

# UNOFFICIAL COPY



RECORDING REQUESTED BY AND  
WHEN RECORDED RETURN TO:

Ward, Miller & Geyer LLC  
165 South Main Street, Second Floor  
Salt Lake City, Utah 84111  
Attn.: Nik Cutler, Esq.

Doc#: 0602345060 Fee: \$76.00  
Eugene "Gene" Moore RHSP Fee: \$10.00  
Cook County Recorder of Deeds  
Date: 01/23/2006 10:14 AM Pg: 1 of 27

(Space above this line for recorder's use only)



## DECLARATION OF RESTRICTIONS, GRANT OF EASEMENTS AND COMMON AREA MAINTENANCE AGREEMENT

between

JETCO PROPERTIES, INC.,  
a Delaware corporation

and

HL DEVELOPMENT, INC.,  
an Illinois corporation

Date: January 12, 2006  
Store No.: ABS #5634  
Location: SWC Dempster Street & Marmora Avenue, Illinois

First American Title Order # NCS 85220

DEC 20FS ANK

# UNOFFICIAL COPY

## TABLE OF CONTENTS

1.	PRELIMINARY .....	1
	1.1 General Definitions .....	1
	1.2 Parties .....	3
	1.3 Parking Requirements .....	3
2.	BUILDING AND COMMON AREA .....	3
	2.1 Building Location .....	3
	2.2 Common Area Use. ....	4
	2.3 Parcels 2 – Type and Design of Building .....	4
	2.4 Construction Requirements .....	5
	2.5 Casualty and Condemnation. ....	6
	2.6 Indemnification .....	7
3.	EASEMENTS. ....	7
	3.1 Ingress and Egress .....	7
	3.2 Utility Lines .....	7
	3.3 Permanent Access Easement .....	8
	3.4 Maintenance Easement .....	8
4.	OPERATION OF COMMON AREA .....	8
	4.1 Parking .....	8
	4.2 Employee Parking .....	9
	4.3 Signs .....	9
	4.4 Protection of Common Areas .....	9
	4.5 Sales .....	9
5.	COMMON AREA MAINTENANCE. ....	9
	5.1 Maintenance by Individual Owners .....	9
	5.2 Indemnification and Insurance .....	11
	5.3 Lighting .....	11
	5.4 Taxes .....	12
	5.5 Right of the Owner or Prime Lessee of Parcel 1 to Maintain Other Parcels .....	12
6.	RESTRICTIONS ON USE. ....	12
	6.1 Food, Pharmacy, Fuel and Liquor, Etc. Restrictions .....	12
	6.2 General Restrictions. ....	13
	6.3 Additional Restrictions .....	13
	6.4 Drive-up and Drive-through Facilities .....	14
	6.5 Mall Restrictions .....	14
	6.6 Hazardous Materials .....	14

# UNOFFICIAL COPY

7.	GENERAL PROVISIONS .....	14
7.1	Covenants Run with the Land .....	14
7.2	Successors and Assigns .....	14
7.3	Duration .....	15
7.4	Injunctive Relief .....	15
7.5	Modification and Termination .....	15
7.6	Method of Approval .....	15
7.7	Not a Public Dedication .....	15
7.8	Breach Shall Not Permit Termination .....	16
7.9	Default .....	16
7.10	Notices .....	16
7.11	Waiver .....	17
7.12	Attorneys' Fees .....	17
7.13	Sale and Sale-leaseback Purchaser .....	18
7.14	Severability .....	18
7.15	Not a Partnership .....	18
7.16	No Third Party Beneficiary Rights .....	18
7.17	Captions .....	18
7.18	Entire Agreement .....	18
7.19	Construction .....	18
7.20	Joint and Several Obligations .....	19
7.21	Recording .....	19
7.22	Non-merger .....	19
7.23	Counterparts .....	19

Proprietary Document  
Clerk's Office

# UNOFFICIAL COPY

## DECLARATION OF RESTRICTIONS, GRANT OF EASEMENTS AND COMMON AREA MAINTENANCE AGREEMENT

THIS DECLARATION OF RESTRICTIONS, GRANT OF EASEMENTS AND COMMON AREA MAINTENANCE AGREEMENT ("**Declaration**"), is made as of the 12<sup>th</sup> day of January, 2006, by and between JETCO PROPERTIES, INC., a Delaware corporation ("**Jetco**"), and HL DEVELOPMENT, INC., an Illinois corporation ("**HL**").

### 1. PRELIMINARY.

#### 1.1 General Definitions.

**1.1.1 "Building Area"**: All of those areas on Parcel 2 shown as Building Area on Exhibit "A" attached hereto and made a part hereof, together with those portions of the "Building Envelope" (defined in Section 1.1.3) which are from time to time covered by a building or other commercial structure. The building on Parcel 2 may be located or relocated anywhere within the Building Envelope provided the total "Floor Area" (defined in Section 1.1.6) of any such building constructed within such Building Envelope does not exceed the maximum square footage shown on Exhibit "A" for such Building Envelope.

**1.1.2 "Building Envelopes"**: All of those areas on Parcel 2 located within the "Building Envelope Lines" as shown on Exhibit "A".

**1.1.3 "Common Area"**: All of 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 the same, shall be deemed to be a part of the building to which they are attached and not a part of the Common Area.

**1.1.4 "Consenting Owner"**: The Owner of Parcel 1; provided, if such Owner sells its Parcel and becomes the Prime Lessee thereon, such Prime Lessee is hereby appointed the entity to cast the vote or give the consent for such Parcel on behalf of the Owner thereof so long as it is the Prime Lessee of such Parcel.

**1.1.5 "Environmental Laws"**: The Comprehensive Environmental Response, Compensation and Liability Act of 1980, the Toxic Substances Control Act, the Clean Water Act, the Resource Conservation and Recovery Act and any other similar federal, state or local law, rule or regulation respecting Hazardous Materials, together with all rules and regulations promulgated thereunder and all present or future amendments thereto.

