

## COMMON AREA MAINTENANCE AGREEMENT

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## COMMON AREA MAINTENANCE AGREEMENT

THIS AGREEMENT is made as of the 22nd day of May 1981, by and between Kroh Brothers Development Company, a Missouri corporation ("First Party"), and Albertson's, Inc., a Delaware corporation ("Albertson's").

I. Recitals.

1.1 Albertson's is the owner of Parcel 2, and First Party is the owner of Parcels 1 and 3, more particularly described in Schedule 1 attached hereto. Parcels 1 through 3 are hereinafter collectively referred to as the "Shopping Center". Parcel 1, 2 or 3 is sometimes referred to as "Parcel".

1.2 By virtue of that certain document entitled "Declaration of Restrictions and Grant of Easements" covering the Shopping Center ("Declaration"), the owners have imposed certain covenants, conditions and restrictions upon their Parcels and have executed reciprocal easements each in favor of the other covering those portions of the Shopping Center defined in the Declaration which are designated as "Common Area", namely, those portions of the Shopping Center which are not shown as "Building Area" on the Exhibit A attached hereto.

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

2. Maintenance Standards.

2.1 Commencing with the opening of Albertson's store, the Maintenance Director shall, except as hereinafter provided, maintain the Common Area at all times in good and clean condition and repair, said maintenance to include, but not limited to, the following:

(a) Maintaining curbs, gutters and sidewalks, and the asphalt 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;

(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) Placing, keeping in repair, and replacing any necessary or appropriate directional signs, markers and lines;

(d) Operating, keeping in repair, and replacing when necessary, such artificial lighting facilities as shall be reasonably required (except for the After Hours Lighting mentioned in Paragraph 3 below);

(e) Maintaining all landscaped areas including those on the perimeter of the Shopping Center and repairing automatic sprinkler systems and water lines and making replacements of shrubs and other landscaping as is necessary; and

(f) Maintaining and repairing any and all walls, common storm drains, utility lines, sewers and other services which are necessary for the operation of the buildings and improvements within the Shopping Center.

(g) Maintaining a security guard if the written consent of the owner of Parcel 2 is first obtained.

2.2 In addition to the foregoing, the Maintenance Director shall provide general public liability insurance insuring First Party and 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) against claims for personal injury, death or property damage occurring in, upon or about the Common Area. Such insurance shall be written with an insurer licensed to do business in the State of Nebraska, and Albertson's shall be named on the policy as an additional insured. The limits of liability of all such insurance shall be not less than \$1,000,000 for injury to or death of any one person, \$1,000,000 for injury to or death of more than one person in one occurrence and \$500,000 with respect to damage to property; or, in lieu of such coverage, a combined single limit (covering bodily injury and prop-

erty damage liability) with a limit of not less than \$1,000,000. The Maintenance Director shall furnish Albertson's with certificates evidencing such insurance. The policies of such insurance shall provide that the insurance represented by such certificates shall not be changed or cancelled without the giving of ten (10) days' written notice to the holders of such insurance and the holders of such certificates.

### 3. Lighting.

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 tenants, then such artificial lights to service such owners or tenants shall be separately metered or otherwise separately allocated in a manner approved by the owners of Parcels 1, 2 and 3, and all expenses thereof shall be paid by such owners or tenants, and such owners or tenants shall pay a reduced proportion of the expense of lighting the Common Area according to the extent to which such owner or tenant is 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.

### 5. Maintenance Director.

5.1 The owners hereby appoint First Party as Maintenance Director of the Shopping Center Common Area from and after the date Albertson's opens for business.

5.2 The owners of at least two (2) Parcels (provided that Parcel 2 is included within such group), may remove the Maintenance Director by executing and filing of record and serving on the owners of the remaining Parcels an instrument stating that the Maintenance Director has been removed in which event the owners of a majority of the Parcels shall appoint another owner to be the new Maintenance Director.

5.3 The Maintenance Director shall have the right, upon giving ninety (90) days' prior written notice to all owners and tenants of the Shopping Center, to resign as Maintenance Director; whereupon a new Maintenance Director shall then be appointed with the approval of a majority of the owners of the Parcels, provided the owner of Parcel 2 is included in the majority.

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 Paragraph 2 herein, provided that the Maintenance Director shall not contract for or pay for any item the prorata share of which for any Parcel exceeds \$3,000 without the prior written consent of the owner of that Parcel.

