

WHEN RECORDED PLEASE RETURN TO:

Richard H. Thornton
JARDINE, LINEBAUGH, BROWN & DUNN
370 East South Temple, Suite 400
Salt Lake City, Utah 84111

5400

4738355

21 FEBRUARY 89 04:45 PM

KATIE L. DIXON

RECORDER, SALT LAKE COUNTY, UTAH

LANDMARK TITLE

REC BY: D DANGERFIELD, DEPUTY

COMMON AREA MAINTENANCE AGREEMENT
(Salt Lake City - Site No. 15)

4738355

THIS COMMON AREA MAINTENANCE AGREEMENT (the "Agreement") is entered this 21st day of February, 1989, by and between THE HAWS LEASURE COMPANIES, a Utah limited partnership, whose address is 370 East South Temple, Suite 500, Salt Lake City, Utah 84111 ("Developer"), SHOPKO STORES, INC., a Minnesota corporation, doing business in Utah as Uvalko Shopko Stores, Inc., whose address is P. O. Box 19060, 2800 South Ashland, Green Bay, Wisconsin 54307-9060 ("Shopko"), and JOHN N. PARAS, also known as John N. Paraskevopulos, and JEAN PARAS, also known as Jean Paraskevopulos, husband and wife, whose address is 4297 South Mackay Street, Murray, Utah 84107 ("Paras").

WHEREAS, the parties either own, or intend to construct a shopping center in various phases on those certain parcels of real property which are shown on the site plan (the "Site Plan") that is attached hereto as Exhibit "A" and that is incorporated herein by this reference (said real property being hereinafter collectively referred to as the "Entire Parcel" or the "Shopping Center"); and

WHEREAS, for the purposes of this Agreement, the Shopping Center is divided into phases (the "Sites" or "Parcels"), the definitions, areas and legal descriptions of which are as follows:

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<u>Definition of Parcel</u>	<u>Approximate Area</u>	<u>Legal Description Set Forth on Exhibit:</u>
"Shopko Parcel" and "Entrance Road Parcel" (which together shall be one Parcel for the purposes of this Agreement)	9.8300 acres	B-1
"Pad C"	.5506 acres	B-2
"Retail Shops A" and "Pad D" (which together shall be one Parcel for the purposes of this Agreement)	2.8716 acres	B-3 and B-4
"Grocery Parcel" and "Pad E" (which together shall be one Parcel for the purposes of this Agreement)	4.6890 acres	B-5 and B-6
"Jr. Department Store"	1.4708 acres	B-7
"Retail Shops C"	1.9056 acres	B-8

WHEREAS, the Shopping Center includes various "Out-lots" or "Pads" that are shown on the Site Plan and that are described more particularly on Exhibit "C" that is attached hereto; and

WHEREAS, Developer owns Pad C; Shopko owns the Shopko Parcel and the Entrance Road Parcel; and Paras owns the balance of the Parcels comprising the Shopping Center; and

WHEREAS, Developer has an option to purchase the Parcels of the Shopping Center that are presently owned by Paras and upon such acquisition intends to construct buildings on such Parcels and develop that Parcels as part of the Shopping Center; and

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WHEREAS, Developer intends to construct a building on Pad C; and

WHEREAS, Shopko intends to construct a building on its Parcel for operation as a department store; and

WHEREAS, the parties hereto have executed and recorded in the records of the Salt Lake County, Utah Recorder a Cross Easement Agreement (the "Cross Easement Agreement") the purpose of which is to otherwise provide for the development of the Shopping Center, and all portions thereof pursuant to a general plan of improvement; and

WHEREAS, as contemplated by paragraph 4.01 of the Cross Easement Agreement the parties desire to enter into an agreement for maintenance of all "Common Areas" (as the term is defined in the Cross Easement Agreement) of the Shopping Center: (1) in accordance with the standards of the Cross Easement Agreement; (2) as may be approved from time to time by those "Owners" (as the term is defined in the Cross Easement Agreement), or to the extent that the provisions of section 17 of this Agreement are applicable, the "Prime Lessees" in such Owners' places (as the term "Prime Lessees" is defined in such section 17), who own greater than 50% of the "Net Building Floor Area" (as the term is defined in the Cross Easement Agreement) of actual constructed building space in the Shopping Center; provided, however, that (a) the Owners and Prime Lessees of Parcels that are being separately maintained by such Owners or Prime Lessees pursuant to the provisions of section 12 of this

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Agreement shall not be required to approve and are not entitled to participate in any of the decisions required by such majority, and (b) the Net Building Floor Area owned by such Owners or Prime Lessees shall not be included in the calculation of the total Net Building Floor Area used in determining whether a requisite majority approval has been obtained (such majority of Owners and Prime Lessees being (referred to herein as the "Majority of Owners")); and (3) with certain provisions applicable to such Owners or Prime Lessees in the center who have constructed 40,000 square feet or more of Net Building Floor Area (referred to herein as the "Major Retailers").

NOW, THEREFORE, in consideration of the foregoing and the covenants and agreements set forth herein, the parties agree as follows:

1. INCORPORATION.

1.01. The above recitals are incorporated herein by reference.

2. CROSS EASEMENT AGREEMENT.

2.01. In the event of any conflict between this Agreement and the Cross Easement Agreement (as either document may be amended in the future), the provisions, agreements, restrictions, and declarations contained in the Cross Easement Agreement shall prevail. The definitions contained in the Cross Easement Agreement are incorporated herein by reference.

