

## COMMON AREA MAINTENANCE AGREEMENT

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RECORDER, SALT LAKE COUNTY, UTAH  
SECURITY TITLE  
REC BY: REBECCA GRAY, DEPUTY

## COMMON AREA MAINTENANCE AGREEMENT

THIS COMMON AREA MAINTENANCE AGREEMENT ("Agreement") is made as of the 14<sup>th</sup> day of May, 1987, by and between Price Development Company, a Utah corporation ("First Party"), and Albertson's, Inc., a Delaware corporation ("Albertson's").

### 1. Recitals.

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

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

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

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

### 2. Maintenance Standards.

2.1 Commencing on the date Albertson's first opens its building on Parcel 2 for business, the Maintenance Director (as defined below) shall, except for Service Facilities and driveup or drive through customer service facilities described in Section 2.3 and except as otherwise hereinafter provided, maintain the Common Area at all times in good and clean condition and repair, said maintenance to include, but not be limited to, the following:

- (a) Maintaining, repairing and resurfacing, when necessary, all paved surfaces in a level, smooth and evenly covered condition with the type of surfacing material originally installed or such substitute as shall in

all respects be equal or superior in quality, use and durability; and restriping, when necessary;

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

(c) Placing, repairing and replacing any necessary or appropriate directional signs, markers and lines;

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

(e) Maintaining all landscaped areas (including, without limitation, those on the perimeter of the Shopping Center); maintaining, repairing and replacing, when necessary, automatic sprinkler systems and water lines; and replacing shrubs and other landscaping as is necessary;

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

(g) Maintaining, repairing and replacing, when necessary, all common storm drains, sewers and other utility lines and facilities not dedicated to the public or conveyed to any public or private utility which are necessary for the operation of the buildings and improvements located in the Shopping Center (with the cost of all such items being allocated between the Owners of all buildings serviced or to be serviced by said facilities on the basis of maximum permissible ground floor area [excluding Expansion Area] of all such buildings);

(h) Keeping the Center Pylon Signs lighted from dusk to midnight or until the last business designated thereon closes for business, whichever last occurs, or during such other times mutually agreed in writing by the businesses designated thereon; and

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

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2.2 In addition to the foregoing, the Maintenance Director shall provide and maintain comprehensive general liability insurance with broad form endorsement insuring the Maintenance Director 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 Utah, and First Party, Albertson's and the Owners of Parcel: 2 and 4 shall be named on the policy as additional insureds. The limits of liability of all such insurance shall be not less than \$2,000,000 for injury to or death of any one person, \$2,000,000 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, death and property damage liability) with a limit of not less than \$2,000,000. The Maintenance Director shall furnish First Party, Albertson's and the Owners of Parcels 2 and 4 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 prior written notice to the holders of such insurance and the holders of such certificates.

2.3 Anything in this Article 2 to the contrary notwithstanding, the Maintenance Director shall not be responsible for the maintenance or insurance of any Service Facilities (i.e., loading docks, trash enclosures, bottle storage areas and other similar service facilities) or driveup or drive through customer service facilities, which facilities shall be maintained by the Owners thereof in good and clean condition and repair and in a quality and condition comparable to the quality and condition of the maintenance of the balance of the Common Area. In addition, the Owners of the Parcel or Parcels on which said Service Facilities or driveup or drive through customer service facilities are located shall at all times provide and maintain or cause to be provided and maintained comprehensive general liability insurance with broad form endorsement insuring all persons who now or hereafter own or hold portions of said facilities or any leasehold estate or other interest therein as their respective interests may appear against claims for personal injury, death or property damage occurring in, upon or about said facilities. Said insurance shall be written with an insurer licensed to do business in the State of Utah and in the amounts set forth in Section 2.2 above. The Owners of any such Parcel or Parcels shall

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furnish the Maintenance Director and any other Owner or Prime Lessee with certificates evidencing such insurance upon request.

2.4 The Maintenance Director agrees to indemnify, defend and hold harmless the Owners and occupants of all Parcels from and against any and all liability, claims, damages, expenses (including reasonable attorney's fees and reasonable attorney's fees on any appeal), judgments, proceedings and causes of action for injury to or death of any person or damage to or destruction of any property occurring on the Common Area and arising out of the performance or nonperformance of any of the obligations of the Maintenance Director set forth in this Agreement unless caused by the negligent or willful act or omission of the indemnified party, its agents, contractors or employees.

### 3. Lighting.

3.1 It is agreed that the artificial lighting for the Common Area shall remain on during the hours of darkness until one (1) hour after a majority of the businesses in the Shopping Center are closed 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 provided but shall be separately metered or otherwise measured or reasonably estimated and all expenses thereof shall be paid by such Owners or tenants to the extent appropriate. If such lights are separately metered, such Owners or tenants shall pay a reduced proportion of the expense of lighting the Common Area according to the extent to which such Owners or tenants are lighting the Common Area by separately metered lights.

### 4. Taxes.

4.1 Each Owner shall pay direct to the tax collector when due the real property taxes and other special taxes and assessments assessed against the Owner's Parcel, including the portion of the Common Area on such Owner's Parcel subject, however, to the right of any such Owner to contest the amount or validity of all or any part of said taxes and assessments. In the event of any such contest, the contesting party shall prosecute such contest with diligence, shall take such steps as are necessary to avoid a tax sale of its Parcel and, upon final determination of such contest, shall promptly pay when due the taxes and assessments ultimately determined by such contest.

### 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 first

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opens its building on Parcel 2 for business.

5.2 The Owners of at least three (3) Parcels (provided that the Owner of Parcel 2 or Parcel 4 is included within such group) may remove the Maintenance Director by executing and serving on the Owners and Prime Lessees 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 (provided that the Owner of Parcel 2 or Parcel 4 is included within such majority) shall appoint another person 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 be appointed with the approval of a majority of the Owners of the Parcels (provided that the Owner of Parcel 2 or Parcel 4 is included in such 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 Article 2 herein, provided that the Maintenance Director shall not contract for or pay for any item of maintenance or insurance expense not included in the approved budget, the pro rata share of which for Parcel 2 or Parcel 4 exceeds Two Thousand Dollars (\$2,000.00) or Four Thousand Dollars (\$4,000.00), respectively, without the prior written consent of the Owner of that Parcel. For the purpose of this Section 6.1, the above limitations shall include all expenses incurred for any item in any ninety (90) day period during any calendar year.