6.2 At least thirty (30) days prior to the initial commencement of the cleaning and sweeping of the Common Area and any other Common Area maintenance work done on a regular basis, the Maintenance Director shall submit said Common Area maintenance work for bid to at least three (3) bidders approved in writing by the owners of Parcels 1, 2 and 3, which approval shall not be unreasonably withheld. The names of the bidding contractors or companies and the amount of their respective bids shall be furnished to the owners of Parcels 1, 2 and 3 by the Maintenance Director within ten (10) days after receipt thereof. The Maintenance Director shall award the contract to the low bidder unless the prior written consent of the owner of Parcel 2 to award the contract to a higher bidder is obtained by the Maintenance Director.

6.3 The owners of all the Parcels shall cause the Maintenance Director to be reimbursed for all its out-of-pocket expenses in performing such services plus a maximum service charge of ten percent (10%) of said expenses to cover administration costs; provided, however, that the ten percent (10%) service charge shall not exceed \$350 for any individual item of service performed without the prior written approval of the owners of Parcels 1, 2 and 3.

6.4 The Maintenance Director agrees to operate on a nonprofit basis with an end to keeping such expenses at a reasonable minimum.

## 7. Billing for Expenses.

7.1 The owner of each Parcel (or its respective delegates, tenants, or agents, as it may direct) shall be billed no more frequently than monthly and at least quarterly for its pro rata share of all expenses incurred by the Maintenance Director in maintaining the Common Area as provided above including the ten percent (10%) administration cost in Article 6 above, with the first billing date being the last day of the first full calendar quarter following the date of the completion of the Common Area improvements. The proportionate share of the total Common Area expenses to be borne by each owner for any year shall be that proportion set forth below:

	Maximum Bldg. Area	Percent
Parcel 1	20,800	19.76
Parcel 2	65,383	62.10
Parcel 3	19,100	18.14
TOTAL:	105,283	100.0

7.2 The percentages set forth in Section 7.1 above are based on the maximum building area of Pad A being 4,000 square feet and Pad B being 3,000 square feet. In the event the square foot area of the buildings constructed on Pads A or B is less than maximum set forth above, the percentages set forth in Section 7.1 shall be adjusted to reflect the size of the buildings actually constructed on Pads A and B. Anything in the Declaration to the contrary notwithstanding, in the event the square foot area of any of the buildings constructed on Pads A or B is less than the maximum set forth above and the percentages in Section 7.1 are adjusted accordingly, the actual size of the buildings constructed on Pads A and B shall be the new maximum and said buildings shall not be increased in size.

## 8. Effect of Sale by Owner.

8.1 If any owner of a Parcel sells its Parcel, other than to perfect a sale and leaseback of its Parcel, then after the date of sale, such owner shall have no further obligation under this Agreement with respect to such Parcel sold; provided, however, the selling owner shall remain liable for obligations incurred prior to said sale. If an owner sells its Parcel to perfect a sale and

leaseback of its Parcel, such owner shall have no further obligation under this Agreement with respect to such Parcel sold after the termination of the sale and leaseback lease but shall be liable for obligations incurred prior to such termination.

9. Default in Payment of Expenses.

9.1 In the event any owner fails or refuses at any time to pay when due its share of the maintenance and insurance expenses as set forth above, then legal action may be instituted against the defaulting owner for reimbursement plus interest at the rate of ten percent (10%) per annum. Furthermore, the other owners shall have a lien on the Parcel of the defaulting owner for the amount of the expenses, which amount shall bear interest at the rate of ten percent (10%) per annum until paid; provided, 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 taxes and assessments when due, any other owner may 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 rate of ten percent (10%) per annum until paid; provided, 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 any owner's Parcel until such dispute is settled by final court decree or mutual agreement.

9.3 In addition to the foregoing, if any owner defaults under this Agreement, any other owner may institute legal action against the defaulting owner for specific performance, declaratory relief, damages, or other suitable legal or equitable remedy. In

addition to recovery of the sums so expended on behalf of the defaulting owner, the prevailing party in the action shall be entitled to receive from the losing party such amount as the court may adjudge to be reasonable attorneys' fees for the services rendered to the prevailing party in any such action.

#### 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 as a claim of lien against the defaulting owner in the Office of the County Recorder of Douglas County, Nebraska, signed and verified, which shall contain at least:

- (a) A statement of the unpaid amount of costs and expenses;
- (b) A description sufficient for identification of that portion of the property of the defaulting owner which is the subject of the lien; and
- (c) The name of the owner or reputed owner of the property which is the subject of the alleged lien.

