

When recorded return to:
 CURTIS R. WARD, P.C.
 265 East 100 South, Suite 250
 Salt Lake City, Utah 84111
 Attn: Kenneth R. Barrett, Esq.

E 1651586 B 2781 P 308
 SHERYL L. WHITE, DAVIS CNTY RECORDER
 2001 APR 5 8:42 AM FEE 46.00 DEP NT
 REC'D FOR METRO NATIONAL TITLE

SE 36-2N-1W

DECLARATION OF RESTRICTIONS AND EASEMENTS

THIS DECLARATION OF RESTRICTIONS AND EASEMENTS (this "Declaration") is entered into on April 4th, 2001, between, MACDONALD-CHRISTENSEN LIMITED LIABILITY COMPANY, a Utah limited liability company ("MacDonald Christensen"), and AMERICAN DRUG STORES, INC., an Illinois corporation ("ADSI").

1 PRELIMINARY.

1.01 Purpose. The parties plan to develop the Entire Property (as defined in Section 1.02) as an integrated commercial sales complex for the mutual benefit of the property comprising the Entire Property. Therefore, the parties hereby establish the Restrictions (as defined in Section 1.02).

1.02 Definitions.

(a) "Access Easement Area" means that portion of the Tract 2 shown as the "Shared Access Easement" on **Exhibit "A"** and more particularly described in **Schedule I** attached hereto and made a part hereof.

(b) "Entire Property" means Tract 1 and Tract 2.

(c) "Environmental Laws" means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, the Toxic Substances Control Act, the Clean Water Act, the Resource Conservation and Recovery Act and any other similar federal, state or local law, rule or regulation respecting environmental protection or conservation, together with all rules and regulations promulgated thereunder and all present or future amendments thereto.

(d) "Hazardous Materials" means underground storage tanks, petroleum and petroleum products, asbestos, PCB's, urea-formaldehyde and any hazardous or toxic substances, pollutants, contaminants, wastes or materials as defined under any Environmental Laws.

(e) "Owner" means the record holder of fee simple title to a Tract or any portion thereof (including its heirs, personal representatives, successors and assigns).

(f) "Tract" means Tract 1 or 2 or both, as the context requires, as shown on **Exhibit "A"** and more particularly described in **Schedule II** attached hereto and made a part hereof. The Tracts are located at the southwest corner of the intersection of 2600 South and U.S. Highway 89 in the City of Bountiful, Davis County, Utah.

PARCEL I.D. # 06-095-0063,0064,0065
 0145,0156

(g) "Restrictions" means the easements, covenants, restrictions, liens and encumbrances contained in this Declaration.

1.03 Parties. MacDonald Christensen is the Owner of Parcel 2 and ADSI is the Owner of Parcel 1.

2 BUILDING DEVELOPMENT. With the exception of buildings existing on Parcel 2 as of the date of this Declaration, no building shall be constructed on Parcel 2 within one hundred (100) feet of the southern boundary line of Parcel 1. Each Owner shall maintain the exterior of any building located on such Owner's Parcel in a reasonably good condition comparable to that of commercial buildings of similar size and nature located in the same geographic area as the Entire Property.

3 EASEMENTS.

3.01 Grant of Access Easement. The Owner of Parcel 2 hereby grants to the Owner of Parcel 1 and its tenants, contractors, employees, agents, licensees and invitees, and the subtenants, contractors, employees, agents, licensees and invitees of such tenants, for the benefit of Parcel 1, a perpetual, nonexclusive easement for ingress and egress by vehicular and pedestrian traffic upon, over and across the Access Easement Area.

3.02 Use of Access Easement. The Owner of Parcel 2 shall use and cause to be used the Access Easement Area in such manner as will not unreasonably interfere with the purposes set forth in this Article. The Owner of Parcel 2 shall not place, or cause to be placed, any obstruction on the Access Easement Area or permit any activity thereon that would permanently or unreasonably impede the flow of vehicular and/or pedestrian traffic upon, over or across the Access Easement Area. Notwithstanding the foregoing, the parties acknowledge that as of the date of this Declaration there are certain above-ground utility and/or sign structures located on or adjacent to the Access Easement Area that may interfere with the use of the Access Easement Area for the purposes set forth in this Declaration. It shall be the responsibility of the Owner of Parcel 1 to remove or relocate such structures in accordance with the Section herein entitled "Construction of Access Drive."

