

KATHIE L. DIXON
RECORDER
SALT LAKE COUNTY,
UTAH

JAN 23 11 08 AM '85

94/8

Penny Koroligos
Penny Koroligos

INDEXED FILED CO.

4042059

DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS FOR
CONSTRUCTION AND OPERATION

SECURITY TITLE CO.
RJT No. 22497

BOOK 5621 PAGE 914

DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS FOR
CONSTRUCTION AND OPERATION

T A B L E O F C O N T E N T S

	<u>Page</u>
RECITALS	1
EFFECTIVE DATE	3
PART 1 - DEFINITIONS	4
1.01 Accounting Period	4
1.02 Affiliate	4
1.03 Annexation Amendment	5
1.04 Automobile Parking Area	5
1.05 Center	6
1.06 Common Area	6
1.07 Common Area Improvements	7
1.08 Common Area Maintenance Cost	7
1.09 Design Plan	9
1.10 Enclosed Mall	10
1.11 Floor Area	10
1.12 Government Regulations	11
1.13 Hotel	12
1.14 Hotel Operator	12
1.15 Improvements	12
1.16 Landlord	12
1.17 Leasable Space	12
1.18 Major Stores	13
1.19 Mortgagee and Mortgage	13
1.20 Occupant	13
1.21 Office Buildings	13
1.22 Onsite Preparation Work	13
1.23 Operate, Operating, Operation	14
1.24 Operator; Operator's Nominee	14
1.25 Permittees	15
1.26 Person, Persons	15
1.27 Phase I Tract	15
1.28 Phase II Tract	15
1.29 Plans and Specifications	15
1.30 Project Architect	16
1.31 Shopping Center Site	16

BOOK 5621 PAGE 915

1.32	Site Plan	16
1.33	Store or Stores	16
1.34	Termination Date	16
1.35	Tract or Tracts	17
1.36	Unavoidable Delay	17
1.37	ZCMI Lease	18
1.38	ZCMI Site	18
1.39	ZCMI Store	18
PART 2 - CONSTRUCTION		18
2.01	Construction Coordination	18
2.02	Developer Access	18
2.03	Safety Precautions	19
2.04	Construction Quality	19
2.05	Approval of Construction	19
2.06	Approval of Restoration	20
PART 3 - ZCMI DEVELOPMENT SCHEDULE		20
3.01	ZCMI Building Schedule	20
3.02	ZCMI Building Design	21
3.03	Reports of Unavoidable Delay	21
PART 4 - OTHER PHASE I DEVELOPMENT		22
4.01	Additional Phase I Development	22
4.02	Enclosed Mall and Common Area Plans	22
4.03	Fire Protection System	23
4.04	Heating, Ventilating and Cooling	24
4.05	Floor Elevation	24
4.06	General Design Data	24
4.07	Limitations	27
4.08	Common Area Work	28
PART 5 - CONSTRUCTION INSURANCE		30
5.01	Developer Insurance	30
5.02	Waiver of Claims	30
PART 6 - LIENS		31
6.01	Prohibition of Liens	31
6.02	Removal of Liens	31
FUTURE DEVELOPMENT		
PART 7 - GENERAL		32
7.01	ZCMI Approval	32

E004 5621 P111 216

PART 8 - PHASE II TRACT	32
8.01 Phase II Development Design	32
8.02 Phase II Development	32
8.03 Common Area Expansion	33
8.04 ZCMI Expansion	33
8.05 Expansion Coordination	35
PART 9 - PHASE II TRACT	36
9.01 Phase II Development Guidelines	36
9.02 Phase II Restrictions	36
9.03 Temporary Facilities	36
PART 10 - ANNEXATION	37
10.01 Contiguous Property	37
10.02 Maintenance of Annexed Parcels	37
OPERATION	
PART 11 - TERM	37
11.01 Termination Date	37
PART 12 - MALL TENANT MIX	37
12.01 Criteria	37
12.02 ZCMI Approval of Contiguous Tenants	40
PART 13 - MAINTENANCE OF SHOPPING CENTER AND COMMON AREA FACILITIES	41
13.01 Common Area Maintenance	41
13.02 Maintenance Standards	41
13.03 Common Area Maintenance Cost	44
13.04 Common Area Oversight.	44
13.05 ZCMI Maintenance	46
13.06 Rules and Regulations	46
13.07 Sign Criteria	47
13.08 Termination of Prescriptive Rights	47
PART 14 - PARKING REQUIREMENTS	47
14.01 Minimum Parking	47
14.02 Parking Rules and Regulations	48
14.03 Restricted Parking	48
14.04 Temporary Parking Closure	49
14.05 Binding Effect	49

INSURANCE

PART 15 - INDEMNIFICATION AND PUBLIC LIABILITY INSURANCE. 50

15.01 Indemnity 50

15.02 Developer's Liability Insurance - Common Area 52

15.03 Public Liability Insurance - Floor Area 53

PART 16 - FIRE AND EXTENDED COVERAGE 54

16.01 Developer - Fire Insurance 54

16.02 Fire Insurance - Major Stores 56

16.03 Waiver of Subrogation 56

16.04 Occupant's Insurance 57

PART 17 - DESTRUCTION OF IMPROVEMENTS 58

17.01 Rebuilding 58

17.02 Time for Rebuilding 58

17.03 ZCMI Store Rebuilding 58

17.04 Common Area Rebuilding 59

17.05 Deposit of Construction Funds 59

17.06 Site Clearance 61

17.07 Conformity with Design Plan 61

PART 18 - OPERATING PERIODS 62

18.01 Term of Declaration 62

18.02 ZCMI Operation 62

18.03 Binding on Successors 63

18.04 Interruptions 63

RECIPROCAL EASEMENTS

PART 19 - INGRESS AND EGRESS 63

19.01 Reciprocal Use 63

19.02 Termination of Use 64

19.03 Access to Major Stores 64

PART 20 - UTILITIES 65

20.01 Utility Use 65

20.02 Relocation Rights 65

PART 21 - ATTACHMENT; ENCROACHMENTS; COMMON BUILDING COMPONENTS 67

21.01 Attachment Rights 67

21.02 Restoration of Terminated Use 67

BOOK 5624 PAGE 918

PART 22 - EASEMENT FOR SELF-HELP	67
22.01 Self-Help Rights	67
22.02 Indemnity	69
22.03 No Waiver	69
GENERAL	
PART 23 - EMINENT DOMAIN	70
23.01 Substantial Taking	70
23.02 ZCMI Building Condemnation	71
23.03 Restoration of Remaining Areas	71
23.04 Temporary Loss of Use	72
23.05 Settlement of Disputes	72
PART 24 - LAND COVENANTS; TRANSFER	72
24.01 Covenant Running with Land	72
24.02 Transfer of Ownership	73
24.03 Restriction on Developer Transfer	73
24.04 No Prohibition Mortgage	73
PART 25 - TERMINATION RIGHTS	74
25.01 Termination of Declaration	74
25.02 Limitation	74
PART 26 - SIGNS	74
26.01 Sign Criteria	74
26.02 Approval of Special Signs	74
PART 27 - ARBITRATION	75
27.01 Settlement of Disputes	75
27.02 Proceedings	75
PART 28 - MISCELLANEOUS	76
28.01 Parties not Partners	76
28.02 No Waiver	76
28.03 Caption	76
28.04 Governing Law	76
28.05 Severable Provisions	77
28.06 Modification	77
28.07 Counterparts	77
28.08 Default	77
28.09 Mortgagee Notice	78
28.10 Estoppel Certificate	78

BOOK 5624 PAGE 919

28.11	No Public Dedication	79
28.12	No Third Party Beneficiary	79
28.13	Implied Obligations and Easements	80
28.14	Approval Rights of ZCMI	80
PART 29 - NOTICES		80
29.01	Notices	80
29.02	Receipt of Notice	81
PART 30 - SUCCESSORS		82
PART 31 - AMENDMENT		82
30.01	Amendment	82

BOOK 5621 PAGE 920

DECLARATION OF COVENANTS, CONDITIONS
AND RESTRICTIONS FOR
CONSTRUCTION AND OPERATION

This Declaration of Covenants, Conditions and Restrictions for Construction and Operation (herein called the "Declaration") is made this _____ day of _____, 1985, by SOUTH TOWNE PARTNERS, LTD., hereinafter referred to as "Developer" and/or "Landlord", depending upon the context.

RECITALS:

A. In order to provide for the most beneficial development and operation of that certain parcel of real estate (as hereinafter defined) located in the County of Salt Lake, State of Utah, as a regional shopping center and multi-use tract and to meet the requirements of certain other agreements, Developer (as said term is hereinafter defined) makes this Declaration of Covenants, Conditions and Restrictions for Construction and Operation.

B. Developer is the owner of a tract of land located in the County of Salt Lake, State of Utah, more particularly described in Exhibit "A" (Developer Tract), attached hereto and by this reference made a part hereof.

BOOK 5621 PAGE 921

C. The Developer desires to make use of said Developer Tract and to develop and improve the Developer Tract into the Bonneville Valley Shopping Center, hereinafter referred to as the "Center" or "Shopping Center", which Shopping Center shall be of the so-called "Regional Enclosed Mall" type. Developer intends to construct a store location for Zions Cooperative Mercantile Institution (hereinafter "ZCMI") and other Major Stores and intends to build other Leasable Space (as hereinafter defined) and other buildings in the Center (including a Hotel), and intends to lease said buildings. The total property upon which the Center is to be developed is hereinafter referred to as the "Shopping Center Site" or "Developer Tract", and is more particularly described in Exhibit "A". There may be additional Tracts added to said Shopping Center Site by Amendment to this Declaration.

D. Developer desires to cause to be constructed and thereafter desires to Operate or cause to be Operated, as part of the Center, as part of the Phase I Tract Improvements, which will include a retail facility for ZCMI as marked on Exhibit "B" attached hereto and by reference made a part hereof, and also not less than 200,000 square feet Leasable Space as a part of the Center, for occupants other than ZCMI, to be located on the premises as described and marked on Exhibit "B" as "Phase I Tract".

E. Developer desires to cause to be constructed and thereafter to Operate or cause to be Operated, as part of the Center, an "Enclosed Mall" as marked on Exhibit "B".

F. Developer desires to cause to be constructed and thereafter to Operate or cause to be Operated, as part of the Center, one or more buildings or installations for other Major Stores as presently contemplated at the locations designated "Major Store" on Exhibit "B". Said locations may be changed by Developer.

G. Developer desires to be constructed and thereafter to Operate or cause to Operated as part of the Center a hotel as shown at the location on Exhibit "B" marked "Hotel". Said location may be changed by Developer.

H. The Developer desires to make certain provisions for the maintenance and operation of the Common Area (as said term is hereinafter defined) and the buildings and improvements in the Shopping Center, and to make certain other covenants and agreements as hereinafter more specifically set forth.

I. Developer desires to make provision for amendment of this Declaration as hereafter described.

EFFECTIVE DATE:

This Declaration shall not be effective until it has been executed and acknowledged by Developer, and until

it has been recorded in the Office of the County Recorder of Salt Lake County, State of Utah.

1. DEFINITIONS

As used herein, the following terms shall have the following meanings:

1.01 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 effective with the date on which Landlord delivers possession of the ZCMI Store to ZCMI and shall end on and include the next following December 31. Any portion or portions of the Common Area Maintenance Cost as hereinafter defined relating to a period of time only part of which is included within an Accounting Period shall be prorated on a daily basis.