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.

#### II. Right to Maintain Parcel Separately.

II.1 Any owner may, at any time and from time to time, upon at least sixty (60) days prior notice to the Maintenance Director and the other owners, elect to assume the obligations of the Maintenance Director to maintain and repair such owner's portion of the Common Areas, except for repaving, lighting and insurance, and other costs which cannot be practicably segregated or allocated between the Parcels, which costs shall continue to be proportionately



paid for by each owner pursuant to the formula in Article 7 of this Agreement. In the event of the assumption by any owner, such owner agrees to maintain and repair its portion of the Common Areas at its sole cost and expense in a manner and at a level of quality at least comparable to that of the Maintenance Director. Any owner may also elect to terminate its obligations to maintain and repair its own portion of the Common Areas by giving at least sixty (60) days' prior notice to the Maintenance Director, in which event the Maintenance Director shall resume its duties and the owner so electing agrees to pay for its pro rata share of costs pursuant to the formula in Article 7.

#### 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 for the maintenance, insurance and lighting of its own Parcel according to the standards herein enumerated, as well as the provision for insurance as to its Parcel. If any owner fails to perform such obligations, such failure shall constitute a default, in which case any other owner may cause the performance of the obligations and bill the defaulting owner for the expenses incurred. In such event, the applicable provisions and remedies of Articles 9 and 10 shall apply.

#### 13. Sale and Leaseback by Albertson's.

13.1 In the event Albertson's sells Parcel 2 and becomes the lessee thereon, Albertson's shall have all of the rights and obligations of the owner of Parcel 2, including without limitation the right to appoint and remove the Maintenance Director and to give other approvals, so long as Albertson's has a leasehold estate in or is a lessee of Parcel 2.

#### 14. General Provisions.

14.1 This Agreement shall bind and inure to the benefit of the successors and assigns of the parties hereto.

14.2 This Agreement shall have a term of sixty-five (65) years from the date hereof, unless earlier terminated by the mutual agreement of the owners; provided, that this Agreement shall terminate automatically upon the termination of the Declaration.

14.3 Notwithstanding any of the provisions of this Agreement, a breach of any of the conditions and covenants contained herein shall not defeat, affect or render invalid the lien of any mortgage or deed of trust made in good faith and for value, but such conditions and covenants shall be binding and effective against any owner of any Parcel or any portion thereof whose title thereto is acquired by foreclosure, trustee's sale or otherwise.

14.4 Each condition and covenant respecting any one Parcel shall be appurtenant to and for the benefit of the other Parcels and each part thereof. Each condition and covenant respecting any one Parcel shall be a burden thereon for the benefit of the other Parcels and each part thereof, and shall run with the land.

15. Sale & Sale-leaseback Purchaser.

15.1 Notwithstanding anything to the contrary contained in this Agreement, it is expressly agreed that in the event Albertson's sells Parcel 2 to an unaffiliated third party and thereafter enters into a lease for such property with such third party (hereinafter referred to as the "SLB Lessor"), so long as Albertson's is in possession of the property as a leaseback lessee the parties hereto shall look solely to Albertson's for the performance of any obligations either Albertson's or the SLB Lessor shall have under this Agreement and the SLB Lessor shall be relieved of any obligation for the performance of or liability for the covenants, terms, agreements and restrictions set forth herein relating to either Albertson's or Parcel 2.

15.2 If, as a result of any termination or expiration of the interest of Albertson's or its successors or assigns as leaseback lessee of Parcel 2 or any surrender thereof to the SLB Lessor or any nominee of the SLB Lessor which shall hold said interest for the benefit of the SLB Lessor, the SLB Lessor shall become liable for the performance of the thereafter accruing obligations under and pursuant to the terms of this Agreement, and if the SLB Lessor fails to perform any covenant, term, agreement, or condition contained in this Agreement upon its part to be performed, and if as a consequence of such default any other party to this Agreement shall recover a

money judgment or other judicial process requiring the payment of money against the SLB Lessor, such judgment shall be satisfied only out of, and the sole and exclusive remedy of any such party shall be against, the proceeds of sale received upon execution of such judgment levied thereon against the right, title and interest of the SLB Lessor in Parcel 2 and out of the rents and other income or revenue from such property receivable by the SLB Lessor, or out of the consideration received by the SLB Lessor from the sale or other disposition (including a condemnation) of all or any part of the SLB Lessor's right, title and interest in such property and the improvements thereon or out of the insurance proceeds received by the SLB Lessor respecting any casualty affecting the improvements on the property, and neither the SLB Lessor, nor any partner thereof shall be personally liable for such judgment nor for any deficiency in the payment of such judgment.

