. OTHER: 0 SQ. FT.

42. OTHER: 0 SQ. FT.

43. OTHER: 0 SQ. FT.

44. OTHER: 0 SQ. FT.

45. OTHER: 0 SQ. FT.

46. OTHER: 0 SQ. FT.

47. OTHER: 0 SQ. FT.

48. OTHER: 0 SQ. FT.

49. OTHER: 0 SQ. FT.

50. OTHER: 0 SQ. FT.

SITE PLAN
SCALE: 1" = 100'

EXHIBIT "C"

FASHION PLACE SHOPPING CENTER
MURRAY, UTAH

BUILDING HEIGHTS

(Measured, in the case of buildings adjacent to the Enclosed Mall, from the finish elevation of the Enclosed Mall surfacing; and measured, in the case of other buildings, from the average finish grade adjacent thereto, and shall include the highest point of such building, including any mechanical equipment thereon.)

<u>Building (per Exhibit "B")</u>	<u>Maximum Height</u>
1	38'
2	35'
4 (Existing Bank)	35'
5	35'
6	35'
7	35'
8	35'
9	35'
A (Sears) - (two stories)	56'
A-1 & A-2 (Sears) - (one story)	30'
C (Auerbach's) - (two stories)	57'
Enclosed Mall Structure and Buildings B, D, E, F, G, & H.	40'

EXHIBIT "D"

FASHION PLACE SHOPPING CENTER
MURRAY, UTAH

SIGN CRITERIA

These criteria have been established for the purpose of assuring an outstanding shopping center, and for the mutual benefit of all tenants. Conformance will be strictly enforced; and any installed nonconforming or unapproved signs must be brought into conformance at the expense of the tenant. "Developer's Architect" herein refers to Project Architect.

The Developer's Architect is to administer and interpret the criteria, but is not empowered to authorize any departure.

A. GENERAL REQUIREMENTS

1. Each tenant shall submit or cause to be submitted to the Developer's Architect for approval before fabrication, at least three copies of detailed drawings covering the location, size, layout, design, and color of the proposed sign, including all lettering and/or graphics.
2. All permits for signs and their installation shall be obtained by the tenant or his representative.
3. Tenant shall be responsible for the fulfillment of all requirements and specifications.

B. GENERAL SPECIFICATIONS

1. Painted lettering will not be permitted, except as specified under Article E-2, Page 4.
2. Flashing, moving or audible signs will not be permitted.
3. Pylon or pole signs will not be permitted, except for the identification sign at the existing Valley Bank, a theatre reader board, and the shopping center identification sign in locations and configurations as approved by all parties to the REA.

Exhibit "D"

4. All electrical signs shall bear the UL label, and their installation must comply with all local building and electrical codes.
5. No exposed conduit, tubing or raceways will be permitted.
6. All cabinets, conductors, transformers and other equipment shall be concealed.

C. CONSTRUCTION REQUIREMENTS

1. All exterior signs, bolts, fastenings and clips shall be of hot-dipped galvanized iron, stainless steel, aluminum, brass, or bronze, and no black iron materials of any type will be permitted.
2. All exterior letters or signs exposed to the weather shall be mounted at least 3/4" from the building wall to permit proper dirt and water drainage.
3. Location of all openings for conduit and sleeves in building walls shall be indicated by the sign contractor on drawings submitted to the Developer's Architect. Sign contractor shall install same in accordance with the approved drawings.
4. No labels will be permitted on the exposed surface of signs, except those required by local ordinance which shall be applied in an inconspicuous location.
5. All penetrations of the building structure required for sign installation shall be neatly sealed in a watertight condition.
6. Sign contractor shall repair any damage to any work caused by his work.
7. Tenant shall be fully responsible for the operations of tenant's sign contractors.

