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File 1989-0040

Name: Albertson's / Osco - 1830 12th Street - Rezone from B-3 to RSF-8

S c a n n e d	<p>A few items are denoted with an asterisk (*), which means they are to be scanned for permanent record on the in some instances, not all entries designated to be scanned by the department are present in the file. There are also documents specific to certain files, not found on the standard list. For this reason, a checklist has been provided.</p> <p>Remaining items, (not selected for scanning), will be marked present on the checklist. This index can serve as a quick guide for the contents of each file.</p> <p>Files denoted with (**) are to be located using the ISYS Query System. Planning Clearance will need to be typed in full, as well as other entries such as Ordinances, Resolutions, Board of Appeals, and etc.</p>				
X	X	Table of Contents			
X		Review Sheet Summary			
		Application Form			
		Review Sheets			
X		Receipts for fees paid for anything			
		*Submittal checklist			
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		Reduced copy of final plans or drawings			
X		Reduction of assessor's map.			
		Evidence of title, deeds, easements			
X	X	*Mailing list to adjacent property owners			
		Public notice cards			
		Record of certified mail			
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		Appraisal of raw land			
		Reduction of any maps - final copy			
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		Other bound or non-bound reports			
		Traffic studies			
X	X	*Petitioner's response to comments			
		*Staff Reports			
		*Planning Commission staff report and exhibits			
		*City Council staff report and exhibits			
		*Summary sheet of final conditions			
		*Letters and correspondence dated after the date of final approval (pertaining to change in conditions or expiration date)			
<u>DOCUMENTS SPECIFIC TO THIS DEVELOPMENT FILE:</u>					
X	X	Action Sheet	X	X	Memo from Dave Tontoli to Don Newton re: signing inspection for finalization of Albertson's - 2/26/91
X	X	Review Sheet Summary	X	X	Letter from Katherine Portner t C. Lee Memford, Albertsons Inc. re: site inspection - deficiencies - 2/25/91
X		Review Sheets	X	X	Letter from Don Newton , Utility Engineer to Ron Rish, Armstrong Consultants, Inc. re: addressing review comments - 7/30/90
X	X	Development Summary	X		Letter from Ron Rish, Armstrong Consultants, Inc. to Don Newton re: design criteria - 5/15/90
X	X	Sign Permit - ** - 10/18/90	X	X	Resolution 37-89 - ** - 9/6/89
X		Public Notice Posting - 7/19/89	X	X	Planning Commission Minutes - ** - 6/6/89, 8/1/89
X		Letter from Dennis Wyatt, Architect, Wyatt & Assoc. to Karl Metzner re: landscaping plan - 6/4/90	X		Letter from Wyatt & Associates, AIA, PC to Karl Metzner re: authorization by Albertson's - 5/5/90
X	X	Signed petition for those opposed to rezone - 8/1/89	X	X	Letter from Don Newton to Planning Dept. re: comments - 7/31/89, 8/18/89
X		Development Application - 7/8/89, 7/19/89	X	X	Memo from Don Newton to Karl Metzner re: access to Mesa Avenue - 8/18/89
X		Elevation Map	X	X	Memo from Dan Wilson to Whom it may concern re: conditions to be imposed as conditions of final approval - 8/28/89
X		Development Improvements Agreement - unsigned by Engineer	X	X	Memo from Don Newton to Karl Metzner re: access - 9/5/89
X		Building Permit Guarantee Format	X		Elevation Map
X	X	Development Schedule			Landscape Plan

ALBERTSON'S - ORCHARD SHOPPING CENTER
GRAND JUNCTION, COLORADO

SITE LIGHTING PROGRAM NARRATIVE

1. Remove existing site lighting fixtures.
2. Prepare complete new site lighting program to meet Albertson's design criteria and neighborhood concerns.
3. Design Criteria:
 - a. State of the art site lighting.
 - b. Footcandle levels:
 - (1) General parking lot at 1 f.c. average.
 - (2) Main entry driveways 2 f.c. average.
 - (3) Albertson's building entrances at 2 f.c. average.
 - c. 400 watt & 1000 watt metallic halide luminaires.
 - d. Shut-off light patterns that do not spill over to adjacent residential properties.
 - e. Avoid glare.
 - f. Energy conservation.
 - g. Most efficient layout to meet criteria utilizing fewest poles at optimum mounting heights & keeping in scale with the proposed and existing buildings.
 - h. Optimum plan developed to meet lighting criteria and budget needs.
 - i. Alternate point by point computer photometric footcandle layouts will be developed for review and approval by Albertson's.
 - j. Rear service areas adjacent to residential properties to utilize directional flood lights directed away from these properties for non-glare program.

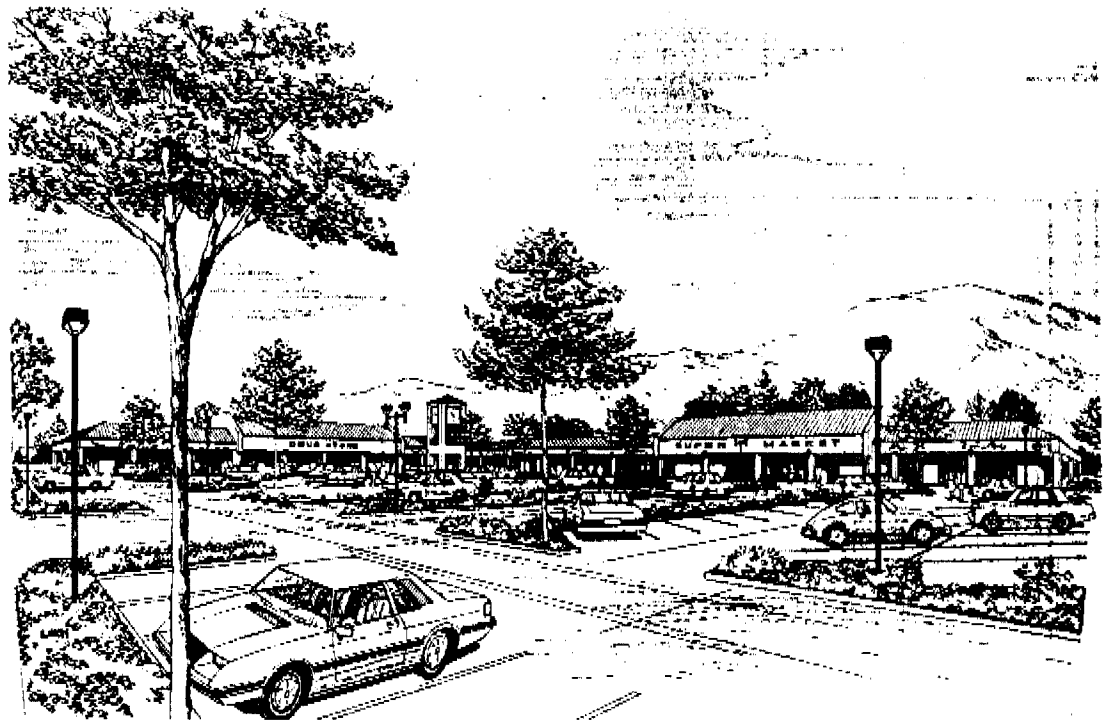
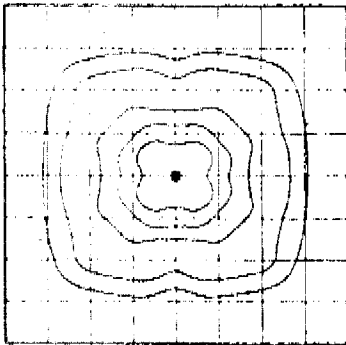
Please refer to the enclosed catalog for additional information. The "XIP" fixture or similar equal fixture will be included in the final construction documents.

Submitted By,
WYATT & ASSOCIATES, AIA, PC
ARCHITECTS AND PLANNERS

Concept: Performance at a Human Scale

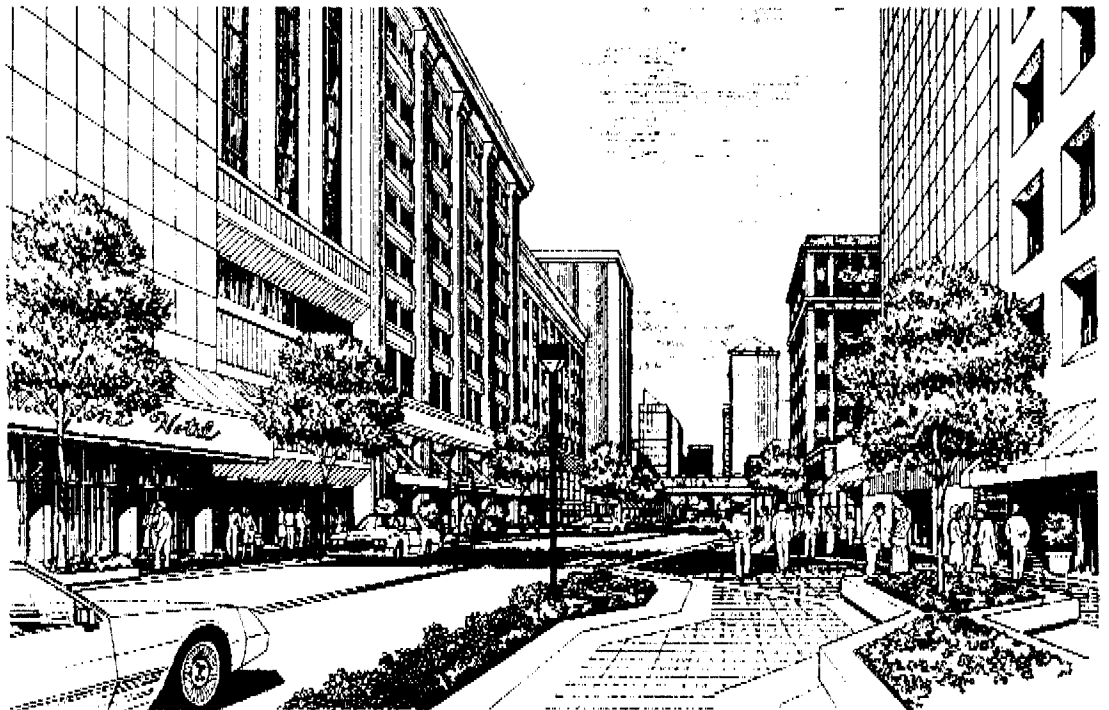
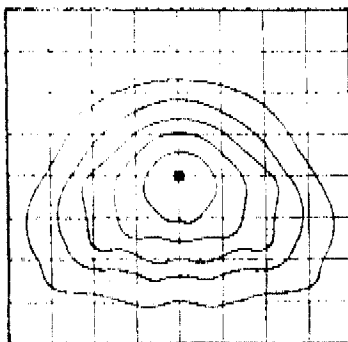
Area Lighting

Until now, performance in area lighting has meant large fixtures on tall poles. The technology of the SBC brings high performance down to an understandable scale, where architecture and landscape are not over-powered. A square light pattern makes possible excellent pole spacing at 8' to 20' mounting heights.



Street Lighting

For street lighting, urban renewal areas, malls or pathways, the SBC provides performance and elegant looks designed specifically to relate to the pedestrian. Low mounting heights keep the appropriate human scale in these areas. A highly efficient asymmetric light pattern is available for uniform coverage of the street when installed at the curb line.



