

**RECORDING REQUESTED BY  
AND WHEN RECORDED RETURN TO:**

James H. Kinney, Esq.  
The Macerich Company  
401 Wilshire Blvd., Suite 700  
Santa Monica, CA 90401

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05/18/2001 03:57 PM 58.00  
Book - 8458 Pg - 7489-7512  
GARY W. OTT  
RECORDER, SALT LAKE COUNTY, UTAH  
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BY: SLH, DEPUTY - WI 24 P.

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Space above this line reserved for County Recorder's Use

**DECLARATION OF RESTRICTIONS AND GRANT OF EASEMENTS**

**THIS DECLARATION OF RESTRICTIONS AND GRANT OF EASEMENTS** (hereinafter referred to as the "DECLARATION") is made and entered into this 17 day of May, 2001 (the "Effective Date") by **MACERICH ST MARKETPLACE LIMITED PARTNERSHIP**, a California limited partnership ("Macerich"), and **SANDY CITY CORPORATION**, a Utah municipal corporation (hereinafter referred to in the alternative as "Sandy City" or "Outparcel Owner").

27-13-226-006

**WITNESSETH:**

**WHEREAS**, Macerich owns in fee simple certain real property situated in the City of Sandy, County of Salt Lake, State of Utah, more particularly described on Exhibit "A-1" attached hereto and made a part hereof (the "Shopping Center Parcel"), which, together with other property, has been developed and improved as a shopping center known, as of the date hereof, as South Towne Marketplace (the "Shopping Center"); and

**WHEREAS**, pursuant to that certain Special Warranty Deed of even date herewith, executed by Macerich in favor of Sandy City and recorded in the County Recorder's Office immediately prior to this Declaration (the "Deed"), Sandy City has acquired from Macerich, and now owns in fee simple certain property situated adjacent to Target (as defined below) at the Shopping Center, more particularly described on Exhibit "A-2" attached hereto and made a part hereof (the "Outparcel"); and

**WHEREAS**, Outparcel Owner intends to cause to be constructed and thereafter to operate, or cause to be operated, certain improvements on the Outparcel (the "Outparcel Improvements"); and

**WHEREAS**, the execution and recordation of this Declaration was a condition precedent to the sale of the Outparcel to Sandy City.

**NOW, THEREFORE**, in consideration of the promises, covenants and agreements herein contained, and as a material inducement, it is hereby agreed as follows:

BK8458PG7489

**ARTICLE I**  
**DEFINITIONS**

- 1.1 **“Common Area”** means all areas of the Outparcel that are, from time to time, constructed, installed, improved or utilized and made available for the mutual convenience, use and benefit of tenants or other occupants of the Outparcel and their respective employees, customers and invitees and shall include, without limitation, the parking lot, parking lot lighting, driveways, truckways, access ways, drive aisles and roadways, sidewalks and walkways, common utilities, storm water retention/detention ponds, and planters, trees, shrubbery, grass and other landscape areas.
- 1.2 **“County Recorder’s Office”** shall mean the office of the County Recorder for the County of Salt Lake, Utah.
- 1.3 **“Floor Area”** shall mean with respect to each building or structure situated upon the Outparcel, the number of square feet of floor area at each level or story lying within the exterior faces of exterior walls (except party walls, as to which the center line, not the exterior faces, shall be used for measurement purposes), excluding, however: (a) penthouse or other physically separated areas used exclusively for electrical, telephone, or other mechanical equipment; (b) loading docks which are not heated or air conditioned; and (c) the upper levels of multi-deck stock areas. Within thirty (30) days of a request by Macerich, Outparcel Owner shall certify to Macerich the amount of Floor Area of each building or structure then existing on the Outparcel. If Outparcel Owner causes an as-built survey to be prepared with respect to any portion of the Outparcel, the Outparcel Owner shall furnish a copy of the survey to Macerich for informational purposes only. During any period of rebuilding, repairing, replacement or reconstruction of a building or structure on the Outparcel, the Floor Area of that building or structure shall be deemed to be the same as existed immediately prior to that period. Upon completion of such rebuilding, repairing, replacement or reconstruction, the Outparcel Owner shall cause a new determination of Floor Area to be made in the manner described above, and such determination shall be sent to Macerich upon its request.
- 1.4 **“Operation and Easement Agreement”** shall mean that certain Operation and Easement Agreement by and between Macerich (as successor in interest to ZML-South Towne Marketplace and Equity Properties and Development Limited Partnership) and Dayton Hudson Corporation dated as of October 24, 1995 (as may be amended from time to time).
- 1.5 **“Outparcel Improvements”** shall have the meaning set forth in the third Whereas provision of this Declaration.
- 1.6 **“Parcel”** shall mean the Shopping Center Parcel, or the Outparcel, as the context may require, and **“Parcels”** shall mean collectively the Shopping Center Parcel and the Outparcel.
- 1.7 **“Road Contribution”** shall mean an annual payment of \$750 to be paid by Outparcel Owner to Macerich in accordance with Section 5.2(b).

- 1.8 “Access Easement Areas” means the areas within the Shopping Center Parcel designated as “Access Easement Areas” and depicted on Exhibit A-3 hereto.
- 1.9 “Target” shall mean Target Stores, a division of Target Corporation (formerly known as Dayton Hudson Corporation), as a tenant of the Shopping Center, whose store is located immediately adjacent to the Outparcel, and any successors and assigns of Target Stores’ leasehold rights at the Shopping Center.
- 1.10 “Utility Easement Area” means the area within the Outparcel designated as “Utility Easement Area” and depicted on Exhibit A-3 hereto.

