

WHEN RECORDED MAIL TO:

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ABOVE SPACE LINE FOR RECORDER'S USE

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS
AND RECIPROCAL EASEMENT AGREEMENT**

by

FPA HILLCREST ASSOCIATES, LLC,
a Delaware limited liability company

Dated _____, 2010

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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS AND RECIPROCAL EASEMENT AGREEMENT

This Declaration of Covenants, Conditions and Restrictions and Reciprocal Easement Agreement (the “**Declaration**”) is made and entered into by FPA HILLCREST ASSOCIATES, LLC, a Delaware limited liability company (“**Declarant**”), as of this ___ day of _____, 2010, with reference to the facts set forth below.

RECITALS

Capitalized terms used in the Recitals are defined in **Article 1** below.

A. Declarant is the Owner of that certain real property located in the City of Boise, County of Ada, State of Idaho, consisting of the real property more particularly described on **Exhibit “A”** attached hereto and incorporated herein (the “**Shopping Center**”) and depicted on the Site Plan attached hereto as **Exhibit “B”** and incorporated herein

B. On even date herewith, Grantor is recording that certain plat for the Shopping Center in the real property records of Ada County, Idaho to subdivide the Property into lots pursuant to the preliminary/final plat approval SUB09-00018 issued by Boise City Council on December 1, 2009.

C. Declarant desires to (i) create certain easements for ingress, egress, parking, utilities and other matters, for the benefit of each of the Parcels, over and across the Common Area on each Parcel; (ii) impose obligations with respect to the maintenance and repair of the Common Areas; and (iii) impose certain limitations on the use of the Parcels and the Improvements to be constructed thereon by the Owners, all as is more particularly set forth herein.

NOW, THEREFORE, Declarant does hereby establish and declare that the Shopping Center and every portion thereof shall be owned, held, conveyed, transferred, divided, sold, leased, rented, encumbered, developed, improved, maintained, repaired, occupied and used subject to the covenants, conditions, restrictions, easements, rights, rights-of-way, liens, charges and other protective and beneficial provisions set forth in this Declaration, which (i) are mutual, beneficial and equitable servitudes in favor of and for the mutual use and benefit of the Shopping Center and each portion thereof and each Owner of a Parcel and (ii) are hereby expressly declared to be binding upon the Parcels and each portion thereof and shall run with the land and each and every part thereof, inure to the benefit of and be a burden upon the Parcels and each portion located therein and shall bind the respective heirs, successors and assigns of the Owners of the Parcels. Upon recordation of this Declaration, any conveyance, transfer, sale, hypothecation, assignment, lease or sublease made by any Owner, shall be and hereby is deemed to incorporate by reference the provisions of this Declaration, as the same may from time to time be amended.

ARTICLE 1 DEFINITIONS

1.1 Albertson's Lease. The term "Albertson's Lease" means that certain Shopping Center Lease dated July 22 1987, by and between Hillcrest Plaza Partnership and Albertson's Inc. together with all amendments thereto, a memorandum of which was recorded on October 19, 1987, in the records of Ada County, Idaho, as Instrument No. 8758331.

1.2 Approving Owners. The term "Approving Owners" means (i) Declarant, so long as Declarant owns any portion of the Shopping Center, and (ii) from and after the date the Declarant no longer owns any portion of the Shopping Center, the Owners of Parcels_____.

1.3 Building. The term "Building" means any Building structure constructed within the Shopping Center.

1.4 Building Area. The term "Building Area" means all areas on each Parcel designated as "Building Area" on the Site Plan, together with those portions of the Expansion Area and within which Buildings may be constructed, placed or located.

1.5 Claims. The term "Claims" means all claims, actions, demands, liabilities, damages, costs, penalties, forfeitures, losses or expenses, including, without limitation, reasonable attorneys' fees and costs and the costs and expenses of enforcing any indemnification, defense or hold harmless obligation under this Declaration.

1.6 Common Area. The term "Common Area" refers to all those areas on each Parcel which are not Building Area together with those portions of the Building Area on each Parcel which are not from time to time actually covered by a Building or which cannot under the terms of this Declaration be used for Buildings. Common Area shall not include any (i) canopies, eaves and roof overhangs which extend over the Common Area, together with any columns or posts supporting the same, (ii) truck and/or loading docks or the concrete apron or ramp leading to such areas (but will include any asphalt paved areas immediately adjacent to and adjoining such concrete apron or ramp area), (iii) trash enclosure and/or compactor areas immediately adjacent to, and used exclusively by, a particular Building or Owner, and (iv) "drive-thru" lanes exclusively serving any Building, all of which shall be deemed to be a part of the Building to which they are appurtenant. During any period of construction on any Parcel, Common Area shall not include any construction area.

1.7 Common Utility Lines. The term "Common Utility Lines" means utility systems and facilities from time to time situated on or serving the Parcels, up to the Building wall of any Building, for use or service in common by the Owners or for the service of the Common Area, such as the following: sanitary sewer systems, manholes, underground domestic and fire protection water systems, underground natural gas systems, underground electric power cables and systems, communication lines, underground telephone and television cables and systems, and all other utility systems and facilities for such common use or service, including, without limitation, any surface water collection, retention and facilities within the Shopping Center and those installed under the provisions of this Declaration and as replacements thereto. The

Common Utility Lines end (and the Owner's separate utility facilities begins) at that point where any utility which is stubbed to a particular Building breaks off or separates from the main line.

1.8 Constant Dollars. The term "Constant Dollars" means the present value of the U.S. dollar to which such phrase refers. An adjustment shall occur on the 1st day of June of the sixth (6th) full calendar year following the date of recordation of this Declaration, and thereafter at five (5) year intervals. Constant Dollars shall be determined by multiplying the dollar amount to be adjusted by a fraction, the numerator of which is the Current Index Number and the denominator of which is the Base Index Number. The "Base Index Number" shall be the level of the Index for the month this Declaration is recorded; the "Current Index Number" shall be the level of the Index for the month of October of the year preceding the adjustment year; the "Index" shall be the Consumer Price Index for All Urban Consumers for the West Region, published by the Bureau of Labor Statistics of the United States Department of Labor for U.S. City Average, All Items (1982-84=100), or any successor index thereto as hereinafter provided. If publication of the Index is discontinued, or if the basis of calculating the Index is materially changed, then the Approving Owners shall substitute for the Index comparable statistics as computed by an agency of the United States Government or, if none, by a substantial and responsible periodical or publication of recognized authority most closely approximating the result which would have been achieved by the Index.

1.9 Declarant. The term "Declarant" refers to FPA Hillcrest Associates, LLC, a Delaware limited liability company. In addition, Declarant shall mean the successors and assigns of FPA Hillcrest Associates, LLC, only if the rights and obligations of FPA Hillcrest Associates, LLC, as the Declarant under this Declaration are assigned to and assumed by such assignee or successor pursuant to a recorded instrument.

1.10 Declaration. The term "Declaration" means this Declaration of Covenants, Conditions and Restrictions, and Reciprocal Easement Agreement, as it may from time to time be amended or supplemented.

1.11 Default Interest Rate. The term "Default Interest Rate" means the lesser of: (i) four percent (4%) per annum in excess of the "Prime Rate", or (ii) the highest lawful rate. The "Prime Rate" shall be the rate announced as such from time to time by Bank of America or its successor. If there shall be no such announced rate of such bank or its successor, then the "Prime Rate" shall be such equivalent rate as is charged from time to time by major money-center banks.

1.12 Floor Area. The term "Floor Area" means the total number of square feet of floor area in a Building, including basement, subterranean, balcony and mezzanine space, irrespective of whether actually occupied. Floor Area will 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 structured or non-structured components.

1.13 Governmental Requirements. The term "Governmental Requirements" means all applicable laws, rules, regulations, orders, ordinances, restrictions and other requirements (including all requirements to have or to obtain permits) of any governmental agency or body with jurisdiction over any portion of the Shopping Center.

1.14 Improvements. The term “Improvements” means any Improvements installed above or below ground including, without limitation, all Buildings, all structures, signs, hardscaping and landscaping and appurtenances thereto of every type and nature.

1.15 Leased Premises. The term “Leased Premises” means the area designated as Leased Premises on the Site Plan.

1.16 Lessee. The term “Lessee” means each Person who, at any given time, is leasing a Parcel or a Building or a portion of a Parcel or a Building on a Parcel from an Owner under a written lease. An Owner may designate, by an executed, recorded instrument, a Lessee as primarily responsible for the burdens and obligations imposed on such Owner herein during the term of the lease, and may further designate to such Lessee the right to exercise the powers granted to such Owner under this Declaration. Such designation, however, shall not result in a release of such Owner from any responsibility or liability hereunder.

1.17 Mortgage. The term “Mortgage” means any mortgage or deed of trust encumbering a Parcel and, to the extent applicable, a “sale and leaseback” or “assignment and subleaseback” transaction under which an Owner becomes a Lessee.

1.18 Mortgagee. The term “Mortgagee” means a mortgagee, or trustee and beneficiary under a Mortgage, and to the extent applicable, a fee owner or lessor or sublessor of any Parcel which is the subject of a lease under which any Owner becomes a Lessee in a so called “sale and leaseback” or “assignment and subleaseback” transaction. A Mortgagee shall not be deemed to be an Owner for purposes of this Declaration until such time as said Mortgagee acquires fee simple title to its Parcel(s) by foreclosure, trustee’s sale or otherwise.

1.19 Occupant. The term “Occupant” means any Owner, Lessee and any other Person from time to time entitled to the use and occupancy of any portion of a Parcel under a lease, sublease, assignment, license, concession or similar occupancy agreement.

1.20 Operator. The term “Operator” initially means Declarant. The Operator may be replaced as provided in **Section 6.5.2** of this Declaration.

1.21 Owner. The term “Owner” means the record fee owner of any of the Parcels (including its heirs, personal representatives, successors and assigns). If a Parcel is owned by multiple parties (“**Multiple Owners**”), the Multiple Owners shall designate in writing one of the Multiple Owners (“**Designated Owner**”) with the sole right to act for and bind all of the Multiple Owners of such Parcel, and the other Owners may rely on any consent, approval or decision made by the Designated Owner on behalf of the Multiple Owners.