3. MAINTENANCE.

3.01. Commencing with the date of this Agreement, the "Maintenance Director" (as hereinafter defined), shall, except

as hereinafter provided, maintain the Common Areas at all times after the date of their original installation and improvement in good and clean condition and repair, such maintenance to include, but not be limited to, the following:

(a) Maintaining, repairing and replacing the asphalt and concrete surfaces and subsurfaces in parking, driveway and sidewalk areas 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, appearance, use and durability;

(b) Promptly removing all ice and snow to the extent reasonably required to carry on retail business in and to provide for the access and safety of users of the Shopping Center; removing all papers, debris, filth and refuse and other hazards; and thoroughly sweeping the Common Area to the extent reasonably necessary to keep it in a clean and orderly condition;

(c) Placing, keeping in repair and replacing any necessary entrance, exit and other appropriate directional signs, markers and lines;

(d) Operating, keeping in repair and replacing when necessary, such artificial lighting facilities as shall be reasonably required;

(e) Maintaining all grass, shrubs and landscaped areas, including those in public rights-of-way that

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are on or adjacent to the perimeter of the Shopping Center, and including but not limited to, fertilizing, watering, mowing, trimming, repairing automatic sprinkler systems, irrigation wells and water lines, and making replacements of shrubs and other landscaping as is necessary;

(f) Maintaining and repairing any and all perimeter walls or fences, common storm drains and facilities for surface drainage, whether on or off-site, utility lines, irrigation lines, sewers and other services which are necessary for the operation of the buildings and improvements within the Shopping Center, including the cost of complying with drainage district requirements;

(g) Maintaining, repairing, cleaning out and replacing irrigation ditches, pipes, canals and rights of way located within the Shopping Center; and

(h) Such painting, restriping and repainting as may be required to maintain the parking areas; directional indications; and equipment thereon in high quality condition.

(i) Keeping in repair, maintaining and replacing when necessary the institutional pylon sign or signs that is or are located in the Shopping Center; provided, however, that the facia of such pylon signs shall be supplied and maintained by the businesses that are advertised on such facia.

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3.02. In addition to the foregoing, the Maintenance Director shall obtain general public liability insurance insuring Paras, Shopko and the Developer, and all other 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, and naming them as insureds on the policy (provided that the Maintenance Director is notified in writing of such interest), against claims for personal injury, death or property damage occurring in, upon or about the Common Area and the streets and sidewalks adjacent to the Shopping Center. Such insurance shall be in accordance with the standards set forth in the Cross Easement Agreement, and shall not be subject to any deductible exceeding \$1,000.00 unless first approved in writing by the Majority of Owners. The Maintenance Director shall furnish the parties hereto, and all other persons who now or hereafter own or hold portions of the Shopping Center, building space within the Shopping Center or any leasehold estate or other interest therein (provided that the Maintenance Director is notified in writing of such interest) with copies of the policy or, at such person's option, certificates evidencing such insurance and that such parties are named as insureds. The policies of such insurance shall provide that the insurance shall not be changed or cancelled without the giving of thirty (30) days' advance written notice to the holders of such insurance or the holders of such certificates, as the case may be.

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4. LIGHTING.

4.01. It is agreed that the artificial lighting for the Common Area shall remain on during and for one hour after ordinary and customary business hours for shopping centers in the Salt Lake City, Utah area, of the type of the Shopping Center. It is recognized that as of the date of this Agreement the ordinary and customary business hours for shopping centers in the Salt Lake City, Utah area and of the type of the Shopping Center terminate at 10:00 p.m. each day of the week. If artificial lighting for a time later than the foregoing ("After Hours Lighting") is needed by any Owner or Prime Lessees (if the provisions of section 17 hereof are applicable), then such artificial lights to service such Owners or Prime Lessees shall be separately metered and all expenses thereof shall be paid by such Owners or Prime Lessees, and such Owners or Prime Lessees shall pay a reduced proportion of the expense of lighting the Common Area according to the extent to which such Owner or Prime Lessee is lighting the Common Area by separately metered lights. Major Retailers may, with the prior written consent of the Maintenance Director, elect to separately meter the Common Area lighting on their respective Parcel(s), in which event as to Common Area lighting expenses such Major Retailer shall only be responsible for the Common Area lighting expenses for its respective Parcel(s). It is agreed that Shopko shall separately meter the Common Area lighting on its Parcel.

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5. TAXES.

5.01. Each Owner shall pay, or cause to be paid (through a tenant or otherwise), direct to the tax collector when due, the real property taxes and other special taxes and assessments assessed against the portion of the Shopping Center owned by the Owner including the portion of the Common Area located on such portion.

6. MAINTENANCE DIRECTOR.

6.01 The owners hereby appoint The Haws Leasure Companies, a Utah limited partnership, as the initial maintenance director (the "Maintenance Director") of the Shopping Center. The parties hereby grant to the Maintenance Director all authority and right to manage the Common Area as provided in this Agreement.

6.02. Subject to the restriction in this paragraph, the Majority of Owners may remove the Maintenance Director by executing, filing of record and serving on the Owners (or "Prime Lessees if section 17 is applicable) of the remaining Parcels an instrument stating that the Maintenance Director has been removed, in which event the Majority of Owners shall appoint a successor Maintenance Director who shall be either (a) the Owner or Prime Lessee of a Parcel or (b) a professional commercial property management company that is experienced in management of retail shopping centers. In no event shall either (y) any Owner or Prime Lessee of a Parcel participate in removing or appointing a Maintenance Director if such Owner or Prime Lessee

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has elected under the provisions of paragraph 12 ("Right to Maintain Parcel Separately") to separately maintain its Parcel; or (z) the building space of such non-participating Owners or Prime Lessees be included in determining whether a Majority of Owners of constructed Net Building Floor Area in the Shopping Center has given necessary consents.

6.03. The Maintenance Director shall have the right, upon giving ninety (90) days' prior written notice to all Owners and Prime Lessees of the Shopping Center (who have notified the Maintenance Director in writing of their interests) to resign as Maintenance Director. Upon such resignation, the resigning Maintenance Director shall record a notice of such resignation in the records of the Salt Lake County, Utah Recorder, and a new Maintenance Director shall be appointed under the same procedure provided under paragraph 6.02 above.