6.2 At least sixty (60) 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 four (4) bidders approved in writing by the Owners of Parcels 2 and 4, 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 2 and 4 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 Owners of Parcels 2 and 4 to award the contract to a higher bidder is first obtained by the Maintenance Director.

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6.3 At least thirty (30) days prior to the initial commencement of the Common Area maintenance work and at least sixty (60) days prior to the commencement of each calendar year thereafter, the Maintenance Director shall submit to the Owners of the Parcels a proposed budget and all bids, proposals and other documents supporting same for all Common Area maintenance and insurance expenses to be incurred during the following calendar year or balance thereof. In the event any Owner objects to the proposed budget, the Owner shall provide written notice of said objection to the Maintenance Director within thirty (30) days after said Owner's receipt of the proposed budget whereupon the Maintenance Director shall promptly meet with the Owner for the purpose of establishing a final approved budget for the following calendar year. The Maintenance Director shall not exceed the final approved budget for any item of Common Area maintenance or insurance by more than five percent (5%) without the prior written approval of the Consenting Owners.

6.4 Upon thirty (30) days prior written notice from any Consenting Owner, the Maintenance Director shall have the Common Area maintenance work, or any portion thereof designated by said Owner, rebid in the manner set forth in Section 6.2 and the Owners' shares of said Common Area maintenance work included in the budget shall thereafter be based on the amount of the lowest bid unless the prior written consent of the Consenting Owners to award the contract to a higher bidder is first obtained by the Maintenance Director. Following a rebid of any item or items of Common Area maintenance work, the Consenting Owners shall have no right to require a subsequent rebid of the same item or items for a period of at least one year. The foregoing notwithstanding, the Maintenance Director shall not be required to rebid any item before the expiration of the term of the applicable contract. In no event shall the Maintenance Director enter into any contract for all or any portion of the Common Area maintenance work for a term in excess of one (1) year without the prior written approval of the Consenting Owners.

6.5 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 service charge (which service charge shall not exceed ten percent [10%] of said expenses for either Parcel 2 or Parcel 4) to cover administration costs; provided, however, that the ten percent (10%) service charge for Parcel 2 or Parcel 4 shall not exceed Three Hundred Fifty Dollars (\$350.00) as to Parcel 2 or Seven Hundred Dollars (\$700.00) as to Parcel 4 for

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any item of Common Area maintenance or insurance expense without the prior written approval of the Owner of that Parcel. The Common Area expenses shall not include any costs incurred by the Maintenance Director for office overhead or compensation of its administrative or clerical employees except to the extent included in the service charge.

6.6 The Maintenance Director agrees to perform its duties under this Agreement 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 monthly in advance for one-twelfth (1/12th) of its pro rata share of all expenses included in the final approved budget (including the service charge described in Article 6 above) with the first billing date being the first day of the first full calendar month after the date Albertson's first opens its building on Parcel 2 for business. Said bills shall be due and payable within thirty (30) days after receipt. All items not included in the final approved budget shall be billed quarterly in arrears and shall be due and payable within thirty (30) days after receipt of a statement and copies of all invoices or other documents supporting same. 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 Building Area (Excluding Expansion Area)	Percent
Parcel 1	11,904	5.78
Parcel 1A	2,000	0.97
Parcel 2	41,407	20.11
Parcel 3	32,460	15.76
Parcel 4	94,300	45.80
Parcel 5	23,840	11.58
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TOTAL	205,911	100.00

Notwithstanding anything to the contrary contained in this Agreement, the Maintenance Director shall not be responsible for the maintenance or insurance of the Common Area of any Parcel (or portion thereof) located in Phase II of the Shopping Center (as shown on Exhibit "A") until such time as construction of a building is substantially completed on such Parcel (or portion thereof).

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Until such time as the conditions set forth in the immediately preceding sentence have been met, (i) the Owners of all such Parcels (or portions thereof) located in Phase II shall perform all of the obligations of the Maintenance Director with respect to their respective Parcels (or portions thereof) including, without limitation, the maintenance of all insurance described in Section 2.2 and the obligation of indemnification set forth in Section 2.3, and (ii) the proportionate share of the Phase I (as shown on Exhibit "A") Common Area maintenance and insurance expenses to be borne by each Owner in Phase I for any year shall be that proportion set forth below:

	Maximum Building Area (Excluding Expansion Area)	Percent
Parcel 1	11,904	15.89
Parcel 1A	2,000	2.67
Parcel 2	41,407	55.28
Parcel 3	19,600	26.16
TOTAL	74,911	100.00

At such time as construction of a building is substantially completed on any Parcel (or portion thereof) located in Phase II pursuant to clause (i) of this Section 7.1, such Parcel (or portion thereof) shall automatically, for the purpose of this Section 7.1, be deemed to constitute a part of Phase I of the Shopping Center, and the proportionate shares of the Phase I Common Area maintenance and insurance expenses set forth in the immediately preceding table shall be recalculated to include such additional Parcel (or portion thereof) based on the maximum Building Area (excluding Expansion Area) permitted to be constructed thereon.

Notwithstanding anything to the contrary contained in the next preceding paragraph, in the event the performance of the Phase I Common Area maintenance work requires the Maintenance Director to perform any work, all or any portion of which would otherwise constitute a Phase II Common Area maintenance or insurance expense under the standards enumerated in Article 2 of this Agreement, all expenses attributable to said work shall be prorated between the Owners of both Phase I and Phase II based on the first table set forth in this Section 7.1. The Maintenance Director shall be solely responsible for the payment and collection of all such Common Area maintenance and insurance expenses allocated to Phase II of the Shopping Center pursuant to

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the next preceding sentence including, without limitation, the payment of all costs and attorney's fees associated with the collection of same.

