

DECLARATION OF RESTRICTIONS
AND

GRANT OF EASEMENTS 00514397 BkD 948 Pg 0159

Table of Contents

RUSSELL SHIRTS * WASHINGTON CO RECORDER
1995 NOV 02 16:32 PM FEE \$102.00 BY RS
FOR: DIXIE TITLE CO

Article	Subject	Page
ARTICLE 1.	PRELIMINARY	1
1.1	Definitions	1
1.2	Parties	2
1.3	Purpose	6
ARTICLE 2.	BUILDING AND COMMON AREA DEVELOPMENT	6
2.1	Building Location	6
2.2	Common Area	7
2.3	Type and Design of Building	8
2.4	Construction Requirements	11
2.5	Casualty and Condemnation	13
2.6	Indemnification	14
ARTICLE 3.	EASEMENTS	14
3.1	Ingress, Egress and Parking	14
3.2	Utility Lines and Facilities	15
3.3	Signs	16
3.4	Building Encroachments	17
3.5	Permanent Service and Access Drives	17
ARTICLE 4.	OPERATION OF COMMON AREA	18
4.1	Parking	18
4.2	Employee Parking	18
4.3	Signs	19
4.4	Protection of Common Areas	24
4.5	Sales	25
ARTICLE 5.	RESTRICTIONS ON USE	25
5.1	Food and Drug Restrictions	25
5.2	Shopping Center Restrictions	26
5.3	Location Restrictions	27
5.4	Driveup and Drive Through Facilities	27

5.5	Mall Restrictions	28
5.6	Other Restricted Property	28
ARTICLE 6. GENERAL PROVISIONS		29
6.1	Covenants Run With the Land	29
6.2	Successors and Assigns	29
6.3	Duration	29
6.4	Injunctive Relief	29
6.5	Modification and Termination	30
6.6	Method of Approval	30
6.7	Not a Public Dedication	31
6.8	Breach Shall Not Permit Termination	31
6.9	Default	31
6.10	Notices	32
6.11	Waiver	33
6.12	Attorney's Fees	33
6.13	Sale & Sale-leaseback Purchaser	34
6.14	Severability	34
6.15	Not a Partnership	34
6.16	Third Party Beneficiary Rights	35
6.17	Captions and Headings	35
6.18	Entire Agreement	35
6.19	Construction	35
6.20	Joint and Several Obligations	35
6.21	Recordation	35
6.22	Consents	35
6.23	Counterparts	36
6.24	Authority	36

**DECLARATION OF RESTRICTIONS
AND GRANT OF EASEMENTS**

THIS DECLARATION OF RESTRICTIONS AND GRANT OF EASEMENTS ("Declaration") is made as of the 2ND day of November, 1995, by and between King Holdings, LC, a Utah limited liability company ("First Party"), John H. Barlow, Trustee of the Barlow Family Trust dated July 7, 1977 ("Second Party"), and Albertson's, Inc., a Delaware corporation ("Albertson's"), with the intent and for the purpose of obligating, benefitting and binding the Shopping Center, each Parcel, the Owners, tenants, subtenants, Lienholders, and other holders of any interest in any portion of the Shopping Center now or in the future.

1. PRELIMINARY

1.1 Definitions:

(a) "Albertson's": Albertson's, Inc., a Delaware corporation, together with any corporation succeeding hereto by consolidation, merger or acquisition of its assets substantially as an entirety, and any wholly owned subsidiary thereof, and whose current address is 250 ParkCenter Boulevard, Post Office Box 20, Boise, Idaho 83726.

(b) "Building Area": All those areas on Parcels 1, 2, 3, 4 and 5 shown as Building Area on Exhibit "A" attached hereto and incorporated herein by this reference, together with those portions of the Expansion Area and Building Envelopes which are from time to time covered by a building or other commercial structure. There shall be no Building Area on Parcel 6.

DECLARATION OF RESTRICTIONS
AND GRANT OF EASEMENTS -
ABS #3-P - Washington, UT
MM&C 125.288 10/26/95

Page 1

00514397 Bk0948 Pg0161

(c) "Building Envelope": That area on each of Parcels 1, 3 and 4 which is within the area enclosed by the Building Envelope Lines shown on Exhibit "A" attached hereto.

(d) "Common Area": All those areas on each Parcel which are not Building Area together with those portions of the Building Area on each Parcel which are not from time to time actually covered by a building or other commercial structure or which cannot under the terms of this Declaration be used for buildings. Canopies which extend over the Common Area, together with any columns or posts supporting same, shall be deemed to be a part of the building to which they are attached and not a part of the Common Area.

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

(f) "Consenting Owners": The Owners of Parcels 2 and 3; provided, however, that in the event any person becomes the Prime Lessee of a Parcel, 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 so long as it is the Prime Lessee of said Parcel.

(g) "Development Agreement": That certain Development Agreement between the parties hereto which encumbers the Shopping Center and is recorded concurrently herewith.

(h) "Expansion Area": That area on Parcel 2 located within the "Expansion Limit Line" shown on Exhibit "A".

(i) "First Party": King Holdings, LC, a Utah limited liability company, whose address is 865 West Telegraph, Suite 100 Washington, Utah 84780.

(j) "floor area": The total number of square feet of floor space in a building whether or not actually occupied including basement, subterranean, balcony and mezzanine space. Floor area shall be measured from the exterior line of the exterior walls and from the center line of any party or common interior walls without deduction for columns, walls or other structural or non-structural components.

(k) "Lienholder": Any mortgagee under a mortgage or a trustee or beneficiary under a deed of trust constituting a lien on any Parcel.

(l) "National Chain": A retail business located in the Shopping Center which also operates at least twenty-five (25) other stores in three (3) or more states, all under the same trade name.

(m) "Other Restricted Property":

(i) That certain real property owned by First Party and described in Schedule IV attached hereto and incorporated herein by this reference; and

(ii) All real property adjacent or contiguous to the real property described in Schedule IV or to any part of the Shopping Center ("Adjacent Property"), now or hereafter owned or controlled by First Party or Second Party or (1) any trustee, beneficiary, member, officer, director, shareholder, heir, personal representative, successor or assign of either of them, (2) any person related to any agent, designee, contractor, employee, consultant, manager, member, officer, director, shareholder, trustee, beneficiary, owner or creditor of First

Party or Second Party by blood or by marriage, (a "Relative"), (3) any agent, designee, contractor, employee, consultant, manager, member, officer, director, shareholder, trustee, beneficiary, owner or creditor of First Party or Second Party or any Relative (an "Agent"), (4) any person with regard to whom (or in which) First Party or Second Party or any Relative or any Agent has any agency, ownership, membership, creditor's, equitable or beneficial interest or relationship, or (5) any person for whom (or in which) First Party or Second Party or any Relative or any Agent is an agent, designee, contractor, employee, consultant, manager, member, officer, director, shareholder or trustee; excluding, however, Parcel 2 in each and every instance.

(n) "Owner": The record holder of fee simple title to a Parcel, its heirs, personal representatives, successors and assigns.

(o) "Parcel": Parcel 1, 2, 3, 4, 5 or 6 as shown on Exhibit "A" and more particularly described in Schedule I attached hereto and incorporated herein by this reference.

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

(q) "Prime Lessee": (i) An Owner of a Parcel who sells said Parcel to an unaffiliated third party and thereafter enters into a lease for said Parcel with such third party or its lessee or sublessee, or (ii) a person who enters into a ground lease covering an entire Parcel with the Owner of said Parcel for a term of twenty-five (25) years or more (including

extension options). Prime Lessee includes the successors and assigns of said Prime Lessee but does not include the sublessees, licensees or concessionaires of said Prime Lessee.

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

(s) "Second Party": John H. Barlow, Trustee of the Barlow Family Trust dated July 7, 1977, whose address is 463 South Palisade, Orem, Utah 84058.

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

(u) "Shopping Center": Parcels 1, 2, 3, 4, 5 and 6 collectively.