1.02 Affiliate. Any person, firm, corporation, partnership or other legal entity (for convenience herein called "person") controlled by, controlling or under common control with a person. "Control", as used in this definition, means actual direction or power to direct the affairs of the controlled person, and no person shall be deemed in control of another simply by virtue of being a director, officer, limited partner or holder of voting securities of any entity. A person shall be presumed to

control any partnership of which he or it is a general partner.

1.03 Annexation Amendment. An Amendment or Amendments to this Declaration in recordable form may be executed by Developer, or any successor of the rights of Developer with respect to land not included in the Developer Parcel, whereby such other land and any improvements thereon shall become part of and added to the Center. Any Annexation Amendment shall describe by metes and bounds the land to be annexed; shall contain a declaration that such land, together with any improvements thereon, has been annexed into and become a part of the Center pursuant to this Declaration, and shall contain a declaration that such annexed land is subject to all the obligations and entitled to the benefits of all applicable rights and easements under this Declaration.

1.04 Automobile Parking Area. Those portions of the Common Area (as hereinafter defined) designated for the parking of motor vehicles, and the incidental and interior roadways, perimeter sidewalks, bumpers, walkways between vehicles and curbs within or adjacent to areas used for parking of motor vehicles, together with employee parking, all improvements which at any time are erected thereon, subject to the provisions of Section 2, shall be referred to as "Automobile Parking Area". Such areas shall include

truck ramps and loading and delivery areas, unless enclosed within the leased area of an Occupant.

1.05 Center. The multi-use regional shopping center to be constructed and operated on the Developer Tract, including, without limitation, the Shopping Center, ZCMI Store, Major Stores, the Hotel, Leasable Space and all Improvements now or hereafter constructed on any portion of the Developer Tract. Any portion of any other tract annexed into the Center, together with any Improvements thereon, shall become part of the Center on filing of the Annexation Amendment applicable thereto.

1.06 Common Area. The term "Common Area" refers to all areas within the exterior boundaries of the Shopping Center which are made available as hereinafter provided for the general use, convenience and benefit of Developer, all Occupants (as hereinafter defined), and all Permittees (as hereinafter defined) of Developer. The Common Area shall be developed as shown on Exhibit "B" and shall include, but not be limited to, utility lines and systems, landscaped areas lying between exterior building faces and curb faces, sidewalks, Automobile Parking Area, access roads, pedestrian walkways, malls, including the Enclosed Mall, courtyards, benches, fences, detention basins and other drainage systems and other such facilities provided for the Operation of the Shopping Center and the convenience of Permittees (as

BOOK 5621 PAGE 926

hereinafter defined). The Common Area shall include truck parking, ramps and turn-around areas, and the depressed portions of truck tunnels or ramps serving the Improvements except where such areas are wholly within a building leased to an Occupant.

1.07 Common Area Improvements. All improvements installed, constructed or located on the Common Area and which are for the benefit of the Shopping Center shall be deemed Common Area Improvements.

1.08 Common Area Maintenance Cost. The term "Common Area Maintenance Cost" refers to and means the total of all monies actually paid during an Accounting Period for reasonable costs and expenses directly relating to the maintenance, repair, replacement and management of the Common Area and Common Area Facilities, the Stores, the Leasable Space and Enclosed Mall (which phrases, for the purposes of this Section 1.07 only, shall include employee parking areas, if any, located upon land outside the Shopping Center which may from time to time be provided). The cost shall include maintenance and replacement and reconstruction work (except as hereinafter expressly provided) as shall be required to preserve the utility of the Common Area, Common Area Improvements, the Stores, the Leasable Space and Enclosed Mall.

Such costs shall further include, but not be limited to utility expenses for lighting, operation of air

BOOK 5621 PAGE 927

conditioning and heating equipment; premiums on public liability, property damage, fire, extended coverage, vandalism and plate glass insurance for the Enclosed Mall, Stores, Leasable Space and Common Area Improvements and equipment; all costs of policing, security protection, control and regulation of the Enclosed Mall, Stores, Leasable Space and Common Area Improvements; maintenance, repair and replacement of electrical, mechanical and other equipment (and related utility lines), including automatic door openers (except automatic door openings to the Stores), lighting fixtures (including replacement of tubes, ballasts and bulbs), air conditioning and heating equipment, fire sprinkler system; repair, maintenance and cleaning of the Stores, Enclosed Mall components and Common Area Improvements, including ceiling, roof, skylights, windows, floor and floor coverings; benches, art objects, columns and supports; rental charges for, or the cost of repairing and replacing the operating, broadcast and maintenance equipment; supplies; all rental charges for equipment and cost of small tools and supplies, all costs of maintenance equipment; all costs of policing, security protection, traffic direction, control and regulation of the Automobile Parking Area; all cost of cleaning and removal of rubbish, dirt, debris, snow and ice from the Common Area and Common Area Facilities; the cost of landscape maintenance and supplies incident thereto; all charges for utility services

BOOK 5621 PAGE 928

utilized in connection therewith (except those utility services separately metered to individual Occupants), together with all costs of maintaining lighting fixtures in the Common Area. There shall also be included in such costs all premiums for public taxes and assessments however characterized on the Common Area, liability and property damage insurance carried by Operator or Operator's Nominee (as hereinafter defined) covering the Common Area, Common Area Facilities, Stores and Enclosed Mall, plus 15% of all of such sums as an administration fee to the Operator.

Nothing in this Section 1.08 shall be deemed to preclude any additional or different cost factors or charges being made pursuant to any lease or other agreement between Developer and any Occupant.

1.09 Design Plan. Plans for components of the ZCMI Store on the Developer Tract approved in writing by ZCMI and Developer, consisting of scope drawings or renderings and outline specifications showing architectural elevations, location and height of the building, floor plans, schematic utility drawings (showing location of service connections and preliminary size and load requirements); vertical transportation, interior design and leasing plan; Automobile Parking Area, roadway network plans and original landscaping design. The Design Plan shall not include final Plans and Specifications.

BOOK 5621 PAGE 929

1.10 Enclosed Mall. The term "Enclosed Mall" shall mean the portion or portions of the mall located in the Center which is so constructed that climatic control will be provided therein and which is designated as such on Exhibit "B".

1.11 Floor Area. The term "Floor Area" means the actual number of square feet of floor space in any building located in the Center exclusively appropriated for use by an Occupant (as hereinafter defined), and completed except for tenant improvements whether or not actually occupied by an Occupant, including basement space and balcony and mezzanine space within the exterior 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. The term "Floor Area" shall not mean or include any of the following: (a) public restrooms accessed from the Enclosed Mall and not contained within any area exclusively appropriated for the use of any single Occupant; (b) the upper levels of any multi-deck stock area created for convenience to increase the usability of area for stock purposes; (c) physically separated and other areas used exclusively by more than one Occupant to house mechanical, electrical, telephone, trash baling, compacting or other operating equipment; (d) any Common Area (including employee parking) or any buildings used solely in connection with the maintenance of the Common Area; (e) any

Center management, security and maintenance offices; (f) Promotional Fund offices; (g) a community hall; (h) exit corridors between fire resistant walls required by building codes and not contained within any area exclusively appropriated for use of any single Occupant; and (i) any truck loading and receiving areas, truck tunnels and truck parking, turn-around and dock areas which are not enclosed. It is specifically understood, however, that item (e) above shall not exceed 5,000 square feet. Without limiting any other remedy available hereunder or at law, it is specifically understood that should the above-described square footage limitation be exceeded, the cost of maintaining such excess shall be borne solely by Developer.

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.

Each Occupant upon completion of construction of its building or space shall certify its actual square feet to the Developer and thereupon the Project Architect, (as hereinafter defined), shall in good faith verify the actual number of square feet of Floor Area of Improvements of said Occupant.

1.12 Government Regulations. Government Regulations or laws, ordinances, rules, regulations,

requirements and orders of the City of Sandy, Utah, and of all other governmental authorities having jurisdiction over the Shopping Center.

1.13 Hotel. The term "Hotel" refers to the Hotel building, together with all other Improvements on the Hotel site located on the Tract, which is designated on Exhibit "B" as "Hotel".

1.14 Hotel Operator. A nationally recognized operator and manager of quality hotels.

1.15 Improvements. The term "Improvements" shall refer to and include Leasable Space, the Hotel, Enclosed Mall, and its stores, buildings and other improvements situated upon the Tract.

1.16 Landlord. The term "Landlord" shall mean SOUTH TOWNE PARTNERS, LTD., a Utah limited partnership, and any affiliate, or successor person thereto acquiring the Developer Parcel. At the time of execution of this Declaration, Developer is the Landlord. The obligations of Developer, as Landlord of the ZCMI Lease, shall bind any successor to Developer's interest in the Shopping Center.

1.17 Leasable Space. "Leasable Space" is that space within the Shopping Center which will be occupied by Occupants.

BOOK 5624 PAGE 932

1.18 Major Stores. Any major department or specialty store Occupant, including ZCMI, (where the context so indicates having a Store) within the Developer Parcel which (a) shall contain at least 40,000 square feet of Floor Area; and (b) may, but need not, be connected to the Enclosed Mall Building with direct access to the Enclosed Mall.

1.19 Mortgagee and Mortgage. The term "Mortgagee" shall mean a mortgagee under a first mortgage or "wraparound" mortgage; a trustee and a beneficiary under a first deed of trust or "wraparound" Trust Deed; and to the extent applicable, the term "Mortgage" shall mean any first mortgage, first deed of trust, "wraparound" mortgage or "wraparound" deed of trust and to the extent applicable, a sale and/or assignment and leaseback transactions.

1.20 Occupant. Any Person occupying Leasable Space located in the Shopping Center under a lease or other instrument or arrangement whereunder such person has acquired rights with respect to the use and occupancy of any Leasable Space.

1.21 Office Buildings. Office Buildings which may be constructed within the Center.

1.22 Onsite Preparation Work. Preparation of the Phase I Tract, installation of Temporary Construction

Facilities and completion of the building pad on the ZCMI Building, all as may be more particularly described in Plans and Specifications.

1.23 Operate, Operating, Operation. The terms "Operate" or "Operating" or "Operation" shall mean, as the context shall require, that (i) a Store is open to the general public for business, including the period during which such Store may temporarily not be open for business by reason of any provisions of Section 16 hereof, or during periods of such reasonable interruptions as may be incident to the conduct of said business; or (ii) after the Enclosed Mall is finished, the Enclosed Mall is open to the general public for business during the business hours of the Major Stores, or any of them, and is properly maintained, heated, air conditioned, lighted and ventilated, subject to the provisions hereof, and so that all services necessary to maintain the Enclosed Mall as properly functioning; or (iii) the Common Area is available for the uses contemplated herein, subject to temporary closure for maintenance and repairs and Section 16, and is being maintained in accordance with the requirements hereof.

1.24 Operator; Operator's Nominee. The term "Operator" as used herein shall mean the Party or Parties or other Person or Persons responsible for the maintenance of the Common Area or any part thereof, including Operator's nominees.

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

1.26 Person, Persons. The words "Person" or "Persons" refer to and shall include individuals, partnerships, firms, associations and corporations or any other form of business or governmental entity.