In the event the Owner of a Parcel expands its building(s) into the Expansion Area shown on Exhibit "A", the percentages set forth in the above tables shall be recalculated based upon any increase in the total floor area of said building(s) (excluding mezzanines and basements not used for the sale or display of merchandise) from the square footages shown therein.

7.2 Within six (6) months after the end of any calendar year, the Maintenance Director shall submit to the Owner of each Parcel (or its respective delegates, tenants or agents, as it may direct) a written summary of its actual reimbursable costs for the preceding calendar year (or portion thereof) together with a check for any overpayment. The Maintenance Director shall include, upon request, copies of all invoices and other evidence substantiating said payments. In the event said summary indicates an underpayment, each Owner shall, within thirty (30) days of receipt of said summary and all documents requested by said Owner pursuant to Section 7.1, pay to the Maintenance Director the amount of any such underpayment as finally determined and otherwise authorized herein. The Maintenance Director shall not be entitled to reimbursement from an Owner (or its delegates, tenants or agents) for any item of Common Area maintenance or insurance expense (including the service charge described in Article 6 above) for which a bill is not submitted to said Owner (or its delegates, tenants or agents, as it may direct) within six (6) months after the end of the calendar year in which said expense is incurred.

7.3 Any Consenting Owner may, upon not less than ten (10) days prior written notice to the Maintenance Director, inspect the Maintenance Director's records for all Common Area maintenance and insurance expenses incurred during the preceding calendar year at the Maintenance Director's General Offices at any time during reasonable business hours within one (1) year after the end of said calendar year. If said inspection reveals an overpayment of Common Area maintenance and insurance expenses (including the service charge described in Article 6 above), the Maintenance Director shall reimburse the Owner of each Parcel (or its respective delegates, tenants or agents, as it may direct) its proportionate share of any such overpayment within thirty (30) days after completion of said inspection and receipt of notice of determination of and the amount of such overpayment. If said inspection reveals an underpayment of Common Area maintenance and insurance expenses

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(including the service charge described in Article 6 above), the Owner of each Parcel shall reimburse the Maintenance Director its proportionate share of any such underpayment within thirty (30) days after completion of said inspection and receipt of proper billing in accordance with Section 7.1. If said inspection reveals that the Maintenance Director misstated Common Area maintenance and insurance expenses by more than five percent (5%), the Maintenance Director shall reimburse the inspecting party for all costs reasonably incurred in making such inspection within thirty (30) days after completion of said inspection and receipt of notice of determination and of the amount of any such misstatement. The Maintenance Director's expenses for any calendar year shall be deemed correct if none of the Consenting Owners gives the Maintenance Director written notice of discrepancy within the one (1) year period provided.

**8. Effect of Sale by Owner.**

8.1 If any Owner sells all or any portion of its interest in any Parcel, such Owner shall thereupon be released and discharged from any and all obligations as Owner in connection with the property sold except for obligations incurred prior to the date of sale and conveyance of title. The new Owner of any such Parcel or any portion thereof (including, without limitation, any Owner who acquires its interest by foreclosure, trustee's sale or otherwise) shall be liable for all obligations arising under this Agreement with respect to such Parcel or portion thereof after the date of sale and conveyance of title.

**9. Default.**

9.1 In the event any Owner fails or refuses at any time to pay when due its share of the maintenance and insurance expenses as set forth above, which failure continues for a period of ten (10) days after receipt of written notice thereof, such failure shall constitute a default and legal action may thereafter be instituted against the defaulting Owner by the Maintenance Director or other person paying the maintenance or insurance expenses of the defaulting Owner ("Curing Party") for reimbursement plus interest at a rate equal to the lesser of (i) the highest rate allowed by law and (ii) the rate two percent (2%) above the "Reference Rate of Interest" charged from time to time to corporate borrowers of the highest credit standard by First Security Bank, N.A., Salt Lake City, Utah from the date said payment was due and payable until paid. Furthermore, the Curing Party shall have a lien on the Parcel of the defaulting Owner for the amount of said expenses and interest; provided, that if there be a bona fide dispute as to the existence of such default or of

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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, which failure continues for a period of ten (10) days after receipt of written notice thereof, such failure shall constitute a default and any other Owner ("Curing Owner") may thereafter pay such taxes if such taxes are delinquent and the defaulting Owner has not commenced and is not duly prosecuting any contest of such taxes in accordance with Section 4.1 of this Agreement. 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 pay the bill, the Curing Owner shall have a lien on the Parcel of the defaulting Owner for the amount of the bill plus interest at a rate equal to the lesser of (i) the highest rate allowed by law and (ii) the rate two percent (2%) above the "Reference Rate of Interest" charged from time to time to corporate borrowers of the highest credit standard by First Security Bank, N.A., Salt Lake City, Utah, from the date of expiration of said fifteen (15) day period 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, in the event any Owner fails to perform any other provision of this Agreement, which failure continues for a period of thirty (30) days after receipt of written notice specifying the particulars of such default, such failure shall constitute a default and any other Owner may thereafter institute legal action against the defaulting Owner for specific performance, declaratory or injunctive relief, damages or other suitable legal or equitable remedy; provided, however, that the defaulting Owner shall not be deemed to be in default if such failure to perform cannot be rectified within said thirty (30) day period and such Owner is diligently proceeding to rectify the particulars of such default.

9.4 In the event the Maintenance Director fails to perform any of the provisions of this Agreement, which failure continues for a period of thirty (30) days (ten [10] days in the event of failure to pay money) after receipt of written notice from any Owner specifying the particulars of such default, such

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failure shall constitute a default and any Owner may thereafter institute legal action against the Maintenance Director for specific performance, declaratory or injunctive relief, damages or other suitable legal or equitable remedy or may perform the obligations of the Maintenance Director specified in said notice of default and offset the cost thereof from amounts due the Maintenance Director; provided, however, that the Maintenance Director shall not be deemed to be in default if such failure to perform (excluding the payment of money) cannot be rectified within said thirty (30) day period and the Maintenance Director is diligently proceeding to rectify the particulars of such default.

