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DECLARATION OF RESTRICTIONS, GRANT OF EASEMENTS AND COMMON AREA MAINTENANCE AGREEMENT

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**DECLARATION OF RESTRICTIONS, GRANT OF EASEMENTS
AND COMMON AREA MAINTENANCE AGREEMENT**

THIS DECLARATION OF RESTRICTIONS, GRANT OF EASEMENTS AND COMMON AREA MAINTENANCE AGREEMENT ("Declaration") is made as of the 2 day of ^{May}~~March~~, 2000, by and between Can Am Retail Partners-Klamath Falls, LLC, an Oregon limited liability company ("First Party") and Albertson's, Inc., a Delaware corporation ("Albertson's").

1. PRELIMINARY

1.1 Definitions.

(a) "Albertson's": Albertson's, Inc., a Delaware corporation, together with any corporation succeeding thereto by consolidation, merger or acquisition of its assets substantially as an entirety, and any wholly owned subsidiary thereof, and whose current address is 250 Parkcenter Boulevard, Post Office Box 20, Boise, Idaho 83726.

(b) "Building Area: All those areas on Parcel 4 shown as Building Area on **Exhibit "A"** attached hereto and incorporated herein by this reference. Notwithstanding that Building Area and Expansion Area shown on Exhibit "A", and notwithstanding any other provision of this Declaration, multiple buildings and structures (including, without limitation, Fuel Center Facilities and Service Facilities) may be located on Parcel 1 or 2 in any size and location approved by the Consenting Owner, in its sole and absolute discretion, except within the Permanent Access Easements.

(c) "Common Area": All those areas on each Parcel which are not Building Area, together with those portions of the Building Area on each Parcel which are not from time to time actually covered by a building or other commercial structure or which cannot under the terms of this Declaration be used for buildings. Canopies which extend over the Common Area, together with any columns or posts supporting same, shall be deemed to be a part of the building to which they are attached or associated and not a part of the Common Area.

(d) "Consenting Owner": The Owner of Parcel 2; provided, however, that in the event the Owner of Parcel 2 sells its Parcel and becomes the Prime Lessee thereon, said Prime Lessee is hereby appointed the entity to cast the vote or give the consent for said Parcel on behalf of the Owner thereof so long as it is the Prime Lessee of said Parcel.

(e) "Expansion Area": That area on Parcel 2 located within the "Expansion Limit Line" shown on Exhibit "A".

(f) "First Party": Can Am Retail Partners-Klamath Falls, LLC, whose address is 2525 East Camelback Road, Suite 770, Phoenix, Arizona 85016.

(g) "floor area": The total number of square feet of floor space in a building whether or not actually occupied including basement, subterranean, balcony and mezzanine space. Floor area shall be measured from the exterior line of the exterior walls and from the center line of any party or common interior walls without deduction for columns, walls or other structural or non-structural components.

(h) "Fuel Center Facilities": Fuel islands, fuel island canopies and the area thereunder, fuel pumps, fuel storage tanks, piping, tank filling ports, compressed air islands, trash

receptacles, air hoses, water hoses, vacuums, signs, safety equipment, access ports, and other structures or equipment associated with selling and dispensing of gasoline, motor fuel and/or other non-packaged petroleum products (collectively, "Petroleum") on Parcel 1 or 2. Fuel Center Facilities shall not be deemed Common Area or Service Facilities.

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

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

(k) "Parcel": Parcel 1, 2 or 4, as shown on Exhibit "A" and more particularly described in **Schedule I** attached hereto and incorporated herein by this reference.

(l) "Parcel Area": The total square footage of land contained within a Parcel.

(m) "person": Individuals, partnerships, firms, associations, corporations, trusts, governmental agencies, administrative tribunals or any other forms of business or legal entity.

(n) "Prime Lessee": An Owner of a Parcel who sells said Parcel (whether or not such sale includes any buildings or improvements located thereon) to an unaffiliated third party and thereafter enters into a lease (including a ground lease) for said Parcel with such third party or its lessee or sublessee. Prime Lessee includes the successors and assigns of said Prime Lessee but does not include the sublessees, licensees or concessionaires of said Prime Lessee.

(o) "Restrictions": The easements, covenants, restrictions, liens and encumbrances contained in this Declaration.

(p) "Service Facilities": Loading docks, trash enclosures and compactors, exterior coolers, electrical and refrigeration facilities, bottle storage areas and other similar service facilities.

(q) "Shopping Center": Parcels 1, 2 and 4, collectively.

(r) "Utility Lines": "Utility Lines" shall mean those facilities and systems for transmissions of utility services, including, but not limited to, stormwater drainage and storage systems or structures or both; fire protection, irrigation and domestic water mains; lift stations; sewer lines and systems; fire and landscape water sprinkler systems; telephone lines; pneumatic tubes and data lines; electrical conduits or systems, gas mains and other public or private utilities. "Common Utility Lines" shall mean those Utility Lines which are installed to provide the applicable service to more than one Parcel. "Separate Utility Lines" shall mean those Utility Lines which are installed to provide the applicable service to only one Parcel. For the purpose of this Declaration, the portion of a Utility Line extending between a Common Utility Line and a single building shall be considered a Separate Utility Line.

1.2 Parties. First Party is the Owner of Parcel 4 and Albertson's is the Owner of Parcels 1 and 2. The Parcels are located at the Southeast corner of the intersection of Homedale Road and S. Sixth Street in the City of Klamath Falls, County of Klamath, State of Oregon as shown on Exhibit "A" and more particularly described in Schedule I attached hereto.

2. BUILDING AND COMMON AREA DEVELOPMENT

2.1 Building Location. All buildings and other structures on Parcel 4 shall be placed or constructed only in the Building Area on Parcel 4. Not more than one (1) building may be

located on Parcel 4, and the ground floor area of such building shall not exceed the maximum square footage assigned on Exhibit "A". Canopies, eaves and roof overhangs (including columns or posts supporting same), normal foundations, utility cabinets and meters, signs and doors for ingress and egress may project from the Building Area into the Common Area. All of the foregoing shall be constructed and maintained in accordance with all local, state and federal laws, rules and regulations applicable thereto. All Building Areas on which buildings are not under construction on the date of this Declaration shall be covered by a one inch asphalt dust cap and kept weed free and clean at the Owner's sole expense until such time as buildings are constructed thereon, except to the extent such requirement is waived in writing by the Consenting Owner with respect to specific Building Areas identified in such written waiver. Once construction of any building on Parcel 1 or 4 has been commenced, the Owner of such Parcel shall diligently prosecute such construction to completion.

2.2 Common Area.

(a) The Common Area is hereby reserved for the sole and exclusive use of all Owners of the Shopping Center, their tenants, contractors, employees, agents, customers, licensees and invitees and the subtenants, contractors, employees, agents, customers, licensees and invitees of such tenants. The Common Area may be used for vehicular driving, parking (except that there shall be no multi-level parking), pedestrian traffic, directional signs, sidewalks, walkways, landscaping, perimeter walls and fences, parking lot lighting, recycle centers, Utility Lines, cart corrals and Service Facilities and for no other purpose unless otherwise specifically provided in this Declaration. No buildings or structures not approved in writing by the Consenting Owner shall be placed or constructed in the Common Area except pylon, monument and directional signs (as

provided in Section 4.3), paving, bumper guards or curbs, landscape planters, lighting standards, perimeter walls and fences, utility pads and equipment, recycle centers, cart corrals, sidewalks, and, to the extent that they are located, and do not impede access, to the rear or sides of buildings, Service Facilities.

(b) The Common Area shall be kept and maintained as provided for in Article 5 hereof. All portions of the Building Area on a Parcel which cannot be used for buildings or which are not covered by a building shall be developed as improved Common Area by the Owner thereof, at said Owner's sole cost and expense, in accordance with a site plan approved by the Consenting Owner (in accordance with the procedure for approval set forth in Section 2.3[a] hereof) prior to the development of the pertinent Common Area improvements. The Common Area improvement work on all of Parcels 1 and 4 shall be completed by the Owner thereof prior to the occupancy of any building constructed or placed on such Parcel. Once any Common Area improvement work has been commenced on Parcel 1 or 4, the Owner of such Parcel shall diligently prosecute such work to completion. From and after the initial construction thereof, the sizes and arrangements of the Common Area improvements, including, without limitation, service drives and parking areas, striping, traffic directional arrows and signs, concrete bumpers, parking lot lighting, perimeter walls and fences, and landscaped areas, together with necessary planting, may not be changed without the prior written consent of the Consenting Owner.

