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COMMON AREA MAINTENANCE AGREEMENT

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COMMON AREA MAINTENANCE AGREEMENT

THIS COMMON AREA MAINTENANCE AGREEMENT ("**Agreement**") is made as of the 14 day of June, 2000, by and between Benson Park Plaza, L.L.C., a Nebraska limited liability company ("**First Party**"), and **Albertson's, Inc.**, a Delaware corporation ("**Albertson's**").

1. Recitals.

1.1 Albertson's is the Owner of Parcel 2, Parcel 4, and Outlot 1; and First Party is the Owner of Parcels 1, 3, 5 and 6, all as shown on **Exhibit "A"** and more particularly described in **Schedule I** attached hereto and incorporated herein by this reference. Parcels 1 through 6 and Outlot 1 are hereinafter collectively referred to as the "**Shopping Center.**" Parcel 1, 2, 3, 4, 5 or 6, or Outlot 1, is sometimes referred to as "**Parcel.**"

1.2 By virtue of that certain document entitled "Declaration of Restrictions and Grant of Easements" which encumbers the Shopping Center and is recorded concurrently herewith ("**Declaration**"), the Owners have imposed certain Restrictions on their Parcels and have executed reciprocal easements each in favor of the other covering those portions of the Shopping Center defined in the Declaration as "**Common Area.**"

1.3 The Owners desire to provide for the common operation, cleaning, maintenance, repair, replacement and insurance of the Common Area within the Shopping Center as hereinafter provided.

1.4 All of the terms in this Agreement shall have the meanings set forth in the Declaration, the provisions of which are incorporated herein by this reference. In the event of any conflict between the terms of this Agreement and the Declaration, the Declaration shall control.

2. Maintenance Standards.

2.1 Commencing on the date Albertson's first opens its building on Parcel 2 for business, the Maintenance Director shall, except as hereinafter provided, maintain the Common Area of all Parcels (including Outlot 1) at all times in good and clean condition and repair, said maintenance to include, without limitation, the following:

(a) Maintaining, repairing and resurfacing, when necessary, all paved surfaces 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; and restriping, when necessary;

(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 as shall be reasonably required (except for the "After Hours Lighting" described in Article 3 below);

(e) Maintaining all landscaped areas (including, without limitation, those on the perimeter of the Shopping Center and on Outlot 1); maintaining, repairing and replacing, when necessary, automatic sprinkler systems and water lines; and 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 the Declaration);

(g) Maintaining, repairing and replacing, when necessary, all storm drains, sewers and other utility lines and facilities 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 in the Shopping Center (with the cost of all such items being allocated between the Owners of all buildings and improvements serviced or to be serviced by said facilities on the basis of their respective Building Areas);

(h) Keeping the Center Sign (as described in the Declaration) lighted from dusk to dawn or during such other times mutually agreed in writing by the businesses designated thereon;

(i) Maintaining, repairing and replacing, when necessary, the Center Sign pylon structures shown on **Exhibit "A"** (except for the sign fascia and cans which shall be supplied and maintained by the businesses designated thereon). Notwithstanding the other provisions of this Agreement, the cost of maintaining, repairing and replacing the Center Sign pylon structures shall be paid by the Owners of all Parcels entitled to display designations thereon in the proportion that the total square footage of each Owner's designation or designations bears to the total square footage of all designations entitled to be displayed thereon; and

(j) Performing itself or contracting with a third party or parties to perform any of the services described herein; provided, however, that the Maintenance Director shall remain responsible and liable for the performance of all of said services in accordance with the terms of this Agreement and for the performance of any such third party or parties under any such contract or contracts.

2.2 In addition to the foregoing, the Maintenance Director shall provide and maintain commercial general liability insurance with broad form coverage endorsement

(including broad form property damage endorsement) insuring the Maintenance Director against Claims for personal injury, bodily injury or death, and property damage or destruction, occurring in, on or about the Common Area. Such insurance shall be written with an insurer licensed to do business in the state in which the Shopping Center is located and First Party, Albertson's, and all persons who now or hereafter own or hold portions of the Shopping Center or building space within the Shopping Center or any leasehold estate or other interest therein as their respective interests may appear (provided that the Maintenance Director is notified in writing of such interest) shall be named on the policy as additional insureds. The limits of liability of all such insurance shall be not less than \$2,000,000 for personal injury or bodily injury or death of any one person, \$2,000,000 for personal injury or bodily injury or death of more than one person in one occurrence and \$500,000 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) of not less than \$2,000,000 per occurrence. The Maintenance Director shall furnish First Party and Albertson's with certificates evidencing such insurance. The policies of such insurance shall provide that the insurance represented by such certificates shall not be cancelled, materially changed or nonrenewed without the giving of thirty (30) days' prior written notice to the holders of such insurance and the holders of such certificates.

2.3 Anything in this Article 2 to the contrary notwithstanding, the Maintenance Director shall not be responsible for the maintenance or insurance of any Service Facilities (as defined in the Declaration) or driveup or drive through customer service facilities, or Fuel Facilities (as defined in the Declaration), all of which facilities shall be maintained by the Owners thereof in good and clean condition and repair and in a quality and condition comparable to the quality and condition of the maintenance of the balance of the Common Area. In addition, the Owners of the Parcel or Parcels on which said facilities are located shall at all times (i) provide and maintain or cause to be provided and maintained commercial general liability insurance with broad form coverage endorsement (including broad form property damage endorsement) insuring all persons who now or hereafter own or hold portions of said facilities or any leasehold estate or other interest therein as their respective interests may appear against Claims for personal injury, bodily injury or death or property damage or destruction occurring in, on or about said facilities, and (ii) indemnify, defend and hold harmless the Owners and occupants of all other Parcels from and against any and all Claims (as defined in the Declaration), for injury to or death of any person or damage to or destruction of any property occurring in, on or about said facilities and arising out of the performance or nonperformance of any of the obligations of the Owners of the Parcel or Parcels on which said facilities are located set forth in this Section 2.3, unless caused by the negligent or willful act or omission of the indemnified person, its agents, contractors or employees. Said insurance shall be written with an

insurer licensed to do business in Nebraska and in the amounts set forth in Section 2.2 above. The Owners of any such Parcel or Parcels shall furnish the Maintenance Director and any other Owner or Prime Lessee with certificates 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 Agreement. So long as an Owner has a net worth, determined in accordance with generally accepted accounting principles, in excess of \$100,000,000.00, all or any part of such insurance carried by such Owner may be provided under a program of self-insurance.