3.03 Construction of Access Drive. At such time as the Owner Parcel 1 commences construction of a new building on Parcel 1, such Owner shall, at its sole expense, construct an access drive on the Access Easement Area with curb cuts located substantially as shown on **Exhibit "A"** and including such pavement, berms, curbing, and surface water drainage facilities as the parties mutually determine to be necessary and appropriate (all of which are collectively referred to as the "Access Drive"). In constructing the Access Drive, the Owner of Parcel 1 shall not substantially alter the grade that currently exists on the Access Easement Area. In connection with constructing the Access Drive, the Owner of Parcel 1 shall, as necessary or appropriate, remove, relocate and/or repair any above or below ground utilities such as light poles, power poles and fire hydrants in accordance with the requirements of the applicable utility provider or governmental authority. The plans and specifications for the Access Drive shall be subject to the approval of applicable governmental authorities and the Owner of Parcel 2, which approval shall not be unreasonably withheld or delayed. The Owner of Parcel 2 shall, at no out-of-pocket expense to such Owner,

cooperate with the Owner of Parcel 1 in obtaining any governmental approvals necessary for the construction of the Access Drive. In connection with constructing the Access Drive, the Owner of Parcel 1 shall, if necessary and at its sole expense, but with the full cooperation of the Owner of Parcel 2, relocate any light fixtures and signs owned by the Owner of Parcel 2 or its tenant to a location on Parcel 2 that is reasonably acceptable to the Owner of Parcel 2.

3.04 Maintenance and Repair of Access Drive. The Owner of Parcel 1 shall cause the Access Drive to be maintained in good repair, clean, safe, presentable, reasonably free from ice and snow, with adequate hard surfacing and proper directional signs and striping (the "Access Drive Maintenance"). The Owner of the Parcel 2 shall pay one-half (1/2) of reasonable costs incurred by the Owner of Parcel 1 in performing the Access Drive Maintenance. Payment of maintenance costs by the Owner Parcel 2 to the Owner of Parcel 1 shall be made within thirty (30) days after receipt of an itemized statement of such costs. Upon the request of the Owner of Parcel 2, but not more often than once per calendar year, the Owner of Parcel 1 shall provide to the Owner of Parcel 2 a written estimate of the anticipated Access Drive Maintenance costs during the succeeding year. Except in the case of an emergency, prior to incurring any unusual or extraordinary Access Drive Maintenance costs not included as part of such estimate, the Owner of Parcel 1 shall provide the Owner of Parcel 2 with reasonable written notice of such unusual or extraordinary Access Drive Maintenance costs.

3.05 Grant of Utility Easements. Each Owner, as grantor, hereby grants to the other Owner, for the benefit of the Parcel belonging to the other Owner, as grantee, a nonexclusive easement under, through and across those portions of the grantor's Parcel not used or intended to be used for the construction of buildings for the installation, operation, maintenance, repair and replacement of water drainage systems or structures, water mains, sewers, water sprinkler system lines, telephones, communication lines, pneumatic tube systems, electrical conduits or systems, gas mains and other public or private utilities or underground systems facilitating communication and/or coordination of business operations between the Parcels. Each Owner agrees to grant such additional easements as are reasonably required by any public or private utility for the purpose of providing the utility lines and facilities described herein provided such easements are not otherwise inconsistent with the provisions of this Declaration.

3.06 Utility Construction Requirements. All systems, structures, mains, sewers, conduits, lines and other utilities referred to in Section 3.05 shall be installed and maintained below the ground level or surface of such easements except for ground mounted electrical transformers and such other facilities as are required to be above ground by the utility providing such service (including, without limitation, temporary service required during the construction, maintenance, repair, replacement, alteration or expansion of any buildings, signs or other improvements located in the Entire Property). The installation, operation, maintenance, repair and replacement of such easement facilities shall not unreasonably interfere with the use of the improved portions of the Entire Property or with the normal operation of any business in the Entire Property. The grantee shall bear all costs related to the installation, operation, maintenance, repair and replacement of such easement facilities, shall repair to the original specifications any damage to the grantor's Parcel resulting from such use and shall provide as-built plans for all such facilities to the Owner of all Parcels upon which such utility

lines and facilities are located within thirty (30) days after the date of completion of construction of the same.

3.07 Relocation of Utilities. At any time and from time to time the Owner of a Parcel shall have the right to relocate on its Parcel any utility line or facility installed pursuant to the grant of easement in Section 3.05 which is then located on the land of such Owner, provided that any such relocation (i) shall be performed only after sixty (60) days' notice of the Owner's intention to undertake the relocation shall have been given to the Owner of the Parcel served by the utility line or facility, (ii) shall not unreasonably interfere with or diminish utility service to the Parcel served by the utility line or facility, (iii) shall not reduce or unreasonably impair the usefulness or function of the utility line or facility, (iv) shall be performed without cost or expense to the Owner or occupant of any other Parcel, and (v) shall provide for the original and relocated area to be restored to their original specifications. The Owner performing such relocation shall provide as-built plans for all such relocated utility lines and facilities to the Owner of the Parcel served by such utility lines and facilities within thirty (30) days after the date of completion of such relocation.