(c) Notwithstanding anything in this Declaration to the contrary, the Consenting Owner may withhold its approval, in its sole and absolute discretion, to any and all Common Area or building plans and specifications submitted to it for approval (as required by

Sections 2.2 and 2.3[a] hereof) in regard to Parcels 1 and 4 if said Consenting Owner determines that (i) the number of parking spaces to be constructed on any such Parcel is less than that required by law for all buildings on any such Parcel (and the proposed use thereof) to be "self-parked" (which determination shall be made without regard to the availability, if any, of parking on other Parcels or variances that could be granted by any governmental authority having jurisdiction); or (ii) the number of parking spaces to be constructed and maintained on any such Parcel is less than (A) five (5) parking spaces for each one thousand (1,000) square feet of floor area used for retail purposes, and (B) ten (10) parking spaces for each one thousand (1,000) square feet of floor area used for restaurant or office purposes. For purposes of the preceding sentence, "restaurant" shall be defined as an establishment serving prepared food for on-premises consumption, "take-out" off-premises consumption, or combination thereof.

2.3 Type and Design of Building.

(a) Each building in the Shopping Center, now and in the future, shall be of first quality construction and architecturally designed so that its exterior elevations (including, without limitation, signs and color) will be architecturally and aesthetically compatible and harmonious with the building on Parcel 2. No building may be constructed on Parcels 1 or 4 nor the exterior of any existing building on Parcels 1 or 4 be changed in any way (including, without limitation, signs and color) without the prior written approval of the Consenting Owner as to the location of the building and the exterior elevations (including, without limitation, signs and color) of the building to be constructed or modified. Before the construction of any building or any modification of an existing building which requires approval is commenced, sufficient information

shall be sent by the Owner of the Parcel upon which such building is to be constructed or modified to the Consenting Owner to enable the Consenting Owner to make a reasonable determination as to the architectural and aesthetic compatibility of said building or modification with the building on Parcel 2. Except as provided in Section 2.2(c) and 2.3(d), the Consenting Owner may not arbitrarily or unreasonably withhold its approval of the proposed building or modification if it is architecturally and aesthetically compatible and harmonious with the building on Parcel 2 and complies with all other provisions of this Declaration. The Consenting Owner must approve or disapprove the proposal within thirty (30) days after receipt of the proposal, and, if such Consenting Owner disapproves the proposal, it shall provide a written explanation in reasonable detail of its reasons for disapproval. If the Consenting Owner rejects or disapproves the proposal and fails to provide such explanation within the thirty (30) day period, such Consenting Owner shall be deemed to have approved same provided that, when the approval was sought, the one seeking the approval stated in writing to the Consenting Owner that, if a disapproval with explanation is not made within the thirty (30) day period, approval will then be deemed to have been given. If the proposal is disapproved as provided herein, then an alternate proposal may be submitted, which alternate proposal shall be handled in the same manner as the initial proposal.

(b) Every building shall be either equipped with automatic sprinkler systems which meet all the standards of the Insurance Services Office (or other similar local organization having jurisdiction) or shall be constructed in such a manner as not to adversely affect the fire rating of any building built upon any other Parcel. The purpose of this subparagraph (b) is

to allow buildings built on each Parcel to be fire rated as separate and distinct units without deficiency charge.

(c) No building shall be built in such a manner as to adversely affect the structural integrity of any other building in the Shopping Center.

(d) The building on Parcel 4 shall be single story with mezzanine permitted and shall not exceed thirty-one (31) feet in height. All buildings and Fuel Center Facilities on Parcel 1 shall be single story and shall not exceed twenty-three (23) feet in height (including mechanical fixtures and equipment and screening for same) without the prior written consent of the Consenting Owner, which consent may be granted or withheld in its sole and absolute discretion. No mezzanine or basement shall be used for the sale or display of merchandise without the prior written consent of the Consenting Owner, which consent may be granted or withheld at the sole and absolute discretion of Consenting Owner.

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

2.4 Construction Requirements.

(a) All work performed in the construction, maintenance, repair, replacement, alteration or expansion of any building, sign or Common Area improvements located in the Shopping Center shall be effected as expeditiously as possible and in such a manner as not to

unreasonably interfere, obstruct or delay (i) access to or from the Shopping Center, or any part thereof, to or from any public right-of-way, (ii) customer vehicular parking in that portion of the improved Common Area located in front of any building constructed in the Shopping Center, or (iii) the receiving of merchandise by any business in the Shopping Center including, without limitation, access to Service Facilities. All staging for the construction, maintenance, repair, replacement, alteration or expansion of any building, sign or Common Area improvements located on Parcel 1 or 4 including, without limitation, the location of any temporary buildings or construction sheds, the storage of building materials, and the parking of construction vehicles and equipment shall be limited to that portion of the Shopping Center approved in writing by the Consenting Owner. Unless otherwise specifically stated herein, the person contracting for the performance of such work ("Contracting Party") shall, at its sole cost and expense, promptly repair and restore or cause to be promptly repaired and restored to its prior condition all buildings, improvements, Fuel Center Facilities, signs, Utility Lines and Common Area damaged or destroyed in the performance of such work.

(b) The Contracting Party shall not permit any liens to stand against any Parcel for any work done or materials furnished in connection with the performance of the work described in subparagraph (a) above; provided, however, that the Contracting Party may contest the validity of any such lien, but upon a final determination of the validity thereof, the Contracting Party shall cause the lien to be satisfied and released of record. The Contracting Party shall, within thirty (30) days after receipt of written notice from the Owner or Prime Lessee of any Parcel encumbered by any such lien or claim of lien, cause any such outstanding lien or claim of lien to be released of

record or transferred to bond in accordance with applicable law, failing which the Owner or Prime Lessee of said Parcel shall have the right, at the Contracting Party's expense, to transfer said lien to bond. The Contracting Party shall indemnify, defend and hold harmless the Owners and occupants of the Shopping Center from any and all liability, claims, damages, expenses (including reasonable attorney's fees and reasonable attorney's fees on any appeal), liens, claims of lien, judgments, proceedings and causes of action, arising out of or in any way connected with the performance of such work, except to the extent caused by the negligent or willful act or omission of the indemnified person, its tenants, subtenants, agents, contractors or employees. Any Contracting Party (except the Owner or Prime Lessee of Parcel 2) who causes the construction, maintenance, repair, replacement, alteration or expansion of any Common Area improvements located in the Shopping Center shall cause the contractor performing such work (the "Site Contractor") to obtain insurance meeting the requirements of **Exhibit "B"** attached hereto and incorporated herein by this reference.

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

2.5 Casualty and Condemnation. In the event all or any portion of any building in the Shopping Center is (i) damaged or destroyed by fire or other casualty, or (ii) taken or damaged as a result of the exercise of the power of eminent domain or any transfer in lieu thereof, the Owner of such building shall promptly restore or cause to be restored the remaining portion of such building or, in lieu thereof, shall remove or cause to be removed the damaged portion of such building together with all rubble and debris related thereto. All Building Areas on which buildings are not reconstructed following a casualty or condemnation shall be graded or caused to be graded by the Owner thereof to the level of the adjoining property and in such a manner as not to adversely affect drainage or Utility Lines of the Shopping Center or any portion thereof, shall be covered by a one inch asphalt dust cap and shall be kept weed free and clean at the Owner's sole cost and expense until buildings are reconstructed thereon.

2.6 Indemnification. Each Owner shall indemnify, defend and hold harmless the other Owners and occupants from and against any and all liability, claims, damages, expenses (including reasonable attorney's fees and reasonable attorney's fees on any appeal), judgments, proceedings and causes of action, for injury to or death of any person or damage to or destruction of any property occurring in the interior of any building constructed on the indemnifying Owner's Parcel, except to the extent caused by the negligent or willful act or omission of the indemnified person, its tenants, subtenants, agents, contractors or employees.