3 Mounting Arrangements = 8 Light Patterns

Single Mount
Type V or Type III



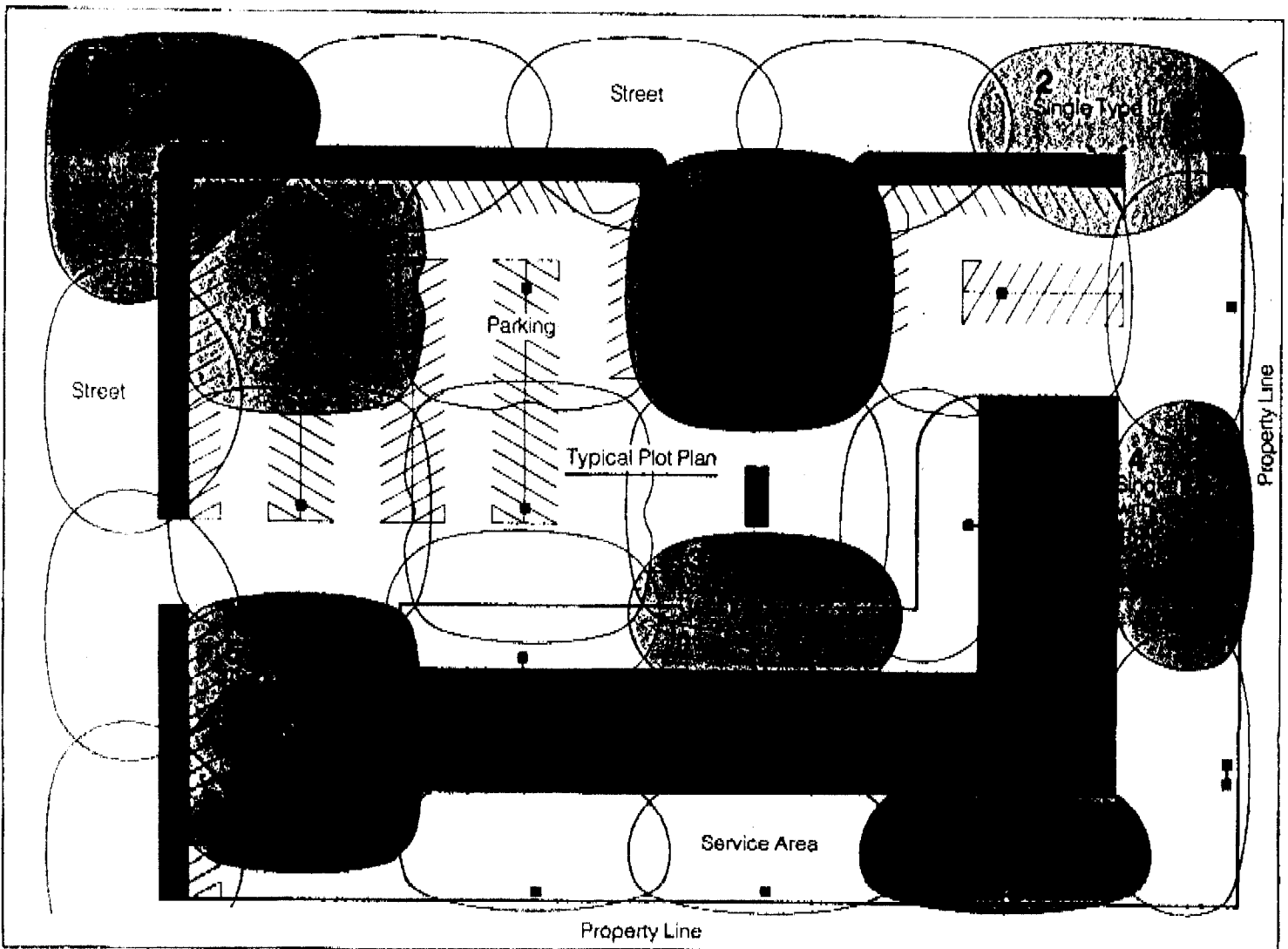
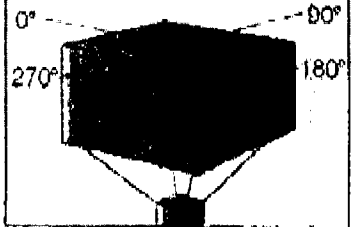
Twin Mount
Type V or Type III



Wall Mount
Type III Only









Note: Fixture can be mounted to pole or arm riser in any of 4 orientations 90° apart.



Property Line

Property Line

LANDSCAPE LEGEND

SYMBOL	DESCRIPTION / SIZE	QUANTITY	NOTES
	CONIFER TREES 6-8' AP = AUSTRIAN PINE	13	
	DECIDUOUS TREES 1-1/2' CA = COMMON ASH HL = HENRY LOGSLET	30	
	EXISTING LANDSCAPING		
	SHRUBS 3 GAL. TJ = TAMM JUNIPER P = POTENTILLAS	27	
	SOD GROUND COVER		
	LANDSCAPE BARK MULCH IN PLANTING BEDS OVER 3 MIL. POLY.		

LANDSCAPE NOTES:

1. ALL NEW LANDSCAPE AREAS SHALL BE IRRIGATED BY AUTOMATIC UNDERGROUND IRRIGATION SYSTEM.
2. ALL LANDSCAPING SHALL BE MAINTAINED BY THE DEVELOPER/OWNER PER COMMON AREA MAINTENANCE AGREEMENTS TO BE FILED AND RECORDED WITH THE COUNTY.

GRADING PLAN NOTE:

1. GRADES SHOWN FOR NEW ALBERTSONS BUILDING ARE SUBJECT TO CONDITIONS OF FINAL GRADING & DRAINAGE PLAN & REPORT PREPARED BY ARMSTRONG CONSULTANTS, INC, CIVIL ENGINEERS AS A PART OF FINAL REPEAT & REUSE PERMIT APPLICATIONS OR APPROVAL.

EXHIBIT "H" (1 of 2)

Richard L. & Linda Berkey 1215 Mesa Avenue Grand Junction, CO 81502	Harley W. Kirkeby Bette M. Kirkeby 1325 Mesa Avenue Grand Junction, CO 81501	Clarise J. Swenson 1252 Texas Ave. Grand Junction, CO 81501
Florence L. Howard 1225 Mesa Avenue Grand Junction, CO 81501	Cecil A. & Ruby B. Rorex 1315 Mesa Avenue Grand Junction, CO 81501	Harold J. Lekic Mary A. Lekic 310 Music Lane Grand Junction, CO 81505
Kay Wright 1235 Mesa Avenue Grand Junction, CO 81501	Jack L. Woods 1345 Mesa Avenue Grand Junction, CO 81501	Juanita A. Tomasi 1274 Texas Ave. Grand Junction, CO 81501
Charles R. Shaver Judith M. Shaver Rt. 1, Box 113 Montrose, CO 81401	Bertha L. Shaw 1035 Bunting Ave. Grand Junction, CO 81501	Tennie Ann Capps 1310 Texas Avenue Grand Junction, CO 81501
Virgil T. Brown Alice G. Brown 1265 Mesa Avenue Grand Junction, CO 81501	Harlien Perina, Trustee 606 Viewpoint Dr. Grand Junction, CO 81501	Ruth Pearlstein 1316 Texas Ave. Grand Junction, CO 81501
Florence Allen 1981 2325 Road Cedaredge, CO 81415	Randall V. Smith 1216 Texas Avenue Grand Junction, CO 81501	Daniel D. Tucker Nell P. Tucker 1330 Texas Avenue Grand Junction, CO 81501
Dean Blake Chambliss 1315 Mesa Avenue Grand Junction, CO 81501	Ernest M. Eggert 1248 Texas Ave. Grand Junction, CO 81501	Arthella Manspeaker 161 29 Road Grand Junction, CO 81503
Virgil R. Preston Lola A. Preston 1347 Orchard Avenue Grand Junction, CO 81501	Mesa College c/o State of Colorado Mesa College Grand Junction, CO 81501	Jean Jacques Monier Gisele Coursinoux 50 Avenue Borrighione Nice, France F.C. 00063
	Earl F. Hannebaum 1245 Mesa Avenue Grand Junction, CO 81501	

EXHIBIT "H" (2 of 2)

Phil E. Tesitor
1342 Hall Avenue
Grand Junction, CO 81501

REPRESENTATIVE:
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1165 So. Pennsylvania St.
Denver, CO 80210

Bill B. Ashcraft
1332 Hall Avenue
Grand Junction, CO 81501

REPRESENTATIVE:
Albertsons, Inc.
Real Estate Division
250 Parkcenter Blvd.
Boise, ID 83726

George A. Theisen
1333 Hall Avenue
Grand Junction, CO 81501

OWNER:
J. Richard Livingston
ORCHARD GROUP, LTD.
2808 North Avenue#400
Grand Junction, CO 81502

Larry D. Anderegg
Cheryl A. Anderegg
c/o Escrow Spec
P.O. Box 4370
Grand Junction, CO 81502

Kenneth J. Quellette
62425 E. J16 Road
Montrose, CO 81401

Fred E. Kaufman
1334 Mesa Avenue
Grand Junction, CO 81501

Richard C. Whitesell
Taeko Whitesell
1344 Mesa Avenue
Grand Junction, CO 81501

Gilbert W. Reddick
Nora E. Reddick
1354 Mesa Avenue
Grand Junction, CO 81501

PATTERSON

WELLINGTON

BOOKCLIFF AVE.

COLLEGE

THE SITE

N. 12TH ST.

N. 10TH ST.

CERRA

WALNUT

PINYON

ORCHARD

HALL

MESA

ELM

KENNEDY

BUNTING

SLEW

15TH

16TH

17TH

18TH

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VICINITY MAP

No Scale NORTH

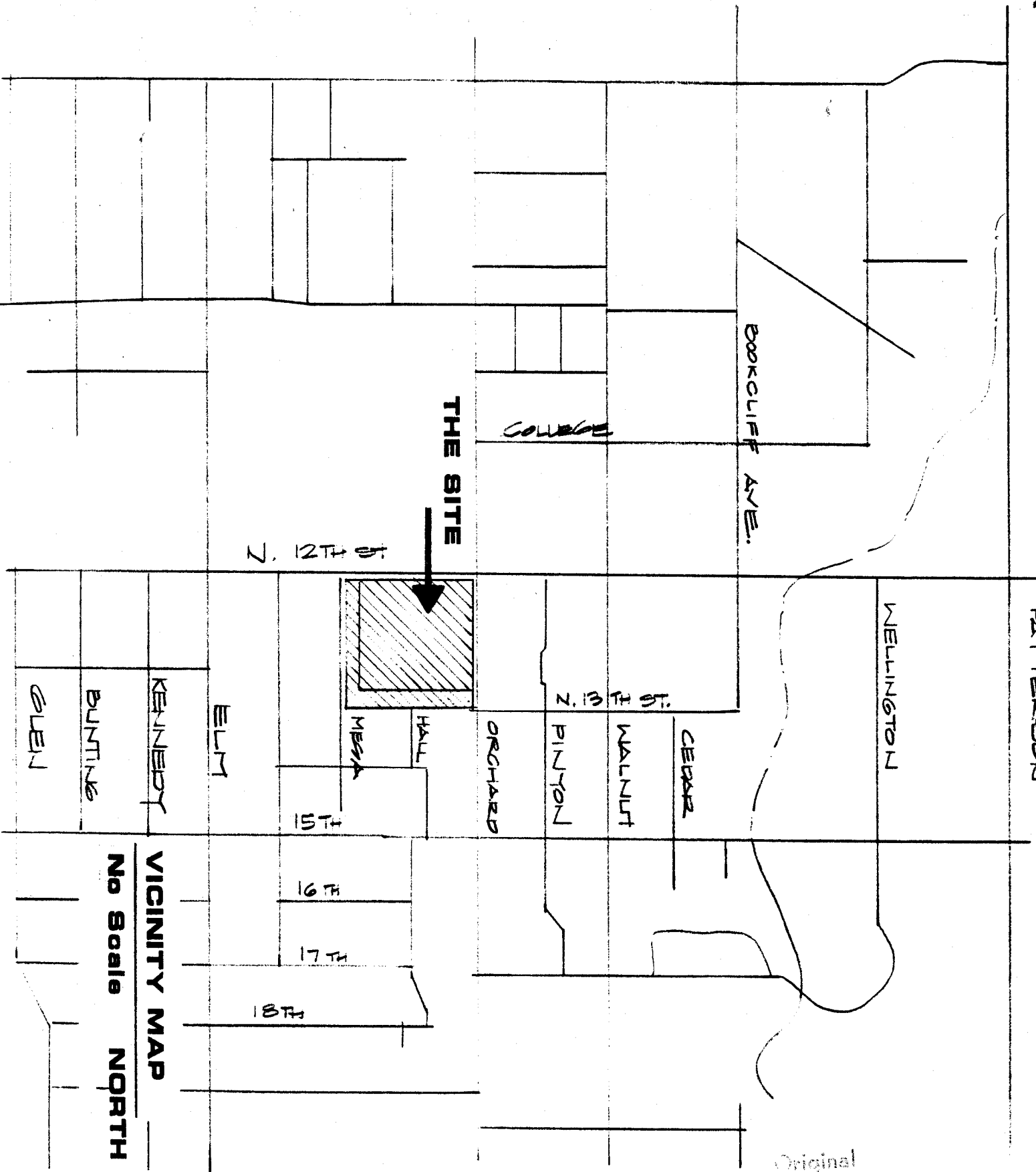


EXHIBIT "BD"

Symbol	Description
	12' - 0" PLANTING STRIP
	6" - 0" PLANTING STRIP
	3" - 0" PLANTING STRIP
	1" - 0" PLANTING STRIP
	0" - 0" PLANTING STRIP
	12' - 0" PLANTING STRIP
	6" - 0" PLANTING STRIP
	3" - 0" PLANTING STRIP
	1" - 0" PLANTING STRIP
	0" - 0" PLANTING STRIP

1. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE NOTED.

2. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE NOTED.

3. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE NOTED.

4. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE NOTED.

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6. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE NOTED.

7. ALL DIMENSIONS ARE TO FACE UNLESS OTHERWISE NOTED.

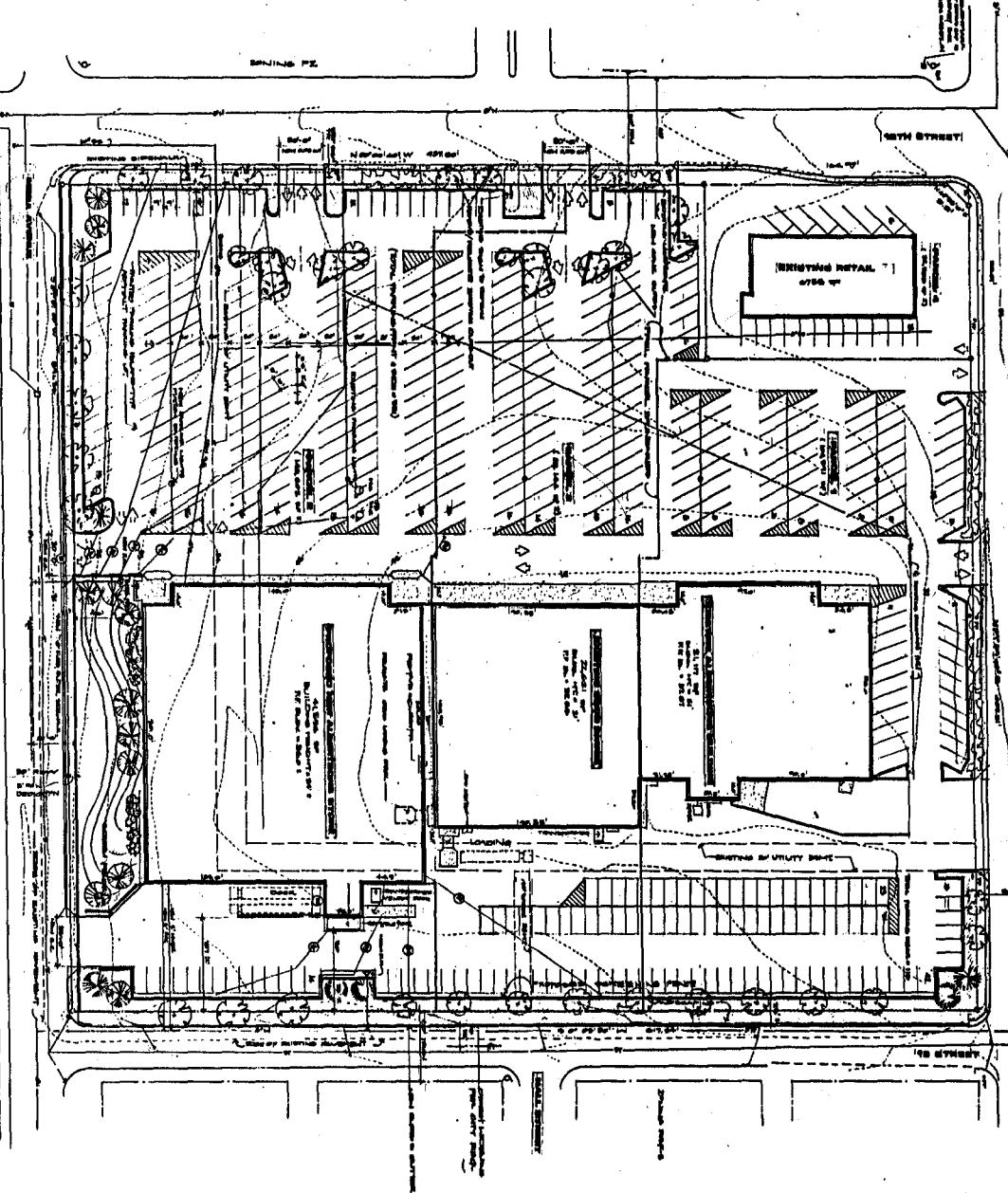
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PB (PLANNED BUSINESS) SITE PLAN

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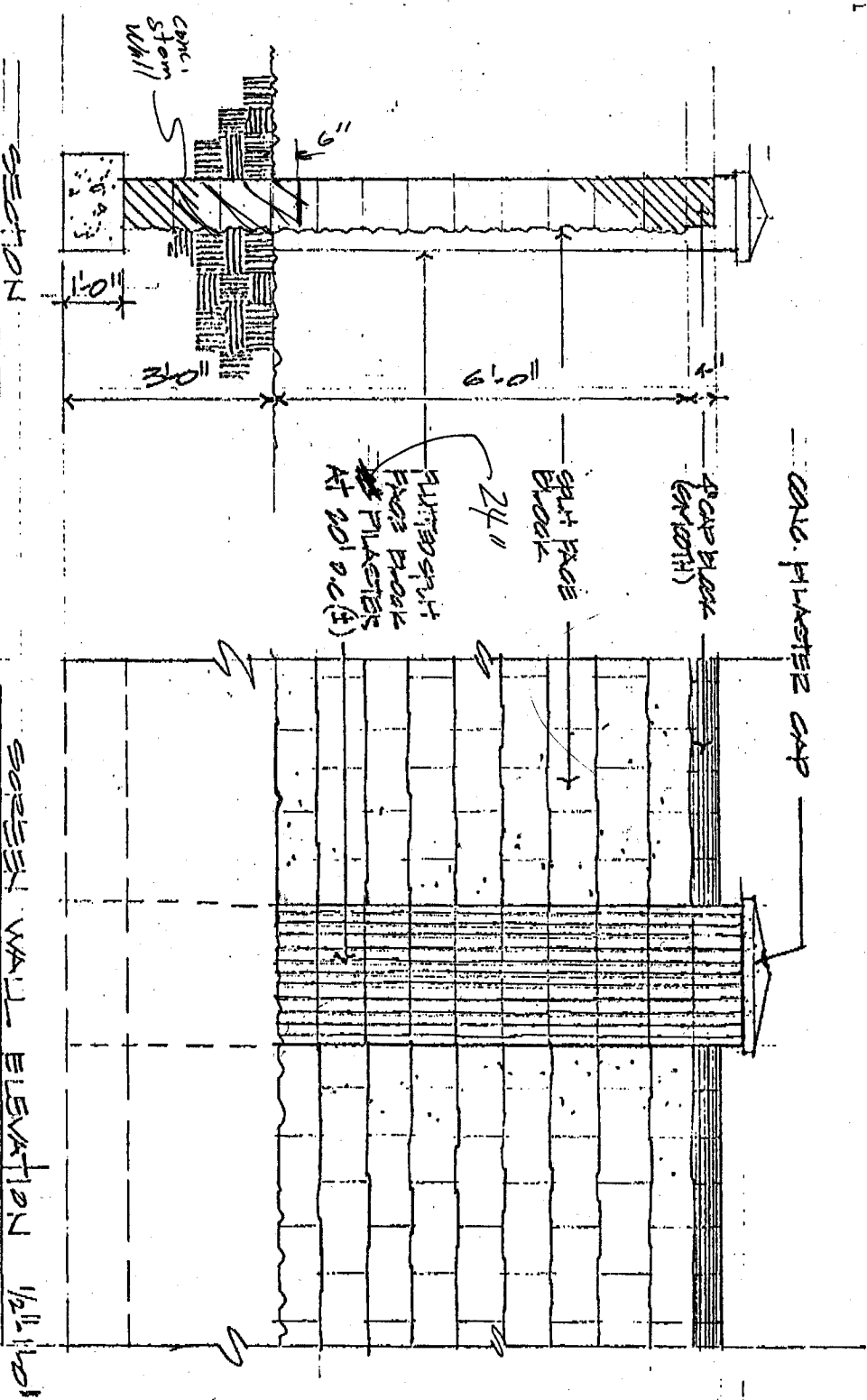
PB (PLANNED BUSINESS) SITE PLAN
ALBERTSONS/OSCOR SHOPPING CENTER
12th Street & Orchard Avenue
GRAND JUNCTION, COLORADO

WYATT ASSOCIATES, P.A. ARCHITECTS AND PLANNERS
 1600 W. UNIVERSITY BL. DENVER, COLORADO 80202 (303) 441-1717

Drawn By:	
Checked By:	
Project No.:	

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1. PLASTER 24" WIDE INSIDE OF 12"
2. CONCRETE BELOW GROUND TO ±6" ABOVE



SECTION

SOREX WALL DETAIL
 SOREX WALL ELEVATION 1/2" = 1'-0"

ALTERNATE DETAIL, SOREX WALL DETAIL

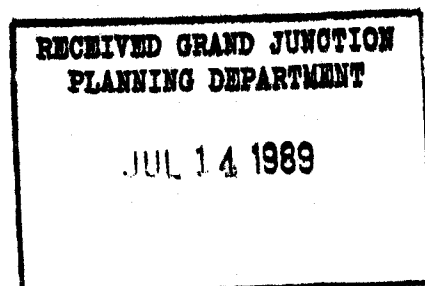
EXHIBIT "B"

IMPACT STATEMENT / PROJECT NARRATIVE

Albertson's Shopping Center
12th Street & Mesa Avenue
Grand Junction, Colorado

1. **GENERAL PROPOSAL:** This proposal is to rezone the existing shopping center from B-3 to PB and at the same time rezone the existing undeveloped RSF-8 properties which are contiguous to the east and south property lines of the existing B-3 Albertsons/Osco shopping center to the PB zone in order to allow for the construction of a new Albertsons supermarket building adjacent to the south wall of the existing Osco building.
2. **LOCATION:** This proposal includes all of Block 1 and Block 2 of the Overhill Annex subdivision, generally located southeast of the intersection of 12th Street and Orchard Avenue.
3. **TIMING/PHASING:** The project will be developed in the Winter of 1990 with anticipated completion in the Spring of 1990. Phasing will include the construction of the new Albertsons supermarket as the first phase followed by the redevelopment of the existing parking lot as the second phase.
4. **IMPACTED AREA:** The area most impacted will be the existing single family residences which are adjacent to this site along the south side of Mesa Avenue and east side of 13th Street.
5. **COMPATIBILITY:** The existing shopping center has been located on this site for many years and this proposal provides for a natural expansion of this facility in order to provide for an updated "state of the art" in-town supermarket which can better serve the needs of the area. The residential portion of the property proposed for rezoning has never been developed although a proposal was made a few years ago for a major expansion of this center to include additional offices, retail and parking. This proposal was approved but due to market conditions the project was not developed.

Development of these existing vacant properties with RSF-8 uses is not practical due to current market conditions and due to the proximity of these properties to the existing B-3 uses currently on the site. This proposal will allow for the natural expansion of this shopping center to Mesa Avenue and 13th Street thus allowing the streets themselves to provide a natural buffer between the commercial and residential uses.



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IMPACT STATEMENT/PROJECT NARRATIVE

Page Two

6. **SERVICES:** All required services are either already in place on the site or will require some modification to provide for this expansion.
7. **SPECIAL CONSIDERATIONS:** The major impact of this proposal will be in relationship to the increased density of development and traffic on Mesa Avenue and to a lesser degree on 13th Street. Factors to mitigate these impacts will include: (1) the widening of Mesa Avenue as required by the City of Grand Junction, (2) provisions for landscaping, fencing and other buffering necessary along the south and east sides of the enlarged shopping center, (3) tenant imposed restrictions on time of truck deliveries and (4) redevelopment of existing points of access to the site to provide for better control, and (5) the recording of a common area maintenance agreement to insure the perpetual maintenance of the entire shopping center.
8. **CRITERIA:** The following are responses to the criteria for rezoning as established by the City of Grand Junction:
(These responses are in specific relationship to the RSF-8 zone district.)
 1. **Was the existing zone an error at the time of adoption?**
At the time the original zone (B-3 and RSF-8) was established for this area it was conceived that the single family lots (RSF-8) would back into the commercial property (B-3). This configuration would allow for little, if any, buffering between the zone districts and would cause these lots to be less desirable. With the current request the existing single family developments across Mesa and across 13th Street can be buffered by the existing streets and adequate landscaping and fencing adjacent to the proposed PB district can be provided.
 2. **Has there been a change in character in the area due to installation of public facilities, other zone changes, new growth trends, deterioration, development transitions, etc.?** As evidenced by the lack of development on the proposed property there has not been a demand for single family development on this property. The property remains an in-fill site in a developed area and becomes a natural extension of the existing shopping center.

