

When Recorded Return To:  
HBN V, LLC  
6340 S. 3000 E. #300  
SLC, UT 84121

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BK 4366 PG 976

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DECLARATION OF EASEMENTS, COVENANTS,  
CONDITIONS AND RESTRICTIONS

D

Syracuse West Phase 1 Subd

THIS DECLARATION OF EASEMENTS, COVENANTS, CONDITIONS AND RESTRICTIONS (the "Declaration") is made on this 12<sup>th</sup> day of September, 2007 by HBN V, LLC, a Utah limited liability company ("Declarant"), whose address is 6340 South 3000 East, Suite 300, Salt Lake City, UT 84121.

RECITALS

A. Declarant is the owner of that certain real property situated on the northeast corner of the intersection of 1700 South and 2500 West in the City of Syracuse, County of Davis, State of Utah, consisting of approximately 9.852 acres and more particularly described in Exhibit "A" attached hereto and incorporated herein by this reference (the "Property").

B. Declarant has subdivided the Property and intends to sell or lease various portions of the Property for various retail and commercial uses. Currently, the Property is subdivided into Lot 1, Lot 2, Lot 3, Lot 4, Lot 5, Lot 6 and Lot 7 of the Syracuse West Phase 1 Subdivision, all of which are legally described in Exhibits A-1, A-2, A-3, A-4, A-5, A-6, and A-7, respectively, attached hereto and depicted on the Site Plan attached hereto. Part of Tax Parcel # 12-606-0007

C. In order to promote the orderly development of the Property, Declarant desires to create certain easements, covenants, conditions and restrictions with respect to the Property, and the present and future owners and occupants thereof, on the terms and conditions hereafter set forth.

NOW, THEREFORE, in consideration of the above premises and of the covenants herein contained, Declarant hereby subjects the Property to the following easements, covenants, conditions and restrictions, all of which shall be deemed covenants running with and affecting the land:

E 2305928 B 4366 P 976-1010  
RICHARD T. MAUGHAN  
DAVIS COUNTY, UTAH RECORDER  
09/13/2007 03:23 PM  
FEE \$85.00 Pgs: 35  
DEP RTT REC'D FOR SYRACUSE CITY

DECLARATIONS

1. Definitions. For purposes hereof:

(a) The term "Owner" or "Owners" shall mean Declarant, and any and all successors or assigns of Declarant as the owner or owners of fee simple title to all or any portion of the Property, whether by sale, assignment, inheritance, operation of law, trustee's sale, foreclosure, or otherwise, but not including the holder of any lien or encumbrance on such real property.

(b) The term "Lot" shall mean one (1) of the seven (7) separately identified parcels of the Syracuse West Phase 1 Subdivision Amending Lot 7 of

Syracuse Wal-Mart Subdivision labeled "Lot 1", "Lot 2", "Lot 3", "Lot 4", "Lot 5", "Lot 6" and "Lot 7" on the Site Plan and constituting a part of the Property and any future subdivisions thereof. The term "Lots" shall mean Lot 1, Lot 2, Lot 3, Lot 4, Lot 5, Lot 6, and Lot 7, collectively.

(c) The term "*Parcel*" shall mean any Lot, individually and the term "*Parcels*" shall mean the Lots, collectively.

(d) The term "*Permittees*" shall mean the tenant(s) or occupant(s) of a Parcel, and the respective employees, agents, contractors, customers, invitees and licenses of (i) the Owner of such Parcel, and/or (ii) such tenant(s) or occupant(s).

(e) The term "*Common Area*" shall mean those portions of the Property that are outside the exterior walls of buildings or other structures from time to time located on the Parcels, and that are either unimproved, or are improved as parking areas, landscaped areas, driveways, roadways, walkways, light standards, curbing, paving, entrances, exits, public land adjacent to the Property for which a governmental authority requires improvements and/or maintenance and other similar exterior site improvements (without limitation).

(f) The term "*Site Plan*" shall mean the site plan of the Property attached hereto as Exhibit "B" and by reference made a part hereof. Except as may be otherwise provided in this Declaration, the Site Plan is for identification purposes only.