2.4 The Maintenance Director agrees to indemnify, defend and hold harmless the Owners and occupants of all Parcels from and against any and all Claims for injury to or death of any person or damage to or destruction of any property occurring in, on or about the Common Area (exclusive of any Service Facilities or driveup or drive through customer service facilities or Fuel Facilities) and arising out of the performance or nonperformance of any of the obligations of the Maintenance Director set forth in this Agreement, unless caused by the negligent or willful act or omission of the indemnified person, its agents, contractors or employees.

3. Lighting.

3.1 It is agreed that the artificial lighting for the Common Area shall remain on while a majority of the businesses in the Shopping Center are open for business. If artificial lighting for a time later than the foregoing ("**After Hours Lighting**") is needed by any Owners or occupants, then such artificial lights to service such Owners or occupants shall be separately metered or otherwise measured or reasonably estimated and all expenses thereof shall be paid by such Owners or occupants to the extent appropriate. Such Owners or occupants shall pay a reduced proportion of the expense of lighting the balance of the Common Area according to the extent to which such Owners or occupants are lighting the Common Area by separately metered lights.

4. Taxes.

4.1 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.

5. Maintenance Director.

5.1 The Owners hereby appoint the Owner of Parcel 1 as Maintenance Director of the Shopping Center Common Area from and after the date Albertson's first opens its building on Parcel 2 for business.

5.2 The Owners of at least three (3) Parcels (provided that Parcel 2 is included within such group) may remove the Maintenance Director upon written notice to the Owners of the remaining Parcels in which event the Owners of a majority of the Parcels (provided that Parcel 2 is included within such majority) shall appoint another person to be the Maintenance Director.

5.3 The Maintenance Director shall have the right, upon giving ninety (90) days' prior written notice to the Owners of the Shopping Center, to resign as Maintenance Director in which event the Owners of a majority of the Parcels (provided that Parcel 2 is included in such majority) shall appoint another person to be the Maintenance Director.

6. Reimbursement of Maintenance Director.

6.1 The Maintenance Director shall contract for and pay for all of the items enumerated as maintenance and insurance expenses in Article 2 herein, pursuant to the provisions of this Article 6.

6.2 At least sixty (60) days prior to the date Albertson's first opens for business and thereafter by June 1 of each calendar year during the term of this Agreement, the Maintenance Director shall submit to each Owner, for such Owner's review and approval, a proposed annual budget for Common Area expenses ("**Budget**") covering, respectively, the First Partial Maintenance Budget Year (as hereafter defined) (or full Maintenance Budget Year if Albertson's opens for business on September 1) and each Maintenance Budget Year thereafter, together with any backup materials reasonably requested by any Owner. For purposes of this Agreement, the term "**First Partial Maintenance Budget Year**" shall mean the period running from the date Albertson's first opens its business to the following September 1. For purposes of this Agreement, the term "**Maintenance Budget Year**" shall mean the period running from the September 1 following Albertson's opening for business, and continuing through the following August 31, and each corresponding 12-month period thereafter.

6.3 The Owners agree that the following approval procedures shall apply to the Budget for each Maintenance Budget Year:

(a) If an Owner shall disapprove the Budget submitted by the Maintenance Director, such Owner shall communicate such disapproval and the specific grounds therefor in writing to the Maintenance Director. The Maintenance Director shall meet with the disapproving Owner within fifteen (15) days after the Maintenance Director's receipt of such notice of disapproval, and the parties shall each negotiate with the other in good faith to resolve any differences relating to the Budget.

(b) Upon approval by the Owners of seventy-five percent (75%) of the Building Area in the Shopping Center (which 75% must include the Consenting Owners), the Maintenance Director shall provide the Consenting Owners with written evidence that

the required approval has been received. Thereafter, the Budget shall go into effect as of the beginning of the Maintenance Budget Year for which it is proposed (or the First Partial Maintenance Budget Year, if applicable) and shall be binding during that year upon all of the Owners in the Shopping Center, subject to the provisions hereof. Notwithstanding the foregoing, no Consenting Owner shall be obligated to pay its pro rata share of a Budget until such Consenting Owner has received written evidence that the required approval has been obtained pursuant to this Section 6.3(b).

(c) If the Budget is approved, the Maintenance Director shall operate, maintain and repair the Common Area during the ensuing Maintenance Budget Year (or the First Partial Maintenance Budget Year, if applicable) in accordance with the final approved Budget and shall not incur any expense not included in the final approved Budget (except for any increased utility expenses incurred during such period, which shall be treated as set forth below) or not subject to Section 6.6 or 6.7 below, without the written permission of the Consenting Owners.

(d) Notwithstanding the foregoing, the Maintenance Director shall be entitled to exceed the Budget by up to five percent (5%) of the Budget in the aggregate (in addition to adjustments for increased utility expenses discussed in Section 6.3[e]), without prior written approval from the Consenting Owners; provided that no increase in any single line item of the Budget shall exceed five percent (5%).

(e) The Maintenance Director shall notify the Consenting Owners within thirty (30) days of receipt by the Maintenance Director of notice of an increase in utility costs for the Shopping Center, and shall provide the Consenting Owners with copies of all documentation representing such increase. Within thirty (30) days after the Maintenance Director's receipt of notice of an increase in utility costs, the Maintenance Director shall provide to all Owners in the Shopping Center a revised Budget for the remainder of the Maintenance Budget Year, reflecting changes only in utility costs. Such revised Budget shall be operative for the remainder of the Maintenance Budget Year, absent reasonable objection by any Consenting Owner.

6.4 Except with respect to the First Partial Maintenance Budget Year, in the event no Budget is approved for any Maintenance Budget Year, the Maintenance Director shall continue to operate and maintain the Common Area on the basis of the Budget for the previous Maintenance Budget Year (or, if no Budget was approved for the previous Maintenance Budget Year, then on the basis of the actual Common Area expenses [excluding one-time capital expenditures] for the previous Maintenance Budget Year). The parties agree, however, that with respect to any Maintenance Budget Year as to which no Budget has been approved (including a Maintenance Budget Year in which the Maintenance Director is operating under the Budget or

actual expenses from the previous Maintenance Budget Year), the following restrictions shall apply:

(a) The Maintenance Director shall not be entitled to reimbursement of all or any portion of any item of Common Area expense from any Owner as to which the pro rata share of such Owner exceeds \$3,500.00, without prior written approval from such Owner.

