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G.I. ABSTRACT

**DECLARATION OF RESTRICTIONS  
AND  
GRANT OF EASEMENTS**

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**DECLARATION OF RESTRICTIONS  
AND GRANT OF EASEMENTS**

THIS DECLARATION OF RESTRICTIONS AND GRANT OF EASEMENTS ("Declaration") is entered into on March 11, 1999, 1999, between **Robert M. Allen Family Limited Partnership**, a Nebraska limited partnership ("Allen"), and **Albertson's, Inc.**, a Delaware corporation ("Albertson's").

**1. PRELIMINARY**

**1.1 Purpose.** The parties plan to develop the Shopping Center (as defined in Section 1.2[bb]) as an integrated complex primarily featuring retail sales, with associated restaurants, business and medical services, all similar to and consistent with uses which are generally found in quality shopping centers in the same geographical area as the Shopping Center. Therefore, for the mutual benefit of all real property in the Shopping Center, the parties hereby establish the Restrictions (as defined in Section 1.2[y]).

**1.2 Definitions.** The following terms shall have the definitions ascribed to them below.

(a) **"Allen Drive"**: The publicly-dedicated road shown as "Allen Drive" on Exhibit "A," attached hereto and made a part hereof, which road runs on a curved line from north (at 13<sup>th</sup> Street) to south (at Faidley Avenue).

(b) **"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. Albertson's current address is 250 Parkcenter Boulevard, P.O. Box 20, Boise, Idaho 83726.

(c) **"Albertson's Lease"**: That certain Shopping Center Ground Lease dated of even date herewith, between Albertson's and Allen (as said lease may be amended and extended from time to time), for Albertson's leasing of Parcel 2, a Memorandum of such Shopping Center Ground Lease being recorded immediately prior to this Declaration.

(d) **"Allen"**: Robert M. Allen Family Limited Partnership, a Nebraska limited partnership, together with any corporation or other entity succeeding thereto by consolidation, merger or acquisition of its assets substantially as an entirety, and whose current address is c/o Robert M. Allen, 1115 West Second Street, P.O. Box 987, Hastings, NE 68902-0987.

(e) **"Building Area"**: All of those areas on each Parcel shown as Building Area on Exhibit "A," together with those portions of the Expansion Area or Building Envelopes which are from time to time covered by a building or other commercial structure. The area shown on Parcel 2 on Exhibit "A" as "Indoor Seasonal Sales Area" shall be considered Building

Area available to the Owner of Parcel 2 to construct a shelter or enclosure which is architecturally compatible with the Tenant's Building for purposes of conducting seasonal sales only, but no such structure shall be deemed a "building" for purposes of calculating the pro rata share of Parcel 2 for any purpose, or applying the Restrictions on Building Area square footage set forth in this Declaration.

(f) **"Building Envelope(s)":** All those area(s) on each Parcel within the "Building Envelope Line(s)," as shown on Exhibit "A."

(g) **"CAMA":** That certain Common Area Maintenance Agreement between the parties hereto which encumbers the Shopping Center and is recorded concurrently herewith.

(h) **"Common Area":** All of those areas in the Shopping Center 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 the same, shall be deemed to be a part of the building to which they are attached and not a part of the Common Area.

(i) **"Consenting Owners":**

(A) As to Parcels 1, 2, 3, 4, and 5, the Consenting Owners shall be the Owners of Parcels 2 through 5, and Allen.

(B) As to Parcels 14 through 29, the Consenting Owners shall be the Owner of Parcel 2 and Allen; provided that at such time as Allen is no longer a Consenting Owner pursuant to the provisions of Section 1.1(i)(C) below, the Consenting Owners shall be the Owners of Parcels 1 and 2.

(C) Notwithstanding the foregoing, Allen shall be deemed a Consenting Owner only for so long as Allen is the continuous Owner of Parcels which together comprise at least 15,000 square feet of Building Area.

(D) For purposes of determining who is the Owner of Parcel 2 under this definition of "Consenting Owners," the parties agree that Albertson's shall be deemed to hold the rights of the Owner of Parcel 2, including the status and rights of Consenting Owner, for so long as the Albertson's Lease is in effect (including extensions granted by its terms or agreed to by the parties to the Albertson's Lease from time to time).

(j) **"Development Agreement":** That certain Development Agreement between the parties hereto which encumbers the Shopping Center and is recorded concurrently herewith as an attachment to the Memorandum of the Albertson's Lease.

(k) **"Environmental Laws":** The Comprehensive Environmental Response, Compensation and Liability Act of 1980, the Toxic Substances Control Act, the Clean Water

Act, the Resource Conservation and Recovery Act and any other similar federal, state or local law, rule or regulation respecting Hazardous Materials, together with all rules and regulations promulgated thereunder and all present or future amendments thereto.

(l) **"Expansion Area"**: All of those areas on Parcel 2 located within the **"Expansion Limit Line"** shown on Exhibit "A."

(m) **"Floor Area"**: The total number of square feet in a building, whether or not actually occupied (including basement, subterranean, balcony and mezzanine space), 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 nonstructural components.

(n) **"General Common Area Improvements"**: The traffic directional arrow signs and other signs permitted under Article 4, paving, bumper guards and curbs, landscape planters and other landscaped areas, parking lot lighting, perimeter walls and fences (as allowed under this Declaration), utility pads and equipment, sidewalks, and walkways.

(o) **"Ground Floor Area"**: The total number of square feet on the ground floor of a building, whether or not actually occupied (excluding basement, subterranean, balcony and mezzanine space), 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 nonstructural components.

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

(q) **"Lienholder"**: Any mortgagee under a mortgage, or a trustee or beneficiary under a deed of trust, constituting a lien on any Parcel. A Lienholder shall not be deemed to be an Owner for purposes of this Declaration until such time as said Lienholder acquires fee simple title to its Parcel(s) by foreclosure, trustee's sale or otherwise.

(r) **"National Chain Store"**: A company or operator that will operate a retail store, business office or other commercial operation in the Shopping Center, which operation will have the standard prototypical building and will operate under the same trade name as is used by said company in at least ten (10) other separate stores or offices within Nebraska or at least thirty (30) stores or offices nationally.

(s) **"Owner"**: The record holder of fee simple title to a Parcel (including its heirs, personal representatives, successors and assigns); provided that anything elsewhere in this Declaration to the contrary notwithstanding, so long as the Albertson's Lease is of any force or effect, including amendments thereto and extensions pursuant to its terms or by agreement

between Allen and Albertson's, Albertson's (or their successors and assigns under the Albertson's Lease) shall be deemed to be the sole Owner of Parcel 2 for all purposes, irrespective of the person in whom fee simple title to Parcel 2 may be vested from time to time, and Albertson's shall continue to be deemed said Owner for all such purposes until Albertson's (or its successors or assigns) no longer holds any interest of any kind (leasehold, fee simple, or otherwise) in Parcel 2.

(t) **"Parcel"**: Any of Parcels 1 through 5 and 14 through 29, as shown on Exhibit "A" and more particularly described in **Schedule I** attached hereto and made a part hereof. The Parcels are located at the southeast corner of the intersection of 13<sup>th</sup> Street and Highway 281 in the City of Grand Island, County of Hall, State of Nebraska. Neither Allen Drive, nor the areas shown on Exhibit "A" as "Detention Area," are within this definition of "Parcel."

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

(v) **"Phase"**: Phase 1 or 2. The area shown on Exhibit "A" as "Phase 3" is not included within this definition of "Phase" and is not part of the Shopping Center encumbered by this Declaration.

(w) **"Phase 1"**: The areas shown as "Phase 1" on Exhibit "A," including the following: (a) Parcels 1 and 2; (b) all of Allen Drive; and (c) the drive aisles running north-south along (i) the common boundary line between Parcels 24 (on the west) and 25 and 26 (on the east), and (ii) the common boundary lines between Parcels 20 and 21 (on the west) and Parcels 22 and 23 (on the east).

(x) **"Phase 2"**: The areas shown as "Phase 2" on Exhibit "A," including Parcels 3, 4, 5, and 14 through 29.

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

(z) **"Self-Parked"**: Meeting or exceeding the number of parking stalls that would be necessary to satisfy the following parking ratios:

(i) On all Parcels, having a minimum of five (5) parking stalls per 1,000 square feet of Floor Area used as retail (not including restaurant or office) space;

(ii) On all Parcels, having ten (10) parking stalls per 1,000 square feet of Floor Area used as restaurant space;

(iii) On Parcels 14 through 21, and 27 through 29, having five (5) parking stalls per 1,000 square feet of Floor Area used as office space;

(iv) On Parcels 22 through 26, having ten (10) parking stalls per 1,000 square feet of Floor Area used as office space; and

(v) On all Parcels, meeting all applicable laws, rules or regulations (without a variance) governing or relating to parking accommodations.

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

(bb) "**Shopping Center**": That certain real property located at the southeast corner of the intersection of 13<sup>th</sup> Street and Highway 281 in the City of Grand Island, Hall County, Nebraska, comprised of Parcels 1 through 5 and 14 through 29, collectively, as shown on Exhibit "A" and more particularly described in Schedule I attached hereto. Neither Allen Drive, nor the areas shown on Exhibit "A" as Parcels 6 through 13, nor the areas shown on Exhibit "A" as "Detention Area," are within this definition of Shopping Center.

**1.3 Parties.** Allen is the Owner of Parcels 1 through 5 and 14 through 29. Albertson's is the lessee of Parcel 2 under the Albertson's Lease.