1.27 Phase I Tract. The term "Phase I Tract" means that portion of the Center to be constructed as shown on Exhibit "B" as the "Phase I Tract".

1.28 Phase II Tract. The term "Phase II Tract" means that portion of the Center to be constructed as shown on Exhibit "B" as the "Phase II Tract", and shall also mean, if the context so indicates, any subsequent phases of development on the Developer Parcel. It is understood, however, that there is no timetable for all or any portion of the Phase II Tract or development of subsequent phases of the Developer Parcel.

1.29 Plans and Specifications. Architectural and engineering drawings and written requirements for construction of Improvements, including working drawings, the Design Plan and written requirements for workmanship and

BOOK 5621 PAGE 935

materials, all of which show details adequate for the commencement and pursuit of actual construction.

1.30 Project Architect. The term "Project Architect" refers to CHARLES KOBER ASSOCIATES, or such other architect or architects as may from time to time be designated by Developer and approved by ZCMI with respect to the Center.

1.31 Shopping Center Site. The terms "Shopping Center Site," "Shopping Center" and "Center" shall have the meanings set forth in Recital Paragraph C above.

1.32 Site Plan. Diagram or drawings which shows the size, location and/or shape of the Developer Tract, the Phase I Tract, the Phase II Tract and the component parts thereof, which is attached hereto as Exhibit "C".

1.33 Store or Stores. The term "Store" or "Stores" refers to the building(s), respectively, housing the ZCMI Store and/or the Stores occupied by other Majors and/or other Occupants, and the Hotel as the context may appropriately require, except where specifically otherwise provided.

1.34 Termination Date. The term "Termination Date" shall mean the date on which this Declaration shall terminate, pursuant to the terms and provisions hereof.

1.35 Tract or Tracts. The term "Tract" or "Tracts" refers to the respective parcels of land described on Exhibits "A" and "B", as the context may require.

1.36 Unavoidable Delay. All failures or delays in a party's performance of its obligations hereunder not within such party's reasonable control, including without limitation, the impossibility of such performance which shall result from or be caused by any arbitration, legal proceedings or other litigation threatened, instituted against or defended by such party, in good faith, and not merely for purposes of delay, acts of God, acts of the public enemy, wars, blockades, epidemics, earthquakes, storms, floods, explosions, strikes, labor disputes, work stoppages, riots, insurrections, breakage or accident to machines or lines of pipe or mains, lawful acts of any governmental agency or authority restricting or curtailing the construction of the Improvements or withholding or revoking necessary consents, approvals, permits or licenses, equipment failures, inability to procure and obtain needed building materials (provided such party who is unable to do so makes reasonable efforts to procure satisfactory substitute materials if practical), whether as a result (directly or indirectly) of any lawful order, law or decree of any governmental authority or agency or otherwise and any other cause, whether of the kind herein referred to or otherwise; provided that such party shall pursue with reasonable diligence the avoidance or removal of such delay.

BOOK 5621 PAGE 937

1.37 ZCMI Lease. Lease dated _____ between Developer and ZCMI covering the ZCMI Site and the ZCMI Store to be erected thereon.

1.38 ZCMI Site. That portion of the Developer Tract, more particularly described on Exhibit "B" hereto which is leased pursuant to the ZCMI Lease and upon which the ZCMI Store is to be constructed.

1.39 ZCMI Store. The two-level department store to be constructed on the ZCMI Site, together with all other Improvements on the ZCMI Site.

2. CONSTRUCTION

2.01 Construction Coordination. Until completion of the Phase I Improvements, ZCMI and Developer shall each, through representatives, attend all meetings called by the Developer for coordination purposes.

2.02 Developer Access. Developer and its respective agents, employees and contractors shall have such access to areas within the Developer Tract (and, with respect to the ZCMI Site) incidental to construction of the Improvements and for storing or staging materials and equipment for use in constructing the Improvements, so long as the same does not unreasonably interfere with construction or operation of Improvements.

2.03 Safety Precautions. Developer and each party entering the Developer Tract shall take all necessary safety measures, including, but not by way of limitation, the erection of barricades (which shall be kept free of advertising matters) as shall be reasonably required to protect persons performing such work or construction, as well as each Occupant and all Permittees, from injury or damage caused by, or resulting from any work or construction.

2.04 Construction Quality. The Improvements shall be constructed in a good and workmanlike manner, and in the performance of such work and construction, Developer shall comply with all effective and applicable laws and ordinances. All materials to be permanently installed or left in the Center shall not have been previously used and shall be of good quality. On completion, the Improvements will comply with all effective and applicable laws and ordinances.

2.05 Approval of Construction. Approval of any matter pertaining to construction of Improvements within the Center or any part thereof under either the provisions of this Declaration or the requirement of a governmental authority shall be made by a representative of each party as follows:

FOR DEVELOPER: TURNMAR DEVELOPMENT COMPANY
50 West Broadway, Suite 1100
Salt Lake City, Utah 84101

AND

COLLIER MANAGEMENT &
DEVELOPMENT, INC.
50 West Broadway, Suite 1100
Salt Lake City, Utah 84101

FOR ZCMI: ZCMI
2200 South 900 West
Salt Lake City, Utah 84317

subject to the right of each party to designate a different representative by written notice. Such approvals shall not be unreasonably denied, withheld or delayed by any party in any case.

2.06 Approval of Restoration. The provisions of this Section, as well as Sections 3, 4 and 6, shall apply to all construction within or pertaining to the Center during the term of this Declaration, including without limitation restoration of Improvements as hereinafter provided.

3. ZCMI DEVELOPMENT SCHEDULE

3.01 ZCMI Building Schedule. Developer shall construct or cause to be constructed Onsite Preparation work and Offsite work in accordance with the terms of the ZCMI Lease (subject to extension for a period equal to the period of any Unavoidable Delay). If Developer does not complete construction within the time frames set forth in the ZCMI

Lease (subject to extension for a period equal to the period of any Unavoidable Delay), ZCMI shall have the rights set forth in the ZCMI Lease.

3.02 ZCMI Building Design Plan. Developer shall construct or cause to be constructed the ZCMI Store on the ZCMI Site in accordance with Plans and Specifications which do not materially deviate from the Design Plan. Any material deviations from such Design Plan must be approved by ZCMI and Developer. The Plans and Specifications for the ZCMI Store shall be subject to the approval of Developer and ZCMI in accordance with the provisions of the ZCMI Lease. The ZCMI Store shall be connected to the Enclosed Mall. ZCMI shall open for business with the general public as provided in the ZCMI Lease, subject to extension for a period equal to the period of any Unavoidable Delay.

3.03 Reports of Unavoidable Delay. In order to obtain the benefit of Unavoidable Delay as to construction matters, both the Developer and ZCMI must submit to the Project Architect a quarterly report specifying the period of such delay incurred during the preceding quarter and the reason therefor. Quarterly reports shall be submitted within ten (10) days following the last day of March, June, September and December covering the preceding quarterly period.

BOOK 5621 PAGE 944

4. OTHER PHASE I DEVELOPMENT.

4.01 Additional Phase I Development. Developer shall also construct or cause to be constructed as part of the Phase I Tract 200,000 square feet of Leasable Space. Developer shall also develop the Common Area Facilities on the Phase I Tract, subject to the provisions set forth herein.

4.02 Enclosed Mall and Common Area Plans. The Enclosed Mall shall be fully enclosed and air-conditioned and shall be constructed at Developer's sole cost and expense. Plans for the development of the Enclosed Mall and of the Common Areas shall be prepared by the Project Architect and shall be submitted to ZCMI for its approval. Such plans shall show:

- (a) Principal interior and exterior dimensions, including scaled elevations and height of principal components, column locations and floor elevations;
- (b) Design concepts;
- (c) Material selection samples and decorative elements;
- (d) Lighting;
- (e) Landscaping and furnishings;

(f) Sign criteria;

(g) Outline specifications for heating, ventilating and air conditioning including performance specification; and

(h) Attachments of Enclosed Mall structure to the ZCMI Store and other stores.

In the development of plans for attachment of the Enclosed Mall to the Stores, the architect designing the Enclosed Mall shall consider, as relevant considerations in resolving questions that arise in such attachment, the facade of the building to which attachment is to be made, insurance requirements, Government Regulations, increased or decreased cost or construction of the building to which attachment is to be made, the requirements that no seismic loading shall be imposed upon the Stores by the enclosure structure (other than shared footings which shall be designed to carry all loads of each separate structure), and that sprinkler protection approved by ZCMI shall be provided within the ceiling plan of each Store at all Enclosed Mall entrances to the Stores.

Upon approval of the final improvement plans for the Enclosed Mall and Common Areas, all work shall be completed at the sole cost and expense of Developer.

4.03 Fire Protection System. The fire protective system for the Enclosed Mall shall be installed in

conformity with Government Regulations.

4.04 Heating, Ventilating and Cooling. 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 70° Fahrenheit with outside dry bulb temperature -20° Fahrenheit for heating, and the cooling system shall be capable of maintaining 78° Fahrenheit dry bulb and 50° humidity inside conditions with outside conditions of 95° Fahrenheit wet bulb. The entire system shall be automatically controlled.

4.05 Floor Elevation. The finished floor surface of the Enclosed Mall shall be established at the same elevation as the corresponding floor of the ZCMI Store at all points adjoining the entrance to the ZCMI Store.

4.06 General Design Data. In the preparation of any improvement plans, the following general design data, without limitation, shall be followed, as minimums, unless Government Regulations for such work establish higher standards:

(a) Sewer drainage and utility lines, conduits, or systems shall not be constructed or maintained above the ground level of the Center unless such lines, conduits or systems are approved by ZCMI, are within approved enclosed structures,

and shall conform with all Government Regulations; and be harmonious with the overall design, as subsequently modified in accordance with this Agreement.

(b) Lighting for Automobile Parking Areas shall be provided by fixtures of such type as Developer and ZCMI shall approve, with area controls with automatic controls, sufficient to produce (i) 1 foot candle (minimum maintained) of lighting, measured at the finished surface of the adjacent ground, except that 4 foot candles (minimum maintained) of lighting shall be maintained at all entrances and exits to the Shopping Center from public streets, or (ii) such other minimum foot candle of lighting as may be mutually approved by Developer and the Major Stores. The parking lot lighting system shall be designed so that it can be illuminated at twenty-five percent (25%) of full intensity, uniformly distributed throughout the lot.

(c) 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 Sandy City, and other governmental agencies having jurisdiction of the same.

(d) All sidewalks, unenclosed malls and pedestrian aisles shall be of materials approved by Developer and ZCMI, and the surface of the Automobile Parking Area and access roads shall be paved by installing a suitable base, surface with a bituminous or asphaltic wearing surface, or other material approved by the Developer and ZCMI.

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

(f) 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 material selection, the decor and the treatment values, approaches and standards of the interior of the Enclosed Mall shall be of first-class quality. Rooftop mechanical equipment shall be screened so

as to be hidden from public view from adjacent public streets and highways.