(b) Any Consenting Owner may require the Maintenance Director to submit any contract for Common Area work to be performed out to bid. Such request shall be made no more than once annually for any contract and shall be handled as follows:

At least (30) days prior to the commencement of the work requested to be bid, the Maintenance Director shall submit said Common Area maintenance work for bid to at least three (3) bidders approved in writing by such Consenting Owners, which approval shall not be unreasonably withheld or delayed. The names of the bidding contractors or companies and the amounts of their respective bids shall be furnished to the Consenting Owner(s) requesting the bid within ten (10) days after receipt thereof. The Maintenance Director shall award the contract to the low bidder unless prior written consent to award the contract to a higher bidder is first obtained by Maintenance Director from all Consenting Owners; and the Owners' pro rata shares of such item of Common Area work shall thereafter be based on the amount of said contract.

6.5 From and after the date Albertson's first opens for business, each Owner shall pay the Maintenance Director, on the first day of each calendar month, an amount equal to the Owner's monthly portion of such Owner's pro rata share of the entire Budget for the First Partial Maintenance Budget Year (i.e., if the First Partial Maintenance Budget Year has 6 months, said Owner's monthly portion would be 1/6 of said Owner's pro rata share of the entire Budget for the First Partial Maintenance Budget Year). Thereafter, each Owner shall pay the Maintenance Director on the first day of each calendar month, an amount equal to one-twelfth (1/12th) of such Owner's pro rata share of the entire Budget for the applicable Maintenance Budget Year, or if no Budget has been approved, then an amount equal to one-twelfth (1/12th) of such Owner's share, as required by Section 6.4.

6.6 If the Maintenance Director is required to incur an extraordinary cost or expense during any Maintenance Budget Year for the emergency repair or replacement of any portion of the Common Area, which expense has not been set forth in an approved Budget, each Owner shall pay to the Maintenance Director such Owner's share of such costs within thirty (30) days of receipt of the Maintenance Director's statement and reasonable backup documentation

therefor. Upon the occurrence of such emergency, Maintenance Director shall provide each Consenting Owner with the best and earliest notice feasible under the circumstances, which notice shall in no event be delayed more than forty-eight (48) hours. For purposes of this Section 6.6, an "emergency" necessitating repair or replacement shall be one which presents an imminent threat or danger of irreparable harm to person or property, as to which delay would cause further threat or damage or would further endanger person or property.

6.7 If the Maintenance Director reasonably deems it necessary to incur an extraordinary cost or expense for the repair or replacement of any portion of the Common Area, which expense has not been set forth in an approved Budget but is not on an emergency basis, the Maintenance Director shall request written approval of such expenditure from the Consenting Owners as far in advance of such repair or replacement as is reasonably possible, and such approval shall not be unreasonably withheld or delayed. If requested by any Consenting Owner, the Maintenance Director shall follow the bidding procedures set forth in Section 6.4 with regard to any repair or replacement performed under this Section 6.7.

6.8 The Maintenance Director agrees to perform its duties under this Article 6 on a nonprofit basis (except as to the management fee described below) with the objective of keeping expenses at a reasonable minimum. The Maintenance Director may charge a management fee, to include all service and administrative charges, of ten percent (10%) of each Owner's pro rata share of Common Area expenses; provided that (i) the ten percent (10%) charge shall not exceed \$350.00 for any line item in the approved Budget, without the prior written approval of the Consenting Owners; and (ii) such management fee shall not apply to amounts spent for capital expenditures to the extent any single such expenditure exceeds Five Thousand Dollars (\$5,000.00), or to utilities or insurance. The Owner of Parcel 2 shall not be required to pay any management, administrative, or service fees to the Maintenance Director, other than the 10% service fee discussed in this Section 6.8. The Maintenance Director may charge such additional and reasonable service fees as the Maintenance Director desires, provided that such additional fees shall not apply to Parcel 2. The Common Area expenses shall not include any costs incurred by Maintenance Director for the services of a manager or management company or for office overhead or compensation of its employees, except to the extent covered by the management fee provided for in this Section 6.8.

6.9 Prior to the commencement of each Maintenance Budget Year (and the First Partial Maintenance Budget Year), the Maintenance Director shall, upon the written request of any Consenting Owner, put all contracts for Common Area maintenance work out to bid, in accordance with the provisions of Section 6.4(b); however, for purposes hereof, the Maintenance Director shall submit such work for bids at least thirty (30) days prior to the date the Maintenance Director submits the proposed Budget to the Owners under Section 6.2. The

Maintenance Director shall not enter into a contract which is binding for a period of longer than one (1) year in duration, for any aspect of Common Area maintenance.

6.10 The limit of \$3,500.00 set forth in Section 6.4(a), and the \$350.00 limit and the \$5,000.00 limit set forth in Section 6.8, shall each be adjusted upward only, on every fifth anniversary date of this Agreement, by 10% of the then-current amount of each such limit.

7. Billing for Expenses.

7.1 Within ninety (90) days following the end of each Maintenance Budget Year, the Maintenance Director shall furnish each Owner a statement covering the Common Area expenses for the Maintenance Budget Year just expired, showing the actual Common Area expenses for the Maintenance Budget Year, the amount of the Owner's share of Common Area expenses for that Maintenance Budget Year, and the monthly payments made by such Owner during that Maintenance Budget Year for said expenses. The Maintenance Director shall deliver to any Owner copies of such additional documents and records concerning Common Area expenses as are reasonably requested to verify the accuracy and content of the statements therefor. If an Owner's share of the Common Area expenses for the Maintenance Budget Year in question exceeds such Owner's prior payments, the Owner shall pay the Maintenance Director the deficiency within sixty (60) days after receipt of such annual statement. If the Owner's payments for the Maintenance Budget Year exceed the Owner's actual share of Common Area expenses, such Owner, at its election, may either offset the excess against Common Area expenses later to come due to the Maintenance Director from such Owner or request reimbursement from the Maintenance Director, which reimbursement shall then be provided without delay.

7.2 The Maintenance Director shall not be entitled to reimbursement from any Owner (or its tenants or agents) for any item of Common Area maintenance or insurance expense (including the management charge described in Section 6.8 above) for which a bill is not submitted to said Owner (or its tenants or agents, as it may direct) within one hundred twenty (120) days after the end of the Maintenance Budget Year in which said expense is incurred.