9.5 In the event any person is required to initiate or defend any legal action or proceeding to enforce or interpret the Agreement, the prevailing party in any such action or proceeding shall be entitled to recover from the losing party its reasonable costs and attorney's fees (including its reasonable costs and attorney's fees on any appeal) as determined by the court in the same or a separate proceeding.

9.6 The failure of an Owner to insist upon strict performance of any of the terms, covenants, conditions or agreements contained herein shall not be deemed a waiver of any rights or remedies that said Owner may have, and shall not be deemed a waiver of any subsequent breach or default in any of the terms, covenants, conditions or agreements contained herein by the same or any other person.

9.7 In addition to the remedies set forth in this Agreement, any person entitled to the benefit of this Agreement shall have all other remedies provided by law. No remedy herein conferred upon or reserved to any person shall exceed any other remedy herein or by law provided, but each shall be cumulative.

**10. Lien for Expenses or Taxes.**

10.1 The lien provided for in Article 9 above shall only be effective when filed for record by the Curing Owner or Curing Party as a claim of lien against the defaulting Owner in the Office of the Recorder of Salt Lake County, Utah, 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;

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(c) The name of the Owner or reputed Owner of the property which is the subject of the alleged lien; and

(d) The name and address of the Curing Owner or Curing Party.

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

11. Right to Maintain Parcel Separately.

11.1 Any Owner of Parcel 2 or 4 may, at any time and from time to time, upon at least sixty (60) days prior notice to the Maintenance Director and the other Consenting Owners, elect to assume the obligations of the Maintenance Director to maintain and repair such Owner's portion of the Common Area, except for resurfacing, lighting 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 (or its respective, delegates, tenants or agents, as it may direct) pursuant to the formula in Article 7 of this Agreement. In the event of any such assumption by any Owner of Parcel 2 or 4, such Owner agrees to maintain and repair its portion of the Common Area at its sole cost and expense and in a manner and at a level of quality at least comparable to that of the balance of the Shopping Center. Any such Owner may also elect to terminate its obligation to maintain and repair its own portion of the Common Area by giving at least sixty (60) days prior notice to the Maintenance Director, in which event the Maintenance Director shall resume its duties with respect to said Parcel and the Owner so electing agrees to pay for its pro rata share of all Common Area maintenance and insurance costs (including the ten percent [10%] service charge in Article 6 above) thereafter incurred by the Maintenance Director in accordance with the formula in Article 7. Anything in the preceding sentence to the contrary notwithstanding, the Owner electing to terminate its obligation to maintain and repair its portion of the Common Area shall return said Common Area to the Maintenance Director in the same quality and condition as the balance of the Common Area, any failure of which shall be corrected at the sole cost and expense of said Owner.

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**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. 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 of and bill the defaulting Owner for the expenses incurred. In such event, the provisions of Articles 9 and 10 shall apply.

12.2 In the event there should at any time cease to be a Maintenance Director, each Owner agrees to indemnify, defend and hold harmless the other Owners from and against any and all liability, claims, damages, expenses (including reasonable attorney's fees and reasonable attorney's fees on any appeal), judgments, proceedings and causes of action for injury to or death of any person or damage to or destruction of any property occurring on the indemnifying Owner's Parcel unless caused by the negligent or willful act or omission of the indemnified Owner, its agents, representatives or employees.

**13. General Provisions.**

13.1 This Agreement shall inure to the benefit of and be binding upon the Owners, their heirs, personal representatives, tenants, successors and assigns, and upon any person acquiring a Parcel, or any portion thereof, or any interest therein, whether by operation of law or otherwise.

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

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

13.4 Each term, covenant, condition and agreement respecting any one (1) Parcel shall be a burden on that Parcel, shall be appurtenant to and for the benefit of the other Parcels and each part thereof and shall run with the land.

13.5 This Agreement may not be modified in any respect whatsoever or terminated, in whole or in part, except with the consent of the Owners and Prime Lessees of the Parcels containing ninety percent (90%) of the total square

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footage of Building Area in the Shopping Center at the time of such modification or termination, and then only by written instrument duly executed and acknowledged by all of the required Owners and Prime Lessees, duly recorded in the office of the Recorder of Salt Lake County, Utah. No modification or termination of this Agreement shall affect the rights of any Lienholder unless the Lienholder consents in writing to the modification or termination.

13.6 Except where otherwise specifically stated to the contrary, all consents and approvals required hereunder (i) shall not be unreasonably withheld or delayed and (ii) shall be given within thirty (30) days after receipt of written notice specifying the section pursuant to which such consent or approval is requested and including copies of all documents reasonably required to grant such consent or approval. In the event written notice of approval or disapproval (with reasons specified) is not given within said thirty (30) day period, said request shall be deemed disapproved.

13.7 Whenever the approval or consent of any Owner is required, such approval or consent shall be exercised only in the following manner. Each Parcel shall have only one (1) vote. The Owners (if consisting of more than one [1] person) of each Parcel shall agree among themselves and designate in writing to the Owners and Prime Lessees of each of the other Parcels a single person who is entitled to cast the vote for that Parcel. If the Owners of any Parcel cannot agree who shall be entitled to cast the single vote of that Parcel, or if the Owners fail to designate the single person who is entitled to cast the vote for that Parcel within thirty (30) days after receipt of request for same from any other Owner or Prime Lessee, then that Parcel shall not be entitled to vote. In the event a Parcel is not entitled to vote, its consent or approval shall not be necessary and the total square footage of Building Area located on said Parcel shall be disregarded for the purpose of computing the percentage requirement set forth in Section 13.5. Except as otherwise set forth in Section 13.5, in the event an Owner sells its Parcel and becomes the Prime Lessee thereon, said Prime Lessee is hereby appointed the entity to cast the vote or give the consent for said Parcel on behalf of the Owner thereof and is hereby granted all of the rights and remedies of the Owner of said Parcel so long as it is the Prime Lessee of said Parcel, anything in this Agreement to the contrary notwithstanding.