3. EASEMENTS

3.1 Ingress, Egress and Parking. Each Owner, as grantor, hereby grants to the other Owners, their respective tenants, contractors, employees, agents, customers, licensees and

invitees, and the subtenants, contractors, employees, agents, customers, licensees and invitees of such tenants, for the benefit of each Parcel belonging to the other Owners, as grantees, a nonexclusive easement for ingress and egress by vehicular and pedestrian traffic and vehicular parking upon, over and across that portion of the Common Area located on the grantor's Parcel(s), except for those areas devoted to Service Facilities, or drive-up or drive through customer service facilities. The reciprocal rights of ingress and egress set forth in this Section 3.1 shall apply to the Common Area for each Parcel as such area shall be increased pursuant to Section 2.2 above.

3.2 Utility Lines.

(a) Each Owner, as grantor, hereby grants to the other Owners, for the benefit of each Parcel belonging to the other Owners, as grantees, a perpetual nonexclusive easement under, through and across that portion of the Common Area located on the grantor's Parcel(s) for the installation, operation, maintenance, repair and replacement of Utility Lines. All such Utility Lines shall be installed and maintained below the ground level or surface of such easements except for ground mounted electrical transformers and such other Utility Lines as are required to be above ground by the utility providing such service (including temporary service required during the construction, maintenance, repair, replacement, alteration or expansion of any buildings or improvements located in the Shopping Center). The installation, operation, maintenance, repair and replacement of such Utility Lines shall not unreasonably interfere with the use of the improved Common Area or with the normal operation of any business in the Shopping Center. The grantee(s) shall be responsible for and shall bear all costs related to the installation, operation, maintenance, repair and replacement of such Utility Lines, shall repair to the original specifications any damage to

buildings, improvements, signs, Utility Lines or Common Area resulting from such use and shall provide as-built plans for all such Utility Lines to the Owners of all Parcels upon which such Utility Lines are located within thirty (30) days after the date of completion of construction of same. All costs associated with the installation, operation, maintenance repair and replacement of Separate Utility Lines shall be borne solely by the Owner of the Parcel served thereby. All costs associated with the installation, operation, maintenance repair and replacement of Common Utility Lines shall be allocated among the Owners of the Parcels served thereby in proportion to the Parcel Area of such Parcel. Except as may be otherwise provided in Article 5, the installation, operation, maintenance, repair and replacement of Common Utility Lines may be performed by the Owner of any Parcel served thereby. The Owner performing such installation, operation, maintenance, repair or replacement of a Common Utility Line ("Performing Owner") shall bill the Owner(s) of the other Parcel(s) served thereby for each such Owner's proportionate share of the costs incurred by the Performing Owner not more often than monthly in arrears and such costs shall be payable within thirty (30) days after receipt of an invoice therefor and, if requested, reasonable supporting documentation.

(b) At any time and from time to time the Owner of a Parcel shall have the right to relocate on its Parcel any Utility Line installed pursuant to the foregoing grant of easement which is then located on such Owner's Parcel, provided that any such relocation (i) shall be performed only after sixty (60) days notice of the Owner's intention to undertake the relocation shall have been given to the Owner of each Parcel served by the Utility Line, (ii) shall not unreasonably interfere with or diminish utility service to the businesses served by the Utility Line, (iii) shall not reduce or

unreasonably impair the usefulness or function of the Utility Line, (iv) shall be performed without cost or expense to the Owner or occupant of any other Parcel, and (v) shall provide for the original and relocated area to be restored to the original specifications. The Owner performing such relocation shall provide as-built plans for all such relocated Utility Lines to the Owners of all Parcels served by such Utility Lines within thirty (30) days after the date of completion of such relocation.

(c) Each Owner agrees to grant such additional easements as are reasonably required by any public or private utility for the purpose of providing the Utility Lines described herein provided such easements are not otherwise inconsistent with the provisions of this Declaration.

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

3.4 Building Encroachments. Each Owner, as grantor, hereby grants to the other Owners, for the benefit of each Parcel belonging to the other Owners, as grantees, an easement for any portion of any building or structure located on any such Parcel which may encroach into or over the grantor's adjoining Parcel(s); provided the easement for footings, piers, piles, grade beams and building encroachments does not exceed two (2) feet, and the easement for canopies, eaves and roof overhangs does not exceed four (4) feet. The easements granted in this Section 3.4 shall survive this Declaration and shall last so long as the encroaching building is standing following its initial construction or following its reconstruction where such building is substantially restored to its prior condition following a casualty or condemnation.'

3.5 Permanent Access Easement for Benefit of Parcel 1 Only. The Owner of Parcel 2, as grantor, hereby grants to the Owner of Parcel 1, its tenants, contractors, employees, agents, customers, licensees and invitees, and the subtenants, contractors, employees, agents, customers, licensees and invitees of such tenants, for the benefit of Parcel 1, as grantee, a perpetual non-exclusive easement for ingress and egress by vehicular and pedestrian traffic upon, over and across that portion of the Common Area located on the grantor's Parcel(s) shown on Exhibit "A" as "Permanent Access Easement" and more particularly described in **Schedule II** attached hereto and incorporated herein by this reference.

3.6 Maintenance Easement. Each Owner, as grantor, hereby grants to the other Owners, their respective employees, agents, and contractors, as grantee, an easement over and across that portion of the Common Area located on the grantors' Parcel for the purpose of protecting the Common Area and operating or performing any maintenance, repairs, resurfacing or replacements

pursuant to Sections 3.2(a), 4.4 and 5.2 hereof or which the Owner or Prime Lessee of Parcel 2 has assumed pursuant to Section 5.6 hereof.

4. OPERATION OF COMMON AREA

4.1 Parking. There shall be no charge for parking in the Common Area without the prior written consent of the Consenting Owner or unless otherwise required by law.

4.2 Employee Parking. Anything in this Declaration to the contrary notwithstanding, areas to be used for motor vehicle parking by employees of occupants of the Shopping Center may be designated within the Shopping Center from time to time with the prior written consent of the Consenting Owner. In the event employee parking areas are designated as provided herein, then employees of any Owner or occupant of any part of the Shopping Center shall use only those portions of the Common Area designated for such motor vehicle parking purposes. In no event shall employees park within two hundred (200) feet of the front of any building located on Parcel 2. The authority herein granted shall be exercised in such manner as not to discriminate against any Owner or occupant of the Shopping Center.

4.3 Signs.

(a) Free-standing signs have been constructed at the locations designated "Albertson's Pylon Sign" on Exhibit "A" ("Albertson's Pylon Signs"). The Albertson's Pylon Signs shall only be used to display the designation of the Owner or occupant of Parcel 2 (including, without limitation, at the option of the Owner or occupant of Parcel 2, as a part of the designation otherwise permitted to the Owner or occupant of Parcel 2 or as a separate sign panel, signs identifying banking, financial and/or business services, and retail departments or concessions located within the building

on Parcel 2). Notwithstanding the location of the Albertson's Pylon Signs on Exhibit "A", the Albertson's Pylon Signs may be relocated anywhere on Parcel 2 as determined in the sole and absolute discretion of the Owner or occupant of Parcel 2. The cost of operating, maintaining, repairing and replacing the Albertson's Pylon Sign shall be paid by the Owner or occupant of Parcel 2.

(b) In addition to the foregoing, and subject to governmental approval and provided the amount of signage otherwise permitted by governmental authorities to the Owner or occupant of Parcel 2 is not adversely affected, the Owner of Parcel 4 may erect one (1) free-standing monument sign on Parcel 4. Said sign shall display the designation of the Owners or occupants of Parcel 4, shall not exceed eight (8) feet in height,¹ and shall not have more than fifty (50) square feet of sign fascia per side without the prior written consent of the Consenting Owner, which consent may be granted or withheld at the sole and absolute discretion of the Consenting Owner. The Owner of Parcel 1 may erect either one (1) monument sign subject to the limitations set forth in the immediately preceding sentence or one (1) pole sign not exceeding twenty (20) feet in height. Said sign shall display the identification of the business, goods, services and product prices located or provided on Parcel 1. The cost of operating, constructing, installing, maintaining, repairing and replacing said monument or pole sign structures shall be paid by the Owner of the Parcel on which the sign is located. The design and location of the monument or pole sign structures and sign fascia used thereon shall be subject to the approval of the Consenting Owner, in accordance with the procedure for approval set forth at Section 2.3(a) hereof.

