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c/o Associated Food Stores, Inc.  
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1850 West 2100 South  
Salt Lake City, Utah 84119

Ent 866395 Bk 1058 Pg 653  
Date: 25-Sep-2023 03:06:01PM  
Fee: \$40.00 Check Filed By :KM  
CARBON COUNTY RECORDER, Recorder  
CARBON COUNTY CORPORATION  
For: FIRST AMERICAN TITLE INSURANCE

Tax Parcel Identification No(s): [ 01-2042-0075 ]  
01-2042-0094, 01-2042-0095, 01-2042-0096  
01-2042-0097, & 01-2042-0098

## DECLARATION OF RESTRICTIONS AND EASEMENTS

This Declaration of Restrictions and Easements (this "Declaration") is made and entered into on September 22, 2023, by and between SPARK UTAH, LLC, a Utah limited liability company ("Spark"), and LIN'S SUPERMARKETS, INC., a Utah corporation ("Lin's").

### 1. PRELIMINARY

**1.1. Lease Agreement.** Spark and Lin's (each a "Party" and, collectively, the "Parties") are parties, by assignment, to that certain Lease Agreement, dated June 16, 1980 (the "Lease") pursuant to which Spark leases to Lin's that certain grocery store and related improvements in Carbon County, Price, Utah as described on Exhibit A hereto (the "Lin's Property"). Spark also owns the properties adjacent to the Lin's Property as described on Exhibit B hereto (the "Spark Properties").

**1.2. Purchase and Sale.** Spark and Lin's entered into that certain Purchase and Sale Agreement, dated August 30th, 2023, pursuant to which Spark sold and Lin's purchased, the Lin's Property (the "Purchase Agreement").

**1.3. Shopping Center Covenants.** Pursuant to the Purchase Agreement and in connection with the purchase and sale of the Lin's Property, the Parties are entering into this Declaration and establishing the Restrictions (as defined in Section 2.1(o) below) to facilitate the continued use and operation of the shopping center for their mutual benefit and satisfaction.

(a) **Original Declaration.** The Lin's Property, the Spark Properties, together with three adjacent parcels, as described on Exhibit C hereto (the "Adjacent Properties") were originally owned by a single property owner and subject to that certain Declaration of Easements and Covenants, dated February 8, 1983 and recorded in the office of the Carbon County Recorder on March 14, 1983, as Entry No. 167540 in Book 226, Page 159, as amended by: (i) that certain First Amended Declaration of Easements and Covenants, dated October 11, 1983 and recorded in the office of the Carbon County Recorder on October 11, 1983 as Entry No. 001202 in Book 232, Page 665; and (ii) that certain Amendment to First Amended Declaration of Easements and Covenants, dated April 23, 1992 and recorded in the office of the Carbon County Recorder on April 24, 1992 as Entry No. 34660 in Book 315, Page 812 (collectively, the "Original

Declaration”). As between Lin’s and Spark, in the event of any conflict between the terms and provisions of this Declaration and the Original Declaration, the terms and provisions of this Declaration will control.

**1.4. Subsequent Sale of Outparcels.** At various times between 2009 and 2019, the original owner of the Shopping Center conveyed the Adjacent Properties to new owners. At the time of such conveyances, the owner and buyers entered into the following additional Declarations of Easements, Covenants and Restrictions:

(a) **2009 Declaration.** On May 12, 2009, Creekview Station, Inc., entered into that certain Declaration of Easements, Covenants, and Restrictions and recorded the same in the Office of the Carbon County Recorder on May 15, 2009, as Entry No. 800951, Book 699, Page 614 (the “2009 Declaration”). For the avoidance of doubt, the 2009 Declaration continues to benefit and burden the Shopping Center and one of the Adjacent Properties known as the Tire Center Outparcel. Notwithstanding anything set forth in the 2009 Declaration to the contrary, including without limitation, Section 20, as between the Spark Properties and the Lin’s Property, the Parties hereby state and agree as follows:

(i) As stated in Section 2 of the 2009 Declaration, the term “Shopping Center Owner” as used in the 2009 Declaration will include Lin’s with respect to the Lin’s Property and Spark with respect to the Spark Properties. In accordance with the foregoing: (i) where consent or approval of the “Shopping Center Owner” is required under the 2009 Declaration, such consent will require both the consent of Spark and Lin’s; (ii) where the “Shopping Center Owner” has the right to act under the 2009 Declaration (e.g. Sections 3-5 and 12, among others), both Spark and Lin’s, acting together, or independently without the consent of the other, has the right to act; and (iii) except as otherwise expressly stated herein, all rights and privileges, including without limitation, all easements, access rights, rights of indemnification, and enforcement rights that inure to the benefit of the “Shopping Center Owner” will inure to both Lin’s and Spark.

(ii) There is a scrivener’s error in fourth line of Section 7(b) of the 2009 Declaration. That line states: “Outparcel Owner shall have no obligation to maintain the buildings, sidewalks, and walkways on the Outparcel.” That line should state: “Shopping Center Owner shall have no obligation to maintain the buildings, sidewalks, and walkways on the Outparcel.” Spark will use its best faith efforts to amend the 2009 Declaration with the “Outparcel Owner” to correct this error. Nevertheless, as between Spark and Lin’s any obligation to maintain any portion of the “Outparcel”, as defined in the 2009 Declaration is Spark’s responsibility. Should Lin’s assume responsibility for common area maintenance of the Commonly Maintained Parcels (as defined in Section 1.5(a) below), as permitted in Section 1.5(c) below, and if the 2009 Declaration is not amended as provided herein, Spark remains obligated to maintain the buildings, sidewalks, and walkways on the Outparcel if required by the Outparcel Owner, and Spark will defend, indemnify

and hold harmless Lin's from any costs, damages or other obligations associated therewith; any costs associated with such maintenance will not be charged nor prorated to Lin's.

(iii) The right of first refusal to purchase the Outparcel as detailed in Section 15, shall be sole and exclusive to Spark, to the extent such right exists and continues, and Lin's waives any right or claim to such right.

(iv) In the event either Party defaults, as the "Shopping Center Owner" in its obligations under the 2009 Declaration, as divided and amended hereby, the non-defaulting Party shall have the right, but not the obligation, to self-help and to remedy any such default at the defaulting Shopping Owner's sole cost and expense (which will incur interest at the rate of 18% per annum until paid or reimbursed, as applicable). Moreover, each Party hereby agrees to defend, hold harmless, and indemnify the other Party for any loss, cost, damage or other liability associated with such Party's default under the 2009 Declaration.

(v) The right to payment under Paragraph 8 of the 2009 Declaration and all other rights to reimbursement under the 2009 Declaration shall be sole and exclusive to Spark and Lin's waives any right or claim to such right.

(vi) As between Lin's and Spark, in the event of any conflict between the terms and provisions of this Declaration and the 2009 Declaration, the terms and provisions of this Declaration will control.

(b) **2010 Declaration.** On May 10, 2010, Creekview Station, Inc., entered into that certain Declaration of Easements, Covenants, and Restrictions and recorded the same in the Office of the Carbon County Recorder on June 9, 2010, as Entry No. 805952, Book 723, Page 478 (the "2010 Declaration"). For the avoidance of doubt, the 2010 Declaration continues to benefit and burden the Shopping Center and one of the Adjacent Properties known as the Oil Lube Outparcel. Notwithstanding anything set forth in the 2010 Declaration to the contrary, including without limitation, Section 20, as between the Spark Properties and the Lin's Property, the Parties hereby state and agree as follows:

(i) As stated in Section 2 of the 2010 Declaration, the term "Shopping Center Owner" as used in the 2010 Declaration will include Lin's with respect to the Lin's Property and Spark with respect to the Spark Properties. In accordance with the foregoing: (i) where consent or approval of the "Shopping Center Owner" is required under the 2010 Declaration, such consent will require both the consent of Spark and Lin's; (ii) where the "Shopping Center Owner" has the right to act under the 2010 Declaration (e.g. Sections 3-5 and 12, among others), both Spark and Lin's, acting together, or independently without the consent of the other, has the right to act; and (iii) except as otherwise expressly stated herein, all rights and privileges, including without limitation, all easements, access rights, rights of indemnification, and enforcement rights that inure to the benefit of the "Shopping Center Owner" will inure to both Lin's and Spark.

(ii) There is a scrivener's error in fourth line of Section 7(b) of the 2010 Declaration. That line states: "Outparcel Owner shall have no obligation to maintain the buildings, sidewalks, and walkways on the Outparcel." That line should state: "Shopping Center Owner shall have no obligation to maintain the buildings, sidewalks, and walkways on the Outparcel." Spark

will use its best faith efforts to amend the 2010 Declaration with the “Outparcel Owner” to correct this error. Nevertheless, as between Spark and Lin’s any obligation to maintain any portion of the “Outparcel”, as defined in the 2010 Declaration is Spark’s responsibility. Should Lin’s assume responsibility for common area maintenance of the Commonly Maintained Parcels (as defined in Section 1.5(a) below), as permitted in Section 1.5(c) below, and if the 2010 Declaration is not amended as provided herein, Spark remains obligated to maintain the buildings, sidewalks, and walkways on the Outparcel if required by the Outparcel Owner, and Spark will defend, indemnify and hold harmless Lin’s from any costs, damages or other obligations associated therewith; any costs associated with such maintenance will not be charged nor prorated to Lin’s.

(iii) The right of first refusal to purchase the Outparcel as detailed in Section 15, shall be sole and exclusive to Spark, to the extent such right exists and continues, and Lin’s waives any right or claim to such right.

(iv) In the event either Party defaults, as the “Shopping Center Owner” in its obligations under the 2009 Declaration, as divided and amended hereby, the non-defaulting Party shall have the right, but not the obligation, to self-help and to remedy any such default at the defaulting Shopping Owner’s sole cost and expense (which will incur interest at the rate of 18% per annum until paid or reimbursed, as applicable). Moreover, each Party hereby agrees to defend, hold harmless, and indemnify the other Party for any loss, cost, damage or other liability associated with such Party’s default under the 2010 Declaration.

(v) The right to payment under Paragraph 8 of the 2010 Declaration and all other rights to reimbursement under the 2010 Declaration shall be sole and exclusive to Spark and Lin’s waives any right or claim to such right.

(vi) As between Lin’s and Spark, in the event of any conflict between the terms and provisions of this Declaration and the 2010 Declaration, the terms and provisions of this Declaration will control.

(c) **2019 Declaration**. On June 27, 2019, Creekview Plaza, LLC, entered into that certain Declaration of Easements, Covenants, and Restrictions and recorded the same in the Office of the Carbon County Recorder on June 27, 2019, as Entry No. 849525, Book 932, Page 662 (the “2019 Declaration”, together with the Original Declaration, the 2009 Declaration and the 2010 Declaration, the “Existing Covenants”). For the avoidance of doubt, the 2019 Declaration continues to benefit and burden the Shopping Center and one of the Adjacent Properties known as the U-Haul Outparcel. Notwithstanding anything set forth in the 2019 Declaration to the contrary, as between the Spark Properties and the Lin’s Property, the Parties hereby state and agree as follows:

(i) As defined in the 2019 Declaration, the term “Owner of the Retained Property” will include Lin’s with respect to the Lin’s Property and Spark with respect to the Spark Properties. In accordance with the foregoing: (i) where consent or approval of the “Owner of the Retained Property” is required under the 2019 Declaration, such consent will require both the consent of Spark and Lin’s; (ii) where the “Owner of the Retained Property” has the right to act under the 2019 Declaration, both Spark and Lin’s, acting together, or independently without the consent of the other, has the right to act; and (iii) except as otherwise expressly stated herein, all

rights and privileges, including without limitation, all easements, access rights, and enforcement rights that inure to the benefit of the “Shopping Center Owner” will inure to both Lin’s and Spark.

