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RECORDING REQUESTED AND  
WHEN RECORDED RETURN TO:

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COMMON AREA MAINTENANCE AGREEMENT

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## COMMON AREA MAINTENANCE AGREEMENT

THIS COMMON AREA MAINTENANCE AGREEMENT ("CAMA") is entered into on June 28, 2002, between **Leon Peterson, a married man dealing with his sole and separate property** ("First Party"), and **Albertson's, Inc.**, a Delaware corporation ("Albertson's").

### AGREEMENT

NOW, THEREFORE, in consideration of the premises set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

#### 1. Preliminary.

##### 1.1 Recitals:

(a) Except as otherwise specified herein, all of the capitalized terms in this CAMA shall have the meanings ascribed to them in that certain document entitled "Declaration of Restrictions and Easements" which encumbers the Shopping Center and is recorded concurrently herewith ("Declaration").

(b) First Party has entered into an agreement with Jones Land Company, L.L.C., a Utah limited liability company ("Jones"), to purchase Parcels 1, 4, 5, 6, 7 and 8 (see Consent and Agreement executed by Jones appended to this CAMA). At such time as First Party acquires fee simple title to Parcels 1, 4, 5, 6, 7 and 8, or any portions thereof, as is contemplated by First Party and Jones, First Party shall become the Owner of Parcels 1, 4, 5, 6, 7 and 8, or such portions thereof. Albertson's is the Owner of Parcels 2 and 3. Parcels 1, 2, 3, 4, 5, 6, 7 and 8, are as shown on **Exhibit "A"** and more particularly described in **Schedule I** attached hereto and made a part hereof.

(c) By virtue of the Declaration, the Owners have imposed certain restrictions on their Parcels and have executed reciprocal easements each in favor of the other covering the Common Area.

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

(e) In the event of any conflict between the terms of this CAMA and the Declaration, the Declaration shall control.

**2. Maintenance Director.**

**2.1 Appointment.** The Owners hereby appoint the Owner of Parcel 7 as maintenance director of the Shopping Center Common Area ("Maintenance Director") from and after the date Albertson's first opens its building on Parcel 2 for business (sometimes referred to herein as the "Commencement Date").

**2.2 Removal.** The Owners of at least three (3) Parcels (provided that Parcel 2 is included within such group) may remove the Maintenance Director upon written notice to the Owners of the remaining Parcels, in which event the Owners of a majority of the Parcels (provided that Parcel 2 is included within such majority) shall appoint another person to be the Maintenance Director (sometimes referred to herein as the "Successor Maintenance Director").

**2.3 Resignation.** The Maintenance Director shall have the right, upon giving ninety (90) days' prior written notice to the Owners of the Shopping Center, to resign as Maintenance Director, in which event the Owners of a majority of the Parcels (provided that Parcel 2 is included in such majority) shall appoint another Owner of a Parcel to be the Maintenance Director (said other Owner also being included with the definition of "Successor Maintenance Director").

**2.4 Assignment of CAM Contracts.** Within thirty (30) days prior to the effective date of the Maintenance Director's resignation or within ten (10) days after removal of the Maintenance Director, the Maintenance Director whose term is ending ("Retiring Maintenance Director") shall deliver to the Successor Maintenance Director (or, if a Successor Maintenance Director has not been appointed, deliver to the Consenting Owners) copies of all contracts with third parties who are providing maintenance services for the Common Area ("CAM Contracts").

Within fifteen (15) days after receipt of copies of such CAM Contracts, the Successor Maintenance Director (if one has been appointed, or if one has not been appointed, then the Consenting Owners) shall provide the Retiring Maintenance Director with written notice specifying

which CAM Contracts (if any) are to be assigned to the Successor Maintenance Director (or if one hasn't been appointed, then to the Consenting Owners) (hereinafter "Assigned Contracts"). Any CAM Contracts that are not to be assigned (or all of the CAM Contracts in the event the Successor Maintenance Director or Consenting Owners, as applicable, fail[s] to timely respond) shall be terminated at the cost of the Retiring Maintenance Director (it being understood said costs shall not be included within CAM Expenses [defined in Section 6.1 below] requiring reimbursement). The Retiring Maintenance Director shall deliver the original Assigned Contracts to the Successor Maintenance Director, or Consenting Owners as applicable, together with an assignment agreement signed by the Retiring Maintenance Director within ten (10) days after the Retiring Maintenance Director receives the notice regarding the Assigned Contracts. Within the same time period, the Retiring Maintenance Director shall (i) notify the service providers under the Assigned Contracts of the assignment; (ii) provide names, addresses and telephone numbers and other pertinent information regarding the Assigned Contracts to the Successor Maintenance Director or Consenting Owners, as applicable; and (iii) otherwise cooperate with the Successor Maintenance Director, or Consenting Owners as applicable, to ensure a smooth transition of the transfer of maintenance responsibilities.

**2.5 Final Statement of Account.** Within ten (10) days after the effective date of the resignation or removal of the Retiring Maintenance Director, the Retiring Maintenance Director shall deliver to each Owner final statements of account for all services performed through such effective date. Each Owner shall provide final payment to the Retiring Maintenance Director within thirty (30) days after receipt of the final statement of account. The Successor Maintenance Director shall not be liable for acts performed by the Retiring Maintenance Director nor shall the Successor Maintenance Director receive payment for services provided by the Retiring Maintenance Director.