1.2 Parties: First Party is the Owner of Parcels 1, 2, 3, 4 and 6; Second Party is the Owner of Parcel 5; and Albertson's is the Prime Lessee of Parcel 2. As of the date of this Declaration, a self-service gasoline station and convenience store is being operated on Parcel 5 by R & J Enterprises, a Utah general partnership, under the trade name Hart's Gas and Food ("R & J Enterprises"), pursuant to that certain undated Lease Agreement by and between Howard K. Barlow, Trustee of the Barlow Family Trust dated July 7, 1977 and John H. Barlow, Trustee of the Barlow Family Irrevocable Trust dated May 6, 1991, as amended by that certain Lease Addendum dated May 29, 1992, by and between said parties (the "R & J Enterprises Lease"). The Parcels are located at the southwest corner of the intersection of Red Cliffs Drive and Green Spring Drive in the City of Washington, County of Washington, State of Utah as shown on Exhibit "A" and more particularly described in Schedule I attached hereto.

1.3 Purpose: The parties plan to develop the Shopping Center as an integrated retail sales complex for the mutual benefit of all real property in the Shopping Center and, therefore, hereby establish the Restrictions.

2. BUILDING AND COMMON AREA DEVELOPMENT

2.1 Building Location:

(a) All buildings and other structures (except those permitted in Section 2.2 below) shall be placed or constructed upon Parcels 2, 4 and 5 only in the Building Areas; provided, however, that canopies, eaves and roof overhangs (including columns or posts supporting same), normal foundations, utility cabinets and meters, signs and doors for ingress and egress may project from the Building Area into the Common Area. No more than one (1) building shall be located on each of Parcels 4 and 5, and the total ground floor area of all buildings placed or constructed on any such Parcel shall never exceed the maximum square footage allowed for such Parcel as shown on Exhibit "A." The configuration of the Building Area on Parcel 4 may be altered or relocated anywhere within the Building Envelope within which the Building Area is contained; provided, however, that the total ground floor area of the building placed or constructed on Parcel 4 shall never exceed 4,000 square feet.

(b) All buildings and other structures shall be placed or constructed upon Parcels 1 and 3 only within the Building Envelopes shown on Exhibit "A" attached hereto. The total ground floor area of all buildings placed or constructed upon Parcel 3 shall never exceed 35,000 square feet, and the total ground floor area of all buildings placed or constructed upon Parcel 1 shall never exceed 23,000 square feet.

DECLARATION OF RESTRICTIONS
AND GRANT OF EASEMENTS -
ABS #3-P - Washington, UT
MM&C 125.288 10/26/95

Page 6

00514397 BK0948 Pg0166

(c) No building or other structure shall be permitted on Parcel 6 except those above ground structures that are otherwise allowed pursuant to the first and second sentences of Section 3.2(a) hereof.

(d) All of the foregoing shall be constructed and maintained in accordance with all local, state and federal laws, rules and regulations applicable thereto. All Building Areas and Building Envelopes on which buildings are not under construction on the date the Owner or occupant of Parcel 2 first opens its building for business shall be covered by a one inch asphalt dust cap and kept weed free and clean at the Owner's sole expense until such time as buildings are constructed thereon.

2.2 Common Area: The Common Area is hereby reserved for the sole and exclusive use of all Owners of the Shopping Center, their tenants, contractors, employees, agents, customers, licensees and invitees and the subtenants, contractors, employees, agents, customers, licensees and invitees of such tenants. The Common Area may be used for vehicular driving, parking (except that there shall be no multi-level parking), pedestrian traffic, directional signs, sidewalks, walkways, landscaping, perimeter walls and fences, parking lot lighting, recycle centers, cart corrals, utilities and Service Facilities and for no other purpose unless otherwise specifically provided in this Declaration. No buildings or structures not shown on the Site Construction Documents approved pursuant to the Development Agreement shall be placed or constructed in the Common Area except pylon and directional signs (as provided in Article 4 hereof), paving, bumper guards or curbs, landscape planters, lighting standards, perimeter walls and fences, utility pads and equipment, recycle centers, cart corrals, sidewalks and, to the

extent that they are located, and do not impede access, to the rear or sides of buildings, Service Facilities. The Common Area shall be constructed in accordance with the site plan attached hereto as Exhibit "A" and shall be kept and maintained as provided for in the Common Area Maintenance Agreement. All portions of a Building Area or Building Envelope which cannot be used for buildings or which are not covered by the building placed or constructed thereon shall (concurrent with the construction of said building) be developed by the Owner thereof, at said Owner's sole cost and expense, in accordance with a site plan approved by each of the Consenting Owners and maintained as improved Common Area. The sizes and arrangements of the Common Area improvements, including, without limitation, service drives and parking areas, striping, traffic directional arrows and signs, concrete bumpers, parking lot lighting, perimeter walls and fences, and landscaped areas, together with necessary planting, may not be changed without the prior written consent of each of the Consenting Owners; provided, however, that nothing contained in this Section 2.2 shall be in any way interpreted or construed to require the written consent of the Consenting Owners to (i) the expansion of any building into the Expansion Area shown on Exhibit "A," or (ii) the construction, alteration or relocation of any Service Facilities to the extent such Service Facilities are located, and do not impede access, to the rear or sides of buildings.

2.3 Type and Design of Building:

(a) Each building in the Shopping Center, now and in the future, shall be of first quality construction and architecturally designed so that its exterior elevations (including, without limitation, signs and color) will be architecturally and aesthetically

compatible and harmonious with all other buildings in the Shopping Center; provided, however, that nothing contained in this sentence shall impose a requirement that the Parcel 5 Signage (as such term is defined in Section 4.3(d) hereof) or the building located on Parcel 5 as of the date of this Declaration be modified specifically for the purpose of bringing it into compliance with the construction and architectural standards set forth hereby. No building may be constructed nor the exterior of any existing building changed in any way (including, without limitation, signs and color) without the prior written approval of each of the Consenting Owners as to the exterior elevations (including, without limitation, signs and color) of the building to be constructed or modified. The standard signs and logos of Albertson's as they may exist from time to time (including, without limitation, exterior signs for persons providing banking and/or financial services within the building located on Parcel 2), the standard signs and logos of persons who are a National Chain and occupy not less than 20,000 square feet of ground floor area in the Shopping Center, the standard building signs and logos as are required (pursuant to a "branding agreement") by any national oil company (e.g., Phillips 66 or Texaco) as a condition to the sale by R & J Enterprises of such oil company's products from Parcel 5, signs in compliance with the criteria therefor set forth in Exhibit "B" attached hereto and incorporated herein by this reference, and the opening, closing or relocation of any door, however, shall not require approval. Before the construction of any building or any modification of an existing building which requires approval is commenced, sufficient information shall be sent to each of the Consenting Owners to enable the Consenting Owners to make a reasonable determination as to the architectural and aesthetic compatibility of said building or modification with all other

DECLARATION OF RESTRICTIONS
AND GRANT OF EASEMENTS -
ABS #3-P - Washington, UT
MM&C 125.288 10/26/95

Page 9

00514397 Bk0948 Pg0169

buildings in the Shopping Center. No Consenting Owner may arbitrarily or unreasonably withhold its approval of the proposed building or modification if it is architecturally and aesthetically compatible and harmonious with all other buildings in the Shopping Center. Each Consenting Owner must approve or disapprove the proposal within thirty (30) days after receipt of the proposal, and, if such Consenting Owner disapproves the proposal, it shall provide a written explanation in reasonable detail of its reasons for disapproval. If a Consenting Owner rejects or disapproves the proposal and fails to provide such explanation within the thirty (30) day period, such Consenting Owner shall be deemed to have approved same provided that, when the approval was sought, the one seeking the approval stated in writing to the one whose approval was sought that, if a disapproval with explanation was not made within the thirty (30) day period, approval would then be deemed to have been given. If the proposal is disapproved as provided herein, then an alternate proposal may be submitted, which alternate proposal shall be handled in the same manner as the initial proposal.

(b) Every building shall be either equipped with automatic sprinkler systems which meet all the standards of the Insurance Services Office (or other similar local organization having jurisdiction) or shall be constructed in such a manner as not to adversely affect the fire rating of any building built upon any other Parcel. The purpose of this subparagraph (b) is to allow buildings built on each Parcel to be fire rated as separate and distinct units without deficiency charge.

(c) No building shall be built in such a manner as to adversely affect the structural integrity of any other building in the Shopping Center.