7. REIMBURSEMENT OF MAINTENANCE DIRECTOR.

7.01. The Maintenance Director shall contract for and subject to the right to obtain reimbursement therefor (as set forth elsewhere in this Agreement) pay for the expenses of, obtaining all of the items enumerated as maintenance and insurance obligations in paragraph 3 herein; provided, however, that (a) the Maintenance Director shall not contract for or pay for any item, the prorata share of which for any Parcel or Pad exceeds Five Thousand Dollars (\$5,000.00) without the prior written consent of the Owner or Prime Lessee of the Parcel or Pad; (b) the Maintenance Director shall not enter into any

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contract for any maintenance in the Shopping Center, which contract is for a period of time greater than ninety (90) days, unless such contract may be terminated without liability upon ninety (90) days notice; (c) the Maintenance Director shall not enter into a contract for whatever duration or cost which delegates the general management duties of the Maintenance Director for any of the foregoing obligations without the prior written approval of the Majority of Owners, which consent shall not be unreasonably withheld; and (d) the costs of maintaining and repairing the signs that are described in subparagraph 3.01(i) of this Agreement shall be borne as follows: (i) if only one Owner or Prime Lessee uses a sign, then such Owner or Prime Lessee shall pay the entire cost for such sign; (ii) if a sign is used by more than one Owner or Prime Lessee, then each Owner or Prime Lessee shall pay an equal share of the cost for such sign; (iii) institutional signs for the Shopping Center as a whole shall be paid for by the Maintenance Director as a Common Area expense; and (iv) signs for the joint use by the Shopping Center as a whole and for individual Owners or Prime Lessees shall be paid for in equal shares by the Maintenance Director (as a Common Area Expense for the Shopping Center) and each Owner or Lessee using the sign.

7.02. Prior to the hiring of a contractor(s) for 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 such Common Area maintenance work for bid

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to at least two (2) responsible bidders. The names of the bidding contractors or companies and the amount of their respective bids shall be maintained on file by the Maintenance Director for a period of one year after the termination of any contract that is accepted. The Maintenance Director shall supply copies of bids and the accepted contracts to any Owner or Prime Lessee who requests copies of the same. The Maintenance Director shall award the contract to the low bidder unless the prior written consent of the Majority of Owners to award the contract to a higher bidder is obtained by the Maintenance Director.

7.03. The Owners (or Prime Lessees, if section 17 is applicable) 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 of fifteen percent (15%) of such expenses to cover administration costs; provided that (a) nothing that is contained in this Agreement shall prevent the Maintenance Director from negotiating a different service charge with the Owner or Prime Lessee of a Parcel or Pad; and (b) the service charge shall not be applicable to sums, if any, paid by the Maintenance Director for taxes and assessments imposed by governmental or quasi-governmental authorities or insurance premiums, which constitute Common Area expenses. The administrative charge herein is in lieu of all salaries, overhead and profit of the Maintenance Director for services under this Agreement.

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7.04. It is understood that Major Retailers may, with the prior written consent of the Maintenance Director, be permitted to separately maintain Common Areas on the Parcels on which their respective buildings are located. The remaining Owners or Prime Lessees proportionate share of Common Area expenses shall be the ratio obtained by dividing the Net Building Floor Area of constructed buildings on the Parcel or Pad of such Owner or Prime Lessee by the Net Building Floor Area of constructed buildings on all parcels in the Shopping Center excluding Parcels (but not Pads within such Parcels) of Major Retailers who maintain their own Parcels; provided, however, that all Owners or Prime Lessees shall continue to be responsible for bearing on a proportionate basis those costs that cannot be practicably segregated or allocated among the Parcels and Pads, as described in paragraph 12.01 of this Agreement.

7.05. The Maintenance Director agrees to operate on a non-profit basis with an end to keeping Common Area expenses at a reasonable minimum; provided, however, that nothing that is contained herein shall prevent the Maintenance Director from collecting the service charge for its service that is described in paragraph 7.03 of this Agreement.

8. BILLING FOR EXPENSES.

8.01. The Owner (or Prime Lessee, if section 17 is applicable) of each Parcel or Pad shall be billed monthly for its prorata share of all expenses incurred by the Maintenance

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Director in maintaining the Common Area, including any service charge, all as described in paragraph 7 above ("Reimbursement of Maintenance Director"), with the first billing date being the first day of the first full calendar month following the construction of building space on the Owner's Parcel or Pad, and that space's readiness for occupancy (as evidenced by the issuance of a certificate of occupancy for the space by the governmental entity having jurisdiction over the Parcel or Pad). An Owner or Prime Lessee may direct its billings to be sent to a delegate, tenant, occupant of the space or agent, but the Owner or Prime Lessee shall remain responsible for payment of all such billings. Each Owner or Prime Lessee shall pay, or cause to be paid, the amount of such billing within thirty (30) days after receipt of such billing and reasonable backup information that is requested by the Owner or Prime Lessee. Any Owner or Prime Lessee may examine and audit the accounts and bills for Common Area expenses at any reasonable time at its own expense; provided, however, in the event such examination or audit reveals that the Maintenance Director overstated Common Area maintenance charges by more than five percent (5%) for any twelve (12) month period, the Maintenance Director shall reimburse the Owner or Prime Lessee conducting such examination or audit for all costs reasonably incurred by such Owner or Prime Lessee in making such examination or audit, which reimbursement shall constitute a personal obligation of the Maintenance Director and shall not be deemed a Common Area maintenance expense.

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8.02. Subject to the right of a Major Retailer to maintain its Parcel separately (as described in section 12 of this Agreement), the share of the total Common Area maintenance costs that each Owner (or Prime Lessee, if section 17 is applicable) shall be required to pay for its Parcel or Pad shall be based upon the ratio obtained by dividing (a) the Net Building Floor Area of constructed buildings on the Parcel or Pad of such Owner or Prime Lessee by (b) the Net Building Floor Area of constructed buildings on all Parcels in the Shopping Center, excluding Parcels (but not Pads within such Parcels) of Major Retailers who maintain their own Parcels.

9. EFFECT OF SALE BY OWNER.

9.01. If any Owner of a Parcel or Pad sells its Parcel or Pad, other than to perfect a sale and leaseback of its Parcel (with the treatment of such sale-leaseback being set forth in section 17 of this Agreement), or if any Prime Lessee of a Parcel or Pad sells its leasehold interest in such Parcel or Pad, then after the date of such sale, such Owner or Prime Lessee shall have no further obligation under this Agreement with respect to the Parcel or Pad sold; provided, however, the selling Owner or Prime Lessee shall remain liable for obligations incurred prior to such sale.