13.8 All notices given pursuant to this Agreement shall be in writing and shall be given by personal delivery, by United States mail or by United

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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 (and any Prime Lessee, where applicable) by name and address shown on the then current real property tax rolls in Salt Lake County, Utah. All notices to First Party or Albertson's shall be sent to the address set forth below:

First Party: Price Development Company  
35 Century Park-Way  
Salt Lake City, Utah 84115

Attention: Legal Department

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

Attention: Legal Department

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

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

13.9 Estoppel Certificate: Each Owner and Prime Lessee hereby agrees, upon written request of any other Owner or Prime Lessee, to issue to any prospective purchaser or Lienholder for value an estoppel certificate stating (i) whether the person to whom the request has been directed knows of any default under this Agreement and, if there are known defaults, specifying the nature thereof; (ii) whether to its knowledge the Agreement has been assigned, modified or amended in any way (and, if it has, stating the nature thereof); and (iii) whether to its knowledge (if such be the case) the Agreement as of that date is in full force and effect. Such estoppel certificate shall in no event subject the person furnishing it to any liability whatsoever.

14. Sale & Sale-leaseback Purchaser.

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

**15. Severability.**

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

**16. Not a Partnership.**

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

**17. Captions and Headings.**

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

**18. Entire Agreement.**

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

**19. Construction.**

19.1 In construing the provisions of this Agreement and whenever the context so requires, the use of a gender shall include all other genders,

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the use of the singular shall include the plural, and the use of the plural shall include the singular.


20. Joint and Several Obligations.

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

21. Recordation.

21.1 This Agreement shall be recorded in the Records of Salt Lake County, Utah.

EXECUTED as of the day and year first above written.

  
Albertson's, Inc.,  
a Delaware corporation

BY: Thomas R. Saldin  
Senior Vice President

BY: Mirina O. Amstrong  
Secretary

FIRST PARTY:  
Price Development Comp. ny,  
a Utah corporation

BY: [Signature] Flora P.

BY: [Signature] ASST SEC.



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STATE OF IDAHO )  
 ) ss.  
County of Ada )

On this 12<sup>th</sup> day of May, 1987, before me, the undersigned, a Notary Public in and for said State, personally appeared Thomas R. Saldin and Minnie O. Armstrong, to me known to be the Senior Vice President and the 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, month and year in this certificate first above written.

My commission expires:

June 27, 1991  
NOTARY PUBLIC  
STATE OF IDAHO

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

STATE OF Utah )  
 ) ss.  
County of Salt Lake )

On this 14<sup>th</sup> day of May, 1987, before me, the undersigned, a Notary Public in and for said State, personally appeared G. Rex Frazier and Michael C. Frei, to me known to be the Executive Vice President and Assistant Secretary respectively, of Price 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, month and year in this certificate first above written.

My commission expires:

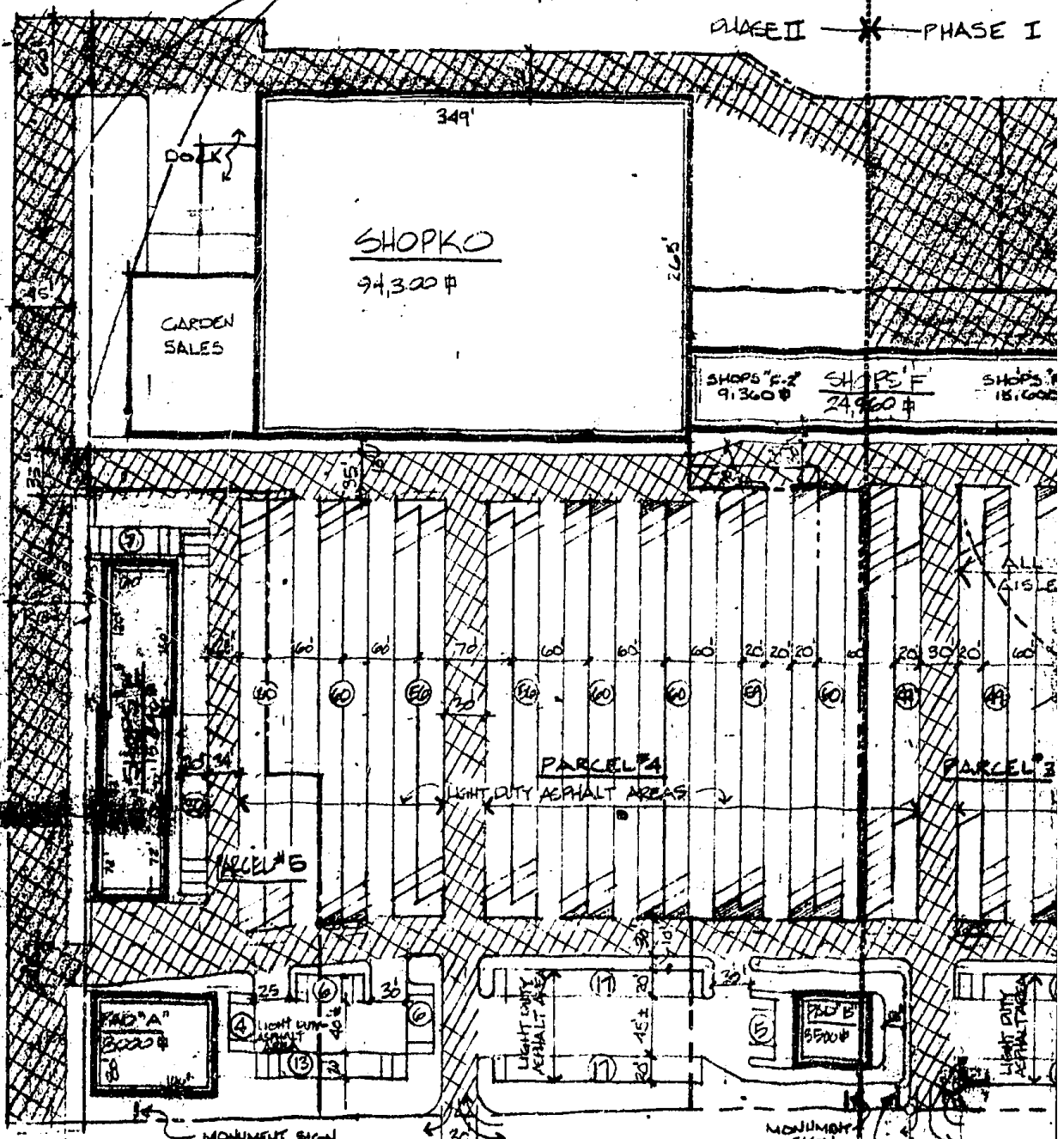
8/1/89

Maura Jane Vincent  
Notary Public in and for the  
State of Utah  
Residing at Kaysville, Utah