(g) The term "*Cross Access Easement*" shall mean that portion of the Lots as depicted on the Site Plan that permits access from any Lot to any other Lot.

(h) The term "*Lot 7 Cross Access Easement*" shall mean that portion of the Lots as depicted on the Lot 7 cross access easement exhibit attached hereto as Exhibit "D" that permits access from any Lot to Lot 7 and Lot 1.

(i) The term "*Access Cuts*" shall mean those portions of the Lots depicted on the access cuts exhibit attached hereto as Exhibit "E" where access is permitted from any Lot to any other Lot and those accesses, if any, that may be permitted in the future with the consent of the Declarant or Owner affected by such future access(s).

(j) The term "*Storm Drain Easement(s)*" shall mean the area extending five feet on both sides of where the main storm drain lines have been or shall have been installed as indicated on the storm drain easement exhibit attached here to as Exhibit "F" and as defined in Section 2.3 of this Declaration. The storm drain easement exhibit is indicative only. The Storm Drain Easement shall not include any lateral lines for any Lot and shall only extend around storm drain lines, pipes, and other storm drain infrastructure directly facilitating the drainage

of multiple Parcels and shall not be understood to extend around any such storm drain lines, pipes and other storm drain infrastructure which solely serve the Parcel upon which it is located.

(l) The term "*Public Utility Easement(s)*" shall mean the public utility easements depicted on the site plan with easements exhibit and attached hereto as Exhibit "C" and as defined in Section 2.5 of this Declaration.

(m) The term "*Dumpster Area*" shall mean the area depicted on the dumpster area exhibit and attached hereto as Exhibit "G" and as defined in Section 2.6 which shall allow for the installation by Owners of Lot 3, 4, and/or 5 of a refuse storage and collection area which shall benefit the Permittees of Lots 3, 4, and/or 5.

2. Easements.

2.1 Subject to any express conditions, limitations or reservations contained herein, each Parcel, and its occupants, invitees, licensees, employees and agents, shall have easements for reasonable access, ingress and egress over the Common Areas of the Parcels as may be constructed and/or relocated from time to time, so as to provide for the passage of motor vehicles and pedestrians between each Parcel and all portions of the Common Area of the Property intended for such purposes, including without limitation the driveway on the Cross Access Easement. Such easements shall expressly include reasonably direct access, ingress and egress over the Common Areas of the Parcels from any Lot through any other Lot or Lots to an Access Cut.

2.2 Declarant hereby declares that the Lots, and all Owners and Permittees of the Lots, shall be benefited and burdened by a nonexclusive, perpetual easement over, across, between and among the Lots.

2.3 Declarant hereby declares that the Lots, and all Owners and Permittees of the Lots, shall be benefited and burdened by a nonexclusive, perpetual easement over, under and across the Storm Drain Easements for storm water drainage and detention and for the maintenance, installation and construction of the storm drain laterals and related improvements; provided that (i) the construction and installation of the storm drain laterals and related improvements shall at all times be exercised in such a manner as not to interfere materially with the normal operation of a Lot and the businesses conducted therein, (ii) except in an emergency, the rights of any Owner to enter upon the Lot of another Owner for maintenance, installation or construction upon providing reasonable prior advance written notice to the other Owner as to the time and manner of entry, (iii) the construction and installation of the storm drain laterals and related improvements by any Owner on another Owner's Lot shall be within the Storm Drain Easements as depicted on Exhibit "F" or within the Public Utility Easements as depicted on Exhibit "C", and (iv) any damage caused in connection with such construction

and installation shall be repaired by the person performing such work, and the property shall be restored to the condition existing prior to such installation or construction.