3.08 Sign. Prior to constructing the first new free-standing pylon sign on Parcel 1 after the date of this Declaration for the purpose of identifying the business operated on Parcel 1 (the "Pylon Sign"), the Owner of Parcel 1 shall notify the Owner of Parcel 2 of its intent to construct such sign. Within fifteen (15) business days after the receipt of such notice, the Owner of Parcel 2 may elect, by written notice to the Owner of Parcel 1, to place a sign panel identifying a single occupant of Parcel 2 on the Pylon Sign. The right of the Owner of Parcel 2 to place a panel on the Pylon Sign shall be subject at all times to the ability of the Owner of Parcel 1 to obtain the necessary governmental approvals for the Pylon Sign. The sign panel of the Owner of Parcel 2 (i) shall appear below the sign panel of the Owner of Parcel 1, (ii) shall be no larger than the sign panel of the Owner of Parcel 1 and (iii) shall include only the trade name of an occupant of Parcel 2 and shall not identify any goods or services sold by such occupant unless such goods or services are part of such occupant's trade name. The Owner of Parcel 1 shall prepare plans and specifications for the Pylon Sign and shall construct, operate, maintain and replace the Pylon sign. If the Owner of Parcel 2 has elected to place a sign panel on the Pylon Sign, such Owner shall reimburse the Owner of Parcel 1 for one-half (½) the cost of preparing such plans and specifications and the cost of constructing, operating, maintaining and replacing the Pylon Sign within thirty (30) days after receipt of an itemized statement of such costs, which may be delivered to the Owner of Parcel 2 from time to time. The Owner of Parcel 2 shall pay all costs associated with the installation, maintenance and replacement of its sign panel.

In the event the Owner of Parcel 2 does not elect to place a sign panel on the Pylon Sign within fifteen (15) days after notice from the Owner of Parcel 1 of its intent to construct the Pylon Sign, the Owner of Parcel 2 may, in any event, elect to place a sign panel on the Pylon Sign at any time after such sign has been constructed, subject to the requirements set forth in the preceding paragraph, except that in such event the Owner of Parcel 2 shall, at its sole expense, (i) prepare all necessary plans and specifications necessary to modify the Pylon Sign to accommodate an additional sign panel, which plans and specifications shall be subject to the approval of the Owner of Parcel 1, which approval shall not be unreasonably withheld or delayed; (ii) obtain any governmental

approvals necessary to modify the Pylon Sign; and (iii) complete the modification of the Pylon Sign in accordance with the approved plans and specifications.

3.09 Assignment and Assumption by Tenant. The Owners of Parcels 1 and 2, and the present tenant of the Owner of Parcel 2, FRN of Greater Salt Lake City, LLC (the "FRN"), hereby acknowledge and agree that the Owner of Parcel 2 has, until further written notice to the contrary from the Owner of Parcel 2 to the Owner of Parcel 1, or as otherwise set forth in this Section, assigned to the FRN, and the FRN hereby assumes, the following described rights and obligations of the Owner of Parcel 2 with respect to:

- (i) the approval of the Access Drive plans and specifications as described in Section 3.03;
- (ii) the cooperation in, and the right to reasonably direct, the relocation of any light fixtures and signs owned by the Owner of Parcel 2 to a location reasonably acceptable to the FRN and the Owner of Parcel 2 as described in Section 3.03;
- (iii) the notification regarding, and itemization and timely payment of, one-half (½) of the reasonable costs incurred by the Owner of Parcel 1 in performing the Access Drive Maintenance as described in Section 3.04; and
- (iv) the notification regarding, the election and placement of a sign panel on, and the timely payment of one-half (½) the costs associated with the Pylon Sign as described in Section 3.08.

The foregoing are hereinafter referred to as the "Assigned Rights and Obligations." Notwithstanding the foregoing, or anything in this Declaration to the contrary, the Owner of Parcel 2 shall remain ultimately responsible to the Owner of Parcel 1 for the timely performance of all the terms and conditions of the Assigned Rights and Obligations to be performed by the Owner of Parcel 2. Until such time as the Owner of Parcel 1 has received written notice to the contrary from the Owner of Parcel 2, (i) the Owner of Parcel 1 shall deliver all notices and written communications with respect to the Assigned Rights and Obligations to the FRN at the address set forth in Section 7.06, with copies to the Owner of Parcel 2, and (ii) the Owner of Parcel 1 shall be entitled to conclusively rely on all notices and communications received from the FRN with respect to the Assigned Rights and Obligations as if such communications had come from the Owner of Parcel 2.