(ii) As between Lin’s and Spark, in the event of any conflict between the terms and provisions of this Declaration and the 2019 Declaration, the terms and provisions of this Declaration will control.

**1.5. Current Common Area Maintenance; Option to Maintain the Lin’s Parcel and/or the Shopping Center and Adjacent Properties.** After giving effect to the Existing Covenants, the maintenance of the Shopping Center Common Areas is as follows:

(a) The Spark Properties, the Lin’s Property, the Tire Center Outparcel and the Oil Lube Outparcel (collectively, the “Commonly Maintained Parcels”) are all currently, at the time of this Declaration, maintained by Spark. Each of the foregoing properties is responsible for their pro-rata share of Common Area expense relating to the listed properties as follows:

- (i) Spark – 54.87%
- (ii) Lin’s – 41.39%
- (iii) Tire Center – 1.87%
- (iv) Oil Lube – 1.87%

(b) The U-Haul Outparcel self-maintains and is responsible for all Common Areas on the U-Haul Outparcel and does not participate in cost sharing with the Commonly Maintained Parcels.

(c) Upon the sale of one or more of the Spark Properties, Spark will have the option to file an amendment to this Declaration (an “Amendment”) that sets forth the new Owner of a Parcel and the pro rata share of Common Area expense of such Parcel. As identified on Site Plan, Parcel 2 shall have a pro rata share of Common Area expense of 10.86% upon a conveyance by Spark; Parcel 3 shall have a pro rata share of Common Area expense of 19.39% upon conveyance by Spark; Parcel 4 shall have a pro rata share of Common Area expense of 17.14% upon conveyance by Spark; Parcel 5 shall have a pro rata share of Common Area expense of 2.88% upon conveyance by Spark; and Parcel 6 shall have a pro rata share of Common Area expense of 4.61% upon conveyance by Spark.

(d) The Owner of the Lin’s Property will have the option, but not the obligation, to assume management and maintenance of the Commonly Maintained Parcels, or any portion thereof, with the right of reimbursement by the owners of the Commonly Maintained Parcels, by providing sixty (60) days written notice of such election to the Owner of the Spark Properties. Upon such election, if at all, except as otherwise expressly set forth herein, the Owner of the Lin’s Property will have all rights and obligations under the Existing Covenants to assess and collect each owners share of Common Area expenses.

(e) Lin’s and Spark agree and acknowledges that certain parking lot repairs are needed on the Spark Properties, the Oil Lube Parcel, and the Tire Center Parcel (herein, the

Parking Lot Repairs”). Spark will complete the Parking Lot Repairs on or before December 31, 2023. Notwithstanding any other language within this Declaration, including Lin’s rights set forth in Section 4.8(c), Lin’s shall pay 41.39% of the actual cost of the Parking Lot Repairs within ten (10) days of completion of the Parking Lot Repairs.

**THE REMAINING AND FOLLOWING SECTIONS OF THIS DECLARATION ARE INTENDED TO GOVERN THE USE AND OPERATION OF LIN’S PROPERTY AND THE SPARK PROPERTIES VIS A VIS EACH OTHER AND, EXCEPT AS EXPRESSLY SET FORTH IN SECTION 1 ABOVE, DO NOT IMPACT THE USE AND/OR OPERATION OF THE U-HAUL OUTPARCEL, THE TIRE CENTER OUTPARCEL OR THE OIL LUBE OUTPARCEL (WHICH SHALL CONTINUE TO BE GOVERNED BY THE EXISTING COVENANTS).**

**2. CERTAIN DEFINED TERMS APPLICABLE TO THE SPARK PROPERTIES AND LIN’S PROPERTY.**

**2.1. Definitions.** In addition to any other terms that may be defined herein, the following terms shall have the definitions given to them below.

(a) **“Building Area”** means the area on each Parcel outlined, depicted or otherwise shown as a “Building Area” on the Site Plan attached hereto as Exhibit D within which a building or commercial structure may be located.

(b) **“Common Area”** means the following: (1) common drive lanes, driveways, and entry and exit areas as shown on the Site Plan and all related improvements including without limitation all signage, ramps, striping, and other elements of vehicular common access areas, (2) common lighting within the Addition, which includes all utility infrastructure servicing such common lighting and the utility costs thereof, (3) all common signage within the Shopping Center which includes all utility infrastructure servicing such common lighting and the utility costs thereof, (4) snow and ice removal, salt or sand application, parking lot cleaning, sweeping, and striping, common landscaping, common irrigation (if any) (collectively, the “Common Services”), and (5) all common drainage improvements serving the Shopping Center (if any), and (6) all areas or improvements designated by the Consenting Owners as a Common Area via duly recorded amendment hereto. Common Area shall not include (i) all pavement, sidewalks, curbs, parking area, parking improvements not otherwise designated as a Common Area on the Site Plan, (ii) all Building Area, Service Facilities, or canopies, including drive through canopies, which extend over the Common Area, together with any columns or posts supporting the same.

(c) **“Consenting Owners”** means (i) the Owner of the Lin’s Property and (ii) the Owner(s) of the Spark Properties having a majority of the total square footage of the remaining land in on the Spark Properties. For matters requiring the consent or approval of the Consenting Owners, the Owner of a Parcel may designate or appoint by written instrument the Prime Lessee or other tenant of a Parcel to cast any vote or give any consent with respect to such Parcel on behalf of the Owner.

(d) **“Environmental Laws”** means the Comprehensive Environmental Response, Compensation and Liability Act of 1980, the Toxic Substances Control Act, the Clean

Water Act, the Resource Conservation and Recovery Act and any other similar federal, state or local law, rule or regulation respecting Hazardous Materials, together with all rules and regulations promulgated thereunder and all present or future amendments thereto.

(e) “Floor Area” means the total number of square feet in a Building, whether or not actually occupied (including basement, subterranean, balcony and mezzanine space), measured from the exterior line of the exterior walls and from the center line of any party or common interior walls without deduction for columns, walls or other structural or nonstructural components.

(f) “General Common Area Improvements” mean the traffic directional arrow signs and other signs permitted under Article 4, paving, bumper guards and curbs, landscape planters and other landscaped areas in the Common Area, commonly metered parking lot lighting, perimeter walls and fences, common utility pads and equipment serving the Common Area, sidewalks and walkways in the Common Area.

(g) “Ground Floor Area” means the total number of square feet on the ground floor of a building, whether or not actually occupied (excluding basement, subterranean, balcony and mezzanine space), measured from the exterior line of the exterior walls and from the center line of any party or common interior walls without deduction for columns, walls or other structural or nonstructural components.

(h) “Hazardous Materials” mean gasoline, diesel, motor fuel and similar petroleum-based products (collectively, “Petroleum”), underground storage tanks, asbestos and asbestos containing materials, poly chlorinated biphenyls, urea-formaldehyde and any other hazardous or toxic substances, pollutants, contaminants, wastes or materials as defined under any Environmental Laws.

(i) “Lienholder” means any mortgagee under a mortgage, or a trustee or beneficiary under a deed of trust, constituting a lien on the fee simple title to any Parcel. A Lienholder shall not be deemed to be an Owner for purposes of this Declaration until such time as said Lienholder acquires fee simple title to its Parcel(s) by foreclosure, trustee’s sale or otherwise. If the consent or approval of any Lienholder is required or otherwise obtained with respect to any matter, then the consent or approval of the mortgagee of any mortgage or the holder of the beneficial interest under any deed of trust (but not the trustee) shall be sufficient for purposes of this Declaration.

(j) “National Chain” means a retail store or restaurant chain located in the Shopping Center which also operates at least twenty-five (25) other retail stores or restaurants in three (3) or more states, all under the same trade name, and which utilizes a prototypical sign design and a generally recognized logo or trademark emblem.

(k) “Owner” means the record holder of fee simple title to a Parcel.

(l) “Parcel” means each of the parcels shown on the Site Plan and identified as the Lin’s Property and the Spark Properties, as more particularly described in Exhibit D attached hereto and as shown or depicted on the Site Plan.

(m) “Person” or “person” means an individual, partnership, firm, association, corporation, limited liability company, trust, governmental agency, administrative tribunal or any other form of business or legal entity.

(n) “Prime Lessee” means (i) an Owner of a Parcel who sells such Parcel (whether or not such sale includes any buildings and/or Common Area improvements located thereon) to an unaffiliated third person and thereafter enters into a lease for the entire Parcel (including a ground lease and/or a building lease) with such third person or its assigns; or (ii) a Person who enters into a ground lease (as the lessee) with the Owner of a Parcel (as the lessor) covering an entire Parcel for a term of twenty-five (25) years or more (including extension options). A Prime Lessee includes the successors and assigns of the Prime Lessee, but does not include the sublessees, licensees or concessionaires of the Prime Lessee.

(o) “Restrictions” mean the easements, covenants, restrictions, liens and encumbrances contained in this Declaration.

(p) “Self-Parked” means (i) having a minimum of five (5) parking stalls per 1,000 square feet of Floor Area used as retail space (not including restaurant or office space) and ten (10) parking stalls per 1,000 square feet of Floor Area used as restaurant or office space, and (ii) meeting all applicable laws, rules or regulations (without obtaining any variance) governing or relating to parking accommodations. For purposes of this Section 2.1(p), a business which offers only fast-food, take-out or food delivery services, and does not offer any sit-down or “full service dining, shall be deemed to be retail space as opposed to restaurant space.

(q) “Service Facilities” mean the loading docks, trash compactors and enclosures, bottle storage areas, exterior coolers, electrical and refrigeration facilities, shopping cart return corrals and other similar service facilities.

(r) “Shopping Center” means the Lin’s Property and the Spark Properties.

(s) “Site Plan” means the site plan for the Shopping Center attached hereto as Exhibit D and incorporated herein by this reference, as the same may be modified from time to time in accordance with, and as permitted by, the terms and conditions of this Declaration.

## **2.2. Building Location.**

(a) Location of Buildings. All buildings and other structures (except those otherwise permitted in the Common Area pursuant to Section 2.3 below) shall be placed or constructed upon each Parcel only in the Building Area shown on the Site Plan for such Parcel; provided, however, that canopies, eaves and roof overhangs (including columns or posts supporting the same), normal foundations, utility cabinets and meters, signs and doors for ingress and egress with respect to a building may project from the Building Areas into the Common Area of the Parcel upon which such building is located. All buildings and other structures or improvements constructed or placed on any Parcel shall be constructed and maintained in accordance with all local, state and federal laws, rules and regulations applicable thereto. Buildings may be located (or relocated) anywhere within a Building Area provided such building otherwise satisfies the self-parking requirements of Section 1.1(c) below. It is anticipated that Parcels 5 and 6 of the Shopping Center will be redeveloped at some point after the filing of this



Declaration. The Consenting Owners agree that the restriction set forth in Sections 2.2(a)-(b) and 2.3(a)-(b) will not prohibit the redevelopment of such Parcels so long as such redevelopment meets the other Sections of this Declaration, provided that Parcels 5 and 6 each continue to meet the requirements of Section 2.2(c) and any such redevelopment will not modify any drive aisles or access points.

(b) Common Area Improvements. As of the date of this Declaration, the Common Area improvements are generally depicted on the Site Plan, including the general location of drive lanes, curb cuts and vehicular points of access to public streets. The location of such drive lanes, curb cuts and vehicular points of access shall not be changed or relocated without the written consent of the Consenting Owners. The location and configuration of the other Common Area improvements, including without limitation General Common Area Improvements, may not be changed in any material manner without the prior written consent of the Consenting Owners, which consent shall not be unreasonably withheld, conditioned or delayed.