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NOT A PART OF SITE WORK

PHASE II \* PHASE I



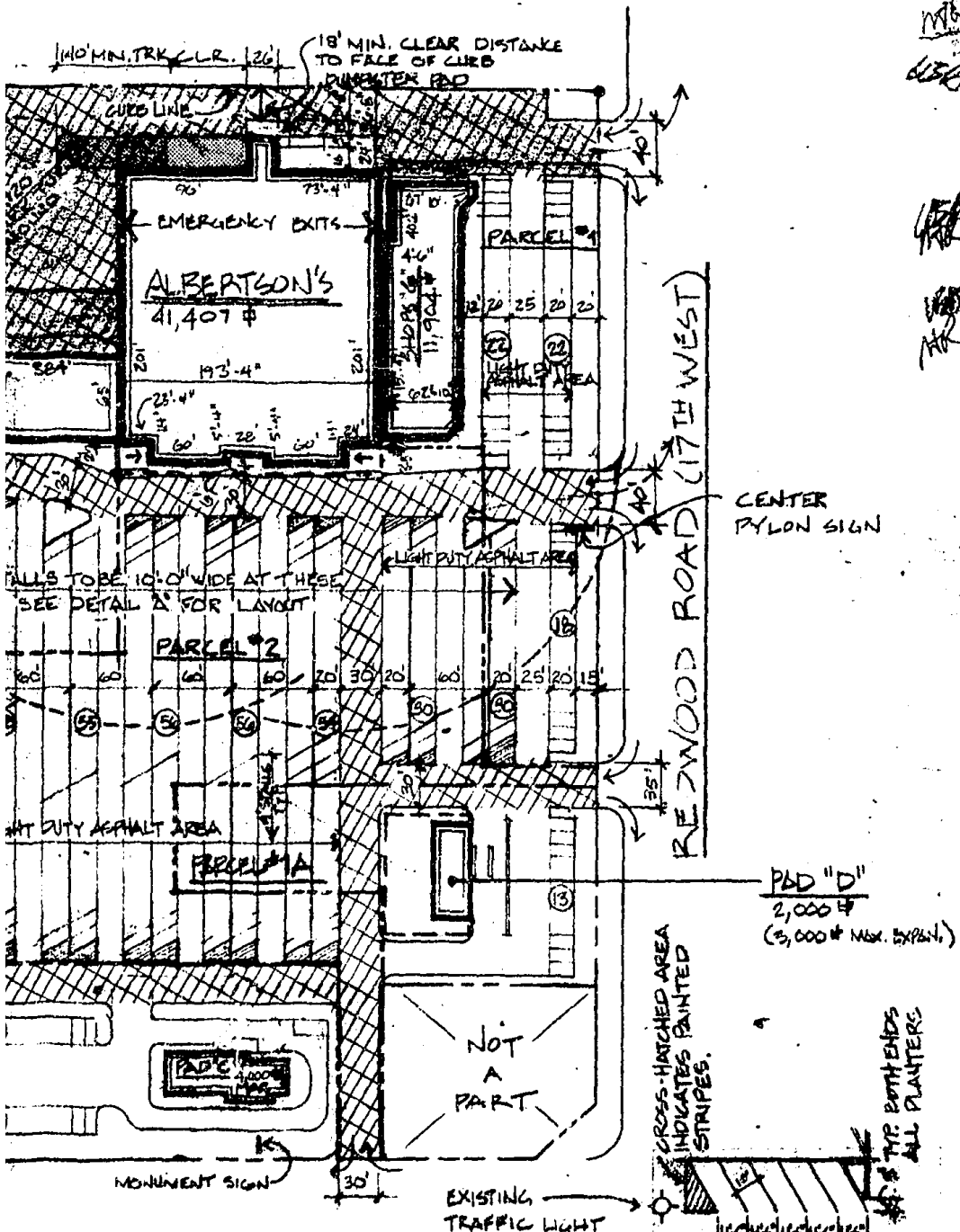
**GENERAL NOTES**

- Drawn w/out Benefit of Survey
- No Truckwells, Natural Deck Only
- Parking Requirements:  
**10 SPACES 10000 G.L.A**
- Building Setbacks:  
**0' ALL SIDES**
- Landscape Requirements:  
**10% OF OPEN SPACE**
- Zoning Requirements:  
Existing - "P2"  
Required - "P2"

**LEGEND**

- Property Line
- Parcel Line
- Expansion Limit Line
- Building Area
- Heavy Duty Asphalt
- Medium Duty Asphalt Area

90TH SOUTH



REVISIONS  
 7-25-80 1-15  
 7-28-80 RAL  
 CHECKED TO  
 POSITION "A"  
 11-04-80 BPP  
 REV. PARKING  
 SHOPS A.P.R.  
 PAD E.C.HOPKO  
 PROP. LINES ADD  
 PHASE LINES  
 12-28-80 BPP  
 REV. CURB  
 CUT WIDTHS  
 1-13-81 P.S.  
 REVISED PAD  
 C-1 ADDED CROSS  
 THRU, CHANGED  
 LOCATION CENTER  
 Pylon SIGN  
 ADDED TURNING  
 ARROWS, REV.  
 INTERIOR PLANTERS  
 2-11-81 P.S.  
 REV. SHOP FIB.  
 PAD A, ADDED  
 R.C.W. REV. PARK  
 PADDED ASPHALT  
 DESIGNATION  
 3-11-81 P.A.C.  
 REV. B, PARCELS,  
 PARKING, SHOPS CAFE  
 PADS B, D, I, SHOP  
 CUBES, SIGNS,  
 MONS CTR. SIGN ON 900