1.22 Parcel or Parcels. The term “Parcel” or “Parcels” means each as shown on the Site Plan.

1.23 Permittees. The term “Permittees” means the Owners, Lessees and Occupants and their respective officers, directors, employees, agents, contractors, customers, visitors, invitees, licensees and concessionaires. Persons engaged in civic, public or political activities within the Shopping Center shall not be considered Permittees.

1.24 Person or Persons. The term “Person” or “Persons” means and includes individuals, partnerships, firms, associations, joint ventures, corporations, trusts, or any other form of business entity.

1.25 Proportionate Share of Shared Maintenance Expenses. The term “Proportionate Share of Shared Maintenance Expenses” means each Owner’s proportionate share of the expenses incurred by Operator for Shared Maintenance, which shall be a fraction, (a) the numerator of which is the square footage of the Floor Area of the Owner’s Building, and (b) the denominator of which is the total square footage of the Floor Area of all Buildings in the Shopping Center, provided if such Shared Maintenance Expenses are provided for the benefit of only a portion of the Shopping Center, then the denominator shall be the total square footage of Floor Area of all Buildings benefited by such maintenance.

1.26 Service Facilities. Loading docks, trash compactors and enclosures, bottle storage areas, exterior coolers, electrical and refrigeration facilities and other similar service facilities.

1.27 Shared Maintenance Areas. The term “Shared Maintenance Areas” means those portions of the Common Area which will be maintained by the Operator as designated as “Shared Maintenance Areas” on the Site Plan from time to time.

1.28 Shared Maintenance Expenses. The term “Shared Maintenance Expenses” means all reasonable costs and expenses of every nature and kind as may be actually paid or incurred by Operator to operate, maintain, repair and replace the Shared Maintenance Areas. Shared Maintenance Expenses shall also include an administrative and management charge set forth in **Article 7**.

1.29 Shopping Center. The term “Shopping Center” means Parcels _____ as shown on the Site Plan, as the same may be amended from time to time.

1.30 Site Plan. The term “Site Plan” means the Site Plan attached hereto as **Exhibit “B”**, as the same may be modified or amended in accordance with the provisions of this Declaration.

1.31 Supplementary Declaration. The term “Supplementary Declaration” means the document which may be executed and recorded by Declarant to do any of the following: (i) impose any additional restrictions applicable to certain Parcels prior to the conveyance of those Parcels to an Owner by Declarant, (ii) designate allocations relating to payment of Shared Maintenance Expenses, provided any such designation shall not modify the method of allocating Shared Maintenance Expenses established under this Declaration, (iii) impose exclusive use or other restrictions on the Owner of a Parcel prior to the conveyance of such Parcel by Declarant; (iv) impose additional maintenance or other obligations on the Owner of a Parcel prior to the conveyance of such Parcel by Declarant; (v) document any modifications to the Site Plan which are made by Declarant pursuant to **Section 12.2** of this Declaration; (vi) attach or replace any new Site Plan pursuant to **Section 12.2** of this Declaration, and/or (vii) make technical or minor corrections to this Declaration or any previously recorded Supplementary Declaration.

1.32 Utility Lines. The term “Utility Lines” means those facilities and systems for the transmission of utility services including, without limitation, Common Utility Lines.

ARTICLE 2 EASEMENTS

2.1 Easements.

2.1.1 Ingress and Egress. Declarant hereby grants and conveys to each Owner and its Permittees, for the benefit of each Parcel, a non-exclusive perpetual easement for ingress and egress by vehicular and pedestrian traffic and vehicular parking upon, over and across the Common Area. The termination of the foregoing easement shall require the prior written consent of the City of Boise.

2.1.2 Utility Easements. Declarant hereby grants and conveys to each Owner for the benefit of each Parcel within the Shopping Center, a non-exclusive perpetual easement in, to, over, under and across the Common Area located on each of the other Parcels for the benefit of and appurtenant to each for the purposes of installation, flow, passage, repair, maintenance, use and operation, relocation and removal (individually and collectively herein referred to as “**Utility Use**”) of Utility Lines. In the performance of such Utility Use: (i) adequate provision shall be made for the safety and convenience of all persons using the surface of such areas; (ii) the areas and facilities shall be replaced or restored to the condition in which they were prior to the performance of such Utility Use; (iii) all costs, fees and expenses incurred as a result of such Utility Use shall be borne solely by the Owner who undertakes such Utility Use; (iv) at least sixty (60) days prior to utilizing the easement granted herein, the Owner who undertakes such Utility Use shall provide the affected Owner with a written statement describing the need for such easement, shall identify the proposed location of the Utility Use, the nature of the service to be provided, and the anticipated commencement and completion dates for the work; (v) the schedule for the performance of such Utility Use shall be subject to the reasonable approval of the other affected Owners (it being acknowledged that it shall be reasonable for the other Owner to disapprove any Utility Use constituting installation, repairs or maintenance during weekends, holiday or high traffic periods which is not occasioned by an emergency), if the disapproving Owner has, or intends to have, an operating business on its Parcel at such time, (vi) any relocation of a utility facility on a burdened Owner’s Parcel shall not unreasonably interrupt, interfere with or diminish any utility service to the Improvements located on the benefitted Parcel or unreasonably impair the usefulness or function of the Utility Line or facility; and (vii) any construction activities pursuant to such easement rights shall be performed so as not to unreasonably interfere with access to, use, occupancy, or enjoyment of the remainder of the Shopping Center. Each Owner who undertakes such Utility Use agrees to indemnify, protect, defend and hold harmless the other Owners from and against all Claims, arising out of or resulting from the exercise of the right to install, maintain, repair, use, and operate, relocate and remove the Utility Lines; provided, however, the foregoing obligation shall not apply to Claims based on the negligence or the willful misconduct of the other Owner.

2.1.3 Drainage. Declarant hereby grants and conveys to each Owner for the benefit of each Parcel within the Shopping Center, a non-exclusive perpetual easement in, to,

over, under, through and across the Common Area located on each of the other Parcels for reasonable drainage purposes to catch basins as installed, improved and modified from time to time and therefrom through underground pipes to seepage beds and detention ponds within the Shopping Center for the purpose of storm water drainage. Nothing herein shall give any Owner the right to discharge wastewater other than storm water and incidental runoff from irrigation activities onto the easement area or into the catch basins or pipes.

2.1.4 Easement in Favor of the Operator and Owner. To the extent the Operator has the obligation for maintaining the Common Area located on a Parcel and the free-standing signs referred to in **Section 4.11.1**, each Owner hereby grants to the Operator and its agents, employees and contractors an easement over such areas which may be located upon an Owner's Parcel for the purpose of performing the Operator's obligations pursuant to the provisions of this Declaration. Each Owner grants to the other Owners for the benefit of each Parcel belonging to the other Owners, an easement to enter the granting Owner's Parcel for the purpose of performing any obligations or exercising any other rights the other Owners have under this Declaration.

2.1.5 Signs. Declarant hereby grants and conveys to each Owner for the benefit of each Parcel within the Shopping Center, a non-exclusive perpetual easement in, to, over, under, through and across the Common Area located on each of the other Parcels for the installation, operation, maintenance, repair and replacement of the free-standing signs referred to in **Section 4.11.1** of this Declaration and all utility lines and facilities appurtenance thereto.

2.1.6 Encroachment Easement. Each of the Owners shall have a non-exclusive easement for any portion of any Building or Improvement located on any Parcel which may *inadvertently* be constructed so as to encroach into or over the adjoining Parcel(s); provided the easement for footings, piers, piles, grade beams and Building encroachments does not exceed two (2) feet, and the easement for canopies, eaves and roof overhangs does not exceed four (4) feet. The easements granted in this **Section 2.1.6** shall (a) survive the expiration of this Declaration and shall last so long as the encroaching Building is standing following initial construction or following reconstruction where such Building is substantially restored to its prior condition following a casualty or condemnation, and (b) not diminish or waive any right of an Owner to recover damages resulting from the constructing owner's failure to construct its Building within its Parcel.

2.2 Unimpeded Access Between Parcels. The Owners within the Shopping Center covenant that, at all times, free access between each Parcel and the remainder of the Shopping Center will not be impeded and will be maintained. Except as specifically depicted on the Site Plan or as may be approved by the Approving Owners, no barriers, fences, material grade changes or other obstructions shall be erected so as to impede or interfere in any way with the free flow of vehicular and pedestrian traffic between those portions of the Parcels from time to time devoted to pedestrian access, vehicular roadways, driveways or parking area, except within the confines of any Service Facilities, and except as may be constructed pursuant to **Section 4.12** or as may be required at any time and from time to time in connection with the construction, maintenance and repair of the Common Area, or in any manner unreasonably restrict or interfere with the use and enjoyment of any Owner of the rights and easements created by this **Article 2**.

2.3 Scope of Easements; No Requirement of Confirmation. Except for any easements granted to Operator, all easements herein shall be easements appurtenant and not easements in gross and shall run with the land. In addition, all easements granted hereunder shall exist by virtue of this Declaration, without the necessity of confirmation by any other document.

ARTICLE 3 SHOPPING CENTER DEVELOPMENT RESTRICTIONS

3.1 Building Location. All Buildings and other structures in the Shopping Center (except those permitted in **Section 5.10** below) shall be placed or constructed only in the Building Areas; provided, however, that canopies, eaves and roof overhangs (including columns or posts supporting same), normal foundations, utility cabinets and meters, signs and doors for ingress and egress may project from the Building Area into the Common Area for a distance of up to thirty (30) feet provided same do not unreasonably interfere with the use of the Common Area for the purposes otherwise designated herein. All of the foregoing shall be constructed and maintained in accordance with all local, state and federal laws, rules and regulations applicable thereto. All Building Areas on which Buildings are not constructed shall be covered by a one-inch asphalt dust cap (or other alternative acceptable to Albertson's and the Approving Owners) and kept weed free and clean at Owner's sole expense until such time as Buildings are constructed thereon.