**1.1.6 "Floor Area"**: The total number of square feet in a building, whether or not actually occupied (excluding basement, balcony and mezzanine space), 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.

# UNOFFICIAL COPY

**1.1.7 "Fuel Facilities"**: Fuel islands, fuel island canopies and the area thereunder, fuel pumps, fuel storage tanks, piping, tank filling ports, compressed air islands, trash receptacles, air hoses, water hoses, vacuums, signs, safety equipment, access ports, and other structures or equipment associated with selling and dispensing of gasoline, motor fuel and/or other non-packaged petroleum products (collectively, "**Petroleum**").

**1.1.8 "Hazardous Materials"**: Underground storage tanks, petroleum and petroleum products, asbestos, PCBs, urea-formaldehyde and any hazardous or toxic substances, pollutants, contaminants, wastes or materials as defined under any Environmental Laws.

**1.1.9 "HL"**: HL Development, Inc., an Illinois corporation, whose current address is: 8724 Ferris Avenue, Morton Grove, Illinois 60053

**1.1.10 "Jetco"**: Jetco Properties, Inc., a Delaware corporation, together with any entity controlling, controlled by or under common control with Albertson's, Inc., a Delaware corporation, and whose current address is: c/o Albertson's, Inc., 250 Parkcenter Boulevard, Boise, Idaho 83706.

**1.1.11 "Lienholder"**: Any mortgagee under a mortgage, or a trustee or beneficiary under a deed of trust, constituting a lien on any Parcel. A Lienholder shall not be deemed to be an Owner for purposes of this Declaration until such time as said Lienholder acquires fee simple title to its Parcel(s) by foreclosure, trustee's sale or otherwise.

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

**1.1.13 "Parcel"**: Parcel 1 and Parcel 2 as shown on Exhibit "A" and more particularly described in Schedule I attached hereto and made a part hereof.

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

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

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

# UNOFFICIAL COPY

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

**1.1.18 "Shopping Center":** Parcels 1 and 2, collectively.

**1.1.19 "Utility Lines":** Those facilities and systems for transmission of utility services, including without limitation, storm water drainage and storage systems or structures; fire protection, irrigation and domestic water mains; lift stations; sewer lines and systems; fire and landscape water sprinkler systems; telephone lines; electrical conduits or systems; gas mains and other public or private utilities. "**Common Utility Lines**" means those Utility Lines which are installed to provide the applicable service to more than one (1) Parcel. "**Separate Utility Lines**" means those Utility Lines which are installed to provide the applicable service only to one (1) Parcel. For the purpose of this Declaration, the portion of a Utility Line extending between a Common Utility Line and a single building shall be considered a Separate Utility Line.

**1.2 Parties.** Jetco is the Owner of Parcel 1 and HL is the Owner of Parcel 2.

**1.3 Parking Requirements.** Parcel 2 shall have not less than fifty-one (51) parking stalls.

## **2. BUILDING AND COMMON AREA.**

**2.1 Building Location.** All buildings and other structures (except those permitted in the Common Area pursuant to Section 2.2 below) shall be placed or constructed upon Parcel 2 only in the Building Area. The total Floor Area of any building on Parcel 2 shall not exceed the maximum square footage assigned to such Parcel as set forth on Exhibit "A". Only one (1) building may be located on Parcel 2.

Canopies, eaves and roof overhangs (including columns or posts supporting the same), normal foundations, utility cabinets and meters, signs and doors for ingress and egress may project from the Building Area into the Common Area.

All of the foregoing shall be constructed and maintained in accordance with all local, state and federal laws, rules and regulations applicable thereto. Any Building Area on Parcel 2 on which a building is not under construction on the date of this Declaration shall be kept in a dust-free, weed-free and clean condition at the sole expense of the Owner of such Parcel, except to the extent such requirement is waived in writing by the Consenting Owner. Once construction of any building on Parcel 2 has commenced, the Owner of such Parcel shall diligently prosecute such construction to completion.

Notwithstanding any other provisions of this Declaration, multiple buildings may be located on Parcel 1 in any size and location (except within the "Permanent Access Easement" as defined in Section 3.4) in the sole and absolute discretion of the Owner of Parcel 1.

# UNOFFICIAL COPY

## 2.2 Common Area Use.

2.2.1 The Common Area is hereby reserved for the sole and exclusive use of all the Owners of the Shopping Center, their tenants, subtenants and licensees, and the contractors, agents, licensees and invitees of such Owners, tenants, subtenants and licensees. The Common Area may be used for vehicular driving, parking (except that there shall be no multi-level parking), pedestrian traffic, directional signs, sidewalks, walkways, landscaping, perimeter walls and fences, parking lot lighting, recycle centers, Utility Lines, cart corrals and Service Facilities and for no other purposes unless specifically provide in this Declaration. In addition, the Common Area may be used: (i) on a temporary basis, as a staging area in connection with the construction and repair of any buildings or Common Area improvement so long as such use does not occupy more area than is reasonably required or unreasonably restrict access to and from or the conduct of business within the buildings on the Parcels or access to and from the adjacent streets; (ii) in connection with the construction and maintenance of Utility Lines so long as such activity is undertaken in strict compliance with this Declaration; and (iii) for any other use required by any governmental authority having jurisdiction thereof.

2.2.2 The Common Area shall be kept and maintained as provided in Article 5 of this Declaration. All portions of the Building Area on Parcel 2 which cannot be used for buildings or which are not covered by a building shall be developed as improved Common Area by the Owner thereof, at such Owner's sole expense, in accordance with a site plan approved by the Consenting Owner (in accordance with the procedure for approval set forth in Section 2.3.1 hereof) prior to the development of the pertinent Common Area improvements. The Common Area improvement work on Parcel 2 shall be completed by the Owner of such Parcel prior to the occupancy of any building constructed or placed on such Parcel. Once any Common Area improvement work has been commenced on Parcel 2, the Owner of such Parcel shall diligently prosecute such work to completion. From and after the initial construction thereof, the sizes and arrangements of the Common Area improvements, including without limitation service drives and parking areas, striping, traffic directional arrows and signs, concrete bumpers, parking lot lighting, perimeter walls and fences and landscaped areas, together with necessary planting, may not be changed without the prior written consent of the Consenting Owner.