**ARTICLE II**  
**CONSTRUCTION GUIDELINES AND RESTRICTIONS ON IMPROVEMENTS**

- 2.1 **Construction.** Outparcel Owner intends to develop the Outparcel by constructing thereupon the Outparcel Improvements. With respect to such development, Outparcel Owner agrees that the future construction activities conducted at the Outparcel (the “Construction”) shall conform to the following guidelines:
- (a) Outparcel Owner shall, at its own expense, maintain and make all repairs and/or alterations to the Outparcel and to the improvements thereon and shall perform any work on or about the Outparcel which may be required by law, regulation or lawful authority or which may be necessary to maintain the improvements thereon in first-class condition and appearance, including repairs and/or alterations to the Common Area located on the Outparcel;
  - (b) The Construction shall be performed in compliance with all applicable laws, rules, regulations, orders, and ordinances of the city, county, state, and federal government, or any department or agency thereof;
  - (c) The Construction shall not unreasonably interfere with the use, occupancy, or enjoyment of any part of the Shopping Center;
  - (d) In connection with the Construction, all storage of materials, preparations and the parking of construction vehicles of workers shall be conducted within the boundaries of the Outparcel; and
  - (e) Upon commencement of the Construction, Outparcel Owner shall diligently pursue or cause to be diligently pursued completion of the Construction.
- 2.2 **Height Restrictions; No-Build Area.** The Outparcel Improvements which may be constructed on the Outparcel from time to time shall comply with the following restrictions.

- (a) The Outparcel Improvements shall not exceed forty (40) feet in height (the “**Maximum Height**”). The height of the Outparcel Improvements shall be measured perpendicular from the finished floor elevation to the top of the roof structure. Notwithstanding the foregoing, (i) devices such as satellite dishes, antennas, laser heads, and associated cabling and equipment may be installed on the rooftops of any Outparcel Improvements and such devices shall not be included in the calculation of the height of such Outparcel Improvements, and (ii) any screening parapet, penthouse, mechanical equipment or similar appurtenance located on the rooftop of any Outparcel Improvements may extend a maximum of ten (10) feet beyond the Maximum Height.
- (b) The Outparcel Improvements shall not be situated or encroach over, under, upon or into the area designated as the “**No Build Area**” on the map attached hereto as Exhibit A-3.

2.3 **Damage or Destruction to Improvements**. In the event of any damage or destruction to any of the Outparcel Improvements, Outparcel Owner shall as soon as reasonably possible after such damage or destruction (subject to issuance of appropriate permits being diligently pursued), either commence to restore and rebuild such improvements or at the sole option of Outparcel Owner, raze the Outparcel Improvements (or such part thereof that has been damaged or destroyed and is not being rebuilt) and clear the area of all debris. If Outparcel Owner decides to raze the effected Outparcel Improvements and not rebuild, Outparcel Owner shall, at its sole cost and expense, landscape or convert the razed areas into parking areas so as to be compatible with adjacent landscaping and/or parking areas in the Outparcel and/or Shopping Center.

### **ARTICLE III** **OPERATION OF THE OUTPARCEL**

- 3.1 **Permitted Uses**. No part of the Outparcel or the Outparcel Improvements shall be used for other than retail sales, offices, Restaurants, other commercial uses or non-transient residential purposes. “**Restaurants**” shall mean eating establishments (other than Bars, as defined below) containing less than 2,500 square feet in Floor Area.
- 3.2 **Use Restrictions**. Without limiting the generality of the foregoing, no part of the Outparcel or Outparcel Improvements shall be used for any of the following purposes:
  - (a) any use which emits an obnoxious odor, noise, or sound which can be heard or smelled outside of any building in the Shopping Center;
  - (b) any operation primarily used as a storage warehouse operation and any assembling, manufacturing, distilling, refining, smelting, agricultural, or mining operation;
  - (c) any “second hand” store or “surplus” store;

- (d) any mobile home park, trailer court, labor camp, junkyard, or stockyard (except that this provision shall not prohibit the temporary use of construction trailers during periods of construction, reconstruction, or maintenance);
- (e) any dumping, disposing, incineration, or reduction of garbage (exclusive of garbage compactors located near the rear of any building);
- (f) any fire sale, bankruptcy sale (unless pursuant to a court order) or auction house operation;
- (g) any central laundry, dry cleaning plant, or laundromat; provided, however, this prohibition shall not be applicable to nominal supportive facilities for on-site service oriented to pickup and delivery by the ultimate consumer as the same may be found in retail shopping districts in the metropolitan area where the Outparcel is located;
- (h) any automobile, truck, trailer or motorized recreational vehicles sales, leasing, display or body shop repair operation;
- (i) any bowling alley or skating rink;
- (j) any movie theater or live performance theater;
- (k) any veterinary hospital or animal raising facilities (except that this prohibition shall not prohibit pet shops);
- (l) any mortuary or funeral home;
- (m) any establishment selling or exhibiting pornographic materials or drug-related paraphernalia;
- (n) any bar, tavern, restaurant or other establishment whose reasonably projected annual gross revenues from the sale of alcoholic beverages for on-premises consumption exceeds thirty percent (30%) of the gross revenues of such business ("**Bar**");
- (o) any flea market, amusement or video arcade, pool or billiard hall, car wash, or dance hall;
- (p) any gambling facility or operation, including but not limited to: off-track or sports betting parlor; table games such as black jack or poker; slot machines, video poker/blackjack/keno machines or similar devices; or bingo hall. Notwithstanding the foregoing, this prohibition shall not apply to governmental sponsored gambling activities, or charitable gambling activities, so long as such governmental and/or charitable activities are

incidental to the business operation being conducted by the occupant(s) of the Outparcel; and

- (q) any drug store exceeding 15,000 square feet of Floor Area.

### 3.3 **Hazardous Materials.**

- (a) Outparcel Owner shall not use, or permit the use of Hazardous Materials in, on, about or under the Outparcel or any Outparcel Improvements, except in *de minimis* quantities which are used in the ordinary course of its (or the Outparcel occupants') usual business operations conducted thereon, and any such use shall at all times be in compliance with all Environmental Laws. Outparcel Owner shall indemnify, protect, defend and hold harmless Macerich and Macerich's partners, and each of their respective officers, directors, share-holders, members, partners, agents, employees and attorneys, and their respective successors and assigns (provided that any mortgagee or purchaser at foreclosure sale shall not be responsible for the indemnification of its predecessor but shall be entitled to the benefits of the indemnification of the Outparcel Owner) from and against all claims, suits, actions, demands, costs, damages and losses of any kind, including but not limited to costs of investigation, litigation and remedial response, arising out of any Hazardous Material used or permitted to be used by Outparcel Owner, whether or not in the ordinary course of business.
- (b) For the purpose of this Section 3.3, the term (i) "**Hazardous Materials**" shall mean: petroleum products, asbestos, polychlorinated biphenyls, radioactive materials and all other dangerous, toxic or hazardous pollutants, contaminants, chemicals, materials or substances listed or identified in, or regulated by, any Environmental Law, and (ii) "**Environmental Laws**" shall mean: all federal, state, county, municipal, local and other statutes, laws, ordinances and regulations which relate to or deal with human health or the environment, all as may be amended from time to time.