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3. Is there an area or community need for the proposed rezone? This established shopping center has been well used over the years and has provided necessary services to the neighborhood. However, during the past several years marketing and merchandising of supermarkets has changed and it is no longer feasible for the existing supermarket to remain competitive without providing the expanded services and convenience that will be a part of a larger building proposed on this site.
4. Is the proposed rezone compatible with the surrounding area or will there be adverse impacts? The intent of this proposed rezoning is to change the existing B-3 and RSF-8 districts to PB (Planned Business) in order to provide for the redevelopment and expansion of the existing shopping center utilizing the planning options available thru a specific site plan to be reviewed and approved by the City Planning Commission. This rezoning provides for a very natural extension of the existing uses and can be very compatible with the adjacent developments thru specific site development proposals made a part of the PB site plan approval. The areas of potential adverse impact related to access, screening and landscaping can be adequately addressed through site design.
5. Will there be benefits derived by the community or area, by granting the proposed rezone? The granting of this request will provide the community with a viable and competitive "close-in" neighborhood shopping center. The project will complete the development of vacant property in the area, provide the necessary public facilities and provide competitive shopping facilities. In addition there will short term economic gains derived through the construction of the project wherein local construction companies will be provided the opportunity to bid and construct the facility. Long term economic gains will be derived through additional jobs created by the larger facility and greater sales tax revenues created through increased sales.
6. Is the proposal in conformance with the policies, intents and requirements of this Code and other adopted plans and policies? This project will be an in-fill commercial development in an existing commercial area utilizing vacant property which cannot be developed in other viable alternate uses.

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7. Are adequate facilities available to serve development for the type and scope suggested by the proposed zone? If utilities are not available could they be reasonably extended? Basic utility services are currently in place and the developer will be responsible for modifications which may be required. The developer will also be responsible for the improvement of adjacent street and access improvements which are already partially in place.

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EXHIBIT "O"

ALBERTSONS/OSCO SHOPPING CENTER
12TH & ORCHARD
GRAND JUNCTION, COLORADO

DEVELOPMENT SCHEDULE:

1. Submittal of PB rezoning application----- July 11, 1989
2. Planning Commission public hearing----- August 10, 1989
3. City Council, 1st reading----- August 16, 1989
4. City Council, 2nd reading----- September 6, 1989
5. Completion of construction drawings----- December 15, 1989
6. Submit for building permit----- January 3, 1990
7. Begin construction----- January 17, 1990
8. Project completion/occupancy----- July 13, 1990

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EXHIBIT "Y"

ALBERTSONS/OSCO SHOPPING CENTER
12TH & ORCHARD
GRAND JUNCTION, COLORADO

TRAFFIC ANALYSIS:

The development of the proposed (PB) Albertsons/Osco Shopping Center involves the addition of a 41,556 s.f supermarket on an enlarged site at the S.E. corner of 12th Street and Orchard Avenue. The existing RSF-8 undeveloped single family lots on the east and south of the existing shopping center are proposed to be added to the existing ground of the shopping center in order to accomplish this addition. The total floor area of the developed center will be 92,049 s.f.

As a part of this development, the developer proposes to completely modify the existing curb cut on 12th Street which currently serves as the main entrance to this center. This curb cut is presently an island divided access point which provides 3 directional curb cuts as a part of the entry. This curb cut will be reduced in size thus eliminating the current confusion which exists with traffic in this location. There are presently 3 additional curb cuts south of this main entrance which partially serve the existing center as well as serve the existing businesses at the N.E. corner of 12th & Mesa. These buildings together with their curb cuts will be removed. A single 30' curb cut serving the center will be generally located in this area thus providing a second major entrance point to the center which will be separated from the other entrance by a distance of approximately 185'. In this manner, two major separated curb cuts will serve the center from 12th Street. No changes to existing access from Orchard Avenue are contemplated at this time.

As a part of this development Mesa Avenue will be brought up to full City of Grand Junction standards by the addition of approximately 17' in additional pavement width. A new concrete curb, gutter and attached sidewalk will be placed on the north side of this widened street. One new 30' wide curb cut will be located on Mesa Avenue approximately 280' east of 12th Street. A second curb cut will be located on Mesa approximately 60' west of 13th. This curb cut will be restricted to delivery vehicles only and will primarily be utilized by exiting tractor/trailer vehicles. Albertson's estimates that approximately 9 large trucks per week will deliver to the store. Truck access to this location will be restricted to acceptable daylight hours as required by the City of Grand Junction thus reducing the impact on the adjacent neighborhood. The rear service area of this shopping center will be signed in such a manner as to require all other service vehicles to exit via the curb cuts on Orchard Avenue. In addition, the management of each of the retail uses will be required to instruct all vendors to primarily utilize the Orchard

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Avenue curb cut. No access points will be allowed on 13th Street.

The majority of the traffic will enter and exit the site via the main curb cuts on 12th Street and existing curb cuts on Orchard Street. Obviously some traffic will enter and exit the center via the curb cut on Mesa Avenue, but due to the convenience of the 12th Street access points, the traffic on Mesa should be minimal. To accommodate this traffic as well as the service vehicle traffic Mesa Avenue will be constructed to full city standards.

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DECLARATION OF RESTRICTIONS

AND

GRANT OF EASEMENTS

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MARKED to show changes from
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DECLARATION OF RESTRICTIONS

AND GRANT OF EASEMENTS

THIS DECLARATION OF RESTRICTIONS AND GRANT OF EASEMENTS ("Declaration") is made as of the ____ day of _____, 19____, by and between Orchard Group, Ltd., a Colorado limited partnership ("First Party"), Osco Drug, Inc., a _____ corporation ("Second 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 which are from time to time covered by a building or other commercial structure.

(c) "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.

(d) "Common Area Maintenance Agreement": That certain Common Area Maintenance Agreement between the parties hereto which encumbers the Shopping Center and is recorded concurrently herewith.

(e) "Consenting Owners": The Owners (as defined below) of Parcels 1, 2 and 3 except that so long as Second Party is a "Tenant" occupying the building on Parcel 3, Second Party shall be the Consenting Owner of Parcel 3 for purposes of this Declaration.

(f) "Development Agreement": That certain Development Agreement between the parties hereto which encumbers the Shopping Center and is recorded concurrently herewith.

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(g) "Expansion Area": All those areas on Parcel ~~2~~ located within the "Expansion Limit Line" shown on Exhibit "A".

(h) "First Party": Orchard Group, Ltd.

(i) "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 non-structural components.

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

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

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

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

(n) "Prime Lessee": An Owner of a Parcel who sells said Parcel to an unaffiliated third party and thereafter enters into a net 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.

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

(p) "Second Party": Osco Drug, Inc., a Delaware corporation.

(q) "Service Facilities": Loading docks, trash enclosures, bottle storage areas and other similar service facilities.

(r) "Shopping Center": Parcels 1, 2, 3 and 4, collectively.

1.2 Parties: Albertson's is the Owner of Parcel 2; First Party is the Owner of Parcels 1 and 4 and is the owner of Parcel 3; Second Party is the successor Lessee under a Lease dated June 15, 1972 by and between Albertson's, Inc., a Delaware corporation, and Skaggs Companies, Inc., a Delaware corporation, covering Parcel 3. The Parcels are located at the southeast corner of the intersection of 12th Street and Orchard in the City of

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Grand Junction, County of Mesa, State of Colorado as shown on Exhibit "A" and more particularly described in Schedule I attached hereto.

1.3 Purpose: The parties plan to develop the Shopping Center as an integrated retail sales complex for the mutual benefit of all real property in the Shopping Center and, therefore, hereby establish the Restrictions.

1.4 Existing Leases on Parcel 4: Anything contained in this Declaration to the contrary notwithstanding, to the extent that the leases in existence on the date hereof on Parcel 4 encumbering the Shopping Center (the "Permitted Existing Leases") are inconsistent with or otherwise contravene the terms of this Declaration, the continuance of any such inconsistency, violation or contravention, and First Party's failure to cure same, shall not be deemed to constitute a default hereunder by First Party, and it is expressly agreed that this Declaration shall be subject to all of the leases in existence on the date hereof on Parcel 4 and that the tenants thereunder, and their successors and assigns, may continue to occupy and conduct operations in their respective premises pursuant to said leases; provided, however, First Party agrees that, except as otherwise hereinafter specifically provided, it will not extend or renew any of the said Permitted Existing Leases, and if and to the extent that any of the foregoing leases shall ever terminate or otherwise become ineffective, then this Declaration shall thereafter be superior to any and all such leases. Irrespective of the fact that this Declaration is subject to the Permitted Existing Leases, First Party covenants and agrees that it will in no event use or consent to, approve or authorize the use of any portion of the Shopping Center, or approve or authorize an assignment of a Permitted Existing Lease or the subletting of all or part of the premises covered by a Permitted Existing Lease, for a use which would contravene any provision of this Declaration to the extent that Landlord has any such right of consent, approval or authorization under any Permitted Existing Lease.

II. BUILDING AND COMMON AREA DEVELOPMENT

2.1 Building Location: All buildings and other structures (except those permitted in Section 2.2 below) shall be placed or constructed upon the Parcels only in the Building Areas; provided, however, that canopies, eaves and roof overhangs (including columns or posts supporting same), normal foundations, utility cabinets and meters, signs and doors for ingress and egress may project from the Building Area into the Common Area. All of the foregoing shall be constructed and maintained in accordance with all local, state and federal laws,

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rules and regulations applicable thereto. 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 by a one inch asphalt dust cap and kept weed free and clean at the Owner's sole expense until such time as buildings are constructed thereon.

2.2 Common Area: The Common Area is hereby reserved for the sole and exclusive use of all Owners of the Shopping Center, their tenants, contractors, employees, agents, customers, licensees and invitees and the subtenants, contractors, employees, agents, customers, licensees and invitees of such tenants. The Common Area may be used for vehicular driving, parking (except that there shall be no multi-level parking), pedestrian traffic, directional signs, sidewalks, walkways, landscaping, perimeter walls and fences, parking lot lighting, utilities and Service Facilities and for no other purpose unless otherwise specifically provided in this Declaration. No buildings or structures not shown on the Site Construction Documents approved pursuant to the Development Agreement shall be placed or constructed in the Common Area except pylon 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, sidewalks and, to the extent that they are located, and do not impede access, to the rear or sides of buildings, Service Facilities. The Common Area shall be constructed in accordance with the site plan attached hereto as Exhibit "A" and 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 by the Owner thereof, at said Owner's sole cost and expense, in accordance with a site plan approved by the Consenting Owners and maintained as improved Common Area. The sizes and arrangements of the Common Area improvements, including, without limitation, service drives and parking areas, striping, traffic directional arrows and signs, concrete bumpers, parking lot lighting, perimeter walls and fences, and landscaped areas, together with necessary planting, may not be changed without the prior written consent of the Consenting Owners; provided, however, that nothing contained in this Section 2.2 shall be in any way interpreted or construed to require the written consent of the Consenting Owners to the expansion of any building into the Expansion Area shown on Exhibit "A".

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2.3 Type and Design of Building:

(a) Each building in the Shopping Center, now and in the future, shall be of first quality construction and architecturally designed so that its exterior elevations (including, without limitation, signs and color) will be architecturally and aesthetically compatible and harmonious with all other buildings in the Shopping Center. No building may be constructed nor the exterior of any existing building changed in any way (including, without limitation, signs and color) without the prior written approval of the Consenting Owners as to the exterior elevations (including, without limitation, signs and color) of the building to be constructed or modified. The standard signs and logos of Albertson's and Second Party as they may exist from time to time and the opening, closing or relocation of any door, however, shall not require approval. Before the construction of any building or any modification of an existing building which requires approval is commenced, sufficient information shall be sent to the Consenting Owners to enable the Consenting Owners to make a reasonable determination as to the architectural and aesthetic compatibility of said building or modification with all other buildings in the Shopping Center. No Consenting Owner may arbitrarily or unreasonably withhold its approval of the proposed building or modification if it is architecturally and aesthetically compatible and harmonious with all other buildings in the Shopping Center. Each Consenting Owner must approve or disapprove the proposal within thirty (30) days after receipt of the proposal, and, if such Consenting Owner disapproves the proposal, it shall provide a written explanation in reasonable detail of its reasons for disapproval. If a Consenting Owner rejects or disapproves the proposal and fails to provide such explanation within the thirty (30) day period, such Consenting Owner shall be deemed to have approved same provided that, when the approval was sought, the one seeking the approval stated in writing to the one whose approval was sought that, if a disapproval with explanation was not made within the thirty (30) day period, approval would then be deemed to have been given. If the proposal is disapproved as provided herein, then an alternate proposal may be submitted, which alternate proposal shall be handled in the same manner as the initial proposal.