3.2 Changes. The sizes and arrangements of Common Area Improvements including, without limitation, service drives and parking areas, striping, traffic directional arrows and signs, concrete bumpers, parking lot lighting, perimeter walls and fences, and landscaped areas, together with necessary planting, may not be changed without the prior written consent of Albertson's and the Approving Owners; provided, however, that nothing in this **Section 3.2** shall be in any way interpreted or construed to require approval to the expansion of the Building located on the Leased Premises into the Expansion Area shown on **Exhibit "A."**

3.3 Parking in Common Area. There shall be no charge for parking in the Common Area without the prior written consent of Albertson's and the Approving Owners. 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 Albertson's and the Approving Owners. In the event employee parking areas are designated as provided herein, then employees of any Owner or Occupant of any part of the Shopping Center shall use only those portions of the Common Area designated for such motor vehicle parking purposes. In no event shall employees park within 200 feet of the front of any Building located on the Leased Premises. The authority herein granted shall be exercised in such manner as not to discriminate against any Owner or Occupant of the Shopping Center.

3.3.1 Self-Reliant Parcels. Notwithstanding the right of each Owner or Occupant within the Shopping Center to use the Common Area on the other Parcels within the Shopping Center for parking as set forth herein, no Occupant of a Parcel shall rely upon any portion of the Common Area outside the Parcel owned or occupied by such Occupant for satisfaction of Governmental Requirements for parking (without variance) for such Owner's

Parcel, provided, however, that prior to the conveyance of a Parcel to a third party, the Declarant may, by Supplementary Declaration, designate certain Parcels that shall be permitted to collectively satisfy the governmental parking requirements such designated Parcels.

3.4 Underground Utilities. All Utility Lines shall be underground except for: (i) ground mounted electrical transformers, (ii) temporary utilities during periods of construction, reconstruction or repair, (iii) those required to be above ground by the provider of such service; (iv) fire hydrants, detector check valves, and backflow prevention devices; and (v) utility meters on the sides of Buildings.

ARTICLE 4 ARCHITECTURAL APPROVALS AND CONSTRUCTION

4.1 Architectural Compatibility. Each Building in the Shopping Center, now and in the future, shall be of first quality construction and architecturally designed so that its exterior elevations (including, without limitation, signs and color) will be architecturally and aesthetically compatible and harmonious with all other Buildings in the Shopping Center. In furtherance thereof, 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 Albertsons's and the Approving Owners, as to the exterior elevations (including, without limitation, signs and color) of the Building to be constructed or modified. The standard signs and logos of (i) Albertson's, (ii) any nationally recognized tenant, or (iii) any other tenant occupying at least 15,000 square feet on the ground floor of a Building, as they may exist from time to time, and the opening, closing or relocation of any door, however, shall not require approval. Before the construction of any Building or any modification of an existing Building which requires approval is commenced, sufficient information shall be sent to Albertson's and the Approving Owners to make a reasonable determination as to the architectural and aesthetic compatibility of said Building or modification with all other Buildings in the Shopping Center. Albertson's and the Approving Owners may not arbitrarily or unreasonably withhold approval of the proposed Building or modification if it is architecturally and aesthetically compatible and harmonious with all other Buildings in the Shopping Center. Albertson's and the Approving Owners must approve or disapprove the proposal within thirty (30) days after receipt of the proposal, and any disapproval of the proposal shall be accompanied by a written explanation in reasonable detail of the reasons for disapproval. If Albertson's or the Approving Owners reject or disapprove the proposal and fail to provide such explanation within the thirty (30) day period, such party shall be deemed to have approved same provided that, when the approval was sought, the one seeking the approval stated in writing to the one whose approval was sought that, if a disapproval with explanation was not made within the thirty (30) day period, approval would then be deemed to have been given. If the proposal is disapproved as provided herein, then an alternate proposal may be submitted, which alternate proposal shall be handled in the same manner as the initial proposal.

4.2 Effect of Review. The Approving Owners shall not be responsible for reviewing, nor shall its approval of the information submitted in connection with the construction of any Building or any modification of an existing Building be deemed an approval from the standpoint of structural safety, architectural or engineering design or conformance with Building or other

Governmental Requirements. As a result of the approval of the information submitted in connection with the construction of any Building or any modification of an existing Building, the Approving Owners shall not be liable for any damage, loss or prejudice suffered or claimed by an Owner or Occupant or any successor in interest to an Owner or Occupant.

4.3 Building Improvements. Each Owner agrees to diligently prosecute to completion the construction of any Building on its Parcel and any modifications thereto.

4.4 Maximum Square Footage of Buildings and Height Restrictions. No Building constructed on any Parcel shall (a) exceed the maximum Floor Area for such Building as shown on the Site Plan, (b) be more than one story in height, provided, however, the foregoing restriction shall not prohibit the construction of mezzanines, and (c) exceed thirty-one (31) feet in height as to Parcels _____ and eighteen (18) feet in height as to any Building on Pad A depicted on the Site Plan. The height of any Building shall be measured perpendicular from the finished floor elevation to the top of the roof structure, including any screening, parapet, mechanical equipment or similar appurtenance located on the roof of such Building. No mezzanine or basement shall be used for the sale or display of merchandise.

4.5 Construction Requirements.

4.5.1 Standards. All work performed in the construction, maintenance, repair, replacement, alteration or expansion of any Building, sign or Common Area Improvements located in the Shopping Center shall be effected as expeditiously as possible and in such a manner as not to unreasonably interfere, obstruct or delay (i) access to or from the Shopping Center (or any part thereof), (ii) customer vehicular parking in that portion of the improved Common Area located in front of any Building constructed in the Shopping Center, or (iii) the receiving of merchandise by any business in the Shopping Center including, without limitation, access to Service Facilities. Staging for the construction, replacement, alteration or expansion of any Building, sign or Common Area Improvements located in the Shopping Center including, without limitation, the location of any temporary Buildings or construction sheds, the storage of Building materials, and the parking of construction vehicles and equipment shall be limited to that portion of the Shopping Center approved in writing by Albertson's and the Approving Owners. Unless otherwise specifically stated herein, the Person contracting for the performance of such work ("**Contracting Party**") shall, at its sole cost and expense, promptly repair and restore or cause to be promptly repaired and restored to its prior condition all Buildings, signs and Common Area Improvements damaged or destroyed in the performance of such work. During the course of any construction, the Person undertaking such work, at its sole cost, shall (a) make adequate provisions for the safety and convenience of all Permittees, (b) control dust, noise and other effects of such work using methods commonly utilized to control such effects associated with construction projects, and (c) promptly remove all dirt and debris.

4.5.2 Liens. The Contracting Party shall not permit any liens to stand against the Shopping Center or any part thereof for any work done or materials furnished in connection with the performance of the work described in **Section 4.5.1**; provided, however, that the Contracting Party may contest the validity of any such lien, but upon a final determination of the validity thereof, the Contracting Party shall cause the lien to be satisfied and released of record.

The Contracting Party shall, within thirty (30) days after receipt of written notice from the Owner of any Parcel encumbered by any such lien or claim of lien, cause any such outstanding lien or claim of lien to be released of record or transferred to bond in accordance with applicable law, failing which the Owner of said Parcel shall have the right, at the Contracting Party's expense, to transfer said lien to bond. The Contracting Party shall indemnify, defend and hold harmless the Owners and Occupants of the Shopping Center from any and all Claims, liens, claims of lien, judgments, proceedings and causes of action, arising out of or in any way connected with the performance of such work, unless caused by the negligent or willful act or omission of the indemnified party, its tenants, subtenants, agents, contractors or employees.

4.5.3 Encroachments. The Owners 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 and Common Area Improvements located in the Shopping Center, all of which are permitted hereunder so long as all activities requiring the use of such facilities are expeditiously pursued to completion and are performed in such a manner as to minimize any interference with use of the improved Common Area or with the normal operation of any business in the Shopping Center.

4.6 Construction Indemnities. Each Owner within the Shopping Center covenants and agrees to indemnify, protect, defend and hold harmless the other Owners within the Shopping Center from and against all Claims, including any action or proceedings brought thereon, arising from or as a result of any mechanic's liens, stop notices, or other claims regarding materials supplied or work performed, or the death of, or any accident, injury, loss or damage whatsoever caused to any natural Person, or to the property of any Person, as shall occur by reason of the performance of any construction, by or at the request of the indemnitor (including any costs or expenses incurred in enforcing this indemnity), except for Claims caused by the negligence or willful misconduct of the indemnitee.

4.7 Cost of Construction. Except as otherwise set forth in this Declaration, or in a separate written agreement between Declarant and the Owner(s), each Owner shall be responsible for the cost and expense of all Improvements to be constructed on its Parcel.

4.8 Automatic Sprinkler System. Every Building in the Shopping Center shall be either equipped with automatic sprinkler systems which meet all the standards of the Insurance Services Office (or other similar local organization having jurisdiction) or shall be constructed in such a manner as not to adversely affect the fire rating of any other Building in the Shopping Center. The purpose of this **Section 4.8** is to allow each Building in the Shopping Center to be fire rated as a separate and distinct unit without deficiency charge.

