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Missoula, MT

DECLARATION OF RESTRICTIONS

AND

EASEMENTS

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DECLARATION OF RESTRICTIONS AND EASEMENTS

THIS DECLARATION OF RESTRICTIONS AND EASEMENTS ("Declaration") is made as of the 17th day of November, 1998, by and between **P. O'B. Montgomery & Co.**, a Texas corporation ("First Party"), and **Albertson's, Inc.**, a Delaware corporation ("Albertson's").

I. PRELIMINARY

1.1 Definitions:

(a) **"Albertson's":** **Albertson's, Inc.**, a Delaware corporation, together with any corporation succeeding thereto by consolidation, merger or acquisition of its assets substantially as an entirety, and any wholly owned subsidiary thereof, and whose current address is 250 Parkcenter Boulevard, P.O. Box 20, Boise, Idaho 83726.

(b) **"Building Area":** All those areas on each Parcel shown as Building Area on Exhibit "A" attached hereto and incorporated herein by this reference, together with those portions of the Expansion Area and Building Envelopes which are from time to time covered by a building or other commercial structure.

(c) **"Building Envelopes":** All those areas on Parcels 3, 4, 5, 6 and 7 located within the "Building Envelope Lines" as shown on Exhibit "A."

(d) **"Common Area":** 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 other commercial structure or which cannot under the terms of this Declaration be used for buildings. Canopies which extend over the Common Area, together with any columns or posts supporting same, shall be deemed to be a part of the building to which they are attached and not a part of the Common Area.

(e) **"Common Area Maintenance Agreement":** That certain Common Area Maintenance Agreement between the parties hereto which encumbers Russell Square and is recorded concurrently herewith.

(f) **"Consenting Owner":** The Owner of Parcel 2; provided, however, that in the event the Owner of Parcel 2 sells its Parcel and becomes the Prime Lessee thereon, said Prime Lessee is hereby appointed the entity to cast the vote or give the consent for said Parcel on behalf of the Owner thereof so long as it is the Prime Lessee of said Parcel.

(g) **"Environmental Laws":** 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.

(h) **"Expansion Area"**: That area on Parcel 2 located within the "Expansion Limit Line" shown on Exhibit "A," subject to the provisions of Section 2.2 governing maintenance of the Russell Square parking ratio.

(i) **"First Party"**: P. O'B. Montgomery & Co., a Texas corporation, whose address is Attn.: Randy Twist, 5550 LBJ Freeway, Suite 380 Dallas, TX 75240.

(j) **"floor area"**: The total number of square feet of floor space in a building whether or not actually occupied including basement, subterranean, balcony and mezzanine space. Floor area shall be measured from the exterior line of the exterior walls and from the center line of any party or common interior walls without deduction for columns, walls or other structural or nonstructural components.

(k) **"Hazardous Materials"**: 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, as defined in subparagraph (g) of this Section 1.1.

(l) **"Lienholder"**: Any mortgagee under a mortgage or a trustee or beneficiary under a deed of trust constituting a lien on any Parcel.

(m) **"National Chains"**: A business organization operating more than thirty (30) stores in two (2) or more states under the same trade name or a franchisee operating under an agreement with said business organization.

(n) **"Owner"**: The record holder of fee simple title to a Parcel, its heirs, personal representatives, successors and assigns.

(o) **"Pads"**: Parcels 4, 5, 6 and 7, collectively.

(p) **"Parcel"**: Parcel 1, 2, 3, 4, 5, 6, 7 or 8 as shown on Exhibit "A" and more particularly described in Schedule I attached hereto and incorporated herein by this reference.

(q) **"Parcel Area"**: The total square footage of land contained within a Parcel.

(r) **"person"**: Individuals, partnerships, firms, associations, corporations, trusts, governmental agencies, administrative tribunals or any other form of business or legal entity.

(s) **"Prime Lessee"**: An Owner of a Parcel who sells said Parcel (whether or not such sale includes buildings and/or Common Area improvements located thereon) to an unaffiliated third party and thereafter enters into a lease (including a ground lease or building lease) for said Parcel with such third party or its lessee or sublessee. Prime Lessee includes the successors and assigns of said Prime Lessee but does not include the sublessees, licensees or concessionaires of said Prime Lessee.

(t) **"Restrictions"**: The easements, covenants, restrictions, liens and encumbrances contained in this Declaration.

(u) **"Russell Square"**: Parcels 1, 2, 3, 4, 5, 6, 7 and 8 collectively.

(v) **"Service Facilities"**: Loading docks, trash enclosures, bottle storage areas, recycling facilities and compactors, exterior coolers, electrical and refrigeration facilities, and other similar service facilities.

(w) **"Utility Lines"**: **"Utility Lines"** shall mean those facilities and systems for transmissions of utility services, including, but not limited to, water drainage and storage systems or structures; fire protection, irrigation and domestic water mains; sewer lines and systems; fire and landscape water sprinkler systems; telephone lines; electrical conduits or systems, gas mains and other public or private utilities. **"Common Utility Lines"** shall mean those Utility Lines which are installed to provide the applicable service to more than one Parcel. **"Separate Utility Lines"** shall mean those Utility Lines which are installed to provide the applicable service to only one Parcel. For the purpose of this Declaration, the portion of a Utility Line extending between a Common Utility Line and a building shall be considered a Separate Utility Line.

1.2 Parties: First Party is the Owner of Parcels 1, 3, 4, 5, 6 and 7; and Albertson's is the Owner of Parcel 2. Albertson's conveyed Parcel 8, by mesne conveyances, to the City of Missoula, for permanent, public use and maintenance as a natural wetlands area, but reserved an easement for storm water drainage, pedestrian access and maintenance over portions of Parcel 8 for the benefit of Russell Square, as provided in that certain Wetlands Conservation and Maintenance Easement recorded May 21, 1998, in Book 542 of Micro Records at page 759, Official Records of Missoula County, Montana (the "Wetlands Easement"). The Parcels are located at the northeast quadrant of the intersection of S. Russell St. and S.W. Higgins Ave. in the City of Missoula, County of Missoula, State of Montana, as shown on Exhibit "A" and more particularly described in Schedule I attached hereto.

1.3 Purpose: The parties plan to develop Russell Square as an integrated retail sales and services, office, and residential use complex for the mutual benefit of all real property in Russell Square and, therefore, hereby establish the Restrictions.

II. BUILDING AND COMMON AREA DEVELOPMENT

2.1 Building Location: All buildings and other structures (except those permitted in Section 2.2(a) below) shall be placed or constructed upon the Parcels only in the Building Areas. Not more than one (1) building may be located on each of Parcels 1, 3, 4 (unless Parcel 4 is developed for residential use), 6 and 7, and the floor area of each such building (or the combined floor area of residential buildings on Parcel 4) shall not exceed the maximum square footage assigned on Exhibit "A" to such Parcel without the prior written consent of the Consenting

Owner, which may be granted or withheld in its sole and absolute discretion. 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. All of the foregoing shall be constructed and maintained in accordance with all local, state and federal laws, rules and regulations applicable thereto. Buildings may be located (or relocated) anywhere within a Building Envelope provided the total floor area of all buildings constructed within a Building Envelope does not exceed the square footage assigned to such Building Envelope as shown on Exhibit "A." All Building Areas on which buildings are not under construction on the date the Owner of Parcel 2 first opens its building for business shall be covered either by hydroseeded grass or a one-inch minimum asphalt dust cap and kept watered and mowed, if grass, weed-free and clean at the Owner's sole expense until such time as buildings are constructed thereon, except to the extent such requirement is waived in writing by the Consenting Owner with respect to specific Building Areas identified in such written waiver. Anything to the contrary in this Declaration notwithstanding, the installation and maintenance of such dust caps or grass areas shall not be a reimbursable Common Area maintenance expense. Once construction of any building on Parcel 1, 2, 3, 4, 5, 6 or 7 has been commenced, the Owner of such Parcel shall diligently prosecute such construction to completion.

2.2 Common Area:

(a) The Common Area is hereby reserved for the sole and exclusive use of all Owners of Russell Square, their tenants, contractors, employees, agents, customers, licensees and invitees and the subtenants, contractors, employees, agents, customers, licensees and invitees of such tenants. 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, recycle centers, Utility Lines, cart corrals and Service Facilities and for no other purpose unless otherwise specifically provided in this Declaration. No buildings or structures not approved in writing by the Consenting Owner shall be placed or constructed in the Common Area except multi-tenant, monument and directional signs (as provided in Article IV), paving, bumper guards or curbs, landscape planters, lighting standards, perimeter walls and fences, utility pads and equipment, recycle centers, cart corrals, sidewalks and, to the extent that they are located, and do not impede access, to the rear or sides of buildings, Service Facilities. All Common Area improvements shall be installed in conformance with the standards set forth in Article VIII (Lighting Standards), Article IX (Sign Standards), Article X (Landscape Standards) and Article XI (Off-Street Parking) of the Russell Square District (as defined in Section 5.1 hereof). Pay phones may be located in the Common Area provided their location has been approved by the Consenting Owner in writing; provided, however, that the foregoing shall not limit the right of the Consenting Owner and the Owner(s) of

Parcels 1 and 3 to locate pay phones, vending machines for soda and bottled water and reverse vendor recycling machines on the exterior of its Building as the Consenting Owner sees fit.

(b) The Common Area shall be kept and maintained as provided for in the Common Area Maintenance Agreement. All portions of a Building Area which cannot be used for buildings shall be developed as improved Common Area by the Owner thereof, at said Owner's sole cost and expense, in accordance with a site plan approved by the Consenting Owner (in accordance with the procedure for approval set forth in Section 2.5 hereof) prior to the development of the pertinent Common Area improvements. The Common Area improvement work on Parcels 1, 3, 4, 5, 6 and 7 shall be completed by the Owner thereof, at such Owner's sole cost and expense, prior to the occupancy of any building constructed or placed on such Parcel. Once any Common Area improvement work has been commenced on any of Parcels 1, 3, 4, 5, 6 or 7, the Owner of such Parcel shall diligently prosecute such work to completion. From and after the initial construction thereof, the sizes and arrangements of the Common Area improvements on any Parcel, 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 the Consenting Owner and the Owner of the Parcel within which the Common Area is to be changed. All requests for approval under this subparagraph (b) shall be processed in accordance with Section 2.5.

(c) Notwithstanding anything in this Declaration to the contrary, the Consenting Owner may withhold its approval, in its sole and absolute discretion, to any and all site plans or building plans and specifications submitted to it for approval (as required by Sections 2.2 and 2.3[a] hereof) in regard to Parcels 1, 3, 4, 5, 6 or 7, if the Consenting Owner determines that (i) the number of parking spaces to be constructed on any such Parcel is less than that required by law for all buildings on any such Parcel (and the proposed use thereof) to be "self-parked" (which determination shall be made without regard to the availability, if any, of parking on other Parcels or variances that could be granted by any governmental authority having jurisdiction); or (ii) the number of parking spaces to be constructed and maintained on any such Parcel would reduce the parking ratio for such Parcel to less than four and one-half (4.5) parking stalls per 1,000 square feet of Building Area, in which case the Building Area of the expanded building must be reduced or the number of parking stalls increased (subject to the Consenting Owner's approval of a revised Exhibit "A" showing the new parking location and configuration) to maintain the parking ratio at four and one-half (4.5) parking stalls per 1,000 square feet of Building Area.

2.3 Type and Design of Building:

(a) Each building in Russell Square, 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 comply with the Architectural Standards set forth in Article VII of the Russell Square District (as defined in Section 5.1 hereof) and will be architecturally and aesthetically compatible and harmonious with the building on Parcel 2. No building may be constructed on Parcel 1, 3, 4, 5, 6 or 7 nor the exterior of any existing building on Parcel 1, 3, 4, 5, 6 or 7 changed in any way (including, without limitation, signs and color) without the prior written approval of the Consenting Owner (which shall be obtained in accordance with the procedures set forth in Section 2.5) as to the location of such building within the applicable Building Envelope and the exterior elevations (including, without limitation, signs and color) of the building to be constructed or modified. The standard signs and logos of Albertson's, National Chains, those of banks and ATM's located in the Albertson's store and those of an Albertson's-operated fuel center and/or convenience store on the adjacent parcel shown as "Not A Part" on Exhibit "A," as they may exist from time to time, and the opening, closing, modification 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 by the Owner of the Parcel upon which such building is to be constructed or modified to the Consenting Owner to enable the Consenting Owner to make a reasonable determination as to the architectural and aesthetic compatibility of said building or modification with the building on Parcel 2. Except as provided in Section 2.2(c) and 2.3(d), the Consenting Owner may not arbitrarily or unreasonably withhold its approval of the proposed building or modification if it is architecturally and aesthetically compatible and harmonious with the building on Parcel 2 and complies with all other provisions of this Declaration. All requests for approval under this subparagraph (a) shall be processed in accordance with Section 2.5.

(b) Every building, with the exception of buildings on Parcels 4, 5, 6 and 7, 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 building built upon any other Parcel. The purpose of this subparagraph (b) is to allow buildings built on each Parcel to be fire rated as separate and distinct units without deficiency charge.

(c) No building shall be built in such a manner as to adversely affect the structural integrity of any other building in Russell Square.

(d) All buildings on Parcel 2 shall be single story with mezzanine permitted and shall not exceed thirty-six (36) feet in height. No building on Parcel 4 shall exceed two (2)

stories and twenty eight (28) feet in height, and no building on Parcel 5 shall exceed two (2) stories and thirty (30) feet in height. No building on Parcel 6 or 7 shall exceed one (1) story and twenty (20) feet in height (including mechanical fixtures and equipment and screening for same), except that National Chains with cupolas or other roof features as part of their standard roof design may build up to twenty-five (25) feet in height. All other buildings in Russell Square shall not exceed one story or twenty-five (25) feet in height or, if adjoining buildings on Parcel 2, shall not exceed the height of the adjoining parapet walls on Parcel 2 (including mechanical fixtures and equipment and screening for same), except that canopies and design features on buildings adjoining Parcel 2 shall be allowed up to 30 feet, provided such canopies and design features shall not exceed thirty percent (30%) of the length of the facade on said buildings. No mezzanine or basement shall be used for the sale or display of merchandise.

(e) Each Owner shall maintain or cause to be maintained the exterior of any building located on such Owner's Parcel(s) in a quality and condition comparable to that of first class mixed use/retail developments of comparable size and nature located in the same geographic area as Russell Square. All Service Facilities shall be attractively screened from view from the parking areas.

2.4 Construction Requirements:

(a) All work performed in the construction, maintenance, repair, replacement, alteration or expansion of any building, sign or Common Area improvements located in Russell Square shall be effected as expeditiously as reasonably possible and in such a manner as not to unreasonably interfere, obstruct or delay (i) access to or from Russell Square, or any part thereof, to or from any public right-of-way, (ii) customer vehicular parking in that portion of the improved Common Area located in front of any building constructed in Russell Square, or (iii) the receiving of merchandise by any business in Russell Square including, without limitation, access to Service Facilities. All staging for the construction, replacement, alteration or expansion of any building, sign or Common Area improvements located in Russell Square 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 Russell Square approved in writing by the Consenting Owner. 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, improvements, signs, Utility Lines and Common Area damaged or destroyed in the performance of such work.

(b) The Contracting Party shall not permit any liens to stand against any Parcel for any work done or materials furnished in connection with the performance of the work described in subparagraph (a) above; provided, however, that (i) 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; and (ii) the foregoing shall not prohibit or be applicable to liens of first or second position mortgages or deeds of trust securing construction loans for work performed on a Parcel and encumbering said Parcel. The Contracting Party shall, within thirty (30) days after receipt of written notice from the Owner or Prime Lessee of any other 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 or Prime Lessee of said other 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 Russell Square from any and all liability, claims, damages, expenses (including reasonable attorney's fees and reasonable attorney's fees on any appeal), liens, claims of lien, judgments, proceedings and causes of action, arising out of or in any way connected with, the performance of such work, except to the extent caused by the negligent or willful act or omission of the indemnified person, its tenants, subtenants, agents, contractors or employees. Any Contracting Party (except the Owner or Prime Lessee of Parcel 2) who causes the construction, maintenance, repair, replacement, alteration or expansion of any Common Area improvements located in the Shopping Center shall cause the contractor performing such work (the "Site Contractor") to obtain insurance meeting the requirements of Exhibit "B" attached hereto and incorporated herein by this reference.

(c) The parties 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, improvements, signs, Utility Lines and Common Area located in Russell Square, 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 Russell Square.

2.5 Approval Procedures. Before any action requiring the Consenting Owner's approval is commenced, sufficient information shall be sent to the Consenting Owner to enable the Consenting Owner to make a reasonable decision as to the proposal. The Consenting Owner shall not have the right to unreasonably withhold its approval to the proposal unless otherwise specified in this Declaration. The Consenting Owner must approve or disapprove the proposal within thirty (30) days after receipt of the proposal, and, if the Consenting Owner disapproves the proposal, it shall provide a written explanation in reasonable detail of its reasons for disapproval. If the Consenting Owner rejects or disapproves the proposal and fails to provide such explanation within the thirty (30) day period, the Consenting Owner shall be deemed to have approved the

same provided that, when the approval was sought, the one seeking the approval stated in writing to the Consenting Owner 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.

III. EASEMENTS

3.1 Ingress, Egress and Parking: Subject to the provisions of Section 4.2, each Owner, as grantor, hereby grants to the other Owners, their respective tenants, contractors, employees, agents, customers, licensees and invitees, and the subtenants, contractors, employees, agents, customers, licensees and invitees of such tenants, for the benefit of each Parcel belonging to the other Owners, as grantees, a nonexclusive easement for ingress and egress by vehicular and pedestrian traffic and vehicular parking upon, over and across that portion of the Common Area located on the grantor's Parcel(s), except for those areas devoted to Service Facilities or driveup or drive through customer service facilities. The reciprocal rights of ingress and egress set forth in this Section 3.1 shall apply to the Common Area for each Parcel as such area shall be increased pursuant to Section 2.2 above.

3.2 Utility Lines:

(a) Each Owner, as grantor, hereby grants to the other Owners, for the benefit of each Parcel belonging to the other Owners, as grantees, a perpetual, nonexclusive easement under, through and across that portion of the Common Area located on the grantor's Parcel(s) for the installation, operation, maintenance, repair and replacement of Utility Lines. All such Utility Lines shall be installed and maintained below the ground level or surface of such easements except for ground mounted electrical transformers and such other Utility Lines as are required to be above ground by the utility providing such service (including temporary service required during the construction, maintenance, repair, replacement, alteration or expansion of any buildings or improvements located in Russell Square). The installation, operation, maintenance, repair and replacement of such Utility Lines shall not unreasonably interfere with the use of the improved Common Area or with the normal operation of any business in Russell Square. Except as otherwise provided herein, the grantee shall bear all costs related to the installation, operation, maintenance, repair and replacement of such Utility Lines, shall repair to the original specifications any damage to buildings, improvements, signs, Utility Lines or Common Area resulting from such use and shall provide as-built plans for all such Utility Lines to the Owners of all Parcels upon which such Utility Lines are located within thirty (30) days after the date of completion of construction of same. All costs associated with the installation, operation, maintenance, repair and replacement of Separate Utility Lines shall be borne solely by the Owner of the Parcel served thereby. The operation, maintenance, repair and replacement of Common

Utility Lines and the allocation of the costs associated therewith shall be as provided in the Common Area Maintenance Agreement.

(b) At any time and from time to time the Owner of a Parcel shall have the right to relocate on its Parcel any Utility Line installed pursuant to the foregoing grant of easement which is then located on such Owner's Parcel, provided that any such relocation (i) shall be performed only after sixty (60) days' notice of the Owner's intention to undertake the relocation shall have been given to the Owner of each Parcel served by the Utility Line, (ii) shall not unreasonably interfere with or diminish utility service to the businesses served by the Utility Line, (iii) shall not reduce or unreasonably impair the usefulness or function of the Utility Line, (iv) shall be performed without cost or expense to the Owner or occupant of any other Parcel, and (v) shall provide for the original and relocated area to be restored to the original specifications. The Owner performing such relocation shall provide as-built plans for all such relocated Utility Lines to the Owners of all Parcels served by such Utility Lines within thirty (30) days after the date of completion of such relocation.

(c) Each Owner agrees to grant such additional easements as are reasonably required by any public or private utility for the purpose of providing the Utility Lines described herein provided such easements are not otherwise inconsistent with the provisions of this Declaration.

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

3.4 Building Encroachments: Each Owner, as grantor, hereby grants to the other Owners, for the benefit of each Parcel belonging to the other Owners, as grantees, an easement for any portion of any building or structure located on any such Parcel which may encroach into or over the grantor's adjoining Parcel(s); subject to the standard set forth in Section 2.3(c) hereof and 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 3.4 shall survive this Declaration and shall last so long as the encroaching building is standing following its initial construction or following its reconstruction where such building is substantially restored to its prior condition following a casualty or condemnation.

3.5 Permanent Service Drive & Permanent Access Easement: Each Owner hereto, as grantor, hereby grants to the other Owners, their respective tenants, contractors, employees, agents, customers, licensees and invitees, and the subtenants, contractors, employees, agents, customers, licensees and invitees of such tenants, for the benefit of each Parcel belonging to the other Owners, as grantees, a perpetual non-exclusive easement for ingress and egress by vehicular and pedestrian traffic upon, over and across those portions of the Common Area located on the grantor's Parcel(s) shown on Exhibit "A" as "Permanent Service Drive" and "Permanent Access Easement" and more particularly described in Schedule II attached hereto and incorporated herein by this reference.

3.6 Maintenance Easement. Each Owner, as grantor, hereby grants to the other Owners, their respective employees, agents, and contractors, as grantee, an easement over and across that portion of the Common Area located on the grantors' Parcel for the purpose of protecting the Common Area and operating or performing any maintenance, repairs, resurfacing or replacements pursuant to the Common Area Maintenance Agreement and this Declaration.

IV. OPERATION OF COMMON AREA

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

4.2 Employee Parking:

(a) Anything in this Declaration to the contrary notwithstanding, areas to be used for motor vehicle parking by employees of occupants of Russell Square may be designated within Russell Square from time to time with the prior written consent of the Consenting Owner. In the event employee parking areas are designated as provided herein, then employees of any Owner or occupant of any part of Russell Square shall use only those portions of the Common Area designated for such motor vehicle parking purposes. In no event shall employees of the occupants of Parcels 1, 3, 4, 5, 6 or 7 park within 200 feet of the front of any building located on Parcel 2. The authority herein granted shall be exercised in such manner as not to discriminate against any Owner or occupant of Russell Square.

(b) Anything in this Declaration to the contrary notwithstanding, areas within Parcels 4 and 5 to be used for motor vehicle parking by residents and employees of the occupant(s) of Parcels 4 and 5 shall be designated by the Owner(s) of Parcels 4 and 5; provided, however, in no event shall any portion of Russell Square other than Parcel 4 or 5 be designated or used as parking by residents and employees of the occupant(s) of Parcels 4 and 5.