2.4 Subject to any express conditions, limitations or reservations contained herein, the Owner(s) of Lot 1 and Lot 7 shall grant a nonexclusive and temporary easement to Declarant and all present and future Owners of Lot 1 and Lot 7 to construct a driveway on the Lot 7 Cross Access Easement depicted on the Site Plan provided that: (i) the rights granted pursuant to this easement shall at all times be exercised in such a manner as not to interfere materially with the normal operation of a Lot and the businesses conducted therein; (ii) construction shall include the driveway connection and curb, gutter, and sidewalk to connect the Lot 7 Cross Access Easement to the eastern end of the existing city park parking lot depicted on the Site Plan; and (iii) except in an emergency, the right of any Owner to enter upon the Lot of another Owner for exercise of any right pursuant to such easements shall be conditioned upon providing reasonable prior advance written notice to the other Owner as to the time and manner of entry. Should the Declarant or any Owner of either Lot 1 or Lot 7 exercise its rights under this Section 2.4, the remaining Owner of Lot 1 or Lot 7 or the Owner of Lot 1 and the Owner of Lot 7 shall pay one half of the construction and installation costs and expenses for the driveway on the Lot 7 Cross Access Easement.

2.5 Subject to any express conditions, limitations or reservations contained herein, Declarant hereby declares that the Lots, and all Owners and Permittees of the Lots shall be benefited and burdened by a nonexclusive, perpetual easement under and across the Public Utility Easement areas as depicted on the Site Plan, for the installation, maintenance, repair and replacement of water mains, sewers, water sprinkler system lines, telephone or electrical conduits or systems, cable, gas mains and other utility facilities necessary for the orderly development and operation of the Common Areas and each building from time to time located within the Lots; provided that (i) the rights granted pursuant to such easements shall at all times be exercised in such a manner as not to interfere therein, (ii) any damage caused in connection with such construction and installation shall be repaired and the property shall be restored by the person performing such work to the condition existing prior to such installation or construction, and (iii) except in an emergency, the right of any Owner to enter upon the Lot of another Owner for the exercise of any right pursuant to such easements shall be conditioned upon providing reasonable prior advance written notice to the other Owner as to the time and manner of entry. All such systems, structures, mains, sewers, conduits, lines and other public utilities shall be installed and maintained below the ground level or surface of the Lot (except for such parts thereof that cannot and are not intended to be placed below the surface, such as transformers and control panel, which shall be placed in such locations as approved by the Owner of the affected Lot).

2.6 Subject to any express conditions, limitations or reservations contained herein, the Owners hereby grant, establish, covenant and agree that the Parcels, and all Owners and Permittees of Lots 3, 4, and or 5, shall be benefited and burdened by the a nonexclusive, perpetual and reciprocal easement to access, repair and maintain the Dumpster Area. Furthermore, The Owner(s) of Lot 3 and Lot 5 hereby agree to allow the improvements associated with the Dumpster Area to remain as to be installed by Declarant on Lots 3 and 5 as indicated on Exhibit . Other future improvements installed within the Dumpster Area for the purpose of containing and concealing dumpsters shall be constructed to match in quality, materials and color(s), the improvements to be installed by Declarant in the Dumpster Area, including, but not limited to, split-face CMU walls and solid metal doors of equal quality, color and appearance.

3. Maintenance and Repair of Parcels; Operation, Repair and Maintenance of Driveways and Drainage Easements.

3.1 Except as otherwise provided herein, each Owner shall maintain its own Parcel (including all Common Areas of its Parcel) in good order and repair, and at its sole cost and expense.

3.2 Except as set forth herein, each Owner or Permittee(s) of the Lots shall maintain all driveways on its own Parcel (including any portion of the driveway on the Cross Access Easement on its own Parcel) in good order and repair, and at its sole cost and expense. The Owner of Lot 1 may perform maintenance and/or repair the driveway on the entire Lot 7 Cross Access Easement, and shall be entitled to reimbursement for the cost and expense of such maintenance and repairs, provided that the Owner of Lot 7 shall have consented in writing to such maintenance and repairs.

3.3 The locations of the Access Cuts shall not be changed without the express written consent of the Declarant, and Declarant may withhold such consent in its sole and absolute discretion. Except during construction necessary for the installation and/or relocation of an Access Cut, the Access Cuts shall not be blocked, closed, altered, changed or removed. There shall be maintained between the Access Cuts and all Cross Access Easements a smooth and level grade transition to all the use of the Common Areas for pedestrian and vehicular ingress and egress as set forth in Section 2.1 above.