- 3.4 **Parking.** Tenants and occupants of and invitees to the Outparcel shall not utilize the parking areas of the Shopping Center, and Outparcel Owner shall take commercially reasonable steps to prevent tenants, occupants and invitees from parking in the Shopping Center. Outparcel Owner shall at all times maintain sufficient vehicular parking on the Outparcel to maintain a parking ratio of not less than the greater of (a) the ratio required by law (including applicable zoning code or other governmental regulations, without any variance or special exception), and (b) in the case of any retail or Restaurant use, not less than four and one-half (4.5) striped automobile parking spaces for each one thousand (1000) square feet of retail or Restaurant Floor Area on the Outparcel.

**ARTICLE IV**  
**SURFACE DRAINAGE**

Outparcel Owner shall not alter or permit to be altered the pavement surfaces or natural drainage systems on the Outparcel if such alteration would materially increase, either in the aggregate or in isolated circumstances, the flow of surface water onto the Shopping Center Parcel.

**ARTICLE V**  
**EASEMENTS FOR INGRESS, EGRESS AND UTILITY FACILITIES**

5.1 **Easements For Ingress and Egress.** For good and valuable consideration, and subject to the terms and conditions contained in this Declaration, Macerich hereby grants (the "Grant") to Outparcel Owner, subject to all matters of record, non-exclusive easements (the "Access Easements") on, over, across and along the Access Easement Areas solely for the purpose of ingress and egress from, to and between the public streets and the Outparcel for use by Outparcel Owner and its successors, assigns, tenants and licensees and their respective sub-tenants, guests, employees and invitees.

5.2 **Conditions and Covenants for Access Easements.**

- (a) **Outparcel Owner's Covenants.** Outparcel Owner, for itself, its successors and assigns, severally covenants and agrees to comply and cause its tenants to comply with any rules and regulations established by Macerich pertaining to the use of the Access Easement Areas (e.g., speed limits, parking restrictions, etc.). Outparcel Owner acknowledges that Macerich, its successors and assigns, and the Shopping Center tenants, occupants and invitees will use the Access Easement Areas for various purposes and covenants and agrees to cooperate with other users of the Access Easement Areas. Outparcel Owner further acknowledges that Macerich may, from time to time, temporarily close the Access Easement Areas for the purpose of repairs and maintenance, and Outparcel Owner agrees that such closures are not in violation of the terms of this Declaration; provided, however, except in the case of an emergency, Macerich shall give advance written notice to Outparcel Owner of any such closure and shall use good faith efforts to perform any such work so as not to unreasonably interfere with the use, occupancy or enjoyment of the Outparcel or any part thereof. Any damage (other than ordinary wear and tear) to the Access Easement Areas which results from any use thereof by Outparcel Owner, or anyone claiming use rights under the Outparcel Owner, shall be promptly repaired by the Outparcel Owner, at its sole cost and expense, to the condition existing prior to such damage. The foregoing covenants are intended to run with and bind the Outparcel, Outparcel Owner and all of Outparcel Owner's successors and assigns for the benefit of the Shopping Center, Macerich and all of Macerich's successors and assigns.

- (b) Road Contribution. Outparcel Owner shall pay to Macerich an amount equal to the Road Contribution as payment of Outparcel Owner's share of the maintenance and repair of the Access Easement Areas. The Road Contribution shall be due and payable in one (1) installment on or before the first day of each year in advance, commencing on the Effective Date. If Outparcel Owner fails to pay to Macerich the Road Contribution when due, Macerich may take the remedies provided in Article VI hereof, provided, however, Macerich may not revoke the Grant or otherwise interfere with the benefits to which the Outparcel Owner is entitled under the Grant.
- (c) Macerich's Covenants. Macerich for itself, its successors and assigns, severally covenants and agrees that to the extent that it establishes any rules and regulations pertaining to the use of Access Easement Areas (e.g., speed limits, parking restriction, etc.) to comply and cause its tenants to comply with such rules and regulations. Macerich acknowledges that Outparcel Owner, its successors and assigns, and the Outparcel tenants, occupants and invitees will use the Access Easement Areas for various purposes and covenants and agrees to cooperate with other users of the Access Easement Area.

Macerich agrees that it shall conduct regular maintenance and repair of the Access Easement Areas. The standard of maintenance for the Access Easement Areas shall be comparable to the standard of maintenance followed in other first class retail developments of comparable size in the Salt Lake City area. The foregoing covenants are intended to run with and bind the Shopping Center Parcel, Macerich and all of Macerich's successors and assigns for the benefit of the Outparcel, Outparcel Owner and any of the Outparcel Owner's successors and assigns.

- 5.3 Easement for Utility Facilities. It is acknowledged that certain utility facilities have been installed by Macerich on that portion of the Outparcel designated as Utility Easement Area on Exhibit A-3. For good and valuable consideration, and subject to the terms and conditions contained in this Declaration, Outparcel Owner hereby grants to Macerich, subject to all matters of record, non-exclusive easements (the "Utility Easements") on, over, across and along the Utility Easement Area for the purpose of providing, maintaining, repairing and replacing utility facilities and utility connections so as to bring utilities to the Shopping Center Parcel. The Utility Easements are perpetual and Outparcel Owner reserves the right to use the surface of the Utility Easement Area as a Common Area; provided, however, in no event shall building improvements be constructed in the Utility Easement Area without the prior written consent of Macerich.
- 5.4 No Gift or Dedication. Nothing contained herein shall be deemed to be a gift or dedication of any portion of the Access Easement Area or the Utility Easement Area to or for the general public or for any public purposes whatsoever, it being the intention of



Macerich and Outparcel Owner that the easements granted herein shall be strictly limited to and for the purposes herein expressed.