4 USE RESTRICTIONS.

4.01 Restrictions on Parcel 2. No portion of Parcel 2 shall be (i) used or occupied as a retail drug store, nor (ii) used for the sale of any of the following, except as an incidental part of the operation of a general grocery store or supermarket occupying in excess of thirty two thousand five hundred (32,500) square feet of ground floor area or a specialty grocery store or supermarket (i.e., a high-end "gourmet" or "natural" food store such as Wild Oats) occupying in excess of twenty five thousand (25,000) square feet of ground floor area, either of which (but not both) is expressly acknowledged to be a permitted use: (1) greeting cards; (2) health and beauty aids or vitamins; (3)

any combination of food items sufficient to be commonly known as a convenience food store or department; and (4) items requiring dispensation by or through a pharmacy or requiring dispensation by or through a registered or licensed pharmacist.

4.02 Other Restrictions. No Owner or occupant shall use or permit the use, handling, generation, storage, release, disposal or transportation of Hazardous Materials on, about or under its Parcel except in the ordinary course of its business and in compliance with all applicable Environmental Laws. No production, manufacturing or industrial use of any kind or nature, except for production of products incidental to the retail sale thereof from the Entire Property shall be permitted in the Entire Property.

5 INDEMNIFICATION AND INSURANCE.

5.01 Indemnification of Owners. Each Owner hereby indemnifies, holds harmless and agrees to defend the other Owner from and against all claims, damages, expenses (including, without limitation, attorneys' fees and reasonable investigative and discovery costs), liabilities and judgments (collectively "Liabilities") on account of injury to persons, loss of life, or damage to property occurring on the Access Easement Area or on the ways immediately adjoining the Access Easement Area, caused by the willful acts or active or passive negligence of the indemnifying Owner, or its tenants, or its or their respective agents, servants, employees or invitees. Notwithstanding the foregoing, (i) the indemnity herein given by an Owner for the conduct of its invitees or the invitees of its tenants' shall be expressly limited to Liabilities incurred by the indemnified Owner on account of injury to persons, loss of life, or damage to property occurring on the Access Easement Area or on the ways immediately adjoining the Access Easement Area caused by the willful acts or active or passive negligence of the invitees of the indemnifying Owner or its tenants other than injury or loss of life to the person, or damage to property, of the indemnified Owner or its tenants or its or their respective agents, servants or employees; and (ii) in no event shall the indemnifying Owner indemnify the other Owner against any Liability which is caused by willful misconduct or the active or passive negligence of the other Owner or its tenants, or its or their agents, servants employees or invitees.

5.02 Liability Insurance Coverage and Limits. Each Owner agrees to maintain and/or cause to be maintained, at its sole cost and expense, liability insurance insuring its interests against claims for bodily injury, death and property damage occurring on, in or about the Access Easement Area and the ways immediately adjoining the Access Easement Area, with a "Combined Single Limit" (covering bodily injury liability and property damage liability) of not less than Two Million Dollars (\$2,000,000) for total claims for any one (1) occurrence. Any required insurance may be in the form of blanket coverage, so long as such blanket policy does not reduce the limits nor diminish the coverage required herein. An Owner shall have the right to satisfy its insurance obligations hereunder by means of self-insurance to the extent of all or part of the required insurance, but only so long as: (i) the self-insuring Owner (or an affiliate providing the self-insurance) shall have a net worth of at least One Hundred Million Dollars (\$100,000,000.00); (ii) the self-insuring Owner (or the affiliate providing the self-insurance) shall, upon request, provide an audited financial statement, prepared in accordance with generally accepted accounting principles, showing the required net worth; and (iii) such self-insurance provides for loss reserves which are actuarially derived in

accordance with accepted standards of the insurance industry and accrued (i.e., charged against earnings) or otherwise funded. Any deductible in excess of Ten Thousand Dollars (\$10,000.00) shall be deemed to be self-insurance. The insurance limits in this Article shall be subject to increase from time to time by such amounts as the Owners may reasonably agree is necessary or desirable, as may be evidenced by the practice of similarly situated properties.

