

When Recorded Return to:
Bryan B. Todd
358 So. Rio Grande, Suite 200
SLC, UT 84101

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GARY W. OTT
RECORDER, SALT LAKE COUNTY, UTAH
TALON GROUP
BY: KJE, DEPUTY - WI 25 P.

**GRANT OF EASEMENTS
AND
DECLARATION OF COVENANTS, CONDITIONS & RESTRICTIONS**

THIS GRANT OF EASEMENTS AND DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS ("Declaration") is made as of October __, 2006 by **AMSOURCE Highbury, LLC**, a Utah limited liability company ("**Declarant**"), regarding the land described on **Exhibit B** attached hereto.

RECITALS

A. **Shopping Center.** Declarant is the owner of the Shopping Center Land defined below. Declarant intends that the Shopping Center, as defined herein, shall be constructed on the Shopping Center Land. All of the Shopping Center Land shall be subject to this Declaration. Notwithstanding any other provision hereof, Declarant may add additional land to the Shopping Center and submit the same to the provisions of this Declaration, with such specific provisions related to such additional land as Declarant may reasonably deem appropriate, in Declarant's sole discretion and without the consent of any other party.

B. **Intent.** Declarant desires to restrict the Shopping Center in accordance with the terms and provisions of this Declaration in order to provide for (i) the orderly development and operation of the Shopping Center, (ii) the construction of compatible improvements in the Shopping Center, (iii) common easements for ingress and egress of pedestrian and vehicular traffic, (iv) reciprocal parking rights, and (v) such other matters as are provided herein.

DECLARATION

NOW THEREFORE, Declarant hereby makes this Declaration, and hereby declares that the Shopping Center Land shall be and hereby is subjected to the following covenants, conditions, restrictions and easements, which shall run with the Shopping Center Land:

1. **PRELIMINARY**

1.1 **Definitions:**



1.1.1 **"Building"**: Any Building constructed on the Shopping Center Land.

1.1.2 **"Building Areas"**: The areas shown as containing Buildings on the Site Plan.

1.1.3 **"Building Limit Lines"**: The lines delimiting the Building Areas as shown on the Site Plan.

1.1.4 **"Center Monument or Pylon Signs"**: Monument or pylon signs, if any, which are hereafter located in areas allowed by the City and approved by Declarant, and which service more than one Owner, Lot or Lessee.

1.1.5 **"City"**: West Valley City, Utah.

1.1.6 **"Common Facilities"**: All those areas of the Shopping Center Land which are not Building Areas, together with those portions of the Building Areas which are not from time to time actually covered by a Building or other commercial structure or which cannot, under the terms of this Declaration, be used for Buildings, including, without limitation: sidewalks; walkways; aisles and driveways providing ingress and egress to the stores, offices, Buildings and parking areas and to and from adjacent streets and highways; parking areas; unloading areas (except for trash facilities, truck docks and ramps which are for the exclusive use of a particular Owner or Tenant); shrubbery; plantings and other landscaping; the illuminating and mechanical equipment used exclusively in connection with any of the foregoing; all utility lines and facilities and all sewer lines and facilities servicing the Lots to the perimeter walls of any Building; the Shopping Center Signs; and all other portions of the Shopping Center designated by the Owners from time to time as Common Facilities. Canopies which extend over the Common Facilities, together with any columns or posts supporting the same, shall be deemed to be a part of the Building to which they are attached and not a part of Common Facilities.

1.1.7 **"Declarant"**: Declarant as named above, as well as any successor in interest to whom a Declarant assigns its rights as Declarant hereunder.

1.1.8 **"Default Rate"**: A rate of interest equal to the lesser of (i) the highest rate allowed by law, or (ii) six percent (6%) over the Prime Rate.

1.1.9 **"Floor Area"**: With respect to the commercial space in the Shopping Center, Floor Area shall mean the total number of square feet of ground floor space in a Building, whether or not actually occupied, excluding basement, subterranean, balcony and mezzanine space, unless that space is used as selling area. Floor Area shall be measured from the exterior line of the exterior walls and from the center line of any party or common interior walls without deduction for columns, walls or other structural or non-structural components. With respect to any office Buildings, Floor Area shall mean the total number of leasable square feet as determined using the latest BOMA standards.

1.1.10 **"Lessee"**: Any Person which has entered into a lease for a portion of the Shopping Center. "Lessee" does not include a sublessee, licensee or concessionaire of a Lessee

except for a sublessee of the entire leasehold for a term of fifteen (15) years or more, or the remaining term of the lease if less.

1.1.11 **“Lienholder”**: Any mortgagee under a mortgage or a trustee or beneficiary under a deed of trust constituting a lien on any Lot.

1.1.12 **“Lot Monument Signs”**: Monument signs, to be located on a Lot in locations approved by both the City, Declarant and the applicable Owner.

1.1.13 **“Manager”**: As defined in **Section 5.2**.

1.1.14 **“Owner”**: The record holder of fee simple title to a Lot, its heirs, personal representatives, successors and assigns.

1.1.15 **“Lot”**: A separate legally subdivided portion of the Shopping Center Land.

1.1.16 **“Person”**: any individual, partnership, limited liability company, firm, association, corporation, trust, governmental agency, administrative tribunal or any other form of business or legal entity.

1.1.17 **“Prime Rate”**: The prime rate of interest reported from time to time on the financial page of the Wall Street Journal (or such successor index as is generally accepted in lieu thereof).

1.1.18 **“Prorata Share”**: a fraction, the numerator of which shall be the Floor Area of completed Buildings on a Lot, and the denominator of which shall be the total Floor Area of completed Buildings on all of the Shopping Center Land.

1.1.19 **“Restrictions”**: The easements, covenants, restrictions, liens and encumbrances contained in this Declaration.

1.1.20 **“Service Facilities”**: Loading docks, trash enclosures, bottle storage areas and other similar service facilities.

1.1.21 **“Shopping Center”**: The shopping center to be built on the Shopping Center Land, together with all improvements located thereon and all appurtenances thereunto pertaining.

1.1.22 **“Shopping Center Land”**: The land legally described on **Exhibit B** attached hereto.

1.1.23 **“Shopping Center Signs”**: Monument or pylon signs, if any, which are located at any time on the Shopping Center Land and which service more than one occupant thereof.



1.1.24 **"Site Plan"**: The site plan attached hereto as **Exhibit A**, as the same may be amended from time to time in accordance with the provisions of this Declaration. All depictions of the Shopping Center are conceptual only until actually constructed, and the actual Shopping Center may be constructed differently than shown (including of a significantly larger or smaller size and/or configuration); likewise, actual Lots may vary from what is shown on the Site Plan. The Shopping Center may also be expanded, reduced or otherwise modified (including the type of shopping center and the tenants therein) to such extent as desired at any time and from time to time by Declarant. No assurance is made as to the construction of any portion of the Shopping Center, or the presence or nature of any other occupants, including, without limitation, any "anchor" tenants. Declarant reserves the right to build and modify the Shopping Center as it may desire in its sole discretion at any time, and modify the Site Plan accordingly.

