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COMMON AREA MAINTENANCE AGREEMENT

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**COMMON AREA MAINTENANCE AGREEMENT**

THIS COMMON AREA MAINTENANCE AGREEMENT ("Agreement") is made as of the 22<sup>nd</sup> day of October, 1998, by and between SB Clinton L.C., a Utah limited liability company ("First Party"), and Albertson's, Inc., a Delaware corporation ("Albertson's").

**1. RECITALS.**

1.1 Albertson's is the Owner of Parcels 2 and 7 and First Party is the Owner of Parcels 1, 3, 4, 5, 6, 8, 9, 10, 11 and 12, all as shown on Exhibit "A" and more particularly described in Schedule I attached hereto and incorporated herein by this reference. Parcels 1 through 11 are hereinafter collectively referred to as the "Shopping Center." Parcel 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 or 12 is sometimes referred to as "Parcel."

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

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

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

## 2. MAINTENANCE STANDARDS.

2.1 Commencing on the date any building on Parcel 1, 2 or 7 first opens for business (the "CAM Commencement Date"), 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, without limitation, the following:

(a) Maintaining, repairing and resurfacing, when necessary, all paved surfaces in a level, smooth and evenly covered condition with the type of surfacing material originally installed or such substitute as shall in all respects be equal or superior in quality, use and durability; and restriping, when necessary;

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

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

(d) Operating, maintaining, repairing and replacing, when necessary, such artificial lighting facilities as shall be reasonably required (except as otherwise provided 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, all Common Area walls (including, without limitation, all fences, walls or barricades constructed pursuant to Section 4.4 of the Declaration);

(g) Maintaining, repairing and replacing, when necessary, all storm drains, sewers and other utility lines and facilities not dedicated to the public or conveyed to any public or private utility which are necessary for the operation of the buildings and improvements located in the Shopping Center (with the cost of all such items being allocated between the Owners of all buildings and improvements serviced or to be serviced by said facilities on the basis of their respective Building Areas);

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

(i) Maintaining, repairing and replacing, when necessary, the Shopping Center Identification Sign and each Center Pylon Sign pylon structure shown on Exhibit "A" (except for the sign fascia and cans which shall be supplied and maintained by the businesses designated thereon). Notwithstanding the other provisions of this Agreement, the cost of

maintaining, repairing and replacing each Center Pylon Sign pylon structure shall be paid by the Owners of all Parcels entitled to display designations thereon in the proportion that the total square footage of each Owner's designation or designations bears to the total square footage of all designations entitled to be displayed thereon; and

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

2.2 In addition to the foregoing, the Maintenance Director shall provide and maintain commercial general liability insurance with broad form coverage endorsement (including broad form property damage endorsement) insuring the Maintenance Director against claims for personal injury, bodily injury or death, and property damage or destruction, occurring in, on or about the Common Area. Such insurance shall be written with an insurer licensed to do business in the state in which the Shopping Center is located and First Party, Albertson's, and all persons who now or hereafter own or hold portions of the Shopping Center or building space within the Shopping Center or any leasehold estate or other interest therein as their respective interests may appear (provided that the Maintenance Director is notified in writing of such interest) shall be named on the policy as additional insureds. The limits of liability of all such insurance shall be not less than \$2,000,000 for personal injury or bodily injury or death of any one person,

\$2,000,000 for personal injury or bodily injury or death of more than one person in one occurrence and \$500,000 with respect to damage to or destruction of property; or, in lieu of such coverage, a combined single limit (covering personal injury, bodily injury or death and property damage or destruction) with a limit of not less than \$2,000,000 per occurrence. The Maintenance Director shall furnish First Party and Albertson's with certificates evidencing such insurance. The policies of such insurance shall provide that the insurance represented by such certificates shall not be canceled, materially changed or nonrenewed without the giving of thirty (30) days prior written notice to the holders of such insurance and the holders of such certificates.