### **3. Maintenance and Insurance Obligations.**

**3.1 Maintenance.** Commencing on the Commencement Date, the Maintenance Director shall, except as hereinafter provided, maintain the Common Area (and General Common Area Improvements) at all times in good and clean condition and repair, said maintenance to include, without limitation, the following:

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

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

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

(d) Operating, maintaining, repairing and replacing, when necessary, artificial lighting facilities as shall be reasonably required (except for the After Hours Lighting described in Article 4 below) including, but not limited to, poles, pole bases, wiring, lamps, ballasts, lenses, photocells, time clocks, and contactors. The Maintenance Director shall not be responsible for maintaining or providing electricity to any lighting fixtures attached to any building or soffit in the Shopping Center, including "canopy" or "soffit" lighting, and the maintenance and electricity for the same shall not be included in Common Area Expenses defined in Section 6.1 below. Each Owner shall maintain and provide electricity to all lighting fixtures attached to its respective building(s), at its sole cost and expense;

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

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

(g) Maintaining, repairing and replacing, when necessary, all storm drains, detention pond and drainage facilities, sewers and other utility lines and facilities not dedicated to the public or conveyed to any public or private utility which are necessary for the operation of the buildings and improvements located in the Shopping Center (with the cost of all such items being

allocated between the Owners of all buildings and improvements serviced or to be serviced by said facilities on the basis of their respective Building Areas);

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

(i) Maintaining, repairing and replacing, when necessary, the Center Pylon Sign pylon structure shown on **Exhibit "A"** (except for the sign fascia and cans which shall be supplied and maintained by the businesses designated thereon). Notwithstanding the other provisions of this CAMA, the cost of maintaining, repairing and replacing the Center Pylon Sign pylon structure shall be paid by the Owners of all Parcels entitled to display designations thereon in the proportion that the total square footage of each Owner's designation or designations bears to the total square footage of all designations entitled to be displayed thereon; and

(j) Performing itself or contracting with a third party or parties to perform any of the services described herein; provided, however, that the Maintenance Director shall give prior written notice to the other Owners of its appointment of a third party to perform any of the services described herein and shall remain responsible and liable for the performance of all of said services in accordance with the terms of this CAMA and for the performance by any such third party or parties of such services.

**3.2 Insurance for Common Area.** In addition to the foregoing, the Maintenance Director shall provide and maintain commercial general liability insurance, which shall include contractual liability coverage, with broad form coverage insuring the Maintenance Director against claims for personal injury, bodily injury or death, and property damage arising out of the negligent act or omission of the Maintenance Director in performing (or failing to perform) its services hereunder. Such insurance shall be written with an insurer licensed or authorized to do business in the state in which the Shopping Center is located and First Party, Albertson's, and all persons who own or hold portions of the Shopping Center or building space within the Shopping Center or any leasehold estate or other interest therein as their respective interests may appear (provided that the Maintenance Director is notified in writing of such interest) shall be named on the policy as additional insureds. The limits of liability of all such insurance shall be a combined single limit

(covering personal injury, bodily injury and property damage) of \$5,000,000 per occurrence. The Maintenance Director shall furnish First Party, Albertson's, and all other additional insureds with certificates evidencing such insurance and the Workers' Compensation insurance described below. The insurance policies shall provide that the insurance represented by such certificates shall not be canceled without the giving of thirty (30) days' prior written notice to the holders of such insurance and the additional insureds. The Maintenance Director shall also carry Workers' Compensation insurance as required under all applicable Workers' Compensation laws in an amount not less than statutory limits as well as commercial automobile liability insurance. The Maintenance Director shall be solely responsible for paying expenses for the foregoing workers' compensation insurance and the commercial automobile liability insurance without contribution from the other Owners. The insurance carried by the Maintenance Director hereunder shall be primary insurance and not contributory with any other insurance which is maintained by the Owners of the Parcels in the Shopping Center. The insurance which a Maintenance Director is required to maintain hereunder may be provided under a blanket policy provided such policy otherwise complies with the requirements of this CAMA. So long as a Maintenance Director has a net worth, determined in accordance with generally accepted accounting principles, in excess of \$100,000,000.00, all or any part of such insurance carried by the Maintenance Director may be provided under a program of self-insurance.

**3.3 Insurance Items.** If the Maintenance Director fails to acquire the necessary insurance for the Common Area and the insurance coverage has lapsed or will soon lapse, any Consenting Owner shall have the option (but not the obligation) of immediately acquiring said insurance, in which event the Maintenance Director shall pay to such Consenting Owner the insurance costs within ten (10) days after its receipt of a statement therefor from said Consenting Owner. Notwithstanding the foregoing, a Consenting Owner shall, prior to acquiring the insurance, be required to give the Maintenance Director reasonable notice (e.g., written or telephonic) and reasonable opportunity to obtain the insurance.

**3.4 Maintenance Director's Indemnification Obligations.** The Maintenance Director shall indemnify, defend and hold harmless the Owners and occupants of the Shopping Center from any and all liabilities, claims, damages, expenses (including, without limitation,

reasonable attorney's fees and reasonable attorney's fees on any appeal), judgments, proceedings and causes of action of any kind whatsoever for injury to or death of any person or damage to any property resulting from the willful misconduct or negligent act or omission of the Maintenance Director in performing (or failing to perform) its services hereunder. Failure by the Maintenance Director to provide and maintain all insurance which the Maintenance Director is obligated to maintain pursuant to Section 3.2 of this CAMA shall not relieve the Maintenance Director of its obligations under this Section 3.4.

**3.5 Service Facilities.** Notwithstanding anything to the contrary in this Article 3, the Maintenance Director shall not be responsible for the maintenance or insurance of any Service Facilities or drive-up or drive through customer service facilities or Fuel Facilities, all of which facilities shall be maintained by the Owners thereof in good and clean condition and repair and in a quality and condition comparable to the quality and condition of the maintenance of the balance of the Common Area. In addition, the Owners or Prime Lessees of the Parcel or Parcels on which said facilities are located shall at all times (i) provide and maintain or cause to be provided and maintained commercial general liability insurance which shall include contractual liability coverage insuring such Owners or Prime Lessees of the Parcel or Parcels, as their respective interests may appear, against claims for personal injury, bodily injury, and property damage occurring in, on or about said facilities or arising out of the negligent activities or operations of said Owners or Prime Lessees at the Shopping Center, and (ii) indemnify, defend and hold harmless the Owners and occupants of all other Parcels from and against any and all liabilities, claims, damages, expenses (including, without limitation, reasonable attorney's fees and reasonable attorney's fees on any appeal), judgments, proceedings and causes of action of any kind whatsoever, for injury to or death of any person or damage to or destruction of any property occurring in, on or about said facilities resulting from the willful misconduct or negligent act or omission of the indemnifying Owner, its agents, contractors or employees. Said insurance shall be written with an insurer acceptable to all parties. The Owners of any such Parcel or Parcels shall furnish the Maintenance Director and any other Owner or Prime Lessee with certificates evidencing such insurance upon request. The insurance which an Owner is required to maintain hereunder may be provided under a blanket policy provided such policy otherwise complies with the requirements of this CAMA. So long as an Owner



or Prime Lessee has a net worth, determined in accordance with generally accepted accounting principles, in excess of \$100,000,000.00, all or any part of such insurance carried by such Owner may be provided under a program of self-insurance.