5.03 Performance of Indemnity Agreements. All policies of insurance required under this Article shall insure the performance of the Owner insured thereunder of the indemnity agreements contained herein, except for the indemnities given with respect to the conduct of the invitees of the Owners, and shall contain a provision that the insurance company will give the other Owner thirty (30) days advance written notice of any cancellation or lapse, or the effective date of any reduction in the amounts or scope of coverage. Upon request, each Owner shall deliver to the requesting Owner a certificate of insurance, reasonably satisfactory in form and substance, evidencing all insurance required to be maintained hereunder. Each Owner shall promptly notify the other Owner of any asserted claim with respect to which such Owner is or may be indemnified against hereunder, and shall deliver to such Owner copies of process and pleadings.

6 DEFAULT

6.01 Monetary Default. In the event any Owner fails to pay any sum required to be paid to the other Owner hereunder and such failure continues for a period of ten (10) days after written demand therefore, the non-defaulting Owner shall have the right to exercise any and all rights it might have in law and equity to collect the same.

6.02 Right to Cure. Should any Owner fail to timely perform any of its obligations hereunder other than the payment of money, and thereafter fail to diligently commence performing such obligation within twenty (20) days following its receipt of the other Owner's written demand therefor, and diligently and continuously pursue such performance to completion, the Owner giving such notice shall, in addition to any other remedy provided at law, in equity or in this Declaration, have the right (but not the obligation) to perform such obligation on behalf of the defaulting Owner and the defaulting Owner shall reimburse the curing Owner for the cost of performing such work within ten (10) days after receipt of billing therefor and proof of payment thereof. In the event the defaulting Owner does not so reimburse the curing Owner within such ten (10) days, the curing Owner shall have the right to exercise any and all rights which such curing Owner might have at law or in equity to collect the same.

6.03 Injunctive Relief. In the event of any violation or threatened violation of any provision of this Declaration, any Owner shall have the right, in addition to any other remedies herein or by law or equity provided, to enjoin such violation or threatened violation.

6.04 Breach Shall Not Permit Termination. No breach of this Declaration shall entitle any Owner to cancel, rescind or otherwise terminate this Declaration, but such limitation shall not affect in any manner any other rights or remedies which such Owner may have hereunder by reason of any breach of this Declaration.

6.05 No Limitation of Remedies. The various rights and remedies herein contained and reserved to the Owners, except as otherwise provided in this Declaration, shall not be considered as exclusive of any other right or remedy, but shall be construed as cumulative, and shall be in addition to every other remedy now or hereafter existing at law, in equity or by statute. No delay or omission of the right to exercise any power or remedy shall impair any such right, power or remedy, or be construed as a waiver of any default or nonperformance or as acquiescence therein.

7 GENERAL PROVISIONS

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

7.02 Successors and Assigns. This Declaration and the Restrictions created hereby shall inure to the benefit of and be binding upon the Owners, their heirs, successors, assigns and personal representatives, and upon any person acquiring a Parcel, or any portion thereof, or any interest therein, whether by operation of law or otherwise. Notwithstanding the foregoing, if any Owner sells or transfers all or any portion of its interest in any Parcel, such Owner shall, upon the sale and conveyance of title, be released and discharged from all of its obligations as Owner in connection with the property sold by it arising under this Declaration after the sale and conveyance of title but shall remain liable for all obligations arising under this Declaration prior to the sale and conveyance of title. The new Owner of any such Parcel or any portion thereof (including, without limitation, any Owner who acquires its interest by foreclosure, trustee's sale or otherwise) shall be liable for all obligations arising under this Declaration with respect to such Parcel or portion thereof after the date of sale and conveyance of title.

7.03 Duration. Except as provided herein, the term of this Declaration shall be for a period of sixty-five (65) years ("**Primary Period**") from the date hereof. Notwithstanding the foregoing, upon the expiration of the Primary Period, the term of this Declaration shall automatically renew for successive periods of ten (10) years each (each such period being referred to as an "**Extension Period**") unless, at least ninety (90) days prior to the date of expiration of the Primary Period or Extension Period then in effect, the Owner of Parcel 1 delivers to the other Owner written notice of termination, in which event, the Declaration shall automatically expire at the end of the Primary Period or Extension Period then in effect.

7.04 Modification and Termination. This Declaration may not be modified in any respect whatsoever or terminated, in whole or in part, except with the consent of the Owners of Parcel 1 and Parcel 2, and then only by written instrument duly executed and acknowledged by all of the required Owners and recorded in the office of the recorder of the county in which the Parcels are located.

7.05 Not a Public Dedication. Nothing herein contained shall be deemed to be a gift or dedication of any portion of Parcel 1 and Parcel 2 to the general public or for the general public or for any public purpose whatsoever, it being the intention of the parties that this Declaration shall be strictly limited to and for the purposes herein expressed.