4.3 Signs:

(a) Subject to governmental approval and the Sign Standards set forth in Article IX of the Russell Square District (as defined in Section 5.1 hereof), a free-standing sign shall be erected at each location designated "Multi-Tenant Sign" on Exhibit "A" (individually, "Multi-Tenant Sign" and collectively, "Multi-Tenant Signs"). Such signs shall display (i) the designation of the Owner or occupant of Parcel 2 (including, without limitation, at the option of the Owner or occupant of Parcel 2, as a part of the designation otherwise permitted to the Owner or occupant of Parcel 2 or as a separate sign panel, signs identifying banking, financial and/or business services and retail departments or concessions located within the building on Parcel 2, and an Albertson's-operated fuel center and/or convenience store on the adjacent parcel shown as "Not A Part" on Exhibit "A," whether or not such banking, financial and/or business services, retail departments, concessions, fuel center or convenience store would otherwise qualify hereunder for the display of a designation on the Multi-Tenant Signs), and (ii) designations for not more than three (3) other businesses in Russell Square, provided the amount of signage otherwise permitted by governmental authority to the Owner or occupant of Parcel 2 is not reduced to less than 48 square feet on each side of the sign fascia and further provided the signs designating such other businesses are separately sub-metered in the name of the business designated thereon at no expense to the Owner or Prime Lessee of Parcel 2. The foregoing requirement for separate sub-metering may be waived with the prior written consent of the Consenting Owner in its sole and absolute discretion. Any such business, in order to display its designation on the Multi-Tenant Sign, must occupy not less than 7,000 square feet of floor area or be a National Chain. The Owner of Parcel 2 and one other Owner designated by First Party shall each be entitled to thirty percent (30%) of the signage on each of the Multi-Tenant Signs. First Party shall be entitled to divide the remaining forty percent (40%) of signage on each Multi-Tenant Sign, at its discretion, among two (2) other Russell Square businesses selected by First Party for each Multi-Tenant Sign, provided that no signage for either of said two (2) businesses selected by First Party shall exceed twenty-five (25%) of the signage for each Multi-Tenant Sign. The cost of constructing, installing, maintaining, repairing and replacing each Multi-Tenant Sign structure shall be paid by the Owners of all Parcels entitled to display designations thereon in the proportion that the total square footage of each Owner's designation or designations bears to the total square footage of all designations entitled to be displayed thereon. Each person displaying a designation on the Multi-Tenant Sign shall supply and maintain its own sign fascia and can. The design of the Multi-Tenant Sign structure shall be subject to the approval of the Consenting Owner, as shall be the size, design and location of the sign fascia used, which approval shall not be unreasonably withheld or delayed; provided, however, that National Chains in Russell Square may use such standard fascia as they from time to time use generally in carrying on their

businesses. First Party shall have the right to substitute a Russell Square designation for any one of its business designations. The Owner or occupant of Parcel 2 shall have the top designation on the Multi-Tenant Signs except that if a Russell Square designation will be displayed, the Russell Square designation shall have the top position and the Owner or occupant of Parcel 2 shall have the position immediately below the Russell Square designation.

(b) In addition to the foregoing Multi-Tenant Signs, subject to governmental approval and the Sign Standards set forth in Article IX of the Russell Square District (as defined in Section 5.1 hereof), and provided it does not adversely affect the installation and use of the Multi-Tenant Signs or the amount of signage otherwise permitted by governmental authority to the Owner or occupant of Parcel 2, First Party may erect on each of Parcels 4, 5, 6 and 7, one (1) monument sign, not to exceed six (6) feet in height from the average grade of the Parcel and with signage not to exceed forty (40) square feet for each side of the monument sign. The cost of constructing, installing, maintaining, repairing and replacing each of such monument sign structures on Parcels 4, 5, 6 and 7 shall be paid by the Owner or occupant of the Parcel on which such structure is located. The location and design of such sign structure and sign fascia shall be subject to the approval of the Consenting Owner, which approval shall not be unreasonably withheld or delayed; provided, however, that National Chains may, without such approval as to sign fascia, use such standard signs and logos as they from time to time use generally in carrying on their business, subject to the foregoing height and size restrictions.

(c) There shall be no other exterior signs, except directional signs and signs on buildings, in Russell Square without the prior written consent of the Consenting Owner which consent may be granted or withheld in its sole and absolute discretion. All exterior building signs on Parcels 1, 3, 4, 5, 6 and 7 shall be restricted to identification of the business or service located or provided therein. No exterior building sign shall be placed on penthouse walls, extend above the building roof or be painted on the exterior building surface. No exterior building or free-standing sign shall utilize flashing, moving or audible lights or appurtenances.

4.4 Protection of Common Areas: The Owner or Prime Lessee of Parcel 2 (with respect to any Common Area in Russell Square) and the Owner or Prime Lessee of Parcels 1 and 3 (to the extent the Common Areas on Parcel 1 or 3 are affected) 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 and parking. Such steps may include, without limitation, the construction of fences, walls or barricades along the boundary lines of any portion of Russell Square except along the common boundary line of any Parcel with any other Parcel.

4.5 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 the

Owner or occupant of Parcel 2 shall be permitted from the parking lot on Parcel 2, subject to the following restrictions: (i) all booths, stands, displays and other structures erected in connection with such sales shall be promptly removed by the Owner or occupant of Parcel 2 upon termination of said activities, (ii) the Common Area shall be promptly repaired to its condition immediately prior to said sale at the sole cost and expense of the Owner or occupant of Parcel 2, and (iii) sales shall not unreasonably interfere with the free movement of vehicular traffic within Russell Square or with access to or from Russell Square, or any part thereof, to or from any public right-of-way.

4.6 Prohibited Activities. Picketing and distribution of pamphlets, handbills or similar materials within Russell Square shall be prohibited.

V. RESTRICTIONS ON USE

5.1 Russell Square Permitted Uses . Permitted Uses in Russell Square are regulated by Article V of the Russell Square Neighborhood Shopping Center District Zone, adopted by the City of Missoula, June 2, 1997 (the "Russell Square District"). The Russell Square District permits the following uses on the Parcels listed:

Parcels 1, 2 and 3. Retail trade including grocery, drugstore, comparative goods, restaurant, general retail and accessory uses such as garden center, bakery, and delicatessen, Hardware Store, Professional office, Personal services, Eating establishments, including donut shop, ice cream or yogurt shop, or sandwich shop, General merchandising and retail trade, Clothing, tailoring, and shoe store, Laundromat and dry cleaning, Take-out foods, including candy stores and gourmet coffee, Day nurseries and child care, Medical clinic, Banks, credit unions and financial institutions, Bakeries, Music store and school, Photo processing and studio, Electronic equipment sales and repair.

Parcel 4

1. Hardware store
2. Professional office
3. Personal services
4. Eating establishments, including donut shop, ice cream or yogurt shop, or sandwich shop
5. General merchandising and retail trade
6. Clothing, tailoring, and shoe store
7. Laundromat and dry cleaning
8. Take-out foods, including candy stores and gourmet coffee
9. Day nurseries and child care

10. Medical clinic
 11. Banks, credit unions and financial institutions
 12. Bakeries
 13. Music store and school
 14. Photo processing and studio
 15. Electronic equipment sales and repair
 16. Residential Uses according to the Performance Standards of R-IV Multiple Dwelling Residential District
- Parcel 5:
1. Residential uses according to the performance standards of R-IV Multiple Dwelling Residential District
- Parcels 6 and 7:
1. Eating establishments
 2. General merchandising and retail trade
 3. Banks, credit unions and financial institutions
 4. Convenience store
- Parcel 8:
1. Wetland, open Space/Infiltration Area
 2. Interpretive area, passive recreation

To insure the orderly development of a dynamic, complementary mix of the above-permitted uses, the Owners of the Parcels in Russell Square impose the following, supplemental restrictions on uses permitted in Russell Square:

5.2 Food and Drug Restrictions: No part of Parcel 1, 3, 4, 5, 6, 7 or 8 shall be used as a supermarket (which shall be defined as any store or department containing at least 3,000 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; as a cigarette or smoke shop or any other store the primary business of which is to sell tobacco products and/or accessories; for the sale of fresh or frozen meat, fish, poultry or produce for off-premises consumption; for the sale of alcoholic beverages for off-premises consumption; except for one state-licensed package liquor store at a location in Russell Square agreed upon by the Consenting Owner; or for the sale or offer for sale of any ethical pharmaceutical products requiring the services of a registered pharmacist. The aforesaid restrictions shall not be deemed to prohibit (i) a donut or bagel shop, (ii) a sandwich shop allowing on-premises consumption, (iii) a take-out or take and bake pizza store, (iv) a store primarily selling ice cream, frozen yogurt and/or candy, (v) a store primarily selling gourmet coffee, or (vi) a store primarily selling fruit or vegetable juices; provided that (a) none of the uses permitted in Subsections (i) through (vi) (collectively, "the Specialty Food Shops") shall have a total floor area of more than 2,000 square feet; (b) the uses in (i), (ii), or (iii) shall be located no closer than two hundred (200) feet from the main entrance of the building on Parcel 2; (c) no more than one (1) Specialty Food Shop shall be located within

75 feet from the Building Area on Parcel 2; (d) no more than one additional (1) Specialty Food Shop shall be located between 75 feet and 200 feet from the Building Area on Parcel 2; and (e) only one Owner or occupant from each of categories (i) through (vi) shall be permitted in Russell Square. Except as otherwise provided herein, the term "restaurant" shall include the Specialty Food Shops.

5.3 Russell Square Restrictions:

(a) Retail Use

Restrictions. No part of Parcels 1, 3, 6 or 7 shall be used for any purpose other than for retail sales, retail services, Office Uses as defined in Section 5.4 hereof, or restaurants. Parcels 4 and 5 may be used for multi-family residential use or for retail sales, retail services, Office Uses as defined in Section 5.4 hereof, or restaurants. Without limiting the foregoing, no part of Parcels 1, 3, 4, 5, 6 or 7 shall be used for an automotive maintenance or repair facility, a second hand or surplus store, or for any entertainment or recreational facility or training or educational facility. For the purpose of this Declaration, 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 but shall not include computer or musical instrument retail stores that conduct lessons on the equipment or instruments sold, incidental to the sale or rental of such products. Subject to governmental approval that such use is not proscribed by the prohibition of "automotive repair" in Article VI of the Russell Square District, "Automotive maintenance or repair facility" shall not include a facility such as a Goodyear or a Firestone car care facility (hereinafter referred to as a "CCF"), operated by a National Chain of such facilities, and which may be located on any one, but not more than one, of Parcel 4, 6 or 7; provided that: (i) all servicing of vehicles is done on the interior of the building utilized for the operation of the CCF, (ii) all bays and roll up doors shall be located on the side of the building away from the front entry of the building on Parcel 2 or in another location approved by the Consenting Owner, (iii) all vehicles left for repair or waiting to be picked up at the CCF must be parked behind the CCF and must be left not more than twenty four (24) hours, (iv) all inventory and equipment shall be stored and displayed inside the CCF, and (v) the design and maintenance of the CCF shall conform to the standards set forth in Section 2.3. No disabled vehicles may be parked anywhere in Russell Square incident to the operation of the CCF. Subject to governmental approval that such use is not proscribed by the prohibition of "automotive repair" in Article VI of the Russell Square District, "Automotive maintenance or repair facility" shall also not include the operation of a store on any one, but not more than one of Parcel 4, 6 or 7, 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 at the rear of the store, no installation bay shall be located on the front of the store, all inventory and equipment shall be stored or displayed inside the building, and the design and maintenance of the store shall conform to the standards set forth in Section 2.3. The phrase "adult book store" or "adult video store" shall not prevent a full-line book store or a full-line video store from carrying adult materials, so long as such materials are incidental to and represent no more than five percent (5%) of the floor area and sales of a full-line book store or a full-line video store and are discreetly stocked and handled.

(b) **Special Use Restrictions.** No part of Russell Square shall be used as a bar, casino, tavern, cocktail lounge, adult book or adult video store, other adult uses or adult entertainment, gas station, car wash, animal kennel, mobile home park or trailer court; warehouse, 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. The provisions of this Section 5.3(b) prohibiting a bar, tavern, casino or cocktail lounge are not intended to restrict the sale of alcohol for on-premises consumption incidental to the sale of food by not more than one (1) restaurant located on either, but not both, Parcel 6 or 7; provided, however, that sales of alcohol shall not be deemed incidental to the sale of food by said restaurant if such sales exceed twenty-five percent (25%) of the annual gross sales of such restaurant on a calendar year basis. First Party agrees that its lease with any occupant or contract of sale with any purchaser of any such restaurant will require the occupant, within thirty (30) days after receipt of written request from Albertson's, to provide Albertson's an annual statement of gross sales by percentage attributable to the sale of alcoholic beverages from any such restaurant. Albertson's agrees to hold in confidence all information contained in said statement; provided, however, that Albertson's may disclose such information to a prospective mortgagee, purchaser or subtenant of Parcel 2. Albertson's shall not be responsible for the disclosure of such information by any such prospective mortgagee, purchaser or subtenant, its agents or employees, provided such information was tendered to such person with the request that same be held confidential.

5.4 Location Restrictions: Except for the Specialty Food Shops described in Section 5.2, no part of Parcel 1 or 3 within 200 feet of the Building Area on Parcel 2 shall be used as a restaurant or as a medical (including, without limitation, eye care or chiropractic), dental, professional or business office (the foregoing office uses being referred to herein as "Office Use"). No individual restaurant or Office Use in Russell Square shall exceed 4,000 square feet in floor area, except that one (1) bank, savings and loan association or credit union, one (1) National Chain one-hour optical clinic, and one (1) National Chain restaurant shall be permitted

up to 5,000 square feet in floor area on Parcel 6 or up to 6,000 square feet in floor area on Parcel 7,, provided that each of these excepted uses shall be located more than 300 feet from the main entrance of the Building on Parcel 2 and shall comply with the parking standard set forth in Section 4.5 hereof. The total floor area of all restaurants and Office Uses located on Parcels 1, 3, 4, 5, 6 and 7 shall not exceed 20,000 square feet.

5.5 Driveup and Drive Through Facilities: Article VI of the Russell Square District prohibits "Drive-through services." Notwithstanding governmental approval of an adjustment from such restriction, no restaurant, bank or other facility featuring vehicular driveup or drive through customer service shall be located in Russell Square unless the Consenting Owner has first given its written consent, which shall not be unreasonably withheld, to the location, parking and drive lanes of such facility.

5.6 Mall Restrictions: There shall be no open or enclosed malls in Russell Square unless the Consenting Owner has first given its written consent, which consent shall be given or withheld in the Consenting Owner's sole discretion.

5.7 Parcel 8 Wetlands Area: Parcel 8 shall be developed as a wetlands and storm water detention area, and no buildings shall be permitted thereon. Albertson's conveyed Parcel 8, by mesne conveyances, to the City of Missoula, for permanent, public use and maintenance as a natural wetlands area, as provided in that certain Wetlands Conservation and Maintenance Easement recorded May 21, 1998, in Book 542 of Micro Records at page 759, Official Records of Missoula County, Montana (the "Wetlands Easement"). The Wetlands Easement obligates the City of Missoula to maintain the Wetlands (as defined in the Wetlands Easement), and obligates Albertson's and the successor Owners to maintain the perimeter improvements on Parcel 8, in accordance with the Wetlands Easement.

6. CASUALTY AND CONDEMNATION

6.1 Casualty. If all or any portion of any building in Russell Square is damaged or destroyed by fire or other casualty, the Owner of such building shall promptly restore or cause to be restored the remaining portion of such building or, in lieu thereof, shall remove the damaged portion of such building together with all rubble and debris related thereto. All Building Areas on which buildings are not reconstructed following a casualty shall be graded or caused to be graded by the Owner thereof to the level of the adjoining property and in such a manner as not to adversely affect the drainage of Russell Square or any portion thereof, shall be covered by a one inch asphalt dust cap and shall be kept weed free and clean at the Owner's sole cost and expense until buildings are reconstructed thereon.

6.2 Condemnation.

(a) **Building Restoration.** If all or any portion of any building in Russell Square is taken or damaged as a result of the exercise of the power of eminent domain or any

transfer in lieu thereof ("**Condemnation**"), the Owner of such building shall have the same obligations with respect to restoration or removal of the building and Building Area as are set forth in Section 6.1.

(b) **Allocation of Award.** If all or any portion of any Parcel in Russell Square is taken or damaged as a result of a Condemnation ("**Condemned Parcel**"), the Owner of the Condemned Parcel shall be entitled to the entire award or purchase price paid for the Condemned Parcel; provided, however, that nothing contained herein shall affect any other person's right to seek severance damages for its Parcel, provided the award of such severance damages does not reduce or diminish the amount which would otherwise be paid to the Owner of the Condemned Parcel. The Owner of the Condemned Parcel shall restore or cause to be restored the remaining portion of the Condemned Parcel as near as practicable to the condition immediately prior to such Condemnation to the extent, but only to the extent, of any condemnation proceeds allocated by the court or condemning party, as the case may be, to such restoration and actually received by the Owner of the Condemned Parcel. Any restoration of the Condemned Parcel which involves a change in the configuration of the Common Area or the sizes and arrangements thereof from that shown on Exhibit "A" shall require the Consenting Owner's prior written approval. Notwithstanding the above, this Section 6.2 is not intended to and shall not alter the allocation of any award between the Owner of a Condemned Parcel and any tenant of such Condemned Parcel pursuant to the terms of any lease or other agreement between the parties.

7. INDEMNIFICATION

7.1 Indemnification. Each Owner shall indemnify, defend and hold harmless the other Owners and occupants of Russell Square from any and all liabilities, claims, damages, expenses (including, without limitation, reasonable attorney's fees and reasonable attorney's fees on any appeal), judgments, proceedings, and causes of action of any kind whatsoever for injury to or death of any person or damage to or destruction of any property resulting from the willful or negligent act or omission of the indemnifying Owner.

VIII. GENERAL PROVISIONS

8.1 Covenants Run With the Land: Each Restriction on each Parcel shall be a burden on that Parcel, shall be appurtenant to and for the benefit of the other Parcels and each part thereof and shall run with the land.

8.2 Successors and Assigns: This Declaration and the Restrictions created hereby shall inure to the benefit of and be binding upon the Owners, their heirs, personal representatives, successors and assigns, and upon any person acquiring a Parcel, or any portion thereof, or any interest therein, whether by operation of law or otherwise; provided, however, that if any Owner sells all or any portion of its interest in any Parcel, such Owner shall thereupon be released and discharged from any and all obligations as Owner in connection with the property sold by it

arising under this Declaration after the sale and conveyance of title but shall remain liable for all obligations arising under this Declaration prior to the sale and conveyance of title. The new Owner of any such Parcel or any portion thereof (including, without limitation, any Owner who acquires its interest by foreclosure, trustee's sale or otherwise) shall be liable for all obligations arising under this Declaration with respect to such Parcel or portion thereof after the date of sale and conveyance of title.

8.3 Duration: Except as otherwise provided herein, the term of this Declaration shall be for sixty-five (65) years from the date hereof. Notwithstanding the termination of the Declaration:

(a) The areas shown on Exhibit "A" as Permanent Service Drive and Permanent Access Easement shall survive the expiration of the term of this Declaration; and

(b) Easements for existing underground utilities in use at the time of the expiration of this Declaration shall continue for the remainder of the life or use of such utility improvements and the replacements thereof. Each Owner shall be entitled to relocate, at its own expense, any portion of the Permanent Service Drive, Permanent Access Easement or easements for utilities on its Parcel after termination of this Declaration, provided that comparable utility and vehicular access is maintained to all other Parcels.

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

8.5 Modification and Termination: This Declaration may not be modified in any respect whatsoever or terminated, in whole or in part, except with the consent of the Owners and Prime Lessees of the Parcels containing eighty percent (80%) of the total square footage of Parcel Area in Russell Square (excluding Parcel 8) at the time of such modification or termination, and then only by written instrument duly executed and acknowledged by all of the required Owners and Prime Lessees of said eighty percent (80%) of the total square footage of Parcel Area and recorded in the office of the recorder of the county in which Russell Square is located. No modification or termination of this Declaration shall affect the rights of any Lienholder unless the Lienholder consents in writing to the modification or termination.

8.6 Method of Approval: Whenever the consent or approval of any Owner is required, such consent or approval shall be exercised only in the following manner. Each Parcel shall have only one (1) vote. The Owners (if consisting of more than one [1] person) of each Parcel shall agree among themselves and designate in writing to the Owners and Prime Lessees of each of the other Parcels a single person who is entitled to cast the vote for that Parcel. If the

Owners of any such Parcel cannot agree who shall be entitled to cast the single vote of that Parcel, or if the Owners fail to designate the single person who is entitled to cast the vote for that Parcel within thirty (30) days after receipt of request for same from any other Owner or Prime Lessee, then that Parcel shall not be entitled to vote. In the event a Parcel is not entitled to vote, its consent or approval shall not be necessary and the total square footage of Parcel Area in said Parcel shall be disregarded for the purpose of computing the percentage requirement set forth in Section 8.5. Except as otherwise set forth in Section 8.5, in the event an Owner sells its Parcel and becomes the Prime Lessee thereon, said Prime Lessee is hereby appointed the entity to cast the vote or give the consent for said Parcel on behalf of the Owner thereof and is hereby granted all of the rights and remedies granted to the Owner of said Parcel so long as it is the Prime Lessee of said Parcel, anything in this Declaration to the contrary notwithstanding.

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

8.8 Breach Shall Not Permit Termination: It is expressly agreed that no breach of this Declaration shall entitle any Owner to terminate this Declaration, but such limitation shall not affect in any manner any other rights or remedies which such Owner may have hereunder by reason of any breach of this Declaration. Any breach of this Declaration shall not defeat or render invalid the lien of any mortgage or deed of trust made in good faith for value, but this Declaration shall be binding upon and be effective against any Owner whose title is acquired by foreclosure, trustee's sale or otherwise.

8.9 Default: A person shall be deemed to be in default of this Declaration only upon the expiration of thirty (30) days (ten [10] days in the event of failure to pay money) from receipt of written notice from any Owner or Prime Lessee specifying the particulars in which such person has failed to perform the obligations of this Declaration unless such person, prior to the expiration of said thirty (30) days (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 reasonable efforts to rectify the particulars specified in the notice of default.

8.10 Notices:

(a) All notices given pursuant to this Declaration shall be in writing and shall be given by personal delivery, by United States mail or by United States express mail or other established express delivery service (such as Federal Express), postage or delivery charges prepaid, return receipt requested, addressed to the person and address designated below or, in the

absence of such designation, to the person and address shown on the then current real property tax rolls of the county in which Russell Square is located. All notices to First Party or Albertson's shall be sent to the person and address set forth below:

First Party: P.O.B. Montgomery & Co.
Attention: Randy Twist
5550 LBJ Freeway, Suite 380
Dallas, TX 75240

with copies to: William C. Wilshusen, Esq.
Haynes & Boone, LLP
901 Main Street, Suite 3100
Dallas, TX 75202-3789

and

Westfield Properties, Inc.
Attention: Richard Mendenhall
2749 E. Parley's Way, Suite 310
Salt Lake City, UT 84109

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

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

(b) For the purpose of this Declaration, the term "receipt" shall mean the earlier of any of the following: (i) the date of delivery of the notice or other document to the address specified pursuant to subparagraph (a) above as shown on the return receipt, (ii) the date of actual receipt of the notice or other document by the person or entity specified pursuant to subparagraph (a) above, or (iii) in the case of refusal to accept delivery or inability to deliver the notice or other document, the earlier of (A) the date of the attempted delivery or refusal to accept delivery, (B) the date of the postmark on the return receipt, or (C) the date of receipt of notice of refusal or notice of nondelivery by the sending party.