10. DEFAULT IN PAYMENT OF EXPENSES.

10.01. In the event any Owner (or Prime Lessee, if section 17 is applicable) fails or refuses at any time to pay when due its share of the maintenance and insurance expenses as

set forth above, then the Maintenance Director, other Owners or other Prime Lessees may institute legal action against the defaulting Owner or Prime Lessees for reimbursement plus interest at the lesser of eighteen percent (18%) per annum, or the maximum rate allowed by law. Furthermore, if the amount in default under this Section 10.01 equals or exceeds the sum of \$5,000.00, the other Owners or Prime Lessees shall have the right to place a lien on the Parcel or Pad of the defaulting Owner or leasehold interest of the defaulting Prime Lessee, as the case may be, for the amount of the expenses, which amount shall bear interest at the lesser of eighteen percent (18%) per annum or the maximum rate allowed by law until paid; provided, that if there be a bona fide dispute as to the existence of such default or of the amount due, and all undisputed amounts are paid, there shall be no right to place a lien on such Owner's Parcel or Pad or such Prime Lessee's leasehold interest until such dispute is settled by a final court decree or mutual agreement.

10.02. In the event an owner fails to pay taxes and assessments on the Common Area located on its Parcel or Pad when due, any other Owner may pay such taxes or assessments if such taxes are delinquent and the owing Owner has not commenced and is not duly prosecuting any contest of such taxes (unless a final judgment or lien has been rendered against the owing Owner or affects its Parcel or Pad, in which event the curing Owner shall have the rights described herein). The curing Owner shall

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then bill the defaulting Owner for the expenses incurred. The defaulting Owner shall have fifteen (15) days after receipt of notice of such bill within which to pay the bill. If the defaulting Owner does not so pay, the curing Owner shall have the right to place a lien on the Parcel or Pad of the defaulting Owner for the amount of the bill, which amount shall bear interest at the lesser of eighteen percent (18%) per annum or the maximum rate allowed by law 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 Pad or Parcel until such dispute is settled by final court decree or mutual agreement.

10.03. In addition to the foregoing, if any Owner (or Prime Lessee, if section 17 is applicable) and/or its agents, delegates or tenants defaults under this Agreement, then the Maintenance Director or any other Owner or Prime Lessee may institute legal action against the defaulting Owner or Prime Lessee and/or its agents, delegates or tenants for specific performance, declaratory relief, damages or any other available legal or equitable remedy. In addition to recovery of the sums so expended on behalf of the defaulting Owner or Prime Lessee, the prevailing party in the action shall be entitled to receive from the losing party such amount as the court may adjudge to be reasonable attorneys' fees for the services rendered to the prevailing party in any such action.

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11. LIEN FOR EXPENSES OR TAXES.

11.01. The lien provided for in paragraph 10 above ("Default in Payment of Expenses") shall only be effective when filed of record by the curing Owner as a claim of lien against the defaulting Owner or Prime Lessee in the Office of the County Recorder of Salt Lake County, Utah, signed, verified and acknowledged, which claim of lien shall contain at least:

(a) A statement of the unpaid amounts of costs and expenses;

(b) A description sufficient for identification of that portion of the property of the defaulting Owner or Prime Lessee which is the subject of the lien; and

(c) The name of the Owner or reputed Owner of the property which is the subject of the lien.

After the filing of any lien under this Section 11.01, a copy of said lien showing the filing or recording data shall be sent to the defaulting Owner or Prime Lessee at the address shown below.

11.02. 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 is acquired or attaches 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 or Prime Lessee, and may be enforced and foreclosed in any manner allowed by law, including, but not limited to, procedures for suits to

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foreclose a mortgage or mechanic's lien under the applicable law or laws of the State of Utah.

12. RIGHT TO MAINTAIN PARCEL SEPARATELY.

12.01. Any Major Retailers of the Shopping Center may, at any time and from time to time, upon at least sixty (60) days' prior notice to the Maintenance Director and the other Owners, elect to assume the obligations of the Maintenance Director to insure, maintain and repair all Common Area that is located on its respective Parcel or Pad, including costs of repaving and lighting, subject to the following conditions:

(a) Notwithstanding any provision of this Agreement to the contrary, the Major Retailer shall not be solely responsible for costs which cannot be practicably segregated or allocated among the Parcels and Pads, which costs shall continue to be proportionately paid for by the Owner or Owners (or Prime Lessees, if section 17 is applicable) of such Parcel(s) or Pad(s), as the case may be, pursuant to the formula set forth in paragraph 8 of this Agreement ("Billing for Expenses").

(b) In the event of such an assumption, the Owner or Prime Lessee agrees to insure, maintain and repair its respective portion of the Common Area at its sole cost and expense in a manner and at a level of quality at least comparable to that required of the Maintenance Director.

(c) The Parcel that an Owner or Prime Lessee elects to maintain separately pursuant to the provisions of this paragraph shall not include any Pads within the boundaries of such Parcel that have been improved with buildings.

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(d) If a Major Retailer elects separately to maintain its Parcel or Pad, then the Major Retailer shall be subject to the provisions of this Agreement and also the Cross Easement Agreement relating to the standards of maintaining the Common Area on the Major Retailer's Parcel.

(e) Whenever a Major Retailer elects separately to maintain its Parcel, the consent or approval of the Major Retailer shall not be necessary to obtain in determining whether a Majority of Owners has approved or consented to the action, and the Net Building Floor Area of the constructed building space on the Parcel shall not be elected in calculating ratios for determining whether such consent has been obtained.

(f) If (i) a Major Retailer elects separately to maintain its Parcel; (ii) no other buildings have been constructed on portions of the Shopping Center outside of the boundaries of such Parcel; and (iii) Common Areas outside of such Parcel have been installed, then the Major Retailer shall continue to be responsible for insuring, maintaining and repairing such other Common Areas until the time that one or more buildings are constructed outside of the boundaries of the Parcel and therefore become obligated to participate in costs for such other Common Areas.