7.06 Notices.

(a) Delivery. All notices given pursuant to this Declaration shall be in writing and shall be given by telefacsimile, personal service, by United States mail or by United States express mail or other established express delivery service (such as Federal Express), postage or delivery charge prepaid, return receipt requested, addressed to the appropriate party at the address or telefacsimile number set forth below. If a notice must be given to a person other than one designated below, such notice shall be sent to the person and address shown on the then current real property tax rolls of the county in which the Entire Property is located. All notices to MacDonald Christensen or ADSI shall be sent to the appropriate party at the address or telefacsimile number set forth below:

MacDonald Christensen: 2074 Sierra View Circle
Salt Lake City, Utah 84109
Fax No. (801) 487-5356

with a copy to: Michael W. Spence
Ray Quinney & Nebeker
79 South Main Street, 4th Floor
Salt Lake City, Utah 84111
Fax No. (801) 532-7543

FRN: Utah Auto Collection
c/o Duff Willey
730 South West Temple
Salt Lake City, Utah 84101
Fax No. _____

with a copy to: Gregory J. Savage
Holme Roberts & Owen
111 East Broadway #1100
Salt Lake City, Utah 84111
Fax No. (801) 521-9639

ADSI: Albertson's, Inc.
250 Parkcenter Boulevard
P.O. Box 20
Boise, ID 83726
Fax No.: 208/395-6575
Attention: Legal Department (Store No. 90JL)

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

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

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

7.08 Attorney's Fees. In the event either party initiates or defends any legal action or proceeding in any way connected with this Declaration, the prevailing party in any such action or proceeding (in addition to any other relief which may be granted, whether legal or equitable), shall be entitled to recover from the losing party in any such action or proceeding its reasonable costs and attorney's fees (including, without limitation, its reasonable costs and attorney's fees on any appeal). All such costs and attorney's fees shall be deemed to have accrued on commencement of any legal action or proceeding and shall be enforceable whether or not such legal action or proceeding is prosecuted to judgment.

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

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

7.11 No Third Party Beneficiary Rights. This Declaration is not intended to create, nor shall it be in any way interpreted or construed to create, any third party beneficiary rights in any person not a party hereto or any public dedication.

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

7.13 Entire Agreement. This Declaration contains the entire agreement between the parties hereto and supersedes all prior agreements, oral or written, with respect to the subject matter hereof.

The provisions of this Declaration shall be construed as a whole and not strictly for or against any party.

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

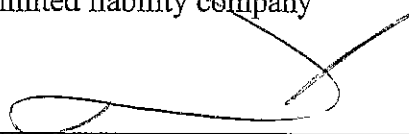
7.15 Joint and Several Obligations. In the event any party hereto is composed of more than one (1) person, the obligations of said party shall be joint and several.

7.16 Recordation. This Declaration shall be recorded in the office of the recorder of the county in which the Entire Property is located.

IN WITNESS WHEREOF, this Declaration has been executed as of the date first above written.

MACDONALD-CHRISTENSEN LIMITED LIABILITY COMPANY

~~MACDONALD CHRISTENSEN, LLC~~
a Utah limited liability company

By  _____

Its MANAGER _____

"MacDonald Christensen"

AMERICAN DRUG STORES, INC.,
an Illinois corporation

By  _____


LINCOLN V. SHARP, JR.
Its Vice President _____

"ADSI" 

ACKNOWLEDGMENT AND SUBORDINATION

The FRN, the tenant of the Owner of Parcel 2 as of the date of this Declaration, for itself and its successors and assigns, hereby acknowledges and agrees that it has received, reviewed and approved this Declaration and that its lease with the Owner of Parcel 2 (including without limitation any amendment, renewal or extension thereof) and all of its rights thereunder shall at all times be subject and subordinate to the terms and conditions of this Declaration. The FRN acknowledges and agrees to the assignment and assumption more fully set forth in Section 3.09 of this Declaration, provided that the lease between the Owner of Parcel 2 and the FRN is in full force and effect and the Owner of Parcel 2 is not in default thereunder. The FRN agrees to provide the Owner of Parcel 2 copies of any notices or other written communications delivered to the Owner of Parcel 1 pursuant to Section 3.09.