- 5.5 **Indemnity.** The grantee of any easement under this Article V agrees to indemnify, defend, and hold harmless the grantor of such easement and its partners, and each of their respective officers, directors, shareholders, members, partners, agents, employees and attorneys, and their respective successors and assigns (collectively, the “**Grantor Parties**”), from and against all claims, actions, losses, liabilities, damages, costs and expenses (including, but not limited to, attorneys’ fees and costs) incurred, suffered by, or claimed against the Grantor Parties, or any of them, by reason of any injury to any persons or property of any person arising out of such person’s use of the easements herein provided. Notwithstanding the foregoing, a grantee’s obligations under this Section 5.5 shall not apply to claims, actions, losses, liabilities, damages, costs and expenses (including, but not limited to, attorneys’ fees and costs) incurred, suffered by, or claimed against the Grantor Parties, or any of them, by reason of the actions of the Grantor Parties. The foregoing provisions shall survive the expiration of this Declaration.

## **ARTICLE VI DEFAULTS**

- 6.1 If any party defaults in the performance of any of the obligations of this Declaration, and such defaulting party fails to cure such default within thirty (30) days (except it shall be 60 days for Sandy City so long as it is the Outparcel Owner) after written notice given by a nondefaulting party, unless such default cannot reasonably be cured within such thirty (30) day period (or 60 days for Sandy City), in which event such defaulting party fails within such thirty (30) day period (or 60 days for Sandy City) to commence to cure and diligently thereafter prosecute such cure to completion, then the non-defaulting party shall have the right, but not the obligation, to cure such default for the account of and at the expense of the defaulting party; provided, however, that in the event of emergency conditions posing an immediate threat to persons or property and constituting a default, the non-defaulting party acting in good faith shall have the right to cure such default upon such advance notice as is reasonably possible under the circumstances or, if necessary, without advance notice, so long as notice is given as soon as possible thereafter. Any notice hereunder shall specify with particularity the nature of the default claimed and shall set forth in detail the action which the party giving such notice proposes to take in order to cure the claimed default. To effectuate any such cure, the nondefaulting party shall have the right to enter upon the parcel of the defaulting party (but not any buildings contained within any building area of such parcel) to perform any necessary work or furnish any necessary materials or services to cure the default of the defaulting party.
- 6.2 Each party shall have the right to prosecute any proceedings at law or in equity against any other party, or any other person, violating, attempting to violate, threatening to violate, or defaulting upon any of the provisions contained in this Declaration, in order to prevent the violating or defaulting party or any such person from violating, attempting to violate, threatening to violate or defaulting upon the provisions of this Declaration and to recover damages for any such violation or default. The remedies available under this

Section 6.2 shall include, by way of illustration but not limitation, ex parte applications for temporary restraining orders, preliminary injunctions and permanent injunctions enjoining any such violation or attempted violation or default, actions for declaratory relief and actions for specific performance of this Declaration.

- 6.3 All costs and expenses reasonably incurred by any party to cure a default of a defaulting party under the provisions of this Article VI, together with interest thereon, at the lower of five percent (5%) above the discount rate charged by the San Francisco Federal Reserve Bank to its member banks, or the maximum rate allowed by applicable usury law, and all costs and expenses of any proceedings at law or in equity, including reasonable attorneys' fees awarded to any party by an order of court, shall be assessed against and paid by the defaulting or violating party.
- 6.4 No default under this Declaration shall entitle any party to cancel, rescind, or otherwise terminate this Declaration, provided, however, that this limitation shall not affect, in any manner, any other rights or remedies that the parties may have by reason of any default under this Declaration.

**ARTICLE VII**  
**INTENTIONALLY OMITTED**

**ARTICLE VIII**  
**POSTPONEMENT OF PERFORMANCE**

In the event that a party shall be delayed or hindered in or prevented from the performance of any act required hereunder by reason of strikes, labor troubles, inability to procure labor or materials, failure of power, restrictive governmental laws or regulations, riots, insurrection, war, Acts of God, fire or other casualty or other reason of similar or dissimilar nature beyond the reasonable control of the party delayed in performing work or doing acts required under the terms of this Declaration, then performance of such act shall be excused for the period of the delay and the period for the performance of any such act shall be extended for a period equivalent to the period of such delay. The provisions of this Article VIII shall not operate to excuse the prompt payment of any sums required by the terms of this Declaration. Delays or failures to perform resulting from lack of funds shall not be deemed delays beyond the reasonable control of the Parties.

**ARTICLE IX**  
**EXPIRATION**

This Declaration shall expire and be of no further force or effect, without action by either party hereto, on the date which is fifty (50) years from the Effective Date.

**ARTICLE X**  
**NOTICES**

Any notice or communication required or permitted in connection with this Declaration shall be in writing and transmitted by United States registered or certified mail, postage prepaid,

return receipt requested, or by personal delivery (including an overnight courier service), addressed to the respective party at following locations specified for Macerich and Outparcel Owner:

If to Macerich: Macerich ST Marketplace Limited Partnership  
c/o The Macerich Company  
401 Wilshire Blvd.  
Suite 700  
Santa Monica, California 90401  
Attn: General Counsel

If to Outparcel Owner: Sandy City Corporation  
10000 Centennial Parkway  
Sandy, Utah 84070  
Attn: Mr. John D. Hiskey,  
Director of Economic Development

Either party may change its notice address at any time by giving written notice of such change to the other party in the manner provided herein at least ten (10) days prior to the date such change is effective. All notices under this Declaration shall be deemed given, received, made or communicated on the date personal delivery is effected at the address for such party as herein specified or, if mailed, on the delivery date or attempted delivery date at such party's address hereunder as shown on the return receipt.

## **ARTICLE XI** **MISCELLANEOUS**

### **11.1 Interpretation**

- (i) The article, sectional and subsectional captions and headings appearing in this Declaration are inserted only as a matter of convenience and in no way amplify, define, limit, construe or describe the scope or intent of this Declaration nor in any other way affect this Declaration.
- (ii) The neuter, feminine or masculine pronoun when used herein shall each include each of the other genders and the use of the singular shall include the plural, and vice versa.
- (iii) The parties hereto agree that all the provisions of this Declaration are to be construed as covenants and agreements as though the words importing such covenants and agreements were used in each separate provision hereof.