## **2. BUILDING AND COMMON AREA DEVELOPMENT**

### **2.1 Building Location.**

(a) **Building Areas.** All buildings and other structures (except those permitted in the Common Area pursuant to Section 2.2 below) shall be placed or constructed upon the Parcels only in the Building Areas; provided, however, that canopies, eaves and roof overhangs (including columns or posts supporting the 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. Buildings may be located (or relocated) anywhere within a Building Envelope, provided that the total Floor Area of all buildings constructed within a Building Envelope shall not exceed the square footage assigned to such Building Envelope as shown on Exhibit "A." Parcels 14 through 29 shall at all times be Self-Parked.

(b) **Construction Within Building Envelope.** Prior to the construction of any building or Common Area improvements within a Building Envelope, the Owner of the applicable Parcel shall obtain from the Consenting Owners prior written approval to the site plan for that portion of the Common Area located within the Building Envelope, in accordance with the procedures set forth in Section 2.5.

(c) **Undeveloped Building Area.** All Building Areas on which buildings are not existing or under construction on the date the Owner of Parcel 2 first opens its building for



business shall be covered by a one inch asphalt dust cap, landscaping, or aesthetically pleasing native grasses, and shall be kept weed-free, trimmed, and clean, so that they do not constitute a nuisance or fire hazard, at the Owner's sole expense until such time as buildings are constructed thereon.

(d) **Consolidation of Building Areas on Parcels 14 Through 18.**

Notwithstanding the provision of Section 2.1(a), the Owner(s) of any of Parcels 14 through 18 may reconfigure the Building Areas on such Owner's Parcel(s), including extending Building Areas over current Parcel lines as between Parcels 14 through 18 (which process is referred to herein as "**Consolidation**"), subject to the following requirements:

(i) No more than two (2) such Building Areas, and no more than two (2) such Parcels, may be affected by the Consolidation;

(ii) The total combined Building Area of the two Parcels, and the total number of buildings allowed on the Parcels, shall not be increased as a result of the Consolidation;

(iii) All approval requirements (including without limitation building design and Common Area configuration) other than those approvals which would otherwise apply to Building Area changes shall continue to apply, as shall the height Restrictions for the original Parcels which are subject to the Consolidation;

(iv) The party Consolidating two Parcels or Building Areas shall pay all expenses associated with changing the Building Areas, and shall also obtain all required governmental approvals to the Consolidation, at its own expense;

(v) The Owner of the Consolidated Parcels shall provide the Consenting Owners with a copy of any amendment to the official Site Plan as finally approved by the governing authorities, resulting from the Consolidation;

(vi) If any Consenting Owner requests an amendment to the Development Agreement, the CAMA, or this Declaration to revise Exhibit "A" hereto or otherwise reasonably reflect changes made to the Shopping Center as a result of the Consolidation, the party requesting the Consolidation shall pay the cost of preparing such amendments; and

(vii) Any Parcel affected by the Consolidated must be Self-Parked following completion of the Consolidation.

**2.2 Common Area.**

(a) **Use.** The Common Area is hereby reserved for the sole and exclusive use of all Owners of the Shopping Center, their tenants, subtenants and licensees, and the contractors, employees, agents, licensees and invitees of such Owners, tenants, subtenants and licensees. The

Common Area may be used for vehicular driving, parking (except that there shall be no multi-level parking), and pedestrian traffic and for no other purpose unless otherwise specifically provided in this Declaration.

(b) **Changes and Additions.** No buildings or structures not approved in writing by the Consenting Owners shall be placed in the Common Area except: (i) Service Facilities; and (ii) public pay telephones whose location has been approved in writing by the Consenting Owners; provided, however, that the Owner or occupant of Parcel 2 shall have the right to locate public pay telephones on the exterior of the building located on Parcel 2 without the Consenting Owners' approval. The sizes and arrangements of Common Area improvements, including, without limitation, General Common Area Improvements, service drives, parking areas and striping, recycle centers, cart corrals and all buildings and structures approved pursuant to this subparagraph (b), may not be changed without the Consenting Owners' prior written approval; provided, however, that nothing in this Section 2.2 shall be interpreted to require the Consenting Owners' approval to (i) the expansion of any building into the Expansion Area shown on Exhibit "A" (except as to changes to the exterior elevation of the building, which require the prior written approval of the Consenting Owners under Section 2.3[a]), or (ii) the construction, alteration or relocation of any Service Facilities to the extent that they are located, and do not impede access, to the rear or sides of buildings. All requests for approval under this subparagraph (b) shall be processed in accordance with Section 2.5.

(c) **Undeveloped Building Area.** All Building Areas which are not from time to time used for buildings or other commercial structures shall be developed by the Owner thereof, at said Owner's sole cost and expense, in accordance with a site plan approved by the Consenting Owners, and maintained as improved Common Area until buildings are constructed thereon.

### 2.3 Type and Design of Buildings.

(a) **Architectural Compatibility.** No more than one (1) building shall be permitted on each of Parcels 1, 2, 4, and 14 through 29; no more than two (2) buildings shall be permitted on Parcel 5; and no more than three (3) buildings shall be permitted on Parcel 3, in each case unless the Consenting Owners have given their prior written approval in their sole and absolute discretion. Each building and other structure in the Shopping Center, now and in the future, shall be of first quality construction. All buildings and structures shall be architecturally designed so that their exterior elevations (including, without limitation, signs and color) will be architecturally and aesthetically compatible and harmonious with all other buildings in the Shopping Center. Each building in the Shopping Center shall initially be constructed so the exterior of such building conforms to the Building Design Drawings approved pursuant to

Section 3.1 of the Development Agreement. No building for which Building Design Drawings have not been approved may be constructed, nor the exterior of any existing building changed in any material way (including, without limitation, signs and color), without the Consenting Owners' prior written approval (which shall be obtained in accordance with the procedures set forth in Section 2.5) as to the exterior elevations (including, without limitation, signs and color) of the building to be constructed or modified; provided that any structural change to a building shall automatically be deemed material. No Consenting Owner may withhold its approval of the proposed building or modification if it is architecturally and aesthetically compatible and harmonious with all other buildings in the Shopping Center. Albertson's standard signs and logos (including, without limitation, signs identifying any tenant, subtenant, licensee, or concessionaire located and operating on Parcel 2 ["Parcel 2 Tenant"]), the standard signs and logos of a National Chain Store, as they may exist from time to time, which are attached to the front elevation of their respective buildings and the opening, closing, modification or relocation of any door, however, shall not require approval under this Section 2.3(a), provided that the same shall comply with applicable law.

(b) **Attachments.** No Owner shall have the right to make any attachment whatsoever to another Owner's building (such other Owner being referred to in this subparagraph only as "Other Owner") without such Other Owner's prior written approval, which may be withheld in such Other Owner's sole and absolute discretion. If the Other Owner approves the requested attachment, the Owner making the attachment shall, prior to making such attachment, obtain the Other Owner's prior written approval (which may be withheld in its sole and absolute discretion) of the drawings and specifications detailing the attachment. Any such attachment shall be at the sole cost and expense of the Owner making the attachment and shall be in strict conformance with the approved drawings and specifications detailing the same.

(c) **Fire Protection.** Every building on Parcels 1, 2, 3, 4, and 5 shall be equipped with automatic sprinkler systems which meet all the applicable standards of the National Fire Protection Association. The purpose of this subparagraph (c) is to allow such buildings to be considered as one (1) building for building code purposes.

(d) **Structural Integrity.** No building or other structure in the Shopping Center shall be built in such a manner as to adversely affect the structural integrity of any other building or structure in the Shopping Center.

(e) **Height of Buildings.** The following Restrictions shall apply to the Parcels indicated unless the Consenting Owners otherwise give their prior written approval, in their sole and absolute discretion. The building height Restrictions imposed under this Subsection 2.3(e) shall be construed to apply to the general roofline of each respective building. An architectural

element or feature on a building (such as an arch, cupola, dormer, steeple, or the like) which otherwise meets the design approval requirements of this Declaration may extend above the general roofline of a building by up to five (5) feet in height, with a total aggregate width of such elements or features along any single roofline of no more than twenty percent (20%) of the length of the roofline on any front, side, or back elevation. For purposes of these Restrictions, the height of a building shall be measured from the finished ground floor elevation of the building in question:

(i) All buildings and other structures in the Shopping Center shall be single story with mezzanine permitted.

(ii) No building or other structure located on Parcel 2 shall exceed thirty-five (35) feet in height, including mechanical fixtures and equipment and screening for same (collectively, "Equipment").

(iii) No building or other structure located on Parcel 3, 4, or 5 shall exceed the lesser of 35 feet or the height of the general roofline of the building on Parcel 2.

(iv) No building or other structure (including Equipment thereon) located on any Parcel specified below shall exceed the height Restriction indicated for such Parcel:

Parcel	Maximum Height (with Equipment)
Parcel 1	28
Parcels 14-18	22
Parcels 19-25	20
Parcel 26-29	25

The height Restrictions set forth herein shall be in addition to (and not in reduction of or in lieu of) the Building Area Restrictions set forth in this Declaration.

(g) **Exterior Maintenance.** Each Owner shall maintain 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 and all satellite dishes, systems, and similar equipment, shall be attractively screened from view from the customer parking areas.

(h) **Direction of Entries.** Each building on Parcels 1, 2, 3, 4, and 5 shall face the main parking lot for the Parcel on which it is located. The main customer entries on Parcels 3, 4, and 5 shall face Highway 281.