1.2 **Subordination.** As of the date that this Declaration is recorded in the records of the Utah County, Utah Recorder, the Owner of each Lot shall cause each Lienholder on the Owner's Lot to subordinate its lien against such Lot to this Declaration by signing and acknowledging a counterpart signature page for the Acknowledgment and Consent of Lender that is attached hereto. All executed counterpart pages shall be attached to and recorded with this Declaration.

2. **BUILDING AND COMMON FACILITIES DEVELOPMENT**

2.1 **Building Location:** Except as may be otherwise approved by Declarant in writing, all Buildings and other structures in the Shopping Center shall be placed or constructed only within the Building Areas, subject to the following terms and conditions:

2.1.1 **Supports.** 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, may project from the Building Area into the Common Facilities of the particular Lot.

2.1.2 **Standard.** All Buildings and other improvements shall be constructed and maintained in accordance with all local, state and federal laws, rules and regulations applicable thereto.

2.1.3 **Parking.** All Owners shall maintain on each of their Lots, at all times, the greater of (a) the number of parking spaces required by applicable code, and (b) five (5) parking spaces for each one thousand (1,000) square feet of Floor Area. The size of the parking spaces must satisfy the requirements of the City and must be approved by the Declarant.

2.2 **Common Facilities:** The Common Facilities are hereby reserved for the use of all Owners of the Shopping Center, their tenants, contractors, employees, agents, customers, licensees and invitees and the subtenants, contractors, employees, agents, customers, licensees and invitees of such tenants. The Common Facilities may be used for their manifestly intended purposes, such as vehicular driving, parking, pedestrian traffic, directional signs, permitted signage, sidewalks, walkways, landscaping, perimeter walls and fences, parking lot lighting, utilities, and Service Facilities, and for no other purpose unless otherwise specifically provided



in this Declaration. The Common Facilities shall be constructed in accordance with the Site Plan as it may be modified as permitted herein, and shall be kept and maintained as provided for herein. The sizes and arrangements of the Common Facilities, including, without limitation, service drives and parking areas, striping, traffic directional arrows and signs, concrete bumpers, parking lot lighting, perimeter walls and fences, and landscaped areas, together with necessary planting, may not be materially changed without the prior written consent of Declarant.

2.3 Type and Design of Building:

2.3.1 Quality and Compatibility. Each Building shall be of first quality construction and architecturally designed so that its exterior elevations (including, without limitation, signs and color) will be architecturally and aesthetically compatible and harmonious with the Buildings constructed therein by Declarant, as determined by Declarant, subject to the following:

2.3.1.1 Elevations and Signage. No Building may be constructed nor the exterior of any existing Building changed in any way (including, without limitation, signs and color) without the prior written approval of Declarant as evidenced by Landlord's signature on each page of a copy of the applicable plans and specifications.

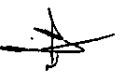
2.3.1.2 Plan Approval. Before the construction of any Building or any modification of an existing Building is commenced, sufficient information shall be sent to the Declarant to enable the Declarant to make a reasonable determination as to the architectural and aesthetic compatibility of said Building or modification with all other Buildings. No approval of the architectural and aesthetic compatibility of any Building or modification of a Building shall waive any requirement that all Buildings be built of first quality construction or any other requirement applicable under this Declaration.

2.3.2 Fire Rating. Every Building, including those with party walls, shall be constructed in such a manner as to not adversely affect the insurance fire rating of any other Building (so that each Building shall be fire-rated as a separate and distinct unit without deficiency charge).

2.3.3 Structural Integrity. No Building shall be built in such a manner as adversely to affect the structural integrity of any other Building.

2.3.4 Height. The Buildings on Pads A and B shall not exceed one story nor twenty-four feet (24') above finished grade, including mechanical fixtures and equipment and screening for same (except that architectural embellishments may extend to not more than twenty-nine feet (29') above finished grade), without Declarant's prior written consent, in its sole and absolute discretion.

2.3.5 Building Maintenance. Each Owner shall maintain or cause to be maintained the exterior of any Building located on such Owner's Lot in a quality and condition comparable to that of first class shopping centers of comparable size and nature located in the



same geographic area as the Shopping Center. All Service Facilities shall be attractively screened from view from the parking areas.

2.4 Construction Requirements:

2.4.1 **Timing and Manner of Work.** All work performed in the construction, maintenance, repair, replacement, alteration or expansion of any Building, sign or Common Facilities improvements located in the Shopping Center shall be effected as expeditiously as possible and in such a manner as to not unreasonably interfere, obstruct or delay (i) access to or from the Shopping Center, or any part thereof, to or from any public right-of-way, (ii) customer vehicular parking, or (iii) the receiving of merchandise by any business in the Shopping Center including, without limitation, access to Service Facilities. All Common Facilities shown on the Site Plan for a Lot shall be constructed and installed in advance of or in connection with the construction of the Building on the Lot. In addition:

2.4.1.1 Staging for the construction, replacement, alteration or expansion of any Building, sign or Common Facilities 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 Declarant, which shall be self-contained on the Lot where construction activity is to occur.

2.4.1.2 Unless otherwise specifically stated herein, the Person contracting for the performance of such work ("**Contracting Party**") shall, at its sole cost and expense, promptly repair and restore or cause promptly to be repaired and restored to its prior condition all Buildings, signs and Common Facilities improvements damaged or destroyed in the performance of such work.

2.4.2 **Liens.** The Contracting Party shall not permit any liens to stand against any Lot for any work done or materials furnished in connection with the performance of any work, subject to the following:

2.4.2.1 The Contracting Party may contest the validity of any such lien, but upon a final determination of the validity thereof, the Contracting Party shall cause the lien to be satisfied and released of record.

2.4.2.2 The Contracting Party shall, within fifteen (15) days after receipt of written notice from an Owner or Lessee, cause any such outstanding lien or claim of lien to be released of record or transferred to bond in a manner reasonably satisfactory to the person giving notice, failing which such Owner or Lessee shall have the right, at the Contracting Party's expense, to transfer said lien to bond.

2.4.2.3 The Contracting Party shall indemnify, defend and hold harmless the Owners, Declarant, and occupants of the Shopping Center from any and all liability, claims, damages, expenses (including reasonable attorneys' fees incurred in or before any action, at trial, on appeal or in bankruptcy court), liens, claims of liens, judgments, proceedings and causes of



action, arising out of or in any way connected with the performance of such work, unless caused by the negligent or willful act or omission of the otherwise indemnified person, its tenants, subtenants, agents, contractors or employees.

2.4.3 Incidental Encroachments. The Owners acknowledge and agree that incidental encroachments upon the Common Facilities may occur as a result of the use of ladders, scaffolds, store front barricades and similar facilities in connection with the construction, maintenance, repair, replacement, alteration or expansion of Buildings, signs and Common Facilities improvements located in the Shopping Center, all of which are permitted hereunder so long as Declarant approves the same in writing in advance and all activities requiring the use of such facilities are expeditiously pursued to completion and are performed in such a manner as to minimize any interference with use of the improved Common Facilities or with the normal operation of any business in the Shopping Center.