The Major Retailer may also elect to terminate its obligation to insure, 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

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Director shall resume its duties, and the Owner or Prime Lessee of the Parcel agrees to thereafter pay for its prorata share of costs pursuant to the provisions in paragraphs 7 and 8.

13. RESPONSIBILITY IF NO MAINTENANCE DIRECTOR.

13.01. In the event there should at any time cease to be a Maintenance Director, each Owner (or Prime Lessee, if section 17 is applicable) shall be responsible for the maintenance, insurance and lighting of its own Parcel or Pad 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 or Prime Lessee may perform the obligation and bill the defaulting Owner or Prime Lessee for the expenses incurred. In such event, the applicable provisions and remedies of paragraph 10 ("Default in Payment of Expenses") and 11 ("Lien for Expenses or Taxes") shall apply.

14. RULES AND REGULATIONS.

14.01. The Majority of Owners, pursuant to mutual agreement, may make reasonable rules and regulations which shall control the use and operation of the Common Area. Such rules and regulations shall be those which are reasonably necessary or desirable to provide for the most effective, economical and fair use and enjoyment of the Common Area and which do not unduly favor or prejudice the Owners or tenants of all or any part of the Shopping Center in the use of the Common Area. Such rules and regulations may be amended from time to time by the Majority of Owners and may include designation of employee parking.

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15. NOTICES.

15.01. All notices to the initial Owners under this Agreement shall be effective if either (a) personally delivered; (b) delivered by a guaranteed overnight delivery service, such as Federal Express; or (c) mailed certified mail, return-receipt requested, as follows (unless notice of a change of address is given pursuant hereto:

A. If to SHOPKO:

Shopko Stores, Inc.
P.O. Box 19060
Green Bay, Wisconsin 54307-9060
Attn.: Director of Real Estate

Copy by ordinary mail to:

Super Valu Stores, Inc.
P.O. Box 990
Minneapolis MN 55440
Attn.: Legal Department

and

Kelley, Weber, Pietz & Slater, S.C.
530 Jackson Street
Wausau, Wisconsin 54401
Attn.: Colin D. Pietz

B. If to DEVELOPER:

The Haws Leasure Company
370 East South Temple, Suite 500
Salt Lake City, Utah 84111

Copy by ordinary mail to:

Richard H. Thornton
Jardine, Linebaugh, Brown & Dunn
370 East South Temple, Suite 400
Salt Lake City, Utah 84111

C. If to PARAS:

John N. Paras and Jean Paras
4297 South Mackay Street
Murray, Utah 84107

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Copy by ordinary mail to:

R. La Mar Bishop
Attorney and Counsel at Law
2040 East 4800 South, Suite 204
Salt Lake City, Utah 84117

If an Owner conveys fee simple title, or if a Prime Lessee assigns its leasehold interest, to any portion of the Shopping Center to another person or entity, then notices with respect to the portion of the Shopping Center that has been conveyed or assigned shall thereafter be sent to the acquiring Owner or Prime Lessee (and its legal counsel, if designated) at the address designated in the notice that is described in section 3.03 of the Cross Easement Agreement. If an Owner or a Prime Lessee fails to designate such an address or fails to give such notice, then the notice may be sent to the record title holder of the Parcel or Pad as shown in the then current assessment records of the Salt Lake County, Utah Assessor for such Site or Pad.

16. ESTOPPEL CERTIFICATE.

16.01. Any Owner or Prime Lessee may, in connection with the financing, sale or transfer of such Owner's Parcel or Pad or such Prime Lessee's leasehold interest, deliver written notice to the Maintenance Director (or Owner or Prime Lessee of any other Parcel or Pad if there is no Maintenance Director) requesting the Maintenance Director, the Owner or Prime Lessee, as the case may be, to certify in writing that to its best knowledge the requesting Owner or Prime Lessee is not in default

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in the performance of its obligations under this Agreement, or, if in default, to describe the nature and amount of the default. The Maintenance Director, Owner or Prime Lessee, as the case may be, shall execute and return such certificate within fifteen (15) days following the receipt thereof.

17. SALE AND LEASEBACK

17.01. In the event the Owner of any Parcel or Pad sells and becomes the lessee of its respective Parcel or Pad ("Prime Lessee"), such party shall have all of the rights of the Owner of such Parcel or Pad, including, without limitation, the right to appoint and remove the Maintenance Director and to give other approvals, that are provided to owners of Parcels or Pads herein.

17.02. Notwithstanding anything to the contrary contained in this Agreement, it is expressly agreed that in the event the Owner of any Parcel or Pad sells such Parcel or Pad to an unaffiliated third party and thereafter leases back such property from such third party or the third party's lessee or sublessee (hereinafter referred to as "SLB Lessor"), so long as such prior Owner is in possession of the Parcel or Pad as a leaseback lessee (the "Prime Lessee"), the parties hereto shall look solely to such Prime Lessee (during the term of such lease) for the performance of any obligations that either such prior Owner or the SLB Lessor shall have under this Agreement, and the SLB Lessor shall be relieved of any obligation for the performance of or liability for the covenants, terms, agreements

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and restrictions set forth herein relating to such prior Owner or the Prime Lessee during the term of such Lease.

18. GENERAL PROVISIONS.

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

18.02. This Agreement shall have a term of sixty-five (65) years from the date hereof, unless earlier terminated by the mutual agreement of the Owners (or Prime Lessees, if section 17.3 is applicable); provided, that notwithstanding the foregoing this Agreement shall terminate automatically upon the termination of the Cross Easement Agreement.

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

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

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18.05. The captions in this Agreement are for convenience only and do not constitute a part of the provisions hereof.

18.06. This Agreement may be executed in any number of counterparts, each of which shall for all purposes be deemed an original and all of which together shall constitute but one and the same instrument, and shall become effective only upon execution of one or more of such counterparts by each of the parties.