## 2.4 Construction Requirements.

(a) **Standards.** 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), (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. Staging for the construction, replacement, alteration or expansion of any building, sign or Common Area improvements located in the Shopping Center 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 Owners. 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, signs and Common Area improvements damaged or destroyed in the performance of such work.

(b) **Liens.** 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 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 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 liabilities, claims, damages, expenses (including, without limitation, reasonable attorney's fees and reasonable attorney's fees on any appeal), liens, claims of lien, judgments, proceedings and causes of action of any kind whatsoever, arising out of or in any way connected with the performance of such work, unless caused by the negligent or willful act or omission of the indemnified person, its tenants, subtenants, agents, contractors or employees.

(c) **Encroachments.** The Owners 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, signs and Common Area improvements 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 use of the improved Common Area or with the normal operation of any business in the Shopping Center.

**2.5 Approval Procedures.** Before any action requiring the Consenting Owners' approval is commenced, sufficient information shall be sent to the Consenting Owners to enable the Consenting Owners to make a reasonable decision as to the proposal. No Consenting Owner shall have the right to unreasonably withhold its approval to the proposal unless otherwise specified in this Declaration. Each 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 a 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 the same provided that, when the approval was sought, the one seeking the approval stated in writing to the one whose approval was sought that, if a disapproval with explanation was not made within the thirty (30) day period, approval would 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.

**2.6 Maintenance of Building Exteriors.** Following completion of construction of the building(s) and structure(s) on any Parcel, each Owner shall maintain (or require its tenants to maintain) the exterior of all building and structures on said Owner's Parcel(s) in good, clean, aesthetically-pleasing condition, including repainting and repairing as necessary.

### **3. EASEMENTS**

**3.1 Ingress, Egress and Parking.** Each Owner, as grantor, hereby grants to all other Owners in the Shopping Center, their respective tenants, contractors, employees, agents, licensees and invitees, and the subtenants, contractors, employees, agents, 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 driveup 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 and Facilities.

(a) **Grant of Easements.** Each Owner, as grantor, hereby grants to the other Owners, for the benefit of each Parcel belonging to the other Owners, as grantees, a nonexclusive easement under, through and across the Common Area of the grantor's Parcel(s) for the installation, operation, maintenance, repair and replacement of water drainage systems or structures, water mains, sewers, water sprinkler system lines, telephones, electrical conduits or systems, transmission lines and facilities for pneumatic or pressurized air tube devices (between Parcels 2 and 26), data conduit lines, gas mains and other public or private utilities (collectively, "**Utility Lines and Facilities**"). Each Owner agrees to grant such additional easements as are reasonably required by any public or private utility for the purpose of providing Utility Lines and Facilities to Phase 1 or Phase 2, provided such easements are not otherwise inconsistent with the provisions of this Declaration.

(b) **Construction Requirements.** All Utility Lines and Facilities shall be installed and maintained below the ground level or surface of such easements, except for ground mounted electrical transformers and such other facilities as are required to be above ground by the utility providing such service (including, without limitation, temporary service required during the construction, maintenance, repair, replacement, alteration or expansion of any buildings, signs or Common Area improvements located in the Shopping Center). The installation, operation, maintenance, repair and replacement of such Utility Lines and Facilities 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 shall bear all costs related to the installation, operation, maintenance, repair and replacement of such Utility Lines and Facilities, shall repair to the original specifications any damage to the Common Area resulting from such use and shall provide as-built plans for all such facilities to the Owners of all Parcels upon which such Utility Lines and Facilities are located within thirty (30) days after the date of completion of construction of same.

(c) **Relocation.** At any time and from time to time, the Owner of a Parcel shall have the right to relocate on its Parcel any Utility Line or Facility installed pursuant to the foregoing grant of easement which is then located on the land of such Owner, provided that any such relocation (i) shall be performed only after sixty (60) days' notice of the Owner's intention to undertake the relocation shall have been given to the Owner of each Parcel served by the Utility Line or Facility, (ii) shall not unreasonably interfere with or diminish utility service to the Parcel(s) served by the Utility Line or Facility, (iii) shall not reduce or unreasonably impair the usefulness or function of the Utility Line or Facility, (iv) shall be performed without cost or expense to the Owner or occupant of any other Parcel, and (v) shall provide for the original and

relocated area to be restored to their original specifications. The Owner performing such relocation shall provide as-built plans for all such relocated Utility Lines and Facilities to the Owners of all Parcels served by such Utility Lines and Facilities within thirty (30) days after the date of completion of such relocation.

**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, an 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 and Facilities appurtenant thereto. Except where otherwise specifically stated herein to the contrary, the grantee(s) shall bear all costs related to the installation, maintenance, repair and replacement of its free-standing sign and appurtenant Utility Lines and Facilities, shall repair to the original specifications any damage to the Common Area resulting from such use and shall provide as-built plans for all such Utility Lines and Facilities to the Owners of all Parcels upon which such Utility Lines and Facilities 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 other 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 Self Help.** Each Owner, as grantor (such Owner being referred to in this subparagraph only as "**Grantor Owner**"), hereby grants to the other Owners for the benefit of each Parcel belonging to the other Owners as grantees (such other Owners being referred to in this subparagraph only as "**Grantee Owners**"), an easement to enter the Grantor Owner's Parcel for the following purposes:

(a) To perform such work on the Grantor Owner's Parcel as is necessary to cure any default by the Grantor Owner under the Development Agreement, Declaration or CAMA, provided and to the extent the Grantee Owner has the express right to cure said default under the Development Agreement, Declaration, or CAMA; and

(b) To perform any obligations or exercise any other rights the Grantee Owner has under the Development Agreement, Declaration, or CAMA.



**3.6 Mutual Perpetual Access Easements, Parcels 3 through 5 and 27 through 29:**

Each Owner of Parcel 3, 4, 5, 27, 28, and 29 (the "Access Parcels"), each as grantor, hereby grants to the other Owners of the Access Parcels, and to the respective tenants, contractors, employees, agents, licensees and invitees of such Owners, and the subtenants, contractors, employees, agents, licensees and invitees of such tenants, for the benefit of each of the Access Parcels, as grantees, a perpetual non-exclusive easement for ingress, egress, and parking by vehicular and pedestrian traffic upon, over and across that portion of the Common Area located on the grantor's Parcel(s). The Owners of the Access Parcels acknowledge that the access easement granted hereunder is intended to survive the expiration or termination of this Declaration. Following the expiration or termination of this Declaration, upon the request of any Owner of an Access Parcel, each of the other Access Parcel Owners agrees to enter into a separate easement document, in recordable form, evidencing the continuation of this easement. Such document shall provide that the Owners of the Access Parcels shall have continued access for vehicular and pedestrian traffic (but not for parking) over the Common Areas of the other Access Parcels. Effective on the expiration or termination of this Declaration, this access easement shall be subject to the following additional requirements: (i) Use of such access easement by any grantee shall not unreasonably disrupt business operations on the servient Access Parcel; (ii) the manner and level of use of such access by any grantee shall not be significantly increased from what it is at the time of expiration of this Declaration, suitable to serve the square footages of the buildings allowed at such expiration pursuant to this Declaration when they are used for retail purposes; and (iii) the parties utilizing the easement areas shall share in the maintenance cost thereof, in the proportion that the actual Floor Area(s) (as defined under this Declaration) of the buildings on their Parcel(s) bear(s) to the total actual Floor Area of all buildings on all Parcels utilizing the easement area pursuant to the respective easement. The reasonable cost of drafting and recording such easement shall be shared equally by the parties utilizing the same or entitled to benefit therefrom.

**4. OPERATION OF COMMON AREA**

**4.1 Parking.** There shall be no charge for parking in the Common Area unless otherwise required by law.

**4.2 Employee Parking.** Notwithstanding anything to the contrary in this Declaration, 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 approval of the Consenting Owners for the Parcel(s) on which the designated parking is to be located. 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. The authority herein granted shall be exercised in such manner as not to discriminate against any Owner or occupant of the Shopping Center. In no event shall employees of any Parcel other than Parcel 2 park within 200 feet of the front of any building located on Parcel 2. The Owners shall each ensure that their employees (or the employees of their tenants) park only on the Parcel on which they are employed.

#### 4.3 Signs.

(a) **Center Pylon Signs.** Subject to governmental approval, a free-standing sign may be erected at each of the locations designated "Center Pylon Sign" on Exhibit "A." The signs labeled "Center Pylon Sign A" and "Center Pylon Sign B" on Exhibit "A" may, at the option of the Owner or occupant of Parcel 2, display the designation of the Owner or occupant of Parcel 2 and/or the designation of a Parcel 2 Tenant (including, at the option of the Owner or occupant of Parcel 2 and as a part of the designation(s) allowed herein for Parcel 2, signs identifying banking and/or financial services located within the buildings on Parcel 2). The designation for the Parcel 2 Tenant may, at the option of the Owner or occupant of Parcel 2, be included on a separate sign can, or be included as part of the designation on the sign can otherwise permitted to the Owner or occupant of Parcel 2. The panels on each of the Center Pylon Signs A and B shall be of proportionately equal size. Provided the amount of signage otherwise permitted by governmental authority to the Owner or occupant of Parcel 2 and any Parcel 2 Tenant is not adversely affected thereby, designations for not more than two (2) other businesses (provided that any such business, in order to display its designation on a Center Pylon Sign, must occupy at least 15,000 square feet of Floor Area) in the Shopping Center shall also be permitted on each of Center Pylon Signs A and B.

