

ALB90CAM

TYPE OF RECORD:	PERMANENT
CATEGORY OF RECORD:	CONTRACT
NAME OF CONTRACTOR:	ALBERTSON'S INC. / ORCHARD GROUP LTD
SUBJECT/PROJECT:	COMMON AREA MAINTENANCE AGREEMENT
LOCATION:	1830 N 12 TH STREET
PARCEL#:	2945-123-02-025
CITY DEPARTMENT:	PUBLIC WORKS AND PLANNING
YEAR:	1990
EXPIRATION DATE:	NONE
DESTRUCTION DATE:	NONE



Lawyers Title Insurance Corporation

ROCKY MOUNTAIN OFFICE
5660 Greenwood Plaza Boulevard
Suite 500
Englewood, Colorado 80111
Area Code (303) 779-9555
Telefax (303) 779-1851

August 17, 1990

U.S. First Class Mail

Dan Wilson, Esq.
City Attorney
250 North 5th Street
Grand Junction, CO 81501

Re: Albertson's, Inc./Orchard Group, Ltd.
Store #8P (12th Street & Orchard Avenue, Grand Junction, CO)
LTIC No. 8908697

Dear Mr. Wilson:

Per the instructions of Albertson's, Inc., enclosed herewith for your files is a conformed copy of the Common Area Maintenance Agreement recorded by the Mesa County Clerk and Recorder in Book 1797 at Page 71 (Reception No. 1547595). Pages 17 and 18 of the instrument bear original signatures and notary acknowledgments of the parties to the agreement.

Sincerely,

Sara Martin

/swm

cc: Lee Mumford, Esq.
Albertson's, Inc.

*Now: for your files?
either for or planning...?
both
8-23-90
copy filed w/
Planning
Dept.*

COMMON AREA MAINTENANCE AGREEMENT

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Conformed copy of Instrument
 Recorded in
 Book 1797 Page 71
 Recpt # 1547595
 Dated 7-27-90 at 4:23P M.
 Mesa County, CO

COMMON AREA MAINTENANCE AGREEMENT

THIS COMMON AREA MAINTENANCE AGREEMENT ("Agreement") is made as of the 27 day of July, 1990, by and between Orchard Group, Ltd., a Colorado limited partnership ("First Party") and Albertson's, Inc., a Delaware corporation ("Albertson's").

1. Recitals.

1.1 Albertson's is the owner of Parcel 2 and Sublessee of Parcels 1 and 3; and First Party is the owner of Parcels 1 and 3 as shown on Exhibit "A" and more particularly described in Schedule I attached hereto and incorporated herein by this reference. Parcels 1 through 3 are hereinafter collectively referred to as the "Shopping Center". Parcel 1, 2 or 3 is sometimes referred to as "Parcel".

1.2 By virtue of that certain document entitled "Declaration of Restrictions and Grant of Easements" which encumbers the Shopping Center and is recorded concurrently herewith ("Declaration"), the Owners (as defined in the Declaration which states, among other things, that Albertson's shall be deemed the owner of Parcel 1 so long as Albertson's has a leasehold interest in Parcel 1 pursuant to the Master Lease as defined in Section 23.1 hereof) have imposed certain restrictions on their Parcels and have executed reciprocal easements each in favor of the other covering those portions of the Shopping Center defined in the Declaration as "Common Area".

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

1.4 All of the terms in this Agreement shall have the meanings set forth in the Declaration, the provisions of which are incorporated herein by this reference. In the event of any conflict between the terms of this Agreement and the Declaration, the Declaration shall control.

2. Maintenance Standards.

2.1 Commencing on the date Albertson's first opens its building on Parcel 2 for business, the Maintenance Director shall, except as hereinafter provided, maintain the Common Area at all times in good and clean condition and repair, said maintenance to include, without limitation, the following:

(a) Maintaining, repairing and resurfacing, when necessary, all paved surfaces in a level, smooth and evenly covered condition with the type of surfacing material originally installed or such substitute as shall in

all respects be equal or superior in quality, use and durability; and restriping, when necessary;

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

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

(d) Operating, maintaining, repairing and replacing, when necessary, such artificial lighting facilities as shall be reasonably required (except for the "After Hours Lighting" described in Article 3 below);

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

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

(g) Maintaining, repairing and replacing, when necessary, all storm drains, sewers and other utility lines and facilities not dedicated to the public or conveyed to any public or private utility which are necessary for the operation of the buildings and improvements located in the Shopping Center (with the cost of all such items being allocated between the Owners of all buildings and improvements serviced by said facilities on the basis of their respective Building Areas);

(h) Keeping the Existing Pylon Sign and New Pylon Sign (as shown on Exhibit "A") lighted from dusk to dawn or during such other times mutually agreed in writing by the businesses designated thereon; and

(i) Performing itself or contracting with a third party or parties to perform any of the services described herein; provided, however, that the Maintenance Director shall remain responsible and liable for the performance of all of said services in accordance with the terms of this Agreement and for the performance of any such third party or parties under any such contract or contracts.

2.2 In addition to the foregoing, the Maintenance Director shall provide and maintain comprehensive general liability insurance with broad form

endorsement insuring First Party, American Drug Stores Inc., an Illinois corporation or other tenant occupying Parcel 3, Albertson's and all other persons who now or hereafter own or hold portions of the Shopping Center or building space within the Shopping Center or any leasehold estate or other interest therein as their respective interests may appear (provided that the Maintenance Director is notified in writing of such interest) against claims for personal injury or death or property damage or destruction occurring in, upon or about the Common Area. Such insurance shall be written with an insurer licensed to do business in the state in which the Shopping Center is located and First Party, American Stores Inc., an Illinois corporation (or other occupant of the building shown as Drug on Exhibit "A" which the Maintenance Director receives notice) and Albertson's shall be named on the policy or policies as additional insureds. The limits of liability of all such insurance shall be not less than \$2,000,000 for injury to or death of any one person, \$2,000,000 for injury to or death of more than one person in one occurrence and \$500,000 with respect to damage to or destruction of property; or, in lieu of such coverage, a combined single limit (covering bodily injury or death and property damage or destruction) with a limit of not less than \$2,000,000 per occurrence. The Maintenance Director shall furnish First Party and Albertson's with certificates evidencing such insurance and, upon request, copies of the insurance policy or policies as well. The policy or policies of such insurance shall provide that the insurance shall not be changed or cancelled without the giving of thirty (30) days prior written notice to the holders of such insurance and the holders of such certificates.