(c) There shall be no other signs, except directional signs and signs on buildings, on Parcels 1 or 4 without the prior written consent of the Consenting Owner which consent

may be granted or withheld in its sole discretion. All exterior building signs on Parcels 1 and 4 shall be restricted to identification of the business or service located or provided therein. No exterior building sign shall be placed on penthouse walls, extend above the building roof or be painted on the exterior building surface. No exterior building or free-standing sign shall utilize flashing, moving or audible lights or appurtenances.

4.4 Protection of Common Areas. The Owner or Prime Lessee of Parcel 2 shall have the right to take such steps as it deems necessary to prevent those persons not authorized by this Declaration to use the Common Area from using the Common Area for ingress, egress and parking. Such steps may include, without limitation, the construction of fences, walls or barricades along the boundary lines of any portion of the Shopping Center, except along the common boundary line of any Parcel with any other Parcel.

4.5 Sales. No portion of the Common Area located within Parcel 4, except sidewalks, shall be used for the sale or display of merchandise. The sale of merchandise by the Owner or occupant of Parcel 2 shall be permitted anywhere on the Common Area located within Parcel 2 and the sale of merchandise by the Owner or occupant of Parcel 1 shall be permitted anywhere on the Common Area located within Parcel 1 with the prior written consent of the Consenting Owner which may be granted or withheld in its sole and absolute discretion.

5. COMMON AREA MAINTENANCE

5.1 Maintenance by Individual Owners. Except as otherwise provided in this Declaration, including, without limitation, Sections 3.2 (Utility Lines), 4.3 (Signs), 5.2 (Maintenance by Owner or Prime Lessee of Parcel 2) and 5.4 (Lighting), commencing on the date of this

Declaration, each Owner, at such Owner's sole cost and expense, shall maintain the Common Area and Service Facilities located on such Owner's Parcel at all times in good and clean condition and repair in a quality and condition comparable to the quality and condition as first class shopping centers within the general area in which the Shopping Center is located. Said maintenance to include, without limitation, the following:

(a) Maintaining, restriping, repairing and resurfacing, when necessary, all paved surfaces (exclusive of all paved surfaces located within the Permanent Access Easement and the drive isles located on the east and west sides of Parcel 4) in a level, smooth and evenly covered condition with the type of surfacing material originally installed or such substitute as shall in all respects be equal or superior in quality, use and durability;

(b) Removing all snow, papers, debris, filth and refuse and thoroughly sweeping the area to the extent reasonably necessary to keep the area in a clean and orderly condition;

(c) Maintaining, repairing and replacing, when necessary, all traffic directional signs, markers and lines;

(d) Operating, maintaining, repairing and replacing, when necessary, such artificial lighting facilities (exclusive of Common Area Lighting as defined in Section 5.2[a] hereof) as shall be reasonably required;

(e) Maintaining all landscaped areas (including those in any public right of way located on the perimeter of the Shopping Center) including, without limitation, replacing shrubs and other landscaping as is necessary;

(f) Maintaining, repairing and replacing, when necessary, all Common Area walls (including, without limitation, all fences, walls or barricades constructed pursuant to Section 4.4 of this Declaration);

(g) Maintaining, repairing and replacing, when necessary, all Utility Lines not dedicated to the public or conveyed to any public or private utility which are necessary for the operation of the buildings and improvements located on its Parcel provided, however, that all Common Utility Lines shall be maintained as provided in Section 3.2.

(h) Maintaining, repairing and replacing, when necessary, all Service Facilities and drive-up or drive-through customer service facilities.

(i) Performing itself or contracting with a third party or parties to perform any of the services described herein; provided, however, that the Owner of each Parcel shall remain responsible and liable for the performance of all of said services on such Owner's Parcel in accordance with the terms of this Declaration and for the performance of any such third party or parties under any such contract or contracts.

5.2 Maintenance by Owner or Prime Lessee of Parcel 2.

(a) Subject to reimbursement as set forth in subparagraph (b) below, commencing on the date of this Declaration or the date the Owner or occupant of Parcel 2 first opens its building for business, whichever is later, the Owner or Prime Lessee of Parcel 2 shall be responsible for (i) maintaining, repairing and replacing the Albertson's Pylon Sign structures (except for sign fascia and cans which shall be operated, supplied and maintained by the Owner of the Parcel or occupant designated thereon); (ii) maintaining, restriping, repairing and resurfacing, when

necessary, in a level, smooth and evenly covered condition with the type of surfacing material originally installed, or such substitute as shall in all respects be equal or superior in quality, use and durability, all paved surfaces lying within the Permanent Access Easements and the drive isle located on the east and west sides of Parcel 4; (iii) maintaining, repairing and replacing, when necessary, all Common Utility Lines provided Parcel 2 is served thereby; and (iv) operating, maintaining, repairing and replacing, when necessary, all Common Area lighting installed by the Owner or Prime Lessee of Parcel 2 ("Common Area Lighting"); and (v) performing other items of Common Area maintenance which cannot be practically segregated or allocated between the Parcels as agreed upon by Owners or Prime Lessees of Parcels containing not less than seventy-five percent (75%) of the total square footage of Parcel Area in the Shopping Center. The Owner or Prime Lessee of Parcel 2 may perform such maintenance itself or contract with a third party or parties to perform any such maintenance.

(b) The cost of maintaining, repairing and replacing the Albertson's Pylon Sign structures shall be paid by the Owners of the Parcels entitled to display designations thereon in accordance with the provisions set forth in Section 4.3(a) hereof. The cost of maintaining, repairing and replacing any Common Utility Lines shall be borne solely by the Owners of the Parcels served thereby in accordance with the provisions of Section 3.2(a) hereof. The cost of operating, maintaining, repairing and replacing Common Area Lighting shall be borne by the Owners of Parcels in accordance with the provisions of Section 5.4 hereof. The cost of all other Common Area items set forth in this Section 5.2 together with the cost of commercial general liability insurance maintained by the Owner or Prime Lessee of Parcel 2 insuring against property damage or personal injury as a

result of the performance or nonperformance of such items shall be borne by each Owner in the proportions set forth below:

	Parcel Area	Percent
Parcel 1	60,201	17.24%
Parcel 2	248,292	71.11%
Parcel 4	<u>40,675</u>	<u>11.65%</u>
TOTAL:	<u>349,168</u>	<u>100.00%</u>

The cost of the Common Area items set forth in this Section 5.2 shall include all reasonable expenses incurred for labor (including the reasonable cost of salaries and other costs of fringe benefits of persons actually employed by the Owner or Prime Lessee of Parcel 2), services, equipment, supplies and materials in connection therewith and an administrative fee of ten percent (10%) of the costs incurred.

The Owner of Parcels 1 and 4 (or its respective tenants or agents as it may designate) shall be billed by the Owner or Prime Lessee of Parcel 2 for each such Owner's proportionate share of the costs incurred by the Owner or Prime Lessee of Parcel 2 in performing Common Area items and providing commercial general liability insurance set forth in this Section 5.2 not more often than monthly in arrears and such costs shall be payable within thirty (30) days after receipt of an invoice therefor and, if requested, supporting documentation maintained by the Owner of Parcel 2 in its ordinary course of business. The Owner or Prime Lessee of Parcel 2 shall not be liable for the failure to perform any item of Common Area maintenance or to provide the commercial general liability insurance set forth in this Section 5.2 unless it has been given written notice describing such item or items and an opportunity to cure the alleged failure in accordance with Section 7.9 (Default) and

Section 7.10 (Notices). In any event, the liability of the Owner or Prime Lessee of Parcel 2 to the Owner or occupant of any other Parcel for damages resulting from or relating to the performance or nonperformance of any Common Area maintenance item as set forth in this Section 5.2 shall be limited to the cost of performing such item; it being specifically agreed and understood that, in no event, shall the Owner or Prime Lessee of Parcel 2 be liable to any person for incidental or consequential damages on account thereof.