## 2.3 Parcels 2 – Type and Design of Building.

2.3.1 Any building on Parcel 2, 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 the building on Parcel 1. No building may be constructed on Parcel 2, nor the exterior of any existing building on Parcel 2 be changed in any way (including without limitation signs and color) without the prior written approval of the Consenting Owner as to the exterior elevations (including without limitation signs and color) of the building to be constructed or modified. Before any construction of any building or modification of an existing building which requires approval is commenced, sufficient information shall be sent by the Owner of Parcel 2 to the Consenting Owner to enable the Consenting Owner to make a reasonable determination as to the architectural and aesthetic compatibility of such building or modification with the building on

# UNOFFICIAL COPY

Parcel 1. Except as provided in Section 2.3.4, the Consenting Owner may not arbitrarily or unreasonably withhold its approval of the proposed building or modification if it is architecturally and aesthetically compatible and harmonious with the building on Parcel 1 and complies with all other provision of this Declaration. The Consenting Owner must approve or disapprove the proposal within thirty (30) days after receipt of the proposal, and if the Consenting Owner disapproves the proposal it shall provide a written explanation in reasonable detail of its reasons for disapproval. If the Consenting Owner rejects or disapproves the proposal and fails to provide such explanation within the thirty (30) day period, such Consenting Owner shall be deemed to have approved the same, provided that, when the approval was sought, the party seeking the approval stated in writing to the Consenting Owner that, if a disapproval with explanation is not made within the thirty (30) day period, approval will then be deemed to have been given. If the proposal is disapproved as provided herein, then an alternate proposal may be substituted, which alternate proposal shall be handled in the same manner as the initial proposal.

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

**2.3.3** The building on Parcel 2 shall have no more than three (3) stories and shall not exceed forty (40) feet in height (excluding mechanical fixtures and equipment and screening for the same) without the prior written consent of the Consenting Owner, which may be granted or withheld in its sole discretion. No mezzanine or basement on Parcel 2 shall be used for the sale or display of merchandise.

**2.3.4** The Owner of Parcel 2 shall maintain, or cause to be maintained, the exterior of the building(s) located on such Owner's Parcel in a quality and condition comparable to that of first class shopping centers of comparable size and nature located in the same geographic area as the Shopping Center. All Service Facilities shall be attractively screened from view from the parking areas.

## **2.4** Construction Requirements.

**2.4.1** All work performed in the construction, maintenance, repair, replacement, alteration or expansion of any building, sign or Common Area improvements located on Parcel 2 shall be effected as expeditiously as possible and in such a manner as not to unreasonably interfere, obstruct or delay: (i) access to or from the Shopping Center (or any part thereof); (ii) customer vehicular parking in that portion of the improved Common Area located in front of any building constructed in the Shopping Center; or (iii) the receiving of merchandise by any business in the Shopping Center, including, without limitation, access to Service Facilities. Staging for the construction, replacement, alteration or expansion of any building, sign, Utility Lines 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 Owner. Unless otherwise specifically stated herein, the person contracting for the performance of such work ("**Contracting Party**"), shall, at its sole cost and expense, promptly repair and restore or cause to



# UNOFFICIAL COPY

be promptly repaired and restored to its prior condition all buildings, signs, Utility Lines and Common Area improvements damaged or destroyed in the performance of such work.

**2.4.2** 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 Section 2.4.1 above; provided, 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 such Parcel shall have the right, at the Contracting Party's expense, to transfer such lien to bond. The Contracting Party shall indemnify, defend and hold harmless the Owners and occupants of the Shopping Center from any and all liabilities, claims, damages, expenses (including, without limitation, reasonable attorneys' fees and reasonable attorneys' fees on any appeal), liens, claims of lien, judgments, proceedings and causes of action of any kind whatsoever, 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. Any Contracting Party (except the Owner or Prime Lessee of Parcel 1) who causes the construction, maintenance, repair, replacement, alteration or expansion of any Common Area improvements located in the Shopping Center shall cause the contractor performing such work ("**Site Contractor**"), to obtain insurance meeting the requirements of Exhibit "B" attached hereto and incorporated herein by this reference.

**2.4.3** The Owners acknowledge and agree that incidental encroachments upon the Common Area may occur as a result of the use of ladders, scaffolds, store front barricades and similar facilities in connection with the construction, maintenance, repair, replacement, alteration or expansion of buildings, 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.** If 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 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: (x) 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 or Utility Lines of the Shopping Center or any portion thereof; (y) covered by a one (1) inch asphalt dust cap or otherwise kept in a dust-free condition; and (z) kept weed free and clean at the Owner's sole cost and expense until buildings are reconstructed thereon.

# UNOFFICIAL COPY

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

## 3. EASEMENTS.

**3.1 Ingress and Egress.** Subject to the restrictions of Section 6.3 hereof, each Owner, with respect to its Parcel, hereby grants to each other Owner as grantee, for the benefit of each other Owner, and for the use of the Owners and their respective tenants, employees, agents, customers and invitees of such tenants, and for the benefit of the Parcels owned by such grantee and as a burden on the grantor's Parcel, a non-exclusive easement appurtenant to each grantee's Parcel for the purpose of ingress and egress by vehicular and pedestrian traffic upon, over, across and through the Common Area within grantor's Parcel, except for those areas devoted to Service Facilities or drive-up or drive-through customer service facilities.