15.3 Such judgment and the satisfaction thereof out of the proceeds of sale received upon the aforesaid execution and levy against the right, title and interest in Parcel 2 the improvements thereon and/or out of the aforesaid rents or other income or revenue, and/or out of the aforesaid consideration from the sale or other disposition thereof or said insurance proceeds shall in all events be subject to the lien of any first mortgage or deed of trust upon all or any portion of such property.

EXECUTED as of the date first above written.

ALBERTSON'S, INC.,  
a Delaware corporation

BY: Michael H. [Signature]  
Senior Vice President

BY: Marjorie O. [Signature]  
Secretary

FIRST PARTY:  
KROH BROTHERS DEVELOPMENT COMPANY,  
a Missouri corporation

BY: [Signature]  
Vice President

BY: A. T. [Signature]  
Secretary

STATE OF IDAHO )

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) ss.

County of Ada )

POOR INSTRUMENT FILED

On this 22nd day of May, 1981, before me, the undersigned Notary Public in and for said State, personally appeared Michael F. Reuling and Minnie O. Armstrong, known to me to be the Senior Vice President and Secretary, respectively, 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 they are authorized to execute the said instrument, and that the seal affixed is the corporate seal of said corporation.

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

10/30/84  
My Commission expires

Cloude C. Medina  
Notary Public for Idaho  
Residing at Boise, Idaho

STATE OF Kansas )  
County of Johnson ) ss.

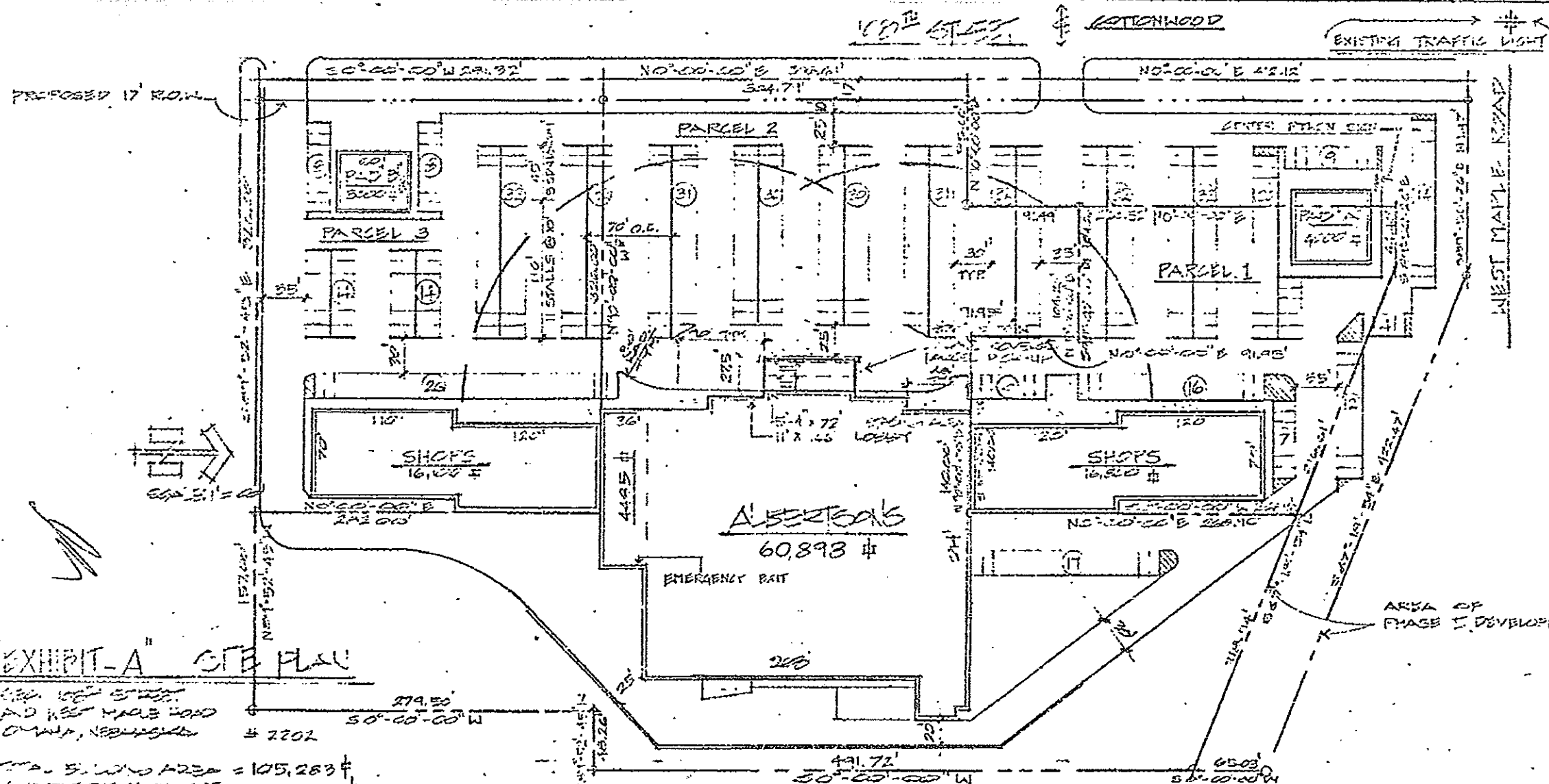
On this 1 day of June, 1981, before me, the undersigned Notary Public in and for said State, personally appeared George P. Karch and B. T. W. Karch, known to me to be the Vice President and Secretary, respectively, of Kroh Brothers Development Company, the corporation that executed the foregoing instrument, 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 they are authorized to execute the said instrument and that the seal affixed is the corporate seal of said corporation.