(c) In the event the Oregon Department of Transportation requires additional traffic controls pursuant to any Application and Permit to Construct Approach Road executed by Albertson's and First Party, the costs of such traffic controls shall be shared evenly between the Owners of Parcels 2 and 4.

5.3 Indemnification.

(a) The Owner of each Parcel hereby agrees to indemnify, defend and hold harmless the Owners and occupants of all other Parcels from and against any and all liability, claims, damages, expenses (including reasonable attorney's fees and reasonable attorney's fees on appeal), judgments, proceedings and causes of action, for injury to or death of any person or damage to or destruction of any property resulting from the negligent or willful act or omission of the indemnifying person, its tenants, subtenants, agents, contractors or employees, or arising out of the performance or nonperformance of any of the obligations set forth in this Declaration, except to the extent caused by the negligent or willful act or omission of the indemnified person, its tenants, subtenants, agents, contractors or employees.

(b) The Owner of each Parcel shall at all times provide and maintain or cause to be provided and maintained commercial general liability insurance with broad form coverage (including broad form property damage coverage) insuring its obligations under Section 5.3(a) with respect to bodily injury, death or property damage or destruction in an amount not less than Two Million and No/100 Dollars (\$2,000,000.00) for personal injury or bodily injury or death of any one person, Two Million and No/100 Dollars (\$2,000,000.00) for personal injury or bodily injury or death of more than one person in one occurrence, and Five Hundred Thousand and No/100 Dollars (\$500,000.00) with respect to damage to or destruction of property; or, in lieu of such coverage, a combined single limit (covering personal injury, bodily injury or death and property damage or destruction) with a limit of not less than Two Million and No/100 Dollars (\$2,000,000.00) per occurrence. Said insurance shall be written with an insurer licensed to do business in the state in which the Shopping Center is located. The Owner of each Parcel shall furnish the Owner or Prime Lessee of any other Parcel with a certificate evidencing such insurance upon request. The insurance which an Owner is required to maintain hereunder may be provided under a blanket policy provided such policy otherwise complies with the requirements of this Declaration. So long as the Owner has a net worth, determined in accordance with generally accepted accounting principles, in excess of One Hundred Million and No/100 Dollars (\$100,000,000.00), all or part of such insurance carried by such Owner may be provided under a program of self-insurance.

5.4 Lighting. Unless otherwise directed by the Consenting Owner, it is agreed that the Common Area Lighting shall remain on until at least one (1) hour after the businesses on Parcels 1 and 2 close for business or until sunrise if either business does not close at night. If artificial lighting

for a time later than the foregoing ("After Hours Lighting") is needed by any Owners or occupants, then, upon request, all other Owners shall negotiate in good faith to reach an agreement under which such After Hours Lighting is provided at the sole expense of the Owners or occupants requesting same. The cost of operating, maintaining, repairing and replacing the Common Area Lighting shall be borne by the Owners of Parcels 1, 2 and 4 in the proportions as set forth in Section 5.2. Any and all additional lighting within the Common Area installed on Parcels 1 and 4 by the Owners of such Parcels shall be operated, maintained, repaired and replaced, when necessary, at the sole cost and expense of the Owner of such Parcel.

5.5 Taxes. Each Owner shall pay direct to the tax collector when due the real property taxes and other special taxes and assessments assessed against the Owner's Parcel, including the portion of the Common Area on such Owner's Parcel; subject, however, to the right of any such Owner to contest the amount or validity of all or any part of said taxes and assessments. In the event the Owner of Parcel 1 or 4 fails to pay property taxes or assessments assessed against such Owner's Parcel, the Owner or Prime Lessee of Parcel 2 may, upon thirty (30) days written notice (unless a shorter period of time is necessary to prevent any taking or remedial action by the taxing authority) pay such taxes or assessments. In the event the Owner or Prime Lessee of Parcel 2 does pay real property taxes or assessments assessed against Parcel 1 or 4, the Owner of such Parcel shall reimburse the Owner or Prime Lessee of Parcel 2 for the full amount of such taxes or assessments paid by the Owner or Prime Lessee of Parcel 2 within thirty (30) days after receipt of an invoice therefor.

5.6 Right of the Owner or Prime Lessee of Parcel 2 to Maintain other Parcels. The Owners of Parcel 1 and 4 acknowledge that such Parcels are an integral part of the Shopping Center and that the Common Areas of such Parcels shall be available for use by other Owners within the Shopping Center, their respective tenants, contractors, employees, agents, customers, licensees and invitees, and the subtenants, contractors, employees, agents, customers, licensees and invitees of such tenants. In the event the Owner of Parcel 1 or 4 fails to perform its obligations to operate, maintain, repair, replace or insure the Common Area in accordance with this Declaration (including, without limitation, Sections 3.2, 4.3, 5.1 and 5.4), the Owner or Prime Lessee of Parcel 2 may, upon thirty (30) days written notice, elect to assume all or any portion of such obligations. Anything to the contrary herein notwithstanding, in the event that an emergency condition should exist because of the failure of the Owner of Parcel 1 or 4 to perform any of its obligations to operate, maintain, repair, replace or insure any portion the Common Area in accordance with this Declaration, said Owner shall not be entitled to such notice and the Owner or Prime Lessee of Parcel 2 may immediately assume all or any portion of such obligations. For the purpose of the preceding sentence, the phrase "emergency condition" shall mean any condition constituting an immediate risk of injury to person or serious damage to property. In the event the Owner or Prime Lessee of Parcel 2 assumes all or any portion of the obligations of the Owner of Parcel 1 or 4 as set forth in this Section 5.6, the Owner of such Parcel shall, within thirty (30) days of being invoiced therefor, reimburse the Owner or Prime Lessee of Parcel 2 for all costs of every kind or nature incurred by the Owner or Prime Lessee of Parcel 2 in performing such assumed obligations, including all expenses incurred for labor (including the reasonable cost of salaries and other costs or fringe benefits of persons actually employed by the

Owner or Prime Lessee of Parcel 2), services, equipment, supplies and materials used in performing such obligations and an administrative fee of ten percent (10%) of all the costs incurred. In the event the Owner or Prime Lessee of Parcel 2 assumes all or any portion of the obligations of the Owners of Parcel 1 or 4, as provided for in this Section 5.6, the Owner or Prime Lessee of Parcel 2 may, in its sole discretion, perform such obligations itself or contract with third parties to perform such assumed obligations. The Owner or Prime Lessee of Parcel 2 shall not be liable for any failure to perform any obligations assumed by it pursuant to this Section 5.6 unless it has first been given written notice describing the item or items of nonperformance and an opportunity to cure the alleged failure in accordance with Sections 7.9 (Default) and 7.10 (Notices). In any event, the liability of the Owner or Prime Lessee of Parcel 2 to the Owner or occupant of any other Parcel for damages resulting from or relating to the performance or nonperformance of items by the Owner or Prime Lessee of Parcel 2 under this Section 5.6 shall be limited to the cost of performing such item; it being specifically agreed and understood that in no event shall the Owner or Prime Lessee of Parcel 2 be liable to any person for incidental or consequential damages on account thereof.

6. RESTRICTIONS ON USE

6.1 Food, Drug and Fuel Center Restrictions. No part of Parcel 4 shall be used as a supermarket (which shall be defined as any store or department containing at least 1,500 square feet of floor area, including aisle space and storage, primarily devoted to the retail sale of food for off-premises consumption); as a bakery or delicatessen; as a cigarette or smoke shop or any other store the primary business of which is to sell tobacco products and/or accessories; for the sale of fresh or frozen meat, fish, poultry or produce for off-premises consumption; for the sale of alcoholic

beverages for off-premises consumption; for the sale of Petroleum, for the sale or offer for sale of any ethical pharmaceutical products requiring the services of a registered pharmacist; or for a "Convenience Store," as hereinafter defined. A "Convenience Store" is herein defined as a self-contained area or building primarily devoted to the sale of any or all of the following items: food, beverages, grocery items, Petroleum, tobacco and/or carwashes, as they may be operated from time to time. By way of example only, stores such as "7-Eleven" and "Circle K" are considered to be "Convenience Stores" under the foregoing definition.