### 3.2 Utility Lines.

**3.2.1** Each Owner, as grantor with respect to its Parcel, hereby grants to each other Owner as grantee, for the benefit of each other Owner and its Parcel, non-exclusive easements appurtenant to the Parcel owned by the grantee, under, through and across the Common Area of the Parcel owned by the grantor for the installation, maintenance, repair and replacement of Utility Lines. All such Utility Lines shall be installed and maintained below the surface or ground level of such easements except for ground-mounted electrical transformers and such other Utility Lines as are required to be above ground by the utility providing such service (including temporary service required during the construction, maintenance, repair, replacement, alteration or expansion of any buildings or improvements located in the Shopping Center). The installation, operation, maintenance, repair and replacement of such easement facilities shall not unreasonably interfere with the use of the improved 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 the same.

All costs associated with the installation, operation, maintenance, repair and replacement of Common Utility Lines shall be allocated among the Owners of the Parcels served thereby as follows: (i) Parcel 1 - 84%; and (ii) Parcel 2 - 16%.

Except as may be otherwise provided in Article 5, the installation, operation, maintenance, repair and replacement of Common Utility Lines may be performed by the Owner

# UNOFFICIAL COPY

of any Parcel served thereby. The Owner performing such installation, operation, maintenance, repair or replacement of a Common Utility Line (“**Performing Owner**”), shall bill the Owner(s) of the other Parcel(s) served thereby for each such Owner’s proportionate share of the costs incurred by the Performing Owner not more often than monthly in arrears, and such costs shall be payable within thirty (30) days after the receipt of an invoice therefor and, if requested, reasonable supporting documentation.

**3.2.2** 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 shall: (i) 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) not unreasonably interfere with or diminish utility service to the Parcel(s) served by the utility line or facility; (iii) not reduce or unreasonably impair the usefulness or function of the other Parcel; and (iv) be performed without cost or expense to the Owner or occupant of any 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.

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

**3.3 Permanent Access Easement.** Each Owner hereto, as grantor, hereby grants to the other Owners, their respective tenants, contractors, employees, agents, licensees and invitees, and the subtenants, contractors, employees, agents, licensees and invitees of such tenants, for the benefit of each Parcel belonging to the other Owners, as grantees, a perpetual non-exclusive easement for ingress and egress by vehicular and pedestrian traffic upon, over and across that portion of the Common Area located on the grantor’s Parcel(s) shown on Exhibit “A” as “Permanent Service Drive” (“**Permanent Access Easement**”).

**3.4 Maintenance Easement.** Each Owner, as grantor, hereby grants to the other Owners, their respective employees, agents and contractors, as grantees, an easement over and across that portion of the Common Area located on the grantor’s Parcel for the purpose of protecting the Common Area and operating or performing any maintenance, repairs, resurfacing or replacements pursuant to Sections 3.2.1, 4.4 and 5.2 hereof or which the Owner or Prime Lessee of Parcel 1 has assumed pursuant to Section 5.6 hereof.

## **4. OPERATION OF COMMON AREA.**

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

# UNOFFICIAL COPY

**4.2 Employee Parking.** Notwithstanding anything to the contrary in this Declaration, the employees and Owners of the business operations on each Parcel shall park their motor vehicles only in designated employee parking areas on the Parcel on which such business is operated.

## **4.3 Signs.**

**4.3.1** The Owner of Parcel 1 shall have the right to construct such free-standing signs on Parcel 1 in such locations, and with such designations thereon, as such Owner may elect in its sole discretion (except within the Permanent Access Easement as defined in Section 3.4).

**4.3.2** Subject to governmental approval, the Owner of Parcel 2 shall have the right to erect one (1) freestanding sign on Parcel 2 at such location as such Owner may elect (except within the Permanent Access Easement as defined in Section 3.4), which sign shall not exceed twenty (20) feet in height. Such sign shall display the designation of the Owner or occupants of Parcel 2. The cost of operating, constructing, maintaining and replacing such sign structure shall be paid by the Owner of Parcel 2. The design and size of the sign structure on Parcel 2 and the sign fascia used thereon shall be subject to the approval of the Consenting Owner in accordance with the procedure for approval set forth in Section 2.3.1 hereof.

**4.3.3 No Other Signs.** Except as expressly provided in this Section 4.3, there shall be no other signs on Parcel 2, except directional signs and signs on buildings, without the prior written consent of the Consenting Owner, which consent may be granted or withheld in such Owner's sole discretion. All exterior building signs on Parcel 2 shall be restricted to identification of the businesses or services located or provided therein. No exterior building sign on Parcel 2 shall be placed on penthouse walls, extend above the building roof or be painted on the exterior building surface. No exterior building sign on Parcel 2 shall utilize flashing, moving or audible lights or appurtenances.

**4.4 Protection of Common Areas.** Each Owner or Prime Lessee shall have the right to take such steps as it deems necessary to prevent those persons not authorized by this Declaration from using the Common Area for ingress, egress, parking, or any other purpose. Such steps shall include, without limitation, the construction of fences, walls or barricades along the boundary lines of any portion of the Shopping Center, except along the common boundary line of any Parcels; provided, any impairment of access to or from the Shopping Center, or any part thereof, shall require the Consenting Owner's prior written approval, which approval may be withheld in such Consenting Owner's sole and absolute discretion.

**4.5 Sales.** The sale of merchandise by the Owner or occupant of Parcel 1 shall be permitted anywhere on the Common Area located on such Owner's Parcel.