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

4.10 Service Facilities. All Service Facilities shall be attractively screened from view from the parking areas.

4.11 Signs. All signs must comply with applicable Governmental Requirements.

4.11.1 Center Pylon Sign. Subject to governmental approval, two free standing signs have been erected at the locations designated "Center Pylon Sign" on **Exhibit "A."** The Center Pylon Sign on Overland Road shall display the designation of the Shopping Center, the designation of Albertson's (or other Occupant of the Leased Premises), and the designations of not more than two (2) other businesses in the Shopping Center. The Center Pylon Sign on Orchard Avenue shall display the designation of the Shopping Center, the designation of Albertson's (or other Occupant of the Leased Premises), and the designations of not more than three (3) other business in the Shopping Center. Any such business, in order to display its designation on either of the Center Pylon Signs, must occupy not less than 15,000 square feet on the ground floor of a Building. The cost of designing, constructing, installing, operating, maintaining, repairing and replacing each Center Pylon Sign structure (including electrical hookup to a separate meter) shall be paid by all businesses designated thereon in the proportion that the total square footage of each party's designation or designations bears to the total square footage of all designations entitled to be displayed thereon. Each person displaying a designation on either of the Center Pylon Signs shall supply and maintain its own sign fascia and can. The design of the Center Pylon Sign structures shall be subject to the approval of Albertson's and the Approving Owners, as shall be the size, design and location of sign fascia used provided, however that Albertson's and other persons occupying at least 15,000 square feet on the ground floor of a Building may use such standard fascia as they from time to time use generally in carrying on their businesses. Albertson's (or other Occupant of the Leased Premises) shall have the top tenant designation on the Center Pylon Signs. All costs associated with the Shopping Center designation appearing on the Center Pylon Sign structures shall be Shared Maintenance Expenses. Upon the expiration of Albertson's Lease (including all extensions and renewals thereof), the designation on each Center Pylon Sign reserved to Albertson's (or other Occupant of the Leased Premises) in this **Section 4.11.1** shall terminate.

4.11.2 No Other Signs. There shall be no other signs, except directional signs and signs on Buildings, in the Shopping Center. All exterior Building signs except Albertson's 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. Each Owner shall operate, maintain and repair, in a clean, sightly and safe condition, the exterior Building signs, including components thereof, located upon its Parcel. No exterior Building or free-standing sign shall utilize flashing, moving or audible lights or appurtenances. Notwithstanding anything to the contrary contained in this **Section 4.11.2**, all exterior Building and free-standing signs located in the Shopping Center as of the date of Albertson's Lease are permitted and all such signs may remain in the Shopping Center for the duration of, and to the extent permitted by, the terms of any lease of all or part of the Shopping Center existing on the date of the Albertson's Lease.

4.12 Protection of Common Areas. Each Owner shall have the right to take such steps as it deems necessary to prevent those persons not authorized by this Declaration to use the Common Area from using the Common Area for ingress, egress, 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 for such portions required for access to public rights-of-way.

4.13 Outside Sales. No portion of the Common Area, except sidewalks, shall be used for the sale or display of merchandise; provided, however, that the seasonal sale of merchandise by Albertson's (or other Occupant of the Leased Premises) shall be permitted from that portion of the Common Area located within 250 feet of the Leased Premises subject to the following restrictions: (i) sales shall be limited to not more than four (4) occasions per calendar year for a cumulative total of not more than sixty (60) days duration, (ii) the sales area shall be limited to not more than twenty (20) parking spaces, (iii) all booths, stands, displays and other structures erected in connection with such sales shall be promptly removed by Albertson's (or other Occupant of the Leased Premises) upon termination of said activities, (iv) the Common Area shall be kept clean and free of all debris and rubbish related thereto during the period of such sales and shall be promptly repaired to its condition immediately prior to such sales, all at the sole cost and expense of Albertson's (or other Occupant of the Leased Premises), and (v) sales shall not interfere with the free movement of vehicular traffic within the Shopping Center or with access to or from the Shopping Center, or any part thereof, to or from any public right-of-way. Upon the expiration of Albertson's Lease (including all extensions and renewals thereof), the foregoing right of Albertson's (or other Occupant of the Leased Premises) to the seasonal sale of merchandise from the Common Area shall terminate.

4.14 Existing Buildings. Notwithstanding anything to the contrary in **Sections 4.1, 4.4, 4.8, 4.9 and 4.10**, no alterations or changes shall be required any Buildings located in the Shopping Center on November 29, 1994, to conform to the requirements or specifications in such Sections; provided, however, that the foregoing shall not be deemed to constitute a waiver of any of the requirements of such Sections with regard to the construction of any new Buildings or the modification of any Building existing on November 29, 1994.

ARTICLE 5 USE RESTRICTIONS

5.1 Restrictions on Certain Parcels. During the term of the Albertson's Lease (including all extensions and renewals thereof), no portion of the Shopping Center other than the Leased Premises shall be used as a supermarket (which shall be defined as any store or department containing at least 5,000 square feet of Floor Area, including aisle space and storage, primarily devoted to the retail sale of food for off-premises consumption); as a bakery or delicatessen; for the sale of fresh or frozen meat, fish, poultry or produce for off-premises consumption; or for the sale of alcoholic beverages for off-premises consumption.; provided, however, this provision shall not prohibit the operation of the following stores in the Shopping Center: a donut shop; a sandwich shop allowing on-premises consumption; a take-out or take-and-bake pizza store; a store primarily selling ice cream and/or candy; a retail operation primarily selling gourmet coffee and, for on premises consumption, pastries; and a liquor store selling alcoholic beverages for off-premises consumption in the Building location identified as "Liquor Store" on **Exhibit "A"** provided that any of the foregoing permitted uses shall have a total Floor Area of no more than 2,000 square feet for each of such uses.

5.2 Prohibited Uses. No portion of the Shopping Center shall be used for any of the following purposes:

5.2.1 a bar, tavern, cocktail lounge, adult book or adult video store, automotive maintenance or repair facility, warehouse, car wash, entertainment or recreational facility or training or educational facility; for the renting, leasing or selling of or displaying for the purpose of renting, leasing or selling of any boat, motor vehicle or trailer; or for industrial purposes. For the purpose of this **Section 5.2.1**, the phrase “entertainment or recreational facility” shall include, without limitation, a theater, bowling alley, skating rink, gym, health spa or studio, dance hall, billiard or pool hall, massage parlor, game parlor or video arcade (which shall be defined as any store containing more than four (4) electronic games). The phrase “training or educational facility” shall include, without limitation, a beauty school, barber college, reading room, place of instruction or any other operation catering primarily to students or trainees as opposed to customers;

5.2.2 a head shop store or any other similar store or club; and any business devoted to sale of articles or merchandise normally used or associated with illegal or unlawful activities, including, without limitation, the sale of paraphernalia used in connection with marijuana, cocaine or other controlled drugs or substances;

5.2.3 a cemetery, mortuary, funeral parlor, crematory or similar service establishment;

5.2.4 a restaurant or a medical, dental, professional or business office within two hundred (200) feet of the Leased Premises during the term of the Albertson’s Lease (including all extensions and renewals thereof). For purposes of this **Section 5.2.4**, the term “restaurant” shall not include take-out restaurants (defined as restaurants in which 75% of the food served the customers is consumed off the premises such as ice cream shops, yogurt shops, sandwich shops or pizza shops) each containing not more than 2,000 square feet of Floor Area, or a restaurant or delicatessen shop containing not more than 2, 000 square feet of Floor Area within any national chain operation occupying more than 10,000 square feet of Building Area provided such restaurant or delicatessen shop is an incidental part of such national chain’s operations. The total combined floor area of all restaurants and medical, dental, professional and business offices located within the Shopping Center (exclusive of the Leased Premises and any Albertson’s office in the Shopping Center) shall not exceed 25,000 square feet;

5.2.5 a central or commercial laundry or dry cleaning plant, coin-operated laundry or laundromat; provided, however, this prohibition shall not be applicable to on-site service-oriented dry cleaners and launderers with pickup and delivery by the ultimate consumer, so long as no dry cleaning or laundering services (other than pressing) shall be performed within the Shopping Center;

5.2.6 a use which emits an offensive or obnoxious odor (excluding normal cooking odors associated with restaurant use), fume, dust, vapor, noise or sound which can be heard or smelled outside of any Building or creates a fire, explosion or other hazard (including without limitation, the display or sale of explosives or fireworks), or constitutes a public or private nuisance;

5.2.7 an assembly, manufacturing, refining, smelting, agriculture or mining operation;

5.2.8 drilling for and/or removal of subsurface substances;

5.2.9 a veterinary hospital or animal raising facility (except that this prohibition shall not restrict pet shops);

5.2.10 a fire sale, flea market or second-hand store, “surplus” store, pawn shop, bankruptcy sale (unless pursuant to a court order) or auction house operation;

5.2.11 a warehouse;

5.2.12 a body shop repair operation;

5.2.13 a church, synagogue, mosque or other place of worship; or

5.2.14 a nonprofit organization office, government office, or office in excess of 4,000 square feet.

5.3 Allowed Uses. Notwithstanding anything to the contrary contained in **Section 5.2**, the following uses are allowed within the Shopping Center:

5.3.1 The display for renting, leasing or selling and the renting, leasing, or selling of any boat, motor vehicle or trailer, provided that such use is conducted entirely within an enclosed Building.

5.3.2 The display, demonstration for purposes of sale and sale of electronic games in a retail store.

5.3.3 No more than four (4) electronic games contained in a restaurant or theater as an incidental part of its operations, except for video poker or similar gambling games, which shall be prohibited everywhere in the Shopping Center.

5.3.4 A children’s entertainment center, which is defined as a facility comprised, collectively, of a child’s play area, party area, daycare area, and fitness or exercise area primarily catering to children of the age of twelve (12) years or under and adults accompanying those children, provided it is located at least 250 feet from the Leased Premises.

5.3.5 Computer or musical instrument retail stores that conduct lessons on the equipment or instruments sold and/or rented incidental to the sale or rental of such products.

5.3.6 A store selling automotive parts, wheels and tires, stereo equipment, seats and automotive upholstery, and similar items, including a bay or area for installation of items sold on the premises, provided that all such installation shall be performed inside the Building, the installation bay or area shall be accessed from and located on the side or rear of the Building away from the front entrance of the Leased Premises, all inventory and equipment shall be displayed or stored inside the Building, no disabled vehicles may be parked anywhere in the Shopping Center outside the Building, and the design and maintenance of the store shall conform to the standards set forth in this Declaration.

5.3.7 The incidental sale of alcoholic beverages for on-premises consumption in a restaurant located in the area shown on **Exhibit "A"** as Pad A, Pad B or Pad C which provides seating for substantially all of its customers, provided that (i) the restaurant does not contain a separate bar or cocktail lounge which exceeds more than twenty-five percent (25%) of the restaurant's Floor Area unless said bar or cocktail lounge is approved by Albertson's and the Approving Owners, which approval may be granted or withheld in their sole and absolute discretion, and (ii) the restaurant does not serve alcoholic beverages except in conjunction with the sale of food for on-premises consumption and in a family oriented restaurant setting such as a "Red Robin," "Applebees," "TGIF," or similar establishment.