6.2 Shopping Center Restrictions. No part of Parcel 4 shall be used as a bar, tavern, cocktail lounge, adult book store, adult video store or other adult entertainment business, automotive maintenance or repair facility, warehouse, car wash, entertainment or recreational facility, training or educational facility; for the renting, leasing or selling of or displaying for the purpose of renting, leasing or selling of any boat, motor vehicle or trailer; or for industrial purposes. For the purpose of this Declaration, the phrase "entertainment or recreational facility" shall include, without limitation, a theater, bowling alley, skating rink, gym, health spa or studio, dance hall, billiard or pool hall, massage parlor, game parlor or video arcade (which shall be defined as any store containing more than four [4] electronic games). The phrase "training or educational facility" shall include, without limitation, a beauty school, barber college, reading room, place of instruction or any other operation catering primarily to students or trainees as opposed to customers.

6.3 Location Restrictions.

(a) The total floor area of all restaurants and medical, dental, professional and business offices located on Parcel 4 shall not exceed 2,500 square feet.

6.4 Drive-up and Drive Through Facilities. No restaurant, bank or other facility featuring vehicular drive-up or drive through customer service facilities shall be located on Parcel 4 unless the Consenting Owner has first given its written consent, which shall not be unreasonably withheld, as to the location, parking and drive lanes of such facility.

6.5 Mall Restrictions. There shall be no open or enclosed malls on Parcel 4 unless the Consenting Owner has first given its written consent, which shall not be unreasonably withheld, to the location of the entrance to such mall.

7. GENERAL PROVISIONS

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

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

foreclosure, trustee's sale or otherwise) shall be liable for all obligations arising under this Declaration with respect to such Parcel or portion thereof after the date of sale and conveyance of title.

7.3 Duration. Except as otherwise provided herein, the term of this Declaration shall be for sixty-five (65) years from the date hereof.

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

7.5 Modification and Termination. This Declaration may not be modified in any respect whatsoever or terminated, in whole or in part, except with the consent of the Owners and Prime Lessees of the Parcels containing seventy-five percent (75%) of the total square footage of Parcel Area in the Shopping Center at the time of such modification or termination, and then only by written instrument duly executed and acknowledged by all of the required Owners and Prime Lessees and recorded in the office of the recorder of the county in which the Shopping Center is located. No modification or termination of this Declaration shall affect the rights of any Lienholder unless the Lienholder consents in writing to the modification or termination.

7.6 Method of Approval. Whenever the consent or approval of any Owner is required, such consent or approval shall be exercised only in the following manner. Each Parcel shall have only one (1) vote. The Owners (if consisting of more than one [1] person) of each Parcel shall agree among themselves and designate in writing to the Owners and Prime Lessees of each of the

other Parcels a single person who is entitled to cast the vote for that Parcel. If the Owners of any such Parcel cannot agree who shall be entitled to cast the single vote of that Parcel, or if the Owners fail to designate the single person who is entitled to cast the vote for that Parcel within thirty (30) days after receipt of request for same from any other Owner or Prime Lessee, then that Parcel shall not be entitled to vote. In the event a Parcel is not entitled to vote, its consent or approval shall not be necessary and the total square footage of Parcel Area in said Parcel shall be disregarded for the purpose of computing the percentage requirement set forth in Section 7.5. Except as otherwise set forth in Section 7.5, in the event an Owner sells its Parcel and becomes the Prime Lessee thereon, said Prime Lessee is hereby appointed the entity to cast the vote or give the consent for said Parcel on behalf of the Owner thereof and is hereby granted all of the rights and remedies granted to the Owner of said Parcel so long as it is the Prime Lessee of said Parcel, anything in this Declaration to the contrary notwithstanding.

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

7.8 Breach Shall Not Permit Termination. It is expressly agreed that no breach of this Declaration shall entitle any Owner to terminate this Declaration, but such limitation shall not affect in any manner any other rights or remedies which such Owner may have hereunder by reason of any breach of this Declaration. Any breach of this Declaration shall not defeat or render invalid the lien of any mortgage or deed of trust made in good faith for value, but this Declaration shall be

binding upon and be effective against any Owner whose title is acquired by foreclosure, trustee's sale or otherwise.

7.9 Default.

(a) A person shall be deemed to be in default of this Declaration only upon the expiration of thirty (30) days (ten [10] days in the event of failure to pay money) from receipt of written notice from any Owner or Prime Lessee specifying the particulars in which such person has failed to perform the obligations of this Declaration unless such person, prior to the expiration of said thirty (30) days (ten [10] days in the event of failure to pay money), has rectified the particulars specified in said notice of default. However, such person shall not be deemed to be in default if such failure (except a failure to pay money) cannot be rectified within said thirty (30) day period and such person is using good faith and its best efforts to rectify the particulars specified in the notice of default.

(b) In the event the defaulting party has defaulted in the payment of money to the Owner or Prime Lessee of Parcel 2, the Owner or Prime Lessee of Parcel 2, in addition to other remedies provided by law, shall be entitled to interest on such amount at a rate equal to the lesser of (i) the highest rate allowed by law, and (ii) the rate two percent (2%) above the prime rate as published in the Wall Street Journal commencing on the date such payment was due pursuant to this Declaration until paid in full and the Owner or Prime Lessee of Parcel 2 shall be entitled to a lien against the Parcel of the defaulting party for the amount of such unpaid amount plus interest. Such lien shall only be effective when filed for record by the Owner or Prime Lessee of Parcel 2 as a claim

of lien against the Parcel of the defaulting party in the office of the recorder of the county in which the Shopping Center is located, signed and verified, which shall contain at least:

- (1) An itemized statement of all amounts due and payable pursuant hereto;
- (2) A description sufficient for identification of that portion of the real property of the defaulting Owner which is the subject of the lien; and
- (3) The name of the Owner or reputed Owner of the property which is the subject of the lien.

The lien, when so established against the real property described in the lien, shall be prior and superior to any right, title, interest, lien or claim which may be or has been acquired or attached to such real property after the time of filing the lien. The lien shall be for the use and benefit of the Owner or Prime Lessee of Parcel 2 and may be enforced and foreclosed in a suit or action brought in any court of competent jurisdiction.

7.10 Notices.

- (a) All notices given pursuant to this Declaration shall be in writing and shall be given by personal delivery, by United States mail or by United States express mail or other established express delivery service (such as Federal Express), postage or delivery charges prepaid, return receipt requested, addressed to the person and address designated below or, in the absence of such designation, to the person and address shown on the then current real property tax rolls of the county in which the Shopping Center is located. All notices to Albertson's and First Party shall be sent to the person and address set forth below:

Albertson's: Albertson's, Inc.
 250 Parkcenter Boulevard
 Post Office Box 20
 Boise, Idaho 83726
 Attention: Legal Department

First Party: Can Am Retail Partners-Klamath Falls, LLC
 2525 East Camelback Road - Suite 770
 Phoenix, AZ 85016

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

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

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

7.12 Attorney's Fees. In the event any person initiates or defends any legal action or proceeding to enforce or interpret any of the terms of this Declaration, the prevailing party in any

such action or proceeding shall be entitled to recover from the losing party in any such action or proceeding its reasonable costs and attorney's and paralegal's fees (including its reasonable costs and attorney's and paralegal's fees on any appeal).

7.13 Sale & Sale-leaseback Purchaser. Notwithstanding anything to the contrary contained in this Declaration, it is expressly agreed that in the event an Owner sells its Parcel (whether or not such sale includes any buildings or improvements located thereon) to an unaffiliated third party and thereafter enters into a lease (including a ground lease) for such Parcel with such third party or its lessee or sublessee (such third party is hereinafter referred to collectively as the "Prime Lessor"), so long as said Prime Lessee is in possession of the property the parties hereto shall look solely to said Prime Lessee (and said Prime Lessee shall be liable therefor) for the performance of any obligations either the Prime Lessee or the Prime Lessor shall have under this Declaration and the Prime Lessor shall be relieved of any obligation for the performance of or liability for the Restrictions set forth herein relating to either the Prime Lessee or its Parcel.