2.3 Anything in this Article 2 to the contrary notwithstanding, the Maintenance Director shall not be responsible for the maintenance or insurance of any Service Facilities (as defined in the Declaration) or driveup or drive through customer service facilities, which facilities shall be maintained by the Owners thereof in good and clean condition and repair and in a quality and condition comparable to the quality and condition of the maintenance of the balance of the Common Area. In addition, the Owners of the Parcel or Parcels on which said facilities are located shall at all times (i) provide and maintain or cause to be provided and maintained comprehensive general liability insurance with broad form endorsement insuring all persons who now or hereafter own or hold portions of said facilities or any leasehold estate or other interest therein as their respective interests may appear against claims for personal injury or

death or property damage or destruction occurring in, upon or about said facilities, and (ii) indemnify, defend and hold harmless the Owners and occupants of all other Parcels from and against any and all liability, claims, damages, expenses (including reasonable attorney's fees and reasonable attorney's fees on any appeal), judgments, proceedings and causes of action, for injury to or death of any person or damage to or destruction of any property occurring in, on or about said facilities and arising out of the performance or nonperformance of any of the obligations of the Owners of the Parcel or Parcels on which said facilities are located set forth in this Section 2.3, unless caused by the negligent or willful act or omission of the indemnified person, its agents, contractors or employees. Said insurance shall be written with an insurer licensed to do business in the state in which the Shopping Center is located and in the amounts set forth in Section 2.2 above. The Owners of any such Parcel or Parcels shall furnish the Maintenance Director and any other Owner or Prime Lessee with certificates evidencing such insurance upon request. The insurance which an Owner is required to maintain hereunder may be provided under a blanket policy provided such policy otherwise complies with the requirements of this Agreement. So long as an Owner has a net worth, determined in accordance with generally accepted accounting principles, in excess of \$100,000,000.00, all or any part of such insurance carried by such Owner may be provided under a program of self-insurance.

2.4 The Maintenance Director agrees to indemnify, defend and hold harmless the Owners and occupants of all Parcels from and against any and all liability, claims, damages, expenses (including reasonable attorney's fees and reasonable attorney's fees on any appeal), judgments, proceedings and causes of action, for injury to or death of any person or damage to or destruction of any property occurring in, on or about the Common Area (exclusive of any Service Facilities or driveup or drive through customer service facilities) and arising out of the performance or nonperformance of any of the obligations of the Maintenance Director set forth in this Agreement, unless caused by the negligent or willful act or omission of the indemnified person, its agents, contractors or employees.

3. Lighting.

3.1 It is agreed that the artificial lighting for the Common Area shall remain on while a majority of the businesses in the Shopping Center are open

for business. If artificial lighting for a time later than the foregoing ("After Hours Lighting") is needed by any Owners or occupants, then such artificial lights to service such Owners or occupants shall be separately metered or otherwise measured or reasonably estimated and all expenses thereof shall be paid by such Owners or occupants to the extent appropriate. Such Owners or occupants shall pay a reduced proportion of the expense of lighting the balance of the Common Area according to the extent to which such Owners or occupants are lighting the Common Area by separately metered lights.

4. Taxes.

4.1 Each Owner shall pay or cause to be paid direct to the tax collector when due the real property taxes and other special improvement taxes and assessments assessed against the Owner's Parcel (hereinafter "Property Tax"), including the portion of the Common Area on such Owner's Parcel; subject, however, to the right of any such Owner to contest the amount or validity of all or any part of said taxes and assessments.

4.2 Each Owner of Parcels 1 and 3 shall provide the Owner of Parcel 2 with copies of all Property Tax notices and tax bills relating to each Owner's respective Parcel within 15 days after each such Owner receives the same and, if requested by the Owner of Parcel 2, such further tax assessment information as is necessary for the Owner of Parcel 2 to determine the total amount of Property Tax assessed against the land and Common Area improvements on each Parcel (excluding building improvements). The Owner of Parcel 2 shall calculate each Parcel's pro rata share of the total amount of said Property Tax for the entire Shopping Center (excluding buildings) which pro rata share shall be as set forth in Section 7.1 hereof.

4.3 Each Owner shall reimburse the Owner of Parcel 2 the difference, if any, between: (i) the Property Tax actually billed for land and Common Area improvements (excluding buildings) on each parcel; and (ii) each Owner's pro rata share (as calculated above) of the Property Tax for the land and Common Area improvements in the entire Shopping Center (excluding buildings), which reimbursement shall be made within 15 days after a receipt of a bill for the same. The Owner of Parcel 2 shall thereafter distribute such received reimbursements to each Owner as necessary to effect a sharing of the real property and special taxes and assessments on land and Common Area improvements in the Shopping Center on a pro rata basis, as calculated above.

5. Maintenance Director.

5.1 The Owners hereby appoint the Owner of Parcel 3 as Maintenance Director of the Shopping Center Common Area from and after the date Albertson's first opens its building on Parcel 2 for business.

5.2 The Owners of at least two (2) Parcels (provided that Parcel 2 is included within such group) may remove the Maintenance Director upon written notice to the Owners of the remaining Parcels in which event the Owners of a majority of the Parcels (provided that Parcel 2 is included within such majority) shall appoint another person to be the Maintenance Director.

5.3 The Maintenance Director shall have the right, upon giving ninety (90) days prior written notice to the Owners of the Shopping Center, to resign as Maintenance Director in which event the Owners of a majority of the Parcels (provided that Parcel 2 shall appoint another person to be the Maintenance Director.