**FRN OF GREATER SALT LAKE CITY,
LLC**, a Utah limited liability company dba
Utah Auto Collection

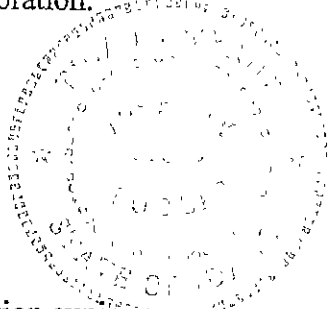
By 
Its CEO

"FRN"

[Attach Acknowledgments]

STATE OF IDAHO)
)ss.
COUNTY OF ADA)

The foregoing instrument was acknowledged before me this 27 day of December, 2000 by Lincoln V. Sharp, Jr. as Vice-President of American Drug Stores, Inc., an Illinois corporation.



[SEAL]

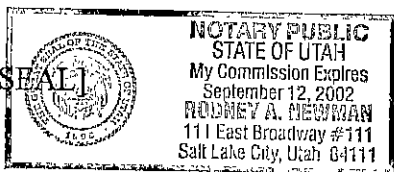
Tina M. Wyant
Notary Public

My commission expires: 04/02/03

Residing at: Boise, Id

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

~~2000~~ ²⁰⁰¹ The foregoing instrument was acknowledged before me this 4th day of April, 2000 by Michael G. MacDonaldas Manager of MacDonal-Christensen Limited Liability Company, a Utah limited liability company.



[SEAL]

Rodney Newman
Notary Public

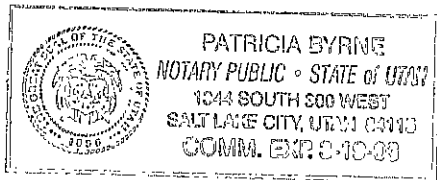
My commission expires: _____

Residing at: _____

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

The foregoing instrument was acknowledged before me this 30 day of March, 2001 by Duff Willey as CEO of FNR of Greater Salt Lake City, LLC, a Utah limited liability company dba Utah Auto Collection.

[SEAL]



Patricia Byrne
Notary Public

My commission expires:
3-19-03

Residing at: S.L.

EXHIBIT "A"

(BASIS OF BEARING)

2600 SOUTH STREET

N89°45'35"W 2479.84 (R) 2479.08 (M)

1534.87 (C) tie to POB

S00°14'25"W 870.49

WITNESS CORNER
SECTION 36, T2N, R14W, S16&M
FOUND MONUMENT
N89°45'35"W

944.95

EAST 1/4 CORNER
SECTION 36, T2N, R14W
MONUMENT NOT FOUND

BOUNTIFUL CITY
CL MONUMENT
NOT FOUND

P.O.B. OVERALL
& TRACT 1

N 89°59'43" W
99.96 (M)

SHARED ACCESS
15,856 sq. ft.
0.364 acres

N 31°19'30" E
71.81'

TRACT 1
79,933 sq. ft.
1.835 acres

ORDER #00025981 PARCEL 1
TAX #06-095-0063

ORDER #00025981 PARCEL 2
TAX #06-035-01567

(RECORDED 5/31/00 117W 58560)

N31°19'30"E 403.03 (M)

S89°57'00"E 112.30 (M)

S00°05'30"E 375.83 (M)

S00°05'30"E (R)

N 75°30'10" W
126.36 (M)
N 89°59'43" W
100.14 (M)

S 00°05'30" E
30.00'
25.0'
50.0'

(RECORDED 11/03/05 30"W 50.00')

HWY 89
N31°19'30"E (R) 319.13
684.09 (M)

P.O.B. TRACT 2
P.O.B. SHARED ACCESS
N 89°57'00" W 359.82'

ORDER #00025981 PARCEL 4
TAX #06-095-0064

(RECORDED 5/07/02)

S00°05'30"E

S00°05'30"E (R)

S00°05'30"E

S00°05'30"E

S00°05'30"E

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S00°05'30"E

S00°05'30"E

S00°05'30"E

1651586 12781 P 323

STAT

(RECORD N70°28'30"E
N31°19'30"E

TRACT 2
262,711 sq. ft.
6.031 acres

S89°13'15"W
204.00 (M)

243.04 (M)

19.0'
6.5'

ORDER #00025981 PARCEL 5
TAX #06-095-0065

TAX #06-095-0066

ORDER #00025981 PARCEL 3
TAX #06-095-0145

500.27'00"E
411.35 (M)

N65°42'00"W
255.22 (M)

S89°51'48"W
245.12 (M)

625 WEST STREET

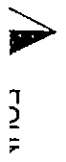
IRFRED PARK SUBDIVISION
LOT 1
BLOCK 1

IRFRED PARK SUBDIVISION
LOT 2
BLOCK 1

N89°51'48"E 2719.18 (R)