2.3 Anything in this Article 2 to the contrary notwithstanding, the Maintenance Director shall not be responsible for the maintenance or insurance of any Service Facilities or Fuel Center Facilities (as such terms are defined in the Declaration) 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 facilities are located shall at all times (i) provide and maintain or cause to be provided and maintained commercial general liability insurance with broad form coverage endorsement (including broad form property damage endorsement) insuring all persons who now or hereafter own or hold portions of said facilities or any leasehold estate or other interest therein as their respective interests may appear against claims for personal injury, bodily injury or death or property damage or destruction occurring in, on or about said facilities, and (ii) indemnify,

defend and hold harmless the Owners and occupants of all other Parcels from and against any and all liability, claims, damages, expenses (including reasonable attorney's fees and reasonable attorney's fees on any appeal), judgments, proceedings and causes of action, for injury to or death of any person or damage to or destruction of any property occurring in, on or about said facilities and arising out of the performance or nonperformance of any of the obligations of the Owners of the Parcel or Parcels on which said facilities are located set forth in this Section 2.3, unless caused by the negligent or willful act or omission of the indemnaified person, its agents, contractors or employees. Said insurance shall be written with an insurer licensed to do business in the state in which the Shopping Center is located and in the amounts set forth in Section 2.2 above. The Owners of any such Parcel or Parcels shall furnish the Maintenance Director and any other Owner or Prime Lessee with certificates evidencing such insurance upon request. The insurance which an Owner is required to maintain hereunder may be provided under a blanket policy provided such policy otherwise complies with the requirements of this Agreement. So long as an Owner has a net worth, determined in accordance with generally accepted accounting principles, in excess of \$100,000,000.00, all or any part of such insurance carried by such Owner may be provided under a program of self-insurance.

2.4 The Maintenance Director agrees to indemnify, defend and hold harmless the Owners and occupants of all Parcels from and against any and all liability, claims, damages, expenses (including reasonable attorney's fees and reasonable attorney's fees on appeal), judgments, proceedings and causes of action, for injury to or death of any person or damage to

or destruction of any property occurring in, on or about the Common Area (exclusive of any Service Facilities or driveup or drive through customer service facilities) and arising out of the performance or nonperformance of any of the obligations of the Maintenance Director set forth in this Agreement, unless caused by the negligent or willful act or omission of the indemnified person, its agents, contractors or employees.

### 3. LIGHTING.

3.1 The artificial lighting facilities in the Common Area located on Parcel 2 will be separately metered to the building located on Parcel 2 (or to such other location on Parcel 2 as is selected by the Owner of Parcel 2) as a part of the Site Work described in the Development Agreement ("Parcel 2 Lighting Facilities") and, from and after the date the Parcel 2 Lighting Facilities become separately metered, the Owner of Parcel 2 (or its tenants or agents, as it may direct) shall pay all costs associated with operating (including, without limitation, the electricity therefor), maintaining, repairing and replacing such Parcel 2 Lighting Facilities. The Maintenance Director shall, as set forth in Section 2.1(d), operate, maintain, repair and replace all artificial lighting facilities in the Shopping Center other than the Parcel 2 Lighting Facilities, and the Owner of Parcel 2 (or any of its tenants or agents) shall have no obligation to reimburse the Maintenance Director for any of the costs thereof, anything in this Agreement to the contrary notwithstanding.

3.2 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.



4. **TAXES.** Each Owner shall pay direct to the tax collector when due the real property taxes and other special taxes and assessments assessed against the Owner's Parcel, including the portion of the Common Area on such Owner's Parcel; subject, however, to the right of any such Owner to contest the amount or validity of all or any part of said taxes and assessments.

5. **MAINTENANCE DIRECTOR.**

5.1 The Owners hereby appoint the Owner of Parcel 1 as Maintenance Director of the Shopping Center Common Area from and after the CAM Commencement Date.

5.2 The Owners of at least six (6) Parcels (provided that Parcel 2 is included within such group) may remove the Maintenance Director upon written notice to the Owners of the remaining Parcels in which event the Owners of a majority of the Parcels (provided that Parcels 1 and 2 are included within such majority) shall appoint another person to be the Maintenance Director.

5.3 The Maintenance Director shall have the right, upon giving ninety (90) days prior written notice to the Owners of the Shopping Center, to resign as Maintenance Director in which event the Owners of a majority of the Parcels (provided that Parcels 1 and 2 are included in such majority) shall appoint another person to be the Maintenance Director.