6. Reimbursement of Maintenance Director.

6.1 The Maintenance Director shall contract for and pay for all of the items enumerated as maintenance and insurance expenses in Article 2 herein; provided, however, that the Maintenance Director shall not be entitled to reimbursement of all or any portion of an Owner's pro rata share of any item of Common Area maintenance or insurance expense, the pro rata share of which for said Owner's Parcel exceeds Two Thousand Dollars (\$2,000.00), without the prior written approval of the Owner of said Parcel.

6.2 At least thirty (30) days prior to the initial commencement of the cleaning and sweeping of the Common Area and any other Common Area maintenance work done on a regular basis, the Maintenance Director shall submit said Common Area maintenance work for bid to at least four (4) bidders approved in writing by the Consenting Owners (as defined in the Declaration), which approval shall not be unreasonably withheld or delayed provided, however, if four bidders for any particular item of common area maintenance are not reasonably available then the Maintenance Director may proceed with obtaining bids from the number of bidders reasonably available for such items. The names of the bidding contractors or companies and the amounts of their respective bids shall be furnished to the Consenting Owners by the Maintenance Director within ten (10) days after receipt thereof. The Maintenance Director shall award the contract to the low bidder unless the prior written consent of

the Consenting Owners to award the contract to a higher bidder is first obtained by the Maintenance Director.

6.3 Upon thirty (30) days prior written notice from any Consenting Owner, the Maintenance Director shall have the Common Area maintenance work, or any portion thereof designated by said Owner, rebid in the manner set forth in Section 6.2, and the Owners' shares of said Common Area maintenance work shall thereafter be based on the amount of the lowest bid unless the prior written consent of the Consenting Owners to award the contract to a higher bidder is first obtained by the Maintenance Director. Following a rebid of any item or items of Common Area maintenance, no Consenting Owner shall have the right to require a subsequent rebid of the same item or items for a period of at least one (1) year. The foregoing notwithstanding, the Maintenance Director shall not be required to rebid any item before the expiration of the term of the applicable contract. In no event shall the Maintenance Director enter into any contract for all or any portion of the Common Area maintenance work for a term in excess of one (1) year without the prior written approval of the Consenting Owners.

6.4 The Owners of the Parcels as referenced in Article 7 below, including Section 7.3, shall cause the Maintenance Director to be reimbursed for all of its out-of-pocket expenses in performing such services plus a maximum service charge of ten percent (10%) of said expenses to cover management and administration costs; provided, however, that the ten percent (10%) service charge shall not exceed Three Hundred Fifty Dollars (\$350.00) for any item of Common Area maintenance expense without the prior written approval of the Consenting Owners and shall not be applied to any insurance premium or capital expenditure expenses. The Common Area expenses shall not include any costs incurred by the Maintenance Director for the services of a manager or management company or for office overhead or compensation of its employees except to the extent included in the ten percent (10%) service charge.

6.5 The Maintenance Director agrees to perform its duties under this Agreement on a nonprofit basis with an end to keeping such expenses at a reasonable minimum.

7. Billing for Expenses.

7.1 The Owner of each Parcel (or its respective tenants or agents, as it may direct) shall be billed monthly in arrears for its pro rata share of all expenses incurred by the Maintenance Director in maintaining and insuring the

Common Area as provided above (including the ten percent [10%] service charge described in Article 6 above) with the first billing date being the last day of the first full calendar month following the date Albertson's first opens its building on Parcel 2 for business. Said bills shall be due and payable within thirty (30) days after receipt of said bills and, if requested, copies of all invoices, statements or other documents supporting same. The proportionate share of the total Common Area expenses to be borne by each Owner for any year shall be that percentage set forth below except that any costs associated with Section 2.1(h) shall be born by the Owners entitled to display designations thereon in proportion that the total square footage of each owners designation bears to the total square footage of all designations thereon:

		Maximum Building Area (Excluding Expansion Area)	Percent	
Parcel 1	(Existing	21,763	23.42	(47.74% total)
	Albertson's) (Drug)	22,601	24.32	
Parcel 2		41,556	44.72	
Parcel 3		7,008	7.54	
		<hr/>	<hr/>	
TOTAL:		92,928	100.0	

In the event the Owner of a building expands its building into the Expansion Area shown on Exhibit "A", the above percentages shall be recalculated based upon any increase in the total floor area (excluding mezzanines and basements not used for the sale or display of merchandise) of said building from the figures set forth above. 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 6 above) for which a bill is not submitted to said Owner (or its tenants or agents, as it may direct) within ninety (90) days after the end of the calendar year in which said expense is incurred.

7.2 The Owner of Parcel 2 may, upon not less than ten (10) days prior written notice to the Maintenance Director, inspect the Maintenance Director's records for all Common Area maintenance and insurance expenses incurred during the preceding calendar year at the Maintenance Director's General Offices or at such other location reasonably designated by the Maintenance Director at any time during reasonable business hours. If said inspection reveals an overpayment of Common Area maintenance and insurance

expenses (including the ten percent [10%] service charge described in Article 6 above), the Maintenance Director shall reimburse the Owner of each Parcel (or its respective tenants or agents, as it may direct) its proportionate share of any such overpayment within thirty (30) days after receipt of notice of determination, and of the amount, of such overpayment. If said inspection reveals an underpayment of Common Area maintenance and insurance expenses (including the ten percent [10%] service charge described in Article 6 above but excluding all expenses for which a statement was not timely submitted pursuant to Section 7.1 above), the Owner of each Parcel shall reimburse the Maintenance Director its proportionate share of any such underpayment within thirty (30) days after receipt of proper billing in accordance with Section 7.1. If said inspection reveals that the Maintenance Director misstated Common Area maintenance and insurance expenses by more than five percent (5%), the Maintenance Director shall reimburse the person making such inspection for all costs reasonably incurred in making such inspection within thirty (30) days after receipt of notice of determination, and of the amount, of any such misstatement.