4.07 Limitations. 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:

- (a) Any public or private nuisance.
- (b) Any noise or sound that is objectionable to Occupants or customers due to intermittence, beat, frequency, shrillness or loudness. (Any noise or sound which cannot be heard outside of the Store in which such originates shall not be deemed to be objectionable hereunder).
- (c) Any obnoxious odor.
- (d) Any noxious, toxic, caustic or corrosive fuel or gas.
- (e) Any unusual fire, explosive or other damaging or dangerous hazard.
- (f) Any warehouse (excluding any area for the storage of goods intended to be sold at any retail

establishment in the Center) assembly, manufacture, distillation, refining, smelting, agriculture or mining operations.

(g) Any mobile home or trailer court, labor camp, junk yard, stock yard, or animal raising (small animal stores are permitted).

(h) Any drilling for and/or removal of subsurface substances.

(i) Any dumping of garbage or refuse.

(j) Any auction house operation.

4.08 Common Area Work. Upon approval of the improvement plans, Developer shall commence construction of all onsite and offsite work required to construct the "Common Area Improvements". The Common Area Improvements shall consist of the following items of work:

(a) Preliminary development of the Shopping Center including, but not limited to, the following:

(i) Design and construction of offsite and of onsite improvements for the general benefit of the Shopping Center including, but not limited to, the construction of curb cuts and median breads and the placement of directional signs, markings and other facilities, all as reasonably required to provide proper ingress and egress for the Center;

(ii) Undergrounding or offsite relocation of overhead utility facilities, if any;

(iii) Demolition, if any is required, and rough grading of the Shopping Center site, which shall include the grading of building pads and excavations for all buildings.

(b) The design, construction and improvement of the Common Area, including, but not limited to, the following:

(i) Fill requirements, including excavations, if any, and compaction to develop the same.

(ii) Finish grading.

(iii) All paving, striping and lighting, including electric time clock controls.

(iv) Facilities for surface and subsurface drainage.

(v) Sidewalks and curbs, exclusive of sidewalks and curbs adjacent to the Store buildings which are a part of such plans.

(vi) Landscaping, including related water systems and related electric time clocks.

(vii) Common sewer, gas, electrical, water and telephone facilities to a point no closer than five feet (5') from each respective building, even though such common facilities serve the Stores, in addition to the Common Area.

(viii) All amenities outside of the Enclosed Mall such as benches, trash receptacles, public telephones, drinking fountains, newspaper racks, bicycle racks, decorative features and similar facilities of the comfort or benefit of 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.

(ix) All architectural and engineering costs and construction bonds and builder's risk insurance relating to the common area work defined above shall be considered a part of the work for the purpose of cost.

(c) The performance of the common improvement work under any such contract shall be scheduled by the Project Architect in consultation with the Developer to coordinate such common area work with the work of construction of the ZCMI Building.

(d) Developer represents and warrants that the capacity of electrical, domestic and fire protection water supply, and sanitary and store sewer facilities constituting part of the Phase I Tract shall, upon completion, be sufficient to serve the proposed uses of Phase I.

5. CONSTRUCTION INSURANCE

5.01 Developer Insurance. Developer shall maintain, or cause to be maintained, comprehensive Builders' Risk Insurance in completed value form during all the period of time the construction of the ZCMI Building and Leasable Space is in progress and uncompleted.

5.02 Waiver of Claims. Each Occupant, by taking possession, and the Developer each waive any and every claim which arises or may arise in its favor against the other party during the period of construction or the period of any

lease for any and all loss of or damage to any of its property located within or upon or constituting a part of the Developer Tract or the Center, which loss or damage could have been covered by valid and collectible insurance policies insuring against such claims, to the extent that this waiver is permitted under such insurance policies and does not invalidate any such insurance coverage. Said mutual waivers shall be in addition to, and not in limitation or derogation of, any other waiver or release regarding any loss of or damage to the said property of any party.

6. LIENS.

6.01 Prohibition of Liens. No Occupant with respect to their premises shall permit any mechanic's or materialmen's liens, or other similar liens, to stand against or attach to any part of the Developer Tract or any interest therein.

6.02 Removal of Liens. Developer agrees to indemnify and to hold ZCMI and all Occupants harmless from all mechanic's, materialmen's and/or laborer's liens and all expenses and liabilities arising out of Developer's activities. Developer may bond and contest the validity and amount of any such lien, but on final determination of the validity and amount of the lien, Developer shall immediately pay any judgment rendered, with all proper costs and

charges, and shall have the lien released at Developer's expense.

FUTURE DEVELOPMENT

7. GENERAL.

7.01 ZCMI Approval. During the term of this Declaration, the Developer shall not expand any building or construct any additional building on any portion of the Developer Tract except as shown on the Plat attached as Exhibit "B", except with the consent of ZCMI, which consent shall not be unreasonably withheld.

8. PHASE II TRACT.

8.01 Phase II Development Design. Following completion of construction on the Phase I Tract pursuant to this Declaration and the Leasable Space, Major Stores, and the Office Building, Developer shall not modify the exterior of the Center without the prior approval of ZCMI, except as hereinafter provided, it being understood that modifications covered by this Section 8.01 shall include exterior signage.

8.02 Phase II Development. Developer shall have the right to construct or cause construction of additional Improvements on Phase II, it being understood that such additional Improvements shall be architecturally harmonious and compatible with that of the Phase I Tract of the Center.

Developer hereby agrees to use all reasonable efforts to secure commitments from Major Stores to construct stores within said Phase II.

8.03 Common Area Expansion. Developer shall have the right to alter, expand and relocate Improvements on the Common Area. Developer shall also have the right, subject to the consent of ZCMI, which shall not be unreasonably withheld, to alter, expand and relocate Automobile Parking Areas so long as (a) requirements for Automobile Parking Areas, set forth in Section 14.01 hereof, are maintained for all Improvements, (b) there is no violation of the restrictions imposed under Section 8.02, (c) no material change is made to those parts of Automobile Parking Areas within Phase I which are within 100 feet of the ZCMI Store, without the prior written consent of ZCMI. The restrictions under (c) above shall have no further force and effect following expiration or sooner termination of the ZCMI Lease. Nothing herein contained shall be deemed to prohibit temporary interruption of Automobile Parking Areas and temporary reduction of parking ratios incidental to such construction of additional Improvements (including construction within Phase II Areas) or restoration or alteration of existing Improvements as shall be permitted hereunder.

8.04 ZCMI Expansion. ZCMI shall have the right to expand its Store horizontally, in accordance with and

subject to the following terms and conditions:

(a) Such expansion can be accomplished without violating applicable zoning requirements.

(b) ZCMI bears construction costs for the additional space or additional Lease Payments as described in the ZCMI Lease.

(c) It is understood that Developer reserves the right to design and construct or to cause design and construction of such additional Automobile Parking Areas and Common Area Improvements at the sole cost and expense of Developer, subject to the limitations described in the ZCMI Lease; provided, however, that prior to commencement of Construction thereof, (i) a Design Plan and the final Plans and Specifications for any expanded Automobile Parking Areas and Common Area Improvements must be approved by Developer and by ZCMI, and (ii) the terms of the proposed construction must be approved by Developer and ZCMI, such approvals under (i) and (ii) not to be unreasonably withheld.

(d) A design Plan and Plans and Specifications for such expansion of the ZCMI Store is approved by Developer, such approval not to be unreasonably withheld.

(e) The expansion shall not exceed 100,000 square feet of Floor Area.

The expansion rights contained in this Section 8.04 shall be effective and enforceable only so long as (i) the ZCMI Lease is in full force and effect, and (ii) the ZCMI Store is being operated under the name ZCMI (or such other name as ZCMI may be using in the Salt Lake City area. Any such expansion space shall be subject to all the terms and provisions of the ZCMI Lease Agreement and this Declaration as if such expansion were originally a part of the ZCMI Store.

8.05 Expansion Coordination. Any expansion or construction of additional Improvements or alteration or restoration of existing Improvements, all as permitted by this Agreement, shall be conducted (a) in such manner that interference with existing Improvements shall be minimized to the extent possible and (b) without unnecessary inconvenience of any kind or character whatsoever. Any damage to existing Improvements of any other party caused by such expansion, construction, alteration or restoration shall promptly be repaired or restored at the cost of the party doing such expansion, construction, alteration or restoration work.

9. PHASE II TRACT.

9.01 Phase II Development Guidelines. Future development of the Phase II Land and subsequent Phases shall be subject to the following conditions:

(a) The exterior design of Improvements on future phases shall be architecturally harmonious and compatible with the Improvements within the Center existing at the time of commencement of construction of such Improvements on the future phases.

(b) Such Improvements on Phase II Tract may be used solely for the following purposes and no others: retail, Hotel or Office Building and Common Area uses ancillary thereto.

9.02 Phase II Restrictions. The restrictions contained in Section 9.01 shall also apply to development of any portion of the Developer Tract so long as this Declaration shall remain in full force and effect as to any portion of the Developer Tract.

9.03 Temporary Facilities. Nothing herein contained shall be deemed to prohibit erection and maintenance on the Phase II Tract of temporary banking facilities.

10. ANNEXATION.

10.01 Contiguous Property. In the event Developer obtains contiguous property to the Center, the Developer shall have the option in its sole discretion to amend this Declaration to annex such portion of the contiguous property into the Center.

10.02 Maintenance of Annexed Parcels. If any portion of such contiguous land is included in the Center, pursuant to this Article 10, the Developer shall keep, repair, manage, operate or maintain or cause to be kept, repaired, managed, operated and maintained the Common Area Facilities located thereon. The costs thereof shall be allocated and paid consistent with the provision therefor in Section 13 hereof.

OPERATION

11. TERM.

11.01 Termination Date. Unless sooner terminated pursuant to the express provisions of this Agreement or by mutual agreement of the parties, this Agreement shall remain in full force and effect until _____.

12. MALL TENANT MIX.

12.01 Criteria. It is in the mutual and best interest of the parties that the Center be developed and

BOOK 5621 PAGE 957

maintained as an integrated, high-quality, regional shopping center, to contain a combination of merchant businesses and other establishments which represent a sound, balanced and generally compatible diversification of merchandise and services and to contain financially responsible retail merchants offering merchandise and services to a broad market. Developer will use all reasonable efforts to accomplish the foregoing goals as to tenants in the Center. Developer covenants and agrees that it will continuously manage and Operate, or cause to be managed and Operated, the Enclosed Mall and the Common Area in the following manner:

(a) As a complex of retail stores and commercial enterprises which is typically part of a first-class shopping center development.

(b) Use its best efforts to:

(i) Have the Leasable Space in the Center occupied and Operated in its entirety, and

(ii) Maintain a quality of management, maintenance, and operation not less than that generally adhered to in other similar shopping centers in the Rocky Mountain States.

(c) Operate under the name "SOUTH TOWNE MALL", and under no other name, without the prior approval of each Major Store, which approval shall be granted or withheld in the sole and absolute judgment of each such Major Store.

(d) Develop and Operate in accordance with rules and regulations to be promulgated and which may from time to time be amended.

(e) Not to substantially change, modify or alter in any manner or to any extent whatsoever the exterior of the Enclosed Mall without the prior approval of the Majors.

(f) Operate the Enclosed Mall, within the confines of the Shopping Center as depicted on Exhibit "B" and not to withdraw any real property from the Developer Tract.