(b) No building shall be built in such a manner as to adversely affect the structural integrity of any other building in the Shopping Center.

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(c) All buildings on Parcels 1, 2 and 3 shall be single story with mezzanine permitted and shall not exceed thirty-one (31) feet in height. No building on Parcel 4 shall exceed one (1) story and 18 feet in height.

(d) Each Owner shall maintain or cause to be maintained the exterior of any building located on such Owner's Parcel(s) in a quality and condition comparable to that of first class shopping centers of comparable size and nature located in the same geographic area as the Shopping Center. All Service Facilities shall be attractively screened from view from the 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 the Shopping Center shall be effected as expeditiously as possible and in such a manner as not to unreasonably interfere, obstruct or delay (i) access to or from the Shopping Center, or any part thereof, 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 the Shopping Center, or (iii) the receiving of merchandise by any business in the Shopping Center including, without limitation, access to Service Facilities. Staging for the construction, replacement, alteration or expansion of any building, sign or Common Area improvements located in the Shopping Center including, without limitation, the location of any temporary buildings or construction sheds, the storage of building materials, and the parking of construction vehicles and equipment shall be limited to that portion of the Shopping Center approved in writing by the Consenting Owners. Unless otherwise specifically stated herein, the person contracting for the performance of such work ("Contracting Party") shall, at its sole cost and expense, promptly repair and restore or cause to be promptly repaired and restored to its prior condition all buildings, signs and Common Area improvements damaged or destroyed in the performance of such work.

(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 the Contracting Party may contest the validity of any such lien, but upon a final determination of the validity thereof, the Contracting Party shall cause the lien to be satisfied and released of record. The Contracting Party shall, within thirty (30) days after receipt of written notice from the

Owner or Prime Lessee of any Parcel encumbered by any such lien or claim of lien, cause any such outstanding lien or claim of lien to be released of record or transferred to bond in accordance with applicable law, failing which the Owner or Prime Lessee of said Parcel shall have the right, at the Contracting Party's expense, to transfer said lien to bond. The Contracting Party shall indemnify, defend and hold harmless the Owners and occupants of the Shopping Center from any and all 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, unless caused by the negligent or willful act or omission of the indemnified person, its tenants, subtenants, agents, contractors or employees.

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

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

2.6 Indemnification: Each Owner hereby agrees to indemnify, defend and hold harmless the other Owners and occupants from and against any and all

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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 the interior of any building constructed on the indemnifying Owner's Parcel, unless caused by the negligent or willful act or omission of the indemnified person, its tenants, subtenants, agents, contractors or employees.

III. EASEMENTS

3.1 **Ingress, Egress and Parking:** 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 and Facilities:

(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 nonexclusive easement under, through and across the Common Area of the grantor's Parcel(s) for the installation, operation, maintenance, repair and replacement of water drainage systems or structures, water mains, sewers, water sprinkler system lines, telephones, electrical conduits or systems, gas mains and other public or private utilities. All such systems, structures, mains, sewers, conduits, lines and other utilities shall be installed and maintained below the ground level or surface of such easements except for ground mounted electrical transformers and such other facilities as are required to be above ground by the utility providing such service (including temporary service required during the construction, maintenance, repair, replacement, alteration or expansion of any buildings or improvements located in the Shopping Center). The installation, operation, maintenance, repair and replacement of such easement facilities shall not unreasonably interfere with the use of the improved

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Common Area or with the normal operation of any business in the Shopping Center. The grantee shall bear all costs related to the installation, operation, maintenance, repair and replacement of such easement facilities, shall repair to the original specifications any damage to the Common Area resulting from such use and shall provide as-built plans for all such facilities to the Owners of all Parcels upon which such utility lines and facilities are located within thirty (30) days after the date of completion of construction of same.

(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 or facility installed pursuant to the foregoing grant of easement which is then located on the land of such Owner, provided that any such relocation (i) shall be performed only after sixty (60) days notice of the Owner's intention to undertake the relocation shall have been given to the Owner of each Parcel served by the utility line or facility, (ii) shall not unreasonably interfere with or diminish utility service to the Parcels served by the utility line or facility, (iii) shall not reduce or unreasonably impair the usefulness or function of the utility line or facility, (iv) shall be performed without cost or expense to the Owner or occupant of any other 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 and facilities to the Owners of all Parcels served by such utility lines and facilities 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 and facilities 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, an easement under, through and across the Common Area of the grantor's Parcel(s) for the installation, operation, maintenance, repair and replacement of the free-standing signs referred to in Section 4.3 of this Declaration and all utility lines and facilities appurtenant thereto. Except where otherwise specifically stated herein to the contrary, the grantee(s) shall bear all costs related to the installation, maintenance, repair and replacement of its free-standing sign and appurtenant facilities, shall repair to the original specifications any damage to the Common Area resulting from such use and shall

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provide as-built plans for all such facilities to the Owners of all Parcels upon which such facilities are located within thirty (30) days after the date of completion of construction of same.

3.4 Building Encroachments: Each Owner, 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); 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.

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 Owners or unless otherwise required by law.

4.2 Employee Parking: Anything in this Declaration to the contrary notwithstanding, areas to be used for motor vehicle parking by employees of occupants of the Shopping Center may be designated within the Shopping Center from time to time with the prior written consent of the Consenting Owners. In the event employee parking areas are designated as provided herein, then employees of any Owner or occupant of any part of the Shopping Center shall use only those portions of the Common Area designated for such motor vehicle parking purposes. In no event shall employees park within 200 feet of the front of any building located on Parcel 2. The authority herein granted shall be exercised in such manner as not to discriminate against any Owner or occupant of the Shopping Center.

4.3 Signs:

(a) Subject to governmental approval, a free-standing sign shall be erected at the location designated "New Pylon Sign" on Exhibit "A." Such sign shall display the designation of the Owner or occupant of Parcel 2, the Owner or occupant of Parcel 3 and the Owner as Occupant of Parcel 1. The cost of constructing, installing, maintaining, repairing and replacing the New Pylon Sign structure and Existing Pylon Sign as shown on Exhibit "A" (excluding

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electrical hookup to the Common Area meter) shall be paid or caused to 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 Center Pylon Sign shall supply and maintain its own sign fascia and can. The design of the Existing Pylon Sign and New Pylon Sign structure shall be subject to the approval of the Consenting Owners, as shall be the size, design and location of the sign fascia used; provided, however, that Albertson's, Second Party and other persons occupying not less than 20,000 square feet of ground floor area may use such standard fascia as they from time to time use generally in carrying on their businesses. The Owner or occupant of Parcel 2 shall have the top designation on the New Pylon Sign and on the Existing Pylon Sign. The Owner of Parcel 1 shall have the right to substitute a Shopping Center designation for any one of its business designations.

(b) There shall be no other signs, except directional signs and signs on buildings ~~and the Pylon Sign and Existing Pylon Sign~~ in the Shopping Center. All exterior building signs on Parcels 1, 2, 3 and 4 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: Each Owner and Prime Lessee shall have the right to take such steps as it deems necessary to prevent those persons not authorized by this Declaration to use the Common Area from using the Common Area for ingress, egress and parking. Such steps shall include, without limitation, the construction of fences, walls or barricades along the boundary lines of any portion of the Shopping Center except along the common boundary line of any Parcel with any other Parcel.

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 located on Parcel 2 subject to the following restrictions: (i) sales shall be limited to not more than four (4) occasions per calendar year for a cumulative total of not more than sixty (60) days duration,

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(ii) the sales area shall be limited to not more than twenty (20) parking spaces located on Parcel 2, (iii) 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, (iv) 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 (v) sales shall not interfere with the free movement of vehicular traffic within the Shopping Center or with access to or from the Shopping Center, or any part thereof, to or from any public right-of-way.

V. RESTRICTIONS ON USE

5.1 Food and Drug Restrictions: No part of Parcel 1, 3 or 4 shall be used as a supermarket (which shall be defined as any store or department containing at least 5,000 square feet of floor area, including aisle space and storage, primarily devoted to the retail sale of food for off-premises consumption); as a bakery or delicatessen; for the sale of fresh or frozen meat, fish, poultry or produce for off-premises consumption. No part of Parcel 1, 2 or 4 shall be used for the sale or offer for sale of any ethical pharmaceutical products requiring the services of a registered pharmacist.

5.2 Shopping Center Restrictions: No part of the Shopping Center shall be used as a bar, tavern, cocktail lounge, adult book or adult video store, automotive maintenance or repair facility, warehouse, car wash, entertainment or recreational facility or training or educational facility; for the renting, leasing or selling of or displaying for the purpose of renting, leasing or selling of any boat, motor vehicle or trailer; or for industrial purposes. For the purpose of this 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.

5.3 Location Restrictions: No part of Parcel 1, 3 or 4 within 200 feet of the Building Area of Parcel 2 shall be used as a restaurant or as a medical, dental, professional or business office. The total floor area of all restaurants

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and medical, dental, professional and business offices located on Parcels 1, 3 and 4 shall not exceed 5,000 square feet.

5.4 Driveup and Drive Through Facilities: No restaurant, bank or other facility featuring vehicular driveup or drive through customer service shall be located in the Shopping Center unless the Consenting Owners have first given their written consent, which shall not be unreasonably withheld, to the location, parking and drive lanes of such facility. The parties hereby approve the vehicular driveup and drive through customer service facilities shown on Exhibit "A."

5.5 Mall Restrictions: There shall be no open or enclosed malls in the Shopping Center unless the Consenting Owners have first given their written consent, which shall not be unreasonably withheld, to the location of the entrance to such mall.

VI. GENERAL PROVISIONS

6.1 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.

6.2 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.

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

6.4 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 the

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Shopping Center shall have the right to enjoin such violation or threatened violation in a court of competent jurisdiction. The right of injunction shall be in addition to all other remedies set forth in this Declaration or provided by law.

6.5 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 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 and Prime Lessees and recorded in the office of the recorder of the county in which the Shopping Center 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.

6.6 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 Building Area located on said Parcel shall be disregarded for the purpose of computing the percentage requirement set forth in Section 6.5. Except as otherwise set forth in Section 6.5, 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.

6.7 Not a Public Dedication: Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Shopping Center to the general

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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.

6.8 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.

6.9 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 best efforts to rectify the particulars specified in the notice of default.

6.10 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 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 of 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

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Second Party: Osco Drug, Inc.
1818 Swift Drive
Oak Brook, IL 60521
Attention: Property Management

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 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.

6.11 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 any of the Restrictions contained herein by the same or any other person.

6.12 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 its reasonable costs and attorney's fees (including its reasonable costs and attorney's fees on any appeal).

6.13 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 to an unaffiliated third party and thereafter enters into a net lease for such Parcel with such third party or its lessee or sublessee (hereinafter referred to collectively as the "Prime Lessor"), so long as said Owner is in possession of the property as a Prime Lessee the parties hereto shall look solely to said Prime Lessee (and said Prime Lessee shall be liable therefor) for the performance of any obligations either the Prime Lessee or the Prime Lessor shall have under this Declaration and the Prime Lessor shall be

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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.

6.14 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.

6.15 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.

6.16 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.

6.17 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.

6.18 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.

6.19 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.

6.20 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.

6.21 Recordation: This Declaration shall be recorded in the office of the recorder of the county in which the Shopping Center is located.

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6.22 Amending and Superceding Provisions of Lease: The parties understand and agree that First Party, as successor Landlord, and Second Party, as successor Tenant, are parties to that certain Lease dated June 15, 1972 entered into originally by and between Skaggs Companies Inc., a Delaware corporation, as Tenant, and Albertson's, Inc., a Delaware corporation, as Landlord, whereby Landlord leased to Tenant those certain premises located in the City of Grand Junction, County of Mesa, State of Colorado, as more particularly described therein. To the extent and only to the extent that this Agreement is in conflict with the provisions of said Lease, this Agreement shall supersede and control.