## **5. COMMON AREA MAINTENANCE.**

**5.1 Maintenance by Individual Owners.** Except as otherwise provided in this Declaration, including without limitation Sections 3.2 (Utility Lines), 4.3 (Signs), 5.2

# UNOFFICIAL COPY

(Maintenance by the Owner or Prime Lessee of Parcel 1) and 5.4 (Lighting), commencing on the date of this Declaration, each Owner, at such Owner's sole cost and expense, shall maintain the Common Area and Service Facilities located on such Owner's Parcel at all times in good and clean condition and repair in a quality and condition comparable to the quality and condition of first class shopping centers within the general area in which the Shopping Center is located. Such maintenance shall include, without limitation, the following:

**5.1.1** Maintaining, repairing and resurfacing, when necessary, all paved surfaces (including, but not limited to, those paved surfaces located on an Owner's Parcel lying within the Permanent Access Easement) 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;

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

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

**5.1.4** Operating, maintaining, repairing and replacing, when necessary, artificial lighting facilities which shall be separately metered as shall be reasonably required including, but not limited to, poles, pole bases, wiring, lamps, ballasts, lenses, photocells, time clocks and contactors. Each Owner shall be responsible for maintaining or providing electricity to any lighting fixtures attached to any building or soffit on its Parcel, including "canopy" or "soffit" lighting. Each Owner shall maintain and provide electricity to all lighting fixtures attached to its respective building(s), at its sole cost and expense;

**5.1.5** 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;

**5.1.6** 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 this Declaration);

**5.1.7** Maintaining, repairing and replacing, when necessary, all Utility Lines 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 on its Parcel; provided, all Common Utility Lines shall be maintained as provided in Section 3.2;

**5.1.8** Maintaining, repairing and replacing, when necessary, all Service Facilities and drive-up or drive-through customer service facilities;

# UNOFFICIAL COPY

**5.1.9** Performing itself or contracting with a third party or parties to perform any of the services described herein; provided, the Owner of each Parcel shall remain responsible and liable for the performance of all such services on such Owner's Parcel in accordance with the terms of this Declaration and for the performance of any such third party or parties under and such contract or contracts.

Notwithstanding the foregoing, the cost of maintaining, repairing and replacing any Common Utility Lines shall be borne solely by the Owners of the Parcels served thereby in accordance with the provisions of Section 3.2.1 hereof.

## **5.2 Indemnification and Insurance.**

**5.2.1** The Owner of each Parcel hereby 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 attorneys' fees and reasonable attorneys' fees on any appeal), judgments, proceedings and causes of action, for injury to or death of any person or damage to or destruction of any property resulting from the negligent or willful act or omission of the indemnifying person, its tenants, subtenants, agents, contractors or employees, arising out of the performance of any of the obligations set forth in this Declaration, except to the extent caused by the negligent or willful act or omission of the indemnified person, its tenants, subtenants, agents, contractors or employees.

**5.2.2** Each Owner agrees to maintain, and/or cause to be maintained, at no cost to the other Owners, liability insurance insuring its interests against claims for personal injury, bodily injury, death and property damage with a "Combined Single Limit" (covering personal injury liability, bodily injury liability and property damage liability) of not less than Two Million Dollars (\$2,000,000.00) for total claims for any one occurrence. Such insurance shall, in addition, insure an Owner's indemnity obligations under Section 5.3.1. The insurance limits in this Section shall be subject to increase from time to time by such amounts as the Owners may reasonably agree is necessary or desirable, as may be evidenced by the practice of similarly situated properties. The Owner of each Parcel shall furnish the Owner or Prime Lessee of any other Parcel with a certificate 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 Declaration. 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.

**5.3 Lighting.** Each Owner covenants and agrees to keep its Parcel fully illuminated each day from dusk to at least thirty (30) minutes after the last business operation on its Parcel has closed, and further agrees to keep any exterior building security lights on from dusk until dawn. During the term of this Declaration, each Owner grants an irrevocable license to each other Owner for the purpose of permitting the lighting from one (1) Parcel to incidentally shine on the adjoining Parcel or Parcels.

# UNOFFICIAL COPY

**5.4 Taxes.** Each Owner shall pay or cause to be paid directly to the tax collector when due the real property taxes and other special taxes and assessments assessed against the property owned by such Owner, including the portion of the Common Area owned by such Owner. Nothing contained herein, however, shall prevent an Owner from paying its taxes under protest or challenging the validity or amount of an assessment so long as such Owner takes steps to prevent the delinquent taxes from becoming a lien on its Parcel or the occurrence of a tax sale of such Parcel.

**5.5 Right of the Owner or Prime Lessee of Parcel 1 to Maintain Other Parcels.**  
In the event the Owner of Parcel 2 fails to perform its obligations to operate, maintain, repair, replace or insure the Common Area in accordance with this Declaration, the Owner or Prime Lessee of Parcel 1 may, upon thirty (30) days' written notice, elect to assume all or any portion of such obligations. Anything to the contrary herein notwithstanding, in the event that an emergency condition should exist because of the failure of the Owner of Parcel 2 to perform any of its obligations to operate, maintain, repair, replace or insure any portion of the Common Area in accordance with this Declaration, such Owner shall not be entitled to such notice and the Owner or Prime Lessee of Parcel 1 may immediately assume all or any portion of such obligations. For the purpose of the preceding sentence, the phrase "**emergency condition**" means any condition constituting an immediate risk of injury to person or serious damage to property. In the event the Owner or Prime Lessee of Parcel 1 assumes all or any portion of the obligations of the Owner of Parcel 2 as set forth in this Section, the Owner of such Parcel shall, within thirty (30) days after being invoiced therefor, reimburse the Owner or Prime Lessee of Parcel 1 for all costs of every kind or nature incurred by the Owner or Prime Lessee of Parcel 1 in performing such assumed obligations, including all expenses incurred for labor (including the reasonable cost of salaries and other costs or fringe benefits of persons actually employed by the Owner or Prime Lessee of Parcel 1), services, equipment, supplies and materials used in performing such obligations and an administrative fee of ten percent (10%) of all the costs incurred. In the event the Owner or Prime Lessee of Parcel 1 assumes all or any portion of the obligations of the Owner of Parcel 2 as provided in this Section, the Owner or Prime Lessee of Parcel 1 may, in its sole discretion, perform such obligations itself or contract with third parties to perform such assumed obligations. The Owner or Prime Lessee of Parcel 1 shall not be liable for the failure to perform any obligations assumed by it pursuant to this Section unless it has been given written notice describing such item or items and an opportunity to cure the alleged failure in accordance with Section 7.9 (Default) and Section 7.10 (Notices). In any event, the liability of the Owner or Prime Lessee of Parcel 1 to the Owner or occupant of any other Parcel for damages resulting from or relating to the performance or non-performance of any Common Area maintenance items as set forth in this Section shall be limited to the cost of performing such item, it being specifically agreed and understood that, in no event shall the Owner or Prime Lessee of Parcel 1 be liable to any person for incidental or consequential damages on account thereof.