4. **Lighting.** The artificial lighting for the Common Area shall remain on while a majority of the businesses in the Shopping Center are open for business. If any Owners or occupants need artificial lighting for a time other than the foregoing ("After Hours Lighting"), then such artificial lights to service such Owners or occupants shall be separately metered or otherwise measured or reasonably estimated such that none of the expenses for the After Hours Lighting shall be included within Common Area Expenses as defined in Section 6.1 below (said expenses to be paid solely by the Owner or occupant[s] needing the After Hours Lighting).

If the artificial lighting on any Parcel is separately metered for any reason, the Owner or occupant(s) thereof shall pay a reduced proportion of the expense of lighting the balance of the Common Area based upon the extent to which such Owner or occupant(s) are lighting the Common Area on their Parcel(s) by separately metered lights.

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

6. **Reimbursement of Maintenance Director/Budget Basis.**

6.1 **Generally.** The Maintenance Director shall contract and pay for all of the items set forth in Article 3 herein (the expenses therefore sometimes collectively being referred to as "Common Area Expenses"), on a budget basis, pursuant to (and subject to) the provisions of Articles 6 and 7. All contracts entered into by the Maintenance Director for the services described herein (sometimes referred to as "Maintenance Contracts") shall be made expressly assignable to a Successor Maintenance Director or the Consenting Owners if no Successor Maintenance Director exists. A copy of all Maintenance Contracts shall be distributed to any Owner requesting the same.

6.2 **Definitions.** For purposes of this CAMA, the term "Maintenance Budget Year" shall mean from July 1st to June 30<sup>th</sup> of each year of this CAMA. The term "First Partial Maintenance Budget Year" shall mean the period running from the Commencement Date to the

beginning of the first full Maintenance Budget Year. Any reference to "Maintenance Budget Year" shall also be deemed to include, where applicable, the First Partial Maintenance Budget Year.

**6.3 Bidding.** At least one hundred and twenty (120) days prior to the First Partial Maintenance Budget Year, the Maintenance Director shall put all contracts for Common Area maintenance work out to bid, in accordance with the following: Specifications for all Common Area maintenance items shall be submitted for bid to at least four (4) bidders reasonably approved in writing by the Consenting Owners. Thereafter, the names of the bidding contractors or companies, the specifications and the amount of their respective bids shall be furnished to the Consenting Owners by the Maintenance Director within ten (10) days after the Maintenance Director's receipt thereof, and the Maintenance Director shall award the pertinent contract to the lowest bidder, unless the Maintenance Director obtains the Consenting Owners' prior written consent to award the contract to a higher bidder. The foregoing bid items and amounts shall be integrated into the pertinent budget.

**6.4 Budget Submission.** At least ninety (90) days prior to the commencement of the First Partial Maintenance Budget Year and ninety (90) days prior to the commencement of each Maintenance Budget Year thereafter, the Maintenance Director shall submit to each Consenting Owner, for such Consenting Owner's review and approval, a proposed annual budget for Common Area Expenses ("Budget") covering, respectively, the First Partial Maintenance Budget Year and each applicable Maintenance Budget Year thereafter, together with a copy of the bids required herein and any backup materials reasonably requested by any Consenting Owner. The Budget may provide for a Service Charge (as defined in Section 6.11), if such Service Charge is allowed under Section 6.11.

**6.5 Consenting Owner's Review.** Each Consenting Owner shall, within sixty (60) days after receipt of the Budget, deliver written notice of its approval or disapproval of the Budget to the Maintenance Director ("Budget Approval Notice"). Notwithstanding the foregoing, (and without limiting the provisions of Section 7.1(d) below, if the Maintenance Director does not comply with the time frames required herein for submission of the Budget and all back-up materials, any such delay in submission shall entitle the Consenting Owners to a corresponding extension in delivering their Budget Approval Notices.

**6.6 Disapproval by Consenting Owners/Bidding.** With respect to each submitted Budget, each Consenting Owner shall approve all items of Common Area Expenses (“CAM Items”) that such Consenting Owner deems acceptable, even if the Budget contains other CAM Items which the Consenting Owner deems unacceptable, such that the Consenting Owner shall have approved as much of the Budget as possible. If a Consenting Owner disapproves of any CAM Items, it must specify its reasons for disapproval in the Budget Approval Notice and the Maintenance Director shall promptly revise and resubmit the same until the Maintenance Director and the Consenting Owner(s) reach agreement on the matters in question. The Maintenance Director and Consenting Owner shall attempt in good faith to reach agreement as to the disapproved items as quickly as reasonably possible and in any event prior to the expiration of the applicable Maintenance Budget Year.

If, prior to the expiration of the applicable Maintenance Budget Year, the Maintenance Director and the majority of the Consenting Owners are unable to agree upon the *inclusion* of a particular CAM Item with the Budget, despite their good faith efforts, said disputed CAM Item shall not be included in the Budget.

If the Maintenance Director and the Consenting Owners are unable to agree upon the *cost* of a particular CAM Item, as reflected in the Budget then the following shall apply:

(i) If the disagreement arises with respect to the First Partial Maintenance Budget Year, the lowest bid for said item, as obtained in Section 6.3, shall be incorporated into the Budget, and

(ii) If the disagreement arises with respect to subsequent Budgets, the Maintenance Director shall promptly submit for rebid each disapproved CAM Item) in accordance with the procedures in Section 6.3 (and if the existing Maintenance Budget Year expires during the foregoing bidding process, the Maintenance Director shall continue to maintain the Common Area based upon the approved portions, if any, of the currently submitted Budget and those portions of the just-expired Budget that relate to disputed CAM Items).