6. **REIMBURSEMENT OF MAINTENANCE DIRECTOR.**

6.1 The Maintenance Director shall contract for and pay for all of the items enumerated as maintenance and insurance expenses in Article 2 herein; provided, however, that

until such time as a budget is approved by each Consenting Owner pursuant to Section 6.3, the Maintenance Director shall not be entitled to reimbursement of all or any portion of an Owner's pro rata share of any item of Common Area maintenance or insurance expense, the pro rata share of which for said Owner's Parcel exceeds Two Thousand Dollars (\$2,000.00), without the prior written approval of the Owner of said Parcel.

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 three (3) bidders approved in writing by the Consenting Owners (as defined in the Declaration), which approval shall not be unreasonably withheld or delayed. The names of the bidding contractors or companies and the amounts of their respective bids shall be furnished to the Consenting Owners 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 Consenting Owners to award the contract to a higher bidder is first obtained by the Maintenance Director.

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 each Consenting Owner 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 Consenting Owner objects to the proposed budget or any portion thereof, the objecting Consenting Owner shall provide written notice of said objection to the Maintenance Director within thirty (30) days after said Consenting Owner's receipt of the proposed budget, whereupon the Maintenance Director shall promptly meet with the Consenting Owners for the purpose of establishing a final approved budget for the following calendar year or balance thereof. 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 each Consenting Owner, nor shall the Maintenance Director be entitled to reimbursement for any such excess not so approved.

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, no Consenting Owner shall have the right to require a subsequent rebid of the same item or items for a period of at least one (1) 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 of its out-of-pocket expenses in performing such services plus a maximum service charge of (i) ten percent (10%) of said expenses with respect to Parcels 2 and 7, and (ii) twenty percent (20%) of said expenses with respect to all other Parcels, to cover management and administration costs ("Service Charge"); provided, however, that the Service Charge shall not exceed Three Hundred Fifty Dollars (\$350.00) for any item of Common Area maintenance or insurance expense without the prior written approval of the Consenting Owners. The Common Area expenses shall not include any costs incurred by the Maintenance Director for the services of a manager or management company or for office overhead or compensation of its 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 (except for the Service Charge) 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 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 (except that in the calendar year in which the CAM Commencement Date occurs, the fraction shall be equal to one [1] over the number of full months remaining in that calendar year)

included in the approved budget (whether final or only partially approved) for the calendar year or the balance thereof (including the Service Charge described in Article 6 above), with the first billing date being the first day of the first full calendar month following the CAM Commencement Date. Said bills shall be due and payable within thirty (30) days after an Owner's receipt of said bills. All items not included in the approved budget (whether final or only partially approved) for the calendar year or balance thereof shall be billed quarterly in arrears and, once the item has received the approval of each Consenting Owner as required by Section 6.1, shall be due and payable within thirty (30) days after an Owner's receipt of a billing statement and copies of all invoices, statements or other documents supporting same. The proportionate share of the total Common Area expenses to be borne by each Owner for any year shall (except as otherwise provided in Section 7.2) be that percentage set forth below:

	Maximum Building Area (Excluding Expansion Area)	Percent
Parcel 1	13,000 S.F.	8.71
Parcel 2	57,560 S.F.	38.55
Parcel 3	15,000 S.F.	10.04
Parcel 4	4,000 S.F.	2.68
Parcel 5	6,000 S.F.	4.02
Parcel 6	6,000 S.F.	4.02
Parcel 7	4,000 S.F.	2.68
Parcel 8	16,750 S.F.	11.22
Parcel 9	10,500 S.F.	7.03
Parcel 10	5,500 S.F.	3.68
Parcel 11	6,000 S.F.	4.02
Parcel 12	<u>5,000 S.F.</u>	<u>3.35</u>
TOTAL:	149,310 S.F.	100.00

Within one hundred twenty (120) days after the end of each calendar year, the Maintenance Director shall submit to the Owner of each Parcel (or its respective tenants or agents, as it may direct) a written summary of the Maintenance Director's 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, the Owner of each Parcel (or its respective tenants or agents, as it may direct) shall, within thirty (30) days after receipt of said summary and all documents requested pursuant to this 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 any Owner (or its 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 tenants or agents, as it may direct) within one hundred twenty (120) days after the end of the calendar year in which said expense is incurred.