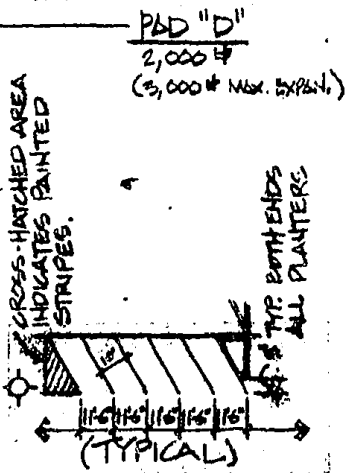


PROJECT  
 90TH &  
 REWOOD

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 WEST JORDAN, UT.  
 STORE NO. 5-P

**EXHIBIT "A" SITE PLAN**

TOTAL GROSS BUILDING AREA	206,911 sq ft
TOTAL CARPARKS REQUIRED	1,030
TOTAL CARPARKS PROVIDED	1,122 (+92)
TOTAL CARPARKS W/IN 200' RAD.	109
TOTAL SITE AREA	206,347 sq ft



APPROVED

CHAIRMAN	W. Miller
VIC-CHAIR	Robert Walker
PRESIDENT	W. Miller
ENR. VP	W. Miller
DR. VP. CRIST	W. Miller
DR. VP. I.	W. Miller
DR. VP. II.	W. Miller

Drawn By: BIL  
 Checked By:  
 Date: 7-25-80  
 Sheet 1 of 2  
 No. 1

**LARSEN & MALMQUIST, INC.**  
**CONSULTING ENGINEERS & LAND SURVEYORS**  
2736 South 2700 West • West Valley City, Utah 84119 • (801) 972-2634

**SCHEDULE I**

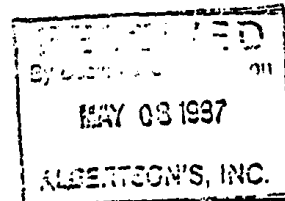
**LEGAL DESCRIPTION**

**RIVER POINTE PLAZA  
PARCEL 1**

BEGINNING at a point on the East line of Redwood Road (1700 West Street), said point being South 00°03'25" East 348.48 feet along the Quarter Section line and North 89°53'45" East 53.00 feet from the Center of Section 3, Township 3 South, Range 1 West, Salt Lake Base and Meridian, and running thence North 89°53'45" East 84.59 feet; thence South 00°06'15" East 221.34 feet; thence North 89°53'45" East 75.00 feet; thence South 00°06'15" East 169.00 feet; thence South 89°53'45" West 4.50 feet; thence South 00°06'15" East 52.33 feet; thence South 89°53'45" West 155.46 feet to the East line of Redwood Road; thence North 00°03'25" West along said East line 442.67 feet to the POINT OF BEGINNING. Contains 1.2372 acres.

PREPARED FOR: Price Development Co.  
35 Century Parkway  
Salt Lake City, Utah 84115

PREPARED BY: Robert S. Markham, P.E.  
L & M No. 01435-86E/S  
May 13, 1987



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**LARSEN & MALMQUIST, INC.**  
**CONSULTING ENGINEERS & LAND SURVEYORS**  
2736 South 2700 West • West Valley City, Utah 84119 • (801) 972-2634

**SCHEDULE I**

**LEGAL DESCRIPTION**

**RIVER POINTE PLAZA  
PARCEL 1 A**

BEGINNING at a point on the East line of Redwood Road (1700 West Street), said point being South 00°03'25" East 193.01 feet along the Quarter Section line and North 89°53'45" East 53.00 feet from the Center of Section 3, Township 3 South, Range 1 West, Salt Lake Base and Meridian, and running thence North 89°53'45" East 160.00 feet; thence South 00°03'25" East 61.94 feet; thence North 89°53'45" East 138.17 feet; thence South 00°06'15" East 78.54 feet; thence South 89°53'45" West 298.23 feet to the East line of Redwood Road; thence North 00°03'25" West along said East line 140.47 feet to the POINT OF BEGINNING. Contains 0.7651 acres.

PREPARED FOR: Price Development Co.  
35 Century Parkway  
Salt Lake City, Utah 84115

PREPARED BY: Robert S. Markham, P.E.  
L & M No. 01435-86E/S  
May 13, 1987



**LARSEN & MALMQUIST, INC.**  
**CONSULTING ENGINEERS & LAND SURVEYORS**  
2736 South 2700 West • West Valley City, Utah 84119 • (801) 972-2634

**SCHEDULE I**

**LEGAL DESCRIPTION**

**RIVER POINTE PLAZA  
PARCEL 2**

BEGINNING at a point on the South line of 9000 South Street, said point being North 89°53'45" East 213.00 feet along the Quarter Section line and South 00°03'25" East 73.00 feet from the Center of Section 3, Township 3 South, Range 1 West, Salt Lake Base and Meridian, and running thence North 89°53'45" East along said line 35.20 feet; thence South 00°06'15" East 139.82 feet; thence North 89°53'45" East 258.50 feet; thence South 00°06'15" East 226.14 feet; thence South 89°53'45" West 101.00 feet; thence South 00°06'15" East 259.86 feet; thence North 89°53'45" East 150.00 feet; thence South 00°06'15" East 144.66 feet; thence South 89°53'45" West 503.33 feet to East line of Redwood Road (1700 West Street); thence North 00°03'25" West along said East line 52.33 feet; thence North 89°53'45" East 155.46 feet; thence North 00°06'15" West 52.33 feet; thence North 89°53'45" East 4.50 feet; thence North 00°06'15" West 169.00 feet; thence South 89°53'45" West 75.00 feet; thence North 00°06'15" West 221.34 feet; thence South 89°53'45" West 84.59 feet; thence North 00°03'25" West 15.00 feet; thence North 89°53'45" East 298.23 feet; thence North 00°06'15" West 78.54 feet; thence South 89°53'45" West 138.17 feet; thence North 00°03'25" West 181.94 feet to the POINT OF BEGINNING. Contains 4.3179 acres (188,087 square feet).