(d) All buildings on Parcels 1, 2 and 3 shall be single story with mezzanine permitted and shall not exceed thirty-one (31) feet in height, except for the peak of the architectural design feature located at the front entry of Albertson's Building (as such term is defined in the Development Agreement), which shall not exceed forty (40) feet in height. No building on Parcel 4 or 5 shall exceed one (1) story and twenty (20) feet in height (including mechanical fixtures and equipment and screening for same). No mezzanine or basement shall be used for the sale or display of merchandise.

(e) Each Owner shall maintain or cause to be maintained the exterior of any building located on such Owner's Parcel(s) in a quality and condition comparable to that of first class shopping centers of comparable size and nature located in the same geographic area as the Shopping Center. All Service Facilities shall be attractively screened from view from the parking areas.

2.4 Construction Requirements:

(a) All work performed in the construction, maintenance, repair, replacement, alteration or expansion of any building, sign or Common Area improvements located in the Shopping Center shall be effected as expeditiously as possible and in such a manner as not to unreasonably interfere, obstruct or delay (i) access to or from the Shopping Center, or any part thereof, to or from any public right-of-way, (ii) customer vehicular parking in that portion of the improved Common Area located in front of any building constructed in the Shopping Center, or (iii) the receiving of merchandise by any business in the Shopping Center including, without limitation, access to Service Facilities. Staging for the construction,

replacement, alteration or expansion of any building, sign or Common Area improvements located in the Shopping Center including, without limitation, the location of any temporary buildings or construction sheds, the storage of building materials, and the parking of construction vehicles and equipment shall be limited to that portion of the Shopping Center approved in writing by the Consenting Owners. Unless otherwise specifically stated herein, the person contracting for the performance of such work ("Contracting Party") shall, at its sole cost and expense, promptly repair and restore or cause to be promptly repaired and restored to its prior condition all buildings, signs and Common Area improvements damaged or destroyed in the performance of such work.

(b) The Contracting Party shall not permit any liens to stand against any Parcel for any work done or materials furnished in connection with the performance of the work described in subparagraph (a) above; provided, however, that the Contracting Party may contest the validity of any such lien, but upon a final determination of the validity thereof, the Contracting Party shall cause the lien to be satisfied and released of record. The Contracting Party shall, within thirty (30) days after receipt of written notice from the Owner or Prime Lessee of any Parcel encumbered by any such lien or claim of lien, cause any such outstanding lien or claim of lien to be released of record or transferred to bond in accordance with applicable law, failing which the Owner or Prime Lessee of said Parcel shall have the right, at the Contracting Party's expense, to transfer said lien to bond. The Contracting Party shall indemnify, defend and hold harmless the Owners and occupants of the Shopping Center from any and all liability, claims, damages, expenses (including reasonable attorney's fees and

DECLARATION OF RESTRICTIONS
AND GRANT OF EASEMENTS -
ABS #3-P - Washington, UT
MM&C 125.288 10/26/95

Page 12

00514397 Bk0948 Pg0172

reasonable attorney's fees on any appeal), liens, claims of lien, judgments, proceedings and causes of action, arising out of or in any way connected with the performance of such work, unless caused by the negligent or willful act or omission of the indemnified person, its tenants, subtenants, agents, contractors or employees.

(c) The parties acknowledge and agree that incidental encroachments upon the Common Area may occur as a result of the use of ladders, scaffolds, store front barricades and similar facilities in connection with the construction, maintenance, repair, replacement, alteration or expansion of buildings, signs and Common Area improvements located in the Shopping Center, all of which are permitted hereunder so long as all activities requiring the use of such facilities are expeditiously pursued to completion and are performed in such a manner as to minimize any interference with use of the improved Common Area or with the normal operation of any business in the Shopping Center.

2.5 Casualty and Condemnation: In the event all or any portion of any building in the Shopping Center is (i) damaged or destroyed by fire or other casualty, or (ii) taken or damaged as a result of the exercise of the power of eminent domain or any transfer in lieu thereof, the owner of such building shall promptly restore or cause to be restored the remaining portion of such building or, in lieu thereof, shall remove or cause to be removed the damaged portion of such building together with all rubble and debris related thereto. All Building Areas on which buildings are not reconstructed following a casualty or condemnation shall be graded or caused to be graded by the Owner thereof to the level of the adjoining property and in such a manner as not to adversely affect the drainage of the Shopping Center.

of any portion thereof, shall be covered by a one inch asphalt dust cap and shall be kept weed free and clean at the Owner's sole cost and expense until buildings are reconstructed thereon.

2.6 Indemnification: Each Owner hereby agrees to indemnify, defend and hold harmless the other Owners and occupants 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 the interior of any building constructed on the indemnifying Owner's Parcel, unless caused by the negligent or willful act or omission of the indemnified person, its tenants, subtenants, agents, contractors or employees.

3. EASEMENTS

3.1 Ingress, Egress and Parking: Each Owner, as grantor, hereby grants to the other Owners, their respective tenants, contractors, employees, agents, customers, licensees and invitees, and the subtenants, contractors, employees, agents, customers, licensees and invitees of such tenants, for the benefit of each Parcel belonging to the other Owners, as grantees, a non-exclusive easement for ingress and egress by vehicular and pedestrian traffic and vehicular parking upon, over and across that portion of the Common Area located on the grantor's Parcel(s), except for those areas devoted to Service Facilities or driveup or drive through customer service facilities. The reciprocal rights of ingress and egress set forth in this Section 3.1 shall apply to the Common Area for each Parcel as such area shall be increased pursuant to Section 2.2 above.

DECLARATION OF RESTRICTIONS
AND GRANT OF EASEMENTS -
ABS #3-P - Washington, UT
MM&C 125.288 10/26/95

Page 14

00514397 Bk0948 Pg0174

3.2 Utility Lines and Facilities:

(a) Each Owner and Prime Lessee, as grantor, hereby grants to the other Owners and Prime Lessees, as grantees, for the benefit of each Parcel, a nonexclusive easement under, through and across the Common Area of the grantor's Parcel(s) for the installation, operation, maintenance, repair and replacement of water drainage systems or structures, water mains, sewers, water sprinkler system lines, electric power transmission lines, telephones, electrical conduits or systems, gas mains and other public or private utilities. All such systems, structures, mains, sewers, conduits, lines and other utilities shall be installed and maintained below the ground level or surface of such easements except for ground mounted electrical transformers and such other facilities as are required to be above ground by the utility providing such service (including temporary service required during the construction, maintenance, repair, replacement, alteration or expansion of any buildings or improvements located in the Shopping Center). The installation, operation, maintenance, repair and replacement of such easement facilities shall not unreasonably interfere with the use of the improved Common Area or with the normal operation of any business in the Shopping Center. The grantee shall bear all costs related to the installation, operation, maintenance, repair and replacement of such easement facilities, shall repair to the original specifications any damage to the Common Area resulting from such use and shall provide as-built plans for all such facilities to the Owners and Prime Lessees of all Parcels upon which such utility lines and facilities are located within thirty (30) days after the date of completion of construction of same.

(b) At any time and from time to time the Owner or Prime Lessee of a Parcel shall have the right to relocate on its Parcel any utility line or facility installed pursuant to the foregoing grant of easement which is then located on the land of such Owner or Prime Lessee, provided that any such relocation (i) shall be performed only after sixty (60) days notice of such person's intention to undertake the relocation shall have been given to the Owners and Prime Lessees of each Parcel served by the utility line or facility, (ii) shall not unreasonably interfere with or diminish utility service to the Parcels served by the utility line or facility, (iii) shall not reduce or unreasonably impair the usefulness or function of the utility line or facility, (iv) shall be performed without cost or expense to the Owner or occupant of any other Parcel, and (v) shall provide for the original and relocated area to be restored to the original specifications. The person performing such relocation shall provide as-built plans for all such relocated utility lines and facilities to the Owners of all Parcels served by such utility lines and facilities within thirty (30) days after the date of completion of such relocation.

(c) Each Owner and Prime Lessee agrees to grant such additional easements as are reasonably required by any public or private utility for the purpose of providing the utility lines and facilities described herein provided such easements are not otherwise inconsistent with the provisions of this Declaration.