7.2 As of the date of this Agreement, it is contemplated that Parcels 1 through 7 will be developed in an earlier phase than Parcels 8 through 12. Consequently, anything in the cost-sharing table set forth in Section 7.1 to the contrary notwithstanding, the proportionate share of the Common Area expenses to be borne by each Owner as of the CAM Commencement Date shall be that percentage set forth below until such date (the "Recalculation Date") as permits have

been obtained to allow construction (or such construction has commenced if, for any reason, that date occurs earlier) of any building improvements on Parcel 8, 9, 10, 11 or 12:

	Maximum Building Area (Excluding Expansion Area)	Percent
Parcel 1	13,000 S.F.	12.32
Parcel 2	57,560 S.F.	54.53
Parcel 3	15,000 S.F.	14.21
Parcel 4	4,000 S.F.	3.79
Parcel 5	6,000 S.F.	5.68
Parcel 6	6,000 S.F.	5.68
Parcel 7	4,000 S.F.	3.79
Parcel 8	0 S.F.	0
Parcel 9	0 S.F.	0
Parcel 10	0 S.F.	0
Parcel 11	0 S.F.	0
Parcel 12	0 S.F.	0
<b>TOTAL:</b>	<b>105,560 S.F.</b>	<b>100.00</b>

This Section 7.2 shall terminate and be of no further force or effect as of the Recalculation Date and, thereafter, the proportionate share of the total Common Area expenses to be borne by each Owner shall be that percentage set forth in Section 7.1.

7.3 In the event the Owner of the building on Parcel 2 expands its building into the Expansion Area shown on Exhibit "A", the cost-sharing percentages set forth in Sections 7.1 and 7.2 shall be recalculated based upon any increase in the total Floor Area (excluding mezzanines and basements not used for the sale or display of merchandise) of said building from the figures set forth in Sections 7.1 and 7.2.

7.4 Either 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 or at such other location reasonably designated by the Maintenance Director at any time during reasonable business hours within one (1) year after the end of said 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 tenants or agents, as it may direct) its proportionate share of any such overpayment within thirty (30) days after receipt of notice of determination, and of the amount, of such overpayment. If said inspection reveals an underpayment of Common Area maintenance and insurance expenses (including the Service Charge described in Article 6 above but excluding all expenses for which a statement was not timely submitted pursuant to Section 7.1 above), the Owner of each Parcel shall reimburse the Maintenance Director its proportionate share of any such underpayment within thirty (30) days after receipt of proper billing in accordance with Section 7.1. If said inspection reveals that the Maintenance Director misstated Common Area maintenance and insurance expenses by more than five percent (5%), the Maintenance Director shall reimburse the person making such inspection for all costs reasonably incurred in making such inspection within thirty (30) days after receipt of notice of determination, and of the amount, of any such misstatement. The Maintenance Director's expenses for any calendar year shall be deemed correct if both Consenting Owners fail (or otherwise forego the opportunity) to give the Maintenance Director written notice of any such overpayment or underpayment within the one (1) year period provided.



8. **EFFECT OF SALE BY OWNER.** In the event an Owner sells or transfers all or any portion of its interest in any Parcel, such Owner shall, upon delivery of the Transfer Notice, thereupon be released and discharged from all of its obligations as Owner in connection with the property sold by it arising under this Agreement after the sale and conveyance of title but shall remain liable for all obligations arising under this Agreement prior to the sale and conveyance of title. The new Owner of any such Parcel or any portion thereof (including, without limitation, any Owner [or Lienholder] who acquires its interest by foreclosure, trustee's sale or otherwise) shall be liable for all obligations arising under this Agreement with respect to such Parcel or portion thereof after the date of sale and conveyance of title.

9. **DEFAULT.**

9.1 In the event any Owner fails or refuses to pay when due its share of any bill for the Common Area maintenance and insurance expenses described above (including the ten percent [10%] service charge described in Article 6 above), which failure continues for a period of ten (10) days after receipt of written notice thereof, such failure shall constitute a default and legal action may thereafter be instituted against the defaulting Owner by the Maintenance Director or other person paying the maintenance or insurance expenses (including the Service Charge described in Article 6 above) of the defaulting Owner ("Curing Party") for reimbursement plus interest from and after the date said bill was due and payable to and including the date said bill is paid at a rate equal to the lesser of (i) the highest rate allowed by law, and (ii) the rate two percent (2%) above the reference rate of interest charged from time to time to corporate borrowers

of the highest credit standard by First Security Bank of Utah (the lesser rate being hereinafter referred to as the "Default Rate"). Furthermore, the Curing Party shall have a lien on the Parcel of the defaulting Owner for the amount of said expenses (including the ten percent [10%] service charge described in Article 6 above) plus accrued interest as set forth above; provided, however, that if there be a bona fide dispute as to the existence of such default or of the amount due and all undisputed amounts are paid, there shall be no right to place a lien on such Owner's Parcel until such dispute is settled by final court decree or mutual agreement.