7.3 The proportionate share of the total Common Area expenses (including those for maintenance, repair, and upkeep of Outlot 1, which is to be shared amongst the Owners of Parcels 1 through 6 as set forth below) to be borne by each Owner of Parcel 1, 2, 3, 4, 5, and 6, respectively, for any year, shall be that percentage set forth below:

	<u>Land Area (in square feet)</u>	<u>Percent</u>
Parcel 1	33,164	8.097
Parcel 2	263,832	64.412
Parcel 3	34,769	8.489
Parcel 4	30,178	7.368
Parcel 5	17,762	4.336
Parcel 6	29,894	7.298
Outlot 1	0	0
<hr/>		
TOTAL:	409,599	100.00

The parties acknowledge that, while fee title to Outlot 1 is held by Albertson's as a matter of convenience, in fact the existence of Outlot 1 is a condition to the governmental approval of the Shopping Center site plan and of the development of the Shopping Center. The parties intent is that the Owner of Outlot 1 shall not be required to bear the cost of taxes, insurance, assessments, utilities, and Common Area maintenance for Outlot 1. Rather, all such expenses allocable to Outlot 1 shall be divided amongst the Owners of Parcels 1 through 6 in accordance with the chart above, in recognition of the benefit and necessity of Outlot 1 to the entire Shopping Center.

7.4 Any Consenting Owner may, upon not less than ten (10) days' prior written notice to the Maintenance Director, inspect the Maintenance Director's records for all Common Area maintenance and insurance expenses incurred during the preceding Maintenance Budget Year at the Maintenance Director's General Offices or at such other location reasonably designated by the Maintenance Director at any time during reasonable business hours within one (1) year after the end of said Maintenance Budget Year. If said inspection reveals an overpayment of Common Area maintenance and insurance expenses (including the ten percent [10%] service charge described in Article 6 above), the Maintenance Director shall reimburse the Owner of each Parcel (or its respective tenants or agents, as it may direct) its proportionate share of any such overpayment within thirty (30) days after receipt of notice of determination, and of the amount, of such overpayment. If said inspection reveals an underpayment of Common Area maintenance and insurance expenses (including the ten percent [10%] service charge described in Article 6 above but excluding all expenses for which a statement was not timely submitted pursuant to Sections 7.1 and 7.2 above), the Owner of each Parcel shall reimburse the Maintenance Director its proportionate share of any such underpayment within thirty (30) days after receipt of proper billing in accordance with Section 7.1. If said inspection reveals that the Maintenance Director misstated Common Area

maintenance and insurance expenses by more than five percent (5%), the Maintenance Director shall reimburse the person making such inspection for all costs reasonably incurred in making such inspection within thirty (30) days after receipt of notice of determination, and of the amount, of any such misstatement. The Maintenance Director's expenses for any Maintenance Budget Year shall be deemed correct if a Consenting Owner does not give the Maintenance Director written notice of any such overpayment or underpayment within the one (1) year period provided.

8. Effect of Sale by Owner.

8.1 In the event an Owner sells all or any portion of its interest in its Parcel, such Owner shall thereupon be released and discharged from any and all obligations as Owner in connection with the property sold by it arising under this Agreement after the sale and conveyance of title but shall remain liable for all obligations arising under this Agreement 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 Agreement with respect to such Parcel or portion thereof after the date of sale and conveyance of title.

9. Default.

9.1 In the event any Owner fails or refuses to pay when due its share of any bill for the Common Area maintenance and insurance expenses described above (including the ten percent [10%] service charge described in Article 6 above), which failure continues for a period of ten (10) days after receipt of written notice thereof, such failure shall constitute a default and legal action may thereafter be instituted against the defaulting Owner by the Maintenance Director or other person paying the maintenance or insurance expenses (including the ten percent [10%] service charge described in Article 6 above) of the defaulting Owner ("**Curing Party**") for reimbursement plus interest from and after the date said bill was due and payable to and including the date said bill is paid at a rate equal to the lesser of (i) the highest rate allowed by law, and (ii) the rate two percent (2%) above the reference rate of interest charged from time to time to corporate borrowers of the highest credit standard by Bank of America (or its successor) (the lesser rate being hereinafter referred to as the "**Default Rate**"). Furthermore, the Curing Party shall have a lien on the Parcel of the defaulting Owner for the amount of said expenses (including the ten percent [10%] service charge described in Article 6 above) plus accrued interest as set forth above; provided, however, that if there be a bona fide dispute as to the existence of such default or of the amount due and all undisputed amounts are paid, there shall be no right to place a lien on such Owner's Parcel until such dispute is settled by final court decree or mutual agreement.

9.2 In the event an Owner fails to pay when due all taxes and assessments described in Article 4 above, which failure continues for a period of ten (10) days after receipt of written notice thereof, such failure shall constitute a default and any other Owner or Prime Lessee ("**Curing Owner**") may thereafter pay such taxes if such taxes are delinquent and the owing Owner has not commenced and is not duly prosecuting any contest of such taxes. The Curing Owner shall then bill the defaulting Owner for the expenses incurred. The defaulting Owner shall have fifteen (15) days within which to pay the bill. If the defaulting Owner does not so pay, the Curing Owner shall have a lien on the Parcel of the defaulting Owner for the amount of the bill, which amount shall bear interest at the Default Rate from the date of expiration of said fifteen (15) day period until paid; provided, however, that if there be a bona fide dispute as to the existence of such default or of the amount due and all undisputed amounts are paid, there shall be no right to place a lien on such Owner's Parcel until such dispute is settled by final court decree or mutual agreement.

9.3 In the event any Owner fails to perform any other provision of this Agreement, which failure continues for a period of thirty (30) days after receipt of written notice specifying the particulars of such failure, such failure shall constitute a default and any other Owner or Prime Lessee may thereafter institute legal action against the defaulting Owner for specific performance, declaratory or injunctive relief, monetary damages or any other remedy provided by law; provided, however, that the defaulting Owner shall not be deemed to be in default if such failure to perform cannot be rectified within said thirty (30) day period and such Owner is diligently proceeding to rectify the particulars of such failure.