3.4 Except with respect to the Access Cuts, and curb cuts to the driveway on the Cross Access Easement, each Owner shall be permitted to maintain curbing, landscaping or other improvements along the boundary line of its Parcel.

3.5 The Owners agree that the Declarant shall design and construct, or cause to be designed and constructed a common storm water detention and drainage system in accordance with the regulations of the City of Syracuse and all other

applicable governmental authorities. It is expressly understood by all Owners that neither Declarant nor any Owner makes any warrantee or representation, explicit or implied, that said common storm water detention and drainage system shall meet the storm water detention and drainage needs of any or all of the Parcels. All Owners or prospective Owners shall be solely responsible for the determination of the adequacy of the common storm water detention and drainage system for their needs and shall hold Declarant and all other Owners harmless from and against all damages, losses, liens, claims, or expenses (including without limitations, all attorney's fees, costs and expenses) relating to the use of such storm water detention and drainage system.

3.6 Prior to the development of any Lot, each Owner, and its sole cost and expense, shall construct (or cause the construction of) those laterals and feeders necessary to drain storm water from its respective Lot, in order to insure that the flow of discharge from its Lot is not increased by any improvements constructed thereon.

3.7 If any Owner fails to comply with the provisions of Section 3, any other Owner may (but is not obligated to), after giving twenty (20) days' written notice to the non-complying Owner, perform or cause to be performed such work as is necessary to cause a Parcel including Common Areas to so comply. In such event, all sums reasonably expended and all costs and expenses reasonably incurred by such other Owner in connection with such work shall bear interest from the date expended or incurred (as the case may be) at the rate of eighteen (18%) per annum until paid or otherwise satisfied in full, and shall be paid promptly to such other Owner by the non-complying Owner on written demand.

4. Use and Building Restrictions.

4.1 To provide for the orderly flow of traffic among the Parcels, certain driveways must run through and among the Parcels. Except as set forth in Section 3 above, upon the development of each Parcel, each Parcel Owner, at its sole expense, shall cause (if not constructed previously) driveways and related improvements to be constructed and maintained, utilizing the same sub-base and paving materials as was constructed on the other Parcels within the Property, shall be paved in a smooth condition at an elevation that allows smooth transition of vehicular traffic between each Parcel and the adjacent rights-of-way and driveways connecting the Property to adjacent properties, and constructed as otherwise required to be in compliance with all applicable laws, codes, regulations, ordinances and documents of record affecting the Property.

4.2 In the event that development by the Owner of a Parcel ("Developing Party") shall occur prior to the development by the Owner of an adjacent Parcel ("Non-Developing Party"), the Developing Party shall have (i) the right to grade, pave and use any portion of the Common Areas of the Non-Developing Party's Parcel for access and for construction of, but not limited to, drainage structures

and utility lines as is necessary to provide essential services to the Developing Party's Parcel and (ii) the right to enter onto the Non-Developing Party's Parcel and construct, and its own cost and expense, any improvements required for ingress, egress and circulation, including but not limited to grading, paving, drainage, curbs, gutters, sidewalks, lighting, landscaping, directional signage, and striping on the Non-Developing Party's Parcel, (the "Advanced Improvements"); provided, however, that (i) except in an emergency, the right of any Owner to enter upon the Lot of another Owner for the exercise of any right in this Section 4.3 shall be conditioned upon providing reasonable prior advance written notice to the other Owner as to the time and manner of entry, and (ii) the construction and installation of any drainage structures or utility lines by any Owner on another Owner's Lot shall be within the Public Utility Easements as depicted on Exhibit "C". The Advanced Improvements shall be constructed in accordance with plans and specifications that are first approved by the City of Syracuse, Utah. All Non-Developing Parties hereby grant to all Developing Parties and their contractors a temporary easement to enter upon the Non-Developing Parties' Parcels and to use and occupy same for the purpose of constructing and installing the Advanced Improvements on the Non-Developing Parties' Parcels. If any Developing Party chooses to exercise the rights granted under this section, such Developing Party shall pay all costs and expenses associated therewith and shall indemnify and hold harmless the Non-Developing Party, from all damages, losses, liens, claims, or expenses (including with limitation, all attorney's fees, costs and expenses) attributable to the performance of such work. In addition, prior to and as a condition of its entry onto the Non-Developing Party's Parcel, the Developing Party shall procure and maintain general and/or comprehensive public liability and property damage insurance as set forth in Section 7 of this Declaration.