8. Effect of Sale by Owner.

8.1 In the event an Owner sells all or any portion of its interest in its 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 Agreement after the sale and conveyance of title but shall remain liable for all obligations arising under this Agreement 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 Agreement with respect to such Parcel or portion thereof after the date of sale and conveyance of title.

9. Default.

9.1 In the event any Owner fails or refuses to pay when due its share of any bill for the Common Area maintenance and insurance expenses described above (including the ten percent [10%] service charge described in Article 6 above), or the tax reimbursement described in Section 4.1, above, which failure continues for a period of ten (10) days after receipt of written notice thereof, such failure shall constitute a default and legal action may thereafter be instituted against the defaulting Owner by the Maintenance

Director or other person paying the maintenance or insurance expenses (including the ten percent [10%] service charge described in Article 6 above) of the defaulting Owner ("Curing Party") for reimbursement plus interest from and after the date said bill was due and payable at a rate equal to the lesser of (i) the highest rate allowed by law, and (ii) the rate two percent (2%) above the reference rate of interest charged from time to time to corporate borrowers of the highest credit standard by BankAmerica (the lesser rate being hereinafter referred to as the "Default Rate"). Furthermore, the Curing Party shall have a lien on the Parcel of the defaulting Owner for the amount of said expenses (including the ten percent [10%] service charge described in Article 6 above) plus accrued interest as set forth above; provided, however, that if there be a bona fide dispute as to the existence of such default or of the amount due and all undisputed amounts are paid, there shall be no right to place a lien on such Owner's Parcel until such dispute is settled by final court decree or mutual agreement.

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

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

cannot be rectified within said thirty (30) day period and the Maintenance Director is diligently proceeding to rectify the particulars of such failure.

9.4 In addition to the foregoing, in the event any person initiates or defends any legal action or proceeding to enforce or interpret this Agreement, the prevailing party in any such action or proceeding shall be entitled to recover its reasonable costs and attorney's fees (including its reasonable costs and attorney's fees on any appeal) as determined by the court in the same or a separate proceeding except that such attorney's fees shall not be assessed against the City of Grand Junction, Colorado unless they have taken enforcement or defense action unreasonably.

9.5 The failure of a person to insist upon strict performance of any of the terms, covenants, conditions or agreements contained herein shall not be deemed a waiver of any rights or remedies that said person may have, and shall not be deemed a waiver of any subsequent breach or default in any of the terms, covenants, conditions or agreements contained herein by the same or any other person.

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

10. Lien for Expenses.

10.1 The lien provided for in Article 9 above shall only be effective when filed for record by the Curing Party as a claim of lien against the defaulting Owner in the office of the recorder of the county in which the Shopping Center is located, signed and verified, which shall contain at least:

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

10.2 The lien, when so established against the real property described in the lien, shall be prior and superior to any right, title, interest,

lien or claim which may be or has been acquired or attached to such real property after the time of filing the lien. The lien shall be for the use and benefit of the person curing the default of the defaulting Owner and may be enforced and foreclosed in a suit or action brought in any court of competent jurisdiction.

11. Right to Maintain Parcel Separately.

11.1 Any Owner may, at any time and from time to time, upon at least sixty (60) days prior written notice to the Maintenance Director and the other Owners, elect to assume the obligations of the Maintenance Director to maintain, repair, replace and insure such Owner's portion of the Common Area, except for resurfacing, lighting and other costs which cannot be practicably segregated or allocated between the Parcels, which costs shall continue to be proportionately paid for by each Owner (or its respective tenants or agents, as it may direct) pursuant to the formula in Article 7. In the event of any such assumption by any Owner, such Owner agrees to maintain, repair and replace its portion of the Common Area at its sole cost and expense and in a manner and at a level of quality at least comparable to that of the balance of the Common Area. Any such Owner may also elect to terminate its obligation to maintain, repair, replace and insure its portion of the Common Area by giving at least sixty (60) days prior written notice to the Maintenance Director, in which event the Maintenance Director shall resume its duties with respect to said Parcel and the Owner so electing agrees to pay for its pro rata share of all Common Area maintenance and insurance costs (including the ten percent [10%] service charge described in Article 6 above) thereafter incurred by the Maintenance Director in accordance with the formula in Article 7. Anything in the preceding sentence to the contrary notwithstanding, the Owner electing to terminate its obligation to maintain, repair, replace and insure its portion of the Common Area shall return said Common Area to the Maintenance Director in the same quality and condition as the balance of the Common Area, any failure of which shall be corrected at the sole cost and expense of said Owner.

11.2 The Owner of any Parcel electing to assume the obligations of the Maintenance Director pursuant to Section 11.1 above agrees to indemnify, defend and hold harmless the Maintenance Director and the Owners and occupants of all other Parcels from and against any and all liability, claims, damages, expenses (including reasonable attorney's fees and reasonable attorney's fees on any appeal), judgments, proceedings and causes of action,

for injury to or death of any person or damage to or destruction of any property occurring on said Owner's Parcel and arising out of the performance or nonperformance of any of the obligations of the Owner of said Parcel set forth in this Article 11, unless caused by the negligent or willful act or omission of the indemnified person, its agents, contractors or employees.

12. Responsibility if No Maintenance Director.

12.1 In the event there should at any time cease to be a Maintenance Director, each Owner shall be responsible for the maintenance, insurance and lighting of its own Parcel according to the standards herein enumerated. In the event any Owner defaults in the performance of such obligations, any other Owner may cause the performance of the obligations of the defaulting Owner and bill the defaulting Owner for the expenses incurred. In such event, the provisions and remedies of Articles 9 and 10 shall apply.