2.4.4 Insurance. During the course of any construction or repair as to any Building, the person responsible for such construction or repair shall obtain and maintain:

2.4.4.1 Commercial general liability insurance (as to which the other Owners and Declarant 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);

2.4.4.2 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

2.4.4.3 "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.

2.4.5 Condition Pending Construction. Each Owner of any Lot, at its expense, shall maintain its Lot held for future construction in a clean condition, free from weeds, and either landscaped and/or covered with gravel base.

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

affect the drainage of the Shopping Center or any portion thereof, and shall be covered by a one inch asphalt dust cap.

3. EASEMENTS

3.1 **Ingress, Egress and Parking:** Each Owner, as grantor, hereby grants to each other Owner and to its tenants, contractors, employees, agents, customers, licensees and invitees, and the subtenants, contractors, employees, agents, customers, licensees and invitees of such tenants, for the benefit of each Lot, a nonexclusive easement for ingress and egress by vehicular and pedestrian traffic and vehicular parking upon, over and across that portion of the Common Facilities located on the grantor's Lot from time to time, except for those areas devoted to Service Facilities or drive-up or drive-through customer service facilities. The rights of ingress, egress and parking set forth in this Section shall apply to the Common Facilities for each Lot.

3.2 Utility Lines and Facilities:

3.2.1 **Grant.** Each Owner, as grantor, hereby grants to each other Owner, for the benefit of each Lot belonging to the other Owners, as grantees, a nonexclusive easement under, through and across the Common Facilities of the grantor's Lot for the installation, operation, maintenance, repair and replacement of water drainage systems and structures, water mains and pipelines, storm and sanitary sewer pipelines and systems, water sprinkler system lines, telephone lines, electrical conduits, lines and systems, gas mains and pipelines, and other public or private utilities. In connection therewith:

3.2.1.1 All such systems, structures, mains, sewers, conduits, lines and facilities shall be installed in locations reasonably approved by the burdened Owners, and shall be installed and maintained below ground level or surface of such easement areas, except for ground-mounted electrical transformers and such other facilities as are required to be above ground by the utility providing such service (including temporary service required during the construction, maintenance, repair, replacement, alteration or expansion of any Buildings or improvements located in the Shopping Center).

3.2.1.2 The installation, operation, maintenance, repair and replacement of such easement facilities shall not unreasonably interfere with the use of the improved Common Facilities 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 Facilities resulting from such use, and shall provide as-built plans for all such facilities to the Owners of all Lots upon which such utility lines and facilities are located, within thirty (30) days after the date of completion of construction of same.

3.2.2 **Relocation.** At any time and from time to time the Owner of a Lot shall have the right to relocate on its Lot any utility line or facility installed pursuant to the foregoing grant of easement which is then located in the land of such Owner, provided that any such relocation (i) shall be performed only after sixty (60) days notice of the Owner's intention to undertake the relocation shall have been given to the Owner of each Lot served by the utility line



or facility, (ii) shall not unreasonably interfere with or diminish utility service to the Lots serviced by the utility line or facility, (iii) shall not reduce or unreasonably impair the usefulness or function of the utility line or facility, (iv) shall be performed without cost or expense to the Owner or occupant of any other Lot, and (v) shall provide for the original and relocated area to be restored to the original specifications. The Owner performing such relocation shall provide as-built plans for all such relocated utility lines and facilities to the Owners of all Lots served by all such utility lines and facilities within thirty (30) days after the date of completion of such relocation.

3.2.3 Additional Grants. Each Owner 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, and provided that such easements do not interfere with or limit use of Building Areas as shown on the Site Plan.

3.3 Signs: Each Owner, as grantor, hereby grants to the other Owners and to each Lessee, for the benefit of each Lot belonging to the other Owners or in which a Lessee has an interest, as applicable, as grantees, an easement under, through and across the Common Facilities of the grantor's Lot 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 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 Facilities resulting from such use and shall provide as-built plans for all such facilities to the Owners of all Lots upon which such facilities are located within thirty (30) days after the date of completion of construction of same.

3.4 Building Encroachments: Each Owner, as grantor, hereby grants to the other Owners and Lessees, for the benefit of each Lot belonging to the other Owners or in which a Lessee has an interest, as applicable, as grantees an easement for:

(a) any portion of any Building or structure located on any such Lot which may unintentionally encroach into or over the grantor's adjoining Lot by not more than six (6) inches;

(b) any footings, piers, piles, or grade beams of any Building or structure located on any such Lot which may intentionally or unintentionally encroach into or over the grantor's adjoining Lot, provided the easement for footings, piers, piles, grade beams does not exceed three (3) feet, and provided that the encroachments do not diminish the buildable area of the servient parcel;

(c) the encroachment and construction, maintenance, use, repair, reconstruction rebuilding and replacement of common footings, common foundations and/or common walls if Declarant and/or any Owner use what is commonly known in the construction trade as common footings, common foundations and/or common walls for their respective improvements. As a condition to the use of common footings, common foundations and/or common walls, any Persons agreeing to the use of the same agree that if all or any part of their respective



improvements are destroyed and are not restored, then the Person whose improvements are destroyed shall leave in place any foundations, footings and walls (or any portions thereof) which were not destroyed if such foundations, footings or walls were being used as common footings, common foundations or common walls and the other Person using the same desires to continue such use; and

(d) the weather-tight attachment of permitted building improvements constructed on any Lot at and on the building improvements on another Lot, provided the manner of attachment shall be designed in accordance with generally accepted construction and engineering practices in the manner customary for improvements of such type and so as not to impose any load on the building improvements to which the same are to be attached, except as may be approved by the Owner thereof.

The plans and specifications for and location and extent of all easements granted under this **Section 3.1** shall be subject to the prior approval of Declarant, and the plans and specifications showing the improvements specified in this **Section 3.1**, together with the specific request by the grantee of the subject easement for approval of the location and extent of the encroachment of the subject easement, shall be submitted to Declarant prior to commencing use of such easement. The approvals required pursuant to the preceding sentence shall not be unreasonably withheld or delayed, but may be conditioned upon: (i) review and approval of sufficiently detailed plans and specifications for the subject improvements, (ii) the grantee's agreement to reimburse the grantor for all increased costs of construction of the grantor's Building due to such easement, (iii) an agreement from the grantee to defend, indemnify and hold harmless the grantor from and against any loss, costs, damages, liens, casualties, liabilities and expenses incurred by or asserted against the grantor in connection with our arising out of such easement, (iv) evidence that the grantee has obtained and will maintain adequate insurance concerning the subject easement, as reasonably required by Declarant and/or the grantor, and (v) evidence that the grantee has obtained all applicable governmental permits for the construction of the subject improvements. Approval of the easement shall constitute: (A) designation of the portions of the Shopping Center Land to be used for such easements, and (B) agreement by the grantee to use only those portions of the Shopping Center Land so designated. All footings, foundations, walls and other improvements constructed from time to time on any portion of the Shopping Center Land shall be constructed, maintained and used in compliance with all applicable laws, ordinances, rules and regulations, including applicable zoning ordinances and building codes and shall be constructed in a good and workmanlike manner. The cost of maintaining, repairing and reconstructing any Common Facilities subject to this **Section 3.1** shall be borne equally by the parties affected by such facilities or as such parties may otherwise agree; provided, however, in the event that the maintenance, repair or reconstruction of such facilities is required primarily due to the acts or omissions of one party (the "**Responsible Party**") (or persons acting by, through or under the Responsible Party) and not the other, the Responsible Party shall bear the entire cost of such maintenance, repair or reconstruction. Each of the easements granted and created under this **Section 3.1** shall be effective on the date of this Declaration and shall remain in existence so long as the Building of the grantee (or any restoration or replacement thereof made during the term of this Declaration) remains in existence, including any restoration following a casualty or condemnation.