**6.7 Insurance Items.** If the Consenting Owners cannot reasonably agree on the insurance costs to be included within any Budget or if the Maintenance Director fails to acquire the necessary insurance for the Common Area and the insurance coverage has lapsed or will soon lapse,

any Consenting Owner shall have the option (but not the obligation) of immediately acquiring said insurance, in which event the Maintenance Director shall pay to such Consenting Owner the insurance costs within ten (10) days after its receipt of a statement therefor from said Consenting Owner. Notwithstanding the foregoing, a Consenting Owner shall, prior to acquiring the insurance, be required to give the Maintenance Director reasonable notice (e.g., written or telephonic) and reasonable opportunity to obtain the insurance.

**6.8 Non-Reimbursable Items.** Notwithstanding anything herein to the contrary, an Owner shall not be obligated to reimburse the Maintenance Director for any CAM Item which is not part of the Budget except: (i) emergency expenses in accordance with Section 6.9, (ii) unforeseen or extraordinary expenses in accordance with Section 6.10, and (iii) necessary expenditures over which the Maintenance Director has no control (such as utility rate increases or extraordinary demand created by forces of nature and governmentally regulated services).

**6.9 Emergency Expenses.** If the Maintenance Director is required to incur an expense for the emergency repair or replacement of any portion of the Common Area, which expense has not been set forth in an approved Budget, then each Owner shall pay its pro rata share of such expense provided that the Maintenance Director has given each Owner the best and earliest notice of the same that is feasible under the circumstances. For purposes of this Section 6.9, an "emergency" necessitating repair or replacement shall be one which presents an imminent threat or danger of harm to person or property.

**6.10 Unforeseen or Extraordinary Expenses.** If the Maintenance Director reasonably deems it necessary to incur an unforeseen or extraordinary expense (which is not on an emergency basis) for the repair or replacement of any portion of the Common Area, which expense has not been set forth in an approved Budget, the Maintenance Director shall request written approval of such expenditure from the Owners as far in advance of such repair or replacement as is reasonably possible, and such approval shall not be unreasonably withheld or delayed. Any such item which is approved by the majority of the Consenting Owners shall be considered a reimbursable expense provided, however that if requested by any Consenting Owner, the Maintenance Director shall follow the bidding procedures set forth in Section 6.3 with regard to such item and the lowest bid therefore shall be utilized in the Budget.

**6.11 Service Charge.** The Maintenance Director may, subject to the provisions hereof, charge a maximum service charge of seven percent (7%) of all out-of-pocket expenses incurred by the Maintenance Director in performing the services described in Section 3.1 (excluding insurance premiums and utilities) to cover management and administration costs ("Service Charge"). Notwithstanding the foregoing,

(i) The Service Charge shall not exceed Three Hundred Fifty Dollars (\$350.00) for any item of Common Area maintenance without the Consenting Owners' prior written approval, and

(ii) If the Maintenance Director contracts with a management company pursuant to Section 3.1(j) ("Management Company"), then the Maintenance Director shall not be entitled to a Service Charge. The fee of the Management Company shall be a reimbursable expense (subject to the provisions of this Article 6), provided however, that if such fee is an amount which exceeds seven percent (7%) of all out-of-pocket expenses (excluding insurance premiums and utilities) incurred by the Maintenance Director in performing the services described in Section 3.1, such excess amount shall not be reimbursable by the Owners of the Parcels without such Owners' prior written approval, and

(iii) The Common Area expenses shall not include any costs incurred by the Maintenance Director or its agent for office overhead or compensation of its employees except to the extent included in the Service Charge.

**6.12 Nonprofit Basis.** The Maintenance Director agrees to perform its duties under this CAMA on a nonprofit basis with the objective of keeping such expenses at a reasonable minimum.

**7. Billing for Expenses.**

**7.1 (a) Monthly Payment.** Beginning on the first day of the first calendar month of the First Partial Maintenance Budget Year and continuing on the first day of each calendar month thereafter, the Owner of each Parcel (or its respective tenants or agents, as it may direct) shall pay to the Maintenance Director such Owner's monthly proportionate share (set forth in Subsection [e] below of the total Common Area Expenses for the first Partial Maintenance Budget Year and every Maintenance Budget Year thereafter, as set forth in the approved Budget. The first of such

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payments shall include such Owner's pro rata share of the Budget amounts for the period between the Commencement Date and the first day of the first calendar month of the First Partial Maintenance Budget Year, calculated on a per diem basis for those days.

**(b) Year-End Reconciliation.** Within ninety (90) days after the end of the First Partial Maintenance Budget Year and every Maintenance Budget Year thereafter, the Maintenance Director shall send to each Owner a written statement of the total Common Area Expenses actually paid by the Maintenance Director during said Maintenance Budget Year ("Actual Expenses") and the difference between said Owner's pro rata share of the Actual Expenses and the sum of all the monthly payments made by each Owner relative to said Maintenance Budget Year or First Partial Maintenance Budget Year as the case may be ("Reconciliation Statement"). The Reconciliation Statement shall also include corresponding information for the period between the Commencement Date and the first day of the first calendar month of the First Partial Maintenance Budget Year with CAM expenses for such period being prorated on a per diem basis for those days. If the insurance premiums for the Maintenance Director's obligations under the CAMA cannot be segregated from the Maintenance Director's obligations at other sites, then an estimated premium, agreed upon, in writing, by the Consenting Owners, will be permitted. The Reconciliation Statement shall be accompanied by complete copies of invoices, statements and documents supporting the expenses covered by said statement (collectively, "Backup Invoices"). The Maintenance Director shall, within fifteen (15) days after receipt of an Owner's written request, provide to such Owner such additional documentation as the Owner reasonably requests to substantiate the expenses (sometimes referred to herein as "Additional Documentation"), and such Owner's obligation to pay any invoice submitted by the Maintenance Director in the Reconciliation Statement shall be contingent upon its receipt of said Additional Documentation. The Owners and the Maintenance Director shall, within thirty (30) days after the Maintenance Director submits the Reconciliation Statement to the Owners, make such adjustments and payments as necessary so that the Maintenance Director receives the entire amount (but no more) of each Owner's proportionate share of the Actual Expenses for the applicable Maintenance Budget Year or First Partial Maintenance Budget Year as the case may be. Notwithstanding the foregoing, if the Actual Expenses for any single item exceeds the budgeted cost of said item by more than five percent (5%), or if the total CAM Expenses exceed

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the aggregate Budget by more than five percent (5%), the Owners shall not be liable for such excess unless the Consenting Owners have approved such excess in writing. Any reimbursement that may be due by the Maintenance Director to the Owners may, if the Maintenance Director and Owners so agree, take the form of a credit on the Owner's next succeeding installment(s).