12.2 In the event there should at any time cease to be a Maintenance Director, each Owner agrees to indemnify, defend and hold harmless the Owners and occupants of all other Parcels from and against any and all liability, claims, damages, expenses (including reasonable attorney's fees and reasonable attorney's fees on any appeal), judgments, proceedings and causes of action, for injury to or death of any person or damage to or destruction of any property occurring on the indemnifying Owner's Parcel and arising out of the performance or nonperformance of any of the obligations of the Owner of said Parcel set forth in Section 12.1, unless caused by the negligent or willful act or omission of the indemnified person, its agents, contractors or employees.

13. General Provisions.

13.1 This Agreement 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.

13.2 The term of this Agreement shall be for sixty-five (65) years from the date hereof; provided, however, that this Agreement shall terminate automatically upon the expiration or earlier termination of the Declaration.

13.3 Anything in this Agreement to the contrary notwithstanding, no breach of this Agreement shall defeat or render invalid the lien of any mortgage or deed of trust made in good faith for value, but this Agreement shall be binding upon, and be effective against, any Owner whose title is acquired by foreclosure, trustee's sale or otherwise.

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

13.5 This Agreement may not be modified in any respect whatsoever or terminated, in whole or in part, except with the consent of the Owners of the Parcels containing ninety percent (90%) of the total square footage of Building Area in the Shopping Center at the time of such modification or termination, and then only by written instrument duly executed and acknowledged by all of the required Owners, duly recorded in the office of the recorder of the county in which the Shopping Center is located. No modification or termination of this Agreement shall affect the rights of any Lienholder unless the Lienholder consents in writing to the modification or termination. In addition, the City of Grand Junction shall be required to approve modifications or terminations which substantially change the maintenance standards of Section 2 or the enforcement provisions of Sections 9 and 10.

13.6 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 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 Owner, then that Parcel shall not be entitled to vote. In the event a Parcel is not entitled to vote, its consent or approval shall not be necessary and the total square footage of Building Area located on said Parcel shall be disregarded for the purpose of computing the percentage requirement set forth in Section 13.5. Except as otherwise set forth in Section 13.5, 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 Agreement to the contrary notwithstanding.

13.7 All notices given pursuant to this Agreement 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 charge 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 in the county in which the Shopping Center is located. All notices to First Party, Second Party or Albertson's shall be sent to the person and address set forth below:

First Party: Orchard Group, Ltd.
c/o J. Richard Livingston
P.O. Box 398
Grand Junction, CO 81502

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 Agreement shall be deemed given upon receipt.

For the purpose of this Agreement, the term "receipt" shall mean the earlier of any of the following: (i) the date of delivery of the notice or other document 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 this Section, 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.

14. Intentionally Deleted.

15. Severability.

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

16. Not a Partnership.

16.1 The provisions of this Agreement 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.

17. Captions and Headings.

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

18. Entire Agreement.

18.1 This Agreement 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 Agreement shall be construed as a whole and not strictly for or against any party.

19. Construction.

19.1 In construing the provisions of this Agreement and whenever the context so requires, the use of a gender shall include all other genders, the use of the singular shall include the plural, and the use of the plural shall include the singular.

20. Joint and Several Obligations.

20.1 In the event any party hereto is composed of more than one person, the obligations of said party shall be joint and several.

21. Recordation.

21.1 This Agreement shall be recorded in the office of the recorder of the county in which the Shopping Center is located.

22. Master Lease.

22.1 Notwithstanding anything to the contrary contained in this Agreement, it is expressly understood and agreed as follows: Ninth Cheltenham Properties, Inc., its successors and/or assigns (hereinafter "Master Landlord"), has a prior interest in a portion of the Shopping Center by virtue of that certain "Ground Lease" dated January 1, 1970 originally entered into between Frank Jaros, Jr., Earnest A. Jaros and Tekla Flash, as Landlord, and Albertson's, Inc., a Delaware corporation, as Tenant. Said Ground Lease and buildings located thereon were respectively assigned and conveyed by Albertson's, Inc. to Master Landlord. Master Landlord thereafter leased the buildings and subleased the property which is the subject of the Ground Lease to Albertson's, Inc., pursuant to that certain Lease and Sublease Agreement

dated November 9, 1970 between Master Landlord and Albertson's, Inc., recorded December 23, 1970 in Book 953 at Page 768 of the Official Records of Mesa County, Colorado ("Master Lease"). It is understood and agreed that this Agreement is subject and subordinate to any interest of Master Landlord in the buildings and the real property covered by the Ground Lease and its successors or assigns other than interests currently held or to be held by the parties hereto.

23. Third Party Beneficiary.

23.1 It is understood and agreed that the City of Grand Junction, Colorado is a third party beneficiary of this Common Area Maintenance Agreement to the extent of the Owners and/or Maintenance Director's obligations herein to maintain the Shopping Center under Articles 2.1, 5, 11.1 and 12.1 hereof. In the event that the Maintenance Director and/or Owner defaults (as defined in Section 9.2 or 9.3 hereof) in the performance of any said obligation to maintain the Shopping Center, the City of Grand Junction shall have all rights and remedies to enforce said maintenance obligations against the Maintenance Director or Owner, as the case may be, by curing said default and billing each Owner its pro rata share of the actual cost thereof in accordance with Article 7 hereof. If such Owner fails to pay such share, the City of Grand Junction shall be deemed the "Curing Party" and shall have the rights and remedies of a Curing Party against said defaulting party set forth in Section 9.1 and 10 hereof with the right to recover reasonable attorney's fees in accordance with Section 9.4 hereof.

EXECUTED as of the day and year first above written.

**Albertson's, Inc.,
a Delaware corporation**

**FIRST PARTY:
Orchard Group, Ltd.,
a Colorado limited partnership**

cjm
BY: Thomas L. Salbin
Senior Vice President

BY: Richard Livingston

BY: Kevin A. Mumby

Consented and Agreed to

City of Grand Junction, Colorado

BY: Maureen Achen

STATE OF IDAHO)
) ss.
County of Ada)

On this 15th day of May, 1990, before me, the undersigned, a Notary Public in and for said State, personally appeared Thomas R. Saldin, to me known to be a Senior Vice President 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 and that the seal affixed is the corporate seal of said corporation.