4. OPERATION OF COMMON FACILITIES

4.1 **Parking Charges.** There shall be no charge for parking in the Common Facilities without prior written consent of the Declarant or unless otherwise required by law.

4.2 **Employee Parking.** The employees, contractors, agents, officers and partners of all Owners, Lessees and occupants of the Shopping Center shall use only the Employee Parking Areas on such Owner's Lot for parking.

4.3 Signs:

4.3.1 **Location, Design, Content, and Costs.** Subject to governmental approval and the prior written approval of the Declarant with respect to location, size and design: (i) Center Monument or Pylon Signs may be erected and maintained in the Shopping Center; and (ii) Lot Monument Signs may be placed on each of the Lots, subject to all of the terms and conditions of this Declaration, including the following terms and conditions:

4.3.1.1 The cost of constructing, maintaining, operating, repairing and replacing the Center Monument and Pylon Signs shall be paid by the Persons entitled to display designations (other than the Shopping Center designation) thereon in the proportion that the total square footage of each occupant designation bears to the total square footage of all designations entitled to be displayed thereon. The cost of constructing, maintaining, operating, repairing and replacing each Lot Monument Sign shall be paid by the Owner of the Lot on which the sign is located or to which it pertains; provided, however, that nothing contained herein shall prevent the Owner of the Lot from shifting such expense to the Lessee or other occupant of the Lot.

4.3.1.2 Each person displaying a designation on the Center Monument or Pylon Signs shall supply and maintain its own sign fascia and can. The design of the Center Monument Signs' structures shall be determined by the Declarant.

4.3.1.3 The parties entitled to use any Center Monument or Pylon Sign shall be determined by Declarant.

4.3.1.4 Any Lot Monument Sign may advertise only the business conducted on such Lot. Lot Monument Signs may not be higher than six (6) feet above the finished landscape of the immediately surrounding area and may not be longer than twenty (20) feet, or such smaller size as is the maximum allowed by law.

4.3.2 **Restrictions and Types.** Other than as set forth in this Section 4.3, there shall be no signs, except directional signs and signs on Buildings, in the Shopping Center. All exterior building signs on all Buildings shall be restricted to identification of the business or service/product located or provided therein, and shall be subject to Declarant's prior written approval.

4.3.3 **Exterior Sales:** No portion of the Common Facilities may be used for the display and/or sale of merchandise and services, except as approved by Declarant in writing.



4.4 **Lighting:** The lighting in the Common Facilities shall be kept on during such hours as Declarant may determine. Parking lot lighting in the Common Facilities shall be installed, maintained and metered by Manager and shall be included in Common Facilities Maintenance.

5. MAINTENANCE AND REPAIR OF COMMON FACILITIES.

5.1 **Maintenance of the Common Facilities:** The Common Facilities shall be operated and maintained in compliance with all applicable governmental laws, rules, regulations, orders and ordinances, the provisions of this Declaration, and in a safe, sound condition, clean and free of rubbish, debris, or other hazards to persons using the same. Except as set forth herein, Manager shall be responsible to operate and maintain all Common Facilities improvements and to repair and replace the same with materials at least equal to the original quality of the materials being repaired or replaced, so as to maintain the architectural and aesthetic harmony of the Shopping Center as a whole. This operation, maintenance and repair (i) shall be performed and carried out promptly and in a first class and workmanlike manner, 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; (ii) shall be referred to herein as the "**Common Facilities Maintenance**"; and (iii) shall include but not be limited to the following:

a. **Drive and Parking Areas.** Maintaining, repairing, cleaning and replacing all blacktop, paved surfaces and curbs in a smooth and evenly covered condition, and such work shall include, without limitation, sweeping, restriping, resealing and resurfacing. (For the purpose of this Section, an overlay of the drive and parking areas shall be considered a maintenance item.)

b. **Debris and Refuse.** Periodic removal of all papers, debris, filth, refuse, ice and snow, including sweeping to the extent necessary to keep the Common Facilities in a first-class, clean and orderly condition. All sweeping shall be done at appropriate intervals during such times as shall not interfere with the conduct of business or use of the Common Facilities by persons intending to conduct business with occupants of the Shopping Center.

c. **Sign and Markers.** Placing, cleaning, keeping in repair, replacing, and repainting any appropriate directional signs or markers, including any handicapped parking signs, and also the Center Monument Signs, except as otherwise determined by Declarant with regard to sign fascia and cans. The Owner of each Lot shall pay the cost of so maintaining the Lot Monument Signs on the Owner's Lot.

d. **Lighting.** Maintaining, cleaning and replacing lighting facilities, including lamps, ballasts and lenses, and utility charges related to lighting the Common Facilities.

e. **Landscaped Areas.** Maintaining all landscaped areas, including landscaping and planters adjacent to exterior walls of Buildings, in an attractive and thriving condition, and replacing shrubs and other landscaping as necessary.

f. **Obstructions.** Keeping the Common Facilities free from any obstructions including those caused by the sale or display of merchandise, unless such obstruction is permitted under the provisions of this Declaration.

g. **Sidewalks.** Maintaining, cleaning and replacing of all sidewalks. Sidewalks shall be cleaned and swept at appropriate intervals during such time as shall not interfere with the conduct of business or use of the Common Facilities.

h. **Traffic.** Regulation of traffic at entrances and exits to the Shopping Center and within the Shopping Center as conditions reasonably require in order to maintain an orderly and proper traffic flow. Each Owner and/or Lessee, as the case may be, shall maintain and repair, at its sole cost, in a clean, sightly and safe condition any exterior shipping/receiving dock area, any truck ramp or truck parking area, and any refuse, compactor or dumpster area on or intended to service such Owner's or Lessee's Lot or Building Area.

i. **Walls.** Maintaining, repairing and replacing, when necessary, all Common Facilities walls, fences, or barricades. At its expense, each Owner of an undeveloped Lot shall maintain its Lot in accordance with the provisions of **Section 2.4.5**.

5.2 **Manager.** The person who is responsible for the operation and maintenance of the Common Facilities from time to time shall be referred to herein as "**Manager.**" Declarant shall either operate and maintain the Common Facilities as Manager (either directly or through an affiliate of Declarant) or enter into a contract with a qualified Manager. Each Owner hereby grants to Manager, its agents and employees a license to enter upon its Lot to discharge the duties to perform the Common Facilities Maintenance.

5.3 **Promulgation of Rules:** The Manager may promulgate such reasonable, non-discriminatory rules and regulations to govern the use of the Common Facilities as it may deem appropriate from time to time, including the regulation of employee parking.