(c) Self-Parked. All Parcels shall be Self-Parked, and all other Restrictions in this Declaration governing the development (*e.g.*, those set forth in this Article 2) or the use (*e.g.*, those set forth in Article 5) of said Parcels shall be subject to the requirement that each Parcel be Self-Parked, unless prior written consent is received from the Consenting Owners. Notwithstanding, however, the Parcels and each respective Parcel's number of parking spaces existing as of the date this Declaration as set forth on Exhibit D (Site Plan) shall be "grandfathered in" or otherwise allowed under this Section 2.2(c) in their current format. Likewise, in the event that Parcels 5 and 6 are partially or entirely redeveloped, such Parcels shall be considered to have met the requirements of this Section 2.2(c) so long as such redevelopment does not decrease the number of parking spaces existing as of the date of this Declaration as set forth on Exhibit D.

### 2.3. Common Area Uses.

(a) Use. The Common Area is hereby reserved for the sole and exclusive use of the Owners of the Shopping Center and their respective tenants, subtenants and licensees, and the contractors, employees, agents, licensees, customers and invitees of such Owners, tenants, subtenants and licensees. The Common Area may be used for landscaping, patios, seating, vehicular driving, parking (except that there shall be no multi-level parking) and pedestrian traffic and for no other purpose unless otherwise specifically provided in this Declaration. Notwithstanding anything herein to the contrary, the Owner, Prime Lessee or occupant of the Lin's Property may also locate shopping cart corrals in the Common Area of such Parcel, including in any parking stall, provided that the Lin's Property continues to be Self-Parked.

(b) Changes and Additions. No buildings or other structures not approved in writing by the Consenting Owners shall be placed in the Common Area except Service Facilities or as otherwise permitted in this Declaration. The sizes and arrangements of Common Area improvements, including without limitation service drives, parking areas and striping, recycle centers, shopping cart corrals and all buildings and structures approved pursuant to this Section 2.3(b), may not be changed without the Consenting Owners' prior written approval; provided, however, that nothing in this Section 2.3 shall be interpreted to require the Consenting Owners' approval for the construction, alteration or relocation of (i) any Service Facilities to the extent that they are located to the rear or sides of Buildings and do not unreasonably impede access to any

other Building or (ii) any shopping cart corrals or similar facilities on Lin's Property. All requests for approval under this Section 2.3(b) shall be processed in accordance with Section 2.6. Notwithstanding, however, the buildings or structures located in the Common Area that exist as of the date this Declaration as set forth on Exhibit D (Site Plan) shall be "grandfathered in" or otherwise allowed under this Section 2.3(b) in their current format.

(c) Limited License for Construction Activities. Each Owner, as grantor, grants to each other Owner, as grantee, and its agents, contractors, subcontractors and employees, a limited non-exclusive license over the Common Area located on the Parcel(s) owned by the grantor Owner for the performance of all work required or permitted to be performed by the grantee Owner under Section 1.1; provided, however, the exercise of such license shall be conducted in a manner to minimize any disruption to the business activities of the grantor Owner and its tenants, shall not exceed a reasonable period of time, shall not disrupt vehicular and pedestrian traffic, and shall otherwise be exercised in a reasonable manner. The grantee Owner shall repair the Common Area and the Common Area Improvements located on the grantor Owner's Parcel to the condition they were in immediately prior to the exercise of such license.

#### **2.4. Type and Design of Buildings.**

(a) Architectural Compatibility. Each building and other structure in the Shopping Center, now and in the future, shall be of first-quality construction and architecturally designed so that its exterior elevations (including without limitation signs, materials and color) will be architecturally and aesthetically compatible and harmonious with all other buildings in the Shopping Center. No building for which building design drawings have not been approved may be constructed, nor the exterior of any building changed in any way (including without limitation signs and color) without the Consenting Owners' prior written approval (which shall be obtained in accordance with the procedures set forth in Section 2.6) as to the exterior elevations (including without limitation signs and color) of the building to be constructed or modified. No Consenting Owner may arbitrarily or unreasonably withhold or delay its approval of the proposed construction or modification of a building if it is architecturally and aesthetically compatible and harmonious with the other buildings in the Shopping Center. Notwithstanding anything herein to the contrary, Lin's standard signs and logos, including without limitation signs identifying any tenant, subtenant, licensee, or concessionaire located and operating on Lin's Property, as they may exist from time to time, and the opening, closing, modification or relocation of any door or entrance to the building on Lin's Property, shall not require approval. Except as otherwise prohibited by Sections 5.1-5.4, any uses, concepts, franchises, or tenants that are commonly located on outparcels of shopping centers of similar size, nature, and geographical region as the Shopping Center shall be presumptively approved under this Section 2.4 for Parcels 5 and/or 6.

(b) Attachments. No Owner or other Person shall have the right to make any attachment whatsoever to another Owner's building in the Shopping Center without the prior written approval of the Owner of such other building, which may be withheld in the sole and absolute discretion of the Owner of such other building. If the Owner of such other building approves the requested attachment, the Owner or Person making the attachment shall, prior to making such attachment, obtain the prior written approval of the Owner of such other building (which may be withheld in its sole and absolute discretion) of the drawings and specifications detailing the attachment. Any such attachment shall be at the sole cost and expense of the Owner

or Person making the attachment and shall be in strict conformance with the approved drawings and specifications detailing the same.

(c) **Fire Protection.** All buildings shall either be equipped with automatic sprinkler systems which meet all the applicable standards of the National Fire Protection Association or shall be constructed in such a manner as to not adversely affect the fire ratings of any other building in the Shopping Center. The purpose of this Section 2.4(c) is to allow buildings on each Parcel to be fire-rated as separate and distinct units for purposes of insurance, without deficiency charge, and for building code purposes. Notwithstanding, Section 2.4(c) shall not apply to buildings within the Shopping Center, in their current format, that were previously constructed as of the date this Declaration was duly filed.

(d) **Structural Integrity.** No building or other structure in the Shopping Center shall be built in such a manner as to adversely affect or compromise the structural integrity of any other building or structure in the Shopping Center.

(e) **Height.** All buildings in the Shopping Center shall be single story, provided that building may have a mezzanine if they otherwise meet the requirements of this Declaration. No building or other structure (other than Center Pylon Signs and parking lot lighting) located on any Parcel shall exceed thirty-five and one-half (35.5) feet in height (including mechanical fixtures and equipment and screening for the same), except for the peak of any architectural design feature located at the front entry of the building located on the Lin's Property, which shall not exceed forty-four (44) feet in height. No mezzanine or basement shall be used for the sale or display of merchandise or for the offer or provision of retail services to the public. Notwithstanding the foregoing to the contrary, the Owner or Prime Lessee of the Lin's Property may install a flagpole on the Lin's Property that exceeds the height limitations set forth in this Section 2.4(e) and display a flag thereon as it deems appropriate, provided such flagpole complies with any applicable zoning ordinances and building codes. Notwithstanding, Section 2.4(e) shall not apply to buildings within the Shopping Center, in their current format, that were previously constructed as of the date this Declaration was duly filed. Any additions, modifications and/or new construction of any of the buildings existing as of the date of this Declaration will comply with this Section 2.4(e).

(f) **Exterior Maintenance.** Each Owner shall maintain (or cause to be maintained) the exterior of any building located on such Owner's Parcel(s) in a quality and condition comparable to that of first class shopping centers of comparable size and nature located in the same geographic area as the Shopping Center. All Service Facilities shall be attractively screened from view from the customer parking areas. Except as would fall within the definition of Common Areas or Common Services, each Owner shall maintain, repair, and replace the parking area, pavement, and other parking improvements within such Owner's respective Parcel in first class condition, as comparable to other shopping centers of the same comparable size, nature, and geographical area.

## **2.5. Construction Requirements.**

(a) **Standards.** All work performed in the construction, maintenance, repair, replacement, alteration or expansion of any building, structure, sign or Common Area

improvements located in the Shopping Center shall be effected as expeditiously as possible and in such a manner as not to unreasonably interfere, obstruct or delay (i) access to or from the Shopping Center (or any part thereof), (ii) customer vehicular parking in that portion of the improved Common Area located in front of any building constructed in the Shopping Center, or (iii) the receiving of merchandise by any business in the Shopping Center, including without limitation access to Service Facilities. All Common Area improvements shown on the Site Plan for each Parcel shall be constructed and installed in advance of, or concurrently with, the construction of a building on such Parcel. Staging for the construction, replacement, alteration or expansion of any building, structure, sign or Common Area improvements located in the Shopping Center, including without limitation the location of any temporary buildings or construction sheds, the storage of building materials and the parking of construction vehicles and equipment, shall be limited to that portion of the Shopping Center approved in writing by the Consenting Owners; **provided, however**, to the fullest extent possible, the staging area should be self-contained on the Parcel where the construction activity is to occur. Unless otherwise specifically stated herein, the Person contracting for the performance of such work (the "**Contracting Party**") shall, at its sole cost and expense, promptly repair and restore, or cause to be promptly repaired and restored, to its prior condition all buildings, structures, signs and Common Area improvements damaged or destroyed in the performance of such work.

(b) **Liens.** The Contracting Party shall not permit any mechanic liens to attach to any Parcel for any work done or materials furnished in connection with the performance of the work described in **Section 2.5(a)** above; **provided, however**, that prior to any distraint or foreclosure of any mechanic lien, the Contracting Party may contest the validity of any such mechanic lien, but upon a final determination of the validity thereof, the Contracting Party shall cause the mechanic lien to be promptly satisfied and released of record. The Contracting Party shall, within thirty (30) days after receipt of written notice from the Owner or Prime Lessee of any Parcel encumbered by any such mechanic lien or claim of mechanic lien, cause any such outstanding mechanic lien or claim of mechanic lien to be released of record or transferred to a bond or other security in accordance with applicable law, failing which the Owner or Prime Lessee of said Parcel shall have the right, at the Contracting Party's expense, to transfer said mechanic lien to a bond or other security. The Contracting Party 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 attorneys' fees and reasonable attorneys' fees on any appeal), liens, claims of lien, judgments, proceedings and causes of action of any kind whatsoever, arising out of or in any way connected with the performance of such work, unless caused by the negligent or willful act or omission of the indemnified Person, its tenants, subtenants, agents, contractors or employees.

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

(d) Insurance. During the course of any construction or repair as to any building on a Parcel, the person responsible for such construction or repair shall obtain and maintain, and shall cause all contractors and subcontractors performing any work to obtain and maintain, the following policies of insurance:

(i) Comprehensive public liability insurance (as to which the other Owners shall be additional insureds) on an “occurrence basis” against claims for “personal injury” including, without limitation, bodily injury, death or property damage occurring on, in or about the Shopping Center and the adjoining streets, sidewalks and passageways, with such insurance to be in single limit coverage in the minimum amount of Three Million Dollars (\$3,000,000.00);

(ii) **Workers’ compensation insurance for all employees of the entity conducting such construction who are engaged in such construction, in the amounts established by law; and**

(iii) **“Builder’s completed value all risk” insurance against “all risks of physical loss” including collapse and transit coverage, during construction or repair, with deductibles not to exceed Five Thousand Dollars (\$5,000.00), covering the total value of work performed and equipment, supplies and materials furnished.**

(e) Condition of Parcels Pending Construction. Prior to the construction of any building on a Parcel, the Owner of each Parcel shall, at its expense: (i) grade its Parcel to a level or grade consistent and compatible with the grade of the adjoining property; (ii) maintain its Parcel (including the Common Area located thereon) in a neat and tidy condition, including removing any trash, refuse, litter or other debris; (iii) remove any noxious weeds and keep all other weeds and vegetation thereof to a height of not more than ten (10) inches; and (iv) use reasonable efforts to minimize the creation and distribution of dust from its Parcel that may detrimentally affect the Shopping Center.