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

My commission expires:

8-21-92

Karen Green
Notary Public in and for the
State of Idaho.
Residing at Boise, Idaho.

STATE OF Colorado)
County of Mesa) ss.

On this 16th day of May, 1990, before me, the undersigned, a Notary Public in and for said State, personally appeared Keith G. Mumby and J. Richard Livingston, to me known to be the general and partners, respectively, of Orchard Group, Ltd., 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 partnership, for the uses and purposes therein mentioned, and on oath stated that they are 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:

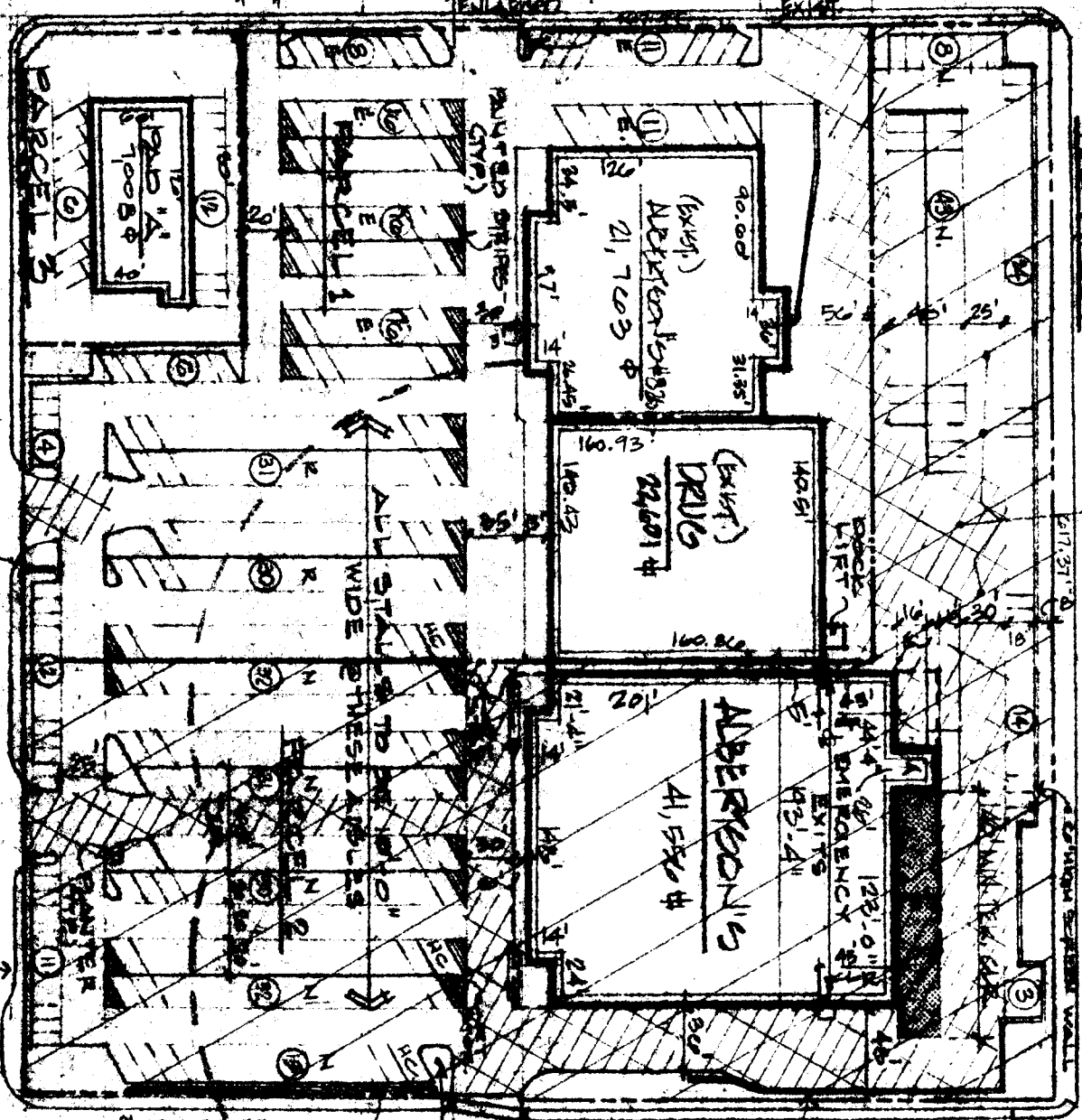
My Commission Expires May 29, 1993

[Signature]
Notary Public in and for the
State of Colorado
Residing at Orchard Ltd.

1 DENOTES PARCEL 2

12th STREET

ORCHARD AVE. 10' EXIST.



EXISTING PAVEMENT SIGN

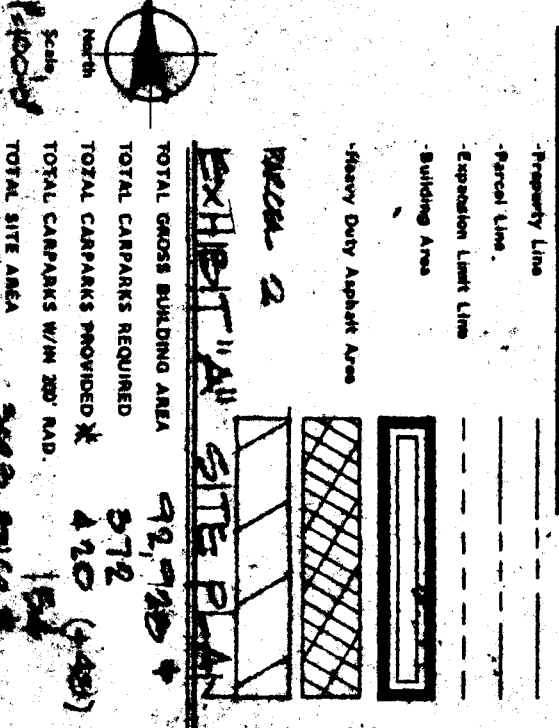
EXISTING SIGN

MESA AVENUE

GENERAL NOTES

- Drawn w/out Benefit of Survey
- No Truckwells, Natural Dock Only
- Parking Requirements: 1500/1000 NET BUILDING AREA.
- Building setbacks: FRONT - 45' SIDE SETBACK - 10' (OPERATIONAL)
- Landscape Requirements: 60% OF FRONT YARD SETBACKS (NORTH ON INTERIOR)
- Zoning Requirement: Existing - B-3 & Residential Required - PD (PLANNED BUSINESS)