5.4 **Common Facilities Budget.** A budget for Common Facilities Costs shall be formulated and made effective in the following manner, as applicable:

a. **Submission for Review.** At least sixty (60) days prior to the beginning of each calendar year, or at least thirty (30) days prior to the completion of construction of the first Building in the Shopping Center, Manager shall submit to the Owners an estimated budget ("**Common Facilities Budget**") for the projected Operating Costs, Management Fee and Common Facilities Charges for the ensuing calendar year (or, in the case of an initial partial calendar year, that ensuing partial year). The Common Facilities Budget shall identify separate cost estimates for major categories in accordance with good shopping center management practice.

b. **Bids.** In determining the Common Facilities Budget, Manager shall submit major items of Common Facilities maintenance work for competitive bid to responsible bidders. Upon an Owner's request, the names of the bidders and their respective bids shall be furnished to such Owner together with the Common Facilities Budget, and the contract shall be awarded to the low bidder unless Manager shall otherwise reasonably determine.

c. **Approval by Owners.** The Owners shall give written notice to Manager of their approval or disapproval of the Common Facilities Budget before the later of December 10th or thirty (30) days after receipt of such Budget. Failure to give timely notice of approval or disapproval shall be deemed to be approval. If the Owners of more than 75% of the land in the Shopping Center timely object to the Common Facilities Budget or any element thereof by specifying such objection and the reason therefor, the Common Facilities Budget shall not be deemed approved until such objection is resolved. Manager and such objecting Owners shall seek to resolve such objection between them. If the objecting Owners and Manager cannot agree, the matter shall be referred to binding arbitration in accordance with the provisions of this Declaration.

d. **Implementing Budget.** After the Common Facilities Budget is approved, Manager shall contract with the approved bidders, pay all of the Operating Costs, and use its reasonable efforts to perform the Common Facilities Maintenance in accordance with the Common Facilities Budget.

e. **Emergency Repairs.** Notwithstanding the foregoing, Manager shall have the right to make emergency repairs to the Common Facilities to prevent injury or damage to person or property or to prevent disruption in the use of the Common Facilities, provided that Manager shall nevertheless advise the Owners of such emergency condition as soon as reasonably possible, including any corrective measure(s) taken and the cost thereof. If the cost of said emergency action exceeds One Thousand Dollars (\$1,000.00), Manager may charge a supplemental billing to the Owners, together with evidence supporting such, and the parties responsible for payment of Operating Costs shall pay their proportionate share thereof within thirty (30) days. If the emergency cost is less than the amount collected, the excess is to be reimbursed appropriately or refunded at year end as provided herein.

f. **Unforeseen Items.** Manager shall be entitled to reimbursement of actual expenses for any reasonably unforeseen non-emergency items not included in the Common Facilities Budget without first obtaining each Owner's approval so long as such Owner's Prorata Share of the cumulative amount of such items does not exceed Ten Thousand Dollars (\$10,000.00) in any calendar year.

g. **Disagreement over Unbudgeted Items.** In the event of a good faith disagreement between Manager and any Owner over the amount of or validity of any unbudgeted Common Facilities Charge billed to such Owner by Manager, such Owner may pay such amount under protest, and such Owner's sole remedy shall be to refer such disagreement to binding arbitration in accordance with the provisions of this Declaration.

h. **Reimbursement.** Manager shall be reimbursed for all of its out-of-pocket expenses incurred in performing Common Facilities Maintenance to the extent such expenses are provided for in the approved Common Facilities Budget, or incurred as emergency repairs or unforeseen items as provided above.



i. **Minimizing Operating Costs.** Manager agrees to perform its Common Facilities Maintenance on a non-profit basis with an end to keeping Operating Costs at a reasonable minimum. Notwithstanding, if Manager employs its own personnel to perform parking lot sweeping, snow removal, refuse removal or other like actions for which Manager incurs Operating Costs, Manager shall be entitled to collect for such services its actual direct and indirect costs (including amortization on equipment, if any), as estimated by Manager and approved by the Owners, provided that the total charge is not greater than the lowest available bid from an outside contractor for a comparable service.

5.5 **Operating Costs.** The following expenses shall be referred to as "**Operating Costs**":

a. **General.** Costs for performing Common Facilities Maintenance, including, without limitation, reimbursements of out-of-pocket expenses as described herein;

b. **Employees.** The expenses (including without limitation hourly compensation paid to or on behalf of employees, and based upon competitive hourly rates) of Manager for work done at the Shopping Center in performing the Common Facilities Maintenance;

c. **Third Parties.** The expenses incurred to unrelated third parties in performing the Common Facilities Maintenance; and

d. **Liability Insurance.** Liability insurance premiums as provided below.
and

5.6 **Common Facilities Charge.**

a. **Determination.** Each Owner shall pay to Manager its Prorata Share of the Operating Costs plus a management fee (the "**Management Fee**") equal to fifteen percent (15%) of the Operating Costs. The amount due from each Owner pursuant to this Section is referred to as the "**Common Facilities Charge.**"

b. **Payment.** Each Owner shall pay its Common Facilities Charge monthly in advance (on or before the first day of each month) based on Manager's reasonable estimates, which must be provided to each Owner in writing only once each year and shall be deemed to be in effect until further written notice. Within sixty (60) days following the close of each calendar year, Manager will furnish to each Owner a statement of the actual amount of Operating Costs, the Management Fee, and such Owner's Common Facilities Charge based on actual expenditures for the previous calendar year. If the actual amount of an Owner's Common Facilities Charge is less than the total amount paid by such Owner for such period, the excess will be applied to the next Common Facilities Charges due until the full credit has been applied. If the actual amount of an Owner's Common Facilities Charge exceeds the amount paid by such Owner for such period, the Owner shall pay to Manager the amount shown as due thereon within thirty (30) days following the receipt of Manager's statement. If at any time or times it reasonably appears to Manager that the amount of such Owner's Common Facilities Charge for the current calendar year will vary from Manager's estimate, Manager may, by written notice to the Owner, revise



Manager's estimate for such year, and subsequent monthly payments by the Owner for such year will be based upon Manager's reasonably revised estimate.

5.7 Common Facilities Liability Insurance. As a part of the Operating Costs, Manager shall obtain and maintain general public liability insurance insuring Manager and naming the Owners as additional named insureds against any claims for personal injury, death or property damage occurring in, upon or about the Common Facilities, including contractual liability. Such insurance shall be written with a financially responsible insurer licensed to do business in the State of Utah, and shall contain an endorsement requiring thirty (30) days' written notice to any named insured before cancellation or change in the coverage, scope or amount of the policy. The limits of liability of all such insurance shall be not less than Three Million Dollars (\$3,000,000.00) single liability limit for both personal injury and property damage. If the limits of such insurance become inadequate due to the changes in overall price level or the size of claims being experienced, Manager shall increase the limits based on shopping center industry practices for similarly situated and comparable shopping centers. At the request of any Owner, Manager shall cause a certificate of insurance to be issued and delivered to such person evidencing the insurance required hereunder. If Manager shall not have collected sufficient amounts from occupants of the Shopping Center during prior time periods to pay the premium of the Common Facilities liability insurance, the Owners agree to pay Manager the Owners' Prorata Shares thereof within two (2) weeks after Manager's written demand therefor accompanied by evidence of the premium amount.