**2.6. Approval Procedures.** Before any action requiring the Consenting Owners’ approval is commenced, sufficient information shall be sent to the Consenting Owners to enable the Consenting Owners to make a reasonable decision as to the proposal. No Consenting Owner shall have the right to unreasonably withhold or delay its approval to the proposal unless otherwise specified in this Declaration. Each Consenting Owner must approve or disapprove the proposal within thirty (30) days after receipt of the proposal, and, if such Consenting Owner disapproves the proposal, it shall provide a written explanation in reasonable detail of the reasons for its disapproval. If a Consenting Owner rejects or disapproves the proposal and fails to provide such explanation within the 30-day period, or if a Consenting Owner fails to respond to a request within such 30-day period, such Consenting Owner shall be deemed to have approved the same provided that, when the approval was sought, the Person seeking the approval stated in writing to such Consenting Owner that, if a disapproval accompanied by an explanation thereof was not made within the 30-day period, or if a Consenting Owner fails to respond within such 30-day period, then the Consenting Owner’s approval would be deemed to have been given. If the proposal is disapproved as provided herein, then an alternate proposal may be submitted, which alternate proposal shall be handled in the same manner as the initial proposal.

### **3. EASEMENTS**

**3.1. Ingress, Egress and Parking.** Each Owner, as grantor, hereby grants to the other Owners, as grantee, and their respective tenants, contractors, employees, agents, licensees and invitees, and the subtenants, contractors, employees, agents, licensees and invitees of such tenants, for the benefit of each Parcel, a nonexclusive easement for ingress and egress by vehicular and pedestrian traffic and vehicular parking upon, over and across that portion of the Common Area located on the grantor Owner's Parcel(s), except for those areas devoted to Service Facilities or drive-up or drive through customer service facilities located on the grantor Owner's Parcel. The reciprocal rights of ingress and egress set forth in this Section 3.1 shall apply to the Common Area for each Parcel as such area shall be increased pursuant to Section 2.3 above.

**3.2. Utility Lines and Facilities.**

(a) **Easements.** Each Owner and Prime Lessee, as grantor, hereby grants to the other Owners and Prime Lessees, as grantees, for the benefit of each Parcel, a nonexclusive easement under, through and across the Common Area of the grantor Owner's Parcel(s) for the installation, operation, maintenance, repair and replacement of water drainage systems or structures, water mains, sewers, water sprinkler system lines, telephones, communication lines, pneumatic tube systems, electrical conduits or systems, gas mains and other public or private utilities or underground systems facilitating communication and/or coordination of business operations between two or more Parcels. Each Owner and Prime Lessee agrees to grant such additional easements as are reasonably required by any public or private utility for the purpose of providing the utility lines and facilities described herein, provided such easements are not otherwise inconsistent with the provisions of this Declaration.

(b) **Construction Requirements.** All utility systems, structures, mains, sewers, conduits, lines and other utilities shall be installed and maintained below the ground level or surface of such easements except for ground mounted electrical transformers and such other facilities as are required to be above ground by the utility providing such service (including without limitation temporary service required during the construction, maintenance, repair, replacement, alteration or expansion of any buildings, signs or Common Area improvements located in the Shopping Center). The installation, operation, maintenance, repair and replacement of such easement facilities shall not unreasonably interfere with the use of the improved Common Area or with the normal operation of any business in the Shopping Center. The grantee shall bear all costs related to the installation, operation, maintenance, repair and replacement of such easement facilities, shall repair to the original specifications any damage to the Common Area resulting from such use and shall provide as-built plans for all such facilities to the Owners and Prime Lessees of all Parcels upon which such utility lines and facilities are located within thirty (30) days after the date of completion of construction of same.

(c) **Relocation.** At any time and from time to time the Owner or Prime Lessee of a Parcel shall have the right to relocate on its Parcel any utility line or facility installed pursuant to the foregoing grant of easement which is then located on the land of such Owner or Prime Lessee, provided that any such relocation (i) shall be performed only after sixty (60) days' notice of the Owner's or Prime Lessee's intention to undertake the relocation shall have been given to the Owner and Prime Lessee of each Parcel served by the utility line or facility, (ii) shall not unreasonably interfere with or diminish utility service to the Parcel(s) served by the utility line or facility, (iii) shall not reduce or unreasonably impair the usefulness or functionality of the utility

line or facility, (iv) shall be performed without cost or expense to the Owner or occupant of any other Parcel, and (v) shall provide for the original and relocated area to be restored to their original specifications. The Owner or Prime Lessee performing such relocation shall provide as-built plans for all such relocated utility lines and facilities to the Owners and Prime Lessees of all Parcels served by such utility lines and facilities within thirty (30) days after the date of completion of such relocation. In all events, any relocated easement shall be located so as to not unreasonably interfere with the Owner's use and the party requesting the relocation shall include and incorporate all reasonable requests of such other Owner in connection with such relocation.

**3.3. Signs.** Each Owner and Prime Lessee, as grantor, hereby grants to the other Owners and Prime Lessees, as grantees, for the benefit of each Parcel, an easement under, through and across the Common Area of the grantor's Parcel(s) for the installation, operation, maintenance, repair and replacement of the free-standing signs referred to in Section 4.3 of this Declaration and all utility lines and facilities appurtenant thereto. Except where otherwise specifically stated herein to the contrary, the grantee(s) shall bear all costs related to the installation, maintenance, repair and replacement of its free-standing sign and appurtenant facilities, shall repair to the original specifications any damage to the Common Area resulting from such use and shall provide as-built plans for all such facilities to the Owners and Prime Lessees of all Parcels upon which such facilities are located within thirty (30) days after the date of completion of construction of same.

**3.4. Building Encroachments.** Each Owner and Prime Lessee, as grantor, hereby grants to the other Owners and Prime Lessees, as grantees, for the benefit of each Parcel, an easement for any portion of any building or other structure located on any such Parcel which may encroach into or over the grantor's adjoining Parcel(s); provided, however, the easement for footings, piers, piles, grade beams and building encroachments does not exceed two (2) feet and (b) the easement for canopies, eaves and roof overhangs does not exceed four (4) feet, provided that in each such event, any such encroachment does not adversely affect the right or ability of the Owner or Prime Lessee of the Parcel being encroached to develop the same or construct a building or other permitted improvement thereon. Anything in this Section 3.4 to the contrary notwithstanding, there shall be no easement for the benefit of Parcels 2, 3 or 5 with respect to any footing, building, canopy, eave or roof overhang encroachment onto Lin's Property by any building, structure or other improvement, including canopies, eaves and roof overhangs, located on Parcels 2, 3 or 5. The easements granted in this Section 3.4 shall survive the termination of this Declaration and shall last so long as the encroaching building is standing following its initial construction or following its reconstruction where such building is substantially restored to its prior condition following a casualty or condemnation.

**3.5. Self Help.** Each Owner and Prime Lessee, as grantor, hereby grants to the other Owners and Prime Lessees, as grantees, for the benefit of each Parcel, an easement to enter the grantor's Parcel(s) for the following purposes:

(a) To perform such work on the grantor's Parcel(s) as is necessary to cure any default by the grantor Owner (or the grantor Prime Lessee, as the case may be) this Declaration or the Existing Covenants, provided and to the extent the grantee Owner (or the grantee Prime Lessee, as the case may be) has the express right to cure said default under this Declaration or the Existing Covenants; and

(b) To perform any obligations or exercise any other rights the grantee Owner (or the grantee Prime Lessee, as the case may be) has under this Declaration or the Existing Covenants.

#### **4. OPERATION AND MAINTENANCE OF COMMON AREA**

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

**4.2. Employee Parking.** Notwithstanding anything to the contrary in this Declaration, areas to be used for motor vehicle parking by employees of occupants of the Shopping Center may be designated within the Shopping Center from time to time with the prior written approval of the Consenting Owners. In the event employee parking areas are designated as provided herein, the employees of any Owner or occupant of any part of the Shopping Center shall use only those portions of the Common Area designated for such motor vehicle parking Purposes. In no event shall any employee parking area in the Shopping Center (other than from employees of the occupant of Lin's Property) be designated within 300 feet of the front of any building located on Lin's Property. The authority herein granted shall be exercised in such manner as not to discriminate against any Owner or occupant of the Shopping Center.

#### **4.3. Signs.**

(a) **Center Pylon Signs.** The sign for the Owner of the Lin's Property shall be given the most prominent location on the Shopping Center Pylon Sign with the top designation on the Shopping Center Pylon Sign. Provided the amount of signage otherwise permitted by any governmental authority to the Lin's Property is not adversely affected thereby, designations for not more than eight (8) other businesses in the Shopping Center shall also be permitted on the Center Pylon Signs below the sign for the Lin's Property. The cost of constructing, installing, maintaining, repairing and replacing the Center Pylon Sign structures 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. If a Reader Board is intended for use by all businesses operating in the Shopping Center, the cost to construct, install, maintain and repair the same shall be Common Area expense. Each Person displaying a designation on a Center Pylon Sign shall supply and maintain its own sign fascia and can. Any change or modification of the design of the Center Pylon Sign structures, including the size, design and location of sign fascia, thereon shall be subject to the Consenting Owners' prior written approval (which shall be obtained in accordance with the procedures set forth in Section 2.6). Notwithstanding anything herein to the contrary, Lin's, other Persons occupying at least 5,000 square feet of Floor Area in the Shopping Center, and any National Chain may use such standard fascia as they from time to time use generally in carrying on their businesses. The Consenting Owners may waive any of the foregoing restrictions or requirements concerning the type, size, appearance or location of Center Pylon Signs or approve any variation of such restrictions or requirements, but may not waive or vary the allocation of the costs to construct, install, maintain or repair the same.

(b) **Monument Signs.** Subject to governmental approval, the Owner of any Parcel shall have the right to a free-standing monument sign on each of such Parcels at the locations



therefor designated on the Site Plan, which location may be on the Parcel or in an area on adjoining land where an easement has been granted for a monument sign; provided, however, in no event shall any Owner or occupant of such Parcels be permitted to contemporaneously display a business designation on a monument sign and on a Center Pylon Sign. No portion of any such monument sign (or any design feature thereof) shall exceed an elevation of five (5) feet above the street level of the nearest adjacent street. In no event shall the sign area of any such monument sign exceed twenty-four (24) square feet, with a maximum of four (4) feet in height and six (6) feet in width. Each monument sign shall identify only the business or services located or provided on the Parcel on which such monument sign is located (or for which an easement has been granted for such Parcel). The cost of designing, constructing, installing, lighting, maintaining, repairing and replacing each monument sign shall be paid by the Owner or occupant of the Parcel on which the sign is located. The design of each monument sign structure, and the size, design and location of the sign fascia used shall be subject to the approval of each of the Consenting Owners (which shall be obtained in accordance with the procedure set forth in Section 2.6).

(c) Building Signs. All exterior building signs shall be restricted to identification of the businesses or services located or provided therein. No exterior building sign shall be placed on penthouse walls, extend above the building roof or be painted on the exterior building surface. No Monument Sign, exterior building sign, freestanding sign or other sign in the Shopping Center shall utilize flashing, moving, scrolling, reader-board lights or similar features or appurtenances. Notwithstanding anything in this Section 4.3(c) to the contrary, if and when vehicular drive-up and drive through customer services facilities are approved on any of Parcels pursuant to Section 5.3, there may be menu boards (including electronic menu boards), speakers, displays and associated drive through order facilities located on such Parcels.