LEGEND



Scale: 1/4" = 10'-0"
 North
 TOTAL GROSS BUILDING AREA 79,775 +
 TOTAL CARPARKS REQUIRED 372
 TOTAL CARPARKS PROVIDED 410 (48%)
 TOTAL CARPARKS W/IN 200 RAD. 154
 TOTAL SITE AREA 300,250 +

* N. New
 B. Existing
 R. Reserve

DATE	BY	APPROVED
04/10/00
05/15/00
07/10/00
08/10/00
09/10/00
10/10/00
11/10/00
12/10/00

REVISIONS
 1-4-00 ML
 MARKED TO
 EXHIBIT 'A'
 DATE: 04/10/00
 REV. NO. 01
 REVISION: ADD
 PARCEL LINE
 TO SHOW
 EXISTING
 BUILDING
 FOOTPRINT
 DATE: 05/15/00
 REV. NO. 02
 REVISION: ADD
 PARCEL LINE
 TO SHOW
 EXISTING
 BUILDING
 FOOTPRINT
 DATE: 07/10/00
 REV. NO. 03
 REVISION: ADD
 PARCEL LINE
 TO SHOW
 EXISTING
 BUILDING
 FOOTPRINT

SITE PLAN



PROJECT
 12th STREET
 &
 ORCHARD AVE
 GARDEN
 VILLAGE,
 CARPARK
 STORE NO.
 # 8222

Drawn By: PJC
 Checked By: PJC
 Date: 5-15-00
 Sheet 1 of 1
 No.

SCHEDULE I

LEGAL DESCRIPTION - PARCEL 1

A PARCEL OF LAND BEING A PORTION OF BLOCK NO. 2, OVERHILL ANNEX, CITY OF GRAND JUNCTION, COUNTY OF MESA, STATE OF COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID BLOCK NO. 2, SAID POINT BEING THE TRUE POINT OF BEGINNING; THENCE SOUTH 00°03'50" WEST ALONG THE EAST LINE OF SAID BLOCK NO. 2 A DISTANCE OF 368.36 FEET; THENCE SOUTH 89°59'00" WEST A DISTANCE OF 491.68 FEET TO A POINT ON THE WEST LINE OF SAID BLOCK NO. 2, SAID POINT ALSO BEING ON THE EAST RIGHT OF WAY LINE OF 12TH STREET; THENCE NORTH 00°00'40" WEST ALONG THE WEST LINE OF SAID BLOCK NO. 2 AND ALONG THE EAST RIGHT OF WAY LINE OF SAID 12TH STREET A DISTANCE OF 188.39 FEET TO THE SOUTHWEST CORNER OF PARCEL 2 AS RECORDED IN BOOK 1296 AT PAGE 837, MESA COUNTY RECORDS; THENCE NORTH 89°59'00" EAST ALONG THE SOUTH LINE OF SAID PARCEL 2 A DISTANCE OF 125.01 FEET TO THE SOUTHEAST CORNER OF SAID PARCEL 2; THENCE NORTH 00°00'40" WEST ALONG THE EAST LINE OF SAID PARCEL 2 A DISTANCE OF 179.97 FEET TO THE NORTHEAST CORNER OF SAID PARCEL 2, SAID POINT ALSO BEING ON THE NORTH LINE OF SAID BLOCK NO. 2 OVERHILL ANNEX AND ON THE SOUTH RIGHT OF WAY LINE OF ORCHARD AVENUE; THENCE NORTH 89°59'00" EAST ALONG THE NORTH LINE OF SAID BLOCK NO. 2 AND ALONG THE SOUTH RIGHT OF WAY LINE OF SAID ORCHARD AVENUE A DISTANCE OF 367.15 FEET TO THE TRUE POINT OF BEGINNING. CONTAINING 158,705 SQUARE FEET OR 3.6434 ACRES MORE OR LESS.

EXCEPT THAT PORTION DEDICATED TO THE CITY OF GRAND JUNCTION FOR PUBLIC RIGHT-OF-WAY AS SHOWN ON THE PLAT OF REPLAT BLOCKS 1 & 2 OVERHILL ANNEX RECORDED 7-27-90, 1990 UNDER RECEPTION NO. 1547588,

NOW KNOWN AS LOT 1, REPLAT OF BLOCKS 1 & 2 OVERHILL ANNEX, A RE-SUBDIVISION OF THE CITY OF GRAND JUNCTION, THE PLAT OF WHICH IS RECORDED 7-27-90, 1990 UNDER RECEPTION NO. 1547588, COUNTY OF MESA, STATE OF COLORADO.