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

8.12 Attorney's Fees: In the event any person initiates or defends any legal action or proceeding to enforce or interpret any of the terms of this Declaration, the prevailing party in any such action or proceeding shall be entitled to recover from the losing party in any such action or proceeding its reasonable costs and attorney's and paralegal's fees (including its reasonable costs and attorney's and paralegal's fees on any appeal).

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

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

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

8.16 Third Party Beneficiary Rights: This Declaration is not intended to create, nor shall it be in any way interpreted or construed to create, any third party beneficiary rights in any person not a party hereto unless otherwise expressly provided herein.

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

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

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

8.20 Joint and Several Obligations: In the event any party hereto is composed of more than one person, the obligations of said party shall be joint and several, subject to the

statutory limited liability afforded corporate shareholders, limited partners in a limited partnership and non-managing members in a limited liability company.

8.21 Recordation: This Declaration shall be recorded in the office of the recorder of the county in which Russell Square is located.

8.22 Non-Merger. Ownership of more than one Parcel by the same Owner shall not result in the merger of the dominant and servient estates of such Owner created by this Declaration.

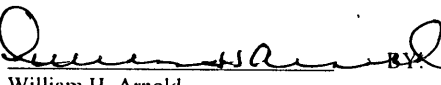
8.23 Approvals. Except as otherwise provided herein, all requests for approval under this Declaration shall be processed in accordance with Section 2.5.

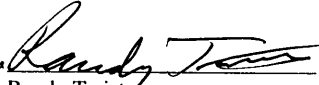
EXECUTED as of the day and year first above written.

Albertson's, Inc.,
a Delaware corporation

First Party:
P.O'B. Montgomery & Co.,
a Texas corporation

BY:


William H. Arnold
Vice President, Real Estate Law


Randy Twist
Its: Executive Vice President

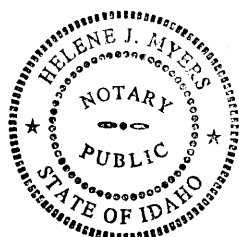
STATE OF IDAHO)
) ss.
 County of Ada)

On this 17th day of November, 1998, before me, the undersigned, a Notary Public in and for said State, personally appeared **William H. Arnold**, to me known to be the **Vice President, Real Estate Law, of Albertson's, Inc.**, the corporation that executed the foregoing instrument, and acknowledged to me that the said instrument is the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute the said instrument.

WITNESS MY HAND and official seal hereto affixed the day, month and year in this certificate first above written.

My commission expires:

12-21-2001



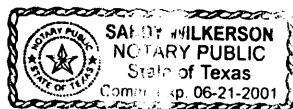
Helene J. Myers
 Notary Public in and for the
 State of Idaho
 Residing at Boise, Idaho

STATE OF TEXAS)
) ss.
 County of Dallas)

On this 12 day of November, 1998, before me, the undersigned, a Notary Public in and for said State, personally appeared **Randy Twist**, to me known to be **Executive Vice President of P.O'B. Montgomery & Co.**, the corporation that executed the foregoing instrument, and acknowledged to me that the said instrument is the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute the said instrument.

WITNESS MY HAND and official seal hereto affixed the day, month and year in this certificate first above written.

My commission expires:



Sandy Wilkerson
 Notary Public in and for the
 State of _____
 Residing at _____

"MULTI-FAMILY -
SUBJECT TO CITY DESIGN APPROVAL"
PARCEL 5

34 th STREET

8,400
S.F.
MAX.

PLAZA

12,250 S.F.
MAX.

ALBERTSONS
55,922 S.F.

15,796 S.F.
MAX.

FUTURE PARKING

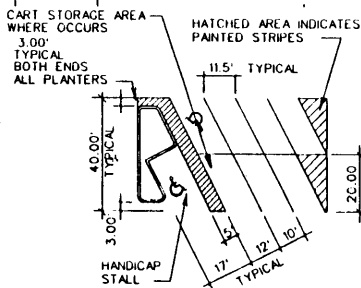
ONE STORY
WOOD WELL
HOUSE

APARTMENTS
NOT A PART

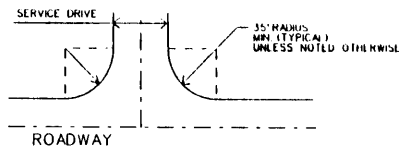
NO MEDIANS

MULTI-TENANT
SIGN

RUSSELL STREET



(A) PARKING DETAIL
1"=50'-0"



(B) CURB CUT DETAIL
1"=100'-0"



EXHIBIT

TOTAL GROSS I
TOTAL CARPARK
TOTAL CARPARK
TOTAL SITE ARE

* PARK

14782

EXHIBIT "B"**INSURANCE REQUIREMENTS**

The Site Contractor shall procure and maintain until the Site Work has been substantially completed and accepted in accordance with Section 2.4 of this Declaration commercial general liability insurance (or if the same is not available, comparable coverage) written on a combined single limit basis with minimum limits of not less than \$2,000,000 per occurrence. All policies of insurance provided hereunder shall be written on an "occurrence" basis on an Insurance Services Office (ISO) 1986 or newer standard form.

The above policy of insurance shall be with an insurer acceptable to both Albertson's and First Party and shall name First Party and Albertson's as additional insureds. The Site Contractor shall furnish First Party and Albertson's certificates (and, if requested by Albertson's, with a copy of the insurance policy as well) showing such coverage and showing that coverage will not be canceled without thirty (30) days prior written notice to First Party and Albertson's. The policy must contain a separation of insureds clause. If the required coverage is obtained through a combination of commercial general liability and umbrella coverage, the certificate for umbrella coverage must also show that First Party and Albertson's will be given thirty (30) days prior written notice of cancellation.

The Site Contractor must provide certificates showing statutory worker's compensation coverage and showing employer's liability coverage with minimum limits of \$1,000,000. In addition, the Site Contractor will provide evidence its subcontractors and their subcontractors carry similar coverage. First Party and Albertson's need not be named as additional insureds on the employer's liability coverage or the worker's compensation coverage. First Party and Albertson's must be given thirty (30) days prior written notice of cancellation of either coverage.

The Site Contractor must provide certificates of insurance showing that it maintains business automobile liability insurance for all owned, nonowned and hired vehicles with single limits of at least \$2,000,000 each accident. Such coverage must name First Party and Albertson's as additional insureds. The Site Contractor must provide a certificate (and, if requested by Albertson's, a copy of the insurance policy as well) showing such coverage and showing that such coverage will not be canceled without thirty (30) days written notice to First Party and Albertson's.

Should any of the above-described policies be canceled before the expiration date thereof, the issuing company will endeavor to mail thirty (30) days written notice to the named certificate holder, but failure to mail such notice shall impose no obligation or liability of any kind upon the company.

SCHEDULE I**Legal Description of Parcels 1, 2, 3, 4, 5, 6 and 7**

Parcels 1 through 7, inclusive, of RUSSELL SQUARE, a subdivision of the City of Missoula, in Missoula County, Montana, located in the SW ¼ of Section 33, Township 13 North, Range 19 West, Principal Meridian, Montana, according to the official plat thereof, filed for record on the ____ day of _____, 1998, permanent files of Missoula County, Montana.

Legal Description of Parcel 8

A tract of land located in the SW ¼ of Section 33, Township 13 North, Range 19 West, Principal Meridian, Montana, Missoula County, Montana, being more particularly described as Parcel A, Certificate of Survey No. 4746.

SCHEDULE II
LEGAL DESCRIPTIONS FOR PERMANENT ACCESS EASEMENT
AND PERMANENT SERVICE DRIVE

A TRACT OF LAND BEING A PORTION OF PARCELS 1, 2 AND 4 OF RUSSELL SQUARE, A SUBDIVISION ON FILE IN MISSOULA COUNTY, MONTANA, LOCATED IN THE SOUTHWEST 1/4 OF SECTION 33, TOWNSHIP 13 NORTH, RANGE 19 WEST, PRINCIPAL MERIDIAN, MONTANA; MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT AN ANGLE POINT IN THE NORTHERLY LINE OF SAID PARCEL 2, SAID ANGLE POINT BEING THE SOUTHEASTERLY TERMINUS OF THAT CERTAIN COURSE IN THE NORTHERLY LINE OF SAID PARCEL 2 SHOWN AS N25°00'00"W, 178.00 FEET ON SAID RUSSELL SQUARE; THENCE S65°00'00"W, 15.50 FEET; THENCE N25°00'00"W, 189.26 FEET; THENCE N60°38'34"E, 60.06 FEET; THENCE N39°32'15"E, 45.04 FEET; THENCE N00°00'00"W, 147.09 FEET TO BEGINNING OF A CURVE CONCAVE WESTERLY AND HAVING A RADIUS OF 29.17 FEET; THENCE NORTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 25°58'00" AN ARC LENGTH OF 13.22 FEET TO A NON-TANGENT POINT ON THE SOUTHERLY RIGHT-OF-WAY LINE OF 34TH STREET AS SHOWN ON SAID RUSSELL SQUARE, A RADIAL LINE THERETO BEARS N64°02'00"E; THENCE S89°53'58"E ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE, 37.59 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE EASTERLY AND HAVING A RADIUS OF 29.17 FEET, A RADIAL LINE THERETO BEARS N63°52'19"W; THENCE SOUTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 26°07'41" AN ARC LENGTH OF 13.30 FEET; THENCE S00°00'00"W, 165.49 FEET TO THE BEGINNING OF A CURVE CONCAVE NORTHWESTERLY AND HAVING A RADIUS OF 35.50 FEET; THENCE SOUTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 64°59'59" AN ARC LENGTH OF 40.27 FEET; THENCE S64°59'59"W, 33.75 FEET TO THE BEGINNING OF A CURVE CONCAVE SOUTHEASTERLY AND HAVING A RADIUS OF 24.50 FEET; THENCE SOUTHWESTERLY, SOUTHERLY AND SOUTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 89°59'59" AN ARC LENGTH OF 38.48 FEET; THENCE S25°00'00"E, 138.00 FEET TO A POINT ON THE NORTHERLY LINE OF SAID PARCEL 2; THENCE S65°00'00"W, 15.50 FEET TO THE POINT OF BEGINNING.

SHEET 1 OF 4

PERMANENT ACCESS EASEMENT
LOCATED IN THE SW 1/4 OF SECTION 33,
T. 13 N., R. 19 W., P.M.M.
MISSOULA, MONTANA

WGM group

FILE NO.: L-1253
DRAFT: CEG

ENGINEERING-SURVEYING-PLANNING
P.O. BOX 16027
MISSOULA, MONTANA 59808

DATE: 11/24/98
PROJECT: 95-07-10

A TRACT OF LAND BEING A PORTION OF PARCELS 3, 6 AND 7 OF RUSSELL SQUARE, A SUBDIVISION ON FILE IN MISSOULA COUNTY, MONTANA, LOCATED IN THE SW 1/4 OF SECTION 33, TOWNSHIP 13 NORTH, RANGE 19 WEST, PRINCIPAL MERIDIAN, MONTANA; MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF SAID PARCEL 6, SAID CORNER BEING ON THE NORTHWESTERLY RIGHT-OF-WAY OF SOUTHWEST HIGGINS AVENUE AS SHOWN ON SAID RUSSELL SQUARE, LAST SAID CORNER ALSO BEING ON A CURVE CONCAVE NORTHWESTERLY AND HAVING A RADIUS OF 1,860.00 FEET, A RADIAL LINE THERETO BEARS S16°01'57"E; THENCE SOUTHWESTERLY ALONG LAST SAID CURVE THROUGH A CENTRAL ANGLE OF 01°00'17" AN ARC LENGTH OF 32.62 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE NORTHWESTERLY AND HAVING A RADIUS OF 29.50 FEET, A RADIAL LINE THERETO BEARS S72°56'54"E; THENCE NORTHEASTERLY ALONG LAST SAID CURVE THROUGH A CENTRAL ANGLE OF 32°47'01" AN ARC LENGTH OF 16.88 FEET; THENCE N15°43'55"W, 84.51 FEET TO THE BEGINNING OF A CURVE CONCAVE EASTERLY AND HAVING A RADIUS OF 75.50 FEET; THENCE NORTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 15°43'55" AN ARC LENGTH OF 20.73 FEET; THENCE N00°00'00"W, 25.64 FEET; THENCE N07°44'28"E, 87.14 FEET; THENCE N00°00'00"W, 136.99 FEET TO A POINT ON THE SOUTHERLY LINE OF SAID PARCEL 2; THENCE N65°00'00"E ALONG THE SOUTHERLY LINE OF SAID PARCEL 2, 33.65 FEET; THENCE S00°00'00"W, 158.57 FEET; THENCE S07°44'28"W, 71.33 FEET TO THE BEGINNING OF A CURVE CONCAVE EASTERLY AND HAVING A RADIUS OF 29.50 FEET; THENCE SOUTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 23°28'23" AN ARC LENGTH OF 12.09 FEET; THENCE S15°43'55"E, 116.92 FEET TO THE BEGINNING OF A CURVE CONCAVE EASTERLY AND HAVING A RADIUS OF 29.50 FEET; THENCE SOUTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 32°55'41" AN ARC LENGTH OF 16.95 FEET TO A NON-TANGENT POINT ON THE NORTHWESTERLY RIGHT-OF-WAY LINE OF SOUTHWEST HIGGINS AVENUE AS SHOWN ON SAID RUSSELL SQUARE, A RADIAL LINE THERETO BEARS S41°20'24"W LAST SAID POINT ALSO BEING ON A CURVE CONCAVE NORTHWESTERLY AND HAVING A RADIUS OF 1,860.00 FEET, A RADIAL LINE THERETO BEARS S16°34'53"E; THENCE SOUTHWESTERLY ALONG LAST SAID CURVE THROUGH A CENTRAL ANGLE OF 00°32'56" AN ARC LENGTH OF 17.82 FEET TO THE POINT OF BEGINNING.

SHEET 2 OF 4

PERMANENT ACCESS EASEMENT
LOCATED IN THE SW 1/4 OF SECTION 33,
T. 13 N., R. 19 W., P.M.M.
MISSOULA, MONTANA

WGM group

FILE NO.: L-1253
DRAFT: CEG

ENGINEERING-SURVEYING-PLANNING
P.O. BOX 16027
MISSOULA, MONTANA 59808

DATE: 11/24/98
PROJECT: 95-07-10

A TRACT OF LAND BEING A PORTION OF PARCELS 1, 2, 3 AND 4 OF RUSSELL SQUARE, A SUBDIVISION ON FILE IN MISSOULA COUNTY, MONTANA, LOCATED IN THE SW 1/4 OF SECTION 33, TOWNSHIP 13 NORTH, RANGE 19 WEST, PRINCIPAL MERIDIAN, MONTANA; MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID PARCEL 4; THENCE S89°53'58"E ALONG THE NORTH LINE OF SAID PARCEL 4, 80.78 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE SOUTHEASTERLY AND HAVING A RADIUS OF 29.17 FEET, A RADIAL LINE THERETO BEARS N63°48'00"W SAID BEGINNING OF NON-TANGENT CURVE BEING THE TRUE POINT OF BEGINNING; THENCE SOUTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 26°12'00" AN ARC LENGTH OF 13.34 FEET; THENCE S00°00'00"W, 220.35 FEET TO THE BEGINNING OF A CURVE CONCAVE WESTERLY AND HAVING A RADIUS OF 81.17 FEET; THENCE SOUTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 20°52'21" AN ARC LENGTH OF 29.57 FEET; THENCE S20°52'21"W, 111.79 FEET TO THE BEGINNING OF A CURVE CONCAVE EASTERLY AND HAVING A RADIUS OF 48.83 FEET; THENCE SOUTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 20°52'20" AN ARC LENGTH OF 17.79 FEET; THENCE S00°00'01"W, 146.60 FEET; THENCE S01°06'03"W, 57.68 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE NORTHEASTERLY AND HAVING A RADIUS OF 120.01 FEET, A RADIAL LINE THERETO BEARS N88°08'41"W; THENCE SOUTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 62°36'08" AN ARC LENGTH OF 131.12 FEET TO THE BEGINNING OF A REVERSE CURVE CONCAVE SOUTHWESTERLY AND HAVING A RADIUS OF 210.00 FEET, A RADIAL LINE THERETO BEARS N29°15'11"E; THENCE SOUTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 44°15'46" AN ARC LENGTH OF 162.23 FEET TO A POINT ON THE SOUTHERLY LINE OF SAID PARCEL 3, A RADIAL LINE THERETO BEARS N73°30'57"E; THENCE S65°00'00"W ALONG SAID SOUTHERLY LINE OF PARCEL 3, 32.42 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE SOUTHWESTERLY AND HAVING A RADIUS OF 178.00 FEET, A RADIAL LINE THERETO BEARS N75°03'41"E; THENCE NORTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 45°48'30" AN ARC LENGTH OF 142.31 FEET TO THE BEGINNING OF A REVERSE CURVE CONCAVE NORTHEASTERLY AND HAVING A RADIUS OF 152.01 FEET, A RADIAL LINE THERETO BEARS S29°15'11"W; THENCE NORTHWESTERLY ALONG SAID REVERSE CURVE THROUGH A CENTRAL ANGLE OF 57°55'06" AN ARC LENGTH OF 153.66 FEET TO THE BEGINNING OF A REVERSE CURVE CONCAVE SOUTHWESTERLY AND HAVING A RADIUS OF 23.00 FEET, A RADIAL LINE THERETO BEARS N87°10'17"E; THENCE NORTHWESTERLY ALONG SAID REVERSE CURVE THROUGH A CENTRAL ANGLE OF 87°05'14" AN ARC LENGTH OF 34.96 FEET; THENCE N89°54'57"W, 23.80 FEET TO THE BEGINNING OF A CURVE CONCAVE NORTHERLY AND HAVING A RADIUS OF 102.00 FEET; THENCE WESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 16°15'52" AN ARC LENGTH OF 28.95 FEET TO THE BEGINNING OF A REVERSE CURVE CONCAVE SOUTHERLY AND HAVING A RADIUS OF 98.00 FEET, A RADIAL LINE THERETO BEARS N16°20'55"E; THENCE WESTERLY ALONG SAID REVERSE CURVE THROUGH A CENTRAL ANGLE OF 16°15'50" AN ARC LENGTH OF 27.82 FEET; THENCE N89°54'55"W, 84.03 FEET TO THE BEGINNING OF A CURVE CONCAVE SOUTHEASTERLY AND HAVING A RADIUS OF 28.00 FEET; THENCE SOUTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 48°13'58" AN ARC LENGTH OF 23.57 FEET TO A POINT ON THE EASTERLY RIGHT-OF-WAY LINE OF RUSSELL STREET AS SHOWN ON SAID RUSSELL SQUARE, A RADIAL LINE THERETO BEARS N48°08'53"W; THENCE N00°04'46"W ALONG THE SAID EASTERLY RIGHT-OF-WAY 60.16 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE NORTHERLY AND HAVING A RADIUS OF 30.00 FEET, A RADIAL LINE THERETO BEARS S20°58'41"W; THENCE EASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 20°53'37" AN ARC LENGTH OF 10.94 FEET; THENCE S89°54'56"E, 94.40 FEET TO THE BEGINNING OF A CURVE CONCAVE SOUTHWESTERLY AND HAVING A RADIUS OF 100.83 FEET; THENCE SOUTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 34°02'54" AN ARC LENGTH OF 59.92 FEET TO THE BEGINNING OF A REVERSE CURVE CONCAVE NORTHERLY AND HAVING A RADIUS OF 39.17 FEET, A RADIAL LINE THERETO BEARS S34°07'58"W; THENCE SOUTHEASTERLY ALONG SAID REVERSE CURVE THROUGH A CENTRAL ANGLE OF 34°02'52" AN ARC LENGTH OF 23.28 FEET; THENCE S89°54'55"E, 1.08 FEET TO THE BEGINNING OF A CURVE CONCAVE NORTHWESTERLY AND HAVING A RADIUS OF 24.17 FEET; THENCE NORTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 90°05'05" AN ARC LENGTH OF 38.00 FEET; THENCE N00°00'00"E, 136.78 FEET TO THE BEGINNING OF A CURVE CONCAVE EASTERLY AND HAVING A RADIUS OF 80.83 FEET; THENCE NORTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 20°52'21" AN ARC LENGTH OF 29.45 FEET; THENCE N20°52'21"E, 111.79 FEET TO THE BEGINNING OF A CURVE CONCAVE NORTHWESTERLY AND HAVING A RADIUS OF 49.17 FEET; THENCE NORTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 20°52'21" AN ARC LENGTH OF 17.91 FEET; THENCE N00°00'00"W, 220.35 FEET TO THE BEGINNING OF A CURVE CONCAVE WESTERLY AND HAVING A RADIUS OF 29.17 FEET; THENCE NORTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 26°20'45" AN ARC LENGTH OF 13.41 FEET TO A NON-TANGENT POINT ON THE SOUTHERLY RIGHT-OF-WAY LINE OF 34TH STREET AS SHOWN ON SAID RUSSELL SQUARE, A RADIAL LINE THERETO BEARS N63°39'15"E; THENCE S89°53'58"E ALONG SAID SOUTHERLY RIGHT-OF-WAY 38.03 FEET TO THE TRUE POINT OF BEGINNING.