11.2 **Severability**. It is the intention of the parties hereto that if any provision of this Declaration is capable of two constructions, one of which would render the provision invalid and the other which would render the provision valid, then the provision shall have the meaning which renders it valid. If any term or provision, or any portion thereof, of this Declaration, or the application thereof to any person or circumstances, 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 held invalid or unenforceable, shall not be affected thereby and each term and provision of this Declaration shall be valid and be enforced to the fullest extent permitted by law.

- 11.3 **Successors**. The covenants, conditions and restrictions contained herein are (i) mutual equitable servitudes for the mutual benefit of the Outparcel and the Shopping Center, and shall run with the land of the Outparcel and Shopping Center and every portion thereof, and (ii) shall inure to the benefit of and be binding upon Macerich and Outparcel Owner and their respective successors and assigns.
- 11.4 **Applicable Law**. The laws of the State of Utah shall govern the validity, performance and enforcement of this Declaration.
- 11.5 **Modification/Amendment of Declaration**. This Declaration contains the entire agreement with respect to its subject matter and may not be amended without the prior written consent of Macerich and Outparcel Owner. In addition, so long as Target is a tenant of the Shopping Center and the Operation and Easement Agreement is in effect, this Declaration may not be amended without the prior written consent of Target.
- 11.6 **Litigation Expenses**. If any party hereto shall bring an action or proceeding (including, without limitation, any cross-complaint, counterclaim or third party claim) against any other party by reason of the breach or alleged violation of any covenant, term or obligation hereof, or for the enforcement or interpretation of any provision of this Declaration, the prevailing party in such action or proceeding shall be entitled to its costs and expenses of suit, including but not limited to reasonable attorneys' fees, which shall be payable whether or not such action is prosecuted to judgment.
- 11.7 **Sale or Transfer**. Upon the assignment, conveyance, sale or other transfer by Macerich of its right, title and interest in the Shopping Center Parcel, Macerich shall be released from the obligations of this Declaration as a party with respect to the Shopping Center Parcel arising subsequent to the effective date of such sale or transfer. Upon the assignment, conveyance, sale or other transfer by the Outparcel Owner of its right, title and interest in the Outparcel, the Outparcel Owner shall be released from the obligations of this Declaration as a party with respect to the Outparcel arising subsequent to the effective date of such sale or transfer.
- 11.8 **Signature Pages**. For convenience, the signatures of each of the parties hereto may be executed and acknowledged on separate pages which, when attached to this Declaration, shall constitute this as one complete Declaration.

IN WITNESS WHEREOF, the undersigned have duly executed this Declaration as of the day and year first above written.

*[Signatures on following pages.]*

**AUTHORIZED SIGNATURE OF MACERICH TO  
DECLARATION OF RESTRICTIONS AND GRANT OF EASEMENTS**

**MACERICH ST MARKETPLACE LIMITED  
PARTNERSHIP,**  
a California limited partnership

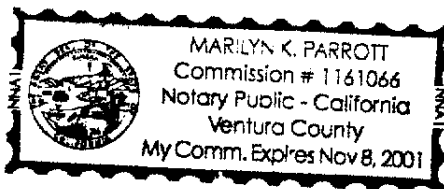
By: Macerich ST Marketplace GP Corp.,  
a Delaware corporation,  
its General Partner

By: *James H. Kinney*  
James H. Kinney  
Senior Vice President

STATE OF CALIFORNIA                                 )  
                                  Ventura                                 ) ss.  
COUNTY OF ~~LOS ANGELES~~ <sup>LOS ANGELES</sup> mrr                         )

On May 10, 2001, before me,  
Marilyn K. Parrott, a Notary Public in and for said State, personally appeared James H. Kinney, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(x) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.



*Marilyn K. Parrott*  
Notary Public

**AUTHORIZED SIGNATURE OF SANDY CITY TO  
DECLARATION OF RESTRICTIONS AND GRANT OF EASEMENTS**

**SANDY CITY CORPORATION**  
a Utah municipal corporation



By: X *[Signature]*

Its: Mayor

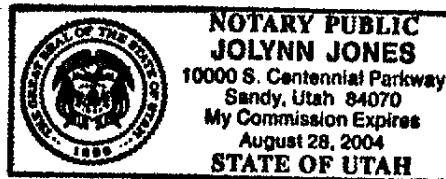
Attest: *[Signature]*  
City Recorder

STATE OF Utah )  
COUNTY OF Salt Lake ) ss.

On May 7, 2001, 2001, before me, Jolynn Jones, a Notary Public in and for said State, personally appeared Tom Dolan, personally known to me (or proved to me on the basis of satisfactory evidence) to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

WITNESS my hand and official seal.

*Jolynn Jones*  
Notary Public



ADDENDUM

CONSENT AND JOINDER

The undersigned, LaSalle National Bank, Trustee under a Pooling and Servicing Agreement dated as of August 1, 1998, Mortgage Pass-Through Certificates, Series 1998-C2, by and through GMAC Commercial Mortgage Corporation, Master Servicer, hereby consent to and join in the execution of the within and foregoing Declaration of Restrictions and Grant of Easements, without warranty or representation, by virtue of their rights and interests set forth in that certain Deed of Trust, Assignment of Leases and Rents and Security Agreement, and agrees to the granting of the aforesaid easement and agrees that any sale under foreclosure of such mortgage shall be subject to such easement agreement.

This 16<sup>th</sup> day of March, 2001

Signed, sealed and delivered in the presence of:

LaSalle National Bank, Trustee under a Pooling and Servicing Agreement dated as of August 1, 1998, Mortgage Pass-Through Certificates, Series 1998-C2

GMAC Commercial Mortgage Corporation, Master Servicer

Witness:

Michael Hubbard  
MICHAEL HUBBARD

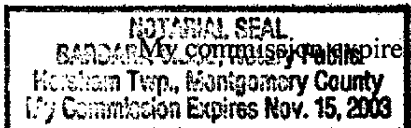
By: Brian Stauffer  
Name: BRIAN STAUFFER  
Title: SENIOR VICE PRESIDENT

ACKNOWLEDGEMENT:

COMMONWEALTH OF PENNSYLVANIA )  
 )ss  
COUNTY OF MONTGOMERY )

On the 16<sup>th</sup> day of March, 2001, before me, a Notary Public in and for the said State, the personally appeared BRIAN STAUFFER, personally known to me or proved to me on the basis of satisfactory evidence to be the individual who name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

In Witness Whereof, I have hereunto set my hand and official seal.