(b) **Control of Designations.** Subject to the provision of Section 4.3(a), Allen shall be entitled to determine the designations on each of the Center Pylon Signs, subject to and in accordance with this Declaration, during the time that Allen is a Consenting Owner, and thereafter the designations shall be determined by the Consenting Owners for the Phase on which the respective Center Pylon Sign is located (subject to Albertson's rights to have a designation on Center Pylon Sign B under Section 4.3[a]).

(c) **Cost of Center Pylon Signs.** The cost of constructing, installing, maintaining, repairing and replacing each of the Center Pylon Sign structures (excluding electrical hookup to the Common Area meter) shall be paid by the Owners of all Parcels entitled to display designations on the respective Center Pylon Sign, 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 each person displaying a designation on a

Center Pylon Sign shall supply and maintain its own sign fascia and can. The design of each Center Pylon Sign structure, and the size, design and location of sign fascia thereon, shall be subject to the prior written approval of the Consenting Owners for the Parcel on which the Center Pylon Sign is located (which approval shall be obtained in accordance with the procedures set forth in Section 2.5). Notwithstanding the foregoing, Albertson's and a National Chain Store may use such standard fascia as they from time to time use generally in carrying on their businesses. The Owner or occupant of Parcel 2 shall have the top designation on Center Pylon Signs A and B. Allen shall have the right to substitute a Shopping Center designation for any one (1) of the business designations allowed on any Center Pylon Sign during the time that Allen, is a Consenting Owner, and thereafter the substitution shall be at the discretion of the Consenting Owners for the Parcel on which the Center Pylon Sign is located.

(d) **Monument Signs.** Provided that the rights of the Owners of Parcel 2 and Parcel 3 as to the Center Pylon Signs are not adversely affected by application for approval of, and/or installation of, monument signs, it is agreed that the Owners of Parcels 14 through 29 shall each have the right to install a monument sign on their respective Parcel(s), provided that any such sign must satisfy the following requirements:

(i) No monument sign on Parcel 23, 24, or 25 shall exceed ten (10) feet in height (measured from the ground to the highest point of the sign structure) or eight (8) feet in width;

(ii) No monument sign on Parcel 14, 15, 16, 17, 18, 19, 20, 21, 22, 26, 27, 28, or 29 shall exceed the height limitation stated for the respective Parcel under Section 2.3(e) hereof (measured from the ground to the highest point of the sign structure), nor shall any of the same exceed ten (10) feet in width;

(iii) The design and location of each monument sign shall be subject to the prior written approval of the Consenting Owners;

(iv) No more than one designation or logo (which shall be for a business which is in operation on the Parcel on which the sign is located) may appear on either side of a monument sign, except that Albertson's shall be allowed to advertise on the Parcel 26 monument sign the grade or type, and the price, of its gasoline and other products sold from a fuel center on Parcel 26, and shall also be entitled to place a logo or designation for a minibank or ATM on such sign;

(v) The Owner of the Parcel on which the sign is installed shall be and remain responsible to ensure that the sign is maintained in good condition and repair; and

(vi) Each such sign shall meet all applicable laws, rules, ordinances, and regulations.

(e) **No Other Signs.** There shall be no other signs, except directional signs and signs on the front elevations of buildings, in the Shopping Center. All exterior building signs on any Parcel shall be restricted to identification of the businesses or services located or provided therein. No exterior building sign shall be placed on penthouse walls, extend above the building roof, be placed at an angle to the building, or be painted on the exterior building surface. No exterior building or free-standing sign shall utilize animated, flashing, moving or audible lights or appurtenances. No visible lamps or tubing shall be allowed on the front of any sign. All signs shall bear the UL label, and their installation shall comply with all applicable building and electrical codes. No sign shall feature any visible raceway, crossover, conduit or fastener. No sign shall feature painted lettering (as opposed to vinyl, plastic, pre-manufactured coloring, or other material of similar good quality), except that the Owner or tenant on Parcel 2 may have painted lettering on temporary signs announcing the opening or re-opening (after remodel or reconstruction) of business, which signs shall be removed within 21 days after commencement of the grand opening or re-opening. All cabinets, conductors, transformers, neon tubes, ballast boxes, and other equipment shall be concealed. Electrical service to all building signs shall be on the meter of the Owner on whose Parcel such sign is located. Painted lettering shall not be permitted on any exterior business sign, other than on Parcel 2.

**4.4 Protection of Common Areas.** Each Consenting Owner 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, parking, or any other purpose. Such steps shall 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; provided, however, that any impairment of access to or from the Shopping Center, or any part thereof, shall also require the Consenting Owners' prior written approval, which may be withheld in the Consenting Owners' sole and absolute discretion. Except as expressly allowed hereunder, no signs, fences, hedges, curbing, barriers, walls, or other structures which would impede the free and uninterrupted flow of pedestrian or vehicular traffic as intended by this Declaration shall be erected by any Owner on the Common Area. The foregoing notwithstanding, each Owner shall have the right to erect barriers once each year for the minimum period required and on a day that the Shopping Center is not open for business, if applicable (but in no event, during the period between October 1 and January 4), to avoid the possibility of dedicating such areas for public use, creating prescriptive rights therein, or creating a risk of any taking by adverse possession.

**4.5 Outside Sales.** No portion of the Common Area (except sidewalks immediately adjacent to the building in which the operator or occupant who is holding the sale is located) shall be used for the sale or display of merchandise, except as follows:

(a) The seasonal sale of merchandise by the Owner or occupant of Parcel 2 shall be permitted at any time from the area shown on Exhibit "A" on Parcel 2 as "Indoor-" and "Outdoor Seasonal Sales Area;" and

(b) The seasonal sale of merchandise by the Owners of Parcels 2, 3, 4, and 5 shall be permitted from the parking lot located on each such Owner's respective Parcel, subject to the following restrictions: (i) the Common Area shall be promptly restored to its condition immediately prior to said sale at the sole cost and expense of the Owner or occupant of the Parcel on which the sales are conducted (ii) sales shall not unreasonably interfere with the free movement of vehicular traffic within the Shopping Center or with access to or from the Shopping Center, or any part thereof, (iii) parking lot sales shall occur on any Parcel no more than four (4) times annually, for a cumulative total of no more than sixty (60) days on any Parcel, and (iv) no more than twenty (20) parking stalls may be used for seasonal sales on any such Parcel at any given time.

**4.6 Prohibited Activities.** Picketing and distribution of pamphlets, handbills or similar materials within the Shopping Center shall be prohibited.

## **5. USE RESTRICTIONS**

### **5.1 Food and Pharmacy Restrictions.**

(a) Except as expressly allowed in Section 5.1(d) hereof, no part of the Shopping Center (other than Parcel 2, and Parcel 26 if it is owned or leased by the Owner of Parcel 2) shall be used as a supermarket, which shall be defined as any store or department containing more than 3,000 square feet of Floor Area, including aisle space and storage, primarily devoted to the retail sale of food for off-premises consumption; 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; or as a convenience store ("**C-Store**") in the nature of a Circle K, 7-Eleven, AM-PM Minimart, or the like.

(b) Except as expressly allowed in Section 5.1(d), no part of the Shopping Center other than Parcel 2 shall be used for an operation involving the sale or offer for sale of any pharmaceutical products requiring the services of a registered pharmacist ("**Pharmacy**"); and no part of the Shopping Center other than Parcels 2 and 26 shall be used for a gas station or fuel service station.

(c) Except as expressly allowed in Section 5.3(a), no part of the Shopping Center (other than Parcels 2 and 26) shall be used as a bakery or delicatessen; or as a cigarette or

smoke shop or any other store the primary business of which is to sell tobacco products and/or accessories.

(d) As an exception to 5.1(b), one (and only one) Pharmacy shall be allowed in Phase 2, in conjunction with a business operation covering at least 65,000 square feet of Floor Area; provided that the Floor Area (including aisle space) devoted to display and sale of pharmaceutical products, i.e., to the Pharmacy, within such operation shall not exceed 5,000 square feet. The party first opening a Pharmacy for business on any Parcel within Phase 2 shall be deemed to have the priority of right to operate a Pharmacy within Phase 2.

(e) The Restrictions set forth in Subsections 5.1(a), -(b), and -(c) above (other than the Restriction pertaining to a gas station or fuel service station) shall cease to be effective if, at any time following Albertson's opening for business on Parcel 2, there ceases to be a supermarket in operation on Parcel 2 for a continuous period of twenty-four (24) consecutive months (the "**Closure Period**"), which discontinuance of operations is not due to reasons of remodel, reconstruction, acts of God, casualty, strikes, lockouts, labor difficulties, or other circumstances customarily viewed as force majeure (separately or collectively, "**Force Majeure Reasons**"); provided that if, following the end of the Closure Period, a supermarket opens on Parcel 2 prior to the opening of a supermarket on another Parcel, then the Restrictions of Subsections 5.1(a), -(b), and -(c) shall be revived and shall once again become effective. Furthermore, if following Albertson's opening of a fuel center on Parcel 26, there ceases to be a fuel center or gas station in operation on Parcel 26 for a Closure Period, which discontinuance of operations is not due to Force Majeure Reasons, the Restriction against a fuel center or gas station in Subsection 5.1(b) shall cease to be effective; provided that such Restriction shall be revived, and shall become effective again, if a fuel center or gas station opens again on Parcel 26 prior to the opening of a fuel center or gas station elsewhere in the Shopping Center.