SHEET 3 OF 4

PERMANENT ACCESS EASEMENT
LOCATED IN THE SW 1/4 OF SECTION 33,
T. 13 N., R. 19 W., P.M.M.
MISSOULA, MONTANA

WGM group

ENGINEERING-SURVEYING-PLANNING

FILE NO.: L-1253
DRAFT: CEG

P.O. BOX 16027
MISSOULA, MONTANA 59808

DATE: 11/24/98
PROJECT: 95-07-10

A TRACT OF LAND BEING A PORTION OF PARCEL 2 OF RUSSELL SQUARE, A SUBDIVISION ON FILE IN MISSOULA COUNTY, MONTANA, LOCATED IN THE SW 1/4 OF SECTION 33, TOWNSHIP 13 NORTH, RANGE 19 WEST, PRINCIPAL MERIDIAN, MONTANA; MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF PARCEL 6 OF SAID RUSSELL SQUARE, SAID CORNER BEING ON A CURVE CONCAVE NORTHWESTERLY AND HAVING A RADIUS OF 1,860.00 FEET, A RADIAL LINE THERETO BEARS S22°34'05"E; THENCE N00°00'00"W ALONG THE EAST LINES OF PARCELS 3 AND 6 OF SAID RUSSELL SQUARE AND THEIR NORTHERLY PROLONGATION, 403.03 FEET; THENCE N65°00'00"E, 7.17 FEET; THENCE N00°00'00"W, 46.36 FEET; THENCE N25°00'00"W, 224.73 FEET; THENCE S65°00'00"W, 16.93 FEET TO A POINT ON THE SOUTHEASTERLY PROLONGATION OF THE EASTERLY LINE OF PARCEL 1 OF SAID RUSSELL SQUARE; THENCE N25°00'00"W ALONG SAID SOUTHEASTERLY PROLONGATION AND ALONG SAID EASTERLY LINE OF PARCEL 1, 68.17 FEET; THENCE N00°00'00"W, 224.45 FEET TO THE BEGINNING OF A CURVE CONCAVE SOUTHWESTERLY AND HAVING A RADIUS OF 29.17 FEET; THENCE NORTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 26°10'19" AN ARC LENGTH OF 13.32 FEET TO A NON-TANGENT POINT ON THE SOUTHERLY RIGHT-OF-WAY LINE OF 34TH STREET AS SHOWN ON SAID RUSSELL SQUARE, A RADIAL LINE THERETO BEARS N63°49'41"E; THENCE S89°53'58"E ALONG SAID SOUTHERLY RIGHT-OF-WAY, 38.00 FEET TO A POINT ON A NON-TANGENT CURVE CONCAVE SOUTHEASTERLY AND HAVING A RADIUS OF 29.17 FEET, A RADIAL LINE THERETO BEARS N63°44'39"W; THENCE SOUTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 26°15'21" AN ARC LENGTH OF 13.37 FEET; THENCE S00°00'00"W, 182.45 FEET TO THE BEGINNING OF A CURVE CONCAVE EASTERLY AND HAVING A RADIUS OF 99.00 FEET; THENCE SOUTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 25°00'00" AN ARC LENGTH OF 43.20 FEET; THENCE S25°00'00"E, 272.07 FEET TO THE BEGINNING OF A CURVE CONCAVE WESTERLY AND HAVING A RADIUS OF 36.00 FEET; THENCE SOUTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 25°00'00" AN ARC LENGTH OF 15.71 FEET; THENCE S00°00'00"W, 290.89 FEET TO THE BEGINNING OF A CURVE CONCAVE EASTERLY AND HAVING A RADIUS OF 100.00 FEET; THENCE SOUTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 12°50'19" AN ARC LENGTH OF 22.41 FEET TO THE BEGINNING OF A REVERSE CURVE CONCAVE WESTERLY AND HAVING A RADIUS OF 100.00 FEET, A RADIAL LINE THERETO BEARS N77°09'41"E; THENCE SOUTHERLY ALONG SAID REVERSE CURVE THROUGH A CENTRAL ANGLE OF 12°50'19" AN ARC LENGTH OF 22.41 FEET; THENCE S00°00'00"W, 100.00 FEET TO A POINT ON THE NORTHWESTERLY RIGHT-OF-WAY LINE OF SOUTHWEST HIGGINS AVENUE AS SHOWN ON SAID RUSSELL SQUARE SAID POINT BEING IN A CURVE CONCAVE NORTHWESTERLY AND HAVING A RADIUS OF 1,860.00 FEET, A RADIAL LINE THERETO BEARS S23°38'23"E; THENCE SOUTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 01°04'18" AN ARC LENGTH OF 34.79 FEET TO THE POINT OF BEGINNING.

'98 NOV 27 AM 7:48

199831651

I RECEIVED AND FILED THIS INSTRUMENT FOR RECORD ON THE 27 DAY OF Nov 1998 AT 7:48 O'CLOCK A M AND IT IS RECORDED IN VOL 563 OF MICRO RECORDS OF THE COUNTY OF MISSOULA, STATE OF MONTANA, ON PAGE 1540 FEE 210 PAID CK
RETURN TO W.G.M. WITNESS MY HAND, VICKIE M. ZIEB, COUNTY RECORDER
ADDRESS Missoula, MT BY Debbie S. C. Phil DEPUTY DOC DM

SHEET 4 OF 4

PERMANENT SERVICE DRIVE
LOCATED IN THE SW 1/4 OF SECTION 33,
T. 13 N., R. 19 W., P.M.M.
MISSOULA, MONTANA

WGM group

FILE NO.: L-1253
DRAFT: CEG

ENGINEERING-SURVEYING-PLANNING
P.O. BOX 16027
MISSOULA, MONTANA 59808

DATE: 11/24/98
PROJECT: 95-07-10

M37967

#2010 Russell & Higgins
Missoula, MT
3/13/2000

FIRST AMENDMENT TO
DECLARATION OF RESTRICTIONS AND EASEMENTS
AND
FIRST AMENDMENT TO
COMMON AREA MAINTENANCE AGREEMENT

THIS FIRST AMENDMENT TO DECLARATION OF RESTRICTIONS AND EASEMENTS AND FIRST AMENDMENT TO COMMON AREA MAINTENANCE AGREEMENT ("First Amendment") is made as of the 30 day of March, 2000, by and between POB Russell Square L.P., a Texas limited partnership ("First Party"), and Albertson's, Inc., a Delaware corporation ("Albertson's").

RECITALS

A. P.O'B. Montgomery & Co., a Texas corporation (predecessor to First Party) and Albertson's entered into that certain Declaration of Restrictions and Easements dated November 17, 1998 and recorded November 27, 1998 as Instrument No. 199831651 (Book 563, Page 1540) in the office of the county recorder of Missoula County, Montana (the "Declaration").

B. P.O'B. Montgomery & Co. and Albertson's also entered into that certain Common Area Maintenance Agreement dated November 17, 1998 and recorded November 27, 1998 as Instrument No. 199831652 (Book 563, Page 1575) in the office of the county recorder of Missoula County, Montana (the "CAMA").

C. Previous to this First Amendment, First Party and Albertson's have adjusted lot lines between certain of the Parcels within the Shopping Center in accordance with that certain Plat of Russell Square, Amended recorded October 15, 1999 in Book 23 of Plats, Page 30, Missoula County, Montana, and that certain Plat of Russell Square, Amended No.2 recorded November 1, 1999 in Book 23 of Plats, Page 32, Missoula County, Montana (collectively, the "Replat"). As a result, at the time of this First Amendment, First Party is the Owner of Parcels 1, 3, 4, 5, 6 and 7, and Albertson's is the Owner of Parcel 2, as such Parcels are shown on the Exhibit "A" site plan attached to this First Amendment. There are no Prime Lessees of any Parcel. As such, First Party and Albertson's are the only parties to the Declaration and CAMA.

D. It is contemplated that Parcels 4 and 5 will be developed for multi-family residential use. In connection therewith, First Party and Albertson's desire to amend the Declaration and CAMA according to the terms and provisions of this First Amendment.

AMENDMENTS

NOW, THEREFORE, for and in consideration of the foregoing Recitals and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree and amend the Declaration and CAMA as follows:

1. Definitions. Any capitalized terms not defined herein shall have the meanings ascribed to such terms in the Declaration and CAMA, as applicable.
2. Exhibit "A" Site Plan. The Exhibit "A" site plan attached to the Declaration and CAMA is hereby deleted and Exhibit "A" attached hereto and incorporated herein by reference is substituted therefor. All references to Exhibit "A" in the Declaration and CAMA shall hereafter refer to the Exhibit "A" attached hereto.
3. Schedule I - Parcel Descriptions. Schedule I attached to the Declaration and CAMA is hereby deleted and Schedule I attached hereto and incorporated herein by reference is substituted therefor. All references to Schedule I in the Declaration and CAMA shall hereafter refer to the Schedule I attached hereto.
4. Schedule II - Permanent Access Easement. Schedule II attached to the Declaration and CAMA is hereby deleted and Schedule II attached hereto and incorporated herein by reference is substituted therefor. All references to Schedule II in the Declaration and CAMA shall hereafter refer to the Schedule II attached hereto. First Party shall relocate the Permanent Access Easement to the new location as described in Schedule II attached hereto, which relocation shall be performed and completed at no cost to Albertson's and shall otherwise comply with the Declaration and CAMA as amended by this First Amendment.
5. Declaration, Section 1.1(c) - Building Envelopes. Parcels 4 and 5 as shown on Exhibit "A" attached hereto shall no longer have Building Envelopes thereon. Accordingly, the reference to Parcels "4, 5," in Section 1.1(c) of the Declaration is hereby deleted.
6. Declaration, Section 2.1 - Building Location. The second sentence of Section 2.1 of the Declaration is hereby deleted and the following is substitute therefor:

"No more than one (1) building may be located on each of Parcels 1, 3, 6 and 7, and the floor area of each building on such Parcels, and the combined floor area of all residential buildings on Parcels 4 and 5, shall not exceed the maximum square footage assigned on Exhibit "A" to each such Parcel without the prior written consent of the Consenting Owner, which consent may be granted or withheld in its sole and absolute discretion."

7. Declaration, Section 2.2(a) - Common Area. The following is added at the end and as a continuation of the first sentence of Section 2.2(a) of the Declaration:

"(provided, however, the Owners of Parcels 4 and 5, and their respective tenants, contractors, employees, agents, customers, licensees and invitees, and the subtenants contractors, employees, agents customers, licensees and invitees of such tenants, shall not have rights to use the Common Area on Parcels 1, 2, 3, 6 and 7 except as expressly permitted under Sections 3.2, 3.5[b] and 3.6)."

8. Declaration, Section 2.2(c) - Parking Requirements. The following is added at the end of Section 2.2(c) of the Declaration:

"Notwithstanding anything to the contrary contained in this Section 2.2(c), so long as Parcels 4 and 5 are used for residential use, Parcels 4 and 5 shall not be required to meet a parking ratio of four and one-half (4.5) parking stalls per 1,000 square feet of Building Area, provided that each of Parcels 4 and 5 shall have a sufficient number of parking stalls to meet all applicable laws relating to parking for the uses thereon (without regard to the availability, if any, of parking on other Parcels or variances that could be granted by any governmental authority having jurisdiction)."

9. Declaration, Section 3.1 - Ingress, Egress and Parking. Parcels 4 and 5 shall not have rights of ingress, egress and parking on any other Parcels of the Shopping Center. Accordingly, Section 3.1 of the Declaration is deleted in its entirety, and the following is substituted therefor:

"3.1 Ingress, Egress and Parking:

(a) Subject to the provisions of Section 4.2, each Owner of Parcels 1, 2, 3, 6 and 7, as grantor, hereby grants to the other Owners of Parcels 1, 2, 3, 6 and 7, their respective tenants, contractors, employees, agents, customers, licensees and invitees, and the subtenants contractors, employees, agents customers, licensees and invitees of such tenants, as grantees, for the benefit of Parcels 1, 2, 3, 6 and 7, a nonexclusive easement for ingress and egress by vehicular and pedestrian traffic and vehicular parking upon, over and across that portion of the Common Area located on the grantor's Parcel(s), except for those areas devoted to Service Facilities or driveup or drive through customer service facilities. The reciprocal rights of ingress and egress set forth in this Section 3.1 shall apply to the Common Area for each such Parcel as such area may be increased pursuant to Section 2.2 above.

(b) To prevent the Owners of Parcels 4 and 5, and their respective tenants, contractors, employees, agents, customers, licensees and invitees, and any subtenants contractors, employees, agents customers, licensees and invitees of such tenants, from using the Common Area on Parcels 1, 2, 3, 6 and 7, the Owners of

Parcels 4 and 5 shall install, maintain, repair and replace, at their sole cost and expense, fences or other barricades on Parcels 4 and 5 along the boundaries common with Parcels 1 and 2, as shown on Exhibit "A"; provided a gate or opening to permit pedestrian access may be located at the "Access Point" shown on Exhibit "A."

10. Declaration, Section 3.3 - Signs. Parcels 4 and 5 shall not have rights to locate signs on any other Parcels of the Shopping Center, but may locate signs only upon their respective Parcels as permitted in Section 4.3 of the Declaration. Accordingly, Section 3.3 of the Declaration is deleted in its entirety, and the following is substituted therefor:

"3.3 Signs: Each Owner of Parcels 1, 2, 3, 6 and 7, as grantor, hereby grants to the other Owners of Parcels 1, 2, 3, 6 and 7, as grantees, for the benefit of Parcels 1, 2, 3, 6 and 7, a perpetual easement under, through and across the Common Area of the grantor's Parcel(s) for the installation, operation, maintenance, repair and replacement of the free-standing signs referred to in Section 4.3 of this Declaration and all Utility Lines appurtenant thereto. Except where otherwise specifically stated herein to the contrary, the grantee(s) shall bear all costs related to the installation, operation, maintenance, repair and replacement of its free-standing sign and appurtenant facilities and Utility Lines, shall repair to the original specifications any damage to the buildings, improvements, signs, Utility Lines or Common Area resulting from such use and shall provide as-built plans for all such facilities to the Owners of all Parcels upon which such facilities and Utility Lines are located within thirty (30) days after the date of completion of construction of same."

11. Declaration, Section 3.4 - Building Encroachments. Parcels 4 and 5 shall not have rights for building or structure encroachments on any other Parcels of the Shopping Center. Accordingly, Section 3.4 of the Declaration is deleted in its entirety and the following is substituted therefor:

"3.4 Building Encroachments: Each Owner of Parcels 1, 2, 3, 6 and 7, as grantor, hereby grants to the other Owners of Parcels 1, 2, 3, 6 and 7, as grantees, for the benefit of Parcels 1, 2, 3, 6 and 7, an easement for any portion of any building or other structure located on any such Parcel which may encroach into or over the grantor's adjoining Parcel(s); subject to the standard set forth in Section 2.3(c) hereof and 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 3.4 shall survive this Declaration and shall last so long as the encroaching building is standing following its initial construction or following its reconstruction where such building is substantially restored to its prior condition following a casualty or condemnation."

12. Declaration, Section 3.5 - Permanent Service Drive. Parcels 4 and 5 shall not have rights of ingress and egress over the Permanent Service Drive, except for a limited right of ingress and egress as more particularly set forth in a new Section 3.5(b). Accordingly, Section 3.5 is hereby deleted in its entirety, and the following is substituted therefor:

"3.5 Permanent Service Drive & Permanent Access Easement:

(a) Each Owner of Parcels 1, 2, 3, 6 and 7, as grantor, hereby grants to the other Owners of Parcels 1, 2, 3, 6 and 7, their respective tenants, contractors, employees, agents, customers, licensees and invitees, and the subtenants contractors, employees, agents customers, licensees and invitees of such tenants, as grantees, for the benefit of Parcels 1, 2, 3, 6 and 7, a perpetual nonexclusive easement for ingress and egress by vehicular and pedestrian traffic upon, over and across those portions of the Common Area located on the grantor's Parcel(s) shown on Exhibit "A" as "Permanent Service Drive" and "Permanent Access Easement" and more particularly described in Schedule II attached hereto and incorporated herein by this reference.

(b) The Owner of Parcel 2, as grantor, hereby grants to the Owners of Parcels 4 and 5, their respective tenants, contractors, employees, agents, customers, licensees and invitees, and the subtenants contractors, employees, agents customers, licensees and invitees of such tenants, as grantees, for the benefit of Parcels 4 and 5, a perpetual nonexclusive easement for ingress and egress (but not parking) upon, over and across that portion of the Permanent Service Drive on Parcel 2 described and shown in Schedule III attached hereto and incorporated herein by this reference; provided, however, that (i) use of such easement area by such grantees shall not interfere with the free and uninterrupted flow of traffic along such Permanent Service Drive, and (ii) if the Permanent Service Drive is damaged as a result of use of such easement area by such grantees, the Maintenance Director (appointed pursuant to the CAMA) shall repair such damage in accordance with Article 2 of the CAMA, and shall bill the Owner of Parcels 4 and/or 5, as applicable, for the entire costs and expenses of any such repairs (and in no event shall the Owner of Parcel 2 be required to pay a share of such costs or expenses)."

13. Declaration, Section 4.1 - Parking. Parcels 4 and 5 may charge for parking on their respective Parcels as they deem appropriate. Accordingly, Section 4.1 of the Declaration is deleted in its entirety and the following is substituted therefor:

"4.1 Parking. There shall be no charge for parking in the Common Area on Parcels 1, 2, 3, 6 and 7 without the prior written approval of the Consenting Owners or unless otherwise required by law."

14. Declaration, Section 5.3(a) - Retail Use Restrictions. The second sentence of Section 5.3(a) of the Declaration is hereby deleted and the following is substituted therefor:

"Parcels 4 and 5 may only be used for multi-family residential use (with up to 5,000 square feet of floor area for office and storage space for Missoula Housing Authority)."

15. Declaration, Section 5.8. The following is added as a new Section 5.8 to the Declaration:

"5.8 Residential Uses in Russell Square: In no event shall the Owners or occupants of Parcels 1, 2, 3, 6 and 7 be responsible or liable to the Owners or occupants of Parcels 4 and 5 as a result of any incompatibilities between the retail uses on Parcels 1, 2, 3, 6 and 7 and the residential uses on Parcels 4 and 5, and the Owners of Parcels 4 and 5 shall, at their expense, create and maintain a transitional buffer zone between such uses and shall take any and all other measures as deemed appropriate by the parties or as may be required by governmental authority to mitigate potential light, noise, traffic, safety and other concerns due to such incompatibilities, including, without limitation, installation of landscaping, fencing, and light shields."

16. CAMA, Section 2.1. The Maintenance Director shall not be responsible for maintaining Parcels 4 and 5, except as provided in the new Section 2.2 of the CAMA. Accordingly, the reference to Parcels "4, 5," contained in line 5 of the opening paragraph of Section 2.1 of the CAMA is hereby deleted.

17. CAMA, Section 2.1(e). Section 2.1(e) of the CAMA is deleted in its entirety and the following is substituted therefor:

"(e) Maintaining all landscaped areas lying within Parcels 1, 2 and 3, as well as the areas on the perimeter of Parcels 1, 2, 3, 6 and 7 and the perimeter area improvements within Parcel 8 (as required by the Wetlands Easement), all of which were installed by the Owner or Prime Lessee of Parcel 2 ("Common Area Landscaping"), including, without limitation, maintaining, repairing and replacing, when necessary, automatic sprinkler systems and waterlines on Parcels 1, 2, 3, 6 and 7; and replacing shrubs and other landscaping on Parcels 1, 2, 3, 6 and 7 as is necessary;"

18. CAMA, Section 2.1(f). The following is added at the end and as a continuation of the clause contained in Section 2.1(f) of the CAMA:

", except for any fences or other barricades installed by the Owners of Parcels 4 and/or 5 pursuant to Section 3.1(b) or 5.8 of the Declaration, which shall be maintained, repaired and replaced by the Owners of Parcels 4 and 5 at their sole cost and expense;"

19. CAMA, Section 2.2. Section 2.2 of the CAMA is deleted in its entirety and the following is substituted therefor:

"2.2 In addition to the foregoing, the Maintenance Director shall perform those items of Common Area maintenance within the Common Area of Russell Square which cannot be practicably segregated or allocated between the In-Line Parcels and the Pads as agreed upon by the Maintenance Director and the Owner or Prime Lessee of Parcel 2, with costs to be allocated as set forth in Section 8.2; and shall also maintain, repair and replace those Common Utility Lines (not dedicated to the public or conveyed to any public or private utility) serving the In-Line Parcels wherever located, with costs to be allocated as set forth in Section 2.1(g)."

20. CAMA, Section 2.3. The second sentence of Section 2.3 of the CAMA is deleted in its entirety and the following is substituted therefor:

"Such insurance shall be written with an insurer authorized to do business in the state in which Russell Square is located and First Party, Albertson's, and all persons who now or hereafter own or hold portions of Parcels 1, 2, 3, 6 and 7 or building space within Parcels 1, 2, 3, 6 and 7 or any leasehold estate or other interest therein as their respective interests may appear (provided that the Maintenance Director is notified in writing of such interest) shall be named on the policy as additional insureds."

21. CAMA, Section 3.1 - Maintenance Standards. The following is added at the end of Section 3.1 of the CAMA:

"Without limiting the generality of the foregoing, except as provided in Section 2.2 hereof, the Owners of Parcels 4 and 5 shall maintain all landscaped areas on Parcels 4 and 5 (including, without limitation, maintaining, repairing and replacing, when necessary, automatic sprinkler systems and waterlines on Parcels 4 and 5; and replacing shrubs and other landscaping on Parcels 4 and 5 as is necessary), notwithstanding the same may have been installed by the Owner or Prime Lessee of Parcel 2."

22. CAMA, Section 3.7. The first sentence of Section 3.7 of the CAMA is deleted in its entirety.

23. CAMA, Section 8.2. Section 8.2 of the CAMA is deleted in its entirety and the following is substituted therefor:

"8.2 The proportionate share of the total Common Area expenses to be borne by the Owners of Parcels 1, 2 and 3 for any year (exclusive of operating, maintaining, repairing, replacing and resurfacing, as applicable, [i] the Multi-Tenant Sign structures, which shall be controlled by Section 4.3[a] of the Declaration, [ii] the Permanent Access Easement and Permanent Service Drive,

[iii] Common Area Landscaping, [iv] the perimeter area improvements within Parcel 8 not comprising Common Area Landscaping (as required by the Wetlands Easement), [v] the items that cannot be practicably segregated or allocated between the In-line Parcels and the Pads as determined in accordance with Section 2.2 hereof, [vi] the cost of commercial general liability insurance maintained by the Maintenance Director pursuant to Sections 2.3 or 3.7 hereof [or the Owner or Prime Lessee of Parcel 2 pursuant to Sections 3.7 or 6.2 hereof], and [vii] Common Utility Lines, which shall be controlled by Sections 2.1[g] and 2.2 hereof) shall be that percentage set forth immediately below:

	<u>Parcel Area</u>	<u>Percent</u>
Parcel 1	125,229	27.06%
Parcel 2	260,418	56.26%
Parcel 3	77,205	16.68%
TOTAL:	462,852	100.00%

The proportionate share of the Common Area expenses to be borne by the Owners of all Parcels for any year to maintain, repair, replace and resurface, as applicable (i) the perimeter area improvements within Parcel 8 not comprising Common Area Landscaping (as required by the Wetlands Easement), and (ii) the items that cannot be practicably segregated or allocated between the In-line Parcels and the Pads as determined in accordance with Section 2.2 hereof, shall be that percentage set forth immediately below:

	<u>Parcel Area</u>	<u>Percent</u>
Parcel 1	125,229	18.63%
Parcel 2	260,418	38.74%
Parcel 3	77,205	11.48%
Parcel 4	65,823	9.79%
Parcel 5	63,924	9.51%
Parcel 6	39,982	5.95%
Parcel 7	39,701	5.90%
TOTAL:	672,282	100.00%

The proportionate share of the Common Area expenses to be borne by the Owners of Parcels 1, 2, 3, 6 and 7 for any year to maintain, repair, replace and resurface, as applicable (i) the Permanent Access Easement and Permanent Service Drive (subject to Section 3.5[b] of the Declaration), (ii) Common Area Landscaping, and (iii) the cost of commercial general liability insurance maintained by the

Maintenance Director pursuant to Sections 2.3 or 3.7 hereof (or the Owner or Prime Lessee of Parcel 2 pursuant to Sections 3.7 or 6.2 hereof), shall be that percentage set forth immediately below:

	<u>Parcel Area</u>	<u>Percent</u>
Parcel 1	125,229	23.08%
Parcel 2	260,418	48.00%
Parcel 3	77,205	14.23%
Parcel 6	39,982	7.37%
Parcel 7	39,701	7.32%
TOTAL:	542,535	100.00%

Additionally, the Owners of Parcels 1, 2, 3, 6 and 7, upon unanimous agreement in writing, may also elect to share proportionately certain Common Area maintenance expenses that can be practicably segregated and allocated between said Parcels (the retail component of Russell Square) and Parcels 4 and 5 (the residential component of Russell Square). In the event of such election, the proportionate share of said Common Area expenses to be borne by the Owners of Parcels 1, 2, 3, 6 and 7 for any year shall be that percentage set forth immediately above.

The Maintenance Director shall not be entitled to reimbursement from any Owner (or its tenants or agents) for any item of Common Area maintenance or insurance expense (including the ten percent [10%] service charge described in Article 7 above) which is not included in the statement of Actual Common Area Expenses submitted to said Owner (or its tenants or agents, as it may direct) in accordance with Section 8.1 hereof."