## 6. RESTRICTIONS ON USE.

**6.1 Food, Pharmacy, Fuel and Liquor, Etc. Restrictions.** No part of Parcel 2 shall be: (i) used or occupied: (1) as a supermarket, which shall be defined as any store or department

# UNOFFICIAL COPY

containing more than one thousand (1,000) square feet of Floor Area, including aisle space and storage, primarily devoted to the retail sale of food for off-premises consumption. (2) as a retail drug store; or (3) as a "dollar" store or a discount store in excess of one thousand hundred (1,000) square feet of Floor Area, whose primary business is the sale of general merchandise for under Five and 00/100 Dollars (\$5.00) (discount or "dollar" stores such as General Dollar, All-A-Dollar, 99 Cent Only, etc. will not be permitted whereas discount stores such as TJ Maxx, Ross Stores, etc. will be permitted); or (ii) used for the sale of any of the following: (1) items requiring dispensation by or through a pharmacy or requiring dispensation by or through a registered or licensed pharmacist; (2) liquor or other alcoholic beverages in package form, including but not limited to beer, wine and ale; (3) any combination of food items sufficient to be commonly known as a convenience food store or department; (4) gasoline or other petroleum products. In addition, no part of Parcel 2 shall be used for Fuel Facilities, a car wash or for a "Convenience Store" (as hereinafter defined) or for the sale of Petroleum. A "Convenience Store" is herein defined as a self-contained area or building primarily devoted to the sale of any or all of the following items: food, beverages, grocery items, Petroleum, tobacco and/or car-washes, as they may be operated from time to time. By way of example only, stores such as "7-Eleven" and "Circle K" are considered to be "Convenience Stores" under the foregoing definition.

**6.2 General Restrictions.** No part of Parcel 2 shall be used: (i) as a restaurant, pub, bar, tavern, cocktail lounge or other establishment serving alcoholic beverages; (ii) as an adult book or video store or other adult entertainment business; (iii) for the sale of automotive parts and accessories; (iv) as an automotive maintenance or repair facility; (v) as a warehouse; (vi) as a car wash; (vii) as an entertainment or recreational facility; (viii) as a training or educational facility; (ix) 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 (x) for industrial purposes. For purposes 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 business containing four or more 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.

**6.3 Additional Restrictions.** No Part of Parcel 2 shall be used for any purpose other than for office purposes as provided in this Section 6.3.

**6.3.1** Parcel 2 may be used for: (i) medical or dental offices; (ii) "business offices" which means offices which do not provide services directly to consumers; and (iii) "retail offices" which means offices which provide services directly to consumers, including, but not limited to, real estate agencies, stock brokerages, title companies and escrow offices, travel and insurance agencies, but excluding financial institutions and medical or dental clinics.

**6.3.2** Offices utilized by governmental or public agencies, such as social security and/or welfare, shall not be permitted on Parcel 2. Offices used for purposes of



# UNOFFICIAL COPY

environmental analysis and/or inspections (including, but not limited to, automobile emissions inspections) shall not be permitted on Parcel 2.

**6.3.3** Any medical or dental office may be used for the conduct of minor surgical procedures and laboratory work as are customary in medical or dental clinics offering similar services of similar size and locale. In addition, the sale or offer for sale of any pharmaceutical products requiring the services of a registered pharmacist shall not be permitted from any medical or dental office; provided, pain medication and/or antibiotics may be dispensed exclusively in connection with the medical or dental practice at such office.

**6.4 Drive-up and Drive-through Facilities.** No vehicular drive-up or drive-through customer service facilities shall be located on Parcel 2.

**6.5 Mall Restrictions.** There shall be no open or enclosed malls on Parcel 2 unless the Consenting Owner has first given its written consent, which shall not be unreasonably withheld, to the location of the entrance to such mall.

**6.6 Hazardous Materials** No Owner or occupant shall use or permit the use, handling, generation, storage, release, disposal or transportation of Hazardous Materials on, about or under its Parcel, except in the ordinary course of its business and in compliance with all Environmental Laws. Each Owner assumes all responsibility and liability for any and all damages, costs and claims, including, but not limited to, remediation costs, incurred as a result of the release of any Hazardous Material from its Parcel which migrates or otherwise contaminates another Parcel in the Shopping Center, including, but not limited to, leaks, spills or losses of motor fuels related to underground storage tanks, piping, dispensing systems or other facilities or activities on or about any Parcel. Each Owner shall promptly comply with any and all clean-up requirements of any governmental authority having jurisdiction pertaining thereto, and shall indemnify the other Owners for all costs, expenses and fees incurred by any other Owners (including reasonable attorneys' fees in defending the same) resulting from any contamination or discharge of Hazardous Materials. Any and all environmental assessment and remediation work shall be performed in accordance with all applicable local, state and federal laws, ordinances and regulations.

## 7. GENERAL PROVISIONS.

**7.1 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.

**7.2 Successors and Assigns.** This Declaration and the Restrictions created hereby shall inure to the benefit and be binding upon each Owner and its successors and assigns; provided, if any Owner conveys all of its interest in any Parcel owned by it, such Owner shall thereupon be released and discharged from any and all further obligations under this Declaration arising after the sale and conveyance of title, but shall remain liable for all obligations under this Declaration arising prior to the sale and conveyance of title. The new Owner of any such Parcel

# UNOFFICIAL COPY

or any portion thereof (including without limitation any Owner that 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.

**7.3 Duration.** Except as otherwise provided herein, this Declaration shall remain in full force and effect for a term of sixty-five (65) years from the date hereof.

**7.4 Injunctive Relief.** In the event of any violation or threatened violation of any provision of this Declaration, any Owner or Prime Lessee shall have the right, in addition to any other remedies herein or by law provided, to enjoin such violation or threatened violation in a court of competent jurisdiction.