5.3.8 A health club, gym or health spa provided such is located in a Building which is at least 250 feet from the Leased Premises and, if the total Floor Area of the Building exceeds 5,000 square feet, the entry to the Building shall be located to the rear of the Shopping Center and parking for the health club, gym or health spa shall be located in the rear of the Shopping Center.

5.4 Special Exception to Entertainment or Recreational Facility Prohibition. Notwithstanding anything to the contrary contained in this Declaration, a theater shall be allowed in the Shopping Center provided such use complies with all of the following restrictions:

5.4.1 the theater shall be operated as a single story movie theater and shall not contain any more than the existing two (2) movie screens; and

5.4.2 no pornographic films shall be shown; and

5.4.3 no expansion beyond or relocation from the area shown on **Exhibit "A"** as "Theater" shall be allowed without the prior written approval of Albertson's and the Approving Owners, which may be withheld at their sole and absolute discretion.

5.5 Drive-Through. No restaurant, bank or other facility featuring vehicular drive-up or drive-through customer service shall be located in the Shopping Center, unless Albertson's and the Approving Owners have first given their written consent, which shall not be unreasonably withheld, to the location, parking and drive lanes of such facility. Albertson's and the Approving Owners have approved the vehicular drive-up and drive-through customer service facilities shown on **Exhibit "A."**

5.6 Malls. No open or enclosed malls shall be located in the Shopping Center, unless Albertson's and the Approving Owners have first given their written consent, which shall not be unreasonably withheld, to the location of the entrance to such mall.

5.7 Pharmacy. No part of the Shopping Center, other than the premises labeled "Albertson's" on **Exhibit "A"** shall be used for the sale or offer for sale of any ethical pharmaceutical products requiring the services of a registered pharmacist.

5.8 Existing Uses. Notwithstanding anything to the contrary set forth in this **Article 5**, any and all leases for any portion of the Shopping Center that existed on November 29, 1994, shall have the right to continue for the remaining term thereof, including the terms of any

extension options in such leases and to continue such occupancies in the locations and uses existing on November 29, 1994. All such occupancies and uses permitted pursuant to such leases existing on November 29, 1994, shall be permitted uses within the Shopping Center and such leases may be renewed for the same uses (or any uses not prohibited by this Declaration) notwithstanding anything to the contrary set forth in this **Article 5** or elsewhere in this Declaration.

5.9 Acceptance of Restrictions. Any lease or occupancy agreement subsequently entered into with respect to a Parcel will require that the tenant's use (and any changes to the original use by the tenant) must comply with applicable laws and recorded easements and restrictions affecting the property (including this Declaration). In acquiring a Parcel, an Owner shall automatically be deemed to acknowledge that the restrictions set forth in this Declaration are an essential part of the particular transaction covering Owner's Parcel and, further, that the restrictions set forth in this Declaration are fair and reasonable to assure all Owners of Parcels of their expected benefits and the orderly and beneficial development of the Shopping Center and the Parcels, but not to control competition.

5.10 Use of the Common Area. The Common Area is hereby reserved for the sole and exclusive use of all Owners of the Shopping Center, their tenants, subtenants and licensees, and the contractors, employees, customers, agents, licensees and invitees of such Owners, tenants, subtenants and licensees. The Common Area may be used for vehicular driving, parking (except that there shall be no multi-level parking), pedestrian traffic, directional signs, sidewalks, walkways, landscaping, perimeter walls and fences, parking lot lighting, utilities and Service Facilities, and for no other purpose unless otherwise specifically provided in this Declaration. No Buildings or structures shall be placed or constructed in the Common Area except free-standing and directional signs (as provided in **Article 4**), paving, bumper guards or curbs, landscape planters, lighting standards, perimeter walls and fences, utility pads and equipment, sidewalks and, to the extent that they are located, and do not impede access, to the rear or sides of Buildings, Service Facilities.

5.11 Subdivision. No Parcel within the Shopping Center shall be further subdivided without obtaining the prior written approval of Albertson's and the Approving Owners.

5.12 Hazardous Materials. No Owner or Occupant 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. Any Owner or Occupant who shall violate (or whose tenant, licensee, or subtenant shall violate) this restriction regarding Hazardous Materials shall indemnify, defend, hold harmless and be liable to all other Owners and Occupants for all Claims arising from such violation and shall promptly undertake and complete all required cleanup and remediation. As used in this Declaration, the term "**Environmental Laws**" shall mean 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. As used in this Declaration, the term "**Hazardous Materials**" shall mean underground

storage tanks, petroleum and petroleum products, asbestos, PCB's, urea-formaldehyde and any hazardous or toxic substances, pollutants, contaminants, wastes or materials as defined under any Environmental Laws.

ARTICLE 6 MAINTENANCE OF IMPROVEMENTS AND SIGNS

6.1 Maintenance of Buildings by Owners. Each Owner, at its own expense, shall maintain the Buildings on its Parcel in good order and first-class condition and state of repair in accordance with the standards of a good shopping center operation.

6.2 Maintenance of Common Area by Owners. Except as to the Shared Maintenance Areas, each Owner shall operate and maintain the Common Area situated on its Parcel in a first class condition of maintenance and repair and in compliance with all Governmental Requirements. Such operation and maintenance obligations shall include, without limitation:

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

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

6.2.3 Maintaining, repairing and replacing, when necessary, all traffic directional signs, markers and lines;

6.2.4 Operating, maintaining, repairing and replacing, when necessary, such artificial lighting facilities as shall be reasonably required (except for the "After Hours Lighting" described in **Section 6.4**);

6.2.5 Maintaining all landscaped areas (except those on the perimeter of the Shopping Center); maintaining, repairing and replacing, when necessary, automatic sprinkler systems and water lines; and replacing shrubs and other landscaping as is necessary;

6.2.6 Maintaining, repairing and replacing, when necessary, all Common Area walls (including, without limitation, all fences, walls or barricades constructed pursuant to **Section 4.12**);

6.2.7 Maintaining, repairing and replacing, when necessary, all Utility Lines and facilities which provide utility services solely to a Parcel or any utility stubbed to a particular Building which breaks off or separates from the main line or Common Utility Line not dedicated to the public or conveyed to any public or private utility; and

6.2.8 Performing itself or contracting with a third party or parties to perform any of the services described herein; provided, however, that the Owner of each Parcel shall remain responsible and liable for the performance of all of said services in accordance with the terms of this **Article 6** and for the performance of any such third party or parties under any such contract or contracts.

6.3 Maintenance of Shared Maintenance Area by Operator. The Operator shall operate and maintain the Shared Maintenance Areas in a first class condition of maintenance and repair and in compliance with all Governmental Requirements. Such operation and maintenance obligations shall include, without limitation:

6.3.1 Maintaining, planting, replanting, irrigating and mowing all landscape plantings, grass, trees and shrubs located on the perimeter of the Shopping Center in an attractive and thriving condition, trimmed and weed-free, including maintaining, repairing and replacing the irrigation systems for such areas;

6.3.2 Supervision of traffic at entrances and exits to the Common Area within the Shared Maintenance Area as conditions reasonably require in order to maintain an orderly and proper flow of traffic;

6.3.3 Maintain, repair and replace all drainage facilities, sewers, and Common Utility Lines not dedicated to the public or conveyed to any public or private utility;

6.3.4 Design, operate, maintain, repair, and replace each Center Pylon Sign structure including, without limitation, maintaining, repairing and replacing, when necessary, all Utility Lines and facilities servicing each Center Pylon Sign, and keeping each Center Pylon Sign lighted.

6.3.5 Any other items of repair, replacement and/or maintenance that the Approving Owners determine may be needed from time to time to maintain the Shared Maintenance Area in a first class condition of maintenance and repair.

6.4 Common Area Lighting. Each Owner shall keep the Common Area lighting, exterior lighting and lighting on Building signage on its Parcel illuminated while a majority of the businesses in the Shopping Center are open for business. If artificial lighting for a time later than the foregoing (“**After Hours Lighting**”) is needed by any Person, then such artificial lights to service such Person shall be separately metered or otherwise measured or reasonably estimated and all expenses thereof shall be paid by such Person to the extent appropriate. Such Person shall pay a reduced proportion of the expense of lighting the balance of the Common Area according to the extent to which such Person is lighting the Common Area by separately metered lights.

6.5 Operator.

6.5.1 Operator. The Declarant shall, upon recordation of this Declaration, be Operator until it resigns or is replaced pursuant to **Section 6.5.2**. The Operator shall have and is hereby given the full right and authority to perform its obligations hereunder.

6.5.2 Appointment of New Operator. Operator shall have the right, at any time, to cease performing the duties of the Operator, and the Approving Owners shall have the right to appoint a new Operator who shall be an Owner of a Parcel within the Shopping Center to perform the obligations of Operator hereunder. In addition, if the Approving Owners determine that the Operator is not performing its duties as provided under this Declaration and provides written notice thereof to Operator specifying in reasonable detail the basis for the claims of non-performance by the Operator, and the Operator fails to correct such deficiencies within thirty (30) days after notice thereof from the Approving Owners, or, if such failure cannot reasonably be cured within thirty (30) days, fails to commence to cure and diligently pursue the same to completion, then the Operator may be replaced or removed by a decision of the Approving Owners and notice to the Operator. The designation of any Operator as provided for hereinabove shall be binding upon all of the Owners. The term of the new Operator shall continue until the earlier to occur of (i) the appointment of a new Operator, (ii) the date the Operator no longer owns or leases any portion of the Shopping Center, or (iii) sixty (60) days after the Operator submits notice to the Owners of its resignation.

6.5.3 No Operator. During any period of time when no Owner is performing the duties of Operator and no replacement Operator has been appointed under **Section 6.5.2** above, each Owner shall have the obligation to maintain the Shared Maintenance Areas located on its Parcel, at its sole cost and expense, in a manner consistent with the provisions of this Declaration.