24. First Party Address. All notices given to First Party pursuant to the Declaration or CAMA shall be sent to the same person and address as for P.O'B. Montgomery & Co. as specified in Section 8.10 of the Declaration, and Section 12.7 of the CAMA.

25. Lienholder Consent. First Party represents and warrants that, at the time of recordation of this First Amendment, there are no Lienholders or tenants with respect to Parcels 1, 3, 4, 5, 6 and 7, except Compass Bank, a Texas state banking corporation. First Party shall obtain, at First Party's sole cost and expense, Compass Bank's consent to this First Amendment by causing Compass Bank to execute the "Consent and Subordination" attached to this First Amendment.

26. Effect of First Amendment. Except as amended by this First Amendment, the Declaration and CAMA shall remain unchanged and in full force and effect.

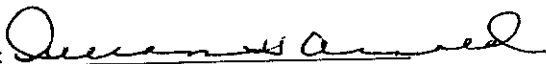
27. Counterparts. This First Amendment may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

28. Recordation. This First Amendment shall be recorded in the office of the recorder of the County in which the Shopping Center is located.

EXECUTED as of the date first set forth above.

ALBERTSON'S:

ALBERTSON'S, INC.,
a Delaware corporation

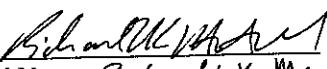
BY: 
HT/TWN William H. Arnold, Vice President
Real Estate Law

FIRST PARTY:

POB RUSSELL SQUARE, L.P.,
a Texas limited partnership

BY: POB Missoula, L.P.,
a Texas limited partnership
Its General Partner

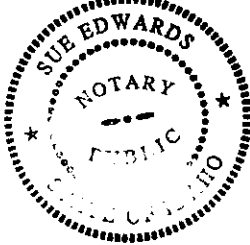
By: Missoula Co. GP, Inc,
a Texas corporation
Its General Partner

By: 
Printed Name: Richard L.K. Mendenhall
Its: Executive Vice President

STATE OF IDAHO)
) ss.
 County of Ada)

On this 14th day of March, 2000, before me, Sue Edwards, a Notary Public in and for said State, personally appeared William H. Arnold, known to me to be Vice President, Real Estate Law of **Albertson's, Inc.**, the corporation that executed the within instrument or the person who executed the instrument on behalf of said corporation, and acknowledged to me that such corporation executed the same.

WITNESS MY HAND and official seal hereto affixed the day, month and year in this certificate first above written.



Sue Edwards
 Notary Public for the State of Idaho
 Residing at Basin, Id
 My Commission Expires 10/15/05

Montana
 STATE OF ~~TEXAS~~)
) ss.
 County of ~~Dallas~~
Missoula

On this 30th day of March, 2000, before me, the undersigned, a Notary Public in and for said State, personally appeared Richard L.K. Mendenhall, known to me to be Executive V.P. of Missoula Co. GP, Inc., a Texas corporation, the general partner of POB Missoula, L.P., a Texas limited partnership, the general partner of **POB Russell Square, L.P.**, a Texas limited partnership, the limited partnership that executed the foregoing instrument, and acknowledged to me that the said instrument is the free and voluntary act and deed of said limited partnership, for the uses and purposes therein mentioned, and on oath state that he/she/they is authorized to execute the said instrument.

WITNESS MY HAND and official seal hereto affixed the day, month and year in this certificate first above written.



NOTARY PUBLIC MONTANA
 Residing at Missoula, MT
 My Comm. Expires Sept. 11, 2002.

Cheryl L. Howlett
 Notary Public for the State of Texas
 Residing at Missoula
 My Commission Expires 9/11/2002

CONSENT AND SUBORDINATION

Compass Bank, a Texas state banking corporation ("Lender"), is the beneficiary under that certain Deed of Trust, Security Agreement, Fixture Financing Statement and Assignment of Rents dated December 9, 1999 and recorded December 15, 1999 in the office of the county recorder of Missoula County, Montana, in Book 565, Page 1796, and also that certain Deed of Trust, Security Agreement, Fixture Financing Statement and Assignment of Rents dated November 30, 1999 and recorded December 29, 1999 in the office of the county recorder of Missoula County, Montana, in Book 605 at Page 804 (the "Mortgages"). Lender hereby consents to and approves this First Amendment to Declaration of Restrictions and Easements and First Amendment to Common Area Maintenance Agreement ("First Amendment") and hereby acknowledges and agrees that the Mortgages and any other security instruments securing Lender's loan(s) on the property encumbered by this First Amendment shall be subordinate to, and subject to, the terms and conditions of this First Amendment.

Dated: March 30, 2000

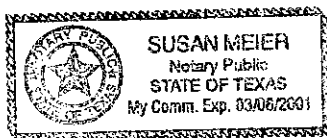
COMPASS BANK,
a Texas state banking corporation

By: Cathy A. English
Printed Name: Cathy A. English
Its: Vice President

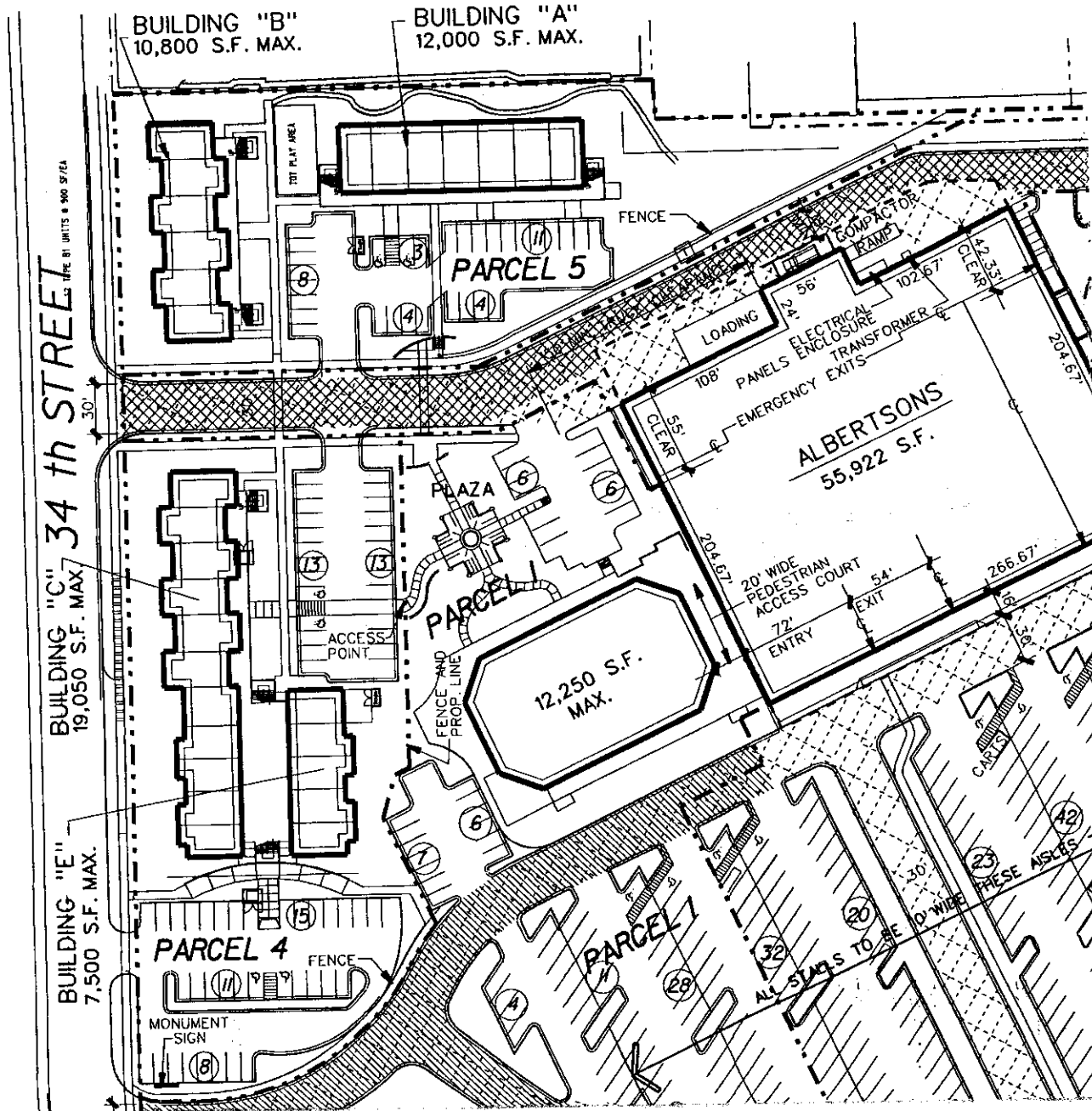
STATE OF TEXAS)
) ss.
County of Dallas

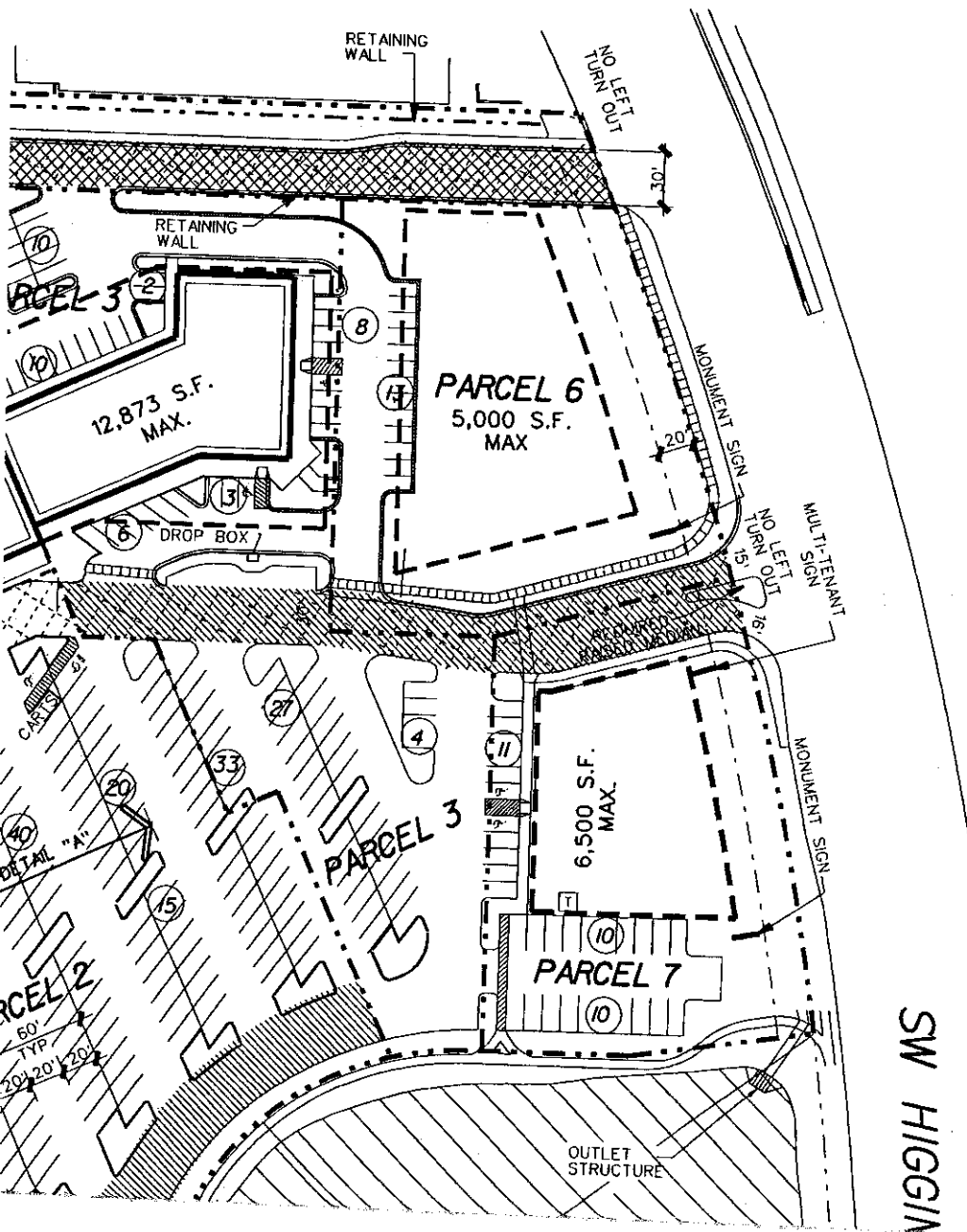
On this 30 day of March, 2000, before me, the undersigned, a Notary Public in and for said State, personally appeared Cathy A. English, known to me to be Vice President of Compass Bank, a Texas state banking corporation, the corporation that executed the foregoing instrument, and acknowledged to me that the said instrument is the free and voluntary act and deed of said corporation, for the uses and purposes therein mentioned, and on oath state that he/she/they is authorized to execute the said instrument.

WITNESS MY HAND and official seal hereto affixed the day, month and year in this certificate first above written.



Susan Meier
Notary Public for the State of Texas
Residing at Plano, Texas
My Commission Expires 3-6-01





GENERAL NOTES

DRAWN WITH OUT BENEFIT OF SURVEY
NO TRUCK WELLS, NATURAL DOCK ONLY
PARKING REQUIREMENTS:

CITY REQUIREMENT- 3.0/1000 S.F. G.B.A.
ALBERTSON'S = 4.5/1000 S.F. G.B.A.

BUILDING SETBACK REQUIREMENTS:
S.W. HIGGINS AVE = 20'

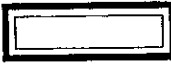

LANDSCAPE REQUIREMENTS:

BY CITY REVIEW AND APPROVAL

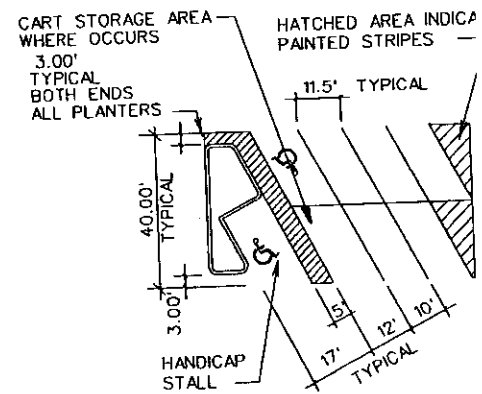
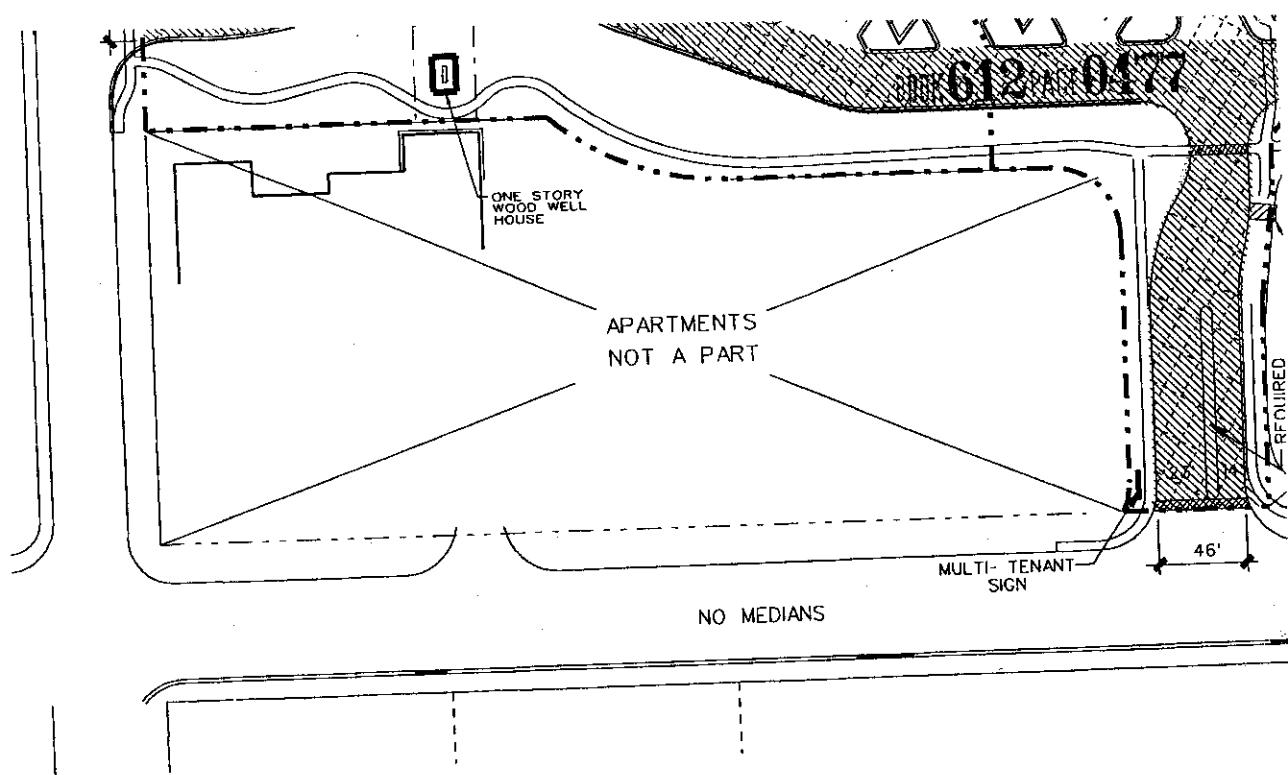
ZONING REQUIREMENTS:

EXISTING- C-1 W/P.U.D. OVERLAY
REQUIRED- C-1 W/P.U.D. OVERLAY

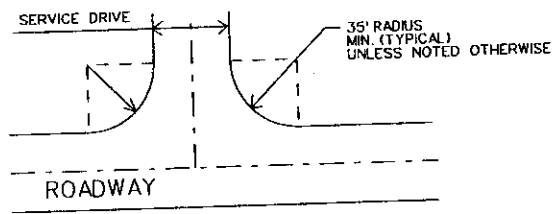
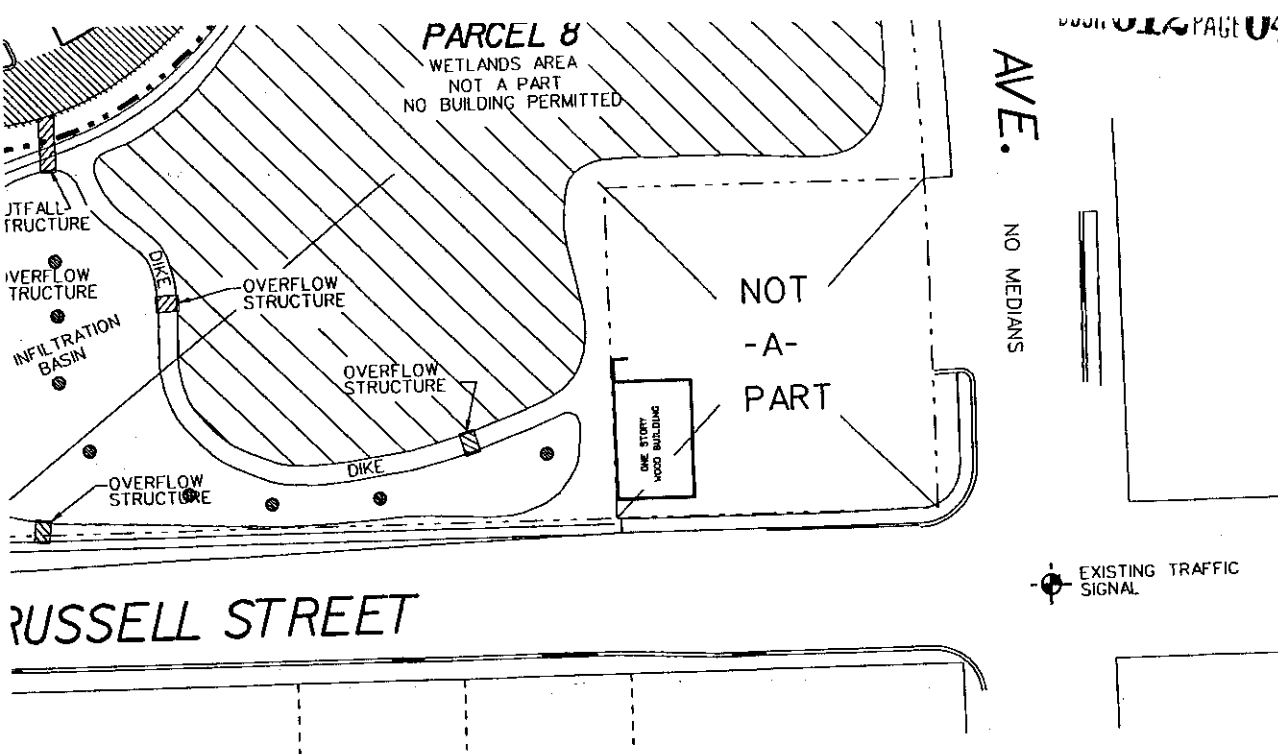
LEGEND

PROPERTY LINE / PARCEL LINE	-----
EXPANSION LIMIT LINE	-----
BUILDING AREA	
HEAVY DUTY PAVING	
BUILDING ENVELOPE	-----
EASEMENT AREA	-----

REVISIONS	
	11-15-'95 RW ADD HIGGINS RD. CURB CUT. ADD WETLANDS EASEMENTS
	1-20-'95 RTD CHANGED TO EXHIBIT "A"
M.R. D.W.	5-12-'97 RD REV. REDRAWN PER NEW CITY APPROVED PLAN.
M.R. D.W.	6-13-'97 RW REV. PARCELS 6 & 7. ADD PLAZA AREA ON PARCEL 1. REV. SHOPS "A". AND G.B.A.
M.R.	8-4-'97 RD REV. ALB. BLD'G/SHOPS "B". PRK'G, PARCEL LINES, ADDED RAISED MEDIAN
M.R.	3-2-'98 RW REV. PARCEL 5 WETLANDS AREA, PARCELS 1 & 2.
M.R.	11-4-'98 CSD ADD PERM. SERVICE DRIVE & PERM. ACCESS EASEMENT
M.R.	1-7-'99 RW REV. DRIVE AISLE, PARKING, RELOC. MON. SIGN, REV. PAR. LINES, REV. PARCELS 1 & 5.
C.P.B. R.G.G.	10-20-'99 TLR REV. PARCELS 3 & 6, REV. G.B.A., AND PRK'G
C.P.B. R.K.B.	2-21-2000 RW REV. PARCELS 4, 5, & 7.



A PARKING DETAIL
1"=50'-0"

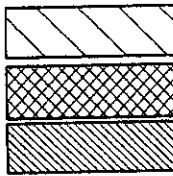


(B) CURB CUT DETAIL
1"=100'-0"

WETLANDS AREA

PERMANENT
SERVICE DRIVE

PERMANENT
ACCESS EASEMENTS



SCALE : 1" = 100'

EXHIBIT "A" SITE PLAN

TOTAL GROSS BUILDING AREA	* 92,545 S.F.
TOTAL CARPARKS REQUIRED	* 278
TOTAL CARPARKS PROVIDED	* 407 (+95)
TOTAL SITE AREA	723,900 S.F. +/- (16.62 AC.)

* PARCELS 4 & 5 EXCLUDED FROM CALCULATIONS.