PREPARED FOR: Price Development Co.  
35 Century Parkway  
Salt Lake City, Utah 84115

PREPARED BY: Robert S. Markham, P.E.  
L & M No. 01435-84E/S  
May 13, 1987

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6/10  
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**LARSEN & MALMQUIST, INC.**  
**CONSULTING ENGINEERS & LAND SURVEYORS**  
2736 South 2700 West • West Valley City, Utah 84119 • (801) 972-2634

SCHEDULE I

LEGAL DESCRIPTION

RIVER POINTE PLAZA  
PARCEL 3

BEGINNING at a point on the South line of 9000 South Street, said point being North  $89^{\circ}53'45''$  East 248.14 feet along the Quarter Section line and South  $00^{\circ}06'15''$  East 73.00 feet from the Center of Section 3, Township 3 South, Range 1 West, Salt Lake Base and Meridian, and running thence North  $89^{\circ}53'45''$  East 329.32 feet along said South line to a point of an 11,512.20 foot radius curve to the left (center bears North  $00^{\circ}06'15''$  West 11,512.20 feet of which the central angle is  $01^{\circ}03'22''$ ); thence Northeasterly along the arc of said curve and said South line 212.19 feet; thence South  $00^{\circ}06'15''$  East 141.77 feet; thence South  $89^{\circ}53'45''$  West 136.00 feet; thence South  $00^{\circ}06'15''$  East 331.00 feet; thence North  $89^{\circ}53'45''$  East 136.00 feet; thence South  $00^{\circ}06'15''$  East 155.00 feet; thence South  $89^{\circ}53'45''$  West 384.00 feet; thence North  $00^{\circ}06'15''$  West 259.86 feet; thence North  $89^{\circ}53'45''$  East 101.00 feet; thence North  $00^{\circ}06'15''$  West 226.14 feet; thence South  $89^{\circ}53'45''$  West 258.50 feet; thence North  $00^{\circ}06'15''$  West 139.82 feet to the POINT OF BEGINNING.  
Contains 4.4677 acres.

PREPARED FOR: Price Development Co.  
35 Century Parkway  
Salt Lake City, Utah 84115

PREPARED BY: Robert S. Markham, P.E.  
L & M No. 01435-86E/S  
February 25, 1987

CONSULTING CIVIL - STRUCTURAL ENGINEERING AND LAND SURVEYING

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**LARSEN & MALMQUIST, INC.**  
**CONSULTING ENGINEERS & LAND SURVEYORS**  
2736 South 2700 West • West Valley City, Utah 84119 • (801) 972-2634

**SCHEDULE I**

**LEGAL DESCRIPTION**

**RIVER POINTE PLAZA  
PARCEL 4**

BEGINNING at a point on the South line of 9000 South Street, said point being North 89°53'45" East 789.64 feet along the Quarter Section line and South 00°06'15" East 71.04 feet from the Center of Section 3, Township 3 South, Range 1 West, Salt Lake Base and Meridian, said point also being on an 11,512.20 foot radius curve to the left (center bears North 01°09'37" West 11,512.20 feet of which the central angle is 01°27'14"); and running thence Northeasterly along the arc of said curve and South line 292.15 feet; thence South 00°06'15" East 256.86 feet; thence North 89°53'45" East 41.00 feet; thence South 00°06'15" East 216.00 feet; thence North 89°53'45" East 141.14 feet; thence South 00°00'50" East 367.00 feet; thence South 89°53'45" West 134.22 feet; thence North 00°06'15" West 25.00 feet; thence South 89°53'45" West 381.00 feet; thence North 60°06'15" West 66.68 feet; thence South 89°53'45" West 134.60 feet; thence North 00°06'15" West 144.66 feet; thence North 89°53'45" East 234.00 feet; thence North 00°06'15" West 155.00 feet; thence South 89°53'45" West 136.00 feet; thence North 00°06'15" West 331.00 feet; thence North 89°53'45" East 136.00 feet; thence North 00°06'15" West 141.77 feet to the POINT OF BEGINNING. Contains 9.0005 acres.

PREPARED FOR: Price Development Co.  
35 Century Parkway  
Salt Lake City, Utah 84115

PREPARED BY: Robert S. Markham, P.E.  
L & M No. 01435-86E/S  
February 17, 1987

CONSULTING CIVIL - STRUCTURAL ENGINEERING AND LAND SURVEYING

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**LARSEN & MALMQUIST, INC.**  
**CONSULTING ENGINEERS & LAND SURVEYORS**  
2736 South 2700 West • West Valley City, Utah 84119 • (801) 972-2634

**SCHEDULE I**

**LEGAL DESCRIPTION**

**RIVER POINTE PLAZA  
PARCEL 5**

BEGINNING at a point on the South line of 9000 South Street, said point being North 89°53'45" East 1081.64 feet along the Quarter Section line and South 00°06'15" East 61.95 feet from the Center of Section 3, Township 3 South, Range 1 West, Salt Lake Base and Meridian, said point also being on an 11,512.20 foot radius curve to the left; thence Northeasterly along the arc of said curve and said South line 152.799 feet to a point of tangency; thence North 86°37'31" East 46.87 feet to the point of an 11,406.16 foot radius curve to the right; thence along the arc of said curve and South line 43.573 feet; thence South 00°00'50" East 852.64 feet; thence South 89°53'45" West 60.00 feet; thence North 00°00'50" West 367.00 feet; thence South 89°53'45" West 141.14 feet; thence North 00°06'15" West 216.00 feet; thence South 89°53'45" West 41.00 feet; thence North 00°06'15" West 256.86 feet to the POINT OF BEGINNING. Contains 2.9690 acres.

PREPARED FOR: Price Development Co.  
35 Century Parkway  
Salt Lake City, Utah 84115

PREPARED BY: Robert S. Markham, P.E.  
L & M No. 01435-86E/S  
February 11, 1987

CONSULTING CIVIL - STRUCTURAL ENGINEERING AND LAND SURVEYING

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