5.8 Manager's Rights. Manager shall have the following rights, among others, in carrying out the Common Facilities Maintenance:

a. **Rules.** To establish and enforce reasonable rules and regulations concerning the maintenance, management, use and operation of the Common Facilities, so long as such rules and regulations do not violate or contradict the terms of this Declaration;

b. **Close Off Facilities.** From time to time to close off any of the Common Facilities to whatever extent required in the reasonable judgment of Manager and its counsel or the Owners to prevent a dedication of any of the Common Facilities or the accrual of any rights by any person or the public to the Common Facilities, provided such closure does not deprive any Owner or Lessee of the substantial benefit and enjoyment of the Shopping Center and further provided any such Owner or Lessee shall be given thirty (30) days' prior written notice of such closure.

c. **Construction.** From time to time to perform such construction relating to the renewal, restoration, remodeling or replacement of the Common Facilities as is authorized or required of Manager as part of the Common Facilities Maintenance; provided that Manager shall use reasonable efforts to minimize the disturbance to businesses in the Shopping Center.

5.9 Conflict Between Declaration and Leases. In the event of any conflict between this Declaration and any leases in the Shopping Center, the provisions of this Declaration shall prevail except as between an Owner and any Lessee(s) and any other occupants of a Lot and as between the sublessor and sublessees and occupants of a Lot, in which case nothing contained herein (i) shall excuse the performance of any obligations under the applicable leases, subleases,



or occupancy agreements affecting such Lot, or (ii) shall limit or prevent any Owner from passing on to its Lessees and other occupants of its Lot or the Lot in which it has an interest all or some of the obligations accruing to such Owner, Declarant, and/or such Lot pursuant to this Declaration.

5.10 **Exclusions.** Declarant shall have the sole and unfettered right, pursuant to separate written agreement, to grant Owners exclusion from the maintenance provisions hereof as long as such Owners maintain their Lots, including all Buildings and other improvements thereon, in compliance with the standards set forth herein and all applicable governmental laws, rules, regulations, orders and ordinances, and in a safe, sound condition, clean and free of rubbish, debris, and other hazards to persons using the same, and repairs and replaces the same, so as to maintain the architectural and aesthetic harmony of the Property as a whole, performed and carried out promptly and in a first class and workmanlike manner, quality and condition comparable to that of the remainder of the Shopping Center and of first class shopping centers in the City.

6. **OWNER INSURANCE.** Each Owner shall obtain and maintain "All Risk" insurance covering all of the Buildings and improvements located on its Lot, in an amount equal to no less than ninety percent (90%) of the full replacement cost thereof.

7. **EFFECT OF SALE OF A LOT BY AN OWNER**

7.1 **Sale by Owner.** In the event an Owner sells all or any portion of its interest in its Lot, such Owner shall thereupon be released and discharged from any and all obligations as Owner in connection with the property sold or conveyed by it arising under this Declaration after the sale or conveyance of title, but shall remain liable for all obligations arising under this Declaration prior to the sale or conveyance of title.

7.2 **Obligation of New Owner or Declarant.** The new Owner of any such Lot or any portion thereof (including, without limitation, any Owner who acquires its interest by foreclosure, trustee's sale or otherwise) shall be liable for all obligations arising under this Declaration with respect to such Lot or portion thereof or interest therein after the date of sale or conveyance of title or, as applicable, the sale or assignment of interest.

8. **INDEMNITY**

8.1 **Mutual Release; Subrogation Waiver; General Indemnity:** To the extent that any liability of an Owner or Lessee to another Owner or Lessee is covered by the insured Owner's commercial general liability insurance policy or property insurance policy, each Owner or Lessee respectively waives all rights of subrogation against the other Owners or Lessees.

8.2 **Indemnification:** Each Owner and Lessee hereby agrees to indemnify, defend and hold harmless the other Owners and Lessees from and against any and all liabilities, claims, damages, expenses (including reasonable attorneys' fees and reasonable attorneys' fees on any appeal), judgments, proceedings and causes of action, for injury to or death of any person or damage to or destruction of any property occurring in the interior of any Building or Service



Facilities constructed on the indemnifying Owner's or Lessee's Lot or Building Area, except to the extent caused by the negligent or willful act or omission of the otherwise indemnified person, its tenants, subtenants, agents, contractors or employees.

8.3 Hazardous Substances: Each Owner agrees as follows with respect to its Lot:

8.3.1 Care of Lot. Each Owner shall maintain its Lot in full compliance with all applicable Environmental Laws. In this Declaration the term "**Environmental Laws**" shall mean any federal, state or local statute, ordinance, rule, regulation or guideline pertaining to health, industrial hygiene, or the environment, including without limitation the federal Comprehensive Environmental Response, Compensation, and Liability Act; and the term "**Hazardous Substance**" shall mean all substances, materials and wastes that are or become regulated or classified as hazardous or toxic, under any Environmental Law.

8.3.2 Notification. If any Owner becomes aware of any condition relating to the existence, release or threatened release of any Hazardous Substance or violation of any Environmental Law on its Lot, the cure or remediation of which is required by law or dictated by commercially reasonable business practices, such Owner shall promptly notify the other Owners in writing thereof and shall promptly cure or remediate such condition.

8.3.3 Right to Cure. If any party hereto or any Owner (a "**Defaulting Party**") fails to maintain its Lot as required herein, or perform its duty to cure or remediate as set forth herein, another party/Owner (a "**Nondefaulting Party**") may proceed to cure after thirty (30) days' written notice and failure of the Defaulting Party to commence, and thereafter diligently to prosecute, such cure, and the Nondefaulting Party shall be entitled to a reimbursement of all costs incurred in effecting such cure, together with interest at the Default Rate from the date such costs were paid, plus Collection Costs. In case of an emergency, the person becoming aware of the condition shall attempt reasonable efforts to notify the person with the duty of cure of the condition requiring attention; however, any person may in such emergency, without notice, proceed in good faith to effect a cure, giving such notice later as soon as possible.

8.3.4 Indemnity. The Owner of each Lot agrees to indemnify, defend and hold harmless the other Owners and occupants of all other Lots from and against any and all liabilities, claims, damages, expenses (including reasonable attorneys' fees and reasonable attorneys' fees on any appeal), judgments, proceedings and causes of action, relating to or connected with any of the foregoing mentioned in this **Section 8.3**, for injury to or death of any person or damage to or destruction of any property occurring on or originating from said Owner's Lot or arising out of the act or omission of such Owner, its tenants, subtenants and their successors and assigns, unless caused by the negligent or willful act or omission of the otherwise indemnified person, its agents, contractors or employees.