9.4 In the event the Maintenance Director fails to perform any of the provisions of this Agreement, which failure continues for a period of thirty (30) days (ten [10] days in the event of failure to pay money) after receipt of written notice from any Owner or Prime Lessee specifying the particulars of such failure, such failure shall constitute a default and any Owner or Prime Lessee may thereafter institute legal action against the Maintenance Director for specific performance, declaratory or injunctive relief, monetary damages or any other remedy provided by law and/or may perform the obligations of the Maintenance Director specified in said notice of default and offset the cost thereof from amounts due the Maintenance Director; provided, however, that the Maintenance Director shall not be deemed to be in default if such failure to perform (excluding the payment of money) cannot be rectified within said thirty (30) day period and the Maintenance Director is diligently proceeding to rectify the particulars of such failure.

9.5 In addition to the foregoing, in the event any person initiates or defends any legal action or proceeding to enforce or interpret this Agreement, 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 fees (including its reasonable costs and attorney's fees on any appeal) as determined by the court in the same or a separate proceeding.

9.6 The failure of a person to insist upon strict performance of any of the terms, covenants, conditions or agreements 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 terms, covenants, conditions or agreements contained herein by the same or any other person.

9.7 In addition to the remedies set forth in this Agreement, each person entitled to enforce this Agreement shall have all other remedies provided by law to the same extent as if fully set forth herein word for word. No remedy herein conferred upon, or reserved to any person shall exclude any other remedy herein or by law provided, but each shall be cumulative.

10. Lien for Expenses or Taxes.

10.1 The lien provided for in Article 9 above shall only be effective when filed for record by the Curing Owner or Curing Party as a claim of lien against the defaulting Owner in the office of the recorder of the county in which the Shopping Center is located, signed and verified, which shall contain at least:

- (a) An itemized statement of all amounts due and payable pursuant hereto;
- (b) A description sufficient for identification of that portion of the real property of the defaulting Owner which is the subject of the lien;
- (c) The name of the Owner or reputed Owner of the property which is the subject of the lien; and
- (d) The name and address of the Curing Owner or Curing Party.

10.2 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 person curing the default of the defaulting Owner and may be enforced and foreclosed in a suit or action brought in any court of competent jurisdiction.

11. Right to Maintain Parcel Separately.

11.1 Any Owner may, at any time and from time to time, upon at least sixty (60) days' prior written notice to the Maintenance Director and the other Owners, elect to assume the obligations of the Maintenance Director to maintain, repair, replace and insure ("**Self Maintain**") the portion of the Common Area on the Parcel of such Owner (the "**Electing Owner**"), except for the cost of the following Common Area maintenance work ("**Continuing Work**"), which shall continue to be proportionately paid for by each Owner of Parcel 1, 2, 3, 4,

5, and 6 (or their respective tenants or agents, as such Owner may direct) pursuant to the formula in Article 7: Resurfacing of the parking area, lighting, all maintenance on Outlot 1, and other costs which cannot be practicably segregated or allocated between the Parcels. In the event of any such assumption by the Electing Owner, the Electing Owner agrees to Self Maintain its portion of the Common Area at its sole cost and expense and in a manner and at a level of quality at least comparable to that of the balance of the Common Area. An Electing Owner may also elect to terminate its obligation to Self Maintain its portion of the Common Area by giving at least sixty (60) days' prior written notice to the Maintenance Director, in which event the Maintenance Director shall resume its duties with respect to said Parcel, and the Electing Owner shall then pay for its pro rata share of all Common Area maintenance and insurance costs (including the ten percent [10%] service charge described in Article 6 above) thereafter incurred by the Maintenance Director in accordance with the formula in Article 7. Anything in the preceding sentence to the contrary notwithstanding, the Electing Owner electing to terminate its obligation to Self Maintain its portion of the Common Area shall return said Common Area to the Maintenance Director in the same quality and condition as the balance of the Common Area, any failure of which shall be corrected at the sole cost and expense of said Electing Owner.

11.2 Any Electing Owner shall indemnify, defend and hold harmless the Maintenance Director and the Owners and occupants of all other Parcels from and against any and all Claims for injury to or death of any person or damage to or destruction of any property occurring on the Electing Owner's Parcel and arising out of the performance or nonperformance of any of the obligations of the Electing Owner as to said Parcel set forth in this Article 11, unless caused by the negligent or willful act or omission of the indemnified person, its agents, contractors or employees.

12. Responsibility if No Maintenance Director.

12.1 In the event there should at any time cease to be a Maintenance Director, each Owner shall be responsible to Self-Maintain its own Parcel according to the standards herein enumerated, and shall contribute to the Continuing Work in the proportion set forth in Article 7. If any Owner defaults in the performance of such obligations, any other Owner may cause the performance of the obligations of the defaulting Owner and bill the defaulting Owner for the expenses incurred. In such event, the provisions and remedies of Articles 9 and 10 shall apply.

12.2 At such times as there is no Maintenance Director, the Consenting Owners (or any of them) may, upon at least thirty (30) days written notice to the other Consenting Owners, contract for the performance of the Continuing Work as reasonably necessary and appropriate. The Consenting Owner who enters into a contract for performance of any such work shall use its good faith, reasonable efforts to ensure that the work is done in accordance

with standards in the industry, and shall have all rights of contribution and collection provided for the Maintenance Director under Article 7 hereof, and all lien rights allowed to a Curing Party under Article 9.

12.3 If there should at any time cease to be a Maintenance Director, each Owner agrees to indemnify, defend and hold harmless the Owners and occupants of all other Parcels from and against any and all Claims for injury to or death of any person or damage to or destruction of any property occurring on the indemnifying Owner's Parcel and arising out of the performance or nonperformance of any of the obligations of the Owner of said Parcel set forth in Section 12.1, unless caused by the negligent or willful act or omission of the indemnified person, its agents, contractors or employees.

13. General Provisions.

13.1 This Agreement 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 that the rights and obligations of the Consenting Owners shall be held by those persons defined as the Consenting Owners under Section 1.2 of the Declaration (defined in Section 1.2 of this Agreement).

13.2 The term of this Agreement shall be for sixty-five (65) years from the date hereof; provided, however, that this Agreement shall terminate automatically upon the expiration or earlier termination of the Declaration.

13.3 Anything in this Agreement to the contrary notwithstanding, no breach of this Agreement shall defeat or render invalid the lien of any mortgage or deed of trust made in good faith for value, but this Agreement shall be binding upon, and be effective against, any Owner whose title is acquired by foreclosure, trustee's sale or otherwise.