APPROVED BY:	DATE:
CHAIRMAN	SIGNED 11-20-95
VICE CHAIRMAN	SIGNED 11-20-95
EXEC. V.P./ RETAIL OPS.	SIGNED 11-20-95
REGIONAL PRES.	SIGNED 11-20-95
SR. V.P./R.E.	SIGNED 11-20-95
GROUP V.P./ARCH. & ENG.	SIGNED 11-20-95



Albertsons
DESIGN & CONSTRUCTION
250 PARKCENTER BLVD.
BOISE, IDAHO 83726
(208)385-6200

PROJECT

N.E.C.

RUSSELL ST.
&
S.W. HIGGINS

MISSOULA, MT

STORE NO.

2010

DRAWN R.W.	CHECKED R.A.C.
DATE 11-7-'95	

SHEET TITLE

EXHIBIT "A"
SITE PLAN

SHEET

1

OF 1
2010.dgn

SCHEDULE I**(Legal Descriptions - Shopping Center Parcels)**

- Parcel 1:** Parcel 1A of RUSSELL SQUARE, AMENDED, a subdivision of the City of Missoula, in Missoula County, Montana, located in the SW ¼ of Section 33, Township 13 North, Range 19 West, Principal Meridian, Montana, according to the official plat thereof, filed for record on October 15, 1999 in Book 23 of Plats, Page 30, Missoula County, Montana.
- Parcel 2:** Parcel 2A of RUSSELL SQUARE, AMENDED, a subdivision of the City of Missoula, in Missoula County, Montana, located in the SW ¼ of Section 33, Township 13 North, Range 19 West, Principal Meridian, Montana, according to the official plat thereof, filed for record on October 15, 1999 in Book 23 of Plats, Page 30, Missoula County, Montana.
- Parcel 3:** Parcel 3B of RUSSELL SQUARE, AMENDED NO. 2, a subdivision of the City of Missoula, in Missoula County, Montana, located in the SW ¼ of Section 33, Township 13 North, Range 19 West, Principal Meridian, Montana, according to the official plat thereof, filed for record on November 1, 1999 in Book 23 of Plats, Page 32, Missoula County, Montana.
- Parcel 4:** Parcel 4A of RUSSELL SQUARE, AMENDED, a subdivision of the City of Missoula, in Missoula County, Montana, located in the SW ¼ of Section 33, Township 13 North, Range 19 West, Principal Meridian, Montana, according to the official plat thereof, filed for record on October 15, 1999 in Book 23 of Plats, Page 30, Missoula County, Montana.
- Parcel 5:** Parcel 5 of RUSSELL SQUARE, a subdivision of the City of Missoula, in Missoula County, Montana, located in the SW ¼ of Section 33, Township 13 North, Range 19 West, Principal Meridian, Montana, according to the official plat thereof, filed for record on November 27, 1998 in Book 22 of Plats, Page 58, Missoula County, Montana.

- Parcel 6:** Parcel 6A of RUSSELL SQUARE, AMENDED, a subdivision of the City of Missoula, in Missoula County, Montana, located in the SW $\frac{1}{4}$ of Section 33, Township 13 North, Range 19 West, Principal Meridian, Montana, according to the official plat thereof, filed for record on October 15, 1999 in Book 23 of Plats, Page 30, Missoula County, Montana.
- Parcel 7:** Parcel 7A of RUSSELL SQUARE, AMENDED NO. 2, a subdivision of the City of Missoula, in Missoula County, Montana, located in the SW $\frac{1}{4}$ of Section 33, Township 13 North, Range 19 West, Principal Meridian, Montana, according to the official plat thereof, filed for record on November 1, 1999 in Book 23 of Plats, Page 32, Missoula County, Montana.
- Parcel 8:** A tract of land located in the SW $\frac{1}{4}$ of Section 33, Township 13 North, Range 19 West, Principal Meridian, Montana, Missoula County, Montana, being more particularly described as Parcel A, Certificate of Survey No. 4746.

BOOK 612 PAGE 0482

SCHEDULE II

LEGAL DESCRIPTIONS FOR PERMANENT ACCESS EASEMENT AND PERMANENT SERVICE DRIVE

A TRACT OF LAND BEING PORTIONS OF PARCELS 1A AND 2A OF RUSSELL SQUARE, AMENDED, A SUBDIVISION ON FILE IN MISSOULA COUNTY, MONTANA, AND PARCEL 3B OF RUSSELL SQUARE, AMENDED NO. 2, A SUBDIVISION ON FILE IN MISSOULA COUNTY, MONTANA, LOCATED IN THE SW 1/4 OF SECTION 33, TOWNSHIP 13 NORTH, RANGE 19 WEST, PRINCIPAL MERIDIAN, MONTANA; MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHWEST CORNER OF PARCEL 4A OF SAID RUSSELL SQUARE, AMENDED, SAID POINT BEING THE BEGINNING OF A NON-TANGENT CURVE CONCAVE SOUTHEASTERLY AND HAVING A RADIUS OF 29.00 FEET, A RADIAL LINE THERETO BEARS N63°11'15"W; THENCE ALONG THE WESTERLY BOUNDARY OF SAID PARCEL 4A THE FOLLOWING FOUR (4) COURSES: 1) SOUTHWESTERLY ALONG SAID NON-TANGENT CURVE THROUGH A CENTRAL ANGLE OF 26°48'45" AN ARC LENGTH OF 13.57 FEET; 2) S00°00'00"W, 22.22 FEET TO THE BEGINNING OF A CURVE CONCAVE NORTHEASTERLY AND HAVING A RADIUS OF 150.00 FEET; 3) SOUTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 62°19'18", AN ARC LENGTH OF 163.16 FEET TO THE BEGINNING OF A REVERSE CURVE CONCAVE SOUTHWESTERLY AND HAVING A RADIUS OF 150.00 FEET, A RADIAL LINE THERETO BEARS N27°40'42"E; 4) SOUTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 11°56'38", AN ARC LENGTH OF 31.27 FEET TO THE SOUTHWEST CORNER OF SAID PARCEL 4A; THENCE CONTINUING ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 25°22'40", AN ARC LENGTH OF 88.44 FEET; THENCE S25°00'00"E, 160.22 FEET TO A POINT ON A LINE ON THE SOUTHEASTERLY BOUNDARY OF SAID PARCEL 1A; THENCE S85°00'00"W, 32.00 FEET ALONG LAST SAID LINE AND ITS SOUTHWESTERLY PROLONGATION; THENCE N25°00'00"W, 160.22 FEET TO THE BEGINNING OF A CURVE CONCAVE SOUTHWESTERLY AND HAVING A RADIUS OF 118.00 FEET; THENCE NORTHWESTERLY ALONG LAST SAID CURVE THROUGH A CENTRAL ANGLE OF 40°30'13", AN ARC LENGTH OF 83.42 FEET TO THE BEGINNING OF A COMPOUND CURVE CONCAVE SOUTHERLY AND HAVING A RADIUS OF 15.00 FEET, A RADIAL LINE THERETO BEARS N24°29'47"E; THENCE WESTERLY ALONG SAID COMPOUND CURVE THROUGH A CENTRAL ANGLE OF 77°37'57", AN ARC LENGTH OF 20.32 FEET; THENCE S38°51'50"W, 72.02 FEET TO THE BEGINNING OF A CURVE CONCAVE SOUTHEASTERLY AND HAVING A RADIUS OF 18.00 FEET; THENCE SOUTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 15°59'29" AN ARC LENGTH OF 5.02 FEET; THENCE S20°52'21"W, 113.82 FEET TO THE BEGINNING OF A CURVE CONCAVE EASTERLY AND HAVING A RADIUS OF 48.83 FEET; THENCE SOUTHERLY ALONG LAST SAID CURVE THROUGH A CENTRAL ANGLE OF 20°52'20" AN ARC LENGTH OF 17.79 FEET; THENCE S00°00'01"W, 146.60 FEET; THENCE S01°05'59"W, 57.68 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE NORTHEASTERLY AND HAVING A RADIUS OF 120.01 FEET, A RADIAL LINE THERETO BEARS N88°08'41"W; THENCE SOUTHEASTERLY ALONG LAST SAID NON-TANGENT CURVE THROUGH A CENTRAL ANGLE OF 62°36'08" AN ARC LENGTH OF 131.12 FEET TO THE BEGINNING OF A REVERSE CURVE CONCAVE SOUTHWESTERLY AND HAVING A RADIUS OF 210.00 FEET, A RADIAL LINE THERETO BEARS N28°15'11"E; THENCE SOUTHEASTERLY ALONG LAST SAID REVERSE CURVE THROUGH A CENTRAL ANGLE OF 60°44'49" AN ARC LENGTH OF 222.65 FEET; THENCE S00°00'00"W, 8.31 FEET TO A POINT ON THE SOUTHERLY LINE OF SAID PARCEL 3B; THENCE N90°00'00"W ALONG SAID SOUTHERLY LINE OF PARCEL 3B, 32.00 FEET; THENCE N00°00'00"E, 8.31 FEET TO THE BEGINNING OF A CURVE CONCAVE SOUTHWESTERLY AND HAVING A RADIUS OF 178.00 FEET;

(CONTINUED ON SHEET 2)

SHEET 1 OF 10

PERMANENT ACCESS EASEMENT
LOCATED IN THE SW 1/4 OF SECTION 33,
T. 13 N., R. 19 W., P.M.M.
MISSOULA, MONTANA

WGM group

ENGINEERING-SURVEYING-PLANNING

P.O. BOX 16027

MISSOULA, MONTANA 59808

DRAFT: CEG

DATE: 02/25/00

PROJECT: 98-02-04

BOOK 612 PAGE 0483

(CONTINUED FROM SHEET 1)

THENCE NORTHWESTERLY ALONG LAST SAID CURVE THROUGH A CENTRAL ANGLE OF 60°44'49" AN ARC LENGTH OF 188.72 FEET TO THE BEGINNING OF A REVERSE CURVE CONCAVE NORTHEASTERLY AND HAVING A RADIUS OF 152.01 FEET, A RADIAL LINE THERETO BEARS S29°15'11"W; THENCE NORTHWESTERLY ALONG LAST SAID REVERSE CURVE THROUGH A CENTRAL ANGLE OF 57°55'14" AN ARC LENGTH OF 153.87 FEET TO THE BEGINNING OF A REVERSE CURVE CONCAVE SOUTHWESTERLY AND HAVING A RADIUS OF 23.00 FEET, A RADIAL LINE THERETO BEARS N87°10'25"E; THENCE NORTHWESTERLY ALONG LAST SAID REVERSE CURVE THROUGH A CENTRAL ANGLE OF 87°05'22" AN ARC LENGTH OF 34.96 FEET; THENCE N89°54'57"W, 23.79 FEET TO THE BEGINNING OF A CURVE CONCAVE NORTHERLY AND HAVING A RADIUS OF 102.00 FEET; THENCE WESTERLY ALONG LAST SAID CURVE THROUGH A CENTRAL ANGLE OF 18°15'49" AN ARC LENGTH OF 28.85 FEET TO THE BEGINNING OF A REVERSE CURVE CONCAVE SOUTHERLY AND HAVING A RADIUS OF 98.00 FEET, A RADIAL LINE THERETO BEARS N18°20'54"E; THENCE WESTERLY ALONG LAST SAID REVERSE CURVE THROUGH A CENTRAL ANGLE OF 16°15'49" AN ARC LENGTH OF 27.82 FEET; THENCE N89°54'55"W, 84.03 FEET TO THE BEGINNING OF A CURVE CONCAVE SOUTHEASTERLY AND HAVING A RADIUS OF 28.00 FEET; THENCE SOUTHWESTERLY ALONG LAST SAID CURVE THROUGH A CENTRAL ANGLE OF 48°13'58" AN ARC LENGTH OF 23.57 FEET TO A POINT ON THE EASTERLY RIGHT-OF-WAY LINE OF RUSSELL STREET AS SHOWN ON SAID RUSSELL SQUARE, AMENDED, A RADIAL LINE THERETO BEARS N48°08'53"W; THENCE N00°04'46"W ALONG THE SAID EASTERLY RIGHT-OF-WAY LINE 60.16 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE NORTHERLY AND HAVING A RADIUS OF 30.00 FEET, A RADIAL LINE THERETO BEARS S20°58'39"W; THENCE EASTERLY ALONG LAST SAID NON-TANGENT CURVE THROUGH A CENTRAL ANGLE OF 20°53'35" AN ARC LENGTH OF 10.94 FEET; THENCE S89°54'56"E, 94.40 FEET TO THE BEGINNING OF A CURVE CONCAVE SOUTHWESTERLY AND HAVING A RADIUS OF 100.83 FEET; THENCE SOUTHEASTERLY ALONG LAST SAID CURVE THROUGH A CENTRAL ANGLE OF 34°02'51" AN ARC LENGTH OF 59.92 FEET TO THE BEGINNING OF A REVERSE CURVE CONCAVE NORTHEASTERLY AND HAVING A RADIUS OF 39.17 FEET, A RADIAL LINE THERETO BEARS S34°07'56"W; THENCE SOUTHEASTERLY ALONG LAST SAID REVERSE CURVE THROUGH A CENTRAL ANGLE OF 34°02'51" AN ARC LENGTH OF 23.28 FEET; THENCE S89°54'55"E, 1.08 FEET TO THE BEGINNING OF A CURVE CONCAVE NORTHWESTERLY AND HAVING A RADIUS OF 24.17 FEET; THENCE NORTHEASTERLY ALONG LAST SAID CURVE THROUGH A CENTRAL ANGLE OF 90°05'04" AN ARC LENGTH OF 38.00 FEET; THENCE N00°00'01"E, 136.78 FEET TO THE BEGINNING OF A CURVE CONCAVE EASTERLY AND HAVING A RADIUS OF 80.83 FEET; THENCE NORTHERLY ALONG LAST SAID CURVE THROUGH A CENTRAL ANGLE OF 20°52'20" AN ARC LENGTH OF 29.45 FEET; THENCE N20°52'21"E, 113.82 FEET TO THE BEGINNING OF A CURVE CONCAVE SOUTHEASTERLY AND HAVING A RADIUS OF 50.00 FEET; THENCE NORTHEASTERLY ALONG LAST SAID CURVE THROUGH A CENTRAL ANGLE OF 15°59'29" AN ARC LENGTH OF 13.96 FEET; THENCE N36°51'50"E, 73.91 FEET TO THE BEGINNING OF A CURVE CONCAVE EASTERLY AND HAVING A RADIUS OF 15.00 FEET; THENCE NORTHERLY ALONG LAST SAID CURVE THROUGH A CENTRAL ANGLE OF 79°25'12" AN ARC LENGTH OF 20.79 FEET TO THE BEGINNING OF A REVERSE CURVE CONCAVE NORTHEASTERLY AND HAVING A RADIUS OF 182.00 FEET, A RADIAL LINE THERETO BEARS S47°26'38"W; THENCE NORTHWESTERLY ALONG LAST SAID REVERSE CURVE THROUGH A CENTRAL ANGLE OF 42°33'22" AN ARC LENGTH OF 135.18 FEET; THENCE N00°00'00"E, 22.22 FEET TO THE BEGINNING OF A CURVE CONCAVE SOUTHWESTERLY AND HAVING A RADIUS OF 29.00 FEET; THENCE NORTHWESTERLY ALONG LAST SAID CURVE THROUGH A CENTRAL ANGLE OF 26°57'40" AN ARC LENGTH OF 13.65 FEET TO A NON-TANGENT POINT ON THE SOUTHERLY RIGHT-OF-WAY LINE OF 34TH STREET AS SHOWN ON SAID RUSSELL SQUARE, AMENDED, A RADIAL LINE THERETO BEARS N63°02'20"E; THENCE S89°53'58"E ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE 38.27 FEET TO THE POINT OF BEGINNING.

SHEET 2 OF 10

PERMANENT ACCESS EASEMENT
LOCATED IN THE SW 1/4 OF SECTION 33,
T. 13 N., R. 19 W., P.M.M.
MISSOULA, MONTANA

WGM group

ENGINEERING-SURVEYING-PLANNING
P.O. BOX 16027
MISSOULA, MONTANA 59808

DRAFT: CEG

DATE: 02/25/00
PROJECT: 98-02-04

98020461.DWG

BOOK 612 PAGE 0484



34TH STREET

POINT OF BEGINNING

R=29.00'
L=13.65'
Δ=28°57'40"

R=29.00'
L=13.57'
Δ=26°48'45"
500°00'00"W
22.22'

N63°11'15"W
RADIAL
N63°02'20"E
RADIAL

S89°53'58"E
38.27'
R=162.00'
L=135.18'
Δ=42°33'22"

R=160.00'
L=163.18'
Δ=62°19'18"

RUSSELL
SQUARE
AMENDED

N24°29'47"E
RADIAL
N27°40'42"E
RADIAL

PARCEL 4A

PARCEL 1A

R=15.00'
L=20.79'
Δ=79°26'12"

S47°28'38"W
RADIAL
N35°51'00"E
73.91'

R=15.00'
L=20.52'
Δ=77°37'57"

R=150.00'
L=118.00'
Δ=83°42'00"

L=31.27'
Δ=11°56'38"

TRACT 1G-2
COS 3031

R=50.00'
L=13.98'
Δ=15°59'29"

S47°28'38"W
RADIAL
N35°51'00"E
73.91'

R=18.00'
L=5.02'
Δ=15°59'29"

R=118.00'
L=83.42'
Δ=40°30'13"

L=68.44'
Δ=25°22'40"

PARCEL 1A

R=80.83'
L=29.45'
Δ=20°52'20"

N20°52'21"E
113.82'

S20°52'21"W
113.82'

R=48.83'
L=17.79'
Δ=20°52'20"

R=118.00'
L=83.42'
Δ=40°30'13"

L=68.44'
Δ=25°22'40"

PARCEL 1A

N20°52'21"E
113.82'

S20°52'21"W
113.82'

R=48.83'
L=17.79'
Δ=20°52'20"

R=118.00'
L=83.42'
Δ=40°30'13"

L=68.44'
Δ=25°22'40"

PARCEL 1A

N20°52'21"E
113.82'

S20°52'21"W
113.82'

R=48.83'
L=17.79'
Δ=20°52'20"

R=118.00'
L=83.42'
Δ=40°30'13"

L=68.44'
Δ=25°22'40"

PARCEL 1A

N20°52'21"E
113.82'

S20°52'21"W
113.82'

R=48.83'
L=17.79'
Δ=20°52'20"

R=118.00'
L=83.42'
Δ=40°30'13"

L=68.44'
Δ=25°22'40"

PARCEL 1A

N20°52'21"E
113.82'

S20°52'21"W
113.82'

R=48.83'
L=17.79'
Δ=20°52'20"

R=118.00'
L=83.42'
Δ=40°30'13"

L=68.44'
Δ=25°22'40"

PARCEL 1A

N20°52'21"E
113.82'

S20°52'21"W
113.82'

R=48.83'
L=17.79'
Δ=20°52'20"

R=118.00'
L=83.42'
Δ=40°30'13"

L=68.44'
Δ=25°22'40"

PARCEL 1A

N20°52'21"E
113.82'

S20°52'21"W
113.82'

R=48.83'
L=17.79'
Δ=20°52'20"

R=118.00'
L=83.42'
Δ=40°30'13"

L=68.44'
Δ=25°22'40"

PARCEL 1A

N20°52'21"E
113.82'

S20°52'21"W
113.82'

R=48.83'
L=17.79'
Δ=20°52'20"

R=118.00'
L=83.42'
Δ=40°30'13"

L=68.44'
Δ=25°22'40"

PARCEL 1A

N20°52'21"E
113.82'

S20°52'21"W
113.82'

R=48.83'
L=17.79'
Δ=20°52'20"

R=118.00'
L=83.42'
Δ=40°30'13"

L=68.44'
Δ=25°22'40"

PARCEL 1A

N20°52'21"E
113.82'

S20°52'21"W
113.82'

R=48.83'
L=17.79'
Δ=20°52'20"

R=118.00'
L=83.42'
Δ=40°30'13"

L=68.44'
Δ=25°22'40"

PARCEL 1A

N20°52'21"E
113.82'

S20°52'21"W
113.82'

R=48.83'
L=17.79'
Δ=20°52'20"

R=118.00'
L=83.42'
Δ=40°30'13"

L=68.44'
Δ=25°22'40"

PARCEL 1A

MATCH LINE - SEE SHEET 4

SHEET 3 OF 10

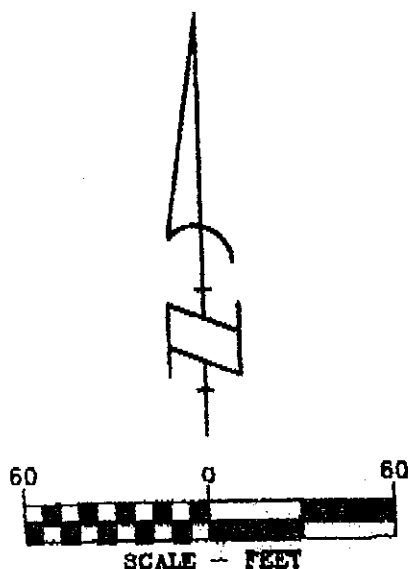
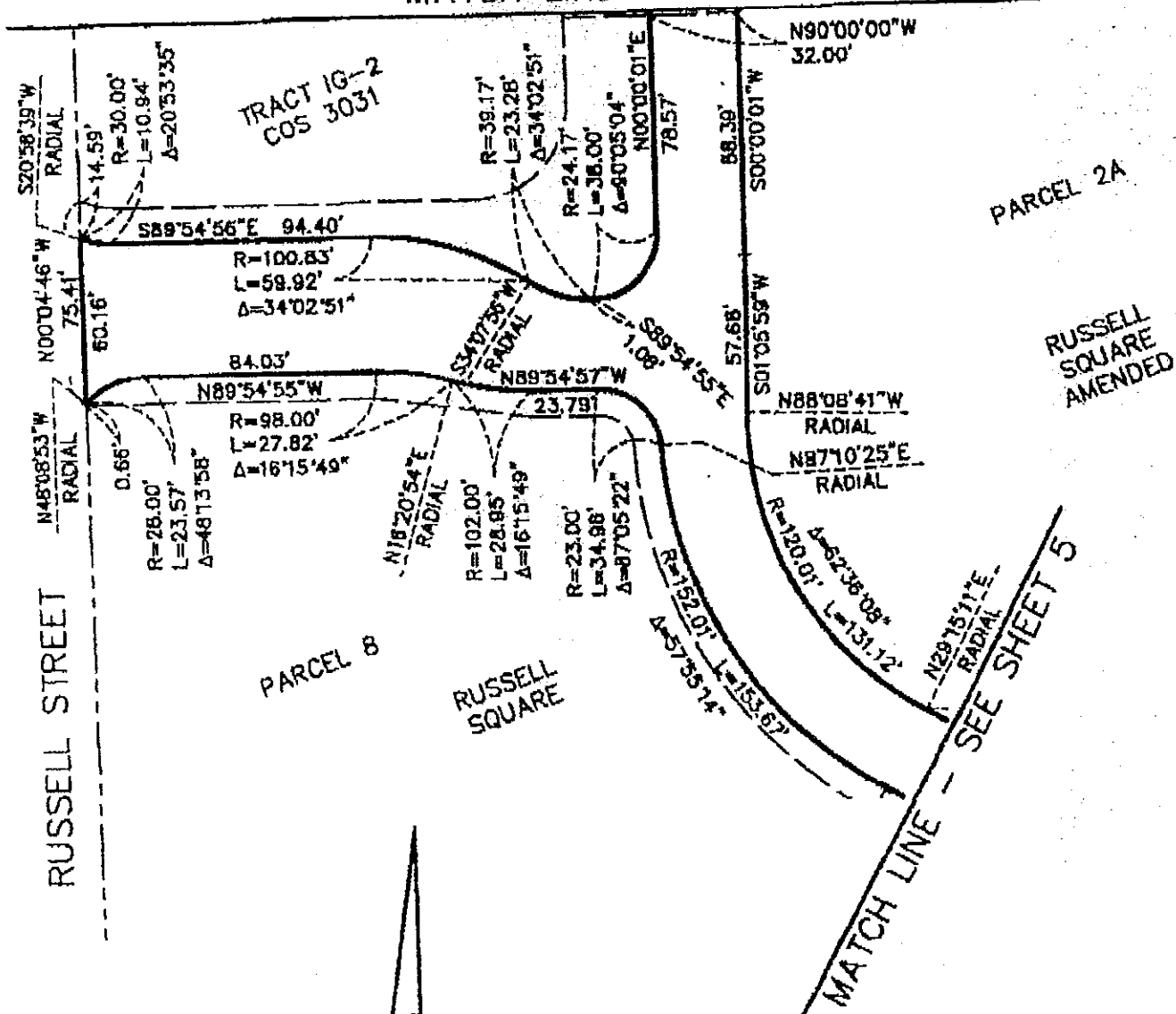
PERMANENT ACCESS EASEMENT
LOCATED IN THE SW 1/4 OF SECTION 33,
T. 13 N., R. 19 W., P.M.M.,
MISSOULA, MONTANA