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

BY: _____
Senior Vice President

BY: _____

SECOND PARTY:
Osco Drug, Inc.,
a _____ corporation

BY: _____

BY: _____

BY: _____

Consented and Agreed to
Ninth Cheltenham Properties, Inc.,
a Delaware corporation

BY: _____

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STATE OF IDAHO)
) ss.
County of Ada)

On this _____ day of _____, 1989, before me, the undersigned, a Notary Public in and for said State, personally appeared Thomas R. Saldin, 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:

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

STATE OF)
) ss.
County of)

On this _____ day of _____, 1989, before me, the undersigned, a Notary Public in and for said State, personally appeared _____ to me known to be a General Partner 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 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:

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

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STATE OF)
) ss.
County of)

On this _____ day of _____, 1989, before me, the undersigned, a Notary Public in and for said State, personally appeared _____ and _____, to me known to be the _____ and _____, respectively, of Osco Drug, 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 they are 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:

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

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COMMON AREA MAINTENANCE AGREEMENT

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COMMON AREA MAINTENANCE AGREEMENT

THIS COMMON AREA MAINTENANCE AGREEMENT ("Agreement") is made as of the ____ day of _____, 19__, by and between Orchard Group, Ltd., a Colorado limited partnership ("First Party"), Osco Drug, Inc., a _____ corporation ("Second Party"), and Albertson's, Inc., a Delaware corporation ("Albertson's").

1. Recitals.

1.1 Albertson's is the Owner of Parcel 2; Second Party is the Tenant of Parcel 3; and First Party is the Owner of Parcels 1, 3 and 4 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, 3 or 4 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 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;

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(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 or to be serviced by said facilities on the basis of their respective Building Areas);

(h) Keeping the Center Pylon Sign and Albertson's Pylon Sign (as described in the Declaration) 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, Second Party, Albertson's and all other persons who now or hereafter own or hold portions of the Shopping Center or

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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, Second Party 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, Second 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,

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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

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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 taxes and assessments assessed against the Owner's Parcel, 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.

5. Maintenance Director.

5.1 The Owners hereby appoint the Owner of Parcel 1 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

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approved in writing by the Consenting Owners (as defined in the Declaration), which approval shall not be unreasonably withheld or delayed. 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 all the Parcels 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 or insurance expense without the prior written approval of the Consenting Owners. 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.

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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 quarterly 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 quarter 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:

	Maximum Building Area (Excluding Expansion Area)	Percent
Parcel 1	21,684	"
Parcel 2	41,556	
Parcel 3	22,400	
Parcel 4		
	-----	-----
TOTAL:		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 or Parcel 3 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

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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 within one (1) year after the end of said calendar year. 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. The Maintenance Director's expenses for any calendar year shall be deemed correct if the Owner of Parcel 2 or Parcel 3 does not give the Maintenance Director written notice of any such overpayment or underpayment within the one (1) year period provided.

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.

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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), 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 an Owner fails to pay when due all taxes and assessments described in Article 4 above, which failure continues for a period of ten (10) days after receipt of written notice thereof, such failure shall constitute a default and any other Owner or Prime Lessee ("Curing Owner") may thereafter pay such taxes if such taxes are delinquent and the owing Owner has not commenced and is not duly prosecuting any contest of such taxes. The Curing Owner shall then bill the defaulting Owner for the expenses incurred. The defaulting Owner shall have fifteen (15) days within which to pay the bill. If the defaulting Owner does not so pay, the Curing Owner shall have a lien on the Parcel of the defaulting Owner for the amount of the bill, which amount shall bear interest at the Default Rate from the date of expiration of said fifteen (15) day period until paid; 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

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such Owner's Parcel until such dispute is settled by final court decree or mutual agreement.

9.3 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 or Prime Lessee 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.

9.4 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 or Prime Lessee specifying the particulars of such failure, such failure shall constitute a default and any Owner or Prime Lessee 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.

9.5 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.

9.6 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

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terms, covenants, conditions or agreements contained herein by the same or any other person.

9.7 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 or Taxes.

10.1 The lien provided for in Article 9 above shall only be effective when filed for record by the Curing Owner or 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 Owner or 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

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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 and Prime Lessees 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 and Prime Lessees, duly recorded in the office of the recorder of the county in which the Shopping Center is

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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.

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

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14

#40 09

Second Party: Osco Drug, Inc.
1818 Swift Drive
Oakbrook, IL 60521

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. Sale & Sale-leaseback Purchaser.

14.1 Notwithstanding anything to the contrary contained in this Agreement, it is expressly agreed that in the event an Owner sells its Parcel to an unaffiliated third party and thereafter enters into a net lease for such Parcel with such third party or its lessee or sublessee (hereinafter referred to collectively as the "Prime Lessor"), so long as said Owner is in possession of the property as a Prime Lessee the parties hereto shall look solely to said Prime Lessee (and said Prime Lessee shall be liable therefor) for the performance of any obligations either the Prime Lessee or the Prime Lessor shall have under this Agreement and the Prime Lessor shall be relieved of any obligation for the performance of or liability for any of the terms, covenants, conditions or agreements set forth herein relating to either the Prime Lessee or its Parcel.

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

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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. Amending and Superceding Provisions of Lease.

22.1 The parties understand and agree that First Party as successor Landlord and Second Party as successor Tenant are parties to that certain Lease dated June 15, 1972 entered into originally by and between Skaggs Companies Inc., a Delaware corporation, as Tenant, and Albertson's, Inc., a Delaware corporation, as Landlord, whereby Landlord leased to Tenant those certain premises located in the City of Grand Junction, County of Mesa, State

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#40 89

of Colorado, as more particularly described therein. To the extent and only to the extent that this Agreement is in conflict with the provisions of said Lease, this Agreement shall supersede and control.

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

BY: _____
Senior Vice President

BY: _____

SECOND PARTY:
Osco Drug, Inc.,
a _____ corporation

BY: _____

BY: _____

BY: _____

Consented and Agreed to

Ninth Cheltenham Properties, Inc.,
a Delaware corporation

BY: _____

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STATE OF IDAHO)
) ss.
County of Ada)

On this _____ day of _____, 19____, 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:

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

STATE OF)
) ss.
County of)

On this _____ day of _____, 1989, before me, the undersigned, a Notary Public in and for said State, personally appeared _____ to me known to be a General Partner 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 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:

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

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STATE OF _____)
County of _____) ss.

On this _____ day of _____, 1989, before me, the undersigned, a Notary Public in and for said State, personally appeared _____ and _____, to me known to be the _____ and _____, respectively, of Osco Drug, 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 they are 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:

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

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MATE...

ARMSTRONG CONSULTANTS, INC.

861 Rood Avenue

— Grand Junction, Colorado 81501 —

(303) 242-0101

May 15, 1990

Mr. Don Newton
City Engineer
250 N. Fifth Street
Grand Junction, CO 81501

RE: Albertsons/Osco Shopping Center
Armstrong Project No. 905308

Dear Don:

Thank you for the time you spent with me yesterday to resolve the design criteria for the perimeter street improvements for the above. The following will be the basis for our design of the improvements.

General:

- * All street curbs will be vertical-face and curb & gutter will be 2 ft. wide. (ie City Standard)
- * All curb, gutter and sidewalk will be monolithic. (City Standard)
- * Curb radii (face of curb) at all public street intersections (12th & Mesa, Orchard & 13th and 13th & Mesa) will be 30 ft. The right-of-way for these should be triangular.
- * All street improvements will be measured from centerline of street right-of-way which will be shown on plans.
- * No trees will be placed within 10 ft. of face of street curb for 100 ft. to left of any exiting driveway. The Architect should submit the landscape plan to you for review of potential sight obstructions at all driveways and street intersections.
- * Stop signs will be placed at all exits. No-parking signs will be placed along the west side of 13th Street and the north side of the east (narrow) end of Mesa Avenue. The Architect should submit the traffic signage plan to you for review.
- * Curb ramps (wheelchair) will be installed at the three street corners and at any driveways having vertical curb returns. (City Standard)

CONSULTING ENGINEERS

- * Existing pavement widths from centerline of right-of-way to edges on opposite side of streets from project will be shown on the plans.
- * Pavement thicknesses on all streets (and the parking lot) will be based on design using CBR test(s) of the site subgrade soil.

12th Street:

- * The right turn lane shown on Wyatt's submittal drawing of May 5, 1990, is acceptable.
- * The right turn lane width of 10 ft. is from the existing edge of asphalt to the proposed edge of asphalt.
- * The curb, gutter and sidewalk will be 8 ft. wide (minimum) (City Standard).
- * The parking curb east face will be located 2 ft. from the back edge of the 8 ft. curb, gutter and sidewalk with one of the following two options for the 1½ ft. space between sidewalk and parking lot curb. This is to allow for parked vehicle overhang.
 - a) Widen sidewalk 1½ ft. if grades allow.
 - b) Slope pave with concrete if grades differ.
- * The right-of-way line will be located at the west face of the parking lot curb.
- * The existing curb, gutter and sidewalk will be replaced up to the newer curb, gutter and sidewalk near Orchard Avenue. The 8 ft. wide section should butt to the existing narrower section at the interface. It is acknowledged that parking lot traffic at the corner building will probably sometimes encroach onto the new sidewalk edge.
- * The two proposed new 36' wide driveways are acceptable as shown on the May 5 submittal in location and width. The curved driveway edges are acceptable if 8 ft. wide crosspans and concrete fillets are provided.
- * The existing driveway cut at the south edge of the northwest parcel will remain at the same location and width but will be reconstructed with the right turn lane widening.

Orchard Avenue:

- * The most westerly existing driveway will remain as is.
- * The center existing driveway will be widened to 36 ft. width.
- * The most easterly existing wide driveway will remain as is except the short "bump" near the driveway center will be removed and replaced to provide a continuously smooth driveway apron.
- * All existing curb, gutter and sidewalk will remain as is.

13th Street:

- * The existing pavement will be wheel-cut and matched at the centerline and the west half will be replaced with 15 ft. of asphalt mat (measured from centerline of right-of-way) and 2 ft. curb and gutter.
- * No sidewalk will be provided on the west side of the street.
- * Except for the intersection corners, no additional right-of-way is required.

Mesa Avenue:

- * The existing pavement will be wheel-cut and matched at the centerline of right-of-way.
- * East of the proposed driveway, 15 ft. of asphalt mat (measured from centerline of right-of-way) and 7 ft. curb, gutter and sidewalk will be provided within the existing right-of-way.
- * West of the proposed driveway, 22½ ft. of asphalt mat (measured from centerline of right-of-way) and 7 ft. curb, gutter and sidewalk will be provided.
- * From the east edge of the proposed driveway to 12th Street, an additional 5 ft. of right-of-way will be dedicated which will result in the back edge of street sidewalk (29½ ft. from centerline of right-of-way) being 6 inches from the new right-of-way line (30 ft. from centerline of right-of-way).
- * The proposed 40 ft. wide driveway as shown on the May 5 submittal is acceptable as to location and width. You expressed concern about making sure the easterly edge radius is sufficient to accommodate the large trucks using this driveway.

Please notify us if the above is not your understanding of the design criteria for the perimeter streets design. We anticipate submitting the construction plans for the streets improvements within the next few weeks for your review and approval.

Sincerely,

ARMSTRONG CONSULTANTS, INC.



Ronald P. Rish, P.E.

RPR/ss
DALY16

cc: Dennis Wyatt, AIA
Karl Metzner - City Planning
Jim Shanks - Public Works Director

Inventories - will be removed

Compactor - loaded from inside
once per day or twice, run about 30 sec.
during business hrs
pick up once per wk

Deciduous trees along Mesa -
not enough room for conifer

Lighting - model has been run - will replace all
25' poles - bldg is 27' high
directional floods in back - toward bldg

Sidewalk along 13th? --

Improvement Agreement -- updated w/ Don

Improvement Guarantee -- letter of Credit has been
agreed upon w/ Don

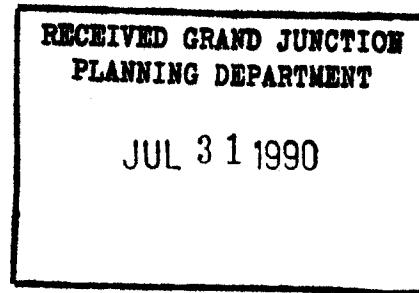
Wall Detail - Painted or colored block to match building.

Construction detail prior to recording of plat

Dedicating ROW at corner of 13th & Michael, along 12th, Mesa from
12th to driveway
Easement along W & N



City of Grand Junction, Colorado
81501-2668
250 North Fifth Street



July 30, 1990

Ronald P. Rish, P.E.
Armstrong Consultants, Inc.
861 Rood Avenue
Grand Junction, CO 81501

Re: Albertson's/Osco Shopping Center Final Plan

Dear Ron:

Your revised plans dated July 20, 1990 and Dennis Wyatt's letter dated July 19, 1990 have adequately addressed my review comments of July 9, 1990.