18.07. This Agreement may not be modified in any respect whatsoever or rescinded, in whole or in part, except with the consent of the Owners and Prime Lessees of the Parcels and Pads containing seventy-five percent (75%) of the total square footage of the Net Building Floor Area of constructed buildings in the Shopping Center at the time of such modification, and then only by a written instrument, which is duly executed and acknowledged by all of the required Owners and Prime Lessees, and duly recorded in the office of the Recorder of Salt Lake County, Utah. No modification or rescission of this Agreement shall affect the rights of any lienholder existing prior to such modification or rescission unless the lienholder consents in writing to the modification or rescission.

18.08. Time is the essence of this Agreement.

18.09. In the event any of the provisions of this Agreement, or portions thereof, are held to be unenforceable or

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invalid by any court, the validity and enforceability of the remaining provisions, or portions thereof, shall not be affected thereby.

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

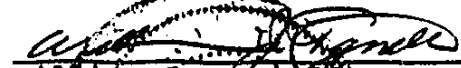
IN WITNESS WHEREOF, the parties hereto have executed this Common Area Maintenance Agreement as of the day and year first above written.

THE HAWS LEASURE COMPANIES, a
Utah Limited Partnership

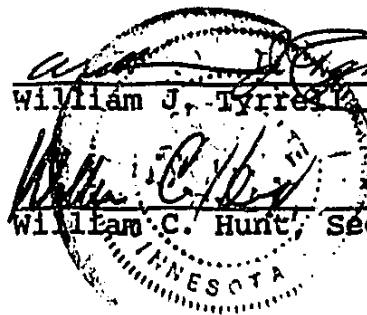
By: THE HAWS COMPANIES, a
Utah corporation and
the Managing General
Partner of The Haws
Leasure Companies

By: 
Richard A. Haws
President

SHOPKO STORES, INC.,
a Minnesota corporation,
doing business in Utah as
Uvalko Shopko Stores, Inc.

By: 
William J. Tyrrell, President

By: 
William C. Hunt, Secretary

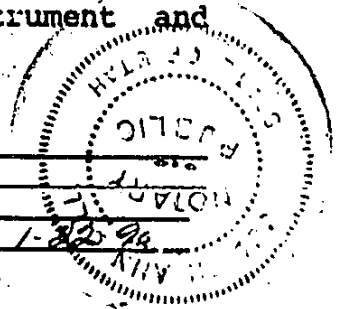


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STATE OF UTAH)
) ss.
COUNTY OF SALT LAKE)

Personally came before me this 21st day of February
1989, John N. Paras, also known as John N. Paraskevopoulos and
Jean Paras, also known as Jean Paraskevopoulos, to me known to be
such persons who executed the foregoing instrument and
acknowledged that they executed the same.

Dorothy Ann Dill
D. Dill
Notary Public
My Commission expires: 1-22-90



THIS INSTRUMENT WAS DRAFTED BY:

Colin D. Pietz, Attorney at Law
Kelley, Weber, Pietz & Slater, S.C.
530 Jackson Street
Wausau, Wisconsin 54401

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SCHEDULE OF EXHIBITS TO
COMMON AREA MAINTENANCE AGREEMENT

<u>Exhibit</u>	<u>Description</u>	Referred to in Paragraph of <u>Agreement</u>
A	Site Plan	1st Recital
B-1 to B-8	Legal Descriptions of Parcels	2nd Recital
C	Legal Descriptions of Pads	3rd Recital

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EXHIBIT A TO
COMMON AREA MAINTENANCE AGREEMENT
(Salt Lake City, Utah - Site No. 15)

Site Plan

See the attached Site Plan for the Shopping Center.

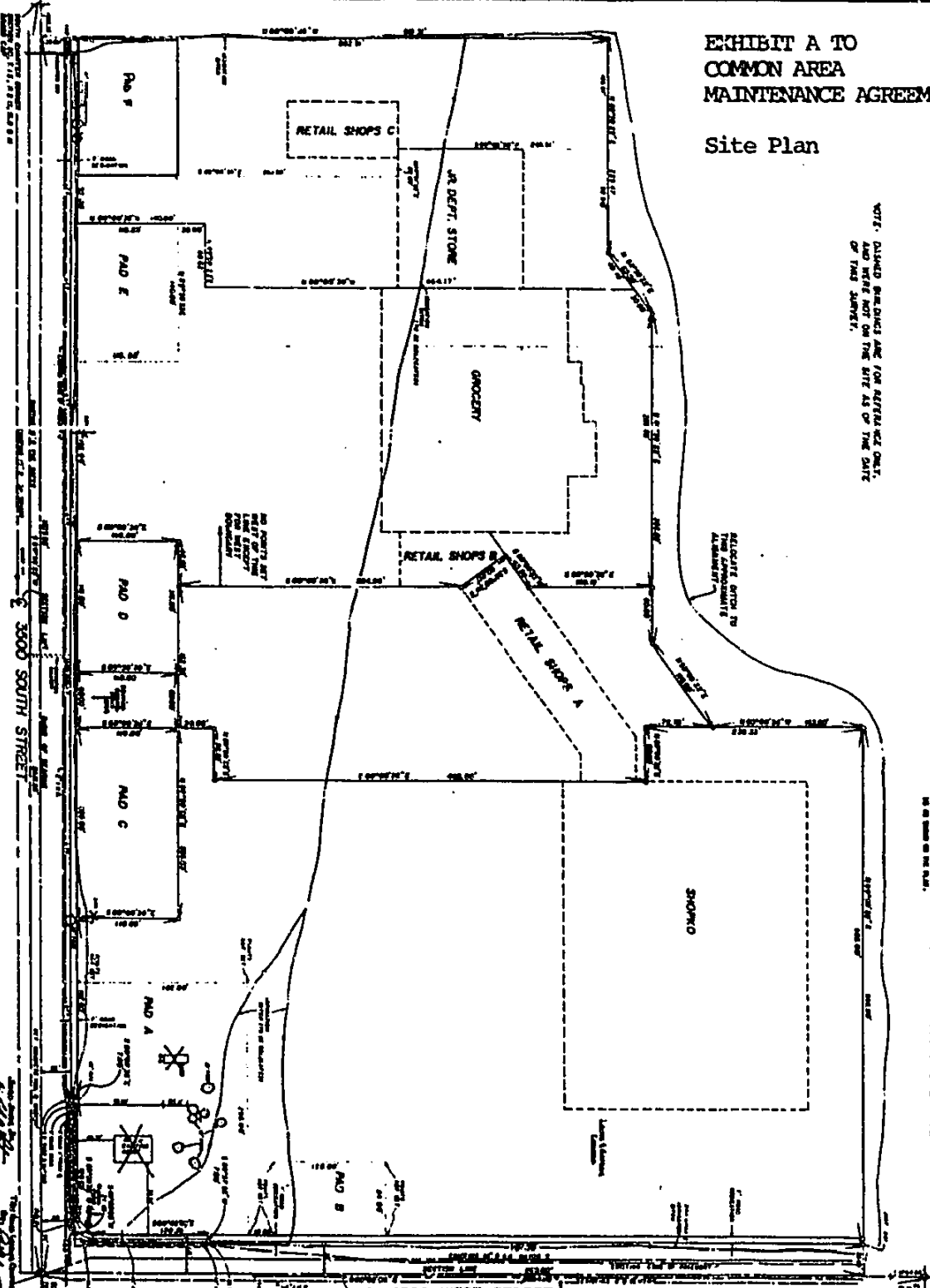
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EXHIBIT A TO
COMMON AREA
MAINTENANCE AGREEMENT