WGM group

ENGINEERING-SURVEYING-PLANNING
P.O. BOX 16027
MISSOULA, MONTANA 59808

DATE: 02/25/00
PROJECT: 85-01-04

DRAFT: CEC



SHEET 4 OF 10

PERMANENT ACCESS EASEMENT
LOCATED IN THE SW 1/4 OF SECTION 33,
T. 13 N., R. 19 W., P.M.M.
MISSOULA, MONTANA

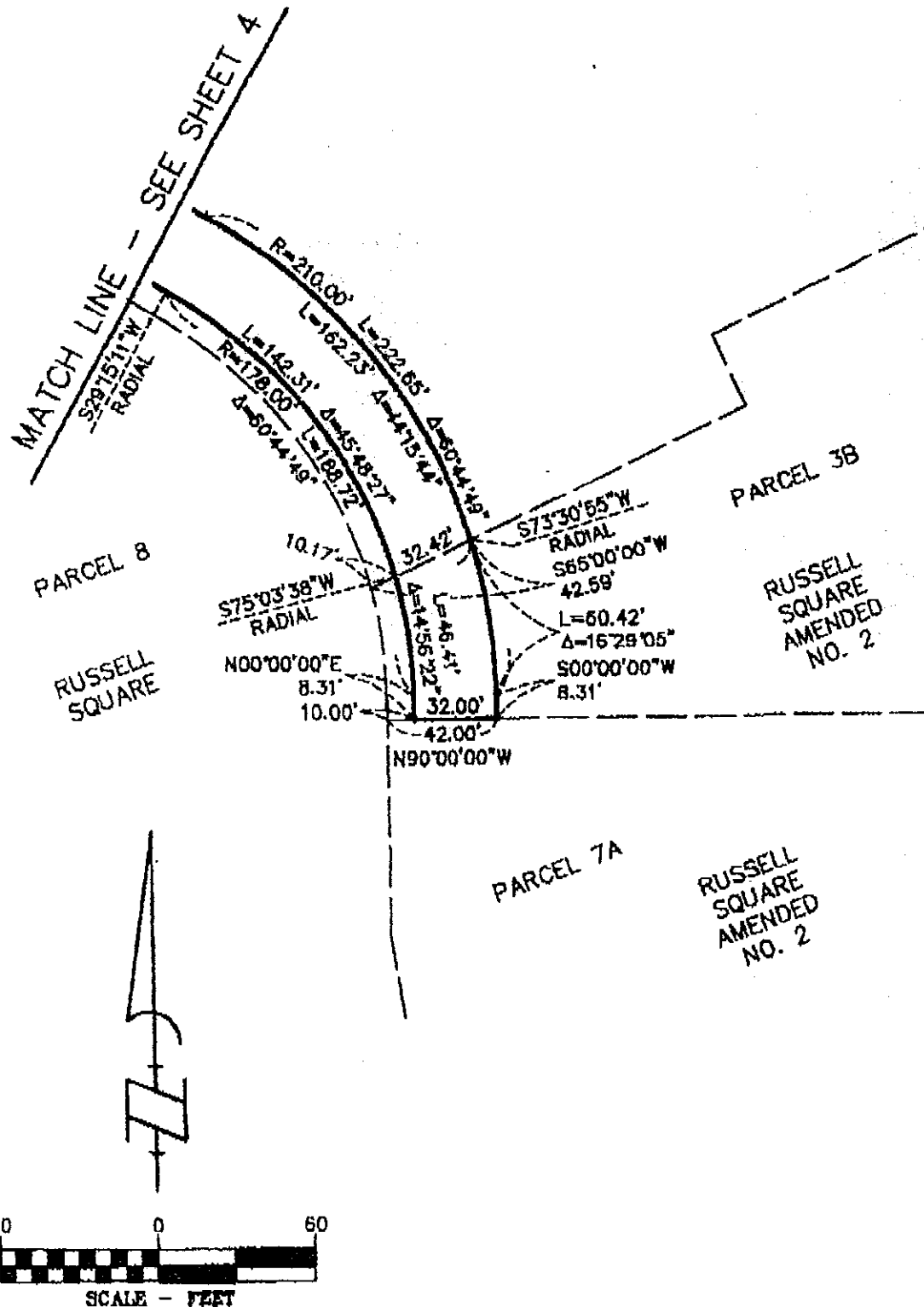
WGM group

ENGINEERING-SURVEYING-PLANNING
P.O. BOX 15027
MISSOULA, MONTANA 59808

DATE: 02/23/00
PROJECT: 88-02-04

DRAFT: ECG

BOOK 612 PAGE 0436



SHEET 5 OF 10

PERMANENT ACCESS EASEMENT
 LOCATED IN THE SW 1/4 OF SECTION 33,
 T. 13 N., R. 19 W., P.M.M.
 MISSOULA, MONTANA

WGM group

ENGINEERING-SURVEYING-PLANNING
 P.O. BOX 18027
 MISSOULA, MONTANA 59808

DRAFT: CEG

DATE: 02/25/00
 PROJECT: 98-02-04

P00204E1.DWG

BOOK 612 PAGE 0437

A TRACT OF LAND BEING PORTIONS OF PARCEL 6A OF RUSSELL SQUARE, AMENDED, A SUBDIVISION ON FILE IN MISSOULA COUNTY, MONTANA, AND PARCELS 3B AND 7A OF RUSSELL SQUARE, AMENDED NO. 2, A SUBDIVISION ON FILE IN MISSOULA COUNTY, MONTANA, LOCATED IN THE SW 1/4 OF SECTION 33, TOWNSHIP 13 NORTH, RANGE 19 WEST, PRINCIPAL MERIDIAN, MONTANA; MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF SAID PARCEL 6A, SAID CORNER BEING ON THE NORTHWESTERLY RIGHT-OF-WAY LINE OF SOUTHWEST HIGGINS AVENUE AS SHOWN ON SAID RUSSELL SQUARE, AMENDED, LAST SAID CORNER ALSO BEING ON A CURVE CONCAVE NORTHWESTERLY AND HAVING A RADIUS OF 1,860.00 FEET, A RADIAL LINE THERETO BEARS S16°01'57"E; THENCE SOUTHWESTERLY ALONG LAST SAID CURVE THROUGH A CENTRAL ANGLE OF 01°00'17" AN ARC LENGTH OF 32.62 FEET TO THE BEGINNING OF A NON-TANGENT CURVE CONCAVE WESTERLY AND HAVING A RADIUS OF 29.50 FEET, A RADIAL LINE THERETO BEARS S72°56'54"E; THENCE NORTHERLY ALONG LAST SAID NON-TANGENT CURVE THROUGH A CENTRAL ANGLE OF 32°47'01" AN ARC LENGTH OF 16.88 FEET; THENCE N15°43'55"W, 84.51 FEET TO THE BEGINNING OF A CURVE CONCAVE EASTERLY AND HAVING A RADIUS OF 75.50 FEET; THENCE NORTHERLY ALONG LAST SAID CURVE THROUGH A CENTRAL ANGLE OF 15°43'55" AN ARC LENGTH OF 20.73 FEET; THENCE N00°00'00"E, 25.64 FEET; THENCE N07°44'28"E, 87.14 FEET; THENCE N00°00'00"E, 136.99 FEET TO A POINT ON A LINE ON THE NORTHWESTERLY BOUNDARY OF SAID PARCEL 3B; THENCE N65°00'00"E ALONG LAST SAID LINE, 33.65 FEET; THENCE S00°00'00"W, 158.57 FEET; THENCE S07°44'28"W, 71.33 FEET TO THE BEGINNING OF A CURVE CONCAVE EASTERLY AND HAVING A RADIUS OF 29.50 FEET; THENCE SOUTHERLY ALONG LAST SAID CURVE THROUGH A CENTRAL ANGLE OF 23°28'23" AN ARC LENGTH OF 12.09 FEET; THENCE S15°43'55"E, 116.92 FEET TO THE BEGINNING OF A CURVE CONCAVE NORTHEASTERLY AND HAVING A RADIUS OF 29.50 FEET; THENCE SOUTHEASTERLY ALONG LAST SAID CURVE THROUGH A CENTRAL ANGLE OF 32°55'41" AN ARC LENGTH OF 16.95 FEET TO A NON-TANGENT POINT ON THE NORTHWESTERLY RIGHT-OF-WAY LINE OF SOUTHWEST HIGGINS AVENUE AS SHOWN ON SAID RUSSELL SQUARE, AMENDED, A RADIAL LINE THERETO BEARS S41°20'24"W, LAST SAID POINT ALSO BEING ON A CURVE CONCAVE NORTHWESTERLY AND HAVING A RADIUS OF 1,860.00 FEET, A RADIAL LINE THERETO BEARS S16°34'53"E; THENCE SOUTHWESTERLY ALONG LAST SAID CURVE AND LAST SAID NORTHERLY RIGHT-OF-WAY LINE THROUGH A CENTRAL ANGLE OF 00°32'56" AN ARC LENGTH OF 17.82 FEET TO THE POINT OF BEGINNING.

SHEET 6 OF 10

PERMANENT ACCESS EASEMENT
LOCATED IN THE SW 1/4 OF SECTION 33,
T. 13 N., R. 19 W., P.M.M.
MISSOULA, MONTANA

WGM group

ENGINEERING-SURVEYING-PLANNING
P.O. BOX 16027
MISSOULA, MONTANA 59808

DRAFT: CEG

DATE: 02/25/00
PROJECT: 98-02-04

W8020421.0.WG

**RUSSELL
SQUARE
AMENDED**

PARCEL 3B

RUSSELL
SQUARE
AMENDED
NO. 2

PARCEL 3B

N90°00'00"E
19.49'

PARCEL 7A

RUSSELL
SQUARE
AMENDED
NO. 2

PARCEL 6A

RUSSELL
SQUARE
AMENDED

HIGGINS AVE.

SOUTHWEST



SCALE. — FEET

SHEET 7 OF 10

PERMANENT ACCESS EASEMENT
LOCATED IN THE SW 1/4 OF SECTION 33,
T. 13 N., R. 19 W., P.M.M.
MISSOULA, MONTANA

WGM group

ENGINEERING-SURVEYING-PLANNING
P.O. BOX 16027
MISSOULA, MONTANA 59808

DRAFT: CEG

DATE: 02/25/00
PROJECT: 00-02-04

BB0204E1.0 WC

BOOK 612 PAGE 0489

A TRACT OF LAND BEING A PORTION OF PARCEL 2A OF RUSSELL SQUARE, AMENDED, A SUBDIVISION ON FILE IN MISSOULA COUNTY, MONTANA, LOCATED IN THE SW 1/4 OF SECTION 33, TOWNSHIP 13 NORTH, RANGE 19 WEST, PRINCIPAL MERIDIAN, MONTANA; MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHEAST CORNER OF PARCEL 6A OF SAID RUSSELL SQUARE, AMENDED, SAID CORNER BEING ON A CURVE CONCAVE NORTHWESTERLY AND HAVING A RADIUS OF 1,860.00 FEET, A RADIAL LINE THERETO BEARS S22°34'05"E; THENCE N00°00'00"W ALONG THE EASTERLY LINES OF SAID PARCEL 6A AND PARCEL 3B OF RUSSELL SQUARE, AMENDED NO. 2, A SUBDIVISION ON FILE IN MISSOULA COUNTY, MONTANA, AND THEIR NORTHERLY PROLONGATION, 403.03 FEET; THENCE N65°00'00"E, 7.17 FEET; THENCE N00°00'00"W, 48.36 FEET; THENCE N25°00'00"W, 224.73 FEET; THENCE S65°00'00"W, 16.93 FEET TO A POINT ON THE SOUTHEASTERLY PROLONGATION OF THE EASTERLY LINE OF PARCEL 1A OF SAID RUSSELL SQUARE, AMENDED; THENCE N25°00'00"W ALONG SAID SOUTHEASTERLY PROLONGATION AND ALONG LAST SAID EASTERLY LINE, 68.17 FEET; THENCE N00°00'00"W, 224.45 FEET TO THE BEGINNING OF A CURVE CONCAVE SOUTHWESTERLY AND HAVING A RADIUS OF 29.17 FEET; THENCE NORTHWESTERLY ALONG LAST SAID CURVE THROUGH A CENTRAL ANGLE OF 26°10'19" AN ARC LENGTH OF 13.32 FEET TO A NON-TANGENT POINT ON THE SOUTHERLY RIGHT-OF-WAY LINE OF 34TH STREET AS SHOWN ON SAID RUSSELL SQUARE, AMENDED, A RADIAL LINE THERETO BEARS N83°49'41"E; THENCE S88°53'58"E ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE, 38.00 FEET TO A POINT ON A NON-TANGENT CURVE CONCAVE SOUTHEASTERLY AND HAVING A RADIUS OF 29.17 FEET, A RADIAL LINE THERETO BEARS N83°44'39"W; THENCE SOUTHERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 26°15'21" AN ARC LENGTH OF 13.37 FEET; THENCE S00°00'00"W, 182.45 FEET TO THE BEGINNING OF A CURVE CONCAVE NORTHEASTERLY AND HAVING A RADIUS OF 99.00 FEET; THENCE SOUTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 25°00'00" AN ARC LENGTH OF 43.20 FEET; THENCE S25°00'00"E, 272.07 FEET TO THE BEGINNING OF A CURVE CONCAVE SOUTHWESTERLY AND HAVING A RADIUS OF 36.00 FEET; THENCE SOUTHEASTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 25°00'00" AN ARC LENGTH OF 15.71 FEET; THENCE S00°00'00"W, 280.89 FEET TO THE BEGINNING OF A CURVE CONCAVE EASTERLY AND HAVING A RADIUS OF 100.00 FEET; THENCE SOUTHERLY ALONG LAST SAID CURVE THROUGH A CENTRAL ANGLE OF 12°50'19" AN ARC LENGTH OF 22.41 FEET TO THE BEGINNING OF A REVERSE CURVE CONCAVE WESTERLY AND HAVING A RADIUS OF 100.00 FEET, A RADIAL LINE THERETO BEARS N77°09'41"E; THENCE SOUTHERLY ALONG LAST SAID REVERSE CURVE THROUGH A CENTRAL ANGLE OF 12°50'19" AN ARC LENGTH OF 22.41 FEET; THENCE S00°00'00"W, 100.00 FEET TO A POINT ON THE NORTHWESTERLY RIGHT-OF-WAY LINE OF SOUTHWEST HIGGINS AVENUE AS SHOWN ON SAID RUSSELL SQUARE, AMENDED, SAID POINT BEING ON A NON-TANGENT CURVE CONCAVE NORTHWESTERLY AND HAVING A RADIUS OF 1,860.00 FEET, A RADIAL LINE THERETO BEARS S23°38'23"E; THENCE SOUTHWESTERLY ALONG LAST SAID NON-TANGENT CURVE THROUGH A CENTRAL ANGLE OF 01°04'18" AN ARC LENGTH OF 34.79 FEET TO THE POINT OF BEGINNING.