5. Improvements, Maintenance, and Taxes.

5.1 Improvements.

(a) Arrangement of Common Areas. The arrangement of the Common Areas shall not be changed in a manner inconsistent with the provisions of this Declaration. The installation of the Common Areas shall conform with the Site Plan unless exception is given in writing by Declarant. The Common Areas constructed or to be constructed by Declarant on Lot 3 and Lot 5 shall not be altered by the Owner(s) of Lot 3 or Lot 5 without the written consent of the Declarant and/or the Owner of Lot 4.

(b) Lighting. To provide for the aesthetic conformity among the Parcels, upon the development of each Parcel, each Parcel Owner, at its sole expense, shall cause the lighting and related improvements to be constructed and maintained, utilizing the same lighting plan design and equipment depicted, described and listed in Exhibit "G" and to construct and install or cause to be constructed and installed such improvements as otherwise required to be in compliance with all applicable laws, codes, regulations, ordinances and

documents of record affecting the Property. Exception to this provision shall be given in writing at the sole and absolute discretion of Declarant.

(b) Landscaping. To provide for the aesthetic conformity among the Parcels, upon the development of each Parcel, each Parcel Owner, at its sole expense, shall cause the landscaping and related improvements to be constructed and maintained, utilizing the same landscaping plan design and plants described and listed in Exhibit "I" and to construct and install or cause to be constructed and installed such improvements as otherwise required to be in compliance with all applicable laws, codes, regulations, ordinances and documents of record affecting the Property. Exception to this provision shall be given in writing at the sole and absolute discretion of Declarant.

(c) No improvements shall be constructed, erected, expanded or altered on any Lot until the plans for same (including site layout, exterior building materials and colors and parking) have been approved in writing by Declarant.

## 5.2 Maintenance.

(a) Standards. Following completion of the improvements on the Common Areas, the Owner(s) of each Lot shall maintain the Common Areas in good condition and repair. The maintenance is to include, without limitation, the following:

- (i) Maintaining the surfaces in a level, smooth and evenly-covered condition with the type of surfacing material original installed or such substitute as shall in all respects be equal in quality, use, and durability;
- (ii) Removing all papers, ice and snow, mud and sand, debris, filth and refuse and thoroughly sweeping the area to the extent reasonably necessary to keep the area in clean and orderly condition;
- (iii) Placing, keeping in repair and replacing any necessary appropriate directional signs, markers and lines;
- (iv) Operating, keeping in repair and replacing where necessary, such artificial lighting facilities as shall be reasonably required;
- (v) Maintaining all perimeter and exterior building walls including but not limited to all retaining walls in a good condition and state of repair, and
- (vi) Maintaining, mowing, weeding, trimming and watering all landscaped areas and making such replacements of shrubs and other landscaping as is necessary.

(b) Expenses. The respective Owners shall pay the maintenance expense of their Lot(s).

(c) By Agent. Subject to the mutual agreement of the Owners hereto, a third part may be appointed as an agent of the Owners to maintain the Common Areas in the manner as above outlined. Said third party may receive for



such agency a fee that is mutually acceptable to all parties to cover supervision, management, accounting and similar fees, which sums are to be included in the general maintenance expense paid by the respective owners of the Common Areas.

5.3 Shared Costs. If any house metering for utilities is installed on the Property then the Owner of each Parcel shall pay its proportionate share of the cost of such utility based upon the square footage of the land area of the Parcel divided by the land area of the Parcels serviced directly by such utility.

5.4 Taxes. Each of the Owners agrees to pay or cause to be paid, prior to delinquency, directly to the appropriate taxing authorities all real property taxes and assessments which are levied against that part of the Common Areas owned by it.