(c) **No Reimbursement for Late Billings.** Without limiting any provisions of Section 6 or 7, the Maintenance Director shall not be entitled to reimbursement from any Owner (or its tenants or agents) for any item of Common Area Expenses (including the Service Charge) for which a bill is not submitted to said Owner with all Backup Invoices and Additional Documentation, within the time frames required herein.

(d) **Conversion to Reimbursement in Arrears.** Notwithstanding anything to the contrary in Article 6 or 7, and, without limiting the provisions of subsection (c) above or any other remedies available to the Owners, if the Maintenance Director fails to comply with either (i) the time frame and manner for submission of the Budget for review as set forth in Section 6.4 or (ii) the time frame and manner for submission of Reconciliation Statements, Backup Invoices and Additional Documentation as set forth in Section 7.1(b), and such failure continues for a period of twenty (20) days following the Maintenance Director's receipt of written notice thereof from any Consenting Owner, then the method for reimbursement of Common Area Expenses shall, without further notice, permanently convert to reimbursement of actual expenses as provided herein. Reimbursement of Common Area Expenses shall occur quarterly in arrears (the Maintenance Budget Year being divided into quarters), effective on the first day of the month immediately following Maintenance Director's receipt of the Consenting Owner's notice referenced above.

Upon conversion to reimbursement in arrears based on actual expenses, the following provisions shall apply:

(i) With respect to the first quarterly payment in arrears, all of the Owner's monthly budget payments made during such quarter (prior to conversion to arrears) shall be credited to the amount each such Owner owes at the end of said quarter.

(ii) The Maintenance Director shall not be entitled to reimbursement of all or any portion of an Owner's pro rata share of any item of Common Area

maintenance or insurance premium, the pro rata share of which for said Owner's Parcel exceeds Two Thousand Dollars (\$2,000.00), without such Owner's prior written approval, and

(iii) The Owner of each Parcel (or its respective tenants or agents, as it may direct) shall be billed quarterly in arrears for its pro rata share of all expenses incurred by the Maintenance Director in maintaining and insuring the Common Area pursuant to Section 3.1 and 3.2 above (including the Service Charge if applicable) with the first billing date being the last day of the quarter in which the conversion to arrears occurred. The billing statements shall include complete copies of all Backup Invoices and Additional Documentation supporting the expenses being billed. The bills shall be due and payable within thirty (30) days after receipt of the bills, Backup Invoices and Additional Documentation. Notwithstanding the foregoing, if an Owner does not receive a bill with Backup Invoices and Additional Documentation within one hundred twenty (120) days after the date the expense relating to such bill was incurred, such Owner shall not be obligated to reimburse the Maintenance Director for such bill, and

(iv) Upon the written request of any Consenting Owner, the Maintenance Director shall have the Common Area maintenance work, or any portion thereof designated by said Owner, re-bid in the manner set forth in Section 6.3, and the Owners' shares of said Common Area maintenance work shall thereafter be based on the amount of the lowest bid unless the Maintenance Director first obtains the Consenting Owner's prior written consent to award the contract to a higher bidder. Following a re-bid of any item or items of Common Area maintenance, no Consenting Owner shall have the right to require a subsequent re-bid of the same item or items for a period of at least one (1) year. Notwithstanding the foregoing, the Maintenance Director shall not be required to re-bid any item before the expiration of the term of the applicable contract.

(e) **Proportionate Shares.** The proportionate share of the total insurance premium and other Common Area expenses to be borne by each Owner shall be the percentage set forth in the table below:



<u>Parcel</u>	<u>Parcel Area (square foot)</u>	<u>Percent</u>
Parcel 1	32,290	3.70
Parcel 2	255,951	29.37
Parcel 3	35,453	4.07
Parcel 4	42,987	4.93
Parcel 5	111,275	12.77
Parcel 6	140,681	16.14
Parcel 7	194,365	22.30
Parcel 8	<u>58,528</u>	<u>6.72</u>
TOTAL	871,530	100.00

In the event the Owner of a building expands its building into the Expansion Area shown on Exhibit "A," the above percentages shall be recalculated based upon any increase in the total floor area (excluding mezzanines and basements not used for the sale or display of merchandise) of said building from the figures set forth above. In no event shall the percentage attributable to any Parcel be reduced by reason of the Owner's failure to utilize the maximum Building Area permitted on such Parcel.

Notwithstanding anything to the contrary with the foregoing, the Owner of a Parcel shall not be responsible for its pro rata share as set forth in this Section 7.1 until such time as a building permit for a building on such Parcel is obtained from the appropriate governmental agency. Until such time as building permits are obtained for all Parcels within the Shopping Center, the proportionate share of all Common Area Expenses to be borne by each Owner shall be the percentage obtained by dividing the square footage set forth in the table above for such Parcel that has obtained a building permit by the total square footage set forth in the table above for all Parcels that have obtained building permits.