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

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

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

9.5 In addition to the foregoing, in the event any Owner (or any other person entitled to enforce the provisions of this Agreement) initiates or defends any legal action or proceeding in any way connected with this Agreement, the prevailing person(s) 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 person(s) 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) as determined by the court in the same or a separate proceeding. 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.

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

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

**10. LIEN FOR EXPENSES OR TAXES.**

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

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

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

**11. RIGHT TO MAINTAIN PARCEL SEPARATELY.**

11.1 In the event the Owner of Parcel 2 determines (after giving the Maintenance Director at least ninety [90] days prior written notice of its concerns) that: (i) in its business

judgment Parcel 2 is not being satisfactorily maintained, or (ii) the expenses it is incurring to maintain and insure the Common Area exceeds the average it pays for common area maintenance and insurance at its other shopping center locations in the State of Utah by more than twenty percent (20%), the Owner of Parcel 2 may, at any time and from time to time, upon at least sixty (60) days prior written notice to the Maintenance Director and the other Owners, elect to assume the obligations of the Maintenance Director to maintain, repair, replace and insure that portion of the Common Area located on Parcel 2, 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 tenants or agents, as it may direct) pursuant to the formula in Article 7. In the event of any such assumption by the Owner of Parcel 2, such Owner agrees to maintain, repair and replace that portion of the Common Area located on Parcel 2 at its sole cost and expense and in a manner and at a level of quality at least comparable to that of the balance of the Common Area. The Owner of Parcel 2 may also elect to terminate its obligation to maintain, repair, replace and insure that portion of the Common Area located on Parcel 2 by giving at least sixty (60) days prior written notice to the Maintenance Director, in which event the Maintenance Director shall resume its duties with respect to Parcel 2 and the Owner of Parcel 2 agrees to pay for its pro rata share of all Common Area maintenance and insurance costs (including the Service Charge described in Article 6 above) thereafter incurred by the Maintenance Director in accordance with the formula in Article 7. Anything in the preceding sentence to the contrary notwithstanding, in the event the Owner of Parcel 2 elects to

terminate its obligation to maintain, repair, replace and insure that portion of the Common Area located on Parcel 2, it 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.

11.2 As a part of any election to assume the obligations of the Maintenance Director pursuant to Section 11.1 above, the Owner of Parcel 2 agrees to indemnify, defend and hold harmless the Maintenance Director and the Owners and occupants of all other Parcels from and against any and all liability, claims, damages, expenses (including reasonable attorney's fees and reasonable attorney's fees on 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 Parcel 2 and arising out of the performance or nonperformance of any of the obligations of the Owner of Parcel 2 set forth in this Article 11, unless caused by the negligent or willful act or omission of the indemnified person, its agents, contractors or employees.

## 12. RESPONSIBILITY IF NO MAINTENANCE DIRECTOR.

12.1 In the event there should at any time cease to be a Maintenance Director, each Owner shall be responsible for the maintenance, insurance and lighting of its own Parcel according to the standards herein enumerated. In the event any Owner defaults in the performance of such obligations, any other Owner may cause the performance of the obligations of the defaulting Owner and bill the defaulting Owner for the expenses incurred. In such event, the provisions and remedies of Articles 9 and 10 shall apply.

12.2 In the event there should at any time cease to be a Maintenance Director, each Owner agrees to indemnify, defend and hold harmless the Owners and occupants of all other Parcels from and against any and all 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 and arising out of the performance or nonperformance of any of the obligations of the Owner of said Parcel set forth in Section 12.1, unless caused by the negligent or willful act or omission of the indemnified person, its agents, contractors or employees.

### 13. GENERAL PROVISIONS.

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

13.2 The term of this Agreement shall be coterminous with the term of the Declaration, and this Agreement shall terminate automatically upon the expiration or earlier termination of the Declaration.