(d) Seasonal Sales Area Signs. If the Owner, Prime Lessee or occupant of the Lin's Property leases, subleases or licenses the use of the Lin's Property Seasonal Sales Area pursuant to Section 4.5 below, such lessee, sublessee or licensee may place signs within the Lin's Property Seasonal Sales Area identifying the business being conducted thereon and the products being sold, provided that such signs (i) shall comply with all applicable laws; (ii) shall not utilize flashing, moving, scrolling, reader-board lights or similar features or appurtenances; and (iii) shall be promptly removed at the conclusion of the seasonal sales activities being conducted thereon.

(e) No Other Signs. Except for the signs permitted in this Section 4.3, there shall be no other signs in the Shopping Center, except traffic and directional signs.

**4.4. Protection of Common Areas**. Each Owner and Prime Lessee shall have the right to take such steps as it deems necessary to prevent those Persons not authorized by this Declaration to use the Common Areas from using the Common Areas for ingress, egress, parking, or any other purpose. Such steps shall include without limitation the construction of fences, walls or barricades along the boundary lines of any portion of the Shopping Center except along the common boundary line of any Parcel with any other Parcel; provided, however, that any impairment of access to or from the Shopping Center, or any part thereof, shall require the Consenting Owners' prior written approval, which may be withheld in each such Consenting Owner's sole and absolute discretion.

**4.5. Outside and Seasonal Sales**. No portion of the Common Area may be used for the display and sale of merchandise or services, except as follows:

(a) **Sidewalks on Lin's Property.** The Owner, Prime Lessee or occupant of the Lin's Property and the Spark Properties may use the sidewalks directly in front of the building located on such Parcel for (i) the display and sale of merchandise and services compatible with the business being conducted on such Parcel, including without limitation the display and sale of bags of salt, snow and ice removers, gardening and landscaping supplies and materials, video rental stands (such as Red Box), propane gas tanks and seasonal merchandise (such as pumpkins, pine cones, etc.); (ii) for the occasional operation of a "smoker" or similar device used to cook or smoke meat and other food products for sale to the public; and (iii) for seating and eating areas (including chairs, benches and tables) pertaining to any fast food, deli or similar business activities conducted within or from the building on such Parcel. During any period of use of the sidewalk areas pursuant to this Section 4.5(a), the Owner, Prime Lessee or occupant of Lin's Property and Spark Properties shall keep the sidewalk areas utilized by it in a safe, neat, clean and attractive manner, including sweeping and removal of snow, ice or other debris. Notwithstanding anything in this Section 4.5(a) to the contrary, any use of the sidewalk on Lin's Property permitted herein shall not completely block the sidewalk or force customers or invitees of the Shopping Center to walk in drive lanes.

(b) **Lin's Property Seasonal Sales Area.** The Owner, Prime Lessee or occupant of the Lin's Property may use, and may license third parties to use, the area(s) in the Common Area located on the Lin's Property that is shown or marked on the Site Plan attached hereto as Exhibit D as the "Seasonal Sales Area" for the display and sale of seasonal merchandise and products (including without limitation the display and sale of Christmas trees, fireworks and spring planting products and supplies, and the operation of a snow cone or shaved ice stand), subject to the following restrictions: (i) during any period of usage, the Owner, Prime Lessee or occupant of Lin's Property shall, or shall cause any licensee to, maintain the Seasonal Sales Area in a safe, neat and clean condition, including sweeping and removing any debris; (ii) sales activities in the Seasonal Sales Area shall be limited to not more than 150 days in the aggregate during any calendar year (excluding, however, any usage for a snow cone or shaved ice stand); (iii) after a seasonal sale activity is concluded, all booths, stands, displays and other structures shall be removed and the Common Area shall be promptly restored to its condition immediately prior to said seasonal sale activity at the sole cost and expense of the Owner, Prime Lessee or occupant of Lin's Property; (iv) such seasonal sales activities shall not be prohibited by any applicable city ordinances; and (v) such seasonal sales activities shall not unreasonably interfere with the free movement of vehicular traffic within the Shopping Center or with access to or from the Shopping Center, or any part thereof. If the Owner, Prime Lessee or occupant of the Lin's Property is entitled to conduct seasonal sales pursuant to this Section 4.5, then it may license another Person to conduct any seasonal sale in the Lin's Property Seasonal Sales Area. Subject to the terms set forth above, the Owner, Prime Lessee or occupant of Lin's Property may sell and/or allow others to sell in its Seasonal Sales Area any merchandise whatsoever, and may otherwise use its Seasonal Sales Area for any purpose it may desire, at any time, without restriction.

**4.6. Prohibited Activities.** Picketing and the distribution of pamphlets, handbills, flyers or similar materials within the Shopping Center shall be prohibited.

**4.7. Lighting.** The lighting in the Common Area shall be kept on during those dawn, dusk and nighttime hours that fall one-half hour before and after the hours of operation of the store on Lin's Property, which may be 24 hour operation; provided, however, that such hours need not

be maintained in the event of failure of power, restrictive governmental law or regulations, riots, insurrection, war, act of God, or other reason of a like nature not the fault of the party responsible for such lighting, in which instance performance of the foregoing covenant shall be excused. Parking lot lighting in the Common Area of each Parcel shall be metered separately and the electricity therefor shall be paid the Owner of such Parcel.

**4.8. Maintenance of Common Areas.**

(a) Standards. The Parcels shall be kept neat, orderly, planted in grass and trimmed until improved and constructed. The parties hereto shall maintain the Common Areas in good condition and repair in accordance with the Existing Covenants.

(b) Maintenance Obligation. Notwithstanding anything to the contrary contained in this Agreement, initial responsibility for maintenance of the Common Areas shall be vested in Spark who shall maintain the Common Areas to the standards set forth in the Existing Covenants and shall be entitled to reimbursement for certain costs incurred in connection with such maintenance as set forth in the Existing Covenants. Subject to the mutual agreement of the Parties, a third party may be appointed as an agent of the parties to maintain the Common Areas in the manner as above outlined. Said third party may receive for such agency a fee that is mutually acceptable to the Parties to cover supervision, management, accounting and similar fees, which sums are to be included in the general maintenance expense paid by the respective owners of the Common Areas.

(c) Share of Common Area Expense. The proportionate share of the Common Area costs to be borne by each Owner shall be the percentages set forth in Section 1.5(a) above. The foregoing notwithstanding, and in addition to other rights set forth herein, the Owner of the Lin's Property may, in its sole discretion, elect to maintain the Common Areas on the Lin's Parcel in lieu of Section 4.8(b). If the Owner of the Lin's Property, makes the election to self-maintain, the Owner of the Lin's Property will be relieved of any obligations for payment, reimbursement or otherwise related to any other Common Area expenses on the Commonly Maintained Parcels, or otherwise. Likewise, if the Owner of the Lin's Property elects to self-maintain, any Common Area costs incurred by Lin's in connection with the Common Areas on the Lin's Property will not be subject to reimbursement by any other Owners. Notwithstanding, the Owner of the Lin's Parcel may not make the election contained in this Section 4.8(c) until eighteen (18) calendar months after the date first set forth above.

(d) Audit; Disputes. Each Owner shall have the right, exercisable by each of them not more frequently than once in any calendar year, to audit all books and records pertaining to Common Area expenses, utilizing a representative of such auditing Owner's choice. In the event of a dispute regarding any Common Area expense, the Parties shall have 45 days to negotiate a settlement of the disputed charge. If the Parties are unable to resolve their differences regarding the disputed charge, then the Parties shall appoint an expert who shall make the decision. If the Parties cannot agree on an expert then the Parties, within 30 days after the expiration of the above-referenced 45 day period, shall each select an independent expert and such experts shall decide the matter and if they are unable to so decide the matter, then the two independent experts shall, within 30 days after the expiration of the previously mentioned 30 day period, appoint a third independent expert whose decision shall be final. Costs will be allocated so that the Parties each pays its own

expert and shall split the costs of the third expert. If either Party fails to engage an expert as required, the other party shall send written notice of the same to the non-engaging party and thereafter if said party still does not engage an expert within 30 days after said notice, then all disputed charges will be determined by the appointed expert.

(e) Taxes. Each of the parties hereto agrees to pay or cause to be paid, prior to delinquency, directly to the appropriate taxing authorities all real property taxes and assessments which are levied against that part of the Common Areas owned by it.

## 5. USE RESTRICTIONS

### 5.1. Exclusive Uses

(a) Lin's Property Grocery and Pharmacy Exclusives. Except as expressly provided in Sections 5.1(b) and 5.1(c), no part of the Shopping Center other than Lin's Property shall be used (i) as a grocery store or supermarket; (ii) as a bakery, pastry shop, delicatessen, or coffee shop; or (iii) for the sale of any pharmaceutical products requiring the services of a registered pharmacist. For purposes of this Declaration, and subject to Section 5.1(c) below, a "grocery store or supermarket" means any store or business offering or selling goods, items and other products customarily offered for sale or sold in grocery stores and supermarkets, including without limitation: vegetables, fruits and produce for off-premises consumption; fresh or frozen meat, fish or poultry products; deli and delicatessen products for off-premises consumption; milk, cheese, packaged or container ice cream, and other dairy products for off-premises consumption; canned and packaged food products for off-premises consumption; soft drink, fruit juices, coffee and other beverage products for off-premises consumption; health and beauty products; soaps and detergents; candy and confectionary products for off-premises consumption; cigarette and tobacco products; bread, cookies, donuts, pastries and other bakery products for off-premises consumption; over-the-counter drugs, medicines and medical supplies and products; and beer and other alcoholic beverages for off-premises consumption.

(b) Incidental Uses. The restrictions and prohibitions set forth in Section 5.1(a) shall not apply to a store or business offering for sale any food, grocery, bakery, deli, cigarette, tobacco, detergents and similar items generally offered for sale in a grocery store or supermarket, provided: (i) the total area devoted to the display and sale of such items, including aisles, shelf space and display areas, does not exceed in the aggregate the lesser of 2,500 square feet or fifty percent (50%) of the Floor Area, and (ii) the retail sales derived from the sale of such items by such business within the Shopping Center does not exceed ten percent (10%) of the total gross sales of such business within the Shopping Center.

(c) Permitted Uses. Notwithstanding Section 5.1(a) above, the following shall not be deemed to be a "grocery store or supermarket" or other business offering beverages or food for off-premises consumption for purposes of this Section 5.1: (i) a restaurant, sandwich shop, or fast food restaurant selling sandwiches or other cooked or prepared foods; (ii) a take-out service preparing food on premises take out or delivery for off-premises consumption, such as, by way of example, "Papa Murphy's Pizza," "Dominos" and "Little Caesar's Pizza;" (iii) a store primarily selling ice cream and/or candy; or (iv) a health food store of less than 3,500 square feet of Floor Area primarily engaged in the sale of vitamins, minerals, herbs, natural foods and dietary

supplements, such as, by way of example, “General Nutrition Center,” but not engaged in the sale of bakery or delicatessen goods, fresh or frozen meat, fish or poultry, or produce.

## 5.2. General Restrictions.

(a) Retail Use Restrictions. No part of the Shopping Center shall be used (i) for an automotive maintenance or repair facility (except that a tire store shall be permitted on Parcels 7 or 8, provided that any area used to store or display new, used or discarded tires shall be enclosed and screened off from public view), (ii) a second hand or surplus store, or (iii) for any entertainment or recreational facility or (iv) for a training or educational facility. As used herein, (X) the phrase “entertainment or recreational facility” shall include without limitation a theater; a bowling alley; a skating rink; a gym, health spa, fitness studio or exercise facility, other than a fitness facility of less than 2,000 square feet, such as a Curves or Day Spa; a dance hall; a billiard or pool hall; a massage parlor (except that a therapeutic massage facility such as “Massage Envy” shall be allowed); or a game parlor or video arcade (including any store containing more than four [4] electronic games); and (Y) the phrase “training or educational facility” shall include without limitation a trade school, college, barber or beauty school, reading room, place of instruction or any other operation catering primarily to students or trainees as opposed to providing instructional services to retail customers, provided that training or educational facility is permitted on Parcel 4 with an building square footage not to exceed 10,000 square feet and so long as Parcel 4 continues to be Self-Parked.