Site Plan

NOTE: DASHED BOUNDARIES ARE FOR APPROXIMATE ONLY AND REFER NOT TO THE SITE AS OF THE DATE OF THIS SURVEY.

THIS PLAN IS THE PROPERTY OF THE SURVEYOR AND IS NOT TO BE REPRODUCED OR TRANSMITTED IN ANY FORM OR BY ANY MEANS, ELECTRONIC OR MECHANICAL, INCLUDING PHOTOCOPYING, RECORDING, OR BY ANY INFORMATION STORAGE AND RETRIEVAL SYSTEM, WITHOUT THE WRITTEN PERMISSION OF THE SURVEYOR.



NO.	DATE	DESCRIPTION
1	11/11/82	AS SHOWN
2	11/11/82	AS SHOWN
3	11/11/82	AS SHOWN
4	11/11/82	AS SHOWN
5	11/11/82	AS SHOWN
6	11/11/82	AS SHOWN
7	11/11/82	AS SHOWN
8	11/11/82	AS SHOWN
9	11/11/82	AS SHOWN
10	11/11/82	AS SHOWN

3600 SOUTH STREET

4800 WEST STREET

LEGEND
 PRINTED
 11/11/82
 480 000

NOTE: SEE PLAN SET AT THE COMM. TO
 THE BOARD OF SUPERVISORS



THIS SURVEY WAS MADE BY ME OR UNDER MY CLOSE PERSONAL SUPERVISION AND THE DATA WERE OBTAINED BY ME OR UNDER MY CLOSE PERSONAL SUPERVISION. I AM A LICENSED SURVEYOR IN THE STATE OF CALIFORNIA AND THIS SURVEY WAS MADE IN ACCORDANCE WITH THE PROVISIONS OF THE SURVEYING ACTS OF THE STATE OF CALIFORNIA. I HEREBY CERTIFY THAT THE DATA WERE OBTAINED BY ME OR UNDER MY CLOSE PERSONAL SUPERVISION AND THAT I AM A LICENSED SURVEYOR IN THE STATE OF CALIFORNIA.

**EXHIBIT B TO
COMMON AREA MAINTENANCE AGREEMENT
(Salt Lake City, Utah - Site No. 15)**

Legal Descriptions of Parcels

See exhibit B-1 to B-8 that are attached hereto for legal descriptions of specific phases of the Project.

RHTD1144

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11/23/88:3

Exhibit B-1

November 18, 1988 (REVISED)

SHOPKO PARCEL

Beginning at a point on the North right-of-way line of 3500 South Street said point being South 89°59'22" West along the Section line 55.00 feet and North 00°00'38" West 40.00 feet from the Southeast corner of Section 25, Township 1 South, Range 2 West, Salt Lake Base and Meridian and running thence the following three courses along said right-of-way line: South 89°59'22" West 128.00 feet; South 00°00'38" East 7.00 feet; South 89°59'22" West 197.0 feet; thence leaving said right-of-way line North 00°00'38" West 117.00 feet; thence South 89°59'22" West 205.00 feet; thence North 00°00'38" West 39.0 feet; thence North 89°59'22" East 56.615 feet; thence North 00°00'38" West 465.66 feet; thence South 89°59'22" West 60.00 feet; thence North 00°00'38" West 235.33 feet; thence North 89°59'22" East 555.00 feet to the West right-of-way line of 4800 West Street; thence the following four courses along said West right-of-way line: South 00°02'08" East 707.00 feet; South 89°57'52" West 7.00 feet; South 00°02'08" East 128.01 feet; and South 45° West 21.18 feet to the point of beginning.

Contains 9.6688 Acres

ENTRANCE ROAD

Beginning at a point on the North right-of-way line of 3500 South Street said point being South 89°59'22" West along the Section line 645.0 feet and North 00°00'38" West 33.0 feet from the Southeast corner of Section 25, Township 1 South, Range 2 West, Salt Lake Base and Meridian and running thence North 00°00'38" West 117.00 feet; thence North 89°59'22" East 60.0 feet; thence South 00°00'38" East 117.00 feet to the aforementioned right-of-way line; thence along said right-of-way line South 89°59'22" West 60.0 feet to the point of beginning.

Contains 0.1612 Acres

Total Shopko Acreage 9.8300 Acres

Exhibit B-2

November 18, 1988 (REVISED)

PAD C

Beginning at a point on the North right-of-way line of 3500 South Street said point being South 89°59'22" West along the Section line 380.0 feet and North 00°00'38" West 33.0 feet from the Southeast corner of Section 25, Township 1 South, Range 2 West, Salt Lake Base and Meridian and running thence along said right-of-way line South 89°59'22" West 205.00 feet; thence leaving said right-of-way line North 00°00'38" West 117.0 feet; thence North 89°59'22" East 205.0 feet; thence South 00°00'38" East 117.0 feet to the point of beginning.