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

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

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

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

7.18 Entire Agreement. This Declaration contains the entire agreement between the parties hereto and supersedes all prior agreements, oral or written, with respect to the subject matter hereof. The provisions of this Declaration shall be construed as a whole and not strictly for or against any party.

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

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

7.21 Recordation. This Declaration shall be recorded in the office of the recorder of the county in which the Shopping Center is located.

7.22 Non-Merger. Ownership of more than one Parcel by the same Owner shall not result in the merger of the dominant and servient estates of such Owner created by this Declaration.

EXECUTED as of the day and year first above written.

ALBERTSON'S:

Albertson's, Inc.,
a Delaware corporation

By: William H. Arnold *mhm/Rum*
Its: Vice President, Real Estate Law

FIRST PARTY:

Can Am Retail Partners-Klamath Falls, LLC,
an Oregon limited liability company

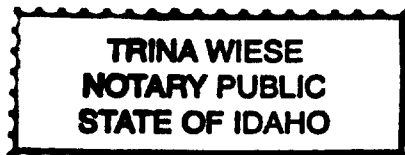
By: Bernard Weiden
Its: Mgt. Member

IA125444\DOCS\DEC.011

STATE OF IDAHO)
) ss.
COUNTY OF ADA)

On this 4th day of ~~March~~ ^{April}, 2000, before me, the undersigned, a Notary Public in and for said state, personally appeared William H. Arnold, known or identified to me to be the Vice President, Real Estate Law of **Albertson's, Inc.**, the corporation that executed the instrument or the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



Trina Wiese
NOTARY PUBLIC for Idaho
Residing at Boise, Idaho
My commission expires: 1/28/04

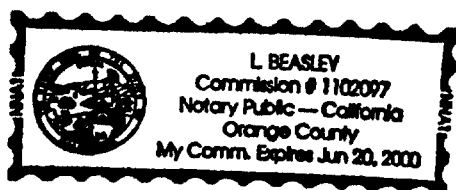
CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

STATE OF CALIFORNIACOUNTY OF ORANGEOn 5-1-00 before me, L. Beasley,
(Date) (Name, Title of Officer)
personally appeared Bernard Weiner,
(Name(s) of Signer(s))

☒ personally known to me - ~~OR~~ - proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

L. Beasley
(Signature of Notary)

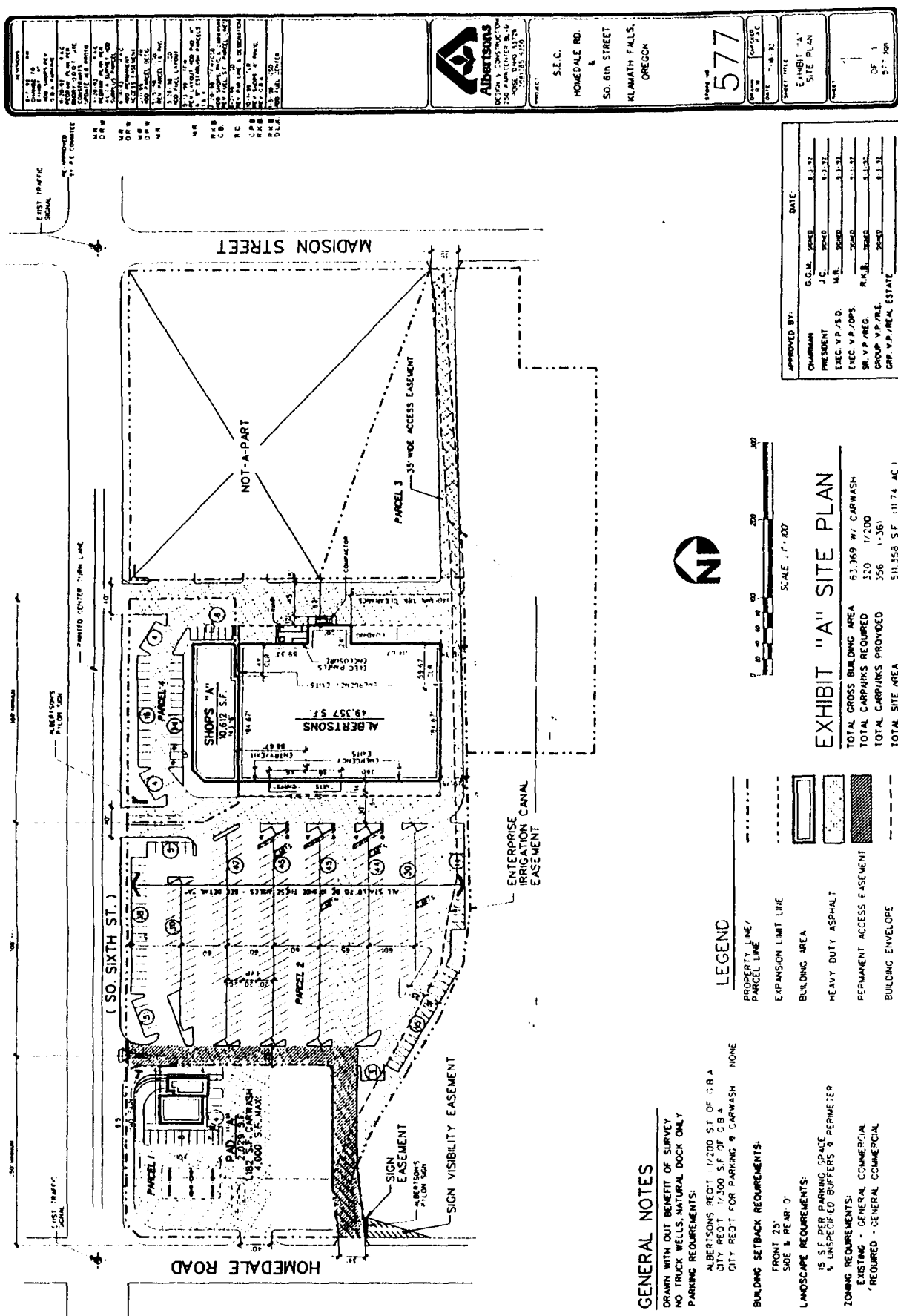
-- OPTIONAL SECTION --
CAPACITY CLAIMED BY SIGNER

Though statute does not require the Notary to fill in the data below, doing so may prove invaluable to persons relying on the document.

- () INDIVIDUAL
() CORPORATE OFFICER(S)

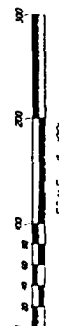
(Title(s))
() PARTNERS
() Limited
() General
() ATTORNEY-IN-FACT
() TRUSTEE(S)
() GUARDIAN/CONSERVATOR
() OTHER _____

SIGNER IS REPRESENTING:
NAME OF PERSON(S) OR ENTITY(IES)



APPROVED BY:	DATE:
CHAIRMAN	G.G.M. MOVED 8-1-92
PRESIDENT	J.C. MOVED 8-1-92
EXEC. VP./S.D.	M.B. MOVED 8-1-92
EXEC. VP./OPS	MOVED 8-1-92
SR. VP./REG.	R.K.B. MOVED 8-1-92
GROUP VP./M.E.	MOVED 8-1-92
GRP. VP./REAL ESTATE	MOVED 8-1-92

EXHIBIT "A" SITE PLAN	
TOTAL GROSS BUILDING AREA	63,369 S.F. CARWASH
TOTAL CARPARKS REQUIRED	320 1/200
TOTAL CARPARKS PROVIDED	356 1-36'
TOTAL SITE AREA	511,358 S.F. (11.74 AC.)