6. Indemnification. Each Lot Owner shall indemnify and hold the remaining Owners harmless from and against all damages, losses, liens, claims, or expenses (including without limitations, all attorney's fees, costs and expenses) relating to the Lot Owner's entry or activities on the remaining Owners' Parcel or those of its Permittees or their respective contractors, employees, agents, or others acting on behalf of the Indemnifier.
7. Insurance. Throughout the term of this Declaration, each Lot Owner shall procure and maintain general and/or comprehensive public liability and property damage insurance against claims for personal injury (including contractual liability arising under the indemnity contained in Section 6 above), death, or property damage occurring upon the Owner's Parcel or any other Owner's Parcel, with single limit coverage of not less than an aggregate of Two Million Dollars (\$2,000,000.00) including umbrella coverage, if any, and naming the other Owners as additional insureds.
8. No Rights in Public; No Implied Easements. Nothing contained herein shall be construed as creating any rights in the general public or as dedicating for public use any portion of any Parcels. No easement shall be implied from this Declaration that is not enumerated herein.
9. Remedies and Enforcement.
  - 9.1 All Legal and Equitable Remedies Available. In the event of a breach or threatened breach by any Owner or its Permittee of any of the terms, covenants, restrictions or conditions hereof, the other Owner(s) shall be entitled forthwith to full and adequate relief by injunction and/or all other available legal and equitable remedies from the consequences of any such breach, including payment of any amounts due and/or specific performance.

9.2 Self-Help. In addition to all other remedies available at law or in equity, upon the failure of a defaulting Owner to cure a breach of this Declaration within thirty (30) days following written notice thereof by an Owner (unless, with respect to any such breach the nature of which cannot reasonably be cured within such 30-day period, the defaulting Owner commences to cure within that 30-day period and thereafter diligently prosecutes the cure to completion), any other Owner shall have the right to perform the obligation contained in this Declaration on behalf of the defaulting Owner and be reimbursed by the defaulting Owner upon demand for the reasonable costs thereof together with interest at the prime rate charged from time to time by Wells Fargo Bank (its successors or assigns), plus two percent (2%) (not to exceed the maximum rate of interest allowed by law). Notwithstanding the foregoing, in the event of emergency, an Owner may immediately cure the same and be reimbursed by the other Owner upon demand for the reasonable cost thereof together with interest at the prime rate, plus two percent (2%), as above described.

9.3 Lien Rights. Any claim for reimbursement, including interest as aforesaid, and all costs and expenses including reasonable attorneys' fees awarded to any Owner in enforcing any payment in any suit or proceeding under this Declaration shall be assessed against the defaulting Owner in favor of the prevailing party and shall constitute a lien ( the "*Assessment Lien*") against the Parcel of the defaulting Owner until paid, effective upon the recording of a notice of lien with respect thereto in the Recorder's Office of Davis County, Utah; provided, however, that any such Assessment Lien shall be subject and subordinate to (i) liens for taxes and other public charges which by applicable law are expressly made superior, (ii) all liens recorded in the Recorder's Office of Davis County, Utah, prior to the date of recordation of said notice of lien, and (iii) all leases entered into, whether or not recorded, prior to the date of recordation of said notice lien. All liens recorded subsequent to the recordation of the notice of lien described herein shall be junior and subordinate to the Assessment Lien. Upon the timely curing by the defaulting Owner of any default for which a notice of lien was recorded, the party recording same shall record an appropriate release of such notice of lien and Assessment Lien.

9.4 Remedies Cumulative. The remedies specified herein shall be cumulative and in addition to all other remedies permitted at law or in equity.

9.5 No Termination for Breach. Notwithstanding the foregoing to the contrary, no breach hereunder shall entitle any Owner to cancel, rescind, or otherwise terminate this Declaration. No breach hereunder shall defeat or render invalid the lien of any mortgage or deed of trust upon any Parcel made in good faith for value, but the easements, covenants, conditions and restrictions hereof shall be binding upon and effective against any Owner of a Parcel covered hereby whose title thereto is acquired by foreclosure, trustee's sale, or otherwise.