**7.2 Inspection of Records.** Any Owner may, upon not less than ten (10) days' prior written notice to the Maintenance Director, inspect the Maintenance Director's records for all Common Area maintenance and insurance expenses incurred during the preceding calendar year at the Maintenance Director's General Offices or at such other location reasonably designated by the Maintenance Director at any time during reasonable business hours within one (1) year after the end of said calendar year. If said inspection reveals an overpayment of Common Area maintenance and

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insurance expenses (including the Service Charge), the Maintenance Director shall reimburse the Owner of each Parcel (or its respective tenants or agents, as it may direct) its proportionate share of any such overpayment within thirty (30) days after receipt of notice of determination, and of the amount, of such overpayment. If said inspection reveals an underpayment of Common Area maintenance and insurance expenses (including the Service Charge but excluding all expenses for which a statement was not timely submitted pursuant to Section 7.1 above), the Owner of each Parcel shall reimburse the Maintenance Director its proportionate share of any such underpayment within thirty (30) days after receipt of proper billing in accordance with Section 7.1. If said inspection reveals that the Maintenance Director misstated Common Area maintenance and insurance expenses (singularly or collectively) by more than five percent (5%), the Maintenance Director shall reimburse the person making such inspection for all costs reasonably incurred in making such inspection within thirty (30) days after receipt of notice of determination, and of the amount, of any such misstatement. The Maintenance Director's expenses for any calendar year shall be deemed correct if an Owner does not give the Maintenance Director written notice of any such overpayment or underpayment within the one (1) year period provided.

**7.3 Recalculation of Proportionate Share.** In the event any Owner elects to assume the obligations of the Maintenance Director to maintain, repair, replace and insure such Owner's portion of the Common Area pursuant to Section 10.1 below, the percentages set forth in Section 7.1 for the insurance and Common Area Expenses shall be re-calculated based on the maximum Building Area (excluding Expansion Area) for the remaining Parcels.

**8. Default.**

**8.1 Failure to Pay Common Area Expenses.** In the event any Owner fails or refuses to pay when due its share of any bill for the Common Area Expenses (including the Service Charge), which failure continues for a period of ten (10) days after receipt of written notice thereof, such failure shall constitute a default and legal action may thereafter be instituted against the defaulting Owner by the Maintenance Director or other person paying the expense (including the Service Charge) of the defaulting Owner ("Curing Party") for reimbursement plus interest. Interest shall accrue from the date said bill was due and payable to and including the date said bill is paid at a rate equal to the lesser of (i) the highest rate allowed by law, and (ii) the rate two percent (2%)

above the reference rate of interest charged from time to time to corporate borrowers of the highest credit standard by U. S. Bank (the lesser rate being hereinafter referred to as the "Default Rate"). Furthermore, the Curing Party shall have a lien on the defaulting Owner's Parcel for the amount of said expenses (including the Service Charge) plus accrued interest as set forth above; provided, however, that if there be a bona fide dispute as to the existence of such default or of the amount due and all undisputed amounts are paid, there shall be no right to place a lien on such Owner's Parcel until ten (10) days after such dispute is settled by final court decree or mutual agreement and payment thereof to the Curing Party has not been made.

**8.2 Failure to Pay Taxes.** In the event an Owner fails to pay when due all taxes and assessments described in Article 5 above, which failure continues for a period of ten (10) days after receipt of written notice thereof, such failure shall constitute a default and any other Owner or Prime Lessee ("Curing Owner") may thereafter pay such taxes if such taxes are delinquent and the owing Owner has not commenced and is not duly prosecuting any contest of such taxes. The Curing Owner shall then bill the defaulting Owner for the expenses incurred. The defaulting Owner shall have fifteen (15) days within which to pay the bill. If the defaulting Owner does not so pay, the Curing Owner shall have a lien on the Parcel of the defaulting Owner for the amount of the bill, which amount shall bear interest at the Default Rate from the date of expiration of said fifteen (15) day period until paid; provided, however, that if there be a bona fide dispute as to the existence of such default or of the amount due and all undisputed amounts are paid, there shall be no right to place a lien on such Owner's Parcel until ten (10) days after such dispute is settled by final court decree or mutual agreement and payment thereof to the Curing Party has not been made.

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

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

**8.5 Attorney's Fees.** In addition to the foregoing, in the event any person initiates or defends any legal action or proceeding to enforce or interpret this CAMA, 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) as determined by the court in the same or a separate proceeding.

**8.6 No Waiver.** The failure of a person to insist upon strict performance of any of the terms, covenants, conditions or agreements contained herein shall not be deemed a waiver of any rights or remedies that said person may have, and shall not be deemed a waiver of any subsequent breach or default in the performance of any of the terms, covenants, conditions or agreements contained herein by the same or any other person.

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

**9. Lien for Expenses or Taxes.**

**9.1 Establishing Lien.** The lien provided for in Article 8 above shall only be effective when filed for record by the Curing Owner or Curing Party as a claim of lien against the defaulting Owner in the office of the recorder of the county in which the Shopping Center is located, signed and verified, which shall contain at least:

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

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

**10. Right to Maintain Parcel Separately.**

**10.1 Election.** Any Owner may, at any time and from time to time, upon at least sixty (60) days' prior written notice to the Maintenance Director and the other Owners, elect to assume the Maintenance Director's obligations to maintain, repair, replace and insure such Owner's portion of the Common Area, except for the following items which the Consenting Owners agree cannot be practicably segregated or allocated between the Parcels ("Nonsegregable Costs"). Any other items which the Consenting Owners agree in writing after the date of this CAMA cannot be practicably segregated or allocated between the Parcels shall be included within the definition of Nonsegregable Costs. Each Owner (or its respective tenants or agents, as it may direct) shall continue to proportionately pay the Nonsegregable Costs pursuant to the formula in Article 7. In the event of any such assumption by any Owner, such Owner shall no longer contribute its proportionate share of the segregable maintenance items, and shall maintain, repair and replace its portion of the Common Area at its sole cost and expense and in a manner and at a level of quality at least comparable to other similar retail shopping centers in the geographic area where the shopping center

is located. Any such Owner may also elect to terminate its obligation to maintain, repair, replace and insure its portion of the Common Area by giving at least sixty (60) days' prior written notice to the Maintenance Director, in which event the Maintenance Director shall resume its duties with respect to said Parcel and the Owner so electing agrees to pay for its pro rata share of all Common Area Expenses (including the Service Charge) thereafter incurred by the Maintenance Director in accordance with the formula in Article 7. Anything in the preceding sentence to the contrary notwithstanding, the Owner electing to terminate its obligation to maintain, repair, replace and insure its portion of the Common Area shall return said Common Area to the Maintenance Director in the same quality and condition as the balance of the Common Area, any failure of which shall be corrected at the sole cost and expense of said Owner.