6.5.4 Affiliates. The Operator may hire companies affiliated with it to perform its maintenance obligations hereunder, but only if the rates charged by such companies are competitive with those of other companies furnishing similar services in the metropolitan area in or about the Shopping Center.

6.5.5 Limitation of Liability. At such times as any Operator ceases to have an obligation to perform the duties and obligations described herein, such Operator shall cease to have any liability or responsibility for any acts, events, or circumstances occurring subsequent to and not as a result of its performance or non-performance of its duties or obligations while Operator.

6.5.6 No Change to Operator's Rights and Responsibilities without Consent. The rights and obligations of the Operator as set forth in this Declaration are in-lieu-of creating a property owner's association required under Boise City Subdivision Approval No. SUB09-00018. No right or obligation of the Operator under this Declaration shall be materially diminished or terminated without the prior written consent of the Boise City Planning Director or its successor.

ARTICLE 7 COVENANT TO PAY SHOPPING CENTER EXPENSES

7.1 Covenant to Pay Proportionate Share of Expenses. Each Owner hereby agrees to pay its Proportionate Share of Shared Maintenance Expenses in accordance with the terms and provisions set forth below. The Shared Maintenance Costs shall include an administrative and management charge ("**Administrative Fee**") imposed by the Operator in such amount as is

customary, from time to time, for similar fees to manage a first class shopping center in the geographic area in which the Shopping Center is located. The Administrative Fee shall be included in Shared Maintenance Expenses without further reference.

7.2 Payment of Proportionate Share of Shared Maintenance Expenses.

7.2.1 Budget. Operator shall use its reasonable efforts to provide to each Owner, within sixty (60) days prior to the beginning of each calendar year, a budget for the Shared Maintenance Expenses for the following calendar year (“**Budget**”). The Budget of estimated expenses shall be based on the prior year’s expenses, taking into account anticipated increases to such amounts, or if no prior year’s expenses are available, then on Operator’s reasonable estimate of the cost. Operator shall have the right to make unexpected or emergency repairs which are not included in the Budget. Operator may submit a supplemental billing to each Owner, together with evidence supporting such payment, and each Owner shall pay its proportionate share thereof within thirty (30) days.

7.2.2 Payment. Each Owner shall pay to the Operator, in equal monthly payments in advance, its Proportionate Share of the Shared Maintenance Expenses allocable to such Owner’s Parcel based upon the amount set forth in the Budget. The Operator shall reasonably estimate such costs for any partial year. Within approximately one hundred twenty (120) days after the end of each calendar year, Operator shall provide each Owner with a written (“**Annual Statement**”) (and upon request, supporting invoices and backup materials), setting forth the actual Shared Maintenance Expenses (“**Annual Expenses**”) as applicable incurred by the Operator for the performance of its obligations hereunder and such Owner’s Proportionate Share of the Annual Expenses. If the amount paid by an Owner for such calendar year shall have exceeded its Proportionate Share for the applicable Annual Expenses, the Operator shall, at its option, refund by check the excess to the Owner owning such Parcel at the time the Annual Statement is delivered or apply the overpayment of the Annual Expenses to the expenses due for the following year, or if the Annual Expenses paid by an Owner as stated in the Annual Statement shall be less than the Annual Expenses owed by such Owner, then the Owner shall pay the balance of the Annual Expenses to Operator within thirty (30) days after receipt of such Annual Statement.

7.2.3 Audit Rights. For a period of one (1) year after receipt of a the Annual Statement, any Owner shall have the right, by written notice to Operator (“**Audit Notice**”) to audit Operator’s books and records pertaining to the expenses for the calendar year shown on the Annual Statement. Failure to provide the Audit Notice within one (1) year after the date of the Annual Statement shall be deemed to be such Owner’s approval of the Annual Expenses shown in the Annual Statement. The Audit Notice must designate the date of the proposed audit, which shall be not less than fifteen (15) days after the date of the Audit Notice. In the event that such audit shall disclose any error in the determination of the Annual Expenses or the allocation thereof to the Owner performing such audit, an appropriate adjustment shall be made forthwith, but no later than ninety (90) days after receipt of written demand therefor, together with a copy of the audit. The cost of any audit shall be assumed by the auditing Owner unless such Owner shall be entitled to a refund in excess of five percent (5%) of the Annual Expenses shown in the

Annual report, as calculated by the Operator, in which case the Operator shall pay the reasonable cost of such audit, in no event to exceed Five Thousand (\$5,000) Constant Dollars.

7.2.4 Indemnity. Operator agrees to indemnify, protect, defend and hold each Owner harmless from and against any Claims arising from any mechanic's, materialmen's and/or laborer's liens, arising out of Operator's maintenance and operation of the Shared Maintenance Areas, and in the event that any Parcel shall become subject to any such lien, Operator shall within thirty (30) days of receipt of notice of any such lien cause such lien to be released and discharged of record or post a bond in the manner provided by law.

7.2.5 Late Payment. If an Owner shall fail to pay such Owner's Proportionate Share of Shared Maintenance Expenses pursuant to this **Article 7**, if any, or any other amounts due under this Declaration, within thirty (30) days after the due date therefor, then (i) a late charge in the amount of five percent (5%) of the amount of the delinquent amount due, (ii) interest charged at the Default Interest Rate commencing from the date of delinquency, and (iii) reasonable costs of collection, including attorneys' fees and costs, shall be levied by the Operator. In addition, Operator shall be entitled to (i) file a lien in the manner provided in **Section 11.5** below, and (ii) recover its attorney's fees.

7.2.6 No Offsets. No offsets against Shared Maintenance Expenses shall be permitted for any reasons, including, without limitation, a claim that the Operator is not properly exercising its duties of maintenance, operation or enforcement.

ARTICLE 8 INSURANCE

8.1 Owner's Insurance.

8.1.1 Owner's Liability Insurance. Each Owner shall procure and maintain (or cause to be procured and maintained) in full force and effect throughout the term of this Declaration commercial general liability insurance ("CGL") insuring against all claims for personal injury, death or property damage occurring upon, in or about the Owner's Parcel, with combined single limits of at least Two Million Dollars (\$2,000,000.00) in Constant Dollars per occurrence for each other Owner, which insurance shall include broad form blanket contractual coverage covering the insured's obligations hereunder. In no event shall the limits of any CGL maintained by any Owner pursuant to this Declaration be considered as limiting such Owner's liability under this Declaration.

8.1.2 Property Insurance. At all times during the term of this Declaration, each Owner shall keep (or cause to be kept) the Buildings and Improvements on its Parcel (including the Common Area on its Parcel) insured against loss or damage by fire and other perils and events as may be insured against under a special form commercial property insurance coverage policy (or its equivalent) for the full replacement cost of the insured Buildings and Improvements ("**Property Insurance**"), with a deductible no greater than ten percent (10%) of replacement costs, subject to the self-insurance described below. The full replacement cost shall mean the cost to replace such Buildings and Improvements, without deduction for depreciation or wear and tear, including costs attributable to Improvements or upgrades required by changes

in laws and regulations governing zoning, public access and accommodation, work place conditions, public health or safety or other matters, and shall include to the extent reasonably attainable a reasonable sum for architectural, engineering, legal, administrative and supervisory fees connected with the restoration or replacement.

8.1.3 General Requirements.

(a) The CGL shall name the other Owners as an additional insured as its respective interests may appear. Each Owner shall furnish to any Owner requesting the same, a certificate(s) of insurance, or statement of self-insurance, as the case may be, evidencing that the CGL and Property Insurance required to be carried by such Owner is in full force and effect. Unless otherwise approved by the Approving Owners, all insurance required hereunder shall (i) be an occurrence basis policy (or policies); (ii) be issued by an insurance company having a General Policyholders Rating of A- or better and a financial size of "VII" or better, as set forth in the most current issue of Best's Rating Guide, or equivalent rating and licensed to do business in the State; (iii) be primary insurance as to all claims thereunder; (iv) with respect to the CGL insurance, contain a cross-liability endorsement or severability of interest clause; (v) shall provide that the policy shall not be cancelled or reduced in amount or coverage below the requirements of this Declaration or allowed to expire, without at least thirty (30) days prior written notice by the insurer to each insured and to each additional insured; (vi) shall provide that an act or omission of one of the insureds or additional insureds which would void or otherwise reduce coverage, shall not reduce or void the coverage as to the other insureds; and (vii) shall provide for contractual liability coverage with respect to the indemnity obligations in this Declaration.

(b) Each policy of insurance described herein shall contain a waiver by said insurer of any and all rights of subrogation against each Owner, and their respective officers, employees, agents, associates and representatives. Said insurance policy shall provide that it may not be canceled, suspended or avoided in whole or in part by any reason of any act, omission or breach of any covenant, condition or restriction contained herein.

8.1.4 Self-Insurance. Notwithstanding anything to the contrary contained in this **Article 8**, so long as the tangible net worth of an Owner shall exceed One Hundred Million Dollars (\$100,000,000.00) in Constant Dollars and such Owner presents audited financial statements to the Approving Owners or Operator (upon request therefor) certifying such tangible net worth, then such Owner shall have the right to retain the financial risk for all or part of any claim for damages. In the event an Owner elects to self-insure, it shall deliver (upon request therefor) a letter to the Approving Owners and Operator indicating the same. Notwithstanding the foregoing, if such Owner is a publicly traded company on a nationally recognized exchange, in lieu of an audited financial statement, such Owner may present to Operator SEC filings showing that such Owner meets the tangible net worth requirement set forth above.

8.1.5 Blanket and Excess Insurance. Any insurance required to be carried pursuant to this **Article 8** may be carried under a policy or policies covering other liabilities and locations of an Owner provided that such policy or policies otherwise complies with the requirements of this Declaration.