**7.5 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 fifty percent (50%) of the total square footage of Building Area in the Shopping Center at the time of such modification or termination (which, in any event, must include the Owner of Parcel 1), 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.

**7.6 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 7.5. Except as otherwise set forth in Section 7.5, 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.

**7.7 Not a Public Dedication.** Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Shopping Center to the general public or for any public purposes whatsoever, it being the intention of the Owners that this Declaration shall be strictly limited to and for the purposes herein expressed.

# UNOFFICIAL COPY

**7.8 Breach Shall Not Permit Termination.** No breach of this Declaration shall terminate this Declaration or entitle any Owner to cancel, rescind or otherwise 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 any Owner whose title is acquired by foreclosure, trustee's sale or otherwise.

## **7.9 Default.**

**7.9.1** 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.

**7.9.2** In the event the defaulting party has defaulted in the payment of money to the Owner or Prime Lessee of Parcel 1, the Owner or Prime Lessee of Parcel 1, in addition to the other remedies provided by law, shall be entitled to interest on such amount at a rate equal to the lesser of: (i) the highest rate allowed by law; or (ii) the rate two percent (2%) above the prime rate as published in the Wall Street Journal commencing on the date such payment was due until paid in full, and the Owner or Prime Lessee of Parcel 1 shall be entitled to a lien against the Parcel of the defaulting party for the amount of such unpaid interest. Such lien shall only be effective when filed of record by the Owner or Prime Lessee of Parcel 1 as a claim of lien against the Shopping Center is located, signed and verified, which shall contain at least: (i) an itemized statement of all amounts due and payable pursuant hereto; (ii) a description sufficient for identification of that portion of the real property of the defaulting Owner which is the subject of the lien; and (iii) the name of the Owner or reputed Owner of the property which is the subject of the lien. 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 the filing of the lien. The lien shall be for the use and benefit of the Owner or Prime Lessee of Parcel 1 and may be enforced and foreclosed in a suit or action brought in any court of competent jurisdiction.

## **7.10 Notices.**

**7.10.1** All notices given pursuant to this Declaration shall be in writing and shall be given by personal service, by United States mail or by United States express mail or other established express delivery service (such as Federal Express), postage or delivery charge

# UNOFFICIAL COPY

prepaid, return receipt requested, addressed to the appropriate party at the address set forth below. If a notice must be given to a person other than one designated below, such notice shall be sent to the person and address shown on the then current real property tax rolls of the county in which the Shopping Center is located. All notices to Jetco or HL shall be sent to the appropriate party at the address set forth below:

To Jetco: Jetco Properties, Inc.  
c/o Albertson's, Inc.  
250 Parkcenter Boulevard  
Boise, Idaho 83706  
Attention: Legal Department (ABS #5634)  
Fax No.: (208) 395-6575

To HL: HL Development, Inc.  
8724 Ferris Avenue  
Morton Grove, Illinois 60053  
Attn: Anthony Hofeld, Esq.  
Phone No.: (847) 966-0909  
Fax No.: (847) 967-2388

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 party. All notices given pursuant to this Declaration shall be deemed given upon receipt.

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

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

**7.12 Attorneys' Fees.** In the event either party initiates or defends any legal action or proceeding in any way connected with this Declaration, the prevailing party in any such action or proceeding (in addition to any other relief which may be granted, whether legal or equitable), shall be entitled to recover from the losing party in any such action or proceeding its reasonable costs and attorneys' fees (including, without limitation, its reasonable costs and attorneys' fees on any appeal). All such costs and attorneys' fees shall be deemed to have accrued on commencement of any legal action or proceeding and shall be enforceable whether or not such

# UNOFFICIAL COPY

legal action or proceeding is prosecuted to judgment. The term "prevailing party" shall mean the Party that prevails in obtaining a final, non-appealable remedy or relief which most nearly reflects the remedy or relief sought.

**7.13 Sale and Sale-leaseback Purchaser.** Notwithstanding anything to the contrary contained in this Declaration, it is expressly agreed that in the event an Owner sells its Parcel (whether or not such sale includes buildings and/or Common Area improvements located thereon) to an unaffiliated third party and thereafter enters into a lease (including a ground lease or building lease) for 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 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.

**7.14 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 and 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.

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

**7.16 No 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.

**7.17 Captions.** 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.

**7.18 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.

**7.19 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.

# UNOFFICIAL COPY

**7.20 Joint and Several Obligations.** In the event any party hereto is composed of more than one person, the obligations of such party shall be joint and several.

**7.21 Recording.** This Declaration shall be recorded in the office of the recorder of the county in which the Shopping Center is located.

**7.22 Non-merger.** Ownership of more than one (1) Parcel by the same Owner shall not result in the merger of the dominant and servient estates of such Owner created by this Declaration.

**7.23 Counterparts.** This Declaration may be executed in counterparts, each of which shall be deemed an original and all of which together shall constitute one (1) and the same instrument.

EXECUTED as of the date first above written.

HL Development, Inc.,  
an Illinois corporation

By: ARH  
Name: Anthony R. Hefso  
Title: President

"HL"

Jetco Properties, Inc.,  
a Delaware corporation

By: William H. Arnold  
Name: William H. Arnold  
Title: Vice President

"Jetco"