Exhibit "D"

D. SIGN REQUIREMENTS

1. All tenant storefront entrance/store identification designs shall be subject to the approval of the Developer's Architect. Imaginative designs which depart from traditional methods and placement will be encouraged.
2. Signs on the exterior of the mall buildings shall be permitted only for those tenants having exterior public entrances and as located within the sign areas designated by the Developer's Architect.
3. Tenants facing the enclosed mall shall have identification signs designed as an integral part of the storefront in a manner compatible with and complimentary to adjacent and facing storefronts and the overall design concept of the mall. Letter size and location shall be appropriately scaled and proportioned to the overall storefront design.
4. No signs perpendicular to the face of the building or storefront will be permitted except as established by the Developer's Architect.
5. No signs of any sort shall be permitted on canopy roofs or building roofs.
6. Wording of signs shall not include the product sold except as part of tenant trade name or insignia.
7. No sign, or any portion thereof, may project above the parapet or top of wall upon which it is mounted.
 - (a) Except as expressly provided herein, no advertising placards, banners, pennants, insignias, trademarks, or other descriptive material shall be affixed or maintained along the glass panels and supports of the show windows and doors or upon the exterior walls of the buildings.

Exhibit "D"

(b) Signs shall be composed of individual or script lettering.

Sign boxes and cans will not be permitted.

8. No sign shall be installed on the exterior of the mall building except such as has first been approved by the Developer's Architect, as to color, size, location, and design.

E. MISCELLANEOUS REQUIREMENTS

1. Each tenant will be permitted to place upon each entrance of its demised premises not more than 144 square inches of gold leaf or decal application lettering not to exceed two inches (2") in height, indicating hours of business, emergency telephone numbers, etc.
2. Each tenant who has a non-customer door for receiving merchandise may have uniformly applied on said door in location, as directed by the Developer's Architect, in two-inch (2") high block letters, the tenant's name and address. Where more than one tenant uses the same door, each name and address shall be applied. Colors of letters will be as selected by the Developer's Architect.
3. Tenant may install on the mall front, if required by the U. S. Post Office, the numbers only for the street address in exact location stipulated by the Developer's Architect. Size, type, and color of numbers shall be as stipulated by the Developer's Architect.
4. Floor signs, such as inserts into terrazzo, etc., shall be permitted within the tenant's lease line in their store fronts, if approved by the Developer's Architect.

Exhibit "D"

F. DEPARTMENT STORES

1. Anything herein to the contrary notwithstanding, it is expressly understood and agreed that Sears and Auerbach's each shall have the right to attach to their respective stores (and TBA's) their standard identification signs; provided that the same shall not be of a flashing or animated type, and shall not extend above the parapet walls or above any penthouse. With respect to TBA's, the provisions of Sections B, C 1, C 2, C 4, D 4, D 5, D 7, E 1, and E 2 of this Exhibit "D" shall be applicable.

G. ADMINISTRATION

1. In the event any conflict or interpretation between any tenant and the Developer's Architect as to the application of these criteria cannot be resolved satisfactorily, the Developer's Architect shall submit the design to the Parties whose unanimous decision shall be final and binding upon the tenant.

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EXHIBIT "E"

FASHION PLACE SHOPPING CENTER
MURRAY, UTAH

RULES AND REGULATIONS

A. COMMON AREA

1. The surface of the Automobile Parking Area and sidewalks shall be maintained level, smooth, and evenly covered with the type of surfacing material originally installed thereon, or such substitute thereof as shall be in all respects equal thereto in quality, appearance, and durability.
2. All papers, debris, filth, and refuse shall be removed from the Center, and paved areas shall be washed or thoroughly swept as required. All sweeping shall be at intervals before the Stores shall be open for business to the public, using motor-driven parking lot vacuum cleaning vehicles where feasible.
3. All trash and rubbish containers located in the Common Area for the use of Permittees shall be emptied daily and shall be washed at intervals sufficient to maintain the same in a clean condition.
4. All landscaping shall be properly maintained, including removal of dead plants, weeds and foreign matter and such replanting and replacement as the occasion may require.
5. All hard-surfaced markings shall be inspected at regular intervals and promptly repainted as the same shall become unsightly or indistinct from wear and tear, or other cause.
6. All sewer catch basins shall be cleaned on a schedule sufficient to maintain all sewer lines in a free-flowing condition and all mechanical equipment related to storm and sanitary sewer facilities shall be regularly inspected and kept in proper working order.