(g) To provide lighting, heating, cooling and ventilation for the Enclosed Mall and to maintain the air-conditioning system and all other services therein at all times when the retail operations are open for business, and in such manner so that the temperature and humidity throughout the Enclosed Mall is at a level in accordance with the design requirements herein, except for those time periods that the retail operations of only one Major Store is open for business and the Store Manager of such Major Store agrees that the Operation of the Enclosed Mall is not necessary thereto.

(h) Developer recognizes that it is its responsibility to attain a proper mixture and

BOOK 5624 PAGE 959

balance of merchandise in the Shopping Center subject to reasonable approval by ZCMI of merchandising mix, without regard to competitive consideration to ZCMI. Developer further acknowledges that in order to assure the maximum flow of pedestrian traffic in the Enclosed Mall that substantial variations of use may be required. Developer agrees that any agreement by which any Person becomes an Occupant shall be subject to this Agreement and shall contain provisions which will enable the Developer to enforce the provisions of this Declaration including but not limited to the rules and regulations provided for in Section (d) above.

(i) To maintain in existence an opening into each Major Store as long as such Major Store maintains an opening into the Enclosed Mall.

12.02 ZCMI Approval of contiguous Tenants.

(a) Notwithstanding anything to the contrary contained in Section 12.01 hereof, Developer agrees that Leasable Space within the Enclosed Mall within 40 lineal feet of the ZCMI Store on both sides of the ZCMI Store shall be leased to Occupants selected by Developer from the categories approved by ZCMI in writing.

(b) The covenants and restrictions contained in this Section 12.02 shall be effective and enforceable only so long as (i) the same is permitted under applicable law, and (ii) the ZCMI Lease is in full force and effect.

13. MAINTENANCE OF SHOPPING CENTER AND COMMON AREA FACILITIES

13.01 Common Area Maintenance. Developer shall keep, repair, manage, operate and maintain the Common Area Improvements and the Center (or cause the same to be kept, repaired, managed, operated and maintained) in all cases in good and clean order, operation, condition, and repair, in conformity with regional multi-use center standards and in such manner as to establish, maintain, and present, at all times the appearance of a clean, well managed, attractive, coordinated, and unified operation of all of the Common Area Improvements and Center. Developer, its agents and employees, shall have, and are hereby granted, access to the Floor Area of each Occupant for the purpose of performing such maintenance, which shall be performed at reasonable times and with the least interference possible.

13.02 Maintenance Standards. Without limiting the generality of the foregoing, Developer in the maintenance of the Common Area shall maintain those improvements specified in Section 1.07 hereof and shall observe the following standards:

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

(b) Remove all papers, debris, filth, refuse, snow and ice from the Center and wash or thoroughly sweep paved areas as required.

(c) Maintain such appropriate Automobile Parking Area entrance, exit and directional signs, markers and lights in the Center as shall be reasonably required and in accordance with the practices prevailing in the operation of similar regional shopping centers in the Rocky Mountain States.

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

(e) Repaint striping, markers, and directional signs as necessary to maintain in first class condition.

(f) Maintain landscaping as necessary to keep in a first-class and thriving condition.

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

(h) Employ courteous personnel for Common Area patrol during store hours and such other hours as are deemed necessary by the Developer.

(i) Maintain and keep in a sanitary condition public restrooms, if any, and other common use facilities.

(j) 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.

(k) Light the Common Areas in accordance with the lighting specifications contained in Section 4.06 (b), above.

(l) Maintain the surface of the Enclosed Mall smooth and evenly covered with the type of surfacing material originally installed thereon, or such substitute thereof as shall have been approved by ZCMI.

(m) Maintain all signs of the Enclosed Mall within the Center, but not those of Occupants, in a

BOOK 5624 PAGE 983

clean and orderly condition, including relamping, reballasting and repairing as may be required.

(n) Clean repair and maintain the structure of the Enclosed Mall, the roof, skylights, wall surfaces, doors and other appurtenances to the Enclosed Mall.

(o) Maintain the heating, ventilating and cooling system of the Enclosed Mall in good order condition and repair.

13.03 Common Area Maintenance Cost. The cost of keeping, repairing, managing, operating and maintaining the Common Area (including insurance and taxes on the Common Area and the land allocable thereto) shall be apportioned equitably among the Occupants, and any additional premises annexed into the Center pursuant to Article X and billed to the Occupants by Developer no more frequently than monthly, it being understood, however, that nothing herein contained, as between ZCMI and Developer, shall be deemed to alter the provisions of the ZCMI Lease Agreement governing the sharing and payment of certain of said costs.

13.04 Common Area Oversight. In the event that two (2) or more of the Major Stores shall at any time, or from time to time, be dissatisfied with Developer's performance of its obligations under Section 13.01 hereof,

BOOK 5621 PAGE 984

(including the expenses thereof) such Major Stores shall have the right to give Developer written notice of such dissatisfaction, specifying the particulars in respect of which Developer's said performance is deemed by such Major Stores to be unsatisfactory (based upon the maintenance standards contained herein). If during the thirty (30) day period from the date of such notice, such Major Stores continue to be dissatisfied with Developer's performance, such Major Stores shall have the right to give Developer a second written notice of such dissatisfaction, specifying the particulars in respect of which Developer's said performance is deemed by such Majors to be unsatisfactory, and if during the fifteen (15) day period from the date of such second notice such Major Stores continue to be dissatisfied with Developer's performance, such Major Stores shall have the right to request that the dispute relating to maintenance standards and the performance of the Developer be submitted for arbitration in accordance with Paragraph 27. Anything herein to the contrary notwithstanding, such dispute or arbitration regarding maintenance, management and Operation of the Common Area shall not obligate any Occupant to pay

any cost or expense in respect of the maintenance, management and Operation of the Common Area except to the extent it is otherwise obligated hereunder, or in the respective lease of the Occupant.

Notwithstanding the notice requirements set forth in this Section 13.04, above, in the event the failure of Developer to perform Common Area Maintenance, as described herein, results in an emergency or life threatening situation a Major Store shall have the right to cause the discharge of such Common Area Maintenance and such costs incurred by a Major Store incident thereto shall be an offset against the Major Store's next Common Area Maintenance Cost assessment.

13.05 ZCMI Maintenance. ZCMI shall keep, repair, manage, operate and maintain the ZCMI Store in good and clean order, operation, condition and repair in conformity with the high quality of the shopping center and regional multi-use center standards.

13.06 Rules and Regulations. Developer, ZCMI and Occupants shall each observe the rules and regulations promulgated from time to time for the Shopping Center and the Common Area, and Developer shall use reasonable diligence to enforce such Rules and Regulations as to each Occupant. So long as Developer or an Affiliate of Developer is the Developer (or manages the Common Area and the

Enclosed Mall for the Developer), Developer may also promulgate and enforce other reasonable rules, regulations and policies for the use and control of the Common Area and the Leasable Space.

13.07 Sign Criteria. The location and appearance of all signs within the Center (except signs of Major Stores, the approval of which shall be governed by the respective Major Leases) shall be subject to the prior written approval of Developer.

13.08 Termination of Prescriptive Rights. At least once in each calendar year, the Developer shall have the right to temporarily block off access to the Common Area in order to avoid the possibility of dedicating the same for public use or creating prescriptive rights therein, such barriers to be temporarily erected, for such purpose, if possible, at a time or upon a day when the Shopping Center is not open for business.

14. PARKING REQUIREMENTS.

14.01 Minimum Parking. Except as otherwise expressly required by the respective Lease Agreements, at all times during the Term hereof, Developer shall maintain or cause to be maintained within the Center parking facilities for all Improvements therein (which have opened for business to the public) which shall meet the applicable

BOOK 5624 PAGE 967

ordinances (or permitted variances therefrom) of the City of Sandy, Utah. Parking within the Common Parking shall be on a commingled basis unless provided to the contrary in this Section 14.02.

14.02 Parking Rules and Regulations. Developer may from time to time promulgate reasonable rules and regulations with respect to the Automobile Parking Facilities (in addition to the Rules and Regulations described in Section 13.06) Developer may, with the consent of ZCMI, which consent shall not be unreasonably withheld, establish permit parking or such other devices as Developer deems appropriate to control use of the Automobile Parking Area. Developer shall have the right to restrict parking for particular users during certain hours of the day, in such manner as Developer deems advisable for the benefit of the Shopping Center. Retail customers of the Center shall not be charged for the use of the Automobile Parking Area without the approval of ZCMI except (a) as may be required by governmental laws, rules or regulations; (b) charges for valet parking; or (c) in accordance with practices of competing shopping centers.

14.03 Restricted Parking. Developer may prescribe certain sections within the Automobile Parking Areas, or on other land outside the Developer Tract within a reasonable distance for use as parking spaces for the employees,

contractors, licensees and concessionaires of Occupants to use, in which case, such employees, contractors, licensees and concessionaires shall use only those areas designated. Developer's regulation of parking pursuant to this Section 14.03 shall be non-discriminatory. Developer agrees to use reasonable efforts to enforce the provisions hereof. Any areas so designated for employee parking, whether within or without the Center shall be deemed Automobile Parking Facilities for all purposes.

14.04 Temporary Parking Closure. In addition to the rights with respect to Automobile Parking Area contained in Section 8.03, Developer may from time to time temporarily close any portion of the Automobile Parking Area to make repairs or changes or to discourage non-customer parking or use thereof, provided that such action shall not unreasonably interfere with the operations of other Occupants.

14.05 Binding Effect. The parking requirements set forth in Section 14.01 shall continue to apply to any portion of the Developer Tract which is withdrawn from this Declaration pursuant to Article 16 or Article 22 prior to termination of this Declaration as to the Developer Tract.

696
11/12/90
5621
939

INSURANCE

15. INDEMNIFICATION AND PUBLIC
LIABILITY INSURANCE.

15.01 Indemnity.

(a) Common Area. Developer with respect to the Common Area covenants to defend and does hereby indemnify and hold harmless the Occupants and their respective directors, officers and employees from and against all claims, and all costs, expenses and liabilities (including reasonable attorney's fees and including any action or proceedings brought thereon), incurred in connection with such claims, which arise 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 except for claims arising out of the conduct of any Occupant, as shall occur in or about the Common Area. Occupant or other indemnified person, however, shall not be entitled to such indemnification and hold harmless for injury or damage caused by reason of the negligence or willful acts or omissions of such indemnified person, or any licensee, concessionaire or such Person, or the agent, servants or employees of such Person, or any licensee or concessionaire of the

agents, servants or employees of such Person, wherever the same may occur.

(b) Floor Area. Each Occupant severally covenants to and does hereby indemnify and hold each of the other Occupants and Developer, respectively, and their respective directors, officers and employees, harmless from and against all claims, and all costs, expenses and liabilities (including reasonable attorney's fees and including any action or proceeding brought thereon), incurred in connection with such claims, which arise 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 on the respective leased premises of each such Person (except for claims insured against by the insurance covering the Common Area referred to in Section (a) above). A Person, Landlord or other indemnified person, however, shall not be entitled to such indemnification or hold harmless for injury or damage caused by reason of the negligence or willful act or omission of each such indemnified Person, or any licensee or concessionaire of any such indemnified Person, or the agent, servants or employees of such Person, or any licensee or concessionaire of the agents,

116
Floor 5624
Page 571

servants or employees of such Person wherever the same may occur.