WV

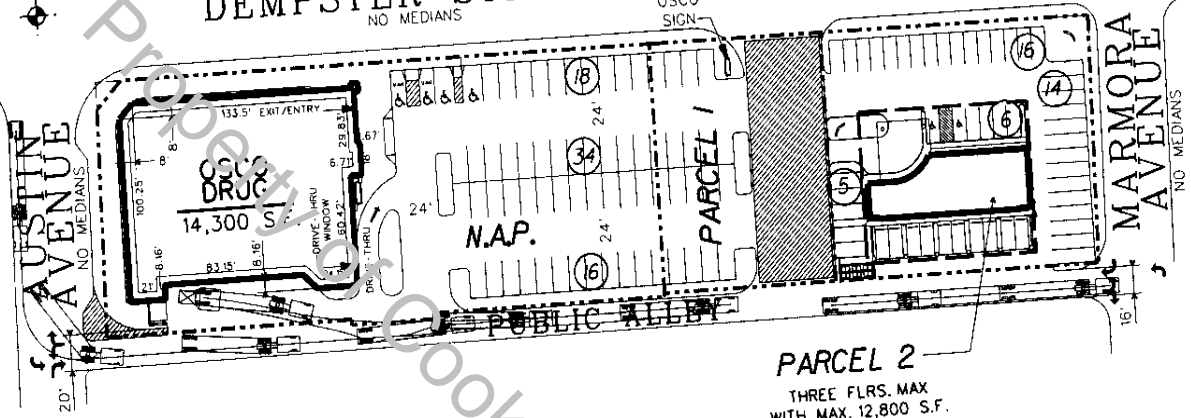


# UNOFFICIAL COPY

EXISTING TRAFFIC SIGNAL

**DEMPSTER STREET**  
NO MEDIANS

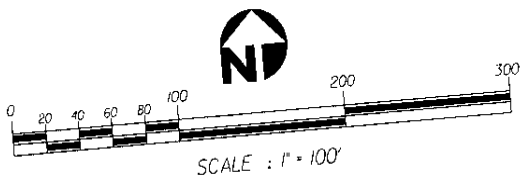
OSCO SIGN



**PARCEL 2**  
THREE FLRS. MAX  
WITH MAX. 12,800 S.F.

## LEGEND

- PROPERTY/PARCEL LINE
- BUILDING ENVELOPE
- BUILDING AREA
- PERMANENT SERVICE DRIVE



## EXHIBIT "A" SITE PLAN

APPROVED BY:	SIGNED	DATE:
MIKE REULING	SIGNED	7-31-'01
PETER LYNCH	SIGNED	7-31-'01
GREG GOINS	SIGNED	7-31-'01
CRAIG BROWN		



DESIGN & CONSTRUCTION  
250 PARKCENTER BLVD.  
BOISE, IDAHO 83726  
12081385-6200

REVISIONS	
8-13-01 GMR REV STORE S.F. & PARCEL LINE	
7-31-01 TEW CHANGED TO EXHIBIT "A"	
8-8-01 TEW	
8-8-01 TEW REV. HORIZONTAL CONTROL ADJUST CALCULATIONS	
8-8-01 TEW	
8-8-01 TEW REVISE PARKING, SIDEWALK AND CALC. ALIQUIS	

PROJECT **S.E.C. DEMPSTER STREET & AUSTIN AVENUE**  
MORTON GROVE, ILLINOIS  
STORE NO. **5622**

DRAWN T.F.W.	CHECKED R.T.W.
DATE 1-31-01	
SHEET TITLE <b>EXHIBIT "A" SITE PLAN</b>	

SHEET **1**  
OF 1  
5622\_exa.dgn



# UNOFFICIAL COPY

## Exhibit "B"

### INSURANCE REQUIREMENTS

The Site Contractor shall procure and maintain commercial general liability insurance (or if the same is not available, comparable coverage) written on a combined single limit basis with minimum limits of not less than \$2,000,000.00 per occurrence. All policies of insurance provided hereunder shall be written on an "occurrence" basis on an Insurance Services Office (ISO) 1986 or newer standard form.

The above policy of insurance shall be with an insurer acceptable to both the Owner of Parcel 1 and the Contracting Party and shall name the Contracting Party and the Owner of Parcel 1 as additional insureds. The Site Contractor shall furnish the Contracting Party and the Owner of Parcel 1 certificates (and, if requested by the Owner of Parcel 1, a copy of the insurance policy as well) showing such coverage and showing that coverage will not be cancelled without thirty (30) days' prior written notice to the Contracting Party and the Owner of Parcel 1. The policy must contain a separation of insureds clause. If the required coverage is obtained through a combination of commercial general liability and umbrella coverage, the certificate for umbrella coverage must also show that the Contracting Party and the Owner of Parcel 1 will be given thirty (30) days' prior written notice of cancellation.

The Site Contractor must provide certificates showing statutory worker's compensation coverage and showing employer's liability coverage with minimum limits of \$1,000,000.00. In addition, the Site Contractor will provide evidence its subcontractors and their subcontractors carry similar coverage. The Contracting Party and the Owner of Parcel 1 need not be named as additional insureds on the employer's liability coverage of the worker's compensation coverage. The Contracting Party and the Owner of Parcel 1 must be given thirty (30) days' prior written notice of cancellation of either coverage.

The Site Contractor must provide certificates of insurance showing that it maintains business automobile liability insurance for all owned, non-owned and hired vehicles with single limits of at least \$2,000,000.00 each accident. Such coverage must name the Contracting Party and the Owner of Parcel 1 as additional insureds. The Site Contractor must provide a certificate (and, if requested by the Owner of Parcel 1, a copy of the insurance policy as well) showing such coverage and showing that such coverage will not be cancelled without thirty (30) days' written notice to the Contracting Party and the Owner of Parcel 1.

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

# UNOFFICIAL COPY

## Schedule I

### Legal Description

#### Legal Description of Property Owned by Jetco (Parcel 1)

Lot 1 in Osco Morton Grove Plat of Resubdivision, being a resubdivision of part of the Northeast 1/4 of Section 20, Township 41 North, Range 13, East of the Third Principal Meridian, according to the Plat thereof recorded July 22, 2004, as Document 0420427071, in Cook County, Illinois.

#### Legal Description of Property Owned by HL (Parcel 2)

Lot 2 in Osco Morton Grove Plat of Resubdivision, being a resubdivision of part of the Northeast 1/4 of Section 20, Township 41 North, Range 13, East of the Third Principal Meridian, according to the Plat thereof recorded July 22, 2004, as Document 0420427071, in Cook County, Illinois.

Pin # 10-20-200-040  
5915 Dempster Street  
Morton Grove, IL