13.4 Each term, covenant, condition and agreement contained herein respecting any 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.

13.5 This Agreement 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 ninety percent (90%) of the total square footage of Building 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, duly recorded in the office of the recorder of the county in which the Shopping Center is located. No modification or termination of this Agreement shall affect the rights of any Lienholder unless the Lienholder consents in writing to the modification or termination.

13.6 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 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 Building Area located on said Parcel shall be disregarded for the purpose of computing the percentage requirement set forth in Section 13.5. Except as otherwise set forth in Section 13.5, 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 Agreement to the contrary notwithstanding.

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

First Party: Benson Park Plaza, L.L.C.
c/o Seldin Company
Montclair Professional Center
13057 West Center Rd.
Omaha, NE 68144-3790
Attention: Randy Lenhoff

copy to: Newfoundland Investment Company, LLC
c/o Farallon Development Services
620 Davis Street
San Francisco, CA 94111
Attention: Jay Pauly, President

Albertson's: Albertson's, Inc.
250 Parkcenter Boulevard
P.O. Box 20
Boise, ID 83726
Attention: Legal Department

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 Agreement shall be deemed given upon receipt.

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

14. Sale & Sale-leaseback Purchaser.

14.1 Notwithstanding anything to the contrary contained in this Agreement, it is expressly agreed that in the event an Owner sells its Parcel to an unaffiliated third party and thereafter enters into a net lease for such Parcel with such third party or its lessee or sublessee (hereinafter referred to collectively as the "**Prime Lessor**"), so long as said Owner is in possession of the property as a Prime Lessee 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 Agreement and the Prime Lessor shall be relieved of any obligation for the performance of or liability for any of the terms, covenants, conditions or agreements set forth herein relating to either the Prime Lessee or its Parcel.

15. Severability.

15.1 If any term or provision of this Agreement or the application of it to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Agreement 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 Agreement shall be valid and shall be enforced to the extent permitted by law.

16. Not a Partnership.

16.1 The provisions of this Agreement 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.

17. Captions and Headings.

17.1 The captions and headings in this Agreement 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.

18. Entire Agreement.

18.1 This Agreement 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 Agreement shall be construed as a whole and not strictly for or against any party.

19. Construction.

19.1 In construing the provisions of this Agreement 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.

20. Joint and Several Obligations.

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

21. Recordation.

21.1 This Agreement shall be recorded in the office of the recorder of the county in which the Shopping Center is located.

22. Applicable Law.


22.1 This Agreement shall be governed and construed in accordance with the laws of the State of Nebraska. EXECUTED as of the day and year first above written.

ALBERTSON'S:

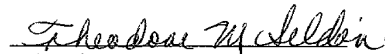
FIRST PARTY:

Albertson's, Inc.,
a Delaware corporation

Benson Park Plaza, L.L.C., a Nebraska
limited liability company

BY: 
C. Lee Mumford
Vice President, Real Estate Law

BY: Northwood Properties, Inc.,
a Nebraska corporation

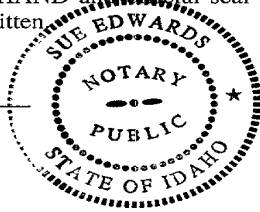
By: 
Theodore M. Seldin, President

STATE OF IDAHO)
) ss.
County of Ada)

On this 3th day of June, 2000, before me, the undersigned, a Notary Public in and for said State, personally appeared **C Lee Mumford**, to me known to be the Vice President, Real Estate Law of **Albertson's, Inc.**, the corporation that executed the foregoing instrument, and acknowledged to me that the said instrument is the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute the said instrument.

WITNESS MY HAND and official seal hereto affixed the day, month and year in this certificate first above written

My commission expires:
10/15/05



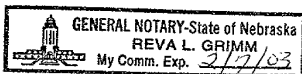
Sue Edwards
Notary Public in and for the
State of Idaho.
Residing at Boise, Idaho.

STATE OF NEBRASKA)
) ss.
County of Douglas)

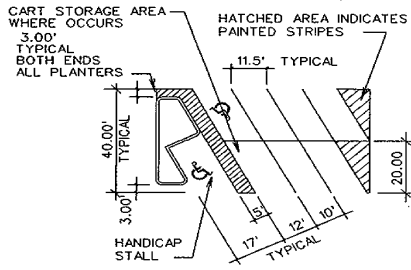
On this 14th day of June, 2000, before me, the undersigned, a Notary Public in and for said State, personally appeared **Theodore M. Seldin**, to me known to be the President of **Northwood Properties, Inc.**, such corporation being the Manager of **Benson Park Plaza, L.L.C.**, the limited liability company that executed the foregoing instrument, and acknowledged to me that the said instrument is the free and voluntary act and deed of said limited liability company, for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute the said instrument on behalf of said limited liability company.

WITNESS MY HAND and official seal hereto affixed the day, month and year in this certificate first above written.