Additional Comments are as follows:

1. The Neenah R-3357 inlet grate and frame specified at 13th and Mesa is not a city standard and is not bicycle safe. If possible, please adapt a Casting No. 12 or a Neenah No. 3246 without curb opening to the inlet structure.
2. The 2" double check valve shown in Section A-A, Sheet 1.6, should be located on the supply side of the irrigation line. This protects the main supply in case of a malfunction in the irrigation system.

All other details, plans and specifications for parking, screen wall, drainage, utilities and street improvements are hereby approved.

Prior to beginning construction within the public right-of-way, I will need the following information:

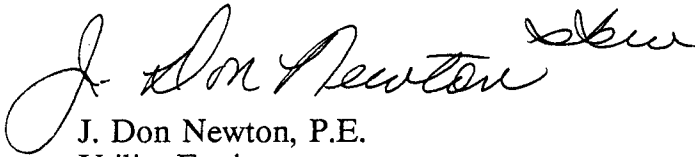
1. Name and phone number of construction manager.
2. Names and phone numbers of these responsibility for construction inspection and materials testing.

Page Two
July 31, 1990

3. Name and phone number of construction superintendent for street and site improvements.
4. Construction schedule.
5. Traffic control plan for construction within public streets.

Please call if you have any questions or need additional information.

Sincerely,

A handwritten signature in cursive script that reads "J. Don Newton" followed by a small flourish or initials "skw".

J. Don Newton, P.E.
Utility Engineer

xc: Dennis Wyatt, Wyatt & Associates
Karl Metzner, City Planning
Walt Hoyt, Public Works Construction Inspector

skw

FILE:DN:RISHOSCO

MEMORANDUM

July 31, 1989

To: City Planning Department
From: Don Newton, City Engineer *DN*

Subject: Albertson's Access Alternatives

I have received a copy of the four access and street design alternatives for Mesa Avenue adjacent to the proposed new Albertson's store and have the following comments:

Alternate A: This is the preferred alternative from an engineering perspective. It includes improvement of the north side of Mesa Ave to city (collector) street standards and provides adequate truck access onto Mesa Avenue. This is the only alternative in which truck access does not conflict with customer traffic and access. This plan also provides landscaping in the area between the building and Mesa Ave.

Alternate B: This plan requires that trucks travel through the customer parking lot and exit the site from the curb cut on 12th Street. This is not recommended. Truck access to 12th Street should be at a street intersection. This plan provides no emergency vehicle or customer access to the site from Mesa Ave. I have no objection to eliminating on street parking along the north side of Mesa Avenue on the east half of the block. The street on the west half of the block should be widened to "collector" standards to accommodate left and right turns onto 12th Street.

Alternate C: For this plan, a right turn lane should be provided at the curb cut for west bound traffic on Mesa Avenue. Trucks exiting from this curb cut would conflict with customer traffic.

Alternate D: It will difficult to prevent customers from entering a one way exit onto Mesa Avenue unless the exit is moved to the east and blocked off from the parking lot.

Memorandum

August 18, 1989

To: Karl Metzner
From: Don Newton

Don

Subject: Albertsons Access to Mesa Ave.

After attending public hearings of both the Planning Commission and the City Council regarding the Albertson's rezoning, it is obvious that the major concerns of the residential neighborhood are impacts of additional traffic the development would generate on Mesa Avenue and 13th Street, and impacts of delivery trucks using Mesa Ave. to enter and exit the development.

I believe there is a "5th" alternative which would eliminate most of the residents concerns and solve the problem of trucks exiting onto 12th Street. This plan would be similar the Architect's alternative "B" with the following modifications:

1. Combine the two curb cuts on 12th Street into one large entrance/exit way, including left and right turn lanes out and a wide entrance lane in (total curb cut width would be approximately 40'). This driveway should be constructed similar to a street intersection to accommodate truck turns.

2. Construct a deceleration/acceleration lane on east side of 12th Street centered on the development's main entrance.

These modifications would make it possible to eliminate the curb cut on Mesa Avenue thus eliminating trucks and customer traffic on the residential street. This would also eliminate the need to widen Mesa Avenue west of Albertsons Store front.

The accel./decel. lane and widened entrance on 12th Street would allow safe ingress and egress for trucks and customer traffic. These improvements would also provide the necessary intersection for a traffic signal if one were warranted at some time in the future.

I recommend that we propose the above modifications to the Albertson's developers.

xc: Dan Wilson
Jim Shanks

Kaufman

DATE: August 28, 1989
TO: To Whom It May Concern
FROM: Dan Wilson
SUBJECT: Albertson's
File

Mrs. Eva Kaufman of 1334 Mesa met with me this morning. She requests that the following conditions be imposed as conditions of final plan approval.

1. A decibel maximum be set to establish an objective standard for enforcement purposes. (I have asked the planning office to consult with the County Health Department as to what an appropriate standard might be.)
2. Within one day after a neighbor complains, the property manager must remove graffiti from the wall to be constructed on 13th Street.
3. Delivery hours will be limited to 8 a.m. to 8 p.m.
4. Trash pickup be limited to 8 a.m. to 8 p.m.
5. According to Mrs. Kaufman, Osco was using a large van for additional on-site storage; she requested that this practice be prohibited.
6. Apparently, an 18-wheeler with a refrigeration unit was recently left idling for an extended period of time throughout the night. She requests that this practice be prohibited. (Recently the Police Department was able to, with the cooperation of the owners, identify an individual who left his unit on the site and has been instructed not to do so again; this may be the basis for the recent complaint.)
7. Street sweeping and snow removal equipment operations be limited to 8 a.m. to 8 p.m.
8. All trees be evergreen and not deciduous; this would serve to avoid problems with leaf removal and winter-time visibility once the leaves fall.

JJ

Memorandum

To: Karl Metzner
From: Don Newton *JDN*

September 5, 1989

Re: Albertsons

Because of the controversy regarding access to the proposed Albertsons site from Mesa Avenue, I have further considered the plan which eliminates all curb cuts and access to the property from Mesa. By combining the two proposed curb cuts on 12th Street into one localized entrance/exit way with a large turning radius on the north side, it would be possible for large trucks to exit from the parking lot onto 12th Street. A deceleration lane should also be constructed south of the entrance on 12th Street. This entrance would become congested if large trucks were exiting during times of heavy customer traffic.

Whether or not curb cuts are allowed on Mesa Ave., I recommend that one major entrance be constructed on 12th Street with a deceleration lane (deceleration lane minimum dimensions should include 90' transition, 125' lane and should be 10' wide).

xc: Jim Shanks
Dan Wilson

- Submitted at hearing
- 8/1/89

WE THE UNDERSIGNED RESPECTFULLY REQUEST THAT THE BUFFER ZONE ORIGINALLY ESTABLISHED BETWEEN THE B-3 ZONING AND THE RESIDENTIAL AREA BE MAINTAINED, AND THE PETITION TO REZONE BE DENIED.

NAME	ADDRESS
Jack L Woods	1345 mesa ave
Ruby Fox	1335 Mesa Ave.
Cecil Kerst	1335 Mesa Ave.
Marlene Brantley	1245 Mesa Ave.
Kay Jean Wright	1235 mesa Ave.
Florence L. Howard	1225 Mesa Ave.
Nora Reddick	1354 mesa ave.
Gilbert Reddick	" "
Mexie Jesitor	1342 Hall
Phil Jesitor	1342 Hall
Ida T. Hobbs	1267 Texas
Cecil C. Hobbs	1267 Texas
Caroline Helmick	1241 Texas
Earl S. Von Burg	1317 Texas ave
Meredith Helmick Von Burg	1317 Texas Ave
Wm Pearlstein	1316 Texas Ave
H R Smith	1330 TEXAS AVE
Mrs Thomas Lynch	1325 Texas
L O. Fickel	1335 Texas
Eudora Ficklin	1335 Texas
W E Williams	1342 Texas

WE THE UNDERSIGNED RESPECTFULLY REQUEST THAT THE BUFFER ZONE ORIGINALLY ESTABLISHED BETWEEN THE B-3 ZONING AND THE RESIDENTIAL AREA BE MAINTAINED, AND THE PETITION TO REZONE BE DENIED.

N A M E

A D D R E S S

Lorraine Williams

1342 Texas Ave.

Lloyd Pittman

1339 Texas Ave. R

Lawrence L. Wilkerson

1364 Mesa

Betty M. Kirkeby

1325 Mesa Avenue

Jelby Thompson

1350 Texas Ave.

Kay Oper

1273 Texas Ave.

Mrs Juanita Tomasi

1274 Texas

Richard J. Barber

1233 Texas

Richard J. Barber

1215 MESA Ave.

Byron L. Hakes

1225 TEXAS

Lucille Sprad

1215 Texas

Burt Hartman

1266 Texas

Cora Kaufman

1334 MESA Ave

Ed Kaufman

1334 MESA Ave.

REVIEW SHEET SUMMARY

FILE NO. 40-89 TITLE/HEADING Rezone B-3 & RSF-8 to PB DUE DATE 7/24/89

ACTIVITY - PETITIONER - LOCATION - PHASE - ACRES Rezone and Final Plan

Petitioner: Orchard Group, Ltd. Location: Southeast corner 12th and Orchard

Acres: 8.38

PETITIONER ADDRESS c/o Richard Livingston 2808 North Avenue Grand Junction, CO 81501

ENGINEER n/a

DATE REC. AGENCY COMMENTS

NOTE: WRITTEN RESPONSE BY THE PETITIONER TO THE REVIEW COMMENTS IS REQUIRED A MINIMUM OF 48 HOURS PRIOR TO THE FIRST SCHEDULED PUBLIC HEARING.

- | | | |
|---------|----------------|---|
| 7/24/89 | Planning Dept. | <ol style="list-style-type: none">1) Need details on screening fence: height and type of construction.2) New parking lights should not impact existing residential.3) Please specify hours of operation.4) Please supply vertical dimensions on elevation.5) The plan shows a 20 foot utility easement running under the new store. This would have to be vacated prior to construction.6) Recommend a 4 foot screen fence along south edge of southernmost row of parking spaces. |
| 7/19/89 | City Engineer | <ol style="list-style-type: none">1) The new curb cuts on 12th Street should be increased in width from 30' to at least 36' for minimum lane widths of 14'-in; 10' left turnout; 11' right turnout; 1' wide double yellow stripes between entrance and exit lanes.2) The curb radii at street intersection shall be increased as follows: Southwest corner 13th and Orchard and north-west corner of 13th and Mesa: R=20.5' to curb face; north-east corner of 12th and Mesa: R=30.5' to curb face.3) Need cross-sections or profiles showing how curb and gutter elevations will be established on Mesa Avenue and 13th Street.4) Parking lot layout is okay. All raised islands should have smooth radii on corners. Handicap spaces should be 17' wide.5) Need drainage report addressing increase in runoff as a result of proposed redevelopment. How much additional runoff? Where will runoff be discharged?6) Traffic control: A 30" stop sign will be required at the exists of all seven driveways. From a driver's position (approx. 6' behind sidewalk), at each exit there shall be a minimum sight distance of 360' to traffic lanes on 12th Street and 300' on all other streets. There shall be no plantings or obstructions over 30" in height within a 15' x 15' triangle on both sides of each driveway.7) How were pavement sections established for Mesa Avenue and 13th Street? Please submit design calculations.8) Grading and drainage plan should show elevations and grades on all curbing and pavement construction to insure proper drainage of the parking areas.9) City monuments, monument lines, and right-of-way splits should be shown on all streets abutting the property. |

- 10) Add a note to the construction drawings stating that all construction within the public right-of-way shall be in accordance with City of Grand Junction standards and specifications.
- 11) The petitioner will be responsible for providing construction inspection and materials testing for all improvements within the public right-of-way. Depending upon the time of year, the City Engineering Department may be able to provide these services.

Upon completion of the project, "AS CONSTRUCTED" drawings of all public improvements shall be submitted to the City Engineering Department. These drawings must be on 24" x 36" reproducible mylar.

7/24/89 Property Manager
 7/14/89 Parks & Rec.

 7/21/89 Public Service
 gas:
 electric:

 7/12/89 City Attorney

 7/24/89 Utilities

No right-of-way concerns.