(b) Special Use Restrictions. No part of the Shopping Center shall be used (i) as a bar, tavern or cocktail lounge, unless such bar or cocktail lounge is incidental to a restaurant or other approved establishment; (ii) as an adult or sexually oriented business, such as an adult or pornographic book store, a video store or an adult- or sexually-oriented lingerie store (such as “Blue Boutique,” but not “Victoria’s Secret”); (iii) as a hotel, motel, residence suite, mobile home park or trailer court; (iv) as a warehouse, manufacturing facility or other industrial purpose; (v) as a veterinarian office or animal kennel; (vi) for a business renting, leasing, selling, painting or repairing boats, motor vehicles or trailers; (vii) for any bankruptcy sales, liquidation sales or going out of business sales; (viii) as a car wash or automotive detail shop; or (ix) as a discount or “dollar” store, such as “Family Dollar” or “Dollar General.” Notwithstanding the foregoing, Parcels 4 or 5 may be used as a full service car wash or automobile detail shop where attendants are on duty to wash, dry and detail automobiles, such as “SuperSonic Car Wash,” “Mister Car Wash,” “Bischoff Car Wash & Detail,” or other similar car wash or detail shop provided any area used for detailing automobiles is entirely enclosed within a building or similar structure and the layout and site plan are approved by the Consenting Owners in writing in advance. Notwithstanding the above language, a “discount or ‘dollar’ store, such as ‘Family Dollar,’ ‘Dollar Tree,’ or ‘Dollar General’ shall be permitted on Parcel 2 in the current format existing on Parcel 2 as of the date of this Declaration.

(c) No part of the Shopping Center shall be used for the uses as set forth on Exhibit E.

5.3. Drive-up and Drive Through Facilities. No vehicular drive-up or drive through customer service facilities shall be located in the Shopping Center unless there is sufficient room for “stacking” of at least seven (7) vehicles waiting to use such facilities in order to prevent the

blocking of drive aisles in the Common Area. Notwithstanding the above language, a vehicular drive-up or drive through customer service facility may be located on Parcels 5 and/or 6 so long as the layout and site plan are approved by the Consenting Owners in writing in advance.

**5.4. Mall Restrictions.** There shall be no open or enclosed malls in the Shopping Center unless the Consenting Owners have first given their written approval.

**5.5. Hazardous Materials.** No Owner, Prime Lessee, tenant or occupant of any part of the Shopping Center shall use or permit the use, handling, generation, storage, release, disposal or transportation of Hazardous Materials on, about or under its Parcel except in the ordinary course of its business and in compliance with all Environmental Laws. Nothing herein shall be interpreted or construed as prohibiting the Owner, Prime Lessee or occupant of Lin's Property from storing, displaying or selling cleaning and other products generally held for sale to the public by grocery stores.

## **6. CASUALTY AND CONDEMNATION**

**6.1. Casualty.** If all or any portion of any building in the Shopping Center is damaged or destroyed by fire or other casualty, the Owner of the Parcel on which such building is located shall either (a) promptly restore or cause to be restored the remaining portion of such building in a manner consistent with this Declaration, or (b) remove the building or damaged portion thereof, together with all rubble and debris related thereto, grade the area on which such building (or removed portion thereof) was situated to the level of the adjoining property and in such a manner as not to adversely affect the drainage of the Shopping Center or any portion thereof, and either cover the area affected by such removal with a one inch asphalt or gravel dust cap or landscape the same with irrigated sod. After any such removal, the Owner of such Parcel, at its sole cost and expense, shall keep the same in accordance with Section 2.5(e) until any buildings are constructed or reconstructed thereon.

### **6.2. Condemnation.**

(a) Building Restoration. If all or any portion of any building in the Shopping Center is taken or damaged as a result of the exercise of the power of eminent domain or any transfer in lieu thereof ("Condemnation"), the Owner of such building shall have the same obligations with respect to restoration or removal of the building and restoration of the underlying area as are set forth in Section 6.1.

(b) Allocation of Award. If all or any portion of any Parcel in the Shopping Center is taken or damaged as a result of a Condemnation (a "Condemned Parcel"), the Owner of the Condemned Parcel shall be entitled to the entire award or purchase price paid for the Condemned Parcel; provided, however, that nothing contained herein shall affect any other Person's right to seek severance damages for its Parcel, provided the award of such severance damages does not reduce or diminish the amount which would otherwise be paid to the Owner of the Condemned Parcel. The Owner of the Condemned Parcel shall restore or cause to be restored the remaining portion of the Condemned Parcel as near as practicable to the condition immediately prior to such Condemnation to the extent, but only to the extent, of any condemnation proceeds allocated by the court or condemning party, as the case may be, to such restoration and actually

received by the Owner of the Condemned Parcel. Any restoration of the Condemned Parcel which involves a change in the configuration of the Common Area or the sizes and arrangements thereof from that shown on the Site Plan shall require the Consenting Owners' prior written approval. Notwithstanding the above, this Section 6.2 is not intended to and shall not alter the allocation of any award between the Owner of a Condemned Parcel and any tenant of such Condemned Parcel pursuant to the terms of any lease or other agreement between the parties.

**7. INDEMNIFICATION.**

Each Owner of a Parcel (an "Indemnifying Owner") shall, during the term of this Declaration (and thereafter, for incidents occurring during the term of this Declaration), indemnify, defend and hold harmless each other Owner from and against any and all liabilities, claims, damages, expenses (including without limitation reasonable attorneys' fees and reasonable attorneys' fees on any appeal), judgments, proceedings, and causes of action of any kind whatsoever arising during the period of such Indemnifying Owner's ownership of a Parcel, for any injury to or death of any person or damage to any property occurring in or about the Shopping Center resulting from the willful misconduct or negligent acts or omissions of such Indemnifying Owner or its contractors, employees, agents, successors or assigns.

**8. GENERAL PROVISIONS**

**8.1. Covenants Run With the Land.** This Declaration and each Restriction created hereby on each Parcel shall be a burden on that Parcel, shall be appurtenant to and for the benefit of the other Parcels and each part thereof and shall run with the land. Notwithstanding the foregoing, the Restrictions in Section 5.1(a), (b) shall be appurtenant to and for the benefit of only Lin's Property and each part thereof and may be waived in writing only by the Owner and Prime Lessee of Lin's Property without the joinder of any other Person.

**8.2. Successors and Assigns.** This Declaration and the Restrictions created hereby shall inure to the benefit of and be binding upon the Owners, their heirs, 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 and delivery of the Transfer Notice (as hereinafter defined), be released and discharged from all of its obligations as Owner in connection with the property sold by it arising under this Declaration after the sale and conveyance of title but shall remain liable for all obligations arising under this Declaration prior to the sale and conveyance of title. The new Owner of any such Parcel or any portion thereof (including without limitation any Owner or Lienholder who acquires its interest by foreclosure, trustee's sale, deed-in-lieu of foreclosure or otherwise) shall be liable for all obligations arising under this Declaration with respect to such Parcel or portion thereof after the date of sale and conveyance of title. As used herein, "Transfer Notice" means a written notice given to the Consenting Owners by any Owner selling or transferring all or any portion of its interest in any Parcel, which Transfer Notice shall (i) state the names, current addresses and current phone numbers of both the transferor and transferee and (ii) be accompanied by a copy of the deed or other legal document effecting such transfer and showing the legal description of the Parcel or interest therein being sold, transferred or conveyed.

**8.3. Duration.** The term of this Declaration shall be for a period of sixty-five (65) years from the date hereof (the "Primary Period"). Upon the expiration of the Primary Period, the term of this Declaration 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, as applicable, the Consenting Owners deliver to the other Owners in the Shopping Center written notice of termination, in which event, the Declaration shall automatically expire at the end of the Primary Period or Extension Period then in effect. Nothing in this Section 8.3 shall affect the duration of those easements created by this Declaration which are expressly designated as perpetual.

**8.4. Injunctive Relief.** In the event of any violation or threatened violation by any Person of any of the Restrictions, any or all of the Owners and Prime Lessees of the property included within the Shopping Center shall have the right to enjoin such violation or threatened violation in a court of competent jurisdiction. The right of injunction shall be in addition to all other remedies set forth in this Declaration or provided by law.

**8.5. Modification and Termination.** This Declaration may not be amended or modified in any respect whatsoever or terminated, in whole or in part, except with the consent of the Owners of the Lin's Property and the largest Owner of the Spark Properties (largest defined as the Owner collectively owning the most Building square footage located on the Spark Properties). No modification or termination of this Declaration shall affect the rights of any Lienholder unless the Lienholder consents in writing to the modification or termination.

**8.6. 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. If more than one Person is the Owner of any Parcel, such Persons 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 the 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 8.5. The Prime Lessee of a Parcel is hereby appointed the entity to cast the vote or give the consent for said Parcel on behalf of the Owner thereof and is hereby granted all of the rights and remedies granted to the Owner of said Parcel so long as it is the Prime Lessee of said Parcel, anything in this Declaration to the contrary notwithstanding.

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

**8.8. Breach Shall Not Permit Termination.** It is expressly agreed that no breach of this Declaration shall entitle any Owner to terminate this Declaration, but such limitation shall not affect in any manner any other rights or remedies which such Owner may have hereunder by reason



of any breach of this Declaration. Any breach of this Declaration shall not defeat or render invalid the lien of any mortgage or deed of trust made in good faith for value, but this Declaration shall be binding upon and be effective against any Owner whose title is acquired by foreclosure, trustee's sale or otherwise.

**8.9. Default.** A Person shall be deemed to be in default of this Declaration only upon the expiration of thirty (30) days (or ten [10] days in the event of failure to pay money) from receipt of written notice from any Owner or Prime Lessee specifying the particulars in which such Person has failed to perform the obligations of this Declaration unless such Person, prior to the expiration of said thirty (30) days (or ten [10] days in the event of failure to pay money), has rectified the particulars specified in said notice of default. Notwithstanding the foregoing, such Person shall not be deemed to be in default if such failure (except a failure to pay money) cannot be rectified within said 30-day period and such Person is using good faith and its best efforts to rectify the particulars specified in the notice of default.

**8.10. Notices.**

(a) **Delivery.** All notices given pursuant to this Declaration shall be in writing and shall be given by personal service, by certified or registered 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 of the county in which the Shopping Center is located. All notices to Spark or Lin's shall be sent to the appropriate party at the address set forth below:

If to Spark: Spark Utah, LLC  
Attn: Manager  
7101 Northwest Expressway #755  
Oklahoma City, OK 73132

If to Lin's: Lin's Supermarkets, Inc.  
c/o Associated Food Stores, Inc.  
Attention: President  
1850 West 2100 South  
Salt Lake City, Utah 84119

The Person and address to which notices are to be given may be changed at any time by any party upon written notice to the other party. All notices given pursuant to this Declaration shall be deemed given upon receipt.

(b) **Receipt.** For the purpose of this Declaration, the term "receipt" shall mean the earlier of any of the following: (i) the date of delivery of the notice or other document to the address specified pursuant to Section 8.10(a) above as shown on the return receipt, (ii) the date of actual receipt of the notice or other document by the Person specified pursuant to Section 8.10(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.