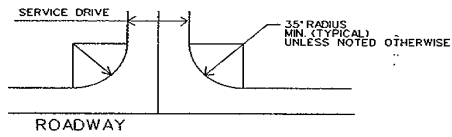
My commission expires:
February 7, 2003



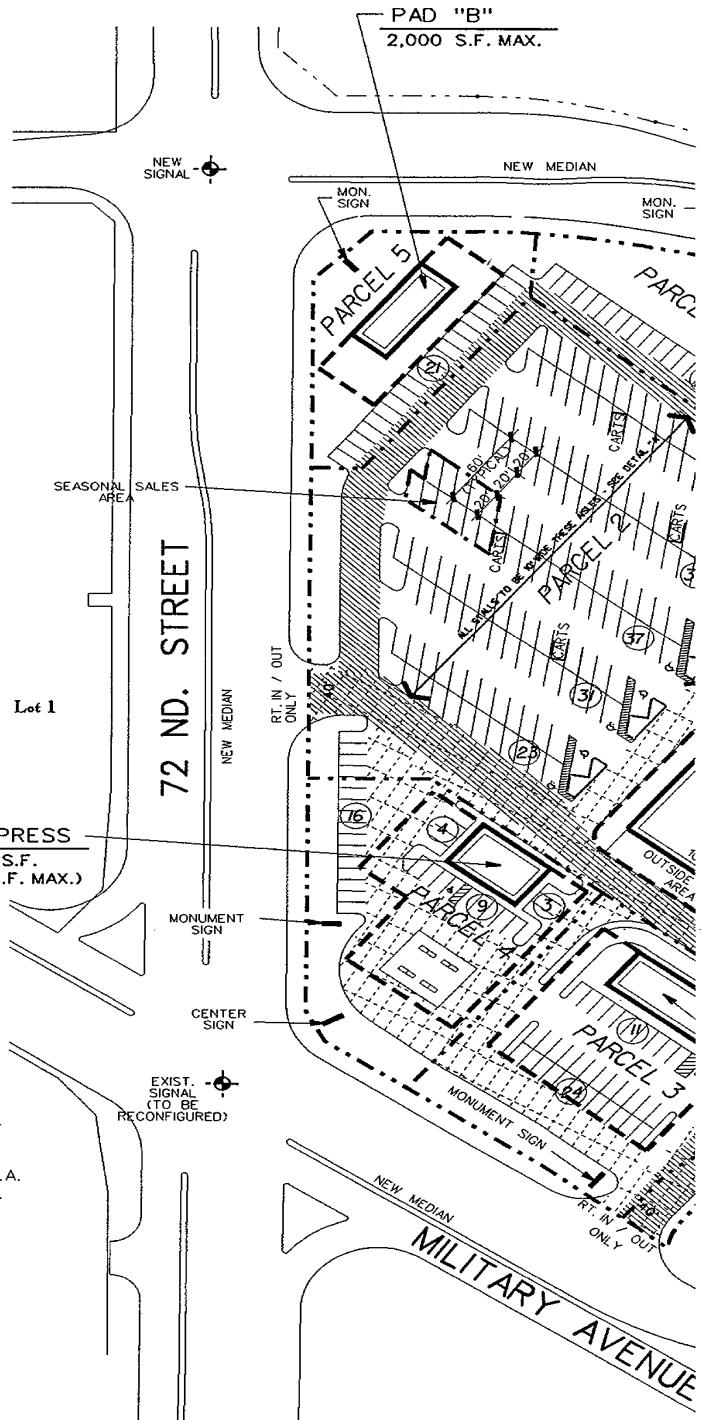
Reva L. Grimm
Notary Public in and for the
State of Nebraska
Residing at Omaha, Nebraska



A PARKING DETAIL
1"=50'-0"



B CURB CUT DETAIL
1"=100'-0"



GENERAL NOTES

NO TRUCK WELLS, NATURAL DOCK ONLY

PARKING REQUIREMENTS:

ALBERTSONS REQ'T : 1/200 S.F. OF G.B.A.
CITY REQUIREMENT: 1/250 S.F. OF G.B.A.

BUILDING SETBACK REQUIREMENTS:

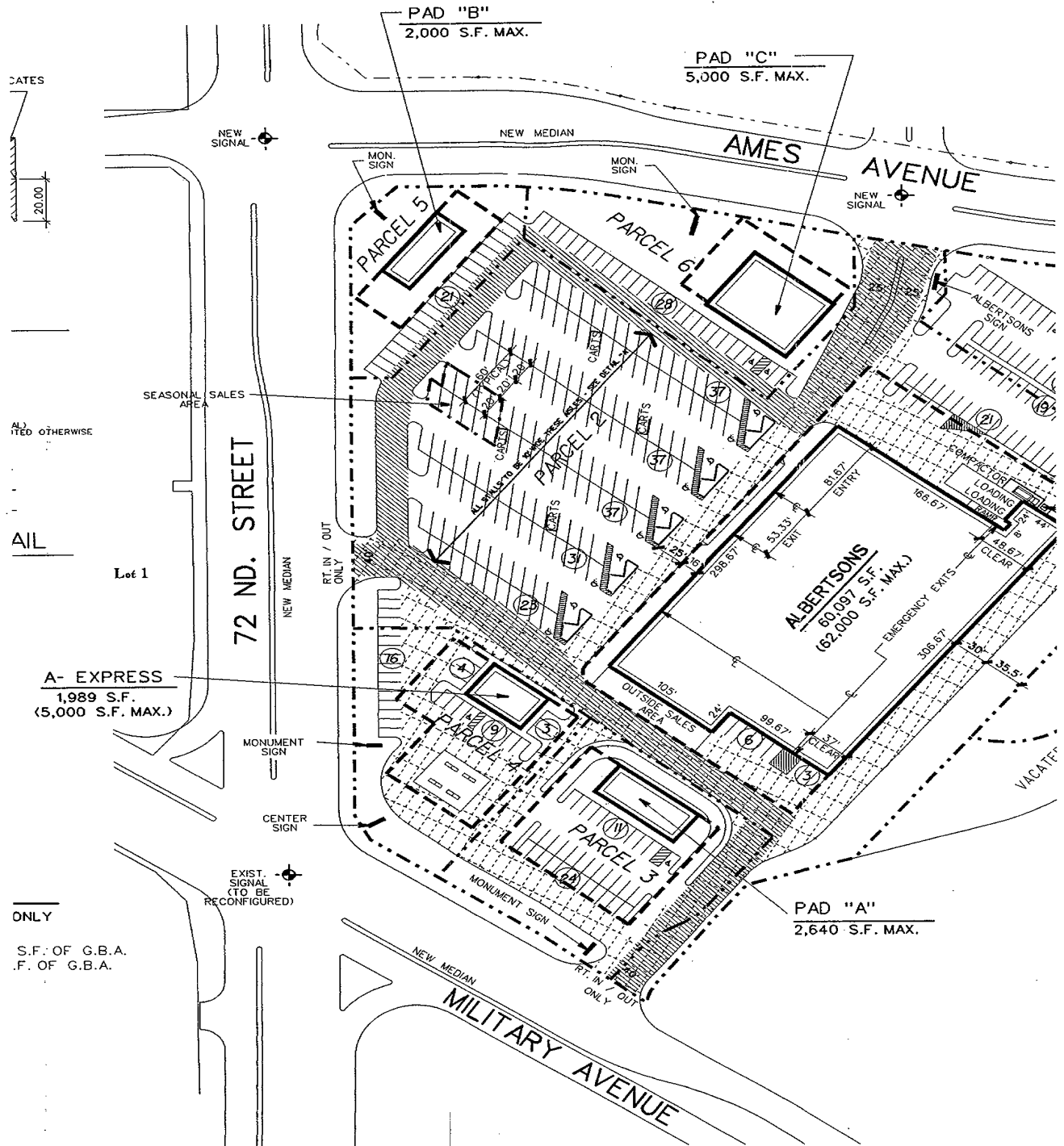
PER CITY REVIEW.