Contains: 0.5506 Acres

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Exhibit B-3

November 18, 1988 (REVISED)

RETAIL SHOPS A

Beginning at a point which is South $89^{\circ}59'22''$ West 585.0 feet and North $00^{\circ}00'38''$ West 150.0 feet from the Southeast corner of Section 25, Township 1 South, Range 2 West, Salt Lake Base and Meridian and running thence South $89^{\circ}59'22''$ West 152.38 feet; thence North $00^{\circ}00'38''$ West 304.98 feet; thence North $36^{\circ}00'38''$ West 60.0 feet; thence North $53^{\circ}59'22''$ East 43.59 feet; thence North $00^{\circ}00'38''$ West 133.19 feet; thence North $89^{\circ}59'22''$ East 60.0 feet; thence North $53^{\circ}59'22''$ East 110.00 feet; thence South $00^{\circ}00'38''$ East 72.33 feet; thence North $89^{\circ}59'22''$ East 60.0 feet; thence South $00^{\circ}00'38''$ East 465.66 feet; thence South $89^{\circ}59'22''$ West 56.615 feet; thence South $00^{\circ}00'38''$ East 39.0 feet to the point of beginning.

Contains 2.4929 Acres

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Exhibit B-4

November 18, 1988 (REVISED)

PAD D

Beginning at a point on the North right-of-way line of 3500 South Street, said point being South 89°59'22" West along the Section line 645.0 feet and North 00°00'38" West 33.0 feet from the Southeast corner of Section 25, Township 1 South, Range 2 West, Salt Lake Base - rd Meridian and running thence along said right-of-way line South 89°59'22" West 141.0 feet; thence leaving said right-of-way line North 00°00'38" West 117.0 feet; thence North 89°59'22" East 141.0 feet; thence South 00°00'38" East 117.0 feet to the point of beginning.

Contains 0.3787 Acres

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Exhibit B-5

February 8, 1989 (Revised)

GROCERY PARCEL (PHASE II)

Beginning at a point on the North right-of-way line of 3500 South Street, said point being South 89°59'22" West along the Section line 978.0 feet and North 00°00'38" West 33.0 feet from the Southeast corner of Section 25, Township 1 South, Range 2 West Salt Lake Base and Meridian and running thence North 00°00'38" West 117.00 feet; thence South 89°59'22" West 148.00 feet; thence North 00°00'38" West 30.00 feet; thence North 89°59'22" East 68.62 feet; thence North 00°00'38" West 464.17 feet; thence North 53°59'22" East 30.90 feet; thence North 89°59'22" East 295.00 feet; thence South 00°00'38" East 133.19 feet; thence South 53°59'22" West 43.59 feet; thence South 36°00'38" East 60.00 feet; thence South 00°00'38" East 304.98 feet; thence South 89°59'22" West 48.62 feet; thence South 00°00'38" East 117.00 feet to the aforementioned right-of-way line; thence along said right-of-way line South 89°59'22" West 192.00 feet to the point of beginning.

Contains 4.2915 Acres

Exhibit B-6

November 25, 1988 (REVISED)

PAD E

Beginning at a point on the North right-of-way line of 3500 South Street, said point being South 89°59'22" West along the Section line 1126.0 feet and North 00°00'38" West 33.0 feet from the Southeast corner of Section 25, Township 1 South, Range 2 West, Salt Lake Base and Meridian and running thence North 00°00'38" West 117.00 feet; thence North 89°59'22" East 148.00 feet; thence South 00°00'38" East 117.00 feet to the aforementioned right-of-way line; thence along said right-of-way line South 89°59'22" West 148.00 feet to the point of beginning.

Contains 0.3975 Acres

088 7225 5019 7008
BOOK 6105 PAGE 930

Exhibit B-7

November 25, 1988 (Revised)

JR DEPARTMENT STORE

Beginning at a point of the North right-of-way line of 3500 South Street, said point being South 89°59'22" West along the Section line 1126.00 feet and North 00°00'38" West 33.0 feet from the Southeast corner of Section 25, Township 1 South, Range 2 West, Salt Lake Base and Meridian and running thence North 00°00'38" West 147.00 feet; thence North 89°59'22" East 68.62 feet; thence North 00°00'38" West 464.17 feet; thence South 53°59'22" West 49.10 feet; thence South 89°59'22" West 98.90 feet; thence South 00°00'38" East 225.31 feet thence North 89°59'22" East 20.0 feet; thence South 00°00'38" East 357.00 feet to the aforementioned right-of-way line thence along said right-of-way line North 89°59'22" East 50.00 feet to the point of beginning.

Contains 1.4708 Acres

Exhibit B-8

February 16, 1989 (Revised)

RETAIL SHOPS C

Beginning at a point on the North right-of-way line of 3500 South Street, said point being South 89°59'22" West along the Section line 1176.00 feet and North 00°00'38" West 33.0 feet from the Southeast corner of Section 25, Township 1 South, Range 2 West, Salt Lake Base and Meridian and running thence along said right-of-way line South 89°59'22" West 150.01 feet to the 1/16th Section line; thence along said 1/16th Section line North 00°03'55" West 582.31 feet; thence North 89°59'22" East 130.57 feet; thence South 00°00'38" East 225.31 feet; thence North 89°59'22" East 20.00 feet; thence South 00°00'38" East 357.00 feet to the point of beginning.

Contains 1.9056 Acres

EXHIBIT C TO
COMMON AREA MAINTENANCE AGREEMENT
(Salt Lake City, Utah - Site No. 15)

Legal Descriptions of Pads

The legal descriptions of the "Outlots" or "Pads" are set forth on the following exhibits to this Agreement:

<u>Pad</u>	<u>Exhibit</u>
A	Included within Shopko Parcel (see approximate location shown on Site Plan)
B	Included within Shopko Parcel (see approximate location shown on Site Plan)
C	B-2
D	B-4
E	E-6
F	Included within Retail Shops C (see approximate location shown on Site Plan)

RHTD1145

11/23/88:3

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