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

**8.12. Attorney's Fees.** In the event any Person initiates or defends any legal action or proceeding in any way connected with this Declaration, the prevailing party in any such action or proceeding (in addition to any other relief which may be granted, whether legal or equitable), shall be entitled to recover from the losing party in any such action or proceeding its reasonable costs and attorneys' fees (including without limitation its reasonable costs and attorneys' fees on any appeal). All such costs and attorneys' fees shall be deemed to have accrued on commencement of any legal action or proceeding and shall be enforceable whether or not such legal action or proceeding is prosecuted to judgment.

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

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

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

**8.16. No Third Party Beneficiary Rights.** This Declaration is not intended to create, nor shall it be in any way interpreted or construed to create, any third party beneficiary rights in any Person not a party hereto.

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

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

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

**8.20. 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.

**8.21. Recordation.** This Declaration shall be recorded in the official records of the Carbon County Recorder, State of Utah.

*[Remainder of page left blank.  
Signature page follows.]*

EXECUTED as of the date first set forth above.

SPARK:

SPARK UTAH, LLC, an Oklahoma limited liability company

Spark Brixton, LLC, an Oklahoma limited liability company, as Manager of Spark Utah, LLC

By: 

\_\_\_\_\_  
Mason Ghaniabadi, as Manager

LIN'S:

LIN'S SUPERMARKETS, INC.,  
a Utah corporation

By: \_\_\_\_\_

Name: Darin L. Pierce

Title: President

List of Exhibits:

- Exhibit A - Legal Description of Lin's Property
- Exhibit B - Legal Description of Spark Properties
- Exhibit C - Legal Description of Adjacent Properties
- Exhibit D - Site Plan

[Signature Page to Declaration of Restrictions and Easements]

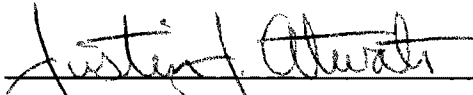
EXECUTED as of the date first set forth above.

SPARK: SPARK UTAH, LLC, an Oklahoma limited liability company

Spark Brixton, LLC., an Oklahoma limited liability company, as Manager of Spark Utah, LLC

By: \_\_\_\_\_  
Mason Ghaniabadi, as Manager

LIN'S: LIN'S SUPERMARKETS, INC.,  
a Utah corporation

By:  \_\_\_\_\_  
Name: Justin J. Atwater  
Title: Vice President & General Counsel

List of Exhibits:

- Exhibit A - Legal Description of Lin's Property
- Exhibit B - Legal Description of Spark Properties
- Exhibit C - Legal Description of Adjacent Properties
- Exhibit D - Site Plan
- Exhibit E - Additional Use Restrictions

[Signature Page to Declaration of Restrictions and Easements]



STATE OF OKLAHOMA     )  
  : ss.  
COUNTY OF OKLAHOMA )

On September \_\_\_\_\_, 2023, before me the undersigned notary public, personally appeared Mason Ghaniabadi known or proven to me to be the signer of the foregoing instrument, who duly acknowledged to and before me that he is the Manager of Spark Brixton, LLC, an Oklahoma limited liability company, who is the Manager of Spark Utah, LLC, an Oklahoma limited liability company, and that he signed the foregoing instrument for and on behalf of said corporation, having all requisite authority to so act.

[seal]

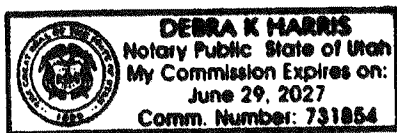
\_\_\_\_\_  
Notary Public

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

On September 22, 2023, before me the undersigned notary public, personal appeared Justin J. Atwater, known or proven to me to be the signer of the foregoing instrument, who duly acknowledged to and before me that he is the Vice President & General Counsel of Lin's Supermarkets, Inc., a Utah corporation, and that he signed the foregoing instrument for and on behalf of said corporation, having all requisite authority to so act.

Debra K. Harris  
Notary Public

[seal]



[Signature Page to Declaration of Restrictions and Easements]

**EXHIBIT A**  
**LEGAL DESCRIPTION FOR LIN'S PROPERTY**

The following property is located in Carbon County, Utah (Parcel 1 as identified on the Site Plan:

**PARCEL 1**

Part of the Northeast Quarter of Section 20; Township 14 South, Range 10 East, Salt Lake Base and Meridian, U.S. Survey, in Price City, Carbon County, Utah:

Beginning at a Rebar and Cap Stamped PLS 343635 found marking the Southwest Corner of Creekview Plaza - Big O Tire Subdivision recorded as Entry No. 800950 In Book 699 at Page 613 in the Official Records of Carbon County, located 2515.78 feet South 88°42'20" West along a line between a PK nail found marking the Northeast Corner of said Section 20 and an Aluminum cap reference monument for the Northwest Corner of said Section 20; 88.42 feet South to the Northwest corner of said Subdivision; and 146.16 feet South 10°13'07" East (South 9°38'59" East 146.08 feet record) from said PK nail; and running thence North 80°02'59" East 250.70 feet (South 80°36'34" West 250.56 feet record) along the Southerly line of said Subdivision to a mag nail found marking the Southeast Corner thereof on the West line of the Price Oil Express Lot Split recorded as Entry No. 805872 in Book 723 of Page 150 in the Official Records of Carbon County; thence South 0°30'26" East (South record) 51.37 feet along said West line to a mag nail found marking the Southwest Corner of said Lot Split; thence North 80°02'49" East 250.92 feet (South 80°32'56" West 250.81 feet record) to a point on a curve on the Southwesterly line of Price River Drive as it exists of a 33.00 foot half-width as dedicated per that certain Plat recorded in Book 4 of Plats at Page 229 in the Official Records of Carbon County; thence Southeasterly along the arc of a 413.00 foot radius curve to the left a distance of 133.95 feet (Center bears North 72°51'05" East, Central Angle equals 18°34'59" and Long Chord bears South 26°26'24" East 133.36 feet) along said Southwesterly line to a point on said curve; thence South 54°16'06" West 48.12 feet along a radial line; thence South 46°43'04" East 34.18 feet; thence South 43°16'56" West 152.50 feet; thence South 46°43'04" East 25.68 feet; thence South 80°02'05" West 170.63 feet; thence North 10°22'39" West 9.74 feet; thence South 79°37'00" West 228.42 feet to and along an existing demising wall to a point on a curve on the Westerly line of said Plat recorded in Book 4 of Plats at Page 229 in the Official records of Carbon County; thence along said Westerly line the following two courses: Northwesterly along the arc of a 636.197 foot radius curve to the right a distance of 29.96 feet (Center bears North 77°04'59" East, Central Angle equals 2°41'54" and Long Chord bears North 11°34'04" West 29.96 feet) to a point of tangency; and North 10°13'07" West 300.78 feet to the Southwest Corner of said Subdivision and the point of beginning.

*Contains 148,399 sq. ft. or 3.407 acres.*



**EXHIBIT B**  
**LEGAL DESCRIPTION FOR SPARK PROPERTIES**

The following property is located in Carbon County, Utah:

**PARCEL 2**

A part of the Northeast Quarter of Section 20; Township 14 South, Range 10 East, Salt Lake Base and Meridian, U.S. Survey, in Price City, Carbon County, Utah:

Beginning at a point located 2001.90 feet South 88°42'20" West along a line between a PK nail found marking the Northeast Corner of said Section 20 and an Aluminum cap reference monument for the Northwest Corner of said Section 20; and 583.16 feet South 1°17'40" East from said PK nail; and running thence South 80°02'05" West 174.13 feet; thence South 38°15'21" West 154.67 feet; thence South 55°23'35" West 94.64 feet along a radial line to a point on a curve on the Southwesterly line of that certain Plat recorded in Book 4 of Plats of Page 229 in the Official Records of Carbon County; thence Northwesterly along the arc of a 636.197 foot radius curve to the right a distance of 240.84 feet (Center bears North 55°23'35" East, Central Angle equals 21°41'24" and Long Chord bears North 23°45'43" West 239.40 feet) along said Southwesterly line; thence North 79°37'00" East 228.42 feet; thence South 10°22'39" East 9.74 feet; thence North 80°02'05" East 170.63 feet; thence South 46°43'04" East 64.37 feet; thence South 0°30'26" East 30.75 feet to the point of beginning.

Contains 56,633 sq. ft. or 1.300 acres.

**PARCEL 3**

Part of the Northeast Quarter of Section 20; Township 14 South, Range 10 East, Salt Lake Base and Meridian, U.S. Survey, in Price City, Carbon County, Utah:

Beginning at a point located 2001.90 feet South 88°42'20" West along a line between a PK nail found marking the Northeast Corner of said Section 20 and an Aluminum cap reference monument for the Northwest Corner of said Section 20; and 583.16 feet South 1°17'40" East from said PK nail; and running thence South 0°30'26" East 39.48 feet; thence South 67°36'23" East 56.11 feet; thence North 65°09'24" East 54.79 feet; thence South 0°34'08" East 113.87 feet; thence South 89°25'52" West 80.84 feet; thence South 0°34'08" East 36.53 feet; thence South 89°25'52" West 26.04 feet; thence South 38°38'51" West 39.61 feet; thence South 0°32'31" East 194.76 feet to and along an existing building wall to the Southerly line of that certain Survey filed as Entry No. 846378 in Book 935 at Page 483 in the Official Records of Carbon County; thence along said Southerly line the following two courses: North 56°49'38" West 91.43 feet; and North 15°30'40" West 30.11 feet to the Southwesterly line of that certain Plat recorded in Book 4 of Plats at Page 229 in the Official Records of Carbon County; thence along said Southwesterly line the following six courses: South 89°25'52" West 46.77 feet to a point on a curve; thence Southeasterly along the arc of a 596.197 foot radius curve to the left a distance of 5.00 feet (Center bears North 34°19'13" East, Central Angle equals 0°28'50" and Long Chord bears South 55°55'13" East 5.00 feet) to a point of tangency; South 56°09'37" East 45.00 feet; South 15°22'50" East 61.24 feet; North

56°09'37" West 91.37 feet to a point of curvature; and Northwesterly along the arc of a 636.197 foot radius curve to the right a distance of 239.32 feet (Central Angle equals 21°33'12" and Long Chord bears North 45°23'01" West 237.91 feet) to a point on said curve; thence North 55°23'35" East 94.64 feet along a radial line; thence North 38°15'21" East 154.67 feet; thence North 80°02'05" East 174.13 feet to the point of beginning.

Contains 99,633 sq. ft. or 2.287 acres.

**PARCEL 4**

A part of the Northeast Quarter of Section 20; Township 14 South, Range 10 East, Salt Lake Base Meridian, U.S. Survey, in Price City, Carbon County, Utah:

Beginning at a point on the West line of the East Parcel of that certain Survey filed as Entry No. 846378 in Book 935 at Page 483 in the Official Records of Carbon County; located 1719.49 feet South 88°42'20" West along a line between a PK nail found marking the Northeast Corner of said Section 20 and an Aluminum cap reference monument for the Northwest Corner of said Section 20; and 641.15 feet South 1°17'40" East from said PK nail; and running thence along said West line the following four courses: South 0°34'08" East 280.42 feet to the South line of the Southwest Parcel of that certain Plat recorded in Book 4 of Plats at Page 229 in the Official Records of Carbon County; South 32°23'45" West 108.02 feet to a point on a curve on the South line; South 0°34'08" East 178.69 feet; and South 32°23'45" West 108.02 feet to a point on a curve on the South line of said Survey; thence along said South line the following three courses: Northwesterly along the arc of 558.366 foot radius curve to the left a distance of 136.30 feet (Center bears South 47°13'53" West, Central Angle equals 13°59'10" and Long Chord bears North 49°45'42" West 135.96 feet); North 33°10'22" East 20.00 feet; and North 56°49'38" West 151.16 feet; thence North 0°32'31" West 194.76 feet to and along an existing building wall; thence North 38°38'51" East 39.61 feet; thence North 89°25'52" East 26.04 feet; thence North 0°34'08" West 36.53 feet; thence North 89°25'52" East 80.84 feet; thence North 0°34'08" West 98.31 feet; thence North 89°25'52" East 181.55 feet to the point of beginning.