Appraisal needed for open space if this requires that one be paid. It is essential that the landscaping be completed as part of the development.

No objection to preliminary plan. Electric asks for a 10-foot utility easement along the west and north boundaries of this parcel.

Consider making the City a third party beneficiary of maintenance agreement and declaration of restrictions so that City could enforce the provisions thereof.

- 1) There appears to be no problems with the extension of the existing complex connecting to the existing utilities.
- 2) A composite utility plan will be required as part of the preliminary plans in such case that no final plat is required. The composite utility plan shall comply with the requirements of Section 5-6-5 of the Zoning and Development Code.
- 3) No information has been supplied addressing water usage or sewage generated from the addition, as required in Section 6-7-2.
- 4) No information has been supplied pertaining to site irrigation, as required by Section 6-7-2.

7/25/89 Mtn. Bell

U.S. West Communications (Mtn. Bell) has no objection to the proposed rezone. We presently have buried facilities located in an area proposed as parking lot.

LATE

RESPONSE NECESSARY

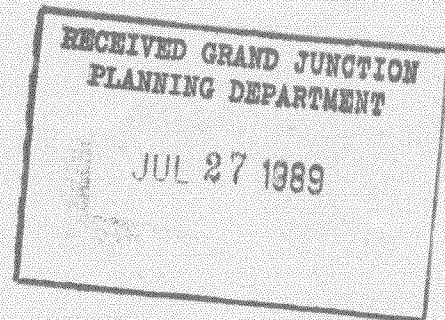
by 7/28/89

*sent 7/24/89
AF*

July 27, 1989

Mr. Karl Metzner
PLANNING DIRECTOR
City of Grand Junction
250 North Fifth Street
Grand Junction, Colorado 81501-2643

RE: REZONING REQUEST, CASE 25-89
12th & Mesa



Dear Karl,

We are in receipt of the Review Sheet Summary dated 7/24/89 and have the following responses:

PLANNING DEPARTMENT:

1. Having discussed the screening fence with the neighborhood group we will propose a 6' to 8' high solid split face concrete block wall which will be painted and will contain offsets at the corners and approximately midway as shown on the site plan. Details will be provided to staff prior to the City Council meeting for approval.
2. The new parking lot lights will contain cutoff shields on the residential side so that light will not spill over to the residential properties.
3. The new Albertsons store will operated 24 hours per day and all deliveries will be restricted between the hours of 7:00 A.M. and 10:00 P.M.
4. The elevations submitted are very preliminary in nature and we proposed that the maximum building height above finished floor be approximately 34' at the front main fascia with side and rear wall heights of approximately 25' above finished floor elevation.
5. We understand that the existing 20' utility easement will have to be vacated and new easements for the new store will have to be created. Our previous discussions with your office indicated that these items as well as any required ROW dedications and lot line adjustments can be taken care of by separate survey documents to be recorded prior to the issuance of a building permit.
6. Depending upon the final access and right-of-way configuration agreed upon for Mesa Drive we will review the request for this screening wall and if appropriate make it a condition of final approval.

Mr. Karl Metzner
July 27, 1989
Page Two

CITY ENGINEER

1. We agree with these curb cut size changes and will revise them on the final plan prior to the City Council meeting.
2. We agree with these radius increases and will revise them on the final plan prior to the City Council meeting. These will also be included in the public improvement construction drawings which we shall prepare and submit prior to issuance of a building permit.
3. All details for the public improvements on Mesa, 13th and at the intersections will be part of the detailed construction drawings for public improvements submitted to the engineering department prior to the issuance of a building permit.
4. The detailed site plan construction drawings will show all radii on parking lot islands.
5. Subsequent to our rezoning request but prior to request for a building permit we will prepare a detailed storm water drainage report and plan together with other sitework construction plans for review and approval by the Engineering Department.
6. The detailed sitework construction plans will show the requested traffic control devices and will be submitted as a part of our sitework construction drawings for approval by the Engineering Department.
7. Pavement sections have not yet been established for Mesa and 13th. We will work with the Engineering Department in the establishment of these sections based upon additional soils tests which will need to be prepared for both on-site and off-site construction.
8. Same response as noted in item 5 above.
9. City monuments etc. will be shown on our detailed sitework construction plans as noted above.
10. The construction drawings will contain the notes and references as requested.
11. We understand this requirement and will make it a condition of the public improvements plans and specifications.

Mr. Karl Metzner
July 27, 1989
Page Three

PROPERTY MANAGER:
No comments

PARKS & RECREATION:

1. Upon approval of the PB site plan we will prepare the appraisals as required.

PUBLIC SERVICE:

1. Upon development of the detailed site construction plans we will prepare any required easements.

CITY ATTORNEY:

1. This request has been referred to the legal department of Albertsons Inc. and we hope to have an answer back to you prior to the City Council meeting.

UTILITIES:

1. No comment.
2. The location of existing and proposed utilities has been schematically shown on the site plan and details will be a part of the detailed sitework construction plans.
3. This information will be provided upon approval of the PB plan and will be a part of our detailed sitework construction plans.
4. Site irrigation note appears on the site plan and details will be a part of our sitework construction drawings if we obtain approval of the PB plan.

MOUNTAIN BELL:

No response necessary.

General Comments:

As per our discussion on Wednesday, July 26, 1989 it appears that most of the department comments are related to detailed construction plans for on and off-site construction plans which are not required as a part of our PB zoning request. We fully understand that prior to the issuance of any building permits we will be required to prepare detailed plans in conformance with city requirements for this construction and we stand ready to prepare these documents once the PB zoning site plan is approved. In addition to all construction plans we will be ready to submit all surveys, vacations and dedications required for the property itself.

Mr. Karl Metzner
July 27, 1989
Page Four

We are in the process of reviewing the access concerns of both the Planning Commission, city engineering department and the neighborhood groups with Albertsons management and will be in position to present these alternates at the Planning Commission Hearing. If you have any further questions please don't hesitate to call.

Cordially,
WYATT & ASSOCIATES, AIA, PC



Dennis W. Wyatt, Architect

cc: Ted Ridder
David Wilcox
Richard Livingston

development summary



File # 40-89 Name Albertson's Date 8/2/89

PROJECT LOCATION: 1838 N. 12th

PROJECT DESCRIPTION: Rezone from B-3 and RSF-8 to Planned Business (PB) and a Final Plan on 8.38 acres.

REVIEW SUMMARY (Major Concerns)

POLICIES COMPLIANCE	YES	NO *	TECHNICAL REQUIREMENTS	SATISFIED	
				SATISFIED	NOT SATISFIED *
Complies with adopted policies	X		Streets/Rights Of Way	X	
Complies with adopted criteria	X		Water/Sewer	X	
Meets guidelines of Comprehensive Plan	X		Irrigation/Drainage	X	
			Landscaping/Screening	X	
			Other: _____		

* See explanation below

-- This proposal would rezone the existing Albertson's/Osco complex from B-3 (Retail Sales) to PB. It would also rezone the two vacant strips of land along 13th Street and Mesa Avenue from RSF-8 to PB. A new Albertsons store is proposed south of the existing Osco Store. On site drainage and access from 12th Street will be improved.

STATUS & RECOMMENDATIONS:

-- The proposal fits the following criteria for rezoning:

- The zoning is in conformance with the 12th Street Corridor Guidelines.
- There are adequate facilities available to serve the site.
- A Planned Zone would be more compatible with the neighborhood.
- There would be community benefit by putting the vacant land to productive use and improving the appearance of the neighborhood.

Planning Commission Action

8/1/89--Planning Commission recommended approval of the rezone.
 Approved the final plan with access alternative C, one exit to Mesa Avenue, no left turn.

WYATT & ASSOCIATES, AIA  ARCHITECTS and PLANNERS

June 4, 1990

Mr. Karl Metzner
Planning Director
City of Grand Junction
250 N. Fifth Street
Grand Junction, Colorado 81501

RE: Albertson's-Orchard Shopping Center

Dear Karl,

Pursuant to the request by Dan Wilson, City Attorney and Kathy in the Planning Department please find enclosed herein (by FAX transmission) additional supporting information which has been requested as support data for the processing of the final subdivision re-plat for the above noted project.

This information includes the following:

1. Landscaping planting species and revised plan. Please note that we have included Austrian Pines in the S.E. corner of the property as suggested for additional neighborhood buffering.
2. Screen wall section and typical elevation
3. Site lighting program narrative and catalog information.
4. Modifications to public improvements cost estimate including addition of landscaping as a part of the budget. (under separate cover from Armstrong Consultants.)
5. Open Space appraisal from Nisley Associates.

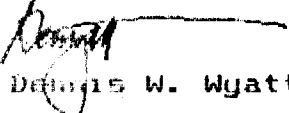
Tom Logue, of Armstrong Consultants will be discussing current details and comments from Don Newton concerning engineering requirements and public improvement concerns.

We currently understand that the Planning Commission would like to hear the final re-plat as scheduled on Tuesday, June 5, 1990 and hopefully approve the re-plat subject to the provision that all public improvements construction drawings and site plan details be submitted to and approved by the appropriate city department prior to the recordation of the final re-plat. This is certainly acceptable to the Owner's and generally follows the procedures wh: we understood in the beginning of the project. We are currently preparing detailed construction documents for this project and anticipate completing this work on about the 15th of June.

Mr. Karl Heizner
June 4, 1990
Page Two

I will be in attendance at the meeting on Tuesday evening and hope to arrive in Grand Junction early that afternoon to answer any questions that staff may still have. Thanks for your continued cooperation.

Cordially,
WYATT & ASSOCIATES


Dennis W. Wyatt, Architect

cc: Tom Logue
Ted Riddeer
Hal Hoffhins
Rick Livingston



RFC

Grand Junction Planning Department
250 North Fifth Street
Grand Junction, Colorado 81501-2668
(303) 244-1430

February 25, 1991

C. Lee Mumford
Albertsons Inc.
250 Parkcenter Blvd.
Box 20
Boise, Idaho 83726

Dear Mr. Mumford:

On February 22, 1991, the City Engineer and I conducted a site inspection of the new Albertsons' facility on 12th Street and Orchard Avenue for release of the Certificate of Occupancy (C.O.). The following deficiencies were noted:

1. The masonry wall along 13th Street and a portion of Mesa Avenue is not 6' in height at all locations. The height from the outside of the wall ranged from about 5' to 6.5'. The approval of the development was specific as to a 6' wall being required.
2. There are 3 conifers and 3 deciduous trees along Mesa Avenue east of the driveway. Four deciduous trees were required according to the approved site plan.
3. The paint on the wall is chipping off in many places already. The surface may not have been properly treated prior to applying the color.
4. City Engineering needs a mylar copy of the as-constructed drawings of all public improvements.
5. The City traffic engineer must complete his final inspection of all traffic control signs required on site. The fire department must also do a final inspection of fire hydrant placement.

February 25, 1991
C. Lee Mumford
Page 2

All of the above concerns must be resolved before we can issue the final C.O. During the inspection it was also noted that the raised curbing around the internal islands has been greatly damaged, apparently from snow removal. Although that is not a direct concern of the City, we wanted to make you aware of it. If you have any questions please contact me at 244-1446.

Sincerely,



Katherine M. Portner
Senior Planner

xc: Mike Michalke, Albertsons' Manager
Roche Construction
John Shaver, Assistant City Attorney
Don Newton, City Engineer

Dennis Wyatt
Hal Hoffmann
Don Schuchman

MEMORANDUM

TO: Don Newton
FROM: Dave Tontoli *DT*
DATE: February 26, 1991
SUBJECT: Signing inspection for finalization of Albertson's

Inspection was made on February 26, 1991 and findings are as follows:

1. 30" stop sign and post needed at the exit/entrance closest to 13th Street on Orchard Avenue, South side.
2. Handicap signing not present at all handicap stalls.
NOTE: Painted legends are installed.

CERTIFICATE OF OCCUPANCY

BUILDING DEPARTMENT
CITY OF GRAND JUNCTION
(OR MESA COUNTY)

PERMIT # 36528

DATE 1-23-91

PERMISSION IS HEREBY GRANTED TO Roche Const. TO OCCUPY THE

BUILDING SITUATED AT 1830 N. 12th St.

LOT _____ BLOCK _____ FILING _____ SUBDIVISION _____

TAX SCHEDULE NUMBER 2945-123-03-001

FOR THE FOLLOWING PURPOSE: new grocery store

THIS CERTIFICATE ISSUED IN CONFORMITY TO SECTION 307, UNIFORM BUILDING CODE

INSPECTOR *Robert*

City Planning *Kathy*