**10.2 Indemnity.** The Owner of any Parcel electing to assume the obligations of the Maintenance Director pursuant to Section 10.1 above agrees to indemnify, defend and hold harmless the Maintenance Director and the Owners and occupants of all other Parcels from and against any and all liabilities, claims, damages, expenses (including, without limitation, reasonable attorney's fees and reasonable attorney's fees on any appeal), judgments, proceedings and causes of action of any kind whatsoever, for injury to or death of any person or damage to any property resulting from the willful misconduct or negligent act or omission of the indemnifying Owner, its agents, contractors or employees in performing (or failing to perform) the assumed obligations of Maintenance Director hereunder.

**11. Responsibility if No Maintenance Director.**

**11.1 Owner's Responsibility.** In the event there should at any time cease to be a Maintenance Director, each Owner shall be responsible for the maintenance, insurance and lighting of its own Parcel according to the standards herein enumerated. In the event any Owner defaults in the performance of such obligations, any other Owner may cause the performance of the obligations of the defaulting Owner and bill the defaulting Owner for the expenses incurred. In such event, the provisions and remedies of Articles 8 and 9 shall apply.

**11.2 Indemnity.** If there is no Maintenance Director, each Owner shall indemnify, defend and hold harmless the other Owners and occupants of all other Parcels from and against any and all liabilities, claims, damages, expenses (including, without limitation, reasonable attorney's

fees and reasonable attorney's fees on any appeal), judgments, proceedings and causes of action of any kind whatsoever, for injury to or death of any person or damage to any property resulting from the willful misconduct or negligent act or omission of the indemnifying Owner, its agents, contractors or employees.

**12. General Provisions.**

**12.1 Successors and Assigns.**

(a) **Persons Bound.** This CAMA shall inure to the benefit of and be binding upon the Owners, their heirs, successors, assigns and personal representatives, and upon any person acquiring a Parcel, or any portion thereof, or any interest therein, whether by operation of law or otherwise. Notwithstanding the foregoing, if any Owner sells or transfers all or any portion of its interest in any Parcel, such Owner shall, upon the sale and conveyance of title, be released and discharged from all of its obligations as Owner in connection with the property sold by it arising under this CAMA after the sale and conveyance of title but shall remain liable for all obligations arising under this CAMA prior to the sale and conveyance of title. The new Owner of any such Parcel or any portion thereof (including, without limitation, any Owner or Lienholder who acquires its interest by foreclosure, trustee's sale or otherwise) shall be liable for all obligations arising under this CAMA with respect to such Parcel or portion thereof after the date of sale and conveyance of title; provided, however, that nothing contained in this paragraph shall be deemed to effect the priority or validity of any lien established under Articles 8 and 9.

**12.2 Duration.** Except as hereinafter provided, the term of this CAMA shall be for a period of sixty-five (65) years ("Primary Period") from the date hereof. Notwithstanding the foregoing, upon the expiration of the Primary Period, the term of this CAMA shall automatically renew for successive periods of ten (10) years each (each such period being referred to as an "Extension Period") unless, at least ninety (90) days prior to the date of expiration of the Primary Period or Extension Period then in effect, the Owner of Parcel 2 delivers to the other Owners in the Shopping Center written notice of termination, in which event, this CAMA shall automatically expire at the end of the Primary Period or Extension Period then in effect. Anything to the contrary in this Section 12.2 notwithstanding, this CAMA shall terminate automatically upon the expiration or earlier termination of the Declaration.

**12.3 Breach Shall Not Permit Termination.** A breach of this CAMA shall not entitle any Owner to terminate this CAMA, 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 CAMA. Any breach of this CAMA shall not defeat or render invalid the lien of any mortgage or deed of trust made in good faith for value, but this CAMA and any liens arising hereunder shall be binding upon and be effective against any Owner whose title is acquired by foreclosure, trustee's sale or otherwise.

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

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

**12.6 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 12.5. Except as otherwise set forth in Section 12.5, in the event an Owner sells its Parcel and becomes the Prime Lessee thereon, said Prime Lessee is hereby appointed the entity to cast the vote or give the consent for said Parcel on behalf of the Owner thereof and is hereby granted all of the rights and remedies granted to the Owner of said Parcel so long as it is the Prime Lessee of said Parcel, anything in this CAMA to the contrary notwithstanding. Notwithstanding the foregoing, in the event the Owner of any Parcel has given notice of its election to self-maintain pursuant to Section 10.1, such Owner shall not be entitled to vote with respect to any aspect of Common Area maintenance in which said Owner no longer participates (but in no event shall this language be construed to eliminate the obligation to obtain such Owner's execution of a formal amendment to this CAMA when an amendment is required for the matter in question).

#### **12.7 Notices.**

(a) **Delivery.** All notices given pursuant to this CAMA shall be in writing and shall be given by personal service, by United States mail or by United States express mail or other established express delivery service (such as Federal Express), postage or delivery charge prepaid, return receipt requested, addressed to the appropriate party at the address set forth below. If a notice must be given to a person other than one designated below, such notice shall be sent to the person and address shown on the then current real property tax rolls in the county in which the Shopping Center is located. All notices to First Party or Albertson's shall be sent to the appropriate party at the address set forth below:

First Party: Leon Peterson  
225 South 200 East  
Salt Lake City, UT 84102

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

With a copy to: Albertson's, Inc.  
Attention: Legal Department  
250 Parkcenter Boulevard  
P.O. Box 20  
Boise, ID 83726

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 CAMA shall be deemed given upon receipt. In the event the Maintenance Director has hired a Management Company to perform Maintenance Director's obligations under this CAMA, the other Owners shall be entitled to rely on notices from such Management Company with respect to the appointment of successor Management Companies.

(b) **Receipt.** For the purpose of this CAMA, 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 subparagraph (a) above, 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 non-delivery by the sending party.