13.3 Anything in this Agreement to the contrary notwithstanding, no breach of this Agreement shall defeat or render invalid the lien of any mortgage or deed of trust made in



good faith for value, but this Agreement shall be binding upon, and be effective against, any Owner whose title is acquired by foreclosure, trustee's sale or otherwise.

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

13.5 This Agreement may not be modified in any respect whatsoever or terminated, in whole or in part, except with the consent of the Owners and Prime Lessees of the Parcels containing ninety percent (90%) of the total square footage of Building Area in the Shopping Center, and then only by written instrument duly executed and acknowledged by all of the required Owners and Prime Lessees, duly recorded in the office of the recorder of the county in which the Shopping Center is located. No modification or termination of this Agreement shall affect the rights of any Lienholder unless the Lienholder consents in writing to the modification or termination.

13.6 Whenever the consent or approval of any Owner is required, such consent or approval shall be exercised only in the following manner. Each Parcel shall have only one (1) vote. The Owners (if consisting of more than one [1] person) of each Parcel shall agree among themselves and designate in writing to the Owners and Prime Lessees of each of the other Parcels a single person who is entitled to cast the vote for that Parcel. If the Owners of any such Parcel cannot agree who shall be entitled to cast the single vote of that Parcel, or if the Owners fail to designate the single person who is entitled to cast the vote for that Parcel within thirty (30) days

after receipt of request for same from any Owner or Prime Lessee, then that Parcel shall not be entitled to vote. In the event a Parcel is not entitled to vote, its consent or approval shall not be necessary and the total square footage of Building Area located on said Parcel shall be disregarded for the purpose of computing the percentage requirement set forth in Section 13.5. Except as otherwise set forth in Section 13.5, in the event an Owner sells its Parcel and becomes the Prime Lessee thereon, said Prime Lessee is hereby appointed the entity to cast the vote or give the consent for said Parcel on behalf of the Owner thereof and is hereby granted all of the rights and remedies granted to the Owner of said Parcel so long as it is the Prime Lessee of said Parcel, anything in this Agreement to the contrary notwithstanding.

13.7 All notices given pursuant to this Agreement shall be in writing and shall be given by personal 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 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 in the county in which the Shopping Center is located. All notices to First Party or Albertson's shall be sent to the appropriate party at the address set forth below:

First Party: SB Clinton L.C.  
c/o SmithBrubaker  
2231 Easy Murray Holladay Road #200  
Salt Lake City, Utah 84177

Albertson's: Albertson's, Inc.  
250 Parkcenter Boulevard  
Post Office Box 20  
Boise, Idaho 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 party. 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 to the address specified pursuant to this section 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.

14. **SALE & SALE-LEASEBACK PURCHASER.** 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 lease (whether a ground lease or a building 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.** 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.** 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.** 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.** 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. In construing the provisions of this Agreement and whenever the context so requires, the use of a gender shall include all other genders, the use of the singular shall include the plural, and the use of the plural shall include the singular.

20. JOINT AND SEVERAL OBLIGATIONS. In the event any party hereto is composed of more than one (1) person, the obligations of said party shall be joint and several.

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

EXECUTED as of the date and year first set forth above.

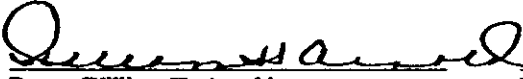
ALBERTSON'S:

FIRST PARTY:

KLG  
by  
Gy

Albertson's, Inc.,  
a Delaware corporation

S B Clinton L.C.,  
a Utah limited liability company



By: William H. Arnold  
Its: Vice President, Real Estate Law

By: SCOTT M. BRUBAKER  
Its: MEMBER

E:\125462\DOCS\CAMA.068

STATE OF IDAHO )  
 ) ss.  
County of Ada )

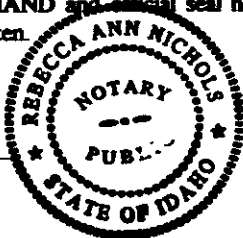
E 1451283 : 2379 P 459

On this 16<sup>th</sup> day of October, 1998, before me, the undersigned, a Notary Public in and for said State, personally appeared William H. Arnold, 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:

09-29-00



Rebecca Ann Nichols

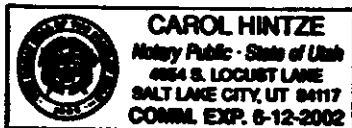
Notary Public in and for the State of Idaho  
Residing at Boise, Idaho

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

The foregoing instrument was acknowledged before me this 29 day of September, 1998, by Scott M. Brubaker, a member of S B Clinton L.C., a Utah limited liability company.