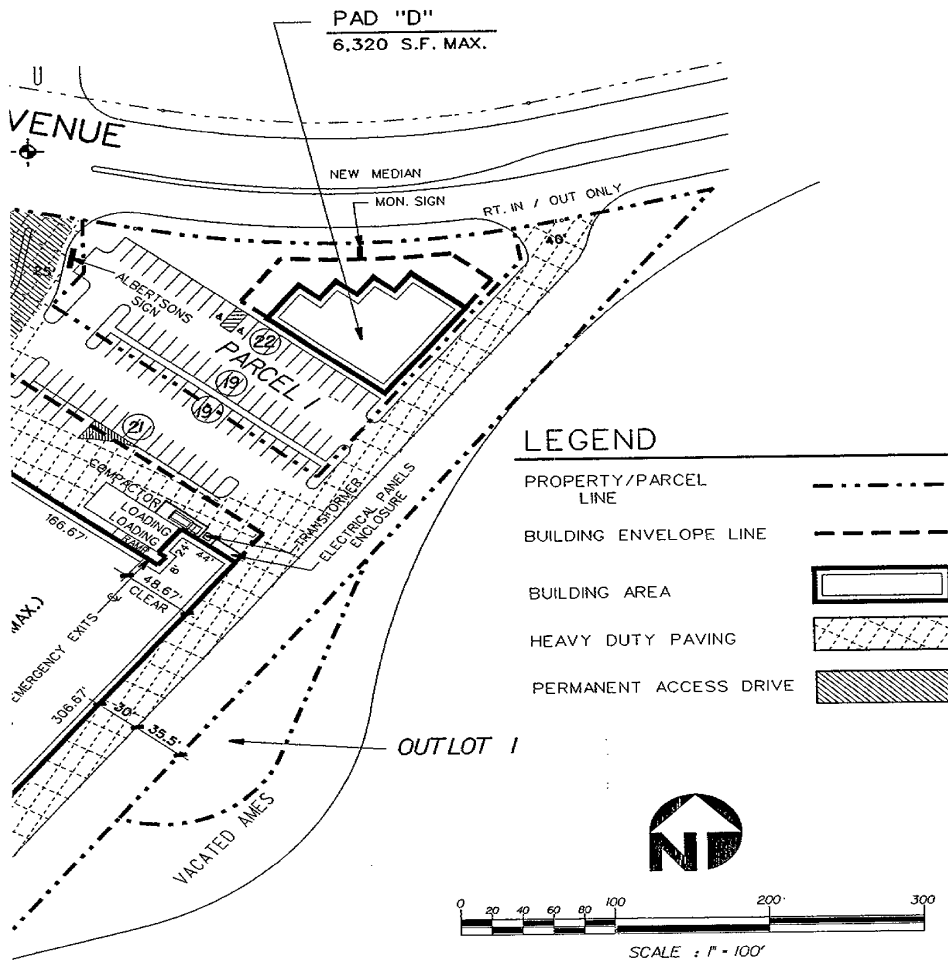
LANDSCAPE REQUIREMENTS:

PER CITY REVIEW.

ZONING REQUIREMENTS:

EXISTING - COMMERCIAL
REQUIRED - COMMERCIAL






R.K.B.
C.P.B.

R.K.B.
C.P.B.

RC

RC
RW

REVISIONS	
3-27-'00	DJL CHANGED TO EXHIBIT 'A'
4-5-2000	RW ADD AL'BTS. BLDG. ENVEL. REM. EX'PN LN., ADD MAX. S.F., ADD OUTLOT 1, REV. SITE AREA.
4-24-'2000	RW REV. AL'BTS. DOCK, PROTO S.F., G.B.A. AND PARKING.
5-9-2000	RW ADD PARCEL 1,5 & 6 MONUMENT SIGNS.
5-9-2000	RW REV. PERM. ACCESS DR., SHIFT AL'BTS. FORWARD 5' TO CLEAR EXIST. REAR EASEMENT.



Albertsons
DESIGN & CONSTRUCTION
220 PARKCENTER BLVD.
BOISE, IDAHO 83726
(208)395-6200

PROJECT

N.W.C.
72 ND. STREET
&
AMES AVE.

OMAHA,
NEBRASKA

STORE NO.
22CY

DRAWN RW	CHECKED TFW
DATE 3-3-2000	

SHEET TITLE
EXHIBIT 'A'
SITE PLAN

SHEET
1
OF 1
22cy.dgn

MAX.

EXHIBIT 'A' SITE PLAN

TOTAL GROSS BUILDING AREA	✕81,057	S.F.
TOTAL CARPARKS REQUIRED	405 (1/200)	324 (1/250)
TOTAL CARPARKS PROVIDED	371 (-34)	(+47)
TOTAL SITE AREA	418,330 S.F.	(9.60 AC.)

✕ DOES NOT INCLUDE ALBERTSONS MAX. BUILDING AREA

APPROVED BY:	Z.O.C.	DATE:	3-22-2000
CHAIRMAN	SIGNED	3-24-'00	
VICE CHAIRMAN	SIGNED	3-24-'00	
EXEC. V.P./ RETAIL OPS.	SIGNED	4-11-'00	
REGIONAL PRES.	SIGNED	5-11-'00	
SR. V.P./R.E.	SIGNED	3-23-'00	
GROUP V.P./ARCH. & ENG.	SIGNED	3-23-'00	

#22CY-- 72nd & Ames
Omaha, NE
22cy-b-cama7 06/09/00

**SCHEDULE I
TO
COMMON AREA MAINTENANCE AGREEMENT**

**Legal Descriptions of Parcels in Shopping Center
(comprised of Parcels 1, 2, 3, 4, 5, and 6, and Outlot 1).**

As used herein, the word "Plat" shall refer to **Benson Park Plaza**, a subdivision, as surveyed, platted, and recorded in Douglas County, Nebraska.

- PARCEL 1:** Lot 1 of the Plat.
- PARCEL 2:** Lot 2 of the Plat.
- PARCEL 3:** Lot 3 of the Plat.
- PARCEL 4:** Lot 4 of the Plat.
- PARCEL 5:** Lot 5 of the Plat.
- PARCEL 6:** Lot 6 of the Plat.
- OUTLOT 1:** Outlot 1 of the Plat.