3.3 Signs: Each Owner and Prime Lessee, as grantor, hereby grants to the other Owners and Prime Lessees, as grantees, for the benefit of each Parcel, an easement under, through and across the Common Area of the grantor's Parcel(s) for the installation, operation, maintenance, repair and replacement of the free-standing signs referred to in Section 4.3 of this

Declaration and all utility lines and facilities appurtenant thereto. Except where otherwise specifically stated herein to the contrary, the grantee(s) shall bear all costs related to the installation, maintenance, repair and replacement of its free-standing sign and appurtenant facilities, shall repair to the original specifications any damage to the Common Area resulting from such use and shall provide as-built plans for all such facilities to the Owners and Prime Lessees of all Parcels upon which such facilities are located within thirty (30) days after the date of completion of construction of same.

3.4 Building Encroachments: Each Owner, as grantor, hereby grants to the other Owners and Prime Lessees, as grantees, for the benefit of each Parcel, an easement for any portion of any building or structure located on any such Parcel which may encroach into or over grantor's adjoining Parcel(s); provided the easement for footings, piers, piles, grade beams and building encroachments does not exceed two (2) feet, and the easement for canopies, eaves and roof overhangs does not exceed four (4) feet. The easements granted in this Section 3.4 shall survive this Declaration and shall last so long as the encroaching building is standing following its initial construction or following its reconstruction where such building is substantially restored to its prior condition following a casualty or condemnation.

3.5 Permanent Service and Access Drives: Each Owner, as grantor, hereby grants to the other Owners, their respective tenants, contractors, employees, agents, customers, licensees and invitees, and the subtenants, contractors, employees, agents, customers, licensees and invitees of such tenants, for the benefit of each Parcel belonging to the other Owners, as grantees, a perpetual non-exclusive easement for ingress and egress by vehicular and pedestrian.

traffic upon, over and across (i) that portion of the Common Area located on the grantor's Parcel(s) shown on Exhibit "A" as "Permanent Service Drive" and more particularly described in Schedule II attached hereto and incorporated herein by this reference, and (ii) that portion of the Common Area located on the grantor's Parcel(s) shown on Exhibit "A" as "Permanent Access Drive" and more particularly described in Schedule III attached hereto and incorporated herein by this reference.

4. OPERATION OF COMMON AREA

4.1 Parking: There shall be no charge for parking in the Common Area without the prior written consent of the Consenting Owners or unless otherwise required by law.

4.2 Employee Parking:

(a) Anything in this Declaration to the contrary notwithstanding, areas to be used for motor vehicle parking by employees of occupants of the Shopping Center may be designated within the Shopping Center from time to time with the prior written consent of the Consenting Owners. In the event employee parking areas are designated as provided herein, then employees of any Owner or occupant of any part of the Shopping Center (except that the parking of the employees of R & J Enterprises shall be governed solely by the provisions of Section 4.2(b) hereof) shall use only those portions of the Common Area designated for such motor vehicle parking purposes. The authority herein granted shall be exercised in such manner as not to discriminate against any Owner or occupant of the Shopping Center.

(b) In no event shall employees of the businesses located in the Shopping Center park within 200 feet of the front of any building located on Parcels 1, 2 or 3.

The Owner of Parcel 1 shall require all employees of the business(es) located on Parcel 1 to park in the parking spaces provided at the rear of the building located on Parcel 1.

4.3 Signs:

(a) (1) Subject to governmental approval, a free-standing sign shall be erected at the location designated "Shopping Center Pylon Sign #1" on Exhibit "A." Such sign shall display the designation of the Owner or occupant of Parcel 2 (including, without limitation, at the option of the Owner or occupant of Parcel 2 and as part of the designation otherwise permitted to the Owner or occupant of Parcel 2, signs identifying banking and/or financial services located within the building located on Parcel 2, whether or not a National Chain) and, provided the amount of signage otherwise permitted by governmental authority to the Owner or occupant of Parcel 2 is not adversely affected thereby, a designation for one (1) other business in the Shopping Center. Any such business, in order to display its designation on Shopping Center Pylon Sign #1, must (i) be a National Chain (but cannot be the Owner or occupant of Parcel 4 in the event the pylon sign permitted pursuant to Section 4.3(c) hereof is ever erected), or (ii) occupy not less than 20,000 square feet of ground floor area in the Shopping Center. The cost of constructing, installing, maintaining, repairing and replacing the pylon sign structure (excluding electrical hookup to the Common Area meter) shall be paid by the Owners or occupants of all Parcels displaying designations thereon in the proportion that the total square footage of each Owner's or occupant's designation or designations bears to the total square footage of all designations displayed thereon. Each person displaying a designation on Shopping Center Pylon Sign #1 shall supply and maintain its own sign fascia and can. The

design of the pylon sign structure shall be subject to the approval of each of the Consenting Owners, as shall be the size, design and location of the sign fascia used; provided, however, that Albertson's (including, without limitation, persons providing banking and/or financial services within the building located on Parcel 2), a National Chain and persons occupying not less than 20,000 square feet of ground floor area in the Shopping Center may use such standard fascia as they from time to time use generally in carrying on their businesses. The Owner or occupant of Parcel 2 shall have the top designation on Shopping Center Pylon Sign #1. In the event the Owner of Parcel 3 would otherwise be entitled to display a business designation on Shopping Center Pylon Sign #1 pursuant to this Section 4.3(a)(1), the Owner of Parcel 3 shall have the right to substitute a Shopping Center designation for said business designation.

(2) In addition to Shopping Center Pylon Sign #1, the Owner or occupant of Parcel 2 shall have the right (but not the obligation), subject to governmental approval, to erect a free-standing sign at the location designated "Shopping Center Pylon Sign #2" on Exhibit "A". Such sign shall display the designation of the Owner or occupant of Parcel 2 (including, without limitation, at the option of the Owner or occupant of Parcel 2 and as part of the designation otherwise permitted to the Owner or occupant of Parcel 2, signs identifying banking and/or financial services located within the building located on Parcel 2, whether or not a National Chain) and, provided the amount of signage otherwise permitted by governmental authority to the Owner or occupant of Parcel 2 is not adversely effected thereby, a designation for one (1) other business in the Shopping Center. Any such business, in order to display its designation on Shopping Center Pylon Sign #2, must (i) be a National Chain (but cannot be the Owner or occupant of Parcel 4 in the event the pylon sign permitted pursuant to Section 4.3(c)

hereof is ever erected), or (ii) occupy not less than 20,000 square feet of ground floor area in the Shopping Center. The cost of constructing, installing, maintaining, repairing and replacing the pylon sign structure (excluding electrical hookup to the Common Area meter) shall be paid by the Owners or occupants of all Parcels displaying designations thereon in the proportion that the total square footage of each Owner's or occupant's designation or designations bears to the total square footage of all designations displayed thereon. Each person displaying a designation on Shopping Center Pylon Sign #2 shall supply and maintain its own sign fascia and can. The design of the pylon sign structure shall be subject to the approval of each of the Consenting Owners, as shall be the size, design and location of the sign fascia used; provided, however, that Albertson's (including, without limitation, persons providing banking and/or financial services within the building located on Parcel 2), a National Chain and persons occupying not less than 20,000 square feet of ground floor area in the Shopping Center may use such standard fascia as they from time to time use generally in carrying on their businesses. The Owner or occupant of Parcel 2 shall have the top designation on Shopping Center Pylon Sign #2. In the event the Owner of Parcel 3 would otherwise be entitled to display a business designation on Shopping Center Pylon Sign #2 pursuant to this Section 4.3(a)(2), the Owner of Parcel 3 shall have the right to substitute a Shopping Center designation for said business designation. Shopping Center Pylon Sign #1 and Shopping Center Pylon #2 are sometimes hereinafter referred to individually as "Center Pylon Sign" and collectively as "Center Pylon Signs".

(b) (1) The Owner or occupant of Parcel 2 (whichever of them is designated on the sign) will initially pay all of the costs incurred to construct, install, maintain, repair and replace the Shopping Center Pylon Sign #1 structure and the Shopping Center Pylon

Sign #2 structure (subject, however, to the Owner or occupant of Parcel 2 making an election to erect Shopping Center Pylon Sign #2). No person otherwise entitled (pursuant to Section 4.3(a) above) to display such person's designation on a Center Pylon Sign, shall be permitted to do so unless and until such person has paid to the Owner or occupant of Parcel 2 (whichever of them has incurred the cost) such person's proportionate share (determined pursuant to the formula set forth therefor in Section 4.3(a) above) of all costs having then been incurred to construct, install and replace such Center Pylon Sign structure. Such person shall also be required to pay such person's proportionate share of all costs thereafter incurred to maintain, repair and replace such Center Pylon Sign structure, pursuant to Section 4.3(a) above.