9. RESTRICTIONS ON USE. In no event will the Shopping Center or any portion thereof be used as or for any of the following (the "**Prohibited Uses**"): the sale or service of automobiles or other vehicles; funeral parlor; animal clinic or animal boarding (kennel) unless part of a pet store; for musical/dance reviews or topless/nude shows; so-called "flea market"; warehousing, except as incidental to a retail business; any business or use that emits offensive



odors, fumes, dust or vapors or is a public or private nuisance or emits loud noise or objectionable sounds or creates fire, explosive or other hazard, except that normal restaurant odors shall be permitted; any place of public entertainment or amusement including but not limited to a bowling alley, skating rink, electronic or mechanical games arcade (except as an incidental use to a retail or commercial business, in which case such use shall be restricted to less than five percent (5%) of the floor area occupied by such business), billiard room or pool hall, health spa or studio or fitness center (except that a smaller health spa/fitness studio such as "Curves" shall be permitted), massage parlor, discotheque, dance hall, banquet hall, night club, bar or tavern, "head shop," pornographic or "adult" store of any kind, racquetball court or gymnasium (except as provided above), or other place of public amusement; the manufacture, storage, sale or consumption of drugs, except the legal personal use or possession for legal personal use of drugs for medicinal purposes; or any gambling. If the provisions of this **Section 9** shall be breached or shall be threatened to be breached, Manager, Declarant, any Owner or any Lessee shall be entitled to injunctive relief or any other appropriate remedy at law or in equity whether provided by statute or otherwise, as such elect.

10. **CONDEMNATION.** If at any time or times all or any part of the Common Facilities shall be taken or condemned by any public authority under power of eminent domain, the provisions of this Section shall apply. A voluntary sale or conveyance of all or any part of the Common Facilities in lieu of condemnation but under threat of condemnation shall be deemed to be a taking by eminent domain. All compensation, damages, and other proceeds from any such taking by power of eminent domain ("**Condemnation Award**") attributable to the value of any land within the Common Facilities shall be payable only to the Owner thereof (and its assigns, as per lease or otherwise), and no claim thereon shall be made by the other Owners; provided, however, that all other Owners may file collateral claims with the condemning authority over and above the value of the land and improvements located within the Common Facilities so taken to the extent of any damage suffered by their respective Building Areas resulting from severance of the appurtenant portions of the Common Facilities so taken. The Owner of the portions of the Common Facilities so condemned shall promptly repair and restore the remaining portion of the Common Facilities so owned by such Owner as near as practicable to the condition of the same immediately prior to the condemnation and without contribution from any other Owner; provided, however, that the obligation to repair or reconstruct shall be limited such that the cost thereof shall not exceed the amount of the Condemnation Award payable to the Owner of the Common Facilities so condemned less said Owner's costs associated with the condemnation, including but not limited to attorneys' fees and court costs arising out of the condemnation proceedings.

11. **GENERAL PROVISIONS**

11.1 **Covenants Run With the Land:** Each restriction on each Lot shall be a burden on that Lot, shall be appurtenant to and for the benefit of the other Lots and each part thereof and shall run with the land.

11.2 **Successors and Assigns:** This Declaration and the Restrictions created hereby shall inure to the benefit of and be binding upon the Owners, their heirs, personal representatives, successors and assigns, and upon any Person acquiring a Lot, or any portion thereof, or any



interest therein, whether by operation of law or otherwise, to the extent that the foregoing is consistent with the provisions of **Section 7** of this Declaration. With respect to rights in or to any Lot which have been severed from the rights or estates owned by Declarant pursuant to the terms of this Declaration, Declarant intends that such rights remain severed notwithstanding that during any time in which this Declaration is in effect, Declarant or any other person may own the underlying estate or servient estate as well as the lessor's right or dominant estate, respectively, so that Declarant's purposes in making this Declaration, as listed in the recitals, may be served, and any doctrine of merger of estates, or principle of law having similar effect, shall not apply to diminish any right hereunder or combine any right created or severed hereunder with any other estate or interest.

11.3 Duration: Except as otherwise provided herein, the term of this Declaration shall be for fifty (50) years and shall be thereafter automatically renewed for successive terms of ten (10) years unless terminated by a termination notice from Owners and first mortgage Lienholders owning or having first mortgage (including trust deed) liens upon, more than seventy-five percent (75%) of the Shopping Center Land, which termination notice shall be executed by said Owners and mortgage lienholders and recorded in the records of the Utah County Recorder at least one (1) year before the termination of the primary term or any renewal term.

11.4 Arbitration: As required by specific references within this Declaration to arbitration but otherwise only with the consent of the persons affected thereby, any controversy or claim arising out of or relating to this Declaration, or the breach thereof, shall be settled by arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association, with any specific adjustments made for the state of Utah and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof.

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

4.1 11.6 Modification and Termination: This Declaration may not be modified in any respect or terminated, in whole or in part, except with the consent of Declarant plus 50% of the total Owners, and then only by written instrument duly executed and acknowledged by the same as set forth in **Section 11.7** below and recorded in the office of the recorder of the county in which the Shopping Center is located. No modification or termination of the Declaration shall affect the rights of any first Lienholder unless the first Lienholder consents in writing to the modification or termination. Nothing herein contained, and no violation of these covenants, conditions, and restrictions, shall invalidate or impair the lien of any mortgage or deed of trust, given in good faith and for value.

11.7 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 Owners that this Declaration shall be strictly limited to and for the purposes herein expressed.



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

11.9 **Default:** A person shall be deemed to be in default of this Declaration only upon the expiration of thirty (30) days (unless another period is specified elsewhere in this Declaration with regard to a specific kind of default) from receipt of written notice from Declarant, Manager, any Owner or any 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 other such period as is elsewhere specified), has rectified the particulars specified in said notice of default. However, such person shall not be deemed to be in default if such failure cannot be rectified within said thirty (30) day period (or other specified time period) and such person is using diligent good faith efforts to rectify the particulars specified in the notice of default.

11.10 **Notices:** All notices given pursuant to this Declaration shall be in writing and shall be given by personal delivery, 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 Declarant as designated below, and to other parties subject hereto at their respective addresses shown on the then current real property tax rolls of the county in which the Shopping Center is located:

Declarant: Amsource Highbury, LLC
 Attn: Manager's President
 358 S. Rio Grande, Suite 200
 Salt Lake City, Utah 84101

With a copy to Declarant's General Counsel at the same address.

The person and address to which notices are to be given may be changed at any time by any party upon written notice to the other parties. All notices given pursuant to this Declaration shall be deemed given upon receipt. 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 above as shown on the return receipt, (ii) the date of actual receipt of the notice or other document by the person or entity specified pursuant hereto, or (iii) in the case of refusal to accept delivery or inability to deliver the notice or other document, the earlier of (A) the date of the attempted delivery or refusal to accept delivery, (B) the date of the postmark on the return receipt, or (C) the date of receipt of notice of refusal or notice of nondelivery by the sending person.

11.11 **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.

11.12 Attorneys' Fees: In the event any person initiates or defends any legal action or proceeding related to this Declaration, the prevailing party in any such action or proceeding shall be entitled to recover from the non-prevailing party in any such action or proceeding its reasonable costs and attorneys' fees (including its reasonable costs and attorneys' fees on any appeal).

11.13 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 so long as the severed provision does not affect the basic consideration for this Declaration, and each term and provision of this Declaration shall be valid and shall be enforced to the extent permitted by law.