8.1.6 Release. Each Owner (the “**Releasing Owner**”) hereby releases and waives for itself, and each Person claiming by, through or under it, each other Owner (the “**Released Owner**”) from any liability for any loss or damage to all property of such Releasing Owner located upon any portion of the Shopping Center, which loss or damage is of the type for which property insurance is required to be maintained under this **Article 8**, but only to the extent such loss or damage is actually covered by insurance irrespective either of any negligence on the part of the Released Owner which may have contributed to or caused such loss, or of the amount of such insurance required or actually carried, including any deductible or self-insurance reserve. Each Releasing Owner agrees to use its reasonable efforts to obtain, if needed, appropriate endorsements to its policies of insurance, and to the policies of insurance carried by its Occupants, with respect to the foregoing release; provided, however, that failure to obtain such endorsements shall not affect the release hereinabove given.

8.1.7 Indemnification. Each Owner and the Operator shall indemnify, protect, defend and hold the other Owners and Occupants harmless from and against any and all Claims arising from injury or death to Person or damage to property that occurs on the indemnifying Owner’s Parcel or the Shopping Center as a result of the actions of such indemnifying Owner or Operator, except to the extent attributable to the negligence or willful misconduct of such other Owner.

ARTICLE 9 DAMAGE

9.1 Restoration of Common Area. In the event of damage to or destruction of the Common Area Improvements on any of the Parcels, the affected Owner shall restore and reconstruct such Common Area Improvements. All such restoration and reconstruction shall be performed in accordance with all Governmental Requirements and the applicable requirements of this Declaration. Such Owner shall commence the restoration and reconstruction work within sixty (60) days of such damage or destruction and diligently pursue such work to completion.

9.2 Restoration of Building(s). In the event of damage to or destruction of the Building(s) on an Owner’s Parcel, such Owner shall restore and reconstruct such Building(s). All such restoration and reconstruction shall be performed in accordance with all Governmental Requirements and the applicable requirements of this Declaration. Such Owner shall commence the restoration and reconstruction work within sixty (60) days of such damage or destruction and diligently pursue such work to completion.

9.3 Clearing of Premises. Whenever a Building(s) that has or have been damaged or destroyed are not reconstructed, the Owner thereof, at its sole cost and expense, shall promptly (i) raze such Building(s) or such part thereof as has or have been damaged or destroyed, (ii) clear the premises of all debris, and (iii) all areas not restored to their original use shall be improved with, at the option of the Owner of such Parcel, either landscaping or pavement of like standard and design as the Common Area and maintained in a clean, orderly and sightly manner.

ARTICLE 10 EMINENT DOMAIN

10.1 Shopping Center. In the event any part of the Shopping Center shall be taken by eminent domain, condemnation or any other similar authority of law (“**Eminent Domain Action**”), the entire award for value of the land and Improvements so taken shall belong to the Owner whose property was so taken and the other Owners shall not claim any portion of such award by virtue of any interests created by this Declaration. The other Owners may file a claim with the condemning authority over and above the value of the property so taken to the extent of any damage suffered by such Owner resulting from the severance of such area taken. The Owner whose property was so condemned shall promptly repair and restore in accordance with this Declaration the remaining portion of its Parcel as nearly as practicable to the condition existing just prior to such condemnation without contribution from the other Owners. Except to the extent they burden the land taken, no easement or license set forth in this Declaration shall expire or terminate based solely upon such taking.

10.2 Eminent Domain Affecting Parking Spaces. Additionally, and in any case, notwithstanding the remainder of this Article, in the event of a condemnation of part of a Parcel or a sale or transfer in lieu thereof that reduces the number of usable parking spaces on such Parcel below that which is required herein, the Owner whose Parcel is so affected shall use its commercially reasonable efforts (including using proceeds from the condemnation award or settlement, but not to exceed the proceeds received by such Owner from such condemnation award) to restore and/or substitute ground-level parking spaces in order to comply with the parking requirements set forth in this Declaration. If such compliance is not reasonably possible, such Owner shall not be deemed in default hereunder, but such Owner shall not be permitted to expand the amount of Floor Area located on its Parcel. If such Floor Area is thereafter reduced other than by casualty, then the Floor Area on such Parcel may not subsequently be increased unless the parking requirements set forth above are satisfied.

ARTICLE 11 REMEDIES

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

11.2 Injunctive and Declaratory Relief. In the event of any violation or threatened violation by any Person of any of the terms, covenants, conditions, and restrictions herein contained, in addition to any other remedies set forth in this Declaration or available at law or in equity, the Approving Owners or any other Owner shall have the right to enjoin such violation or

threatened violation and to bring an action for declaratory relief in a court of competent jurisdiction.

11.3 Owner's Right to Cure or Abate. If any Owner (a "**Defaulting Owner**") is in default under **Section 11.1**, or permits or suffers any Occupant of its Parcel to be in default of this Declaration, then, in addition to any other remedy set forth in this Declaration or available at law or in equity, the Approving Owners or any other Owner (each or together, as applicable, the "**Non-Defaulting Owner**") may demand by ten (10) days advance written notice (the "**Default Notice**") that the violation be cured; provided, however, that in the event such default shall constitute an emergency situation, the Non-Defaulting Owner acting in good faith shall have the right to cure such default upon such advance notice as is reasonably possible under the circumstances, or if necessary, without advance notice, so long as notice is given as soon as possible thereafter. If the Defaulting Owner does not cure the default within ten (10) days after receipt of the Default Notice, then Non-Defaulting Owner (and its agents and employees) shall have the right to (i) pay any sum owed by the Defaulting Owner to the Person entitled thereto, (ii) enter upon the Parcel of the Defaulting Owner and summarily abate, remove or otherwise remedy any Improvement, thing or condition which violates the terms of this Declaration, and (iii) enter upon the Parcel of the Defaulting Owner and perform any obligation of the Defaulting Owner to be performed thereon. The Defaulting Owner shall, within ten (10) days of written demand by any other Owner, accompanied by appropriate supporting documentation, reimburse the Non-Defaulting Owner for all reasonable costs, expenses and attorneys' fees incurred by the Non-Defaulting Owner in undertaking any of the actions permitted by clauses (i) through (iii) in the preceding sentence, including, without limitation, wages, benefits and overhead allocable to the time expended by any employee of the Non-Defaulting Owner in taking such actions, together with interest thereon at the rate equal to the Default Interest Rate, from the date such costs and expenses were advanced or incurred by the Non-Defaulting Owner. The right to cure the default of another Owner shall not be deemed to: (a) impose any obligation on a Non-Defaulting Owner to do so; (b) render the Non-Defaulting Owner liable to the Defaulting Owner or any third party for an election not to do so; (c) relieve the Defaulting Owner from any performance obligation hereunder, or (d) relieve the Defaulting Owner from any indemnity obligation as provided in this Declaration.

11.4 Certain Limitations on Remedies. The Declarant (whether partners, shareholders, officers, directors, members, trustees, employees, beneficiaries or otherwise) shall not be personally liable for any judgment obtained against the Declarant. Each Owner agrees to look solely to the Declarant's interest in the Shopping Center for recovery of damages for any breach of this Declaration.

11.5 Lien. Any Non-Defaulting Owner or the Operator ("**Creditor Owner**") shall be entitled to a lien against the Parcel of the Defaulting Owner, which lien shall be created and foreclosed in accordance with this Section.

11.5.1 Creation. A lien authorized by this Section shall be created by recording a written instrument (the "**Claim of Lien**") in the real property records of the County in which the Shopping Center is located, which (i) references this Declaration by recording number, (ii) alleges a specific breach of this Declaration, (iii) states the amount owed by the Defaulting

Owner through the recording date of the Claim of Lien, (iv) contains a legal description of the Parcel of the Defaulting Owner, and (v) is executed and acknowledged by the Creditor Owner.

11.5.2 Amount. A lien created pursuant to this Section shall include (i) the amount stated in the Claim of Lien, (ii) all reasonable costs and expenses incurred in creating and foreclosing such lien (including attorneys' fees), (iii) all amounts which become due from the Defaulting Owner (or its successors or assigns) to the Creditor Owner after the date the Claim of Lien is recorded, whether such amounts arise from a continuation of the default alleged in the Claim of Lien or from some other default under this Declaration, and (iv) interest on all of the foregoing at the Default Interest Rate.

11.5.3 Priority. The priority of a lien created pursuant to this Section shall be established solely by reference to the date the Claim of Lien is recorded; provided, however, that such lien shall, in all instances, be subject and junior to any mortgage or deed of trust made in good faith for value recorded prior to the date such Claim of Lien.

11.5.4 Extinguishment. If the Defaulting Owner cures its default, and pays all amounts secured by a lien created pursuant to this Section, the Creditor Owner shall, at the Defaulting Owner's expense, record an instrument sufficient in form and content to clear title to the Parcel of the Defaulting Owner from the Creditor Owner's lien.

11.5.5 Foreclosure. A lien created pursuant to this Section shall be foreclosed in the manner provided by law.

11.6 Obligation. Each Owner shall be deemed to covenant and agree to be bound by this Declaration. Any sum not paid, or other obligation not performed when due, together with interest payable hereunder, and all costs and attorneys' fees incurred in connection with collection, shall be the personal obligation of the Owners of the Parcel at the time the payment or obligation became due. The obligation shall not be released by any transfer of the Parcel subsequent to the date such payment or obligation became due, but such obligation shall run with the land and shall be binding upon, and be the liability of, any successor Owner. Nothing contained herein shall limit the ability of any new Owner from collecting any sum due by the new Owner from the prior Owner which has become a liability of the new Owner.

11.7 Remedies Cumulative. The rights and remedies provided in this Declaration are in addition to any other remedy(ies) available at law or in equity. The rights and remedies given to any Owner by this Declaration shall be deemed to be cumulative and no one of such rights and remedies shall be exclusive of any of the others, or if any other right or remedy at law or in equity which any such Owner might otherwise have by virtue of a default under this Declaration, and the exercise of one such right or remedy by any such Owner shall not impair such Owner's standing to exercise any other right or remedy.

11.8 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.

ARTICLE 12 SUPPLEMENTARY DECLARATIONS AND SITE PLAN

12.1 Supplementary Declaration. So long as Declarant owns any Parcel in the Shopping Center, Declarant shall have the unilateral right to record a Supplementary Declaration.