(2) If Albertson's elects not to construct Shopping Center Pylon Sign #2 as a part of the Site Work described in the Development Agreement, First Party shall have the right (but not the obligation) to construct Shopping Center Pylon Sign #2 (subject to all of the terms and provisions of Section 4.3(a) above), and in that event First Party shall, notwithstanding anything in this Declaration or in the Development Agreement to the contrary, pay all of the costs to construct, install, maintain and replace the Shopping Center Pylon Sign #2 structure. No person otherwise entitled (pursuant to Section 4.3(a) above) to display such person's designation on Shopping Center Pylon Sign #2, shall be permitted to do so unless and until such person has paid to First Party such person's proportionate share (determined pursuant to the formula set forth therefor in Section 4.3(a) above) of all costs having then been incurred to construct, install and replace the Shopping Center Pylon Sign #2 structure. Such person shall also be required to pay such person's proportionate share of all costs thereafter incurred to

maintain, repair and replace the Shopping Center Pylon Sign #2 structure, pursuant to Section 4.3(a) above. At such time (if ever) as the Owner or occupant of Parcel 2 elects to be designated on Shopping Center Pylon Sign #2, the Owner or occupant of Parcel 2 shall have the top designation on Shopping Center Pylon Sign #2.

(c) In addition to the Center Pylon Signs, subject to governmental approval, and provided it does not interfere with or impair the installation and use of the Center Pylon Signs, the Owner of Parcel 4 shall have the right to erect a free-standing sign on Parcel 4 at the location designated "Parcel 4 Pylon Sign" on Exhibit "A," which sign shall not be higher in elevation than thirty-five (35) feet above the street level of Red Cliffs Drive. The total square footage of the sign fascia and can shall not exceed one hundred forty-four (144) square feet. The sign shall display the designation of the Owner or occupant of Parcel 4, and the cost of constructing, installing, maintaining, repairing and replacing the sign shall be paid by the Owner or occupant of Parcel 4. The design and size of the sign structure shall be subject to the approval of each of the Consenting Owners, in accordance with the procedure for approval set forth in Section 2.3(a) hereof, as shall the size, design and location of the sign fascia used.

(d) It is acknowledged that a "Phillips 66" freeway sign and a gasoline price board exist in the northeastern portion of Parcel 5 as of the date of this Declaration (the "Parcel 5 Signage"). Nothing contained in this Section 4.3 shall be interpreted or construed to require the removal of the Parcel 5 Signage at this time, and said signage shall be permitted to remain on Parcel 5 provided that (i) no aspect of the Parcel 5 Signage (e.g., height, width, size or number of signs) shall hereafter be increased or expanded in any way, and (ii) there shall not

be any replacement of any Parcel 5 Signage that is removed from Parcel 5 [except if such removal is necessary for purposes of repair, maintenance or renovation of the signage or is due to a change in the occupant of Parcel 5, a change in the name of the occupant of Parcel 5, or a change in regard to the product sold by the occupant of Parcel 5 (e.g., a change from Phillips 66 products to Texaco products)]. The Parcel 5 Signage shall only be used by the occupant of Parcel 5 in connection with the business operated thereon, and if there is ever a one (1) year period in which there is a business operating on Parcel 5 that does not use the Parcel 5 Signage (or any portion thereof), the unused portion of such signage (or all of such signage, as the case may be) shall be forever removed from Parcel 5 by the Owner or occupant of Parcel 5. The Owner of Parcel 5 shall maintain or cause to be maintained the Parcel 5 Signage in a quality and condition comparable to that of the Center Pylon Signs.

(e) There shall be no other signs, except directional signs and signs (including logos, as provided herein) on buildings, in the Shopping Center. All exterior building signs on Parcels 1, 3, 4 and 5 shall be restricted to identification of the business or service located or provided therein. No exterior building sign shall be placed on penthouse walls, extend above the building roof or be painted on the exterior building surface. No exterior building or free-standing sign shall utilize flashing, moving or audible lights or appurtenances.

4.4 Protection of Common Areas: Each Owner and Prime Lessee shall have the right to take such steps as it deems necessary to prevent those persons not authorized by this Declaration to use the Common Area from using the Common Area for ingress, egress and parking. Such steps shall include, without limitation, the construction of fences, walls or

barricades along the boundary lines of any portion of the Shopping Center except along the common boundary line of any Parcel with any other Parcel.

4.5 Sales: No portion of the Common Area, except sidewalks, shall be used for the sale or display of merchandise; provided, however, that the seasonal sale of merchandise by the Owner or occupant of Parcel 2 shall be permitted from the parking lot located on Parcel 2 subject to the following restrictions: (i) sales shall be limited to not more than four (4) occasions per calendar year for a cumulative total of not more than sixty (60) days duration, (ii) the sales area shall be limited to not more than twenty (20) parking spaces located on Parcel 2; (iii) all booths, stands, displays and other structures erected in connection with such sales shall be promptly removed by the Owner or occupant of Parcel 2 upon termination of said activities, (iv) the Common Area shall be promptly repaired to its condition immediately prior to said sale at the sole cost and expense of the Owner or occupant of Parcel 2, and (v) sales shall not interfere with the free movement of vehicular traffic within the Shopping Center or with access to or from the Shopping Center, or any part thereof, to or from any public right-of-way.

5. RESTRICTIONS ON USE

5.1 Food and Drug Restrictions:

(a) No part of the Shopping Center other than Parcel 2 shall be used as a supermarket (which shall be defined as any store or department containing at least 5,000 square feet of floor area, including aisle space and storage, primarily devoted to the retail sale of food for off-premises consumption) or for the sale or offer for sale of any ethical pharmaceutical products requiring the services of a registered pharmacist.

(b) No part of the Shopping Center other than Parcel 2 shall be used as a bakery or delicatessen for the sale of fresh or frozen meat, fish, poultry or produce for off-premises consumption, or for the sale of alcoholic beverages for off-premises consumption; provided, however, that nothing contained in this Section 5.1(b) shall restrict the operation by R & J Enterprises of its convenience store and self-service gasoline station on Parcel 5 for the balance of the remaining term of the R & J Enterprises Lease, in accordance with all of the terms of said lease.

5.2 Shopping Center Restrictions: No part of the Shopping Center shall be used as a bar, tavern, cocktail lounge, adult book or adult video store, automotive maintenance or repair facility, warehouse, car wash, entertainment or recreational facility or training or educational facility; for the renting, leasing or selling of or displaying for the purpose of renting, leasing or selling of any boat, motor vehicle or trailer; or for industrial purposes. For the purpose of this Declaration, the phrase "entertainment or recreational facility" shall include, without limitation, a theater, bowling alley, skating rink, gym, health spa or studio, dance hall, billiard or pool hall, massage parlor, game parlor or video arcade (which shall be defined as any store containing more than four [4] electronic games). The phrase "training or educational facility" shall include, without limitation, a beauty school, barber college, reading room, place of instruction or any other operation catering primarily to students or trainees as opposed to customers.

5.3 Location Restrictions:

(a) No part of Parcel 1 or 3 within 100 feet of the Building Area of Parcel 2 shall be used as a medical, dental, professional or business office or as a restaurant, other than a single (i) Little Caesar's take-out pizza restaurant, (ii) Subway sandwich restaurant, or (iii) restaurant offering only fully-prepared "take-out" food and no "sit-down" service. Notwithstanding anything to the contrary in the last sentence of Section 5.3(b) below, no restaurant within 100 feet of the Building Area of Parcel 2 shall exceed 1,500 square feet of floor area.

(b) No part of Parcel 1 or 3 shall be used as a military recruiting center. The total floor area of all restaurants and medical, dental, professional and business offices located on Parcels 1 and 3 shall not exceed 7,000 square feet. No single restaurant or medical, dental, professional or business office located on Parcel 1 or 3 shall exceed 2,500 square feet of floor area except that a single restaurant not exceeding 4,000 square feet of floor area shall be permitted on Parcel 1 provided that no part of such restaurant is located within 260 feet of the Building Area of Parcel 2.