9.6 Irreparable Harm. In the event of a violation or threat thereof of any of the provisions of Sections 2 and 4 of this Declaration, each Owner agrees that such violation or threat thereof shall cause the nondefaulting Owners and/or their respective Permittees to suffer irreparable harm and such nondefaulting Owners and their respective Permittees shall have no adequate remedy at law. As a result in the event of a violation or threat thereof of any of the provisions of Section 2 or 4 of this Declaration, the nondefaulting Owners and their respective Permittees, in addition to all remedies available at law or otherwise under this Declaration, shall be entitled to injunctive or other equitable relief to enjoin a violation or threat thereof.

10. Term. The easements, covenants, conditions and restrictions contained in this Declaration shall be effective commencing on the date of recordation of this Declaration in the Recorder's Office of Davis County, Utah, and shall remain in full force and effect, unless this Declaration is canceled or terminated by the written consent of all then record Owners of the Parcels.

11. Miscellaneous.

11.1 Attorney's Fees. If a party institutes any legal action or proceeding for the enforcement of any right or obligation herein contained, the prevailing party after a final adjudication shall be entitled to recover its costs and reasonable attorneys' fees incurred in the preparation and prosecution of such action or proceeding.

11.2 Amendment.

(a) Except as provided herein, this Declaration may be modified or amended, in whole or in part, or terminated, only by the written consent of all record Owners of the Parcels evidenced by a document that has been fully executed and acknowledged by all such voting record Owners and recorded in the Recorder's Office of Davis County, Utah.

(b) An Owner who has consent or approval or voting rights relating to this Declaration may delegate to another party with an interest in the subject matter of this Declaration its right to approve a termination, modification, or amendment, *provided, however,* that any such delegation shall only be effective upon the recordation of notice of such delegation in the Recorder's Office of Davis County, Utah, against all of the Parcels.

11.3 No Waiver. No waiver of any default of any obligation by any party hereto shall be implied from any omission by the other party to take action with respect to such default.

11.4 No Agency. Nothing in this Declaration shall be deemed or construed by any party or by any third person to create the relationship of principal and

agent or of limited or general partners or of joint venturers of any other association between or among the parties.

11.5 Covenants to Run with Land. It is intended that each of the easements, covenants, conditions, restrictions, rights and obligations set forth herein shall run with the land and create equitable servitudes in favor of a real property benefited thereby, shall bind every person having any fee, leasehold or other interest therein and shall inure to the benefit of the respective parties and their successors, assigns, heirs, and personal representatives. Notwithstanding the foregoing, any rights granted in favor of the Declarant under this Declaration and any consent or approval rights of the Declarant shall be personal to the Declarant, and not run with land, until such time as the Declarant has conveyed its last remaining property interest in the Property. On or before such time, Declarant shall designate its rights under this Declaration to another Owner or Owners.

11.6 Grantee's Acceptance. The grantee of any Parcel, or any portion thereof, by acceptance of a deed conveying title thereto or the execution of a contract for the purchase thereof, whether from an original party or from a subsequent owner of the Parcel, shall accept any such deed or contract upon and subject to each and all of the easements, covenants, conditions, restrictions and obligations contained herein. By such acceptance, any such grantee shall for himself and his successors, assigns, heirs, and personal representatives, covenant, consent, and agree to and with the other party, to keep, observe, comply with, and perform the obligations and Declarations set forth herein with respect to the property so acquired by that grantee.

11.7 Severability. Each provision of this Declaration and the application thereof to the Property is hereby declared to be independent of and severable from the remainder of this Declaration. If any provision contained herein is held to be invalid or to be unenforceable or not to run with the land, then that holding shall not affect the validity or enforceability of the remainder of this Declaration. If the validity or enforceability of any provision of this Declaration is held to be dependent upon the existence of a specific legal description, the parties agree to promptly cause such legal description to be prepared.

11.8 Time of Essence. Time is of the essence for this Declaration with respect to each and every covenant, agreement, and obligation of the Declarant and each subsequent Owner.