Barbara Kuci  
Notary Public

BK 8458 PG 7503

**EXHIBIT "A-1"**

**LEGAL DESCRIPTION OF SHOPPING CENTER PARCEL**

[Attached]

138189\_5

A-1

BK8458PG7504



**LEGAL DESCRIPTION  
MARKETPLACE SUBDIVISION  
LOT 2**

BEGINNING at a point on the westerly right of way line of State Street, which point is North 89°50'56" East, 41.33 feet from the Northeast corner of Section 13, Township 3 South, Range 1 West, Salt Lake Base and Meridian (Basis of Bearing being South 00°01'50" East 2599.11 feet along the monument line of State Street between the monuments found marking the intersections of 10600 South and 10200 South Streets), said Northeast corner of Section 13 being South 89°53'20" West, 92.33 feet from the monument at the intersection of 10200 south and State Streets, and running thence South 00°01'50" East along said westerly right of way line for 583.24 feet; thence South 00°50'43" East along said line for 70.31 feet; thence South 00°01'50" East along said line for 53.16 feet to the northerly line of an access road and a point on a 25.00 foot radius curve to the right; thence running along said northerly line the next five courses, Southwesterly 21.60 feet along the arc of said curve through a central angle of 49°30'41" (chord bearing and distance of South 65°15'40" West - 20.94 feet); thence North 89°59'00" West for 192.15 feet to the point of tangency with a 306.00 foot radius curve to the left; thence southwesterly 162.31 feet along the arc of said curve through a central angle of 30°23'31" (chord bearing and distance of South 74°49'14" West - 160.42 feet); thence South 59°37'30" West for 74.04 feet to the point of tangency with a 25.00 foot radius curve to the right; thence northwesterly 37.15 feet along the arc of said curve through a central angle of 85°08'19" (chord bearing and distance of North 77°48'20" West - 33.82 feet) to the point of tangency with a 758.00 foot radius curve to the left and being the north line of the South Towne Mall Ring Road; thence northwesterly 712.45 feet along the arc of said curve through a central angle of 53°51'11" along said line (chord bearing and distance of North 62°09'46" West - 686.52 feet); thence North 00°00'36" East for 651.39 feet to a point on a 45.00 foot radius curve to the left; thence Easterly 15.90 feet along the arc of said curve through a central angle of 20°14'42" (chord bearing and distance of South 79°42'52" East - 15.82 feet); thence South 89°50'14" East for 72.06 feet to the point of tangency with a 33.00 foot radius curve to the left; thence Northeasterly 25.06 feet along the arc of said curve through a central angle of 43°31'06" (chord bearing and distance of North 68°24'13" East - 24.47 feet); thence North 00°00'00" East for 585.21 feet; thence South 65°32'54" West for 58.00 feet to the point of tangency with a 70.00 foot radius curve to the right; thence Southwesterly 30.93 feet along the arc of said curve through a central angle of 25°18'45" (chord bearing and distance of South 78°12'16" West - 30.67 feet); thence North 89°08'21" West for 11.58 feet to the point of tangency with a 45.00 foot radius curve to the left; thence Westerly 16.18 feet along the arc of said curve through a central angle of 20°35'49" (chord bearing and distance of South 80°33'44" West - 16.09 feet); thence North 00°00'36" East for 90.98 feet; South 89°57'20" East for 519.88 feet; thence North 86°50'50" East for 266.48 feet; thence South 89°59'01" East for 280.57 feet to the west right of way line of State Street; thence South 00°07'35" East along said line for 847.85 feet to the POINT OF BEGINNING.

LESS AND EXCEPTING the following (being the relocated Canal Strip)

BEGINNING at a point on the westerly right of way line of State Street, which point is North 89°50'56" East, 41.33 feet from the Northeast corner of Section 13, Township 3 South, Range 1 West, Salt Lake Base and Meridian (Basis of Bearing being South 00°01'50" East 2599.11 feet along the monument line of State Street between the monuments found marking the intersections of 10600 South and 10200 South Streets), said Northeast corner of Section 13 being South 89°53'20" West, 92.33 feet from the monument at the intersection of 10200 south and State Streets, and running thence South 00°01'50" East along said westerly right of way line for 142.94 feet; thence North 45°00'00" West for 32.77 feet to a point on a 116.00 foot radius curve to the right; thence southwesterly 38.99 feet along the arc of said curve through a central angle of 19°15'29" (chord bearing and distance of South 39°19'27" West - 38.81 feet); thence South 41°02'50" East for 28.93 feet; thence South 50°28'54" West for 7.88 feet to a point of curvature with a 102.00 foot radius curve to the left; thence southwesterly 89.92 feet along the arc of said curve through a central angle of 50°30'43" (chord bearing and distance of South 25°13'33" West - 87.04 feet); thence South 13°14'00" West for 71.92 feet; thence South 00°01'50" East for 190.71 feet to a point of curvature with a 17.00 foot radius curve to the left; thence southeasterly 18.24 feet along said curve through a central angle of 61°29'08" (chord bearing and distance of South 30°46'24" East - 17.38 feet); thence South 61°30'58" East for 67.84 feet; thence North 00°01'50" West for 308.03 feet to a point of curvature with a 50.00 foot radius curve to the right; thence northeasterly 44.08 feet along the arc of said curve through a central angle of 50°30'43" (chord bearing and distance of North 25°13'33" East - 42.67 feet); thence North 50°28'54" East for 2.33 feet to said westerly right of way line of State Street; thence South 00°01'50" East along said line for 367.99 feet; thence South 00°50'43" East along said line for 66.61 feet; thence North 61°30'58" West for 86.65 feet to a point on a 25.00 foot radius curve to the right; thence southwesterly 36.21 feet along the arc of said curve through a central angle of 82°58'40" (chord bearing and distance of South 48°31'41" West - 33.12 feet); thence North 89°59'14" West for 63.53 feet; thence North 00°01'50" West for 590.56 feet; thence North 89°52'57" East for 89.62 feet; thence North 00°07'35" West for 469.81 feet to a point of curvature with a 113.00 foot radius curve to the right; thence northeasterly 89.42 feet along the arc of said curve through a central angle of 45°20'24" (chord bearing and distance of North 22°32'37" East - 87.11 feet); thence North 45°12'48" East for 56.83 feet to said westerly right of way; thence South 00°07'35" East for 550.60 feet to the POINT OF BEGINNING.