(c) No part of Parcel 4 or 5 shall be used as a medical, dental, professional or business office.

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

parties hereby approve the vehicular driveup and drive through customer service facilities already existing on Parcel 5, together with those (if any) shown on Exhibit "A."

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

5.6 **Other Restricted Property:**

(a) No part of the Other Restricted Property shall be used as a supermarket (which shall be defined as any store or department containing at least 5,000 square feet of floor area, including aisle space and storage, primarily devoted to the retail sale of food for off-premises consumption).

(b) Not later than thirty (30) days after each portion of Adjacent Property is owned or controlled by First Party or Second Party or any of the other persons described in Section 1.1(m)(ii) hereof, First Party or Second Party shall notify the Owner or occupant of Parcel 2 of the same and provide the Owner or occupant of Parcel 2 with a legal description of the Adjacent Property, whereupon the Owner or occupant of Parcel 2 shall prepare and circulate for execution an amendment to this Declaration which shall incorporate the legal description of the Adjacent Property into this Declaration and denote that said property constitutes additional Other Restricted Property that is subject to the terms of Section 5.6(a) above. All Owners (and the consenting party hereto) shall duly execute and acknowledge said amendment, which shall be recorded in the appropriate public records of Washington County, Utah.

6. GENERAL PROVISIONS

6.1 Covenants Run With the Land: Each Restriction on each Parcel shall be a burden on that Parcel, shall be appurtenant to and for the benefit of the other Parcels and each part thereof and shall run with the land.

6.2 Successors and Assigns: This Declaration and the Restrictions created hereby shall inure to the benefit of and be binding upon the Owners, their heirs, personal representatives, successors and assigns, and upon any person now owning or hereafter acquiring a Parcel, or any portion thereof, or any interest therein (including, without limitation, a leasehold interest), whether by operation of law or otherwise; provided, however, that if any Owner sells all or any portion of its interest in any Parcel, such Owner shall thereupon be released and discharged from any and all obligations as Owner in connection with the property sold by it arising under this Declaration after the sale and conveyance of title but shall remain liable for all obligations arising under this Declaration prior to the sale and conveyance of title. The new Owner of any such Parcel or any portion thereof (including, without limitation, any Owner who acquires its interest by foreclosure, trustee's sale or otherwise) shall be liable for all obligations arising under this Declaration with respect to such Parcel or portion thereof after the date of sale and conveyance of title.

6.3 Duration: Except as otherwise provided herein, the term of this Declaration shall be for sixty-five (65) years from the date hereof.

6.4 Injunctive Relief: In the event of any violation or threatened violation by any person of any of the Restrictions contained in this Declaration, any or all of the Owners and

Prime Lessees of the property included within the Shopping Center shall have the right to enjoin such violation or threatened violation in a court of competent jurisdiction. The right of injunction shall be in addition to all other remedies set forth in this Declaration or provided by law.

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

6.6 Method of Approval: 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 other Owner or Prime Lessee, then that Parcel shall not be entitled to vote. In the event a Parcel is

not entitled to vote, its consent or approval shall not be necessary, and the total square footage of Building Area located on said Parcel shall be disregarded for the purpose of computing the percentage requirement set forth in Section 6.5. In the event any person becomes the Prime Lessee of a Parcel, 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 Declaration to the contrary notwithstanding.

6.7 Not a Public Dedication: Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Shopping Center to the general public or for the general public or for any public purpose whatsoever, it being the intention of the parties that this Declaration shall be strictly limited to and for the purposes herein expressed.

6.8 Breach Shall Not Permit Termination: It is expressly agreed that no breach of this Declaration shall entitle any Owner to terminate this Declaration, but such limitation shall not affect in any manner any other rights or remedies which such Owner may have hereunder by reason of any breach of this Declaration. Any breach of this Declaration shall not defeat or render invalid the lien of any mortgage or deed of trust made in good faith for value, but this Declaration shall be binding upon and be effective against any Owner whose title is acquired by foreclosure, trustee's sale or otherwise.

6.9 Default: A person shall be deemed to be in default of this Declaration only upon the expiration of thirty (30) days (ten [10] days in the event of failure to pay money) from receipt of written notice from any Owner or Prime Lessee specifying the particulars in which

such person has failed to perform the obligations of this Declaration unless such person, prior to the expiration of said thirty (30) days (ten [10] days in the event of failure to pay money), has rectified the particulars specified in said notice of default. However, such person shall not be deemed to be in default if such failure (except a failure to pay money) cannot be rectified within said thirty (30) day period and such person is using good faith and its best efforts to rectify the particulars specified in the notice of default.

6.10 Notices:

(a) All notices given pursuant to this Declaration shall be in writing and shall be given by personal delivery, 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 person and address designated below or, in the absence of such designation, to the person and address shown on the then current real property tax rolls of the county in which the Shopping Center is located. All notices to First Party, Second Party or Albertson's shall be sent to the person and address set forth below:

First Party: King Holdings, LC
865 West Telegraph, Suite 400
Washington, Utah 84780

Second Party: John H. Barlow, Trustee of the
Barlow Family Trust dated July 7, 1977
463 South Palisade
Orem, Utah 84058

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 parties. All notices given pursuant to this Declaration shall be deemed given upon receipt.

(b) For the purpose of this Declaration, the term "receipt" shall mean the earlier of any of the following: (i) the date of delivery of the notice or other document to the address specified pursuant to subparagraph (a) above as shown on the return receipt, (ii) the date of actual receipt of the notice or other document by the person or entity specified pursuant to 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.

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

6.12 Attorney's Fees: In the event any person initiates or defends any legal action or proceeding to enforce or interpret any of the terms of this Declaration, the prevailing party in any such action or proceeding shall be entitled to recover from the losing party in any

such action or proceeding its reasonable costs and attorney's fees (including its reasonable costs and attorney's fees on any appeal).

6.13 **Sale & Sale-leaseback Purchaser:** Notwithstanding anything to the contrary contained in this Declaration, it is expressly agreed that in the event an Owner sells its Parcel to an unaffiliated third party and thereafter enters into a 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 Declaration and the Prime Lessor shall be relieved of any obligation for the performance of or liability for the Restrictions set forth herein relating to either the Prime Lessee or its Parcel.

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

6.15 **Not a Partnership:** The provisions of this Declaration are not intended to create, nor shall they be in any way interpreted or construed to create, a joint venture, partnership, or any other similar relationship between the parties.

DECLARATION OF RESTRICTIONS
AND GRANT OF EASEMENTS -
ABS #3-P - Washington, UT
MM&C 125.288 10/26/95

Page 34

00514397 Bx0948 Pg0194

6.16 Third Party Beneficiary Rights: This Declaration is not intended to create, nor shall it be in any way interpreted or construed to create, any third party beneficiary rights in any person not a party hereto unless otherwise expressly provided herein.

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

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

6.19 Construction: In construing the provisions of this Declaration and whenever the context so requires, the use of a gender shall include all other genders, the use of the singular shall include the plural, and the use of the plural shall include the singular.

6.20 Joint and Several Obligations: In the event any party hereto is composed of more than one person, the obligations of said party shall be joint and several.

6.21 Recordation: This Declaration shall be recorded in the office of the recorder of Washington County, Utah.

6.22 Consents: Each party and consenting party hereto hereby represents to the other parties hereto that (i) all holders of any leasehold interest in the Shopping Center or any part or portion thereof, (ii) all mortgagees or beneficiaries of deeds of trust which encumber any part or portion of such party's or consenting party's respective interest in the Shopping Center.

and (iii) all other persons required by any agreement with such party or consenting party to consent to this Declaration, have attached their consents to this Declaration.

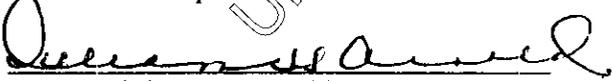
6.23 Counterparts: To facilitate the execution of this Declaration, it is agreed that this Declaration may be executed in separate identical counterparts, all of which together shall constitute a single original instrument, and this Declaration shall be effective upon execution of one or more of such counterparts by each party and consenting party hereto.