15.02 Developer's Liability Insurance - Common Area. The Developer shall at all applicable times during the term of this Agreement maintain or cause to be maintained, in full force and effect, the following insurance covering all of the Common Area with a financially responsible insurance company or companies approved by the Developer and ZCMI: Comprehensive public liability insurance including coverage for any accident resulting in death or personal or bodily injury to any person and consequential damages arising therefrom, and comprehensive property damage insurance in the amount of \$5,000,000.00 for injury or death to any one person and \$10,000,000.00 for injury or death to more than one person and \$250,000.00 with respect to damage to property. Developer shall furnish to all Occupants on demand, evidence that the insurance referred to in this Section 15.02 is in force and effect and that the premiums therefor have been paid. Such insurance shall name the Developer and Occupants (as a covered category but not individually), and Developer's Mortgagee, as additional insured thereunder, shall contain a severability of interests provision 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 Developer and Developer's Mortgagee. Such insurance shall

BOOK 5621 PAGE 972

expressly insure the indemnity set forth in Section 15.01 (a). The cost of such insurance for the Common Area shall be included in Common Area Maintenance Cost.

15.03 Public Liability Insurance - Floor Area.

The Occupants shall each, severally, at all times during the term of this Agreement, maintain in full force and effect, with respect to the areas specified in Section 15.01 (b) with financially responsible insurance companies, comprehensive public liability insurance, including coverage for any accident resulting in death or personal or bodily injury to any person, and consequential damages arising therefrom and comprehensive property damage insurance, as required by the Occupants' respective Lease Agreements. Each such policy shall name the Landlord and Operator and Landlord's Mortgagee as additional assured thereunder, shall contain a severability of interests provision and shall provide that the same shall not be cancelled without at least ten (10) days prior written notice given by the insurer to each of the additional insured Persons. Such insurance shall expressly insure the indemnity of each Party obtaining such insurance, as such indemnity is described in Section 15.01 (b). Upon request, each person shall furnish to the other on or before the effective date of any such policy, evidence that such insurance is in full force and effect.

BOOK 5624 PAGE 973

16. FIRE AND EXTENDED COVERAGE.

16.01 Developer - Fire Insurance.

(a) Developer, as respects the Improvements, including the Enclosed Mall, will carry or cause to be carried fire and extended coverage insurance in an amount at least equal to ninety percent (90%) of the then current replacement cost (exclusive of the cost of excavations, foundations and footings) of the buildings and improvements insured from causes or events which from time to time are included as covered risks under standard insurance industry practices (i) within the classification of fire and "all risk" extended type coverage, which covered risks would presently include the following: loss or damage by fire, lightning, windstorm, hail, explosion, riot, riot attending a strike, falling aircraft, vehicles, civil commotion, smoke and those other perils commonly covered by "all risk" insurance other than earthquake and flood, and (ii) within the classification of normal or common endorsements (or separate insurance) which presently could cover loss or damage arising from vandalism and malicious mischief and from sprinkler leakage. Developer shall similarly obtain pressure vessel property damage insurance as respects

explosion, such insurance to be in an amount not less than \$1,000,000.00. All insurance described in this Section 16.01 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, provided that such policy or policies allocate to the properties required to be insured by this Section 16.01 (a) an amount not less than the amount of insurance required to be carried by Developer with respect thereto pursuant to the first sentence of this Section 16.01 (a).

Developer shall furnish to Occupants upon request, evidence that the insurance required by this Section 16.01 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 thirty (30) days prior written notice being given by the insurer to other named insured.

(b) Developer covenants that with respect to all fire and extended coverage insurance carried by it that in case of any loss which exceeds \$1,000,000.00, the amount of any claim shall be paid and disbursed as described in Section 17.05.

BOOK 5621 PAGE 975

16.02 Fire Insurance - Major Stores. Each Major Store (except as provided in its respective lease agreement) shall carry or cause to be carried insurance for risks enumerated in Section 16.01 equal to 90% of the replacement cost (exclusive of the cost of excavations, foundations and footings) of its building and improvements on the Center. Each Major Store shall also cause to be carried pressure vessel property damage insurance as respects explosion in an amount not less than \$1,000,000.00. Such insurance shall be carried with financially responsible fire insurance companies and may be carried under a blanket policy or policies covering other property owned or controlled by such Major Store, or a subsidiary, affiliate or controlling corporation of such Major Store, provided that such policy or policies allocate to the properties required to be insured by this Section 16.02 an amount not less than the amount of insurance required to be carried by such Major Store with respect thereto pursuant to the first sentence of this Section 16.02.

16.03 Waiver of Subrogation. Each Person and Developer hereby release each other from any liability for any loss or damage to the property of each occasioned to such property, which loss or damage is of the type generally covered by fire insurance with extended coverage endorsements. To the extent legally permissible, the foregoing is intended to release the subrogated claim of an

insurer of such property. Developer and Persons covenant that they will, to the extent such insurance endorsement is legally available, obtain for the benefit of and each other, a waiver of any right of subrogation which the insurer of such Person may acquire against any other Person or Developer by virtue of the payment of any such loss covered by such insurance. In the event Developer, or any Person shall fail to obtain the required waiver of any right of subrogation during any time when such Person was legally able to obtain such waiver, and if such failure results in the assertion of a claim against any other such Person by or on behalf of any insurer of the one failing to obtain such waiver, such Person failing to obtain said waiver covenants to and shall indemnify the affected Person from and against any loss, cost and expense, including court costs, reasonable attorney's fees and damages suffered by said affected Person as a result of the failure to obtain the aforesaid waiver of the right of subrogation.

16.04 Occupant's Insurance. Developer covenants to and with the Major Stores that it will require all Occupants of the Center to carry fire and extended coverage insurance, including the perils specified in Section 16.01 hereof, on the building occupied by each such Occupant with financially responsible fire insurance companies in an amount at least equal to the insurance required to be carried by Developer under Section 16.01, and to require

BOOK 5621 PAGE 977

that the proceeds of such insurance be first applied to restore damaged improvements.

17. DESTRUCTION OF IMPROVEMENTS.

17.01 Rebuilding. In the event of the destruction of, or damage to, the Improvements on the Common Area, or any part thereof, at any time during the term hereof, whether insured or otherwise, Developer shall promptly and diligently rebuild, repair and restore such Improvements and/or Common Area to as good a condition and to the same general appearance and quality.

17.02 Time for Rebuilding. The Improvements and/or Common Area which Developer is required to restore pursuant to Section 17.01 or by requirements of the lease of an Occupant, shall be rebuilt, repaired and restored and ready for occupancy with due diligence, not to exceed twenty-four (24) months from the time when the loss or destruction occurred (or as required by a lease of an Occupant), subject however, to extension for a period equal to the period of any Unavoidable Delay.

17.03 ZCMI Store Rebuilding. In the event of the destruction of or damage to the ZCMI Store at any time during the term of the ZCMI Lease by an insurable risk or by any other casualty to the extent of insurance proceeds available therefor, such Store shall be restored in

EDCF 5624 PAGE 978

accordance with the terms of the ZCMI Lease, Any material deviation from the original Plans and Specifications incident to repair, reconstruction or replacement of the ZCMI Store must be approved by Developer and ZCMI.

17.04 Common Area Rebuilding. Any repair, reconstruction and replacement of any Improvements and/or Common Area performed by Developer pursuant to this Article, shall be performed in accordance with the requirements of Articles 2, 5 and 6 hereof.

17.05 Deposit of Construction Funds. In the case of damage to any Improvements required to be restored hereunder, the cost to restore of which exceeds \$1,000,000.00, all fire and extended coverage insurance proceeds shall be deposited with the holder of the mortgage having the first lien priority. If there be no such mortgage, such proceeds shall be deposited with a national bank in Salt Lake City, Utah, having assets of \$40,000,000.00 or more, as shall be selected by Developer (the "Qualified Bank"). The party with whom such proceeds are to be placed, being either the holder of the mortgage having the first lien priority or the Qualified Bank, is hereby called the "Depository".

In the event such proceeds shall be received and held by a Depository, such proceeds shall be disbursed for restoration of the casualty damage as follows:

(i) The insurance proceeds will be paid to Developer by the Depository after delivery of evidence satisfactory to the Depository that (a) repair, restoration or rebuilding for which an advance of funds is requested has been completed and effected in compliance with this Declaration; and (b) no mechanics' or materialmen's liens have attached to the fee or leasehold estates; and such proceeds shall be advanced by the Depository in reasonable installments. Each such installment (except the final installment) is to be advanced by the Depository in an amount equal to the cost of construction of the work completed (including the applicable party's overhead directly related or reasonably allocated thereto) since the last prior advance (or since commencement of work, as to the first advance) according to a certificate by the architect in charge, less statutorily required retainage in respect of mechanic's and materialmen's liens, together with reasonable evidence of bills for labor and material, and evidence satisfactory to the Depository that no lien affidavit has been filed in Salt Lake County for any labor or material in connection with such work (or that the same has been satisfactorily bonded). The final payment or disbursement, which

BOOK 5624 PAGE 980

shall be in an amount equal to the balance of such proceeds, shall then be made upon the Project Architect's proper certificate of completion and upon receipt of evidence required by (i)(a) and (i)(b) above, but in no event shall the Depository be required to advance more than the balance of such insurance proceeds remaining in its deposits;

(ii) Any or all of such insurance proceeds in excess of the cost of such repairs, restoration or rebuilding shall be paid over to the Developer or ther person party who is obligated to perform the restoration work hereunder.

17.06 Site Clearance. In the event the Developer shall not be required to rebuild and restore its damaged Improvements and/or Common Area within any portion of the Center under the provisions of this Article and it does not, in fact, make such restoration, Developer shall promptly and diligently clear the Site of all debris and hazardous conditions, and shall leave the Site in a clean, safe and sightly condition.

17.07 Conformity with Design Plan. The provisions of this Section 17 shall apply to the restoration of all Improvements on the Developer Tract; provided, however, that Improvements other than said Improvements which shall be damaged or destroyed may be substituted for those destroyed

BOOK 5624 PAGE 984

so long as the restrictions of this Declaration are complied with including, specifically, that the ZCMI Store shall be attached to an Enclosed Mall having not less than 200,000 square feet. In the latter event, the Design Plan for the Improvements to be substituted shall be delivered to Developer and Major Stores at least thirty (30) days prior to commencement of construction; and the Design Plan and Plans and Specifications for such substituted Improvements shall be subject to the prior approval of Developer and Major Stores.

18. OPERATING PERIODS.

18.01 Term of Declaration. Developer shall continuously use the Leasable Space for the purpose of operating and managing, or causing to be operated and managed, an integrated high-quality, shopping center until December 31, 2041.

18.02 ZCMI Operation. Provided that and only so long as Developer shall not be in default under its operating covenant set forth in Section 18.01, ZCMI shall continuously operate the ZCMI Store as a high-quality retail department store under the name of "ZCMI" (or such other name as ZCMI shall be using for its stores in the Salt Lake City area presently operating under the name of "ZCMI"). For the remainder of the term of the ZCMI Lease or any extension or renewal thereof, the ZCMI Store shall be

operated as a high-quality retail department or specialty store.

18.03 Binding on Successors. The covenants contained in Sections 18.01 and 18.02 shall continue to apply on transfer of an ownership interest with respect to the Center or ZCMI.

18.04 Interruptions. Temporary cessation of business caused by strike, picketing or labor disputes or other circumstances which are reasonably beyond any person's control shall not be deemed a discontinuance of operation.