My commission expires:

6-12-2002



Carol Hintze  
Notary Public in and for the State of Utah  
Residing at Salt Lake City, UT

## Schedule I

## Description of the Shopping Center Parcels

- Parcel 1: Lot 1, Clinton Towne Center, Clinton City, Davis County, Utah, according to the official plat thereof.
- Parcel 2: Lot 2, Clinton Towne Center, Clinton City, Davis County, Utah, according to the official plat thereof.
- Parcel 3: Lot 3, Clinton Towne Center, Clinton City, Davis County, Utah, according to the official plat thereof.
- Parcel 4: Lot 4, Clinton Towne Center, Clinton City, Davis County, Utah, according to the official plat thereof.
- Parcel 5: Lot 5, Clinton Towne Center, Clinton City, Davis County, Utah, according to the official plat thereof.
- Parcel 6: Lot 6, Clinton Towne Center, Clinton City, Davis County, Utah, according to the official plat thereof.
- Parcel 7: Lot 7, Clinton Towne Center, Clinton City, Davis County, Utah, according to the official plat thereof.
- Parcel 8: Lot 8, Clinton Towne Center, Clinton City, Davis County, Utah, according to the official plat thereof.
- Parcel 9: Lot 9, Clinton Towne Center, Clinton City, Davis County, Utah, according to the official plat thereof.
- Parcel 10: Lot 10, Clinton Towne Center, Clinton City, Davis County, Utah, according to the official plat thereof.
- Parcel 11: Lot 11, Clinton Towne Center, Clinton City, Davis County, Utah, according to the official plat thereof.
- Parcel 12: Lot 12, Clinton Towne Center, Clinton City, Davis County, Utah, according to the official plat thereof.