SHEET 8 OF 10

PERMANENT SERVICE DRIVE
LOCATED IN THE SW 1/4 OF SECTION 33,
T. 13 N., R. 19 W., P.M.M.
MISSOULA, MONTANA

WGM group

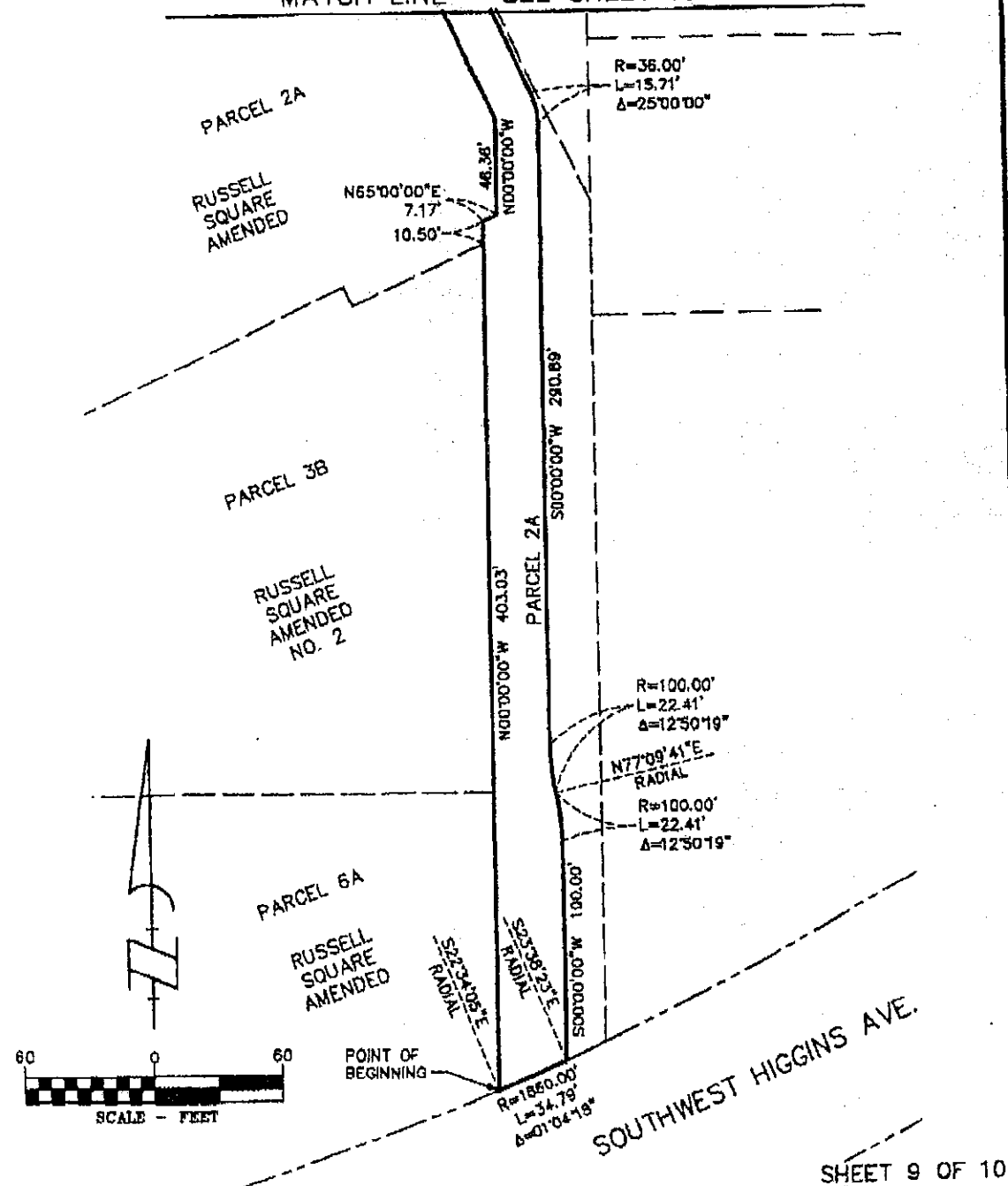
ENGINEERING-SURVEYING-PLANNING
P.O. BOX 18027
MISSOULA, MONTANA 59808

DATE: 02/25/00
PROJECT: 88-02-04

DRAFT: CEG

MATCH LINE — SEE SHEET 10

BOOK 612 PAGE 0490



SHEET 9 OF 10

PERMANENT SERVICE DRIVE
LOCATED IN THE SW 1/4 OF SECTION 33,
T. 13 N., R. 19 W., P.M.M.
MISSOULA, MONTANA

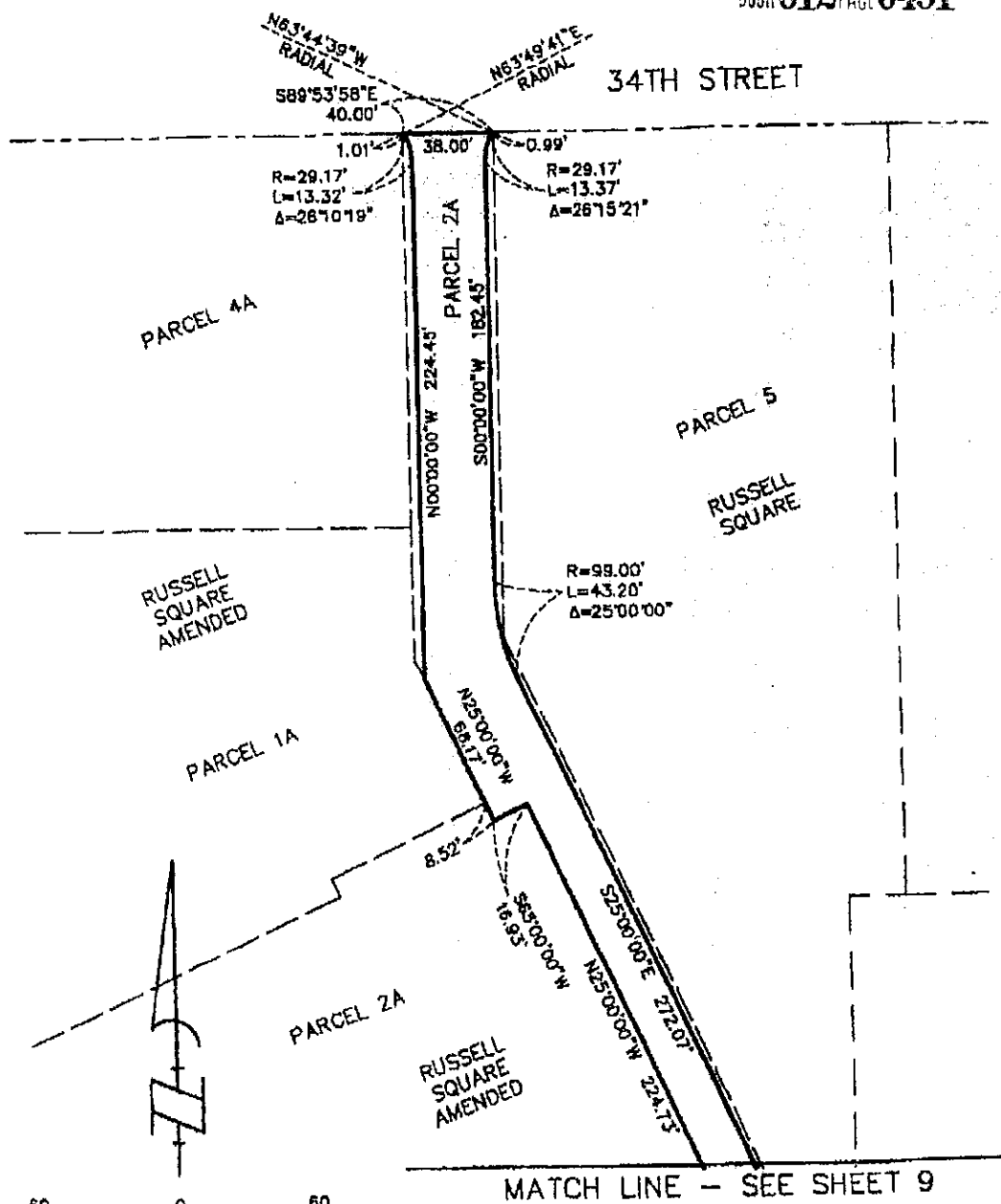
WGM group

ENGINEERING—SURVEYING—PLANNING
P.O. BOX 18027
MISSOULA, MONTANA 59808

DRAFT: CEG

DATE: 02/25/00
PROJECT: 98-02-04

BOOK 612 PAGE 0491



SHEET 10 OF 10

PERMANENT SERVICE DRIVE
 LOCATED IN THE SW 1/4 OF SECTION 33,
 T. 13 N., R. 19 W., P.M.M.
 MISSOULA, MONTANA

DRAFT: CEG

WGM group

ENGINEERING-SURVEYING-PLANNING
 P.O. BOX 18027
 MISSOULA, MONTANA 59806

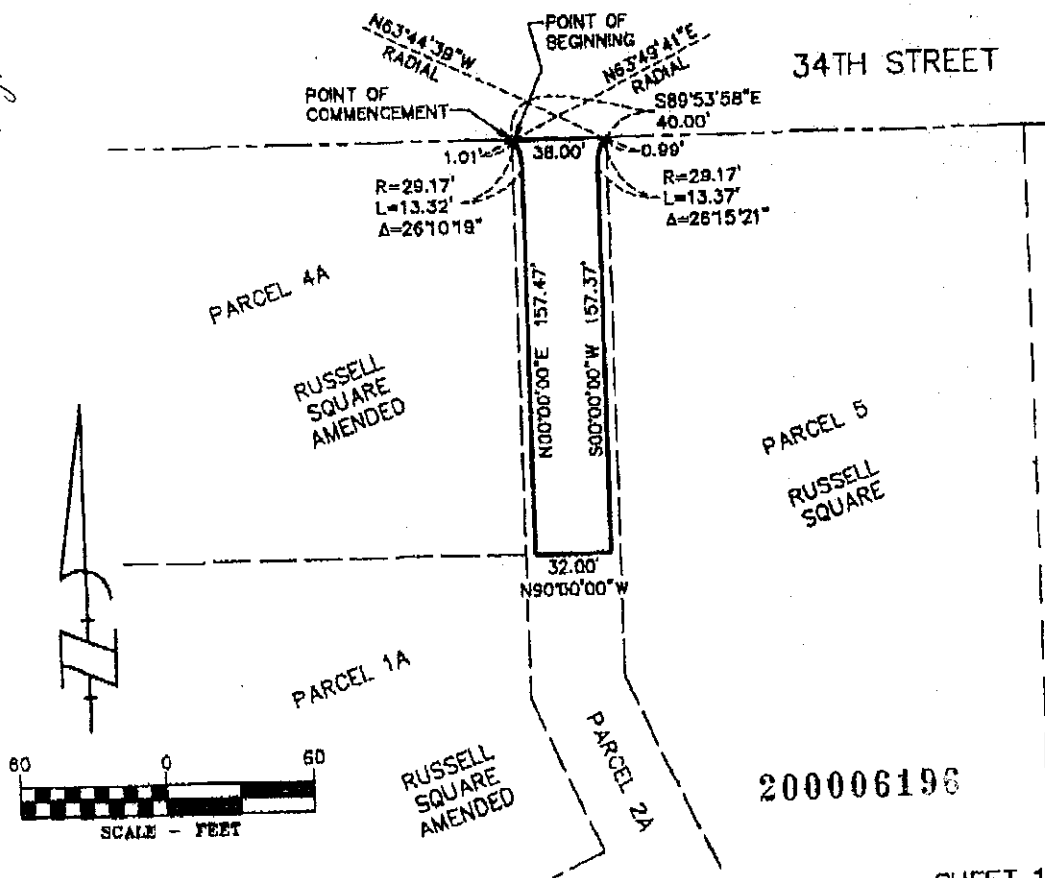
DATE: 02/25/00
 PROJECT: 98-03-04

BOOK 612 PAGE 0492 SCHEDULE III LEGAL DESCRIPTION FOR RESIDENTIAL ACCESS

A TRACT OF LAND BEING A PORTION OF PARCEL 2A OF RUSSELL SQUARE, AMENDED, A SUBDIVISION ON FILE IN MISSOULA COUNTY, MONTANA, LOCATED IN THE SW 1/4 OF SECTION 33, TOWNSHIP 13 NORTH, RANGE 19 WEST, PRINCIPAL MERIDIAN, MONTANA; MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF PARCEL 4A OF SAID RUSSELL SQUARE, AMENDED; THENCE S89°53'58"E, 1.01 FEET ALONG THE SOUTHERLY RIGHT-OF-WAY LINE OF 34TH STREET AS SHOWN ON SAID RUSSELL SQUARE, AMENDED TO THE POINT OF BEGINNING; THENCE CONTINUING ALONG SAID SOUTHERLY RIGHT-OF-WAY LINE S89°53'58"E, 38.00 FEET TO A POINT ON A NON-TANGENT CURVE CONCAVE SOUTHEASTERLY AND HAVING A RADIUS OF 29.17 FEET, A RADIAL LINE THERETO BEARS N63°44'39"W; THENCE SOUTHWESTERLY ALONG SAID NON-TANGENT CURVE THROUGH A CENTRAL ANGLE OF 26°15'21" AN ARC LENGTH OF 13.37 FEET; THENCE S00°00'00"W, 157.37 FEET; THENCE N90°00'00"W, 32.00 FEET; THENCE N00°00'00"E, 157.47 FEET TO THE BEGINNING OF A CURVE CONCAVE SOUTHWESTERLY AND HAVING A RADIUS OF 29.17 FEET, THENCE NORTHWESTERLY ALONG SAID CURVE THROUGH A CENTRAL ANGLE OF 26°10'19" AN ARC LENGTH OF 13.32 FEET TO THE POINT OF BEGINNING.

CORRELATION



200006196

SHEET 1 OF 1

RESIDENTIAL ACCESS
LOCATED IN THE SW 1/4 OF SECTION 33,
T. 13 N., R. 19 W., P.M.M.
MISSOULA, MONTANA

WGM group

ENGINEERING-SURVEYING-PLANNING
P.O. BOX 18027
MISSOULA, MONTANA 59808

DATE: 02/25/00
PROJECT: 00-02-04

DRAFT: CEG

I RECEIVED AND FILED THIS INSTRUMENT FOR RECORD ON THE 31 DAY OF MAR 2000 AT 12:46 O'CLOCK P.M. AND IT IS RECORDED
IN VOL 602 OF MICRO RECORDS OF THE COUNTY OF MISSOULA STATE OF MONTANA, ON PAGE 162 FEE 17 PAID 8
RETURN TO See Side BY [Signature] WITNESS BY HAND NICKIE M. ZEIER, COUNTY RECORDER
ADDRESS [Signature] DEPUTY DOC DM

When Recorded Return To: '90 Russell Square Properties
2749 E. Parkway #310
Salt Lake City, UT 84109

RECORDING REQUESTED
WHEN RECORDED RETURN TO:

ABS MT-O LLC
Attn: Legal Department - JPL
250 Parkcenter Blvd.
Boise, ID 83706

Albertson's #2010 – Russell & Higgins, Missoula, MT

**SECOND AMENDMENT TO
DECLARATION OF RESTRICTIONS AND EASEMENTS**

THIS SECOND AMENDMENT TO DECLARATION OF RESTRICTIONS AND EASEMENTS ("Second Amendment") is made as of the 9th day of July, 2014 (the "Effective Date"), by and between Russell Square 2004, LLC., a Utah limited liability company (successor in interest to P.O.B. Montgomery & Co., a Texas corporation) ("Russell Square"), ABS MT-O LLC, a Delaware limited liability company (successor in interest to Albertson's, Inc., a Delaware corporation) ("Albertson's"), and The University Center Bookstore, Inc., a Montana corporation ("Bookstore") (collectively, the "Parties").

RECITALS

A. WHEREAS, P.O'B. Montgomery & Co. and Albertson's, Inc. entered into that certain Declaration of Restrictions and Easements dated November 17, 1998 and recorded November 27, 1998 as Instrument No. 199831651 (Book 563, Page 1540) in the office of the county recorder of Missoula County, Montana (the "Original Declaration") regarding the property described in Schedule I (the "Property").

B. WHEREAS, P.O'B Russell Square, L.P. (successor in interest to P.O'B. Montgomery & Co.), and Albertson's, Inc. also entered into that certain First Amendment to Declaration of Restrictions and Easements and First Amendment to Common Area Maintenance Agreement dated March 30, 2000 and recorded March 31, 2000 as Instrument No. 20006196 (Book 612, Page 462) in the office of the county recorder of Missoula County, Montana (the "First Amendment").

C. WHEREAS, previous to this Second Amendment, Russell Square 2004, LLC (successor in interest to P.O'B Russell Square, L.P.) and Albertson's, Inc. have agreed by that

certain Letter Agreement dated April 14, 2003 regarding approval of Parcel 7 (as described on the attached Schedule I) building elevations, floor area and location; and further agreed by that certain Letter dated September 2, 2004 regarding approval of Parcel 6 (as described on the attached Schedule I) building elevations and floor area (collectively, the "Letters"). The Original Declaration, the First Amendment and the Letters are collectively referred to herein as the "Declaration").

D. WHEREAS, Russell Square is currently the Owner of Parcels 3, 6 and 7, as such Parcels are shown on Exhibit "A" attached to the Declaration. Albertson's is currently the Owner of Parcel 2 as shown on Exhibit "A" attached to the Declaration. Bookstore has succeeded to Russell Square's interest as Owner of Parcel 1 as shown on Exhibit "A" attached to the Declaration. Russell Square Housing L.P. has succeeded to P.O'B Russell Square, L.P.'s interest as Owner of Parcels 4 and 5 as shown on Exhibit "A" attached to the Declaration.

E. WHEREAS, Section 8.5 of the Declaration provides that the Declaration may be modified only with the consent of the Owners and Prime Lessees of the Parcels containing eighty percent (80%) of the total Parcel Area in the Shopping Center (excluding Parcel 8). Russell Square, Albertson's and Bookstore collectively own eighty percent (80%) of the total Parcel Area in the Shopping Center and there are no Prime Lessees in the Shopping Center.

F. WHEREAS, the buildings and site improvements existing on the Effective Date of this Second Amendment and located on Parcel 6 and Parcel 7 (the "Completed Improvements") vary from the construction dimensions and location requirements set forth in the Declaration.

G. WHEREAS, the Parties desire to amend the Declaration to formally approve the Completed Improvements and to revise the Exhibit "A" site plan attached to the Declaration to reflect the specifications of the Completed Improvements.

AMENDMENTS

NOW, THEREFORE, for and in consideration of the foregoing Recitals and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree and amend the Declaration as follows:

1. **Definitions.** Any capitalized terms not defined herein shall have the meanings ascribed to such terms in the Declaration.

2. **Revised Exhibit "A" Site Plan.** The Exhibit "A" site plan attached to the Declaration is hereby deleted and replaced with the revised Exhibit "A" site plan attached hereto and incorporated herein by this reference. All references in the Declaration and this Amendment to the "site plan" or to "Exhibit 'A'" shall refer to the revised Exhibit "A" attached hereto.

3. **Exhibit "B" Specifications for Completed Improvements.** The Parties approve the Building Envelopes, Building Locations and Floor Areas for the Completed Improvements as depicted on Exhibit "B" attached hereto and incorporated herein by this reference.

4. **Ratification.** Except as amended by this Second Amendment, the Declaration shall remain unchanged and in full force and effect.

5. **Counterparts.** This Second Amendment may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

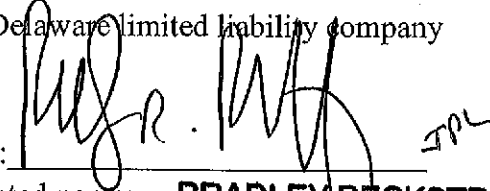
6. **Recordation.** This Second Amendment shall be recorded in the office of the recorder of Missoula County, Montana.

[Signature Pages Follow]

IN WITNESS WHEREOF, Albertson's has signed this Second Amendment to be effective as of the Effective Date.

ALBERTSON'S:

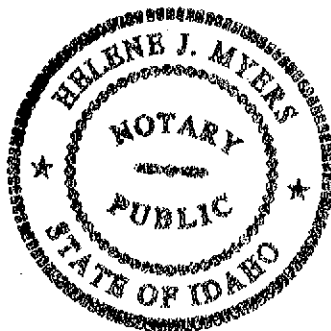
ABS MT-O LLC,
A Delaware limited liability company


BY:  JPL
Printed name: **BRADLEY BECKSTROM**
Its: **AUTHORIZED SIGNATORY**

STATE OF IDAHO)
) ss.
County of Ada)

On this 9th day of July, 2014, before me, Helene J. Myers a Notary Public in and for said State, personally appeared Bradley Beckstrom known to me to be Authorized Signatory of ABS MT-O LLC, the limited liability company that executed the foregoing instrument, and acknowledged to me that the said instrument is the free and voluntary act and deed of said partnership, for the uses and purposes therein mentioned, and on oath state that he/she/they is authorized to execute the said instrument.

WITNESS MY HAND and official seal hereto affixed the day, month and year in this certificate first above written.




Notary Public for the State of Idaho
My Commission Expires 12-21-2019

IN WITNESS WHEREOF, Russell Square has signed this Second Amendment to be effective as of the Effective Date

RUSSELL SQUARE:

Russell Square 2004, LLC
A Utah limited liability company

BY: *Richard Mendenhall*
Printed name: RICHARD MENDEHALL
Its: MANAGER

STATE OF UTAH)
) ss.
County of UTAH)

On this 2 day of JULY, 2014, before me, DANIEL SCHMIDT a Notary Public in and for said State, personally appeared RICHARD MENDEHALL known to me to be MANAGER of Russell Square 2004, LLC, the limited liability company that executed the foregoing instrument, and acknowledged to me that the said instrument is the free and voluntary act and deed of said partnership, for the uses and purposes therein mentioned, and on oath state that he/she/they is authorized to execute the said instrument.

WITNESS MY HAND and official seal hereto affixed the day, month and year in this certificate first above written.



Daniel Schmidt
Notary Public for the State of UTAH
My Commission Expires 6/3/17

SCHEDULE I

LEGAL DESCRIPTION

- Parcel 1:** Parcel 1A of RUSSELL SQUARE, AMENDED, a subdivision of the City of Missoula, in Missoula County, Montana, located in the SW ¼ of Section 33, Township 13 North, Range 19 West, Principal Meridian, Montana, according to the official plat thereof, filed for record on October 15, 1999 in Book 23 of Plats, Page 30, Missoula County, Montana.
- Parcel 2:** Parcel 2A of RUSSELL SQUARE, AMENDED, a subdivision of the City of Missoula, in Missoula County, Montana, located in the SW ¼ of Section 33, Township 13 North, Range 19 West, Principal Meridian, Montana, according to the official plat thereof, filed for record on October 15, 1999 in Book 23 of Plats, Page 30, Missoula County, Montana.
- Parcel 3:** Parcel 3B of RUSSELL SQUARE, AMENDED NO. 2, a subdivision of the City of Missoula, in Missoula County, Montana, located in the SW ¼ of Section 33, Township 13 North, Range 19 West, Principal Meridian, Montana, according to the official plat thereof, filed for record on November 1, 1999 in Book 23 of Plats, Page 32, Missoula County, Montana.
- Parcel 4:** Parcel 4A of RUSSELL SQUARE, AMENDED, a subdivision of the City of Missoula, in Missoula County, Montana, located in the SW ¼ of Section 33, Township 13 North, Range 19 West, Principal Meridian, Montana, according to the official plat thereof, filed for record on October 15, 1999 in Book 23 of Plats, Page 30, Missoula County, Montana.
- Parcel 5:** Parcel 5 of RUSSELL SQUARE, a subdivision of the City of Missoula, in Missoula County, Montana, located in the SW ¼ of Section 33, Township 13 North, Range 19 West, Principal Meridian, Montana, according to the official plat thereof, filed for record on November 27, 1998 in Book 22 of Plats, Page 58, Missoula County, Montana.

[Continued on Next Page]

- Parcel 6: Parcel 6A of RUSSELL SQUARE, AMENDED, a subdivision of the City of Missoula, in Missoula County, Montana, located in the SW ¼ of Section 33, Township 13 North, Range 19 West, Principal Meridian, Montana, according to the official plat thereof, filed for record on October 15, 1999 in Book 23 of Plats, Page 30, Missoula County, Montana.
- Parcel 7: Parcel 7A of RUSSELL SQUARE, AMENDED NO. 2, a subdivision of the City of Missoula, in Missoula County, Montana, located in the SW ¼ of Section 33, Township 13 North, Range 19 West, Principal Meridian, Montana, according to the official plat thereof, filed for record on November 1, 1999 in Book 23 of Plats, Page 32, Missoula County, Montana.
- Parcel 8: A tract of land located in the SW ¼ of Section 33, Township 13 North, Range 19 West, Principal Meridian, Montana, Missoula County, Montana, being more particularly described as Parcel A, Certificate of Survey No. 4746.

ALBERTSON'S 10000 W. CENTURY BLVD. SUITE 100 WEST GARDEN CITY, CA 92086 TEL: 949.440.1234 FAX: 949.440.1235		ALBERTSON'S 10000 W. CENTURY BLVD. SUITE 100 WEST GARDEN CITY, CA 92086 TEL: 949.440.1234 FAX: 949.440.1235
ALBERTSON'S 10000 W. CENTURY BLVD. SUITE 100 WEST GARDEN CITY, CA 92086 TEL: 949.440.1234 FAX: 949.440.1235	ALBERTSON'S 10000 W. CENTURY BLVD. SUITE 100 WEST GARDEN CITY, CA 92086 TEL: 949.440.1234 FAX: 949.440.1235	ALBERTSON'S 10000 W. CENTURY BLVD. SUITE 100 WEST GARDEN CITY, CA 92086 TEL: 949.440.1234 FAX: 949.440.1235

EXHIBIT "B"

SPECIFICATIONS FOR COMPLETED IMPROVEMENTS

Page 1 of 2

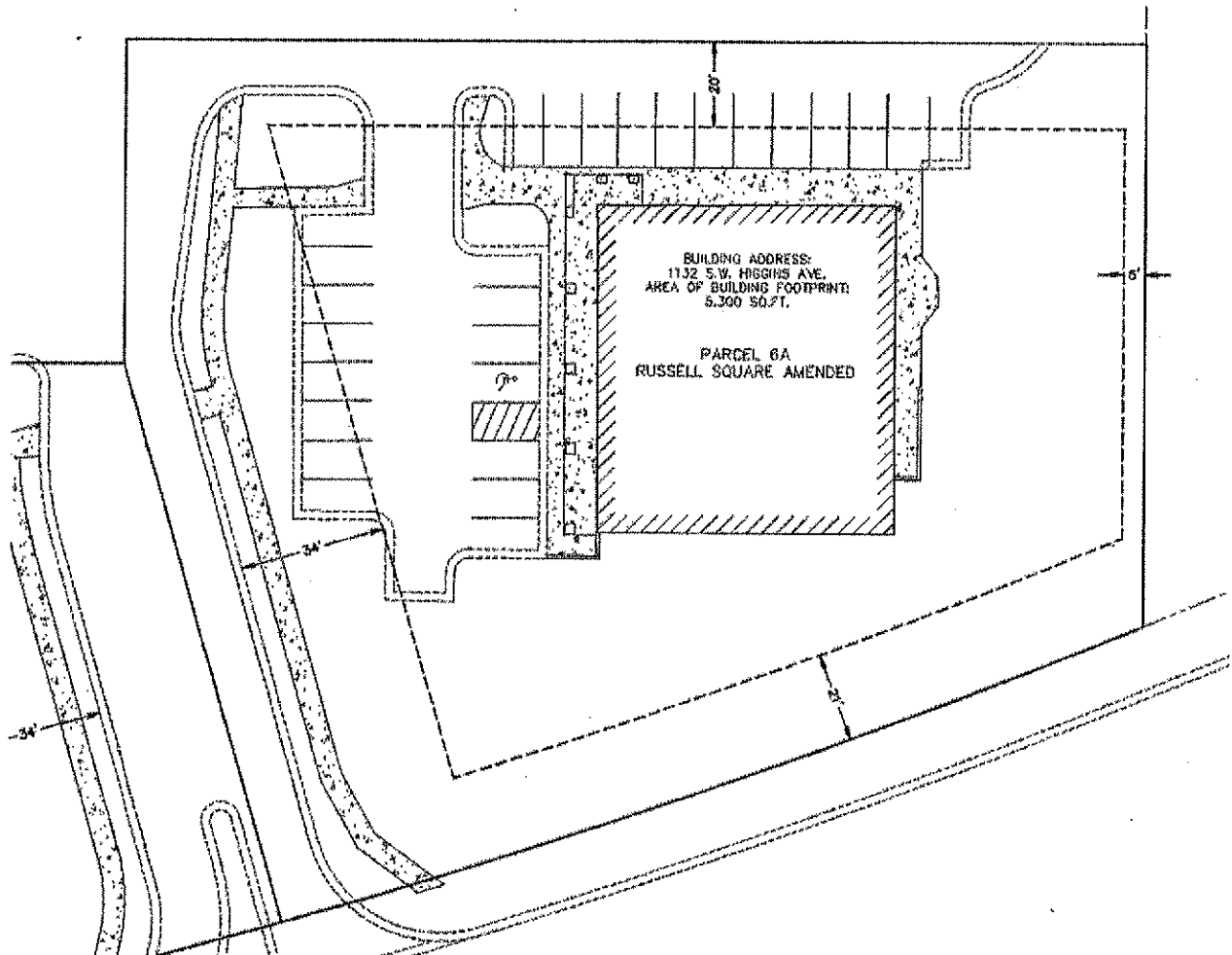


EXHIBIT "B"

SPECIFICATIONS FOR COMPLETED IMPROVEMENTS

Page 2 of 2