Exhibit "E"

7. All asphalt paving shall be inspected at regular intervals and maintained in a first class condition.
8. All stairways shall be: (a) swept and washed at intervals sufficient to maintain the same in a clean condition; (b) inspected at regular intervals and (c) promptly repaired upon the occurrence of any irregularities or worn portions thereof.
9. All glass, including skylights, plate glass and/or glass-enclosed devices shall be cleaned at intervals sufficient to maintain the same in a clean condition.
10. All surface utility facilities servicing the Common Area, including, but not by way of limitation, hose bibbs, standpipes, sprinklers, and domestic water lines, shall be inspected at regular intervals and promptly repaired or replaced, as the occasion may require, upon the occurrence of any defect or malfunctioning.
11. All Common Area amenities, benches, and institutional, directional, traffic and other signs shall be inspected at regular intervals, maintained in a clean and attractive surface condition and promptly repaired or replaced upon the occurrence of any defects or irregularities thereto.
12. All lamps shall be inspected at regular intervals and all lamps shall be promptly replaced when no longer properly functioning.
13. The improvements on and to the Common Area shall be repaired or replaced with materials, apparatus and facilities of quality at least equal to the quality of the materials, apparatus and facilities repaired or replaced.
14. The Common Area shall be illuminated in such areas as the Parties shall determine, at least during such hours of darkness as any of the Stores shall be open for business to the public, and for a

BOOK 2968 PAGE 579

Exhibit "E"

reasonable period thereafter, in order to permit safe egress from the Center by Permittees, and shall also be illuminated during such hours of darkness and in such manner as will afford reasonable security for the Stores.

15. All Parties shall use their best efforts to arrange with local police authorities to (a) patrol the Common Area at regular intervals, and (b) supervise traffic direction at entrances and exits to the Shopping Center Site during such hours and periods as traffic conditions would reasonably require such supervision.

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

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

18. The heating, ventilating and cooling systems for the Enclosed Mall shall be operated in accordance with the provisions of the REA and of these Rules and Regulations, at least during the same hours of the same days that the heating, ventilating and cooling systems serving the Sears and Auerbach's stores shall both be operating.

Exhibit "E"

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

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

21. Such action shall be taken as may be reasonable and necessary, such as snow removal and treatment of icy conditions, to deal with adverse weather so as to minimize hazardous conditions.

B. FLOOR AREA

1. The Occupants of the Developer Mall Stores shall be open for business daily, Sundays and holidays excepted, from and after the dates when they shall originally open for business to the general public and continuously so remain open for business at least those hours as both of the Stores of Sears and Auerbach's shall be open for business. All Occupants shall have their window displays, exterior signs and exterior advertising displays adequately illuminated continuously during such hours as Sears or Auerbach's shall illuminate their window displays, exterior signs or exterior advertising displays; provided, however, that the foregoing provisions shall be subject, as respects any business controlled by governmental regulations or labor union contracts in its hours of operation to the hours of operation so prescribed, and shall not apply to theatres, restaurants, or to banks,

service of banks, or similar type of financial service Occupants.

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

3. All trash, refuse and waste materials shall be regularly removed from the premises of each Occupant of the Center, and until removal shall be stored (a) in adequate containers, which such containers shall be located so as not to be visible to the general public shopping in the Center, and (b) so as not to constitute any health or fire hazard or nuisance to any Occupant. No burning of trash, refuse or waste materials shall occur.

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

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

6. No advertising medium shall be utilized which can be heard or experienced outside of the Floor Area, including, without limiting the generality of the foregoing, flashing lights, searchlights, loud speakers, phonographs, radios or television, but this provision does not preclude carillon or chimes, including any special water effects in connection therewith.

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

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

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

Exhibit "E"

C. CONDUCT OF PERSONS

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

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

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

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

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

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Exhibit "E"

5. No person, without the written consent of Developer, Sears, and Auerbach's shall in or on any part of the Common Area:

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

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

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

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

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

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

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

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

Exhibit "E"

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

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

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