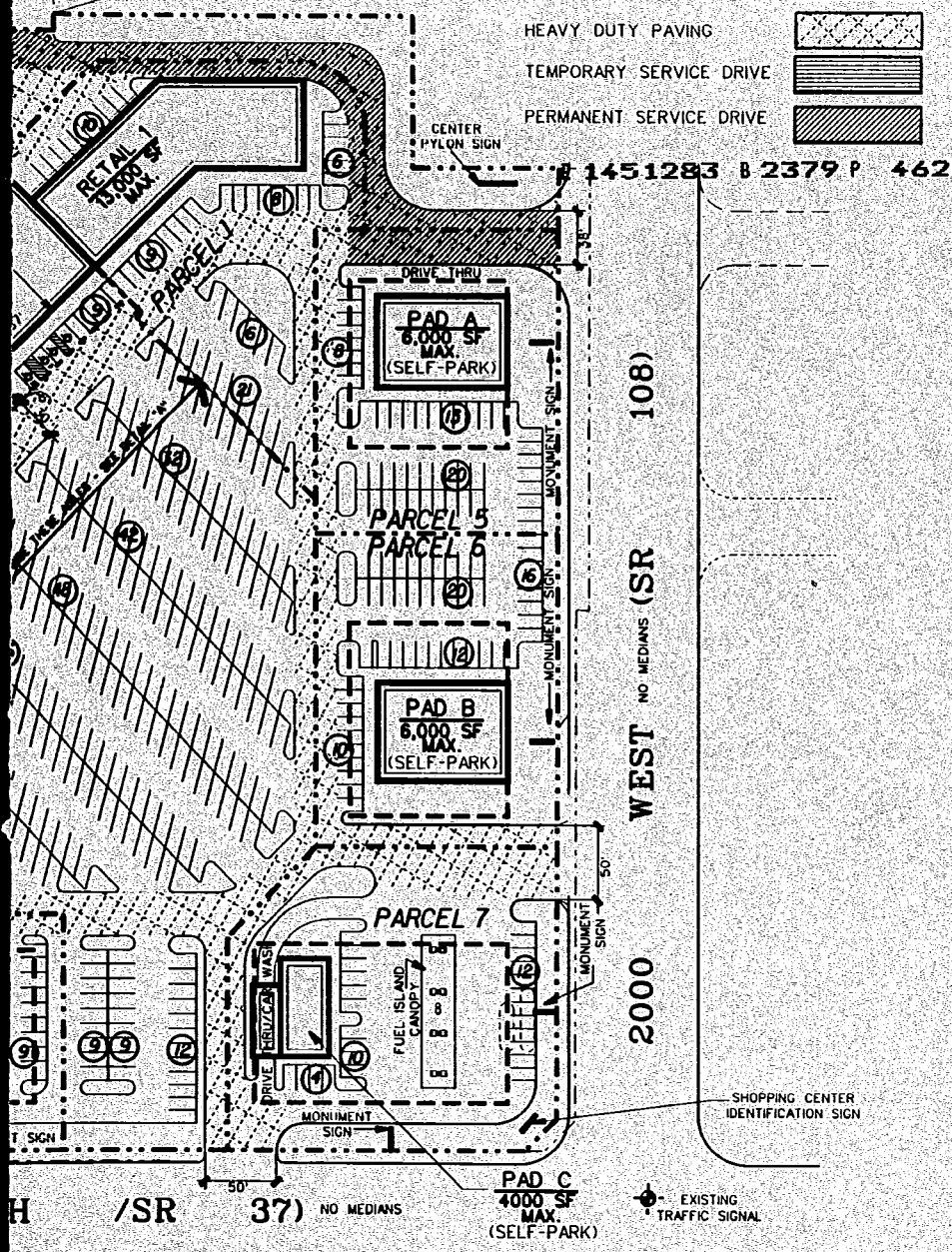


# LEGEND

PROPERTY/PARCEL LINE	----	MR
PHASE LINE	----	
EXPANSION LIMIT LINE	----	
BUILDING ENVELOPE	----	MR
BUILDING AREA	[Hatched Box]	MR
HEAVY DUTY PAVING	[Cross-hatched Box]	
TEMPORARY SERVICE DRIVE	[Horizontal Lines Box]	
PERMANENT SERVICE DRIVE	[Diagonal Lines Box]	

REVISIONS	
7-28-'98	CSD CHANGED TO EXHIBIT A
8-7-'98	CSD REV. PAR. LINES, PKG. BLDG. S.F. AND TEMP. SERVICE DRIVE
9-17-'98	CSD REV. STORE DOCK AREA PKG. & PARCEL 7
10-20-'98	CSD REV. PKG. & PAR. LINES

NOT  
-A-  
PART



## GENERAL NOTES

OWN WITH OUT BENEFIT OF SURVEY  
TRUCK WELLS, NATURAL DOCK ONLY  
LOADING REQUIREMENTS:  
200 S.F. OF G.B.A. (ALBERTSONS STANDARD)  
LOADING SETBACK REQUIREMENTS:  
PER CITY REVIEW.  
LANDSCAPE REQUIREMENTS:  
PER CITY REVIEW.  
LOADING REQUIREMENTS:  
EXISTING -  
REQUIRED - COMMERCIAL

## EXHIBIT 'A' SITE PLAN

TOTAL GROSS BUILDING AREA	149,310 S.F.
TOTAL CARPARKS REQUIRED	747 (1/200)
TOTAL CARPARKS PROVIDED	805 (+58)
TOTAL SITE AREA	685,136 S.F. (15.73 AC.)

APPROVED BY:	DATE:
CHAIRMAN	7-27-'98 SIGNED
PRESIDENT	7-27-'98 SIGNED
EXEC. V.P./S.D.	7-27-'98 SIGNED
EXEC. V.P./OPS.	7-27-'98 SIGNED
SR. V.P./REG.	7-27-'98 SIGNED
GROUP V.P./RE.	7-27-'98 SIGNED
V.P./ARCH. & ENG.	7-27-'98 SIGNED



PROJECT  
  
N.W.C.  
2000 WEST  
&  
1800 NORTH  
CLINTON,  
UTAH  
STORE NO.  
**393**

DRAWN	CSD	CHECKED	RAC
DATE	7-23-'98		

SHEET TITLE  
EXHIBIT 'A'  
SITE PLAN

SHEET  
1  
OF 1  
393clint.dgn