RECIPROCAL EASEMENTS

19. INGRESS AND EGRESS.

19.01 Reciprocal Use. Developer hereby grants to each other Occupant for the use of each such other Occupant and all their respective Permittees, in common with other Occupants and Permittees (and in common with any and all other persons, from time to time, lawfully entitled to use the same) mutual, non-exclusive and reciprocal easements in, to and over the Common Area and the Common Area Improvements located within the Center for and during the term of this Agreement, for the use and enjoyment of the Common Area for their intended purposes, subject to the provisions of this Declaration. Such easements shall be, without limiting the generality of the foregoing sentence, for access and ingress

and egress to, from and among the various uses within the Center and all areas now or hereafter constituting a part of the Center for the parking of vehicles and the passage of vehicular and pedestrian traffic upon the Common Area and among all such areas, pedestrian traffic over the Common Area and the Leasable Space, and for the doing of such other things as are authorized or required to be done upon or within the Common Area and the Leasable Space. It is understood and agreed that all such easements created and provided for in this Section 19.01 shall be appurtenant to all such areas, including the Leasable Space (and all areas therein, including without limitation the ZCMI Site), and likewise shall be a servitude upon all such areas.

19.02 Termination of Use. Except as otherwise provided in this Declaration, the easements granted in Section 19.01 of this Declaration shall terminate upon the termination of this Declaration in its entirety.

19.03 Access to Major Stores. ZCMI and the Major Stores shall provide openings for access to and from its respective store (i) to and from the Enclosed Mall, on each level of the Enclosed Mall, and (ii) to and from the Automobile Parking Facilities on each level of their respective store which is adjacent to Automobile Parking Facilities, all at locations fixed in the Plans and Specifications. Each such opening for access between such

BOOK 5624 PAGE 984

Major Store and the Mall and Automobile Parking Facilities shall remain open at all times during those hours that the respective Major Store is open for business. The openings for access to and from the Enclosed Mall shall remain open at all times during the hours that any Major shall be open for business.

20. UTILITIES.

20.01 Utility Use. Subject to the provisions of this Declaration, Developer hereby grants to each Occupant for its use in common with each other Occupant, easements in, to, over and under the Common Area located within the Center for the installation, operation, maintenance and repair of the Common Utility Facilities, all of which shall be located and installed as shown in the utility plan which constitutes a part of the Plans and Specifications; provided however, that said easements shall be subject to relocation as hereinafter provided.

20.02 Relocation Rights. Except as otherwise provided herein to the contrary, the easements contained in Section 20.01 shall be perpetual, PROVIDED however, that:

(1) The Developer shall have the right, at any time and from time to time, to relocate any utility pipes, lines, conduits, mains, sewers, related equipment and any Common Utility Facilities upon the condition that:

(a) Such right of relocation shall be exercisable only after thirty (30) days prior notice of the Developer's intention to relocate shall have been given to the Occupant whose lateral is to be relocated; and

(b) Such relocation shall not interrupt or diminish any utilities to the then existing Improvements within the Center (except temporarily during non-business hours as reasonably necessary to switch from existing utility facilities to relocated utility facilities) and shall be completed as expeditiously as possible.

(2) In the event of abandonment (which term shall include non-use) of any such utility for a continuous period of twelve (12) months (other than temporary discontinuance for restoration and repair), the easements so abandoned shall expire upon the day after such twelve (12) month period, provided however, that the person claiming such abandonment shall notify the party or parties in whose favor the easement runs of its claim of abandonment and if such other person does not refute the same by notice within thirty (30) days thereafter, the easement shall conclusively be

BOOK 5624 PAGE 986

deemed abandoned. If such notice of refutation shall be given and there shall be a dispute as to whether such easement was abandoned, the dispute shall be settled by arbitration as provided in Article 24 hereof.

21. ATTACHMENT; ENCROACHMENTS;
COMMON BUILDING COMPONENTS

21.01 Attachment Rights. ZCMI and each Major Store hereby grant unto Developer the right to attach the Enclosed Mall and/or Leasable Space and/or Automobile Parking Areas to the ZCMI Store, at the locations and in the manner shown in the Plans and Specifications, and to keep and maintain such attachment for and during the term of this Declaration; provided however, that the attachment of the Enclosed Mall and/or the Leasable Space and/or Automobile Parking Area to the ZCMI Store shall not require additional load-bearing capacity by the ZCMI Store.

21.02 Restoration of Terminated Use. If the attachments provided for in Section 21.01 are removed for any reason, the Developer shall repair all damage to and restore the portion of the Improvement to which the attachment was made.

22. EASEMENT FOR SELF-HELP.

22.01 Self-Help Rights. So long as this Declaration shall remain in full force and effect, Developer

BOOK 5624 PAGE 987

grants to the Occupants hereto and their employees, agents and contractors, easements to enter upon the property of such party within the Center and into all Improvements thereon for the purpose of performing any obligation which such person is required to perform hereunder but fails or refuses to perform, subject to the following conditions:

(1) Notice shall first be given to the defaulting person, who shall have thirty (30) days after such notice (a) to perform its obligations or (b) if such obligation is not capable of being performed within thirty (30) days, to commence such performance and diligently pursue the same.

(2) If on expiration of said thirty (30) days the defaulting person shall not have performed its obligation or, as to obligations not capable of being performed within thirty (30) days, commenced to perform the same, notice shall again be given to the defaulting person, which notice shall state that the party sending such notice intends to avail itself of the self-help provisions of this Section 22.01 and shall specify the remedy proposed.

(3) If on expiration of ten (10) days following said second notice the defaulting person shall not have performed its obligation or, as to obligations not capable of being performed within

BOK 5624 PART 988

said ten days, shall not have commenced to perform the same, the person giving such notice shall have the right to avail itself of the self-help provisions of this Section 21.01 and to carry out the remedy proposed in its notice; provided that such party minimizes, to the extent possible, any interference or interruption of business operations on the property of the defaulting person.

(4) In the event of an emergency, the notice and time period provisions set forth above shall not apply, but rather such emergency condition may be remedied at any time after telephone or telegraphic notice to the defaulting person by the person giving notice of such default.

22.02 Indemnity. The person performing such self-help shall indemnify and save the defaulting party harmless from all loss, risk and expense in any way arising out of such person's availing itself of the self-help provisions of Section 22.02; provided however, that the defaulting person shall reimburse the party performing the self-help for the cost of performing the obligation of the defaulting person.

22.03 No Waiver. Notwithstanding anything herein contained to the contrary, nothing herein shall be deemed to waive any right the so-called defaulting person may have to

BOOK 5624 PAGE 989

contest the existence of the default in question and the reasonableness of the remedy taken by the other person.

GENERAL

23. EMINENT DOMAIN.

23.01 Substantial Taking. In the event that all or a substantial part of the Improvements (being such a taking as to reduce the Floor Area by forty-five percent [45%]) or in the event that all or more than twenty percent (20%) of the Common Parking Facilities should be taken for any public or quasi-public use under any governmental law, ordinance or regulation, or by right of eminent domain, or by voluntary conveyance in lieu thereof, then, and in any of such events, this Declaration and the Terms hereof may be terminated by any of the Major Stores by notice given as herein provided. In the event of a taking for any public or quasi-public use under any governmental law, ordinance or regulation, or by right of eminent domain, or by voluntary conveyance in lieu thereof, which results in (i) access from the ZCMI Store to the Enclosed Mall being permanently cut off or (ii) more than twenty percent (20%) of the Automobile Parking Areas being taken and the Developer is not willing or not able to provide replacement parking spaces as to those in excess of twenty percent (20%) of Automobile Parking Areas and Developer fails to give notice of willingness to replace such spaces to within sixty (60) days

BOOK 5624 PAGE 980

after the vesting of title in the condemning authority, then a Major Store shall have the right to terminate this Agreement as to its Store by notice given as provided in Section 21.02. Notwithstanding any such termination, in no event shall any Major Store have the right to withdraw its Store or any portion thereof from the Automobile Parking Area until the termination of this Declaration as to the Developer Tract or from the Common Utility Facilities except under the circumstances described in Section 17.02(2) or from any other easements created and provided for herein (except in accordance with provisions for termination or extinguishment thereof otherwise contained herein).

23.02 ZCMI Building Condemnation. In the event that all or a substantial part of the ZCMI Building should be taken for any public or quasi-public use under any governmental law, ordinance or regulation, or by right of eminent domain, or by voluntary conveyance in lieu thereof, then, and in any of such events, the obligation of Developer to ZCMI shall be as set forth in the ZCMI Lease.

23.03 Restoration of Remaining Areas. Except as otherwise provided in Section 21.01 to the contrary, Developer shall restore or cause restoration of the Common Area Improvements which are not taken. All condemnation awards, proceeds or settlements shall be made available for restoration and otherwise distributed in accordance with the

interests of the respective Occupants. The Automobile Parking Areas taken in a partial taking which are restored by Developer (if Developer shall cause restoration thereof), shall be either within the Center or upon available unimproved land, if any, of which the nearest boundary shall be no more than 500 feet from the boundary of the Developer Tract to provide at least the minimum requirements as to Automobile Parking Facilities pursuant to Section 14.01.

23.04 Temporary Loss of Use. In the event that all or any part of any Improvements within the Center are taken temporarily for any public or quasi-public use under governmental law, ordinance or regulation, or by right of eminent domain, or by voluntary conveyance in lieu thereof, then, and in any of such events, this Declaration shall continue in full force and effect as to the Improvements so taken until the Term hereof shall otherwise expire (except insofar as the provisions hereof shall be superseded or preempted during the period of such taking).

23.05 Settlement of Disputes. Any dispute arising under this article shall be settled by agreement, if possible; otherwise, by arbitration, as provided in Article 27.

24. LAND COVENANTS; TRANSFER.

24.01 Covenant Running with Land. Except as otherwise expressly provided, all covenants, conditions,

easements and agreements contained in this Declaration affecting the use and maintenance of the Developer Tract, shall be and constitute covenants running with the land and shall bind and inure to the benefit of the Developer and Occupants and their successors and assigns.

24.02 Transfer of Ownership. In the event of the transfer of any ownership interest in any portion of the Developer Tract, the transferee shall take such ownership interest subject to the covenants, provisions, conditions and easements herein contained which are applicable to such ownership interest, unless specifically provided herein to the contrary. Except as otherwise expressly provided herein and except upon transfer of the lessee's interest in the ZCMI Lease (which shall be governed by the terms of the ZCMI Lease) upon such transfer, the transferor shall be relieved of all covenants, obligations and liabilities hereunder accruing on or after the date of the transfer.

24.03 Restriction on Developer Transfer. Notwithstanding anything herein contained to the contrary, until completion of Phase I, Developer shall not, without the prior written consent of ZCMI, transfer its ownership interests in the Developer Tract except with the written approval of ZCMI.

24.04 No Prohibition Mortgage. Nothing herein contained shall be deemed to prohibit the mortgaging of the Developer Tract.

25. TERMINATION RIGHTS.

25.01 Termination of Declaration. Upon the expiration or earlier termination of this Declaration, in accordance with its provisions and conditions, all rights and privileges derived from, and all duties and obligations created and imposed by all provisions of this Declaration shall terminate and thereafter cease to exist; except that the rights and easements conferred and granted shall not terminate except as herein provided.