SOUTHEAST CORNER
SECTION 36, T2N, R1E
MONUMENT NOT FOUND

LEGEI



FOUR

SCHEDULE I

ACCESS EASEMENT AREA

E 1651586 A 2781 P 324

Beginning at a point which lies South 89 degrees 45 minutes 35 seconds East 1537.05 feet along the North line of the Southeast Quarter of Section 36, Township 2 North, Range 1 West, S.L.B.&M., and South 00 degrees 14 minutes 25 seconds West perpendicular to said North line 1246.32 feet from the Center of said Section 36 Township 2 North, Range 1 West, S.L.B.&M., (a found Brass cap), thence along the right-of-way of 625 West being South 00 degree 05 minutes 30 seconds East 30.00 feet; thence North 89 degrees 57 minutes 00 seconds West 359.82 feet; thence North 31 degrees 19 minutes 30 seconds East 71.81 feet; thence South 89 degree 59 minutes 43 seconds East 99.96 feet; thence South 75 degrees 30 minutes 10 seconds East 126.36 feet; thence South 89 degrees 59 minutes 43 seconds East 100.14 feet to the **Point of Beginning**.

SCHEDULE II

PARCEL 1

E 1651506 B 2701 P 325

*0063
Pt 0156*

Beginning at a point which lies South 89 degrees 45 minutes 35 seconds East 1534.87 feet along the North line of the Southeast Quarter of Section 36, Township 2 North, Range 1 West, S.L.B.&M., and South 00 degrees 14 minutes 25 seconds West perpendicular to said North line 870.49 feet from the Center of said Section 36, Township 2 North, Range 1 West, S.L.B.&M., a found Brass cap, (said beginning point also lies East 150.73 feet and South 33.13 feet from the centerline intersection city monument at Hwy 89 and 2600 South being a found brass cap), (point of beginning also lies South 89 degrees 51 minutes 48 seconds West 1190.85 feet along the South line of the Southeast Quarter of said Section 36 and North 00 degrees 08 minutes 13 seconds West 1856.83 feet perpendicular to said South line to establish beginning point of original vesting deed, Entry #1491770, Book 2456, Page 1111, Davis County Recorders Office), said point also lies on the South right-of-way line of 2600 South Street; running thence along the West right-of-way line of 625 West Street being South 00 degrees 05 minutes 30 seconds East 375.83 feet; thence along the Northerly boundary line of Tract No. 2 (said tract No. 2 being the land adjacent on the South), thence along said boundary the following three (3) courses: 1. North 89 degrees 59 minutes 43 seconds West 100.14 feet, 2. North 75 degrees 30 minutes 10 seconds West 126.36 feet, 3. North 89 degrees 59 minutes 43 seconds West 99.96 feet to a point which lies on the Westerly right-of-way line of State Road 89; thence along said right-of-way line North 31 degrees 19 minutes 30 seconds East 403.03 feet to a point which lies on the South right-of-way line of 2600 South Street; thence along said right-of-way line South 89 degrees 57 minutes 00 seconds East 112.30 feet to the **Point of Beginning**.

PARCEL 2

*Remains
of 0156
0064, 0065,
0145*

Beginning at point which lies South 89 degrees 45 minutes 35 seconds East 1537.05 feet along the North line of the Southeast Quarter of Section 36, Township 2 North, Range 1 West, S.L.B.&M., and South 00 degrees 14 minutes 25 seconds West perpendicular to said North line 1246.32 feet from the Center of said Section 36, Township 2 North, Range 1 West, S.L.B.&M., (a found Brass cap), thence South 00 degree 05 minutes 30 seconds East 243.04 feet to a point which lies on the North boundary line of the Bountiful City Redevelopment property; thence along said North boundary South 89 degrees 13 minutes, 15 seconds West 204.00 feet to the Northwest corner of said Bountiful City property; thence along the West boundary line of said property South 00 degrees 27 minutes 00 seconds East 411.35 feet; thence South 89 degrees 51 minutes 48 seconds West 245.12 feet; thence North 65 degrees 42 minutes 00 seconds West 255.22 feet to a point which lies on the Westerly right-of-way line of State Road 89; thence along said right-of-way line North 31 degrees 19 minutes 30 seconds East 684.09 feet to a point which lies on the South boundary line of Tract No. 1; (said tract No. 1 being the land adjacent on the North), thence along said boundary line the following three (3) courses: 1. South 89 degrees 59 minutes 43 seconds East 99.96 feet, 2. South 75 degrees 30 minutes 10 seconds East 126.36 feet, 3. South 89 degrees 59 minutes 43 seconds East 100.14 feet to the **Point of Beginning**.