## 5.2 General Restrictions.

(a) **Retail Use Restrictions.** No part of Parcels 1, 3 through 5, or 14 through 29 shall be used for any purpose other than for retail sales, retail services or restaurants. No part of Parcels 1, 3 through 5, or 14 through 29 shall be used for an automotive maintenance or repair facility (except as allowed under Section 5.2[e]), a second hand or surplus store, or for any entertainment or recreational facility or training or educational facility. 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. A discount eyecare store, such as LensCrafters or Pearle Vision, which sells eyewear and lenses to the general public and does not feature ophthalmologist's services except as an incidental part of a retail operation, shall be considered retail in nature rather than an Office Use.

(b) **Special Use Restrictions.** No part of the Shopping Center shall be used as a bar, tavern, or cocktail lounge; as a car wash, warehouse, animal kennel, mobile home park or trailer court; 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; or for any bankruptcy sales or going out of business sales. Notwithstanding the foregoing, a bar shall be allowed to operate incidentally to a restaurant operation, provided that the bar (including seating therefor, aisle space, and all bar facilities) shall not exceed either 25% of the Floor Area or 25% of the gross sales of such restaurant. The Consenting Owners shall be entitled to audit the books of any such restaurant, on two (2) days' notice and during business hours, to ensure compliance herewith.

(c) **Hotel.** No part of the Shopping Center shall be used as a hotel or motel.

(d) **Adult Entertainment Store.** No part of the Shopping Center shall be used as an adult entertainment store. As used herein, "**adult entertainment store**" shall mean a store which has, for sale or rental, as 10% or more of its Floor Area or 150 square feet of Floor Area, whichever is less, any combination of the following: (i) videos, movies, books, or magazines of a sexually-explicit or pornographic nature, not intended for general audiences; (ii) unrated movie videos of a sexually-explicit or pornographic nature, or movie videos with a rating of "NC-17" or higher, restricting persons under the age of 18 from purchasing or renting the same; (iii) clothing items of a sexually-oriented or explicit nature which would not be sold in stores whose customer base is family-oriented, such as Sears, J. C. Penney's, K-Mart, or other comparable department or family discount stores; or (iv) photographs, games, or other items of a sexually-explicit, pornographic, or erotic nature.

Any store or department in the Shopping Center which offers for sale or rental the items listed in subparts (i) through (iv) of this Section 5.2(d) shall locate such items either behind the counter under the control of the retailer's employees, or in a separate room or area out of view from the general retail Floor Area (subject, however, to the Floor Area Restriction set forth in the previous paragraph) with access limited to persons 18 years of age or older. No Owner or occupant shall display or advertise the existence, sale or rental of the adult entertainment items listed above, either in advertisements circulated to the public or in signs posted within the store; or place signs for such on the buildings in the Shopping Center.

(e) **Car Care Facilities.** Any of the following uses, each referred to herein as a car care facility ("CCF"), shall be allowed on Parcel 29 as an exception to the Restriction against an automotive maintenance or repair facility set forth in Subsection 5.2(a):

(i) A gas station, which may include a fast food restaurant (subject to the approval requirements of Sections 2.5 and 5.4);

(ii) A tire or automotive-parts store; or

(iii) A car-repair facility such as Grease Monkey, Jiffy Lube, Oil Can Henry's, or the like.

Any such CCF use shall be subject to the following restrictions:

(A) Servicing of, and repair work on, vehicles shall be limited to the interior of the building utilized for such purpose. The location of service bays shall be subject to the approval of the Consenting Owners in their sole and absolute discretion;

(B) All vehicles left for repair or waiting to be picked up must be parked behind the building utilized for the CCF and must be hidden from view of persons utilizing the parking and other Common Area of Parcels 2 through 5; and must be further hidden from view of persons approaching the Shopping Center from 13<sup>th</sup> Street or Highway 281;

(C) No vehicles waiting for parts, for service or repair, or to have tires put on or replaced, and no vehicles waiting to be picked up following service or repair, shall be left parked in the Shopping Center overnight;

(D) The installation of gas pumps as a part of any CCF operation shall be subject to the approval of the Consenting Owners in their sole discretion, as shall be the location and design of such gas pumps (provided that, by reviewing such design, the Consenting Owners shall not be deemed to undertake responsibility or incur any liability therefor in any manner, and the Owner of the Parcel on which the gas pumps are located shall indemnify the other Owners against all environmental and other liability relating to or arising from the installation or operation of such gas pumps);

(E) No disabled vehicles may be parked anywhere in the Shopping Center incidentally to the operation of the CCF; and

(F) There shall be no outdoor displays of tires. Outdoor display of merchandise for sale shall be limited to sidewalks and shall not be on the parking lot or other Common Areas.

### 5.3 Location Restrictions.

(a) No part of Parcel 1 shall be used as a restaurant, except as follows: A sandwich, bagel, or yoghurt shop and/or a carryout pizza operation shall be permitted, each with



seating for no more than 35 customers, and no such use to exceed 2,000 square feet of Floor Area. The total Floor Area of all restaurants, including sandwich, bagel, yoghurt and similar shops on Parcel 1 shall not exceed 4,000 square feet of Floor Area. The main customer entry door of any medical, eye care, chiropractic, dental, professional, or business office (in any case, "Office Use"), or of any restaurant, on Parcel 1 shall face either Webb Road or the intersection of 13<sup>th</sup> Street and Webb Road. No Office Use on Parcel 1 shall exceed 1,200 square feet of Floor Area.

(b) No more than two (2) restaurants or Office Uses shall be allowed on Parcel 3 within 200 linear feet of the Building Area of Parcel 2; and any restaurant or Office Use, within such 200-foot distance shall be limited to 1,500 square feet of Floor Area. Further, no restaurant or Office Use anywhere on Parcel 3, 4, or 5 shall be allowed to exceed 4,000 square feet of Floor Area.

(c) The total Floor Area of all restaurants and Office Uses located in Shopping Center shall not exceed 60,000 square feet.

(d) In the event of a conflict between Owners and/or tenants, as to who holds prior right to operate a restaurant or Office Use in accordance with this Section 5.3, the party who first opens for business to the public (or who succeeds as the party-in-interest under an existing lease under which such a use exists and is in continuous operation) shall be deemed to have the prior right.

**5.4 Driveup and Drive Through Facilities.** No vehicular driveup or drive through customer service facilities shall be located in the Shopping Center unless the Consenting Owners have first given their written approval, which shall not be unreasonably withheld, to the location, parking and drive lanes of such facility.

**5.5 Mall Restrictions.** There shall be no open or enclosed malls in the Shopping Center unless the Consenting Owners have first given their written approval, which shall not be unreasonably withheld, to the location of the entrance to such mall.

**5.6 Hazardous Materials.** No Owner or occupant shall use or permit the use, handling, generation, storage, release, disposal or transportation of Hazardous Materials on, about or under its Parcel except in the ordinary course of its business and in compliance with all Environmental Laws.

## **6. CASUALTY AND CONDEMNATION**

**6.1 Casualty.** If all or any portion of any building in the Shopping Center is damaged or destroyed by fire or other casualty, 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 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 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 the drainage of the Shopping Center or any portion thereof; shall be covered by a one inch asphalt dust cap, landscaping, or aesthetically-pleasing native grasses; and shall be kept weed free, trimmed, and clean, so that they do not constitute a nuisance or fire hazard, at the Owner's sole cost and expense until buildings are reconstructed thereon.

**6.2 Condemnation.**

(a) **Building Restoration.** If all or any portion of any building in the Shopping Center is taken or damaged as a result of the exercise of the power of eminent domain, or any transfer in lieu thereof ("**Condemnation**"), the Owner of such building shall have the same obligations with respect to restoration or removal of the building and Building Area as are set forth in Section 6.1.

(b) **Allocation of Award.** If all or any portion of any Parcel in the Shopping Center is taken or damaged as a result of a Condemnation ("**Condemned Parcel**"), the Owner of the Condemned Parcel shall be entitled to the entire award or purchase price paid for the Condemned Parcel; provided, however, that nothing contained herein shall affect any other person's right to seek severance damages for its Parcel, provided the award of such severance damages does not reduce or diminish the amount which would otherwise be paid to the Owner of the Condemned Parcel. The Owner of the Condemned Parcel shall restore or cause to be restored the remaining portion of the Condemned Parcel as near as practicable to the condition immediately prior to such Condemnation to the extent, but only to the extent, of any condemnation proceeds allocated by the court or condemning party, as the case may be, to such restoration and actually received by the Owner of the Condemned Parcel. Any restoration of the Condemned Parcel which involves a change in the configuration of the Common Area or the sizes and arrangements thereof from that shown on Exhibit "A" shall require the Consenting Owners' prior written approval. Notwithstanding the above, this Section 6.2 is not intended to and shall not alter the allocation of any award between the Owner of a Condemned Parcel and any tenant of such Condemned Parcel pursuant to the terms of any lease or other agreement between the parties.

**7. INDEMNIFICATION**

**7.1 Indemnification.** Each Owner shall indemnify, defend and hold harmless the other Owners and occupants of the Shopping Center from any and all liabilities, claims, damages, expenses (including, without limitation, reasonable attorney's fees and reasonable attorney's fees on any appeal), judgments, proceedings, and causes of action of any kind whatsoever for injury to

or death of any person or damage to or destruction of any property resulting from the willful or negligent act or omission of the indemnifying Owner.