LEGEND

- PROPERTY LINE / PARCEL LINE
- EXPANSION LIMIT LINE
- BUILDING AREA
- HEAVY DUTY ASPHALT
- PERMANENT ACCESS EASEMENT
- BUILDING ENVELOPE

GENERAL NOTES

- DRAWN WITH OUT BENEFIT OF SURVEY
- NO TRUCK WELLS, NATURAL DOCK ONLY
- PARKING REQUIREMENTS:
- ALBERTSONS REQ'D 1/200 S.F. OF G.B.A
- CITY REQ'D 1/200 S.F. OF G.B.A
- CITY REQ'D FOR PARKING & CARWASH NONE
- BUILDING SETBACK REQUIREMENTS:
- FRONT 25'
- SIDE & REAR 0'
- LANDSCAPE REQUIREMENTS:
- 15 S.F. PER PARKING SPACE
- & UNSPECIFIED BUFFERS & PERMETER
- ZONING REQUIREMENTS:
- EXISTING - GENERAL COMMERCIAL
- REQUIRED - GENERAL COMMERCIAL

**SCHEDULE I
LEGAL DESCRIPTIONS**

PARCEL 1

Parcel 1 of Land Partition 24-98, situated in Lots 1 thru 8 of Block 1, and Lots 1, 2, 3, 8 and 9 of Block 2 of "BAILEY TRACTS NO. 2", and the NE1/4 SE1/4 of Section 2, Township 39 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon.

AND

Lot 9 in Block 1 of BAILEY TRACTS NO. 2, according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon, EXCEPTING THEREFROM that portion conveyed to Klamath County, a political subdivision by Deed recorded April 2, 1981 in Book M81, at page 5924, Microfilm Records of Klamath County, Oregon.

PARCEL 2

Parcel 1 of Land Partition 15-99 being Parcel 2 of Land Partition 24-98 situated in Lots 1 through 8 of Block 1 and Lots 1, 2, 3, 8 and 9 of Block 2 of BAILEY TRACTS NO. 2, according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon, being in the NE1/4 SE1/4 of Section 2, Township 39 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon.

PARCEL 4

Parcel 2 of Land Partition 15-99 being Parcel 2 of Land Partition 24-98 situated in Lots 1 through 8 of Block 1 and Lots 1, 2, 3, 8 and 9 of Block 2 of BAILEY TRACTS NO. 2, according to the official plat thereof on file in the office of the County Clerk of Klamath County, Oregon, being in the NE1/4 SE1/4 of Section 2, Township 39 South, Range 9 East of the Willamette Meridian, Klamath County, Oregon.

SCHEDULE II**Legal Description of
Permanent Access Easement**

A PRIVATE ACCESS EASEMENT BEING IN A PORTION OF LOTS 6 THROUGH 8, BLOCK 1 AND PORTION OF LOTS 8 AND 9, BLOCK 2 OF "BAILEY TRACTS NO. 2", A DULY RECORDED SUBDIVISION, SITUATED IN THE NE $\frac{1}{4}$ SE $\frac{1}{4}$ OF SECTION 2, T39S, R9E W.M., KLAMATH COUNTY, OREGON, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF PARCEL 1, BEING ON THE SOUTHERLY RIGHT OF WAY LINE OF SOUTH SIXTH STREET, FROM WHICH THE NORTHWEST CORNER OF SAID LOT 8 BEARS N89°43'42"W 148.57 FEET; THENCE, ALONG THE BOUNDARY OF SAID PARCEL 1, S00°16'18"W 266.00 FEET AND N89°43'42"W 148.64 FEET TO THE SOUTHEAST CORNER OF LOT 9, BLOCK 1 OF SAID "BAILEY TRACTS NO. 2"; THENCE S89°33'31"W, ALONG THE SOUTH LINE OF SAID LOT 9, 77.36 FEET TO THE EASTERLY RIGHT OF WAY LINE OF HOMEDALE ROAD; THENCE S00°17'12"W, ALONG THE SAID EASTERLY RIGHT OF WAY LINE, 35.24 FEET TO A POINT ON THE WEST LINE OF SAID LOT 9, BLOCK 2, SAID POINT BEING THE SOUTHWEST CORNER OF THE ALBERTSON'S INC. PROPERTY; THENCE N83°33'31"E, ALONG THE SOUTH LINE OF SAID ALBERTSON'S INC. PROPERTY AND ITS EXTENSION, 117.93 FEET; THENCE S89°43'42"E 132.96 FEET; THENCE N00°16'18"E 296.50 FEET TO A POINT ON THE NORTH LINE OF SAID LOT 6, BLOCK 1, AND BEING ON THE SAID SOUTHERLY RIGHT OF WAY LINE OF SOUTH SIXTH STREET; THENCE N89°43'42"W 24.60 FEET TO THE POINT OF BEGINNING, WITH BEARINGS BASED ON RECORD OF SURVEY #5351 ON FILE AT THE OFFICE OF THE KLAMATH COUNTY SURVEYOR.

EXHIBIT "B"
to Declaration of Restrictions, Grant of Easements
and Common Area Maintenance Agreement

INSURANCE REQUIREMENTS

The Site Contractor shall procure and maintain until the Site Work has been completed and accepted by the Owner or Prime Lessee of Parcel 2, commercial general liability coverage with combined single limits of not less than \$2,000,000 per occurrence. Such insurance must include broad form property damage coverage including, but not limited to, damage arising from blasting and collapse of structure with any X.C.U. exclusion removed. The insurance must include contractor's protective liability insurance and completed operations coverage extended to include the Site Contractor, its subcontractors and any independent contractors or sub-subcontractors directly or indirectly employed by either of them. The commercial general liability policy shall be endorsed to include personal injury, libel, slander, wrongful eviction, and false arrest. All policies of insurance provided hereunder shall be written on an "occurrence" basis, if available, and, if not, on a "claims made" basis.

The above policy of insurance shall name the Owner and Prime Lessee of Parcel 2 as additional insureds. The Site Contractor shall furnish the Owner and Prime Lessee of Parcel 2 certificates showing such coverage and showing that coverage will not be canceled, materially changed or non-renewed without thirty (30) days prior written notice to the Owner and Prime Lessee of Parcel 2. If coverage is obtained by naming the Owner and Prime Lessee of Parcel 2 as additional insureds, the policy must contain a cross liability clause and a breach of warranty clause and the certificate must so indicate. If the required coverage is obtained through a general commercial liability policy backed up with umbrella coverage, the certificate for umbrella coverage must also show that the Owner and Prime Lessee of Parcel 2 will be given thirty (30) days prior written notice of cancellation, material change or non-renewal.

The Site Contractor must provide certificates showing statutory worker's compensation coverage and showing employer's liability coverage with minimum limits of \$300,000. In addition, the Site Contractor will provide evidence its subcontractors and their subcontractors carry similar coverage. The Owner and Prime Lessee of Parcel 2 need not be named as additional insureds on the employer's liability coverage or the worker's compensation coverage. The Owner and Prime Lessee of Parcel 2 must be given thirty (30) days prior written notice of cancellation or non-renewal of either coverage.

The Site Contractor must provide certificates of insurance showing that it maintains comprehensive automobile liability insurance for all owned, non-owned and hired vehicles with single limits of at least \$2,000,000 per occurrence. Such coverage must name the Owner and Prime Lessee of Parcel 2 as additional insureds. The Site Contractor must provide a certificate (and, if requested by the Owner or Prime Lessee of Parcel 2, a copy of the insurance policy as well) showing such coverage and showing that such coverage will not be canceled, materially changed or non-renewed without thirty (30) days written notice to the Owner and Prime Lessee of Parcel 2.

Breach of Warranty Clause

As to the interest of any additional insured, the insurance afforded by the policy shall not be invalidated by any breach or violation by the additional insured of any warranties, declarations or conditions, but not the exclusions, in the policy, but this shall not prevent exhaustion of the limits of liability by payment on behalf of any insured.

Cross Liability Clause

The insurance afforded applies separately to each insured against whom claim is made or suit is brought, except with respect to the limits of the company's liability.

30 Day Notice Clause - Acceptable Language

In the event of cancellation, material change or non-renewal of the policy or policies by the company during the periods of coverage as stated herein, 30 days written notice of such cancellation, material change or non-renewal will be mailed to the party to whom this certificate is issued.

30 Day Notice Clause - Non-Acceptable Language

Should any of the above described policies be canceled, materially changed or non-renewed before the expiration date thereof, the issuing company will endeavor to mail 30 days written notice to the below named certificate holder, but failure to mail such notice shall impose no obligation or liability of any kind upon the company.

State of Oregon, County of Klamath
Recorded 05/02/00, at 2:25 p.m.
In Vol. M00 Page 15747
Linda Smith,
County Clerk Fee \$ 261⁰⁰