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

April 19, 1982  
My Commission expires:

George P. Karch  
Notary Public for Idaho  
Residing at Boise, Idaho

Overland Park, Kansas



**EXHIBIT-A CTE PLAN**

SEE 10th STREET  
ADJACENT TO 10th STREET  
OWNERS, NEIGHBORS  
# 2202

TOTAL SITE AREA = 105,283 #  
ALBERTSON'S BUILDING = 60,898 #  
TOTAL COVERED AREA = 457 #  
TOTAL SITE AREA = 184 #  
REV. NOV. 15, 1980 DRW.  
REV. JAN. 1, 1981 DRW.  
REV. JAN. 22, 1981 DRW.  
REV. MARCH 10, 1981 DRW.  
REV. MARCH 24, 1981 DRW. *REV LUL*  
REV. APR. 21, 1981 DRW. *REV LUL*  
REV. MAY 6, 1981 DRW. *REV LUL*  
ADD PARKING SPACES & BOUNDARY DIMENSIONS  
REV. MAY 13, 1981 DRW. *REV LUL*

**IMPORTANT** — DISTANCE BETWEEN REAR CURB & REAR OF ALBERTSON'S  
MAY VARY BASED ON LOADING RAMP REQUIREMENTS & GRADES.  
CONSEQUENTLY ALBERTSON'S BUILDING MAY MOVE WEST A  
MAXIMUM OF 10'-0" TO BE VERIFIED WITH ALBERTSON'S  
PROJECT ARCHITECT.

REVISIONS	
NO. 1	10/15/80
NO. 2	11/15/80
NO. 3	12/15/80
NO. 4	1/15/81
NO. 5	2/15/81
NO. 6	3/15/81
NO. 7	4/15/81
NO. 8	5/15/81

## Schedule, I

#22012 108th ~ Maple

Parcel 1:

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POOR INSTRUMENT FILED

## LEGAL DESCRIPTION:

That part of the NW $\frac{1}{4}$  of Section 9, T15N, R12E of the 6th P.M., Douglas County, Nebraska described as follows: Commencing at the N.W. corner of the SW $\frac{1}{4}$  of said Section 9; thence S 89° 52' 45" E (Assumed bearing) on the North line of the SW $\frac{1}{4}$  of said Section 9, 50.00 feet; thence N 00° 00' 00" E on a line 50.00 feet East of and parallel to the West line of the NW $\frac{1}{4}$  of said Section 9, 306.61 feet; thence N 90° 00' 00" E, 85.00 feet; thence N 00° 00' 00" E on a line 135.00 feet East of and parallel to the West line of the NW $\frac{1}{4}$  of said Section 9, 91.49 feet to the point of beginning; thence continuing N 00° 00' 00" E on a line 135.00 feet East of and parallel to the West line of the NW $\frac{1}{4}$  of said Section 9, 260.52 feet to a point on the Southerly R.O.W. line of West Maple Road; thence S 89° 56' 26" E on the Southerly R.O.W. line of said West Maple Road, 44.40 feet; thence S 67° 18' 54" E on the Southerly R.O.W. line of said West Maple Road, 216.61 feet; thence S 00° 00' 00" W on a line 379.26 feet East of and parallel to the West line of the NW $\frac{1}{4}$  of said Section 9, 268.90 feet; thence S 90° 00' 00" W, 140.00 feet; thence N 00° 00' 00" E on a line 239.26 feet East of and parallel to the West line of the NW $\frac{1}{4}$  of said Section 9, 91.95 feet; thence S 90° 00' 00" W, 104.26 feet to the point of beginning. (Containing 1.57 acres more or less.)

Parcel 2:

## LEGAL DESCRIPTION

That part of the W $\frac{1}{2}$  of Section 9, T15N, R12E of the 6th P.M., Douglas County, Nebraska described as follows: Commencing at the N.W. corner of the SW $\frac{1}{4}$  of said Section 9; thence S 89° 52' 45" E, 50.00 feet; thence N 00° 00' 00" E on a line 50.00 feet East of and parallel to the West line of said Section 9, 1.82 feet to the point of beginning; thence continuing N 00° 00' 00" E on a line 50.00 feet East of and parallel to the West line of said Section 9, 304.79 feet; thence N 90° 00' 00" E, 85.00 feet; thence N 00° 00' 00" E on a line 135.00 feet East of and parallel to the West line of said Section 9, 91.49 feet; thence N 90° 00' 00" E, 104.26 feet; thence S 00° 00' 00" W on a line 239.26 feet East of and parallel to the West line of said Section 9, 91.95 feet; thence N 90° 00' 00" E, 140.00 feet; thence N 00° 00' 00" E on a line 379.26 feet East of and parallel to the West line of said Section 9, 268.90 feet to a point on the Southerly R.O.W. line of West Maple Road; thence S 67° 18' 54" E on the Southerly R.O.W. line of said West Maple Road, 218.94 feet; thence S 00° 00' 00" W on a line 581.26 feet East of and parallel to the West line of said Section 9, 491.72 feet to a point on the North line of the SW $\frac{1}{4}$  of said Section 9; thence N 89° 52' 45" W on the North line of the SW $\frac{1}{4}$  of said Section 9, 48.26 feet; thence S 00° 00' 00" W on a line 533.00 feet East of and parallel to the West line of said Section 9, 279.50 feet; thence N 89° 52' 45" W on a line 279.50 feet South of and parallel to the North line of the SW $\frac{1}{4}$  of said Section 9, 157.00 feet; thence N 00° 00' 00" E on a line 376.00 feet East of and parallel to the West line of said Section 9, 282.00 feet; thence N 90° 00' 00" W, 326.00 feet to the point of beginning. (Containing 261,532 Sq. Ft. more or less.)

Parcel 3:

## LEGAL DESCRIPTION:

That part of the W $\frac{1}{2}$  of Section 9, T15N, R12E of the 6th P.M., Douglas County, Nebraska described as follows: Commencing at the N.W. corner of the SW $\frac{1}{4}$  of said Section 9; thence S 89° 52' 45" E on the North line of the SW $\frac{1}{4}$  of said Section 9, 50.00 feet; thence N 00° 00' 00" E on a line 50.00 feet East of and parallel to the West line of the NW $\frac{1}{4}$  of said Section 9, 1.82 feet to the point of beginning; thence S 00° 00' 00" W on a line 50.00 feet East of and parallel to the West line of said Section 9, 281.32 feet; thence S 89° 52' 45" E on a line 279.50 feet South of and parallel to the North line of the SW $\frac{1}{4}$  of said Section 9, 325.00 feet; thence N 00° 00' 00" E on a line 376.00 feet East of and parallel to the West line of the SW $\frac{1}{4}$  of said Section 9, 282.00 feet; thence N 90° 00' 00" W, 326.00 feet to the point of beginning. (Containing 2.11 acres more or less.)

RECEIVED

1931 JUN -8 PM 4:05

C. HAROLD OSTLER  
REGISTER OF DEEDS  
DOUGLAS COUNTY, NEBR.

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as. Mease

-16-

500 44.25

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Compt.

9/15-12