6.24 Authority: Each party and consenting party hereto warrants and represents that it has full power and authority to enter into and perform this Declaration, that all corporate action (in the case of Albertson's), limited liability company action (in the case of First Party), trust action (in the case of Second Party) and partnership action (in the case of R & J Enterprises) necessary to confirm such authority (and the authority of the persons executing this Declaration on behalf of each party and consenting party hereto) has been duly and lawfully taken, and that, upon execution hereof, this Declaration shall constitute a valid, legally binding obligation of each party and consenting party hereto. Neither execution or performance of this Declaration will violate the terms or provisions of (i) Albertson's articles of incorporation, bylaws or any resolution of its board of directors, (ii) the instruments which form or govern the activities of First Party and Second Party, (iii) the partnership instruments which form or govern the activities of R & J Enterprises, or (iv) any note, loan agreement, lease or other contract or agreement to which any party or consenting party hereto is a party.

EXECUTED as of the day and year first above written.

ALBERTSON'S:

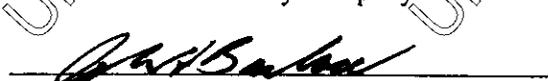
Albertson's, Inc.,
a Delaware corporation



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

FIRST PARTY:

King Holdings, LC,
a Utah limited liability company



By: John H. Barlow, Member

SECOND PARTY:

John H. Barlow, Trustee of the
Barlow Family Trust dated July 7, 1977



By: John H. Barlow, Trustee

(f:\alb\125.288\dec\dec.h)

CONSENT

R & J Enterprises, a Utah general partnership, and the holder of a leasehold estate in Parcel 5, hereby consents to and joins in this Declaration, and agrees that all of its right, title, estate and interest in Parcel 5 and the Shopping Center shall be subject and subordinate to this Declaration.

R & J ENTERPRISES, a Utah general partnership



By: Stan Jardine, General Partner

DECLARATION OF RESTRICTIONS
AND GRANT OF EASEMENTS -
ABS #3-P - Washington, UT
MM&C 125.288 10/26/95

Page 37

00514397 Bk0948 Pg0197

STATE OF IDAHO)

) SS.

County of Ada

On this 30 day of October, 1995, before me, the undersigned, a Notary Public in and for said state, personally appeared William H. Arnold, known or identified to me to be the Vice President, Real Estate Law of Albertson's, Inc., the corporation that executed the instrument or the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



Josephine M. McDonald

NOTARY PUBLIC for Idaho

Residing at Boise, Idaho

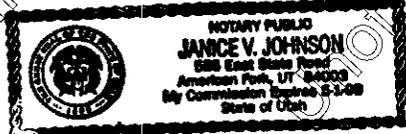
My commission expires: 2-01-99

STATE OF UTAH)

) SS.

County of Utah

The foregoing instrument was acknowledged before me this 1st day of November, 1995, by John H. Barlow, Member of King Holdings, LC, a Utah limited liability company.



Janice V. Johnson

NOTARY PUBLIC for Utah

Residing at American Fork

My commission expires: 5-1-99

DECLARATION OF RESTRICTIONS AND GRANT OF EASEMENTS - ABS #3-P - Washington, UT MM&C 125.288 10/26/95

Page 38

00514397 Bk0948 Pg0198

STATE OF UTAH)

County of Utah) ss.

The foregoing instrument was acknowledged before me this 1st day of November, 1995, by John H. Barlow, Trustee of the Barlow Family Trust dated July 7, 1977.

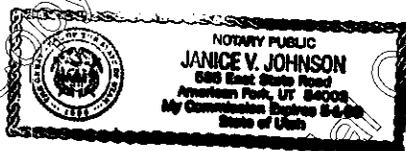


Janice V. Johnson
NOTARY PUBLIC for Utah
Residing at American Fork
My commission expires 5-1-99

STATE OF UTAH)

County of Utah) ss.

The foregoing instrument was acknowledged before me this 1st day of November, 1995, by Stan Jardine, a general partner of R & J Enterprises, a Utah general partnership.



Janice V. Johnson
NOTARY PUBLIC for Utah
Residing at American Fork
My commission expires: 5-1-99

DECLARATION OF RESTRICTIONS
AND GRANT OF EASEMENTS -
ABS #3-P - Washington, UT
MM&C 125.288 10/26/95

Page 39

00514397 Bk0948 Pg0199

SCHEDULE I
to Declaration of Restrictions and Grant of Easements

Parcel 1:

Lot 1, ALBERTSON'S CENTER NO. 1, a commercial subdivision located in part of Sections 15 and 22, Township 42 South, Range 15 West, Salt Lake Base and Meridian, Washington City, Utah, according to the plat thereof recorded on November 2, 1995, as Entry No. 514393, in Book 948 at Page 147, of the official records of Washington County, State of Utah.

Parcel 2:

Lots 2-A and 2-B, ALBERTSON'S CENTER NO. 1, a commercial subdivision located in part of Sections 15 and 22, Township 42 South, Range 15 West, Salt Lake Base and Meridian, Washington City, Utah, according to the plat thereof recorded on November 2, 1995, as Entry No. 514393, in Book 948 at Page 147, of the official records of Washington County, State of Utah.

Parcel 3:

Beginning at the Northeast corner of Lot 3, Albertson's Center No. 1, a Commercial Subdivision located in part of Sections 15 and 22, Township 42 South, Range 15 West, Salt Lake Base and Meridian, Washington City, Utah, according to the official plat thereof on file with the Washington County Recorder's Office; thence along the Easterly line of said Lot 3, S15°44'20"E 321.71 feet, N74°15'40"E 70.41 feet, S15°44'20"E 195.67 feet, S74°15'40"W 6.00 feet and S15°44'20"E 97.00 feet to the Southeast corner of said Lot 3; thence S74°15'40"W 260.70 feet to the Southwest corner of said Lot 3; thence along the Westerly line of said Lot 3, N21°40'56"W 241.78 feet and N12°00'33"W 254.41 feet; thence N74°15'40"E 192.77 feet; thence N15°44'20"W 120.00 feet to the North line of said Lot 3; thence N74°05'42"E 12.00 feet to the point of beginning. Contains 125,765 square feet or 2.8872 acres.

continued

00514397 Bk0948 Pg0200

Parcel 4:

Beginning at a point that is S74°05'42"W along the lot line 12.00 feet from the Northeast corner of Lot 3, Albertson's Center No. 1, a Commercial Subdivision located in part of Sections 15 and 22, Township 42 South, Range 15 West, Salt Lake Base and Meridian, Washington City, Utah, according to the official plat thereof on file with the Washington County Recorder's Office; thence S74°05'42"W 184.99 feet to the Northwest corner of said Lot 3; thence along the Westery line of said Lot 3, S12°00'33"E 119.72 feet; thence N74°15'40"E 192.77 feet; thence N15°44'20"W 120.00 feet to the point of beginning. Contains 22,614 square feet or 0.5191 acre.

Parcel 5:

Lot 5, ALBERTSON'S CENTER NO. 1, a commercial subdivision located in part of Sections 15 and 22, Township 42 South, Range 15 West, Salt Lake Base and Meridian, Washington City, Utah, according to the plat thereof recorded on November 2, 1995, as Entry No. 514393, in Book 948 at Page 147, of the official records of Washington County, State of Utah.

Parcel 6:

That certain parcel of property shown as "Utility Easement" in ALBERTSON'S CENTER NO. 1, a commercial subdivision located in part of Sections 15 and 22, Township 42 South, Range 15 West, Salt Lake Base and Meridian, Washington City, Utah, according to the plat thereof recorded on November 2, 1995, as Entry No. 514393, in Book 948 at Page 147, of the official records of Washington County, State of Utah.