LEGAL DESCRIPTION - PARCEL 2

A PARCEL OF LAND BEING A PORTION OF BLOCK NO. 1 AND BLOCK NO. 2, OVERHILL ANNEX, CITY OF GRAND JUNCTION, COUNTY OF MESA, STATE OF COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHEAST CORNER OF SAID BLOCK NO. 2, SAID POINT BEING THE TRUE POINT OF BEGINNING; THENCE NORTH 89°59'00" EAST ALONG THE NORTH LINE OF SAID BLOCK NO. 1 AND ALONG THE SOUTH RIGHT OF WAY LINE OF ORCHARD AVENUE A DISTANCE OF 100.01 FEET TO THE NORTHEAST CORNER OF SAID BLOCK NO. 1, SAID POINT ALSO BEING ON THE WEST RIGHT OF WAY LINE OF 13TH STREET; THENCE SOUTH 00°03'50" WEST ALONG THE EAST LINE OF SAID BLOCK NO. 1 AND ALONG THE WEST RIGHT OF WAY LINE OF SAID 13TH STREET A DISTANCE OF 617.24 FEET TO THE SOUTHEAST CORNER OF SAID BLOCK NO. 1, SAID POINT ALSO BEING ON THE NORTH RIGHT OF WAY LINE OF MESA AVENUE; THENCE SOUTH 89°57'05" WEST ALONG THE SOUTH LINE OF SAID BLOCK NO. 1 AND ALONG THE NORTH RIGHT OF WAY LINE OF SAID MESA AVENUE A DISTANCE OF 306.36 FEET; THENCE NORTH 00°01'01" WEST A DISTANCE OF 7.50 FEET; THENCE SOUTH 89°57'05" WEST, 7.50 FEET NORTH OF AND PARALLEL WITH THE SOUTH LINE OF SAID BLOCK NO. 1 A DISTANCE OF 285.00 FEET TO A POINT ON THE WEST LINE OF SAID BLOCK NO. 1, SAID POINT ALSO BEING ON THE EAST RIGHT OF WAY LINE OF 12TH STREET; THENCE NORTH 00°00'40" WEST ALONG THE WEST LINE OF SAID BLOCK NO. 1 AND BLOCK NO. 2 AND ALONG THE EAST RIGHT OF WAY LINE OF SAID 12TH STREET A DISTANCE OF 241.71 FEET; THENCE NORTH 89°59'00" EAST A DISTANCE OF 491.68 FEET TO A POINT ON THE EAST LINE OF SAID BLOCK NO. 2; THENCE NORTH 00°03'50" EAST ALONG THE EAST LINE OF SAID BLOCK NO. 2 A DISTANCE OF 368.36 FEET TO THE TRUE POINT OF BEGINNING. CONTAINING 182,019 SQUARE FEET OR 4.1786 ACRES MORE OR LESS.

EXCEPT THAT PORTION DEDICATED TO THE CITY OF GRAND JUNCTION FOR PUBLIC RIGHT-OF-WAY AS SHOWN ON THE PLAT OF REPLAT BLOCKS 1 & 2 OVERHILL ANNEX RECORDED 7-27-90, UNDER RECEPTION NO. 1547588,

NOW KNOWN AS LOT 2, REPLAT OF BLOCKS 1 & 2 OVERHILL ANNEX, A RE-SUBDIVISION OF THE CITY OF GRAND JUNCTION, THE PLAT OF WHICH IS RECORDED 7-27-90, 1990 UNDER RECEPTION NO. 1547588, COUNTY OF MESA, STATE OF COLORADO.

SCHEDULE I Cont'd.

LEGAL DESCRIPTION - PARCEL 3

A PARCEL OF LAND BEING A PORTION OF PARCEL 2 AS RECORDED IN BOOK 1296 AT PAGE 837, MESA COUNTY RECORDS, ALSO BEING A PORTION OF BLOCK NO. 2, OVERHILL ANNEX, CITY OF GRAND JUNCTION, COUNTY OF MESA, STATE OF COLORADO, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SAID BLOCK NO. 2 AND SAID PARCEL 2; THENCE NORTH 89°59'00" EAST ALONG THE NORTH LINE OF SAID BLOCK NO. 2 AND SAID PARCEL 2 AND ALONG THE SOUTH RIGHT OF WAY LINE OF ORCHARD AVENUE A DISTANCE OF 15.00 FEET TO THE TRUE POINT OF BEGINNING; THENCE CONTINUING NORTH 89°59'00" EAST ALONG THE NORTH LINE OF SAID BLOCK NO. 2 AND SAID PARCEL 2 AND ALONG THE SOUTH RIGHT OF WAY LINE OF SAID ORCHARD AVENUE A DISTANCE OF 110.01 FEET TO THE NORTHEAST CORNER OF SAID PARCEL 2; THENCE SOUTH 00°00'40" EAST ALONG THE EAST LINE OF SAID PARCEL 2 A DISTANCE OF 179.97 FEET TO THE SOUTHEAST CORNER OF SAID PARCEL 2; THENCE SOUTH 89°59'00" WEST ALONG THE SOUTH LINE OF SAID PARCEL 2 A DISTANCE OF 125.01 FEET TO A POINT ON THE WEST LINE OF SAID BLOCK NO. 2, SAID POINT BEING THE SOUTHWEST CORNER OF SAID PARCEL 2, SAID POINT ALSO BEING ON THE EAST RIGHT OF WAY LINE OF 12TH STREET; THENCE NORTH 00°00'40" WEST ALONG THE WEST LINE OF SAID BLOCK NO. 2 AND SAID PARCEL 2 AND ALONG THE EAST RIGHT OF WAY LINE OF SAID 12TH STREET A DISTANCE OF 164.97 FEET; THENCE NORTH 44°59'10" EAST A DISTANCE OF 21.21 FEET TO THE TRUE POINT OF BEGINNING. CONTAINING 22,385 SQUARE FEET OR 0.5139 ACRES MORE OR LESS.

EXCEPT THAT PORTION DEDICATED TO THE CITY OF GRAND JUNCTION FOR PUBLIC RIGHT-OF-WAY AS SHOWN ON THE PLAT OF REPLAT BLOCKS 1 & 2 OVERHILL ANNEX RECORDED 7-27-90, 1990 UNDER RECEPTION NO. 1547588,

NOW KNOWN AS LOT 3, REPLAT OF BLOCKS 1 & 2 OVERHILL ANNEX, A RE-SUBDIVISION OF THE CITY OF GRAND JUNCTION, THE PLAT OF WHICH IS RECORDED 7-27-90, 1990 UNDER RECEPTION NO. 1547588, COUNTY OF MESA, STATE OF COLORADO.