## 8. GENERAL PROVISIONS

**8.1 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 to which its benefit runs, and shall run with the land. Notwithstanding the foregoing, the Restrictions in Section 5.1 shall be appurtenant to and for the benefit of only Parcel 2 and each part thereof and may be waived in writing only by the Owner and Prime Lessee of Parcel 2 without the joinder of any other person.

### 8.2 Successors and Assigns.

(a) **Persons Bound.** This Declaration and the Restrictions created hereby shall inure to the benefit of and be binding upon the Owners, their heirs, successors, assigns and personal representatives, and upon any person acquiring a Parcel, or any portion thereof, or any interest therein, whether by operation of law or otherwise. Notwithstanding the foregoing, if any Owner sells or transfers all or any portion of its interest in any Parcel, such Owner shall, upon delivery of the Transfer Notice (as defined in subparagraph [b] below), be released and discharged from all of its obligations as Owner in connection with the property sold by it arising under this Declaration after the sale and conveyance of title but shall remain liable for all obligations arising under this Declaration prior to the sale and conveyance of title. The new Owner of any such Parcel or any portion thereof (including, without limitation, any Owner [or Lienholder] 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.

(b) **Transfer Notice.** An Owner selling or transferring all or any portion of its interest in any Parcel shall give prior written notice thereof ("**Transfer Notice**") to all Owners of Parcels in the Phase in which the Parcel being transferred is located, and also to all Consenting Owners in the Shopping Center. The Transfer Notice shall include at least the following information: (i) the name, current address and current phone number of the transferor, (ii) the name, current address and current phone number of the transferee, and (iii) a copy of the legal description of the Parcel, or portion thereof, or other interest sold or transferred.

**8.3 Duration.** Except as hereinafter provided, the term of this Declaration shall be for a period of sixty-five (65) years ("**Primary Period**") from the date hereof. Notwithstanding the foregoing, upon the expiration of the Primary Period, the term of this Declaration shall automatically renew for successive periods of ten (10) years each (each such period being referred to as an "**Extension Period**") unless, at least ninety (90) days prior to the date of

expiration of the Primary Period or Extension Period then in effect, the Owner of Parcel 2 delivers to the other Owners in the Shopping Center written notice of termination, in which event, the Declaration shall automatically expire at the end of the Primary Period or Extension Period then in effect.

**8.4 Injunctive Relief.** In the event of any violation or threatened violation by any person of any of the Restrictions, any or all of the Owners 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.

**8.5 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 of the Parcels containing ninety percent (90%) of the total square footage of Building Area in the Shopping Center, and then only by written instrument duly executed and acknowledged by all of the required Owners and recorded in the office of the recorder of the county in which the 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.

**8.6 Method of Approval, Including Consenting Owner Approval.**

(a) 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 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, 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 8.5.

(b) Wherever approval is required hereunder to be obtained from the Consenting Owners, unless otherwise expressly stated, the approval required shall be from the Consenting Owners (as set forth in Section 1.1[i]) for the Parcel or property as to which the consent in question is needed or required.

**8.7 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.

**8.8 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.

**8.9 Default.** 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 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.

**8.10 Notices.**

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

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

Allen: Robert M. Allen Family Limited Partnership  
 1115 West Second Street  
 P.O. Box 987  
 Hastings, NE 68902-0987  
 Fax No.: 402/330-3109  
 Attention: Robert Allen

*Concurrent copy to:* John Q. Bachman, Esq.  
 Gaines, Mullen, Pansing & Hogan  
 10050 Regency Circle, Suite 200  
 Omaha, NE 68114  
 Fax No.: 402/397-4853

*and to:* The Lerner Company  
 10855 West Dodge Road  
 Omaha, NE 68154  
 Attention: Salvadore Carta

The person and address to which notices are to be given may be changed at any time by any party upon written notice to the other party. Any party giving notice hereunder by telefacsimile transmission shall also immediately send a hard copy of said notice to the party to whom the notice is directed, by regular mail, with a notation thereon to the effect that it was previously telecopied. All notices given pursuant to this Declaration shall be deemed given upon receipt.

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

**8.11 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.

**8.12 Attorney's Fees.** In the event either party initiates or defends any legal action or proceeding in any way connected with this Declaration, the prevailing party in any such action or proceeding (in addition to any other relief which may be granted, whether legal or equitable), shall be entitled to recover from the losing party in any such action or proceeding its reasonable costs and attorney's fees (including, without limitation, its reasonable costs and attorney's fees on any appeal). All such costs and attorney's fees shall be deemed to have accrued on

commencement of any legal action or proceeding and shall be enforceable whether or not such legal action or proceeding is prosecuted to judgment.

**8.13 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.

**8.14 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.

**8.15 No Third Party Beneficiary Rights.** This Declaration is not intended to create, nor shall it be in any way interpreted or construed to create, any third party beneficiary rights in any person not a party hereto. Specifically, but not by way of limitation, this Declaration shall not be deemed or construed to grant any rights, or impose any obligations, upon the Owners of the areas shown on Exhibit "A" as Parcels 6 through 13 or as "Detention Area."

**8.16 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.

**8.17 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.

**8.18 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.

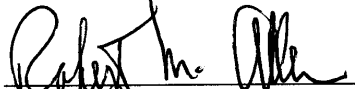
**8.19 Joint and Several Obligations.** In the event any party hereto is composed of more than one (1) person, the obligations of said party shall be joint and several.

**8.20 Recordation.** This Declaration shall be recorded in the office of the recorder of Hall County, Nebraska.


99 106376

EXECUTED as of the date first set forth above.

**ALLEN:**  
Robert M. Allen Family Limited Partnership,  
a Nebraska limited partnership

By:   
Name: Robert M. Allen  
Title: General Partner

**ALBERTSON'S:**  
Albertson's, Inc.,  
a Delaware corporation

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

**List of Exhibits and Schedules:**

Exhibit A - Site Plan  
Schedule I - Legal Description of Parcels 1 through 5 and 14 through 29.



STATE OF IDAHO )  
 ) ss.  
County of Ada )

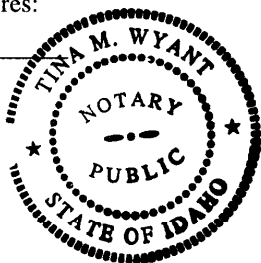
99 106376

On this 17th day of May, 1999, 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:

04/02/03



Tina M. Wyant

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

STATE OF NEBRASKA )  
 ) ss.  
County of Adams )

On this 13th day of May, 1999, before me, the undersigned, a Notary Public in and for said State, personally appeared Robert M. Allen, to me known to be the GENERAL PARTNER of **Robert M. Allen Family Limited Partnership**, the limited partnership that executed the foregoing instrument, and acknowledged to me that the said instrument is the free and voluntary act and deed of said limited partnership, for the uses and purposes therein mentioned, and on oath stated that he/she 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:

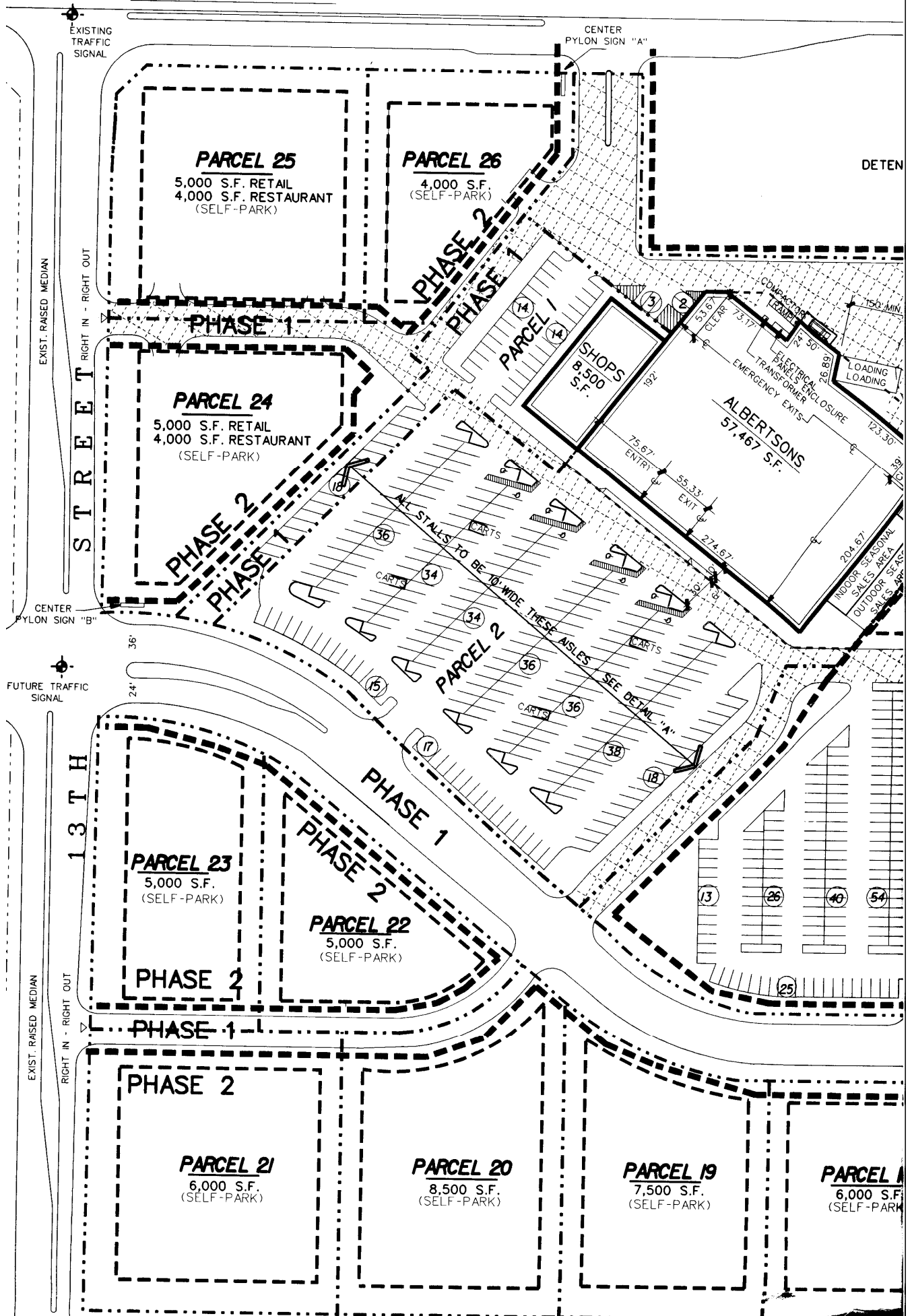
June 16, 2001



Christine M. Guest

Notary Public in and for the  
State of Nebraska  
Residing at JUNIATA, NEBRASKA

99 106376



99 106376

W E B B R O A D

DETENTION AREA

**PARCEL 27**  
6,000 S.F.  
(SELF-PARK)

**PARCEL 28**  
12,000 S.F.  
(SELF-PARK)

**PARCEL 29**  
7,500 S.F.  
(SELF-PARK)

PHASE 2

**PARCEL 3**  
100,000 S.F.

**PARCEL 4**  
27,000 S.F.

**PARCEL 5**  
65,000 S.F.

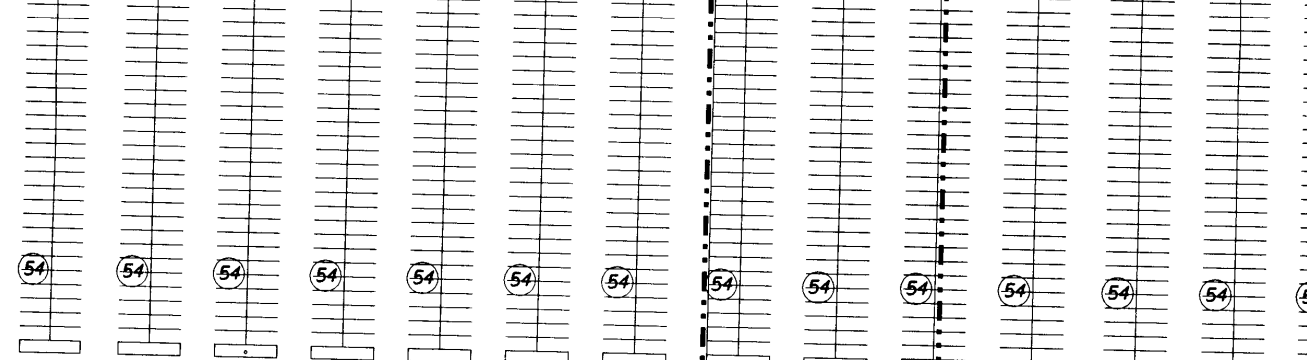
150' MIN. TRUCK CLEARANCE

LOADING  
LOADING

123.30'

20' CLEAR

204.67'  
INDOOR SEASONAL  
SALES AREA  
OUTDOOR SEASONAL  
SALES AREA



PHASE 2

A L L E N D R I V E

**PARCEL 18**  
6,000 S.F.  
(SELF-PARK)

**PARCEL 17**  
6,000 S.F.  
(SELF-PARK)

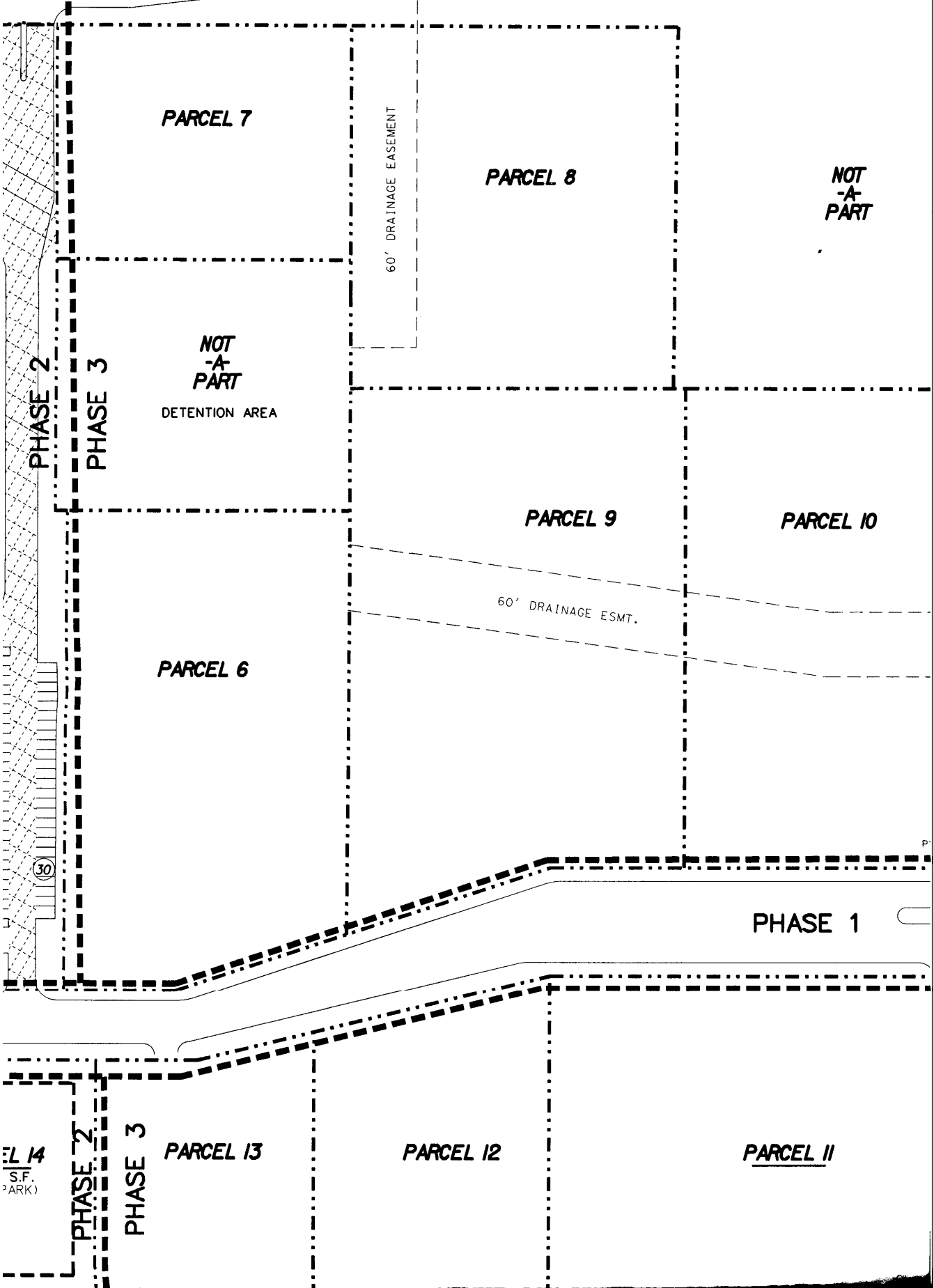
**PARCEL 16**  
6,000 S.F.  
(SELF-PARK)

**PARCEL 15**  
6,000 S.F.  
(SELF-PARK)

**PARCEL 14**  
6,000 S.F.  
(SELF-PARK)

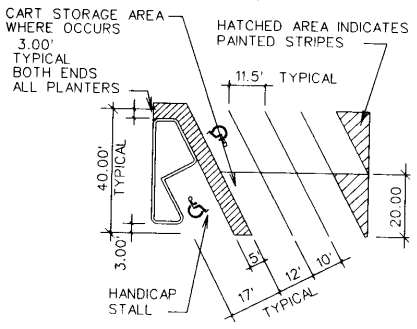
PHASE 2

CENTER  
PYLON SIGN "E"

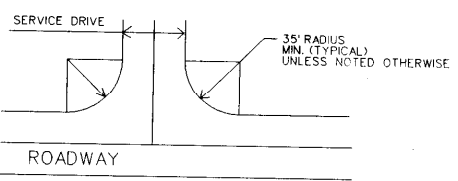


F A I D L E Y A V E N U E

99 106376



(A) PARKING DETAIL  
1"=50'-0"



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

**GENERAL NOTES**

DRAWN WITH OUT BENEFIT OF SURVEY  
NO TRUCK WELLS, NATURAL DOCK ONLY

**PARKING REQUIREMENTS:**  
BY CITY REVIEW

**BUILDING SETBACK REQUIREMENTS:**  
30' BUFFER SETBACK YARD ALONG  
WEBB ROAD AND US HWY 281

**LANDSCAPE REQUIREMENTS:**  
BY CITY REVIEW

**ZONING REQUIREMENTS:**  
EXISTING- UNKNOWN  
REQUIRED- COMMERCIAL

**LEGEND**

- PROPERTY/PARCEL LINE
- EXPANSION LIMIT LINE
- BUILDING AREA
- HEAVY DUTY PAVING
- BUILDING ENVELOPE
- ACCESS & UTILITY EASMENT

REVISIONS	
4-29-'98	CSD CHANGED TO EXHIBIT 'A'
1-5-'99	CSD/RW REV. PKG., PAR. LINES & S.F., ADD NOTES, REV. SIGN DESIGNATIONS.
2-9-'99	RW REV. ALBTS. PROTO, REM. PHASE 3 AREAS, REV. G.B.A. & SITE AREA.