THE PROPERTY FIRST DESCRIBED ABOVE BEING TOGETHER WITH those easements: that are appurtenant thereto created in that certain Special Warranty Deed (conveying relocated canal strip, and reserving certain Easements and Rights) dated October 26, 1995 and recorded November 7, 1995 as Entry No. 6208148 in Book 7265 at Page 2716 of Official Records.

THE PROPERTY FIRST DESCRIBED ABOVE BEING TOGETHER WITH those easements: that are appurtenant thereto created in that certain Special Warranty Deed

(conveying Street and Wetlands Property, and reserving certain Easements and Rights)  
dated February 5, 1996 and recorded February 9, 1996 as Entry No. 6277216 in Book  
7327 at Page 1430 of Official Records.

Contains 1,402,544.9487 square feet or 32.1980 acres

**EXHIBIT "A-2"**

**LEGAL DESCRIPTION OF OUTPARCEL**

[Attached]

**LEGAL DESCRIPTION  
MARKETPLACE SUBDIVISION  
LOT 5**

A tract of land, lying in the southeast quarter of section 12, Township 3 South, Range 1 West, Salt Lake Base and Meridian, said tract described as Lot 1, Marketplace Subdivision, said tract being further described as follows:

Commencing at the southeast corner of Section 12, Township 3 South, Range 1 West, Salt Lake Base and Meridian (Basis of Bearing being South 00°01'50" East 2599.11 feet along the monument line of State Street between the monuments found marking the intersections of 10600 South and 10200 South Streets), said southeast corner of Section 12 being South 89°53'20" West, 92.33 feet from the monument at the intersection of 10200 south and State Streets, thence North 89°50'56" East for 41.33 feet to a point on the western right of way of State Street; thence North 00°07'35" West along said west right of way line for 847.85 feet; thence leaving said right of way North 89°59'01" West for 280.57 feet; thence South 86°50'50" West for 266.48 feet; thence North 89°57'20" West for 519.88 feet to a point on the east right of way of Centennial Parkway; thence South 00°00'36" West along said east right of way line for 90.98 feet to the POINT OF BEGINNING; said point being a point on the arc of a 45.00-foot radius curve to the right whose center bears South 19°44'10" East; thence Easterly 16.18 feet along the arc of said curve through a central angle of 20°35'49"; thence South 89°08'21" East for 11.58 feet to the beginning of a 70.00-foot radius curve to the left; thence Northeasterly 30.93 feet along the arc of said curve through a central angle of 25°18'45"; thence North 65°32'54" East 58.01 feet; thence South 00°00'00" East for 585.21 feet to a point on the arc of a 33.00-foot radius curve to the right whose center bears North 43°21'20" West; thence Southwesterly 25.07 feet along the arc of said curve through a central angle of 43°31'06"; thence North 89°50'14" West for 72.06 feet to the beginning of a 45.00-foot radius curve to the right; thence Northwesterly 15.90 feet along the arc of said curve through a central angle of 20°14'42"; thence North 00°00'36" East for 558.44 feet to the POINT OF BEGINNING.

Containing 1.4496 acres.