(Statb\125.258\dec\sched.1)

00514397 Bk0948 Pg0201

SCHEDULE II
to Declaration of Restrictions and Grant of Easements

Beginning on the Southwesterly line of Green Spring Drive at the most Easterly corner of Lot 1, Albertson's Center No. 1, a commercial subdivision, according to the official plat thereof on file with the Washington County Recorder's office; thence along the Southeasterly line of said Lot 1, S54°02'09"W 188.51 feet; thence S74°15'40"W 66.53 feet; thence S54°02'09"W 230.45 feet to a point on the Southerly line of Lot 2-A, said subdivision; thence S74°15'40"W 501.17 feet to the Southwest corner of Lot 3, said subdivision; thence along the Westerly line of said Lot 3, N21°40'56"W 30.16 feet; thence N74°15'40"E 377.82 feet; thence S15°44'20"E 12.00 feet; thence N74°15'40"E 56.00 feet; thence N15°44'20"W 12.00 feet; thence N74°15'40"E 96.00 feet; thence N15°44'20"W 11.38 feet; thence N54°02'09"E 197.54 feet; thence N74°15'40"E 66.53 feet; thence N54°02'09"E 176.82 feet to said Southwesterly line of Green Spring Drive; thence S47°53'34"E 30.66 feet to the point of beginning.

00514397 Bk0948 Pg0202

SCHEDULE III
to Declaration of Restrictions and Grant of Easements

Beginning on the Southwesterly line of Green Spring Drive at a point that is N47°53'34"W 192.00 feet from the most Easterly corner of Lot 1, Albertson's Center No. 1, a commercial subdivision, according to the official plat thereof on file with the Washington County Recorder's office; thence S42°06'26"W 84.03 feet; thence S74°15'40"W 811.09 feet to a point on the Westerly line of Lot 3, said subdivision; thence along said Lot line N12°00'33"W 30.06 feet; thence N74°15'40"E 800.49 feet; thence N42°06'26"E 75.38 feet to said Southwesterly line of Green Spring Drive; thence along said street line S47°53'34"E 30.00 feet to the point of beginning.

**SCHEDULE IV
to Declaration of Restrictions and Grant of Easements**

Lot 4, ALBERTSON'S CENTER NO. 1, a commercial subdivision located in part of Sections 15 and 22, Township 42 South, Range 15 West, Salt Lake Base and Meridian, Washington City, Utah, according to the plat thereof recorded on November 2, 1995, as Entry No. 514393, in Book 948 at Page 147, of the official records of Washington County, State of Utah.

(f:\alb\125.288\declschd1.4)

00514397 Bk0948 Pg0204

A PLANNING DEPARTMENT

B CASE NO. 2000-0000

CASE NO. 2000-0000

DATE

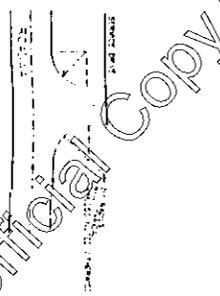
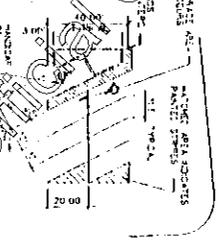
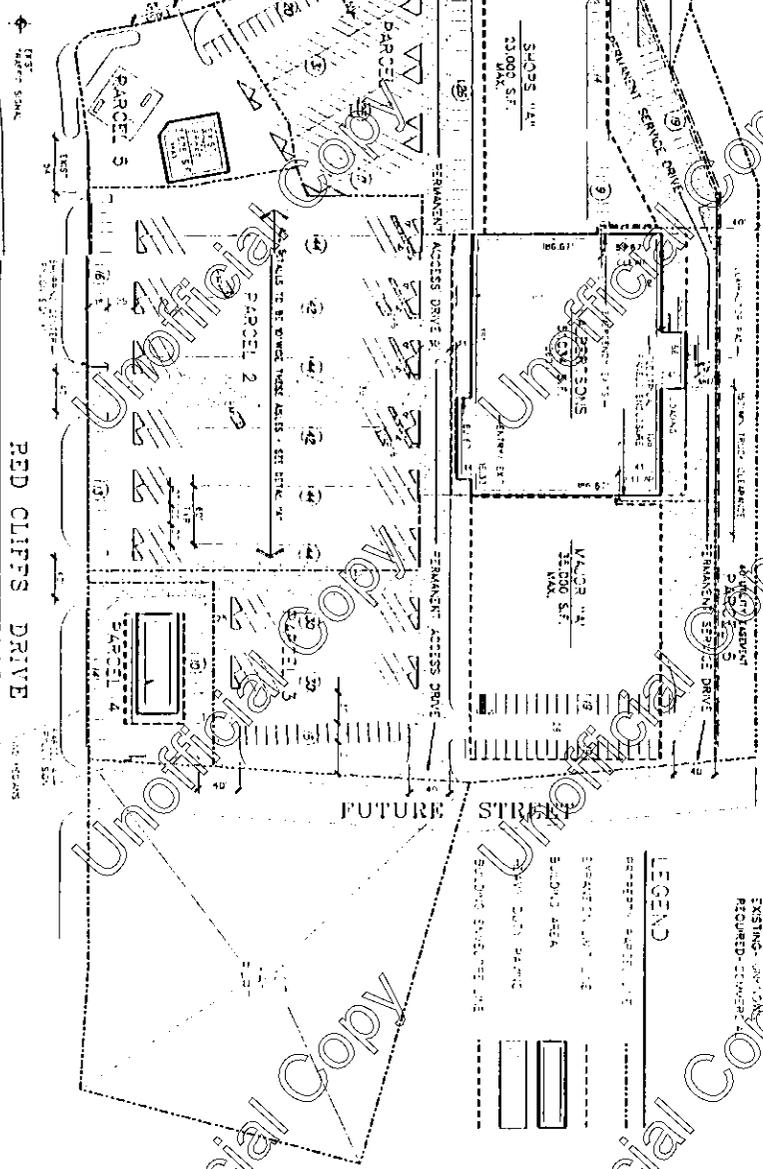


EXHIBIT "A" SITE PLAN

TOTAL GROSS BUILDING AREA
TOTAL CARPARKS REQUIRED
TOTAL CARPARKS PROVIDED
TOTAL AREA
EXCLUDES EXIST. CONVENIENCE STORE

16,562 S.F.
455
598 (137)
136,658 S.F. (222 AC.)



GENERAL NOTES

PARKING REQUIREMENTS:
EXISTING - APPROVED
REQUIRED - EXISTING
REQUIRED - EXISTING

LANDSCAPE REQUIREMENTS:
BY DIV. 21.1.1

ZONING REQUIREMENTS:
EXISTING - APPROVED
REQUIRED - EXISTING
REQUIRED - EXISTING

LEGEND



3-1-2

WASHINGTON, UTAH

GREENSPRING DRIVE

RED CLIFFS DRIVE

S.W.C.

ADDITIONS

DATE

EXHIBIT "B"

Sign Criteria

Pursuant to this Declaration of Restrictions and Grant of Easements, signage in the Shopping Center, now and in the future, shall be of first quality construction and architecturally designed to be aesthetically compatible and harmonious with the buildings, elevations, colors, materials, and other signage within the Shopping Center. Conformance with this sign criteria shall be strictly enforced, and any signage installed not conforming with this criteria shall be immediately removed and/or brought into conformance.

The following sign criteria shall apply to signage on buildings on Parcels 1, 3 and 4:

1. All exterior building signs shall be restricted to identification of the business or service located or provided thereon. All exterior signs shall be uniform in nature as to shape, style, materials and design.
2. Only internally illuminated signage is permitted and said signage shall only be permitted within the sign band area on the building.
3. No labels will be permitted on exposed surface of signage except those required by local ordinance. Sign supports, wiring, and transformers must be concealed. Any penetration of the building structure required for sign installation shall be neatly sealed in a water-tight condition.
4. No exposed lamps, tubing, animated, flashing, audible signs, conduit or brackets will be permitted. No sign shall utilize flashing, moving, audible, animated lights or appurtenances. No black iron material of any type will be permitted. All conductors, transformers and other equipment shall be concealed.
5. No sign shall be placed on penthouse walls, extend above the building roof or be painted on the exterior building surface. The signage shall be parallel with the exterior building surface.
6. All signs shall be professionally fabricated and installed by a licensed sign manufacturing company. All signs shall be fabricated and installed per local building and electrical codes, city code and ordinances.
7. All signs shall be kept in good repair and working order at all times. Broken signs shall be immediately repaired.
8. The maximum permissible height of letters will be 30 inches and the maximum permissible width of sign will be 75% of the horizontal store front width. Signage shall be parallel to the store front and have a maximum thickness of 8 inches. The sign must be centered within the sign band on the store front.