11.14 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 or entity not specifically mentioned herein, unless otherwise expressly provided herein.

11.15 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.

11.16 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.

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

EXECUTED as of the day and year first above written.

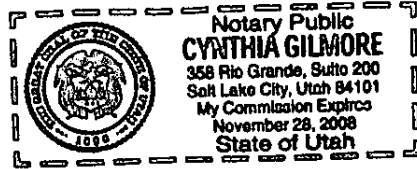
AMSOURCE Highbury, LLC,
a Utah limited liability company,
by its Manager, Amsource Development Inc.,
a Utah corporation

By: 
Its: Vice President

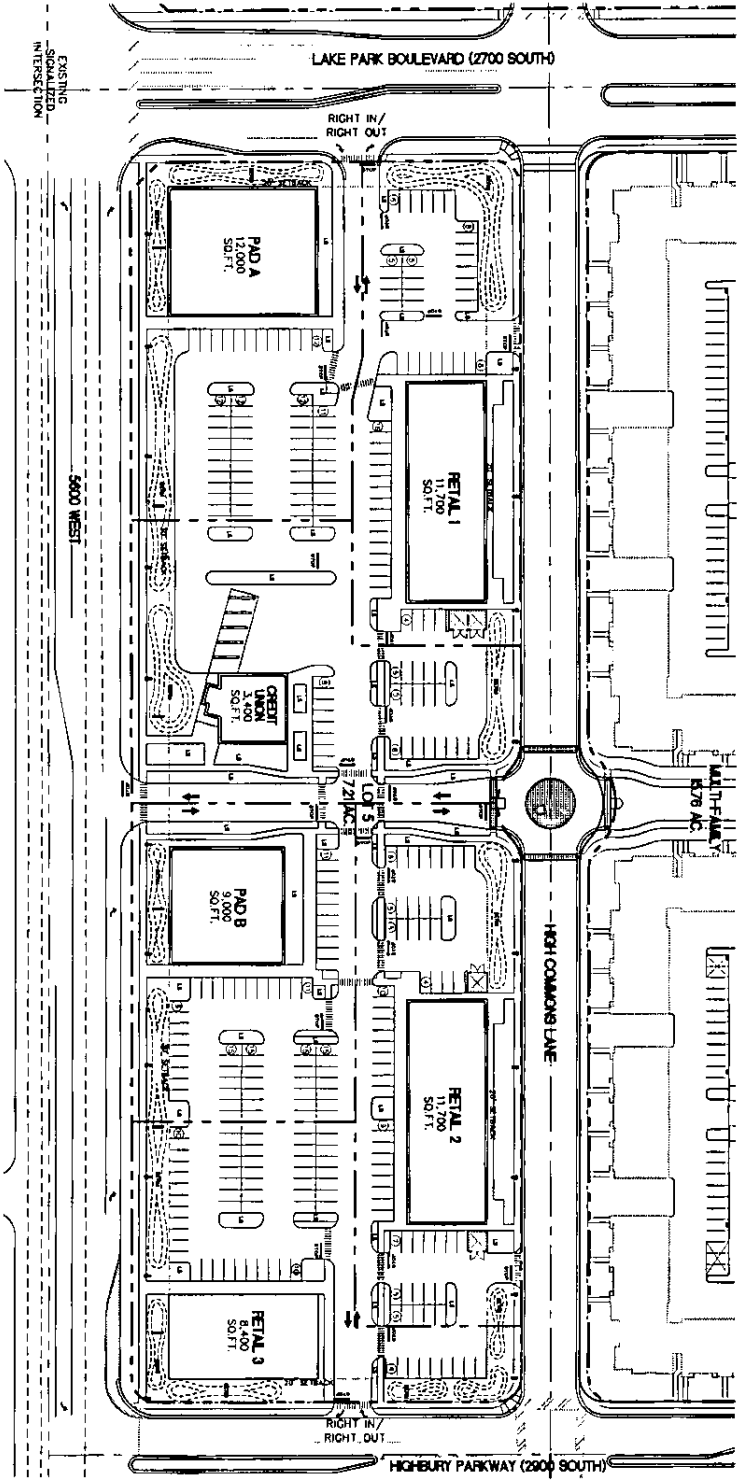
STATE OF UTAH)
)
:SS
COUNTY OF SALT LAKE)

The foregoing instrument was acknowledged before me on 10/5/04 by
BYRON B TODD, in the capacity indicated.

Notary Public: *Cynthia Gilmore*



A small, handwritten mark or signature located in the bottom right corner of the page.



BUILDING AND SITE DATA

CREDIT UNION	3,400 SF	1.32 AC
PAD A	12,000 SF	1.22 AC
PAD B	5,000 SF	1.07 AC
PAD C	8,400 SF	1.18 AC
RETAIL 1	11,700 SF	1.38 AC
RETAIL 2	11,700 SF	1.38 AC
TOTAL BUILDING SF	68,500 SF	7.21 AC

PARKING DATA

CREDIT UNION	98 STALLS
PAD A	68 STALLS
PAD B	51 STALLS
RETAIL 1	71 STALLS
RETAIL 2	71 STALLS
RETAIL 3	52 STALLS
TOTAL	324 STALLS
OVERALL RATIO	4.77/1,000 SF

ZONING INFORMATION

FORMER CATEGORIES	C-7/ 300' X 600' ZONE	FORMER CATEGORIES	300' X 600' ZONE
LOCAL JURISDICTION	WEST VALLEY CITY	COMMERCIAL	COMMERCIAL
PLANNING SERVICE REQUIREMENTS	30'	MINIMUM FRONT SETBACK	30'
MIN. YARD	30'	MINIMUM SIDE SETBACK	30'
MIN. YARD	30'	MINIMUM REAR SETBACK	30'
MIN. YARD	30'	MINIMUM CORNER SETBACK	30'
MIN. YARD	30'	MINIMUM SIGN SETBACK	30'
MIN. YARD	30'	MINIMUM SIGN HEIGHT	13.5' (OR 3000 N. SIGN)
MIN. YARD	30'	MINIMUM SIGN AREA	100 SQ. FT.
MIN. YARD	30'	MINIMUM SIGN SPACING	10 FT.
MIN. YARD	30'	MINIMUM SIGN SPACING	10 FT.
MIN. YARD	30'	MINIMUM SIGN SPACING	10 FT.



PRELIMINARY SITE PLAN
HIGHBURY SHOPPES
 5600 WEST & 2700 SOUTH
 WEST VALLEY CITY, UTAH

DATE: 08/20/2018

PROJECT: 18-00000

OWNER: HIGHBURY SHOPPES

DESIGNER: [Logo]

CREATED BY: [Name]

NO. 18-00000

9-p-12

18-00000-001

18-00000-002

18-00000-003

18-00000-004

18-00000-005

18-00000-006

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18-00000-046

18-00000-047

18-00000-048

18-00000-049

18-00000-050

EXHIBIT A



EXHIBIT B

LEGAL DESCRIPTION OF SHOPPING CENTER LAND

Lot 5, Highbury Commons at Lake Park, according to the official plat on file and of record in the Office of the Salt Lake County Recorder.

14-25-100-018 - 14-25-101-001