12.2 Site Plan. So long as Declarant owns any Parcel in the Shopping Center, Declarant shall have the unilateral right to replace, modify or correct the Site Plan by recording a Supplementary Declaration attaching the modified site plan.

ARTICLE 13 MISCELLANEOUS

13.1 Amendments. Except as set forth in **Article 12**, this Declaration may be amended only by the mutual agreement of (a) the Owners of the Parcels containing ninety percent (90%) of the total square footage of Building Area in the Shopping Center, and (b) Declarant, so long as Declarant owns any portion of the Shopping Center. All amendments shall be effective only when recorded in records of the County in which the Shopping Center is located. No provision of this Declaration required as a condition of approval of Boise City Subdivision No. SUB09-00018, including Sections 2.1.1, 2.1.3, 2.2, 2.3, 3.3 and 6.5, shall be modified or terminated without the express written consent of the Boise City Planning Director or its successor.

13.2 Requirements for Consent by Owners. In any instance in which any Owner shall be requested to consent to or approve of any matter with respect to which such Owner's consent or approval is required by any of the provisions of this Declaration, such consent or approval or disapproval shall be given in writing, and shall not be unreasonably withheld, delayed or conditioned, unless the provisions of this Declaration with respect to a particular consent or approval shall expressly provide otherwise. Except as otherwise provided in **Section 4.1**, to the extent that the consent of any of the Owners is required under this Declaration, the Owners shall have fifteen (15) days to provide notice of approval or disapproval of the item for which consent is required. The failure of an Owner to deliver notice of disapproval within such fifteen (15) day period shall be deemed approval thereof. If an Owner delivers a notice of disapproval, such notice shall state with reasonable specificity, the basis for disapproval.

13.3 Notices. Any notice, payment, demand, offer, or communication required or permitted to be given by any provision of this Declaration (collectively, "**Notices**") shall be in writing and shall be deemed to have been sufficiently given or served for all purposes if personally delivered (including any overnight courier services) or if sent by registered or certified mail, postage and charges prepaid or if such notice is rejected at the then designated address of the Owner intended, provided such notice was sent prepaid. Notices given to a Person other than one designated below 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. Upon at least ten (10) days prior written notice, each Owner shall have the right to change its address to any other address in the United States of America. The following address is hereby designated for Declarant:

FPA Hillcrest Associates, LLC

Phone: _____

Any such notice shall be deemed to have been delivered upon receipt if delivered by personal delivery or Federal Express or other overnight courier services, or as of the third business day after mailing if sent by registered or certified mail.

13.4 Termination of Declarant Rights. If there is no Declarant under this Declaration, any consents or approvals granted by Declarant prior to the termination of its rights under this Declaration shall remain in effect for so long as such rights were granted by Declarant and if no time period is specified for so long as this Declaration remains in effect.

13.5 Binding Effect. All of the limitations, covenants, conditions, easements, and restrictions contained herein shall attach to and run with the Parcels, and shall benefit or be binding upon the successors and assigns of the respective Owners. This Declaration and all the terms, covenants and conditions herein contained shall be enforceable as equitable servitudes in favor of said Parcels and any portion thereof. Every Person who now or in the future owns or acquires any right, title or interest in or to any Parcel or portion thereof shall be conclusively deemed to have consented to and agreed to every covenant, restriction, provision, condition and right contained in this Declaration, whether or not the instrument conveying such interest refers to this Declaration.

13.6 Waiver of Default. The failure of a Person to insist upon strict performance of this Declaration 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 this Declaration by the same or any other Person.

13.7 Attorneys' Fees. In the event of any action for breach of or to enforce any provision or right hereunder, the non-prevailing party in such action shall pay to the prevailing party all costs and expenses expressly including, but not limited to, reasonable attorneys' fees and costs incurred by the prevailing party in connection with such action.

13.8 No Partnership. Neither this Declaration nor any acts of the Owners shall be deemed or construed by the parties hereto, or any of them, or by any third Person, to create the relationship of principal and agent, or of partnership, or of joint venture, or of any association between any of the Owners. Each Owner shall be considered a separate owner, and no Owner shall have the right to act as an agent for another Owner, unless expressly authorized to do so herein or by separate written instrument signed by the Owner to be charged.

13.9 Severability. In the event any term, covenant, condition, provision, or agreement contained herein is held to be invalid, void, or otherwise unenforceable, by any court of competent jurisdiction, such holding shall in no way affect the validity of enforceability of any other term, covenant, condition, provision, or agreement contained herein.

13.10 Governing Law. This Declaration and the obligations of the Owners hereunder shall be interpreted, construed, and enforced in accordance with the laws of the state in which the Shopping Center is located, without regard to conflict of law rules.

13.11 Terminology. All personal pronouns used in this Declaration, whether used in the masculine, feminine, or neuter gender, shall include all other genders; the singular shall include the plural and vice versa. Whenever required by the context of this Declaration, the use of the words “including”, “such as”, or words of similar import, when following any general term, statement or matter shall not be construed to limit such statement, term or matter to specific items, whether or not language of non-limitation, such as “without limitation”, or “but not limited to”, are used with reference thereto, but rather shall be deemed to refer to all other items or matters that could reasonably fall within the broadest scope of such statement, term or matter.

13.12 Captions. Article and section titles or captions contained herein are inserted as a matter of convenience and for reference, and in no way define, limit, extend, or describe the scope of this Declaration or any provisions hereof.

13.13 Estoppel Certificate. Each Owner and Operator shall upon not less than thirty (30) days from receipt of written notice from the other Owner (which shall not be more frequent than three (3) times per any calendar year) execute and deliver to such other Owner, a certificate in recordable form stating: (i) either this Declaration is unmodified and in full force and effect or is modified (and stating the modification); and (ii) whether or not to the best of its knowledge without duty of inquiry the requesting Owner claims other Owner or any other Owner is in default in any respect under this Declaration and if in default, specifying such default.

Such estoppel certificate shall act to estop the issuer from asserting a claim or defense against a bona fide encumbrancer or purchaser for value to the extent that such claim or defense is based upon facts known to the issuer as of the date of the estoppel certificate which are contrary to the facts contained therein, and such bona fide purchaser or encumbrancer has acted in reasonable reliance upon such estoppel certificate without knowledge of facts to the contrary. The issuance of an estoppel certificate shall in no event subject the issuer to any liability for the negligent or inadvertent failure of the issuer to disclose correct and/or relevant information, nor shall such issuance be construed to waive any rights of the issuer to perform an audit or obtain an adjustment with respect to Shared Maintenance Expenses for any year it is entitled to do so, or to challenge acts committed by other Owners for which approval by the Approving Owner was required but not sought or obtained.

13.14 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. Except as herein specifically provided, no right, privileges or immunities of any Owner hereto shall inure to the benefit of any third-party, nor shall any third-party be deemed to be a beneficiary of any of the provisions contained herein.

13.15 Time of Essence. Time is of the essence with respect to the performance of each of the covenants and agreements contained in this Declaration.

13.16 Entire Declaration. This Declaration and the exhibits hereto contain the entire agreement with respect to the subject matter hereof. Any prior correspondence, memoranda or agreements are superseded in total by this Declaration and Exhibits hereto. The provisions of this Declaration shall be construed as a whole according to their common meaning and not strictly for or against any Owner.

13.17 Excuse for Non-Performance. Each Owner shall be excused from performing any obligation or undertaking provided in this Declaration, except any obligation to pay any sums of money under the applicable provisions hereof (unless such payment is conditioned upon performance of any obligation or undertaking excused by this Section), in the event and so long as the performance of any such obligation is prevented or delayed, retarded or hindered by act of God, fire, earthquake, floods, explosion, actions of the elements, war, invasion, insurrection, riot, mob violence, sabotage; inability to procure or general shortage of labor, equipment, facilities, materials or supplied in the ordinary course on the open market; failure of normal transportation; strikes, lockouts, action of labor unions; condemnation, requisition; laws or orders of Governmental Authorities or civil or military authorities; breach or default of the other Owners of any of its obligations hereunder; failure to obtain necessary governmental approvals or permits despite the exercise of due diligence and good faith efforts by an Owner, or any other cause, whether similar or dissimilar to the foregoing, not within the reasonable control of such Owner, other than the lack of or inability to obtain funds or causes which were reasonably foreseeable.

13.18 Mechanics' Liens. In the event any mechanics' liens are filed against the Parcel of any Owner, the Owner permitting or causing such lien to be filed hereby covenants either to pay the same and have it discharged of record, promptly, or to post a bond for the lien in the manner provided by law, and in all events agrees to have such lien discharged prior to the entry of judgment for foreclosure of such lien.

13.19 Duration. This Declaration will remain in effect for a term of sixty-five (65) years from the recordation date hereto and will automatically be renewed for successive ten (10) year periods unless the Owners of the Parcels owning more than sixty percent (60%) of the land area of all Parcels in the Shopping Center agree in writing not to so renew; provided that any election not to renew must be made not less than five (5) years prior to the date that such non-renewal is to take effect. Notwithstanding the foregoing, the easements set forth to in **Section 2.1** which are specified as being perpetual or as continuing beyond the term of this Declaration shall continue in force and effect as provided therein.

13.20 Albertson's Lease. In the event of a conflict between Albertson's Lease and this Declaration during the term of the Albertson's Lease (including all extensions and renewals thereof), Albertson's Lease shall control. Upon the expiration of Albertson's Lease (including all extensions and renewals thereof), Albertson's approval rights under this Declaration including, without limitation, the approval rights contained in **Sections 3.1, 3.2, 3.3, 4.1, 4.5.1, 4.11.1, 5.3.7, 5.4.3, 5.5, 5.6, Error! Reference source not found.,** and **5.11** shall terminate.

13.21 Conflict with Easements of Record. The terms of any easement affecting the Shopping Center which was recorded prior to the date of this Declaration shall control if there is any conflict between such easement and this Declaration.

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EXHIBIT "A"

Legal Description of Shopping Center

EXHIBIT "B"

Site Plan