MR  
MR



**Albertsons**  
DESIGN & CONSTRUCTION  
250 PARKCENTER BLVD.  
BOISE, IDAHO 83726  
(208) 385-6700

PHASE I

F A I D

CEL 12

PARCEL II








# EXHIBIT 'A' SITE PLAN

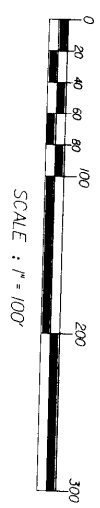
TOTAL GROSS BUILDING AREA 359,467 S.F. ( DOES NOT INCLUDE PHASE 3 )  
 TOTAL CARPARKS REQUIRED 287 (1/200) \*  
 TOTAL CARPARKS PROVIDED 287 \*  
 TOTAL SITE AREA (+/-) 1,736,288 S.F. (39.86 AC.)  
 ( DOES NOT INCLUDE PHASE 3 OR ALLEN DR. )

\* ALBERTSONS PARCEL ONLY

99 106376

## LEGEND

- PROPERTY/PARCEL LINE 
- EXPANSION LIMIT LINE 
- BUILDING AREA 
- HEAVY DUTY PAVING 
- BUILDING ENVELOPE 
- ACCESS & UTILITY EASMENT 
- PHASE LINE 



APPROVED BY:	DATE:
CHAIRMAN	SIGNED 4-27-'98
PRESIDENT	SIGNED 4-27-'98
EXEC. V.P./S.D.	SIGNED 4-27-'98
EXEC. V.P./OPS.	SIGNED 4-27-'98
SR. V.P./REG.	SIGNED 4-27-'98
GROUP V.P./R.E.	SIGNED 4-27-'98
V.P./ARCH. & ENG.	SIGNED 4-27-'98



**Albertsons**  
 DESIGN & CONSTRUCTION  
 250 PARKCENTER BLVD.  
 BOISE, IDAHO 83726  
 (208)385-6200

PROJECT  
 S.E.C.  
 15TH STREET  
 AND  
 US HWY 281

GRAND ISLAND,  
 NEBRASKA

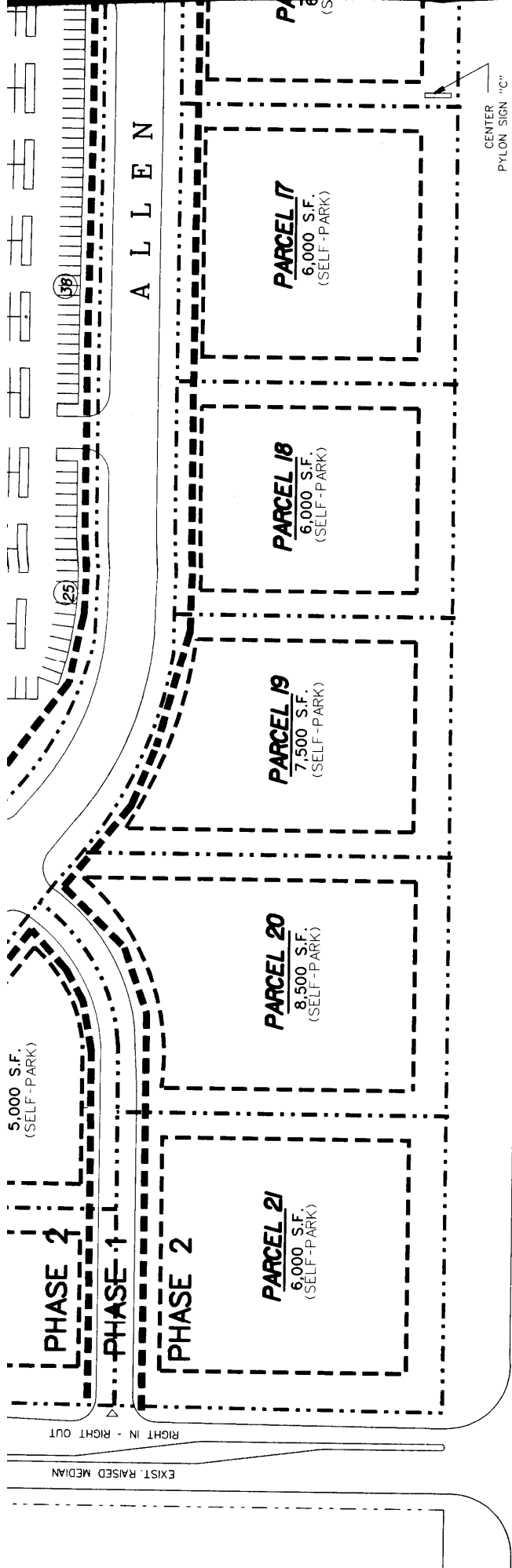
STORE NO.  
**896**

DRAWN: CSD  
 CHECKED: RC  
 DATE: 10-29-'97

SHEET TITLE  
**EXHIBIT 'A'  
 SITE PLAN**

SHEET  
**1**  
 896grand.dgn

CONESTOGA

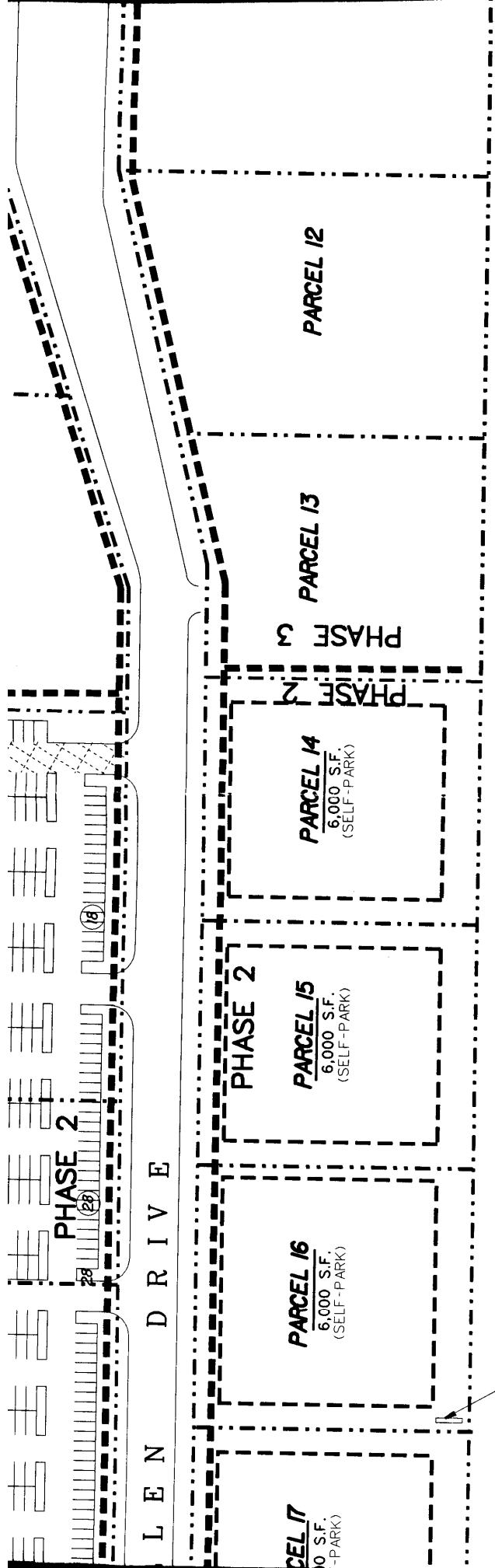


EXISTING TRAFFIC SIGNAL

U. S. HIGHWAY

99 106376

99 106376



99 106376

EXHIBIT

TOTAL GROSS BUILT  
 TOTAL CARPARKS R  
 TOTAL CARPARKS P  
 TOTAL SITE AREA

\* ALBERTSONS PA



**SCHEDULE I  
TO DECLARATION OF RESTRICTIONS AND  
GRANT OF EASEMENTS**

**Legal descriptions of Parcels 1 through 5 and 14 through 29:**

As used herein, the word "Plat" shall refer to that certain Plat known as **Meadowlark West Third Subdivision, in the City of Grand Island, Hall 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 14:** Lot 14 of the Plat
- Parcel 15:** Lot 15 of the Plat
- Parcel 16:** Lot 16 of the Plat
- Parcel 17:** Lot 17 of the Plat
- Parcel 18:** Lot 18 of the Plat
- Parcel 19:** Lot 19 of the Plat
- Parcel 20:** Lot 20 of the Plat
- Parcel 21:** Lot 21 of the Plat
- Parcel 22:** Lot 22 of the Plat
- Parcel 23:** Lot 23 of the Plat
- Parcel 24:** Lot 24 of the Plat
- Parcel 25:** Lot 25 of the Plat
- Parcel 26:** Lot 26 of the Plat
- Parcel 27:** Lot 27 of the Plat
- Parcel 28:** Lot 28 of the Plat
- Parcel 29:** Lot 29 of the Plat