**13. Sale & Sale-leaseback Purchaser.** Notwithstanding anything to the contrary contained in this CAMA, it is expressly agreed that in the event an Owner sells its Parcel (whether or not such sale includes buildings and/or Common Area improvements located thereon) to an unaffiliated third party and thereafter enters into a net lease (including a ground lease or building lease) for such Parcel with such third party or its lessee or sublessee (hereinafter referred to collectively as the "Prime Lessor"), so long as said Owner is in possession of the property as a Prime Lessee the parties hereto shall look solely to said Prime Lessee (and said Prime Lessee shall be liable therefor) for the performance of any obligations either the Prime Lessee or the Prime Lessor shall have under this CAMA and the Prime Lessor shall be relieved of any obligation for the performance of or liability for any of the terms, covenants, conditions or agreements set forth herein relating to either the Prime Lessee or its Parcel.

14. **Severability.** If any term or provision of this CAMA or the application of it to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this CAMA 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 CAMA shall be valid and shall be enforced to the extent permitted by law.

15. **Not a Partnership.** The provisions of this CAMA 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.

16. **No Third Party Beneficiary Rights.** This CAMA 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.

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

18. **Entire Agreement.** This CAMA 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 CAMA shall be construed as a whole and not strictly for or against any party.

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

20. **Joint and Several Obligations.** In the event any party hereto is composed of more than one (1) person, the obligations of said party shall be joint and several.

21. **Recordation.** This CAMA shall be recorded in the office of the recorder of the county in which the Shopping Center is located.

22. **Counterparts.** This CAMA may be executed in counterparts, each of which shall be deemed an original and all of which shall constitute a single instrument. Signature and acknowledgment pages may be detached from individual counterparts and attached to a single or multiple original(s) in order to form a single or multiple original(s) of this document.





**SCHEDULE I**  
To Common Area Maintenance Agreement

Description of Shopping Center

Parcel 1

Lot 1 of that certain ALBERTSON'S 10400 SOUTH STREET SUBDIVISION, recorded ~~June~~ <sup>September 5,</sup> 2002, in Book ~~2002P~~ at Page ~~243~~, as Instrument No. 8343187, in the Recorder's Office in Salt Lake County, Utah (the "Subdivision").

Situate in South Jordan City, Salt Lake County, Utah.

Parcel 2

Lot 2 of the Subdivision.

Situate in South Jordan City, Salt Lake County, Utah.

*27-17-100-018*

Parcel 3

Lot 3 of the Subdivision.

Situate in South Jordan City, Salt Lake County, Utah.

Parcel 4

Lot 4 of the Subdivision.

Situate in South Jordan City, Salt Lake County, Utah.

Parcel 5

Lot 5 of the Subdivision.

Situate in South Jordan City, Salt Lake County, Utah.

Parcel 6

Lot 6 of the Subdivision.

Situate in South Jordan City, Salt Lake County, Utah.

BK 8646 PG 4457

Parcel 7

Lot 7 of the Subdivision.

Situate in South Jordan City, Salt Lake County, Utah.

Parcel 8

Lot 8 of the Subdivision.

Situate in South Jordan City, Salt Lake County, Utah.





## CONSENT AND AGREEMENT

THIS CONSENT AND AGREEMENT ("Consent") is made a part of and appended to that certain Common Area Maintenance Agreement (the "CAMA").

### RECITALS

A. Jones Land Company, L.L.C., a Utah limited liability company ("Jones"), is the fee owner of Parcels 1, 4, 5, 6, 7 and 8 of that certain Shopping Center ("Jones Property"), as described in the CAMA to which this Consent is appended.

B. To provide the basis of an integrated retail sales complex, Jones desires to have the Declaration as a lien or encumbrance on the Jones Property to benefit and encumber the Jones Property by the terms and conditions of the CAMA as set forth herein.

### AGREEMENT

NOW, THEREFORE, in consideration of the foregoing Recitals and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Jones hereby consents and agrees as follows:

1. Jones hereby consents to, ratifies, confirms, approves, assumes and agrees to benefit from and to be bound by and to perform each and every term, covenant, condition and agreement contained in the CAMA as the Owner (as such term is defined in the CAMA) of the Jones Property as if each thereof were set forth in this Consent. Each of said terms, covenants, conditions and agreements shall be binding upon, inure to the benefit of, and be enforceable by the parties to the CAMA (and by Jones, as the case may be) and their successors and assigns.

2. Jones does hereby subordinate all of Jones' right, title and interest in and to the Jones Property to the CAMA and the CAMA shall be a benefit to and an encumbrance upon Jones' fee interest in and to the Jones Property.

3. All notices to Jones that are required to be given to an Owner pursuant to the CAMA shall be sent to the address set forth below:

Jones: Jones Land Company, L.L.C.

Ruth S. Jones  
Ronnie S. Jones  
9487 Angus Dr. S. Jordan UT  
Attention: 84695

The person and address set forth above may be changed at any time by Jones upon written notice to all other Owners, as set forth in the CAMA.

4. This Consent represents the complete agreement by Jones and supercedes all prior agreements, oral or written, with respect to the subject matter hereof. This Consent shall continue in full force and effect notwithstanding any renewals, amendments or modifications of the CAMA.

5. Jones warrants and represents that no consent, approval or joinder of any other person or entity is necessary in order for this Consent to be valid and enforceable against Jones. Jones acknowledges that the CAMA to which this Consent is appended was supported by good and valuable consideration.

DATED: June 27, 2002.

Jones Land Company, L.L.C.,  
a Utah limited liability company

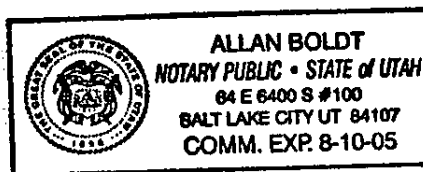
Ruth S. Jones Ronnie S. Jones  
By: Ruth S. Jones Ronnie S. Jones  
Its: Managers

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

The foregoing instrument was acknowledged before me this 27 day of June, 2002, by Ruth S. Jones / Ronnie S. Jones, the Managers of Jones Land Company, L.L.C., a Utah limited liability company.

My commission expires:

Allan Boldt  
Notary Public in and for the State of Utah  
Residing at \_\_\_\_\_



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