25.02 Limitation. Such termination of this Declaration shall not limit or affect any remedy at law or in equity of any party against any Occupant with respect to any liability or obligation arising, or to be performed under this Declaration prior to the date of such termination.

26. SIGNS.

26.01 Sign Criteria. Developer shall develop and ZCMI shall approve 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. Such criteria may be modified from time to time, subject to ZCMI approval.

26.02 Approval of Special Signs. 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 ZCMI and Developer. Any change made to any initially completed sign which causes the same not to fall within the scope of the sign criteria is hereby prohibited, and any such changed sign shall similarly require the approval of ZCMI and Developer.

27. ARBITRATION.

27.01 Settlement of Disputes. Where questions, differences, disputes or controversies arising hereunder are to be settled by arbitration, the same shall be conducted in accordance with the then existing Commercial Arbitration Rules of the American Arbitration Association.

27.02 Proceedings. The arbitrators designated and acting under this Declaration shall not be affiliated in any way with any contesting person and shall make their award in strict conformity with the Association's rules. Any such award shall be binding upon the persons and enforceable by any court exercising jurisdiction over the proceedings. The expense of arbitration proceedings conducted hereunder shall be borne equally by the parties to the arbitration. All arbitration proceedings hereunder shall be conducted in Salt Lake City, Utah.

28. MISCELLANEOUS.

28.01 Parties not Partners. Nothing contained in this Agreement shall be construed to make the Developer, ZCMI or Occupants partners or joint venturers, or to render any of said persons liable for the debts or obligations of the other, except as in this Declaration expressly provided.

28.02 No Waiver. No delay or omission by any person in exercising any right or power accruing upon any non-compliance or failure of performance by any other person under the provisions of this Declaration shall impair any such right or power or be construed to be a waiver thereof. A waiver by any of the parties of any covenant, condition, provision or performance under this Declaration shall not be construed to be a waiver of any succeeding breach thereof, or of any other covenant, condition, provision or performance of this Declaration.

28.03 Caption. The table of contents preceding this Declaration, article headings, captions and other similar designations are for convenience and reference only, and in no way define or limit the scope and content of this Declaration, or in any way affect its provisions.

28.04 Governing Law. This Declaration shall be governed by and construed in accordance with the laws of the State of Utah.

28.05 Severable Provisions. In the event any provision, or any portion thereof, of this Declaration, or the application thereof to any person or circumstances shall, to any extent, be held to be invalid or unenforceable, the remainder of this Declaration, all of its other provisions and all portions thereof and the application thereof, to any other person or circumstances, shall be severed therefrom and shall not be affected thereby, and each such provision and portion thereof of this Declaration shall be valid and enforceable to the fullest extent permitted by law.

28.06 Modification. No agreement shall be effective to add to, change, amend, modify, waive or discharge this Declaration, in whole or in part, unless such agreement is in writing and signed by Developer and all Major Stores not in default under their respective leases.

28.07 Counterparts. This Declaration is executed in several counterparts, each of which shall be deemed an original, and all such counterparts shall together constitute one and the same instrument.

28.08 Default. Unless otherwise provided in this Declaration, no person shall be deemed to be in default under this Declaration until such person shall have been given notice describing the nature of such impending default, and within thirty (30) days after the receipt of such notice, or such longer period of time as may otherwise

BOHN 5321 PAGE 997

be provided in this Declaration, shall have failed to commence to cure such impending default and to proceed diligently to complete the curing of such impending default as promptly as possible, utilizing all reasonable means to effectuate and expedite the curing of such impending default.

28.09 Mortgagee Notice. Notwithstanding any other provisions in this Declaration for notices of default under this Declaration, each party shall notify any mortgagee of the others of any default hereunder, in the same manner that other notices are required to be given under this Declaration; provided however, that said mortgagee shall have first notified such party of its mailing address. Any such notice shall be deemed to have been given on the date actually received by the mortgagee.

28.10 Estoppel Certificate. Any person shall, from time to time (but not more frequently than once in any four [4] month period) upon not less than twenty (20) days notice from any other person, without charge or cost to the requesting person, execute and deliver to such other person a certificate in recordable form stating that this Declaration is unmodified and in full force and effect or, if modified, that this Declaration is in full force and effect, as modified, and stating the modifications; and stating whether or not, to the best of its knowledge, any

FORM 5624 PAGE 998

other person is in default in any respect under this Declaration, and, if in default, specifying such default.

28.11 No Public Dedication. No provision contained in this Declaration shall be construed to grant any gift, dedication or any irrevocable rights to the general public or for any quasi-public purpose whatsoever, of, in or to any portion of the Developer Tract or any Improvements therein, it being the intention of the parties hereto that this Declaration shall be strictly limited to or for the purposes herein expressed.

28.12 No Third Party Beneficiary. Except as herein specifically provided, no rights, privileges or immunities of any person shall inure to the benefit of any tenant, customer, employee or invitee of the Center or any other third party; nor shall any tenant, customer, employee or invitee of the Center or any other person be deemed to be a third party beneficiary of any of the provisions contained herein.

Any amendment to this Declaration must be in writing and executed by Developer or any successors in interest to their respective ownership interests. Where the consent of a named person is required under this Declaration, however, only the consent of that person so named shall be required.

28.13 Implied Obligations and Easements. Nothing contained in this Declaration shall effect or impose obligations upon persons or easements upon the Developer Tract (or any portion thereof) by implication or otherwise, unless specifically and expressly provided for herein.

28.14 Approval Rights of ZCMI. On expiration or sooner termination of the ZCMI Lease and expiration of the time provided therein for a mortgagee to obtain a new lease, no new leasing having been requested, it is expressly understood that the following provisions of this Declaration shall have no further force and effect nor encumber the ZCMI Building:

(a) Any requirement to obtain the approval or consent of ZCMI;

(b) Any requirement to deliver copies of documents, such as Design Plans and Plans and Specifications, to ZCMI.

29. NOTICES.

29.01 Notices. Any notices, demand, request, consent, approval or other communication which any party hereto is required or desires to give or make or communicate to the other shall be in writing and shall be given or made or communicated by prepaid United States registered or certified mail addressed, as follows:

TURNMAR: TURNMAR DEVELOPMENT COMPANY
50 West Broadway, Suite 1100
Salt Lake City, Utah 84101

TURNMAR DEVELOPMENT COMPANY
6868 South Revere Parkway
Englewood, Colorado 80112

WITH COPY TO: E. NORDELL WEEKS
320 Kearns Building
136 South Main Street
Salt Lake City, Utah 84101

AND TO: RALPH J. MARSH
68 South Main Street, #800
Salt Lake City, Utah 84101

ZCMI: ZCMI
2200 South 900 West
Salt Lake City, Utah 84317

WITH COPY TO: RAY, QUINNEY & NEBEKER
Suite 400 Deseret Building
Salt Lake City, Utah 84111
ATTENTION: Stephen H. Anderson

subject to the right of each person to designate a
different address by notice similarly given.

29.02 Receipt of Notice. Any such notice, demand,
request, consent, approval or other communication so made
shall be deemed to have been given, made or communicated on
the date actually received by the recipient or addresses of
such notice, as said date is indicated on the return receipt
or indicated in writing by said recipient or addressee.

BOOK 5624 PAGE 1001

30. SUCCESSORS.

30.01 Except as herein otherwise expressly provided, the covenants, conditions and agreements contained in this Declaration shall bind and inure to the benefit of Developer and the Occupants and their respective heirs, successors, administrators and assigns.

31. AMENDMENT

31.01 Amendment. This Declaration may be amended at any time by the Declarant, subject to the reasonable approval of ZCMI. Such amendments shall be prospective in nature only.

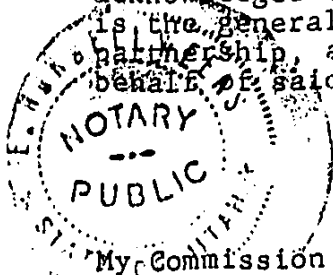
IN WITNESS WHEREOF, the parties have caused this Declaration to be signed and executed as of the day and year first above written.

SOUTH TOWNE PARTNERS,
a Colorado Partnership

By Grant E. Marsh

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

On this 17 day of January, 1985,
personally appeared before me Grant E. Marsh,
the signer of the foregoing instrument, who duly
acknowledged to me that he, the said Grant E. Marsh
is the general partner of SOUTH TOWNE PARTNERS, a Colorado
partnership, and that said instrument was executed on
behalf of said partnership.



E. Gordon Nash
NOTARY PUBLIC

Residing: Bountiful Utah

My Commission Expires:
7-9-85

c/zcm13-CCRS

BOOK 5621 PAGE 1002

EXHIBIT "A"

30 ACRE PARCEL

DESCRIPTION:

Beginning at a point on the West line of State Street (50.0 feet from monument line) that is N 89°50'56" E 41.33 feet and S 0°03'34" W 1986.324 feet from the Northeast Corner of Section 13, Township 3 South, Range 1 West, Salt Lake Base and Meridian (Basis of Bearing being S 0°01'50" E along the State Street monument line between the monuments opposite the Northeast corner and the East 1/4 corner of said Section 13); thence S 89°30'10" W 3.00 feet to the Northeast corner of the Arlene Stevens property, recorded as Entry No. 1619249 on Page 97 in Book 1556 of Deeds in the Salt Lake County Recorder's office; thence along the deed lines of said property (Bearings rotated to agree with Basis of bearing) S 89°30'10" W 93.03 feet, S 70°00'10" W 35.00 feet, S 89°05'10" W 204.06 feet, and S 0°01'50" E 63.87 feet; thence S 89°01'10" W 90.563 feet; thence S 9°28'4"W 460.382 feet to a point on the new Northerly line of 10600 South Street as widened; thence along said Northerly Street line the next 2 courses: Along a curve to the left through a central angle of 5°, a distance of 91.89 feet said curve having a 1053.00 foot radius, the center of which bears S 5°25' W and continuing N 89°35' W 410.00 feet, and N 76°40'15" W 173.93 feet, and N 76°58'27" W 37.64 feet to a point that is 120 feet perpendicularly distant northerly from the as surveyed State Road Commission (SRC) Engineer's centerline station 9+05.86 of State Highway Project 15-7, said point being the end of the Non-Access line of said project; thence along the highway right of way and non-access line of said project the next 4 courses (Bearings rotated to agree with Basis of bearing): N 89°35' W 198.00 feet to a point of tangency with a 205.63 foot radius curve (SRC = 206.59) the center of which bears N 0°25' E and along said curve to the right, through a central angle of 58°26'36", a distance of 209.75 feet (SRC = 210.15) and continuing N 34°54'34" W 420.27 feet to a point on the arc of a 1740.85 foot radius curve, the center of which bears N 57°49'06" E, said point being 65 feet perpendicularly distant Northeasterly from Engineer's Station 57+61.83 from the centerline of Ramp "C" of said Highway project, and continuing Northwesterly along said curve to the right, through a central angle of 14°11'19", a distance of 431.101 feet; thence S 89°50'31" E 2001.989 feet to the West line of said State Street; thence along said West line S 0°01'50" E 349.935 feet to the Point of Beginning, containing 30.000 acres.

BOOK 5624 PAGE 1003

ENW