*pt. of 27-13-226-006*

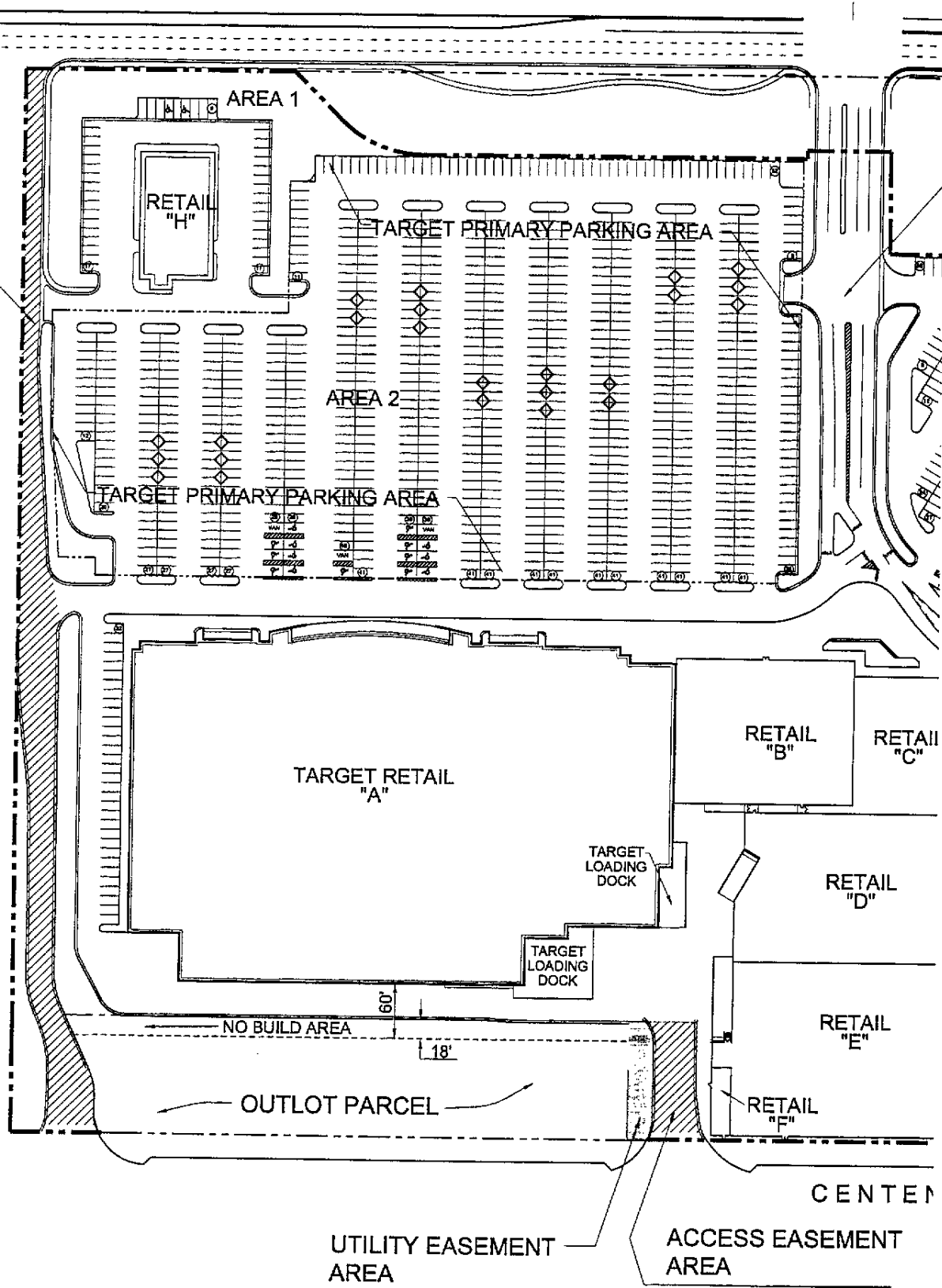
BK 8458 PG 7509

**EXHIBIT "A-3"**

**SITE PLAN**

**[Attached]**

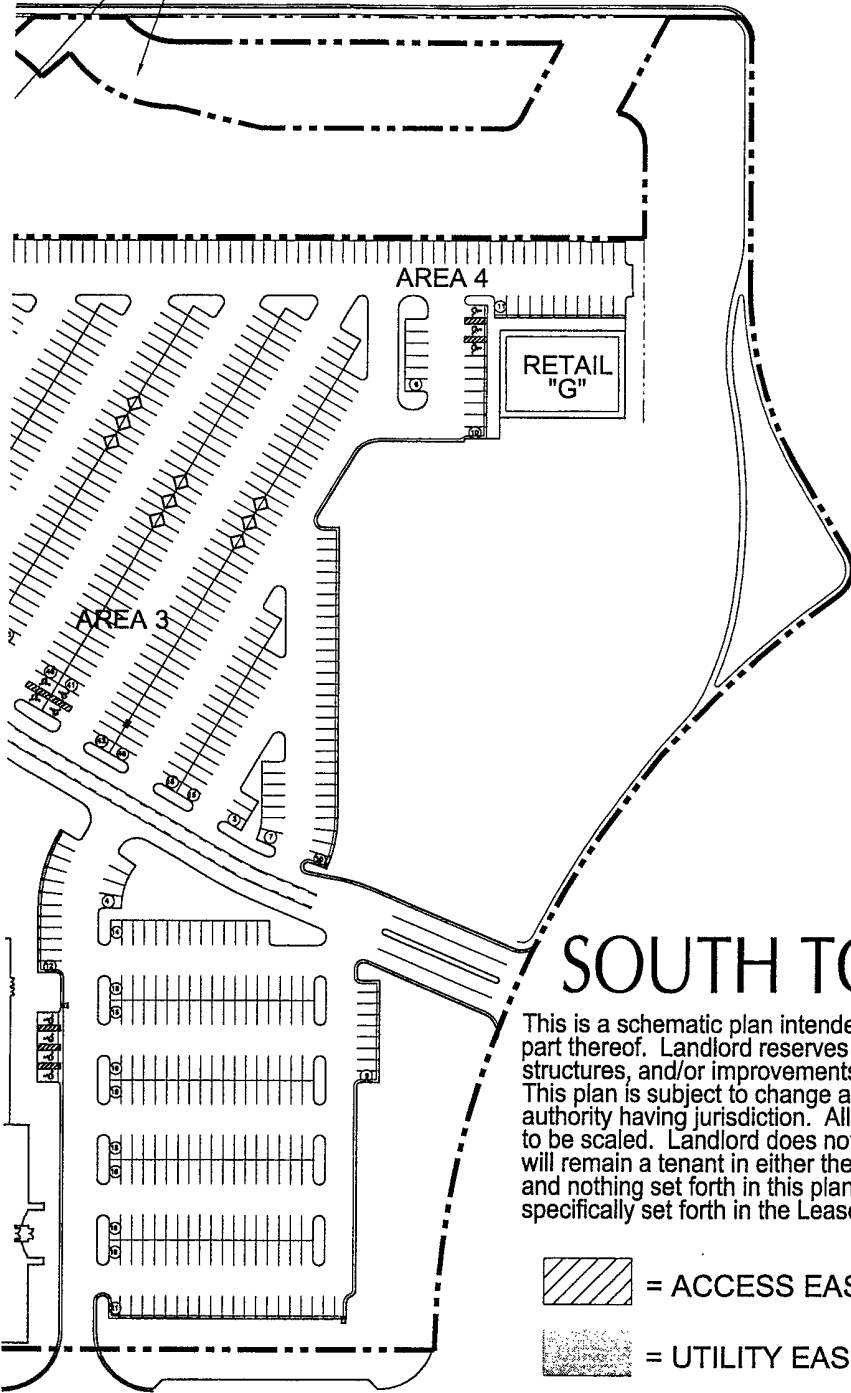
ACCESS EASEMENT  
AREA



SHOPPING CENTER PARCEL


STATE STREET

# EXHIBIT A-3



## SOUTH TOWNE MARKETPLACE

This is a schematic plan intended only to show the general layout of the Center or a part thereof. Landlord reserves the right to alter, vary, add to or omit in whole or in part any structures, and/or improvements, and/or Common Area, and/or land area shown on this plan. This plan is subject to change and modification as may be made by Landlord or required by any authority having jurisdiction. All measurements and distances are approximate. This plan is not to be scaled. Landlord does not covenant or represent that any Occupant indicated herein is or will remain a tenant in either the space marked or in any other space in the Center and nothing set forth in this plan is a representation, agreement or easement right except as specifically set forth in the Lease.

 = ACCESS EASEMENT AREA

30 APRIL 2001

 = UTILITY EASEMENT AREA

 = SHOPPING CENTER PARCEL

BK8458PG7512