Contains 122,023 sq. ft or 2.801 acres

**PARCEL 5:**

A part of the Northeast Quarter of Section 20; Township 14 South, Range 10 East, Salt Lake Base and Meridian, U.S. Survey, in Price City, Carbon County Utah:

Beginning at a point on the West line of the East Parcel of that certain Survey filed as Entry No. 846378 in Book 935 at Page 483 in the Official Records of Carbon County; located 1719.49 feet South 88°42'20" West along a line between a PK nail found marking the Northeast Corner of said Section 20 and an Aluminum cap reference monument for the Northwest Corner of said Section 20; and 641.15 feet South 1°17'40" East from said PK nail; and running thence South 89°25'52" West 181.55 feet; thence North 0°34'08" West 159.74 feet; thence North 36°25'06" East 71.52 feet along a radial line to a point on the Southwesterly line of Price River Drive as it exists at a 33.00 foot half-width as a dedicated per that certain Plat recorded in Book 4 of Plats at

Page 229 in the Official Records of Carbon County; thence Southeasterly along the arc of a 413.00 foot radius curve to the left a distance of 155.31 feet (Center bears North 36°25'06" East, Central Angle equals 21°32'49" and Long Chord bears South 64°21'19" East 154.40 feet) along said Southwesterly line to the West line of said East Parcel; thence South 0°34'08" East 148.67 feet along said West line to the point of beginning.

PARCEL 6:

A part of the Northeast Quarter of Section 20; Township 14 South, Range 10 East, Salt Lake Base and Meridian, U.S. Survey, in Price City Utah:

Beginning at a point located 2001.90 feet South 88°42'20" West along a line between a PK nail found marking the Northeast Corner of said Section 20 and an Aluminum cap reference monument for the Northwest Corner of said Section 20; and 583.16 feet South 1°17'40" East from said PK nail; and running thence North 0°30'26" West 30.75 feet; thence North 46°43'04" West 90.05 feet; thence North 43°16'56" East 152.50 feet; thence North 46°43'04" West 34.18 feet; thence North 54°16'06" East 48.12 feet along a radial line to a point on a curve on the Southwesterly line of Price River Drive as it exists a 33.00 foot half-width as dedicated per that certain Plat recorded in Book 4 of Plats at Page 229 in the Official Records of Carbon County; thence Southeasterly along the arc of a 413.00 foot radius curve to the left a distance of 128.67 feet (Center bears North 54°16'06" East, Central Angle equals 17°51'00" and Long Chord bears South 44°39'24" East 128.15 feet) along said Southwesterly line; thence South 36°25'06" West 71.52 feet along a radial line; thence South 0°34'08" East 144.18 feet; thence South 65°09'24" West 54.79 feet; thence North 67°36'23" West 56.11 feet; thence North 0°30'26" West 39.48 feet to the point of beginning.

Contains 33,302 sq. ft. or 0.765 acres

**EXHIBIT C**  
**LEGAL DESCRIPTION FOR ADJACENT PROPERTIES**

The following property is located in Carbon County, Utah:

**U-HAUL OUTPARCEL:**

BEGINNING AT A POINT WHICH IS NORTH 88°40'35" EAST 3554.97 FEET ALONG THE SECTION LINE (EAST 3554.75 FEET BY RECORD) AND SOUTH 00°00'00" EAST 920.47 FEET (SOUTH 840.21 FEET BY RECORD) FROM THE NORTHWEST CORNER OF SECTION 20, TOWNSHIP 14 SOUTH, RANGE 10 EAST, SALT LAKE BASE AND MERIDIAN, CARBON COUNTY, UTAH, AND RUNNING THENCE SOUTH 89°25'52" WEST 37.29 FEET TO A POINT ON A LINE 35.00 FEET DISTANT FROM AND PARALLEL TO THE EXTENSION OF AN EXISTING BUILDING WALL LINE THENCE SOUTH 00°34'08" EAST 178.69 FEET ALONG SAID PARALLEL LINE AND ITS EXTENSION TO A POINT ON A LINE 50.00 FEET DISTANT FROM AND PARALLEL TO AN EXISTING BUILDING WALL LINE; THENCE SOUTH 32°23'45" WEST 108.02 FEET ALONG SAID PARALLEL LINE AND ITS EXTENSION TO A NON-TANGENT, 558.366-FOOT-RADIUS CURVE TO THE RIGHT; THENCE SOUTHEASTERLY 67.01 FEET ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 06°52'35", CHORD BEARS SOUTH 39°19'49" EAST 66.97 FEET; THENCE NORTH 89°32'34" EAST 536.73 FEET, PARTIALLY ALONG THE NORTH LINE OF WEDGEWOOD ESTATES SUBDIVISION, TO A POINT ON THE WEST RIGHT-OF-WAY LINE OF 600 WEST STREET; THENCE NORTH 00°34'08" WEST 721.40 FEET ALONG SAID RIGHT-OF-WAY LINE; THENCE NORTHWESTERLY 23.56 FEET ALONG THE ARC OF A TANGENT, 1500-FOOT-RADIUS CURVE TO THE LEFT THROUGH A CENTRAL ANGLE OF 90°00'00", CHORD BEARS NORTH 45°34'08" WEST 21.21 FEET, TO THE SOUTH RIGHT OF WAY LINE OF PRICE RIVER DRIVE; THENCE SOUTH 89°25'52" WEST 357.63 FEET ALONG SAID SOUTH RIGHT-OF-WAY LINE TO A POINT ON A TANGENT, 413.00- FOOT-RADIUS CURVE TO THE RIGHT; THENCE WESTERLY 111.30 FEET ALONG SAID ARC THROUGH A CENTRAL ANGLE OF 15°26'28", CHORD BEARS NORTH 82°50'54" WEST 110.97 FEET; THENCE SOUTH 00°34'08" EAST 428.72 FEET TO THE POINT OF BEGINNING, CONTAINING 8.545 ACRES.

**TIRE CENTER OUTPARCEL:**

BEGINNING AT A POINT LOCATED S89°14'04"W ALONG THE SECTION LINE, 2516.58 FEET AND SOUTH 86.60 FEET FROM THE NORTHEAST CORNER OF SECTION 20, T.14 S., R.10 E., S.L.B. & M.; SAID POINT OF BEGINNING BEING AT THE NORTHWEST CORNER OF THE CREEKVIEW SHOPPING CENTER PARCEL; THENCE N89°26'13"E ALONG THE NORTH LOT LINE OF SAID PARCEL, 271.70 FEET; THENCE SOUTH 105.80 FEET; THENCE S80°36'34"W 250.56 FEET TO WEST LINE OF SAID PARCEL; THENCE N09°38'59"W ALONG SAID WEST LINE, 146.08 FEET TO THE POINT OF BEGINNING.

OIL LUBE OUTPARCEL:

**A portion of Parcel 1 as defined by Entry #123690 of Official Records, Carbon County Recorder's Office, being more particularly described as follows.**

**Beginning at a point South 89°14'04" West 2015.57 feet, and South 00°45'56" East 88.37 feet from the Northeast corner of Section 20 Township 14 South, Range 10 East, Salt Lake Base and Meridian; thence South 01°19'26" West 5.15 feet; thence Southeasterly 114.98 feet, along the arc of a 413 foot radius non-tangent curve to the left (chord bears South 08°33'53" East 114.61 feet); thence South 80°32'56" West 250.81 feet; thence North 00°00'00" East 157.40 feet; thence North 89°26'12" East 230.47 feet to the point of beginning. Contains 32,786.10 Sq.Ft. or .75 acres more or less.**

**EXHIBIT D**  
**SITE PLAN**

[To be attached via amendment]

## EXHIBIT E

### ADDITIONAL USE RESTRICTIONS

1. So long as Fifth Avenue Ventures, Inc. possesses a leasehold interest within the Shopping Center, no portion of the Shopping Center shall be used as a “quick cut” haircutting salon, such as any salon brand owned and operated by Regis Corp., Super Cuts, Sports Clips, Fantastic Sam’s or the like, or salons that specializes in kids cuts, or barber shops. This restriction shall not apply to any full service hair salon, day spa, or beauty school occupying less than 5, 00 square feet.
  
2. Except for Ace Hardware, no portion of the Premises shall be used for the following: (i) a hardware store, or (ii) a use or user that devotes more than one thousand (1,000) square feet of its selling floor area, or who derives more than ten percent (10%) of its gross revenues from its business conducted in the Shopping Center, to the sale of any one or combination of the following product categories normally sold in Ace Hardware stores: (i) paints and stains, painting sundries and supplies (including canned paint by the gallon, quart and pint, spray paint, varnish, rollers and brushes); (ii) power drills, hammers, saws, sanders, grinders, Dremmel tools, Craftsman branded power tools and any attachments, accessories and replacement parts for such items, including without limitation drill bits, sanding paper and grinding wheels; (iii) hand tools and accessories, (wrenches, hammers, screwdrivers, pliers, sockets, Craftsman brand tools, and related items); (iv) plumbing components, copper, metal, brass and PVC fittings, faucets, rubber and metal washers, hoses, HVAC filters; (v) electrical components, (examples include gang boxes, electrical switches, wall plate covers, conduit, electrical wires, electrical cords, capacitors, breakers); (vi) batteries and battery chargers for computers and electronic games and equipment comparable to what is sold in a specialty battery store; (vii) live plants and flowers normally sold in garden centers sold in plastic pots and are intended for indoor and outdoor home gardening use, excluding a florist that sells cut flowers and decorative plants in designed arrangements; (viii) gardening and horticultural product and bagged good , such as dirt top oil, mulch, peat, compost, manure, and, stone, brick and cement stones, and other related items; (ix) lawn and garden chemicals, tools, and power equipment used for landscaping home and gardens, (x) outdoor and patio furniture (but excluding a furniture stores); (xi) builder's hardware, including nails, crew , latches, hooks, fasteners of all typical types provided by vendors such as Hillman; (x ii) barbecues and grills, gas, charcoal and electric; (xiii) building material drywall, plywood, lumber, siding, cement, plaster and mud, fencing; (xiv) propane tank filling and exchanges; and (xv) equipment rentals of power washers, sprayers, roto-tillers, ditching and trenching, mowers, weed eaters, and lawn edgers. So long as Lin’s owns the Lin’s Property, the restrictions contained within this paragraph shall not apply to the Lin’s Property. The restrictions in this paragraph shall not apply if an Ace Hardware does not open a store or obtain a leasehold interest within the Shopping Center within six (6) months of the date first set forth in this Declaration.
  
3. So long as Dollar Tree Stores, Inc. possesses a leasehold interest or ownership interest within the Shopping Center, no portion of the Shopping Center (except for Parcel 2) shall be used for a single price point variety retail store. A “single price point variety retail store”

is hereby defined as a store that offers all of its merchandise for sale at a single price point. In addition, Landlord no portion of the Shopping Center (except for Parcel 2) shall b used for the following: (1) a retail store whose "principal business" is: selling variety retail merchandise at a single price point; or (2) variety retail operations with the word "Dollar" in their trade name. For the purpose of this Section, "principal business" shall be defined as selling such merchandise in twenty-five percent (25%) or more of the sales floor area (including one half (1/2) of the adjacent aisle space). Notwithstanding the foregoing, the restriction contained in this paragraph shall not apply to any tenant or occupant selling single price point apparel as its principal business.