11.9 Notices. Notices or other communication hereunder shall be in writing and shall be sent certified or registered mail, return receipt requested, or by other national overnight courier company, or personal delivery. Notice shall be deemed given upon receipt or refusal to accept delivery. The parties may change from time to time their respective addresses for notice hereunder by like notice to the other party. The notice address of Declarant is set forth in the first section of this Declaration. In addition, upon the transfer of fee simple ownership

of all or any part of the Property of any Owner, that purchasing party or entity which shall become an Owner shall execute a supplement to this Declaration substantially in the form attached hereto as Exhibit "J", and that purchasing party or entity shall send a copy of the supplement in the manner provided for notice herein to every other Owner, and after such notice is delivered, the other parties shall be required to give any notices required to the persons and at the addresses stated in that notice, rather than the notice information stated herein.

11.10 Governing Law. The laws of the State of Utah shall govern the interpretation, validity, performance, and enforcement of this Declaration.

11.11 Estoppel Certificates. Each Owner, within twenty (20) days of its receipt of a written request from the other Owner, shall from time to time provide the requesting Owner, a certificate binding upon that Owner stating: (a) to the best of the Owner's knowledge, whether any party to this Declaration is in default or violation of this Declaration and, if so, identifying the default or violation; and (b) that this Declaration is in full force and effect and identifying any amendments to the Declaration as of the date of the certificate.

11.12 Bankruptcy. In the event of any bankruptcy affecting any Owner or occupant of any Parcel, the parties agree that this Declaration shall, to the maximum extent permitted by law, be considered a Declaration that runs with the land and that is not rejectable, in whole or in part, by the bankrupt person or entity.

THE REMAINDER OF THIS PAGE HAD BEEN INTENTIONLLY LEFT BLANK

IN WITNESS WHEREOF, Declarant has executed this Declaration as of the date first written above.

HBN V, LLC  
a Utah limited liability company

By: [Signature]  
BENJAMIN BRUBAKER  
Its: MANAGING MEMBER

STATE OF: UTAH

COUNTY OF: SALT LAKE CITY

This instrument was acknowledged before me on this 12<sup>th</sup> day of September 2007 by Benjamin Brubaker the Managing Member of HBN V, LLC, a Utah limited liability company.

[Signature]  
Notary Public in and for the State of Utah



- Exhibit A – Legal Description of Property.
- Exhibit A-1 – Legal Description of Lot 1.
- Exhibit A-2 – Legal Description of Lot 2.
- Exhibit A-3 – Legal Description of Lot 3.
- Exhibit A-4 – Legal Description of Lot 4.
- Exhibit A-5 – Legal Description of Lot 5.
- Exhibit A-6 – Legal Description of Lot 6.
- Exhibit A-7 – Legal Description of Lot 7.
- Exhibit B – Site Plan.
- Exhibit C – Site Plan with Easements.
- Exhibit D – Lot 7 Cross Access Easement.
- Exhibit E – Access Cuts
- Exhibit F – Storm Drain Easement.
- Exhibit G – Dumpster Area
- Exhibit H – Lighting Plan and Equipment List
- Exhibit I – Landscaping Plan.
- Exhibit J -- Supplement to Declaration of Easements, Covenants, Conditions and Restrictions

EXHIBIT A

SYRACUSE WEST PHASE 1 SUBDIVISION AMENDING LOT 7 OF SYRACUSE  
WAL-MART SUBDIVISION LOCATED IN THE SOUTHEAST QUARTER OF  
SECTION 9, TOWNSHIP 4 NORTH, RANGE 2 WEST, SALT LAKE BASIN &  
MERIDAN, SYRACUSE, DAVIS COUNTY, UTAH.

EXHIBIT A-1

LOT 1 OF THE SYRACUSE WEST PHASE 1 SUBDIVISION AMENDING LOT 7 OF SYRACUSE WAL-MART SUBDIVISION LOCATED IN THE SOUTHEAST QUARTER OF SECTION 9, TOWNSHIP 4 NORTH, RANGE 2 WEST, SALT LAKE BASIN & MERIDAN, SYRACUSE, DAVIS COUNTY, UTAH, LOCATED AT 2378 WEST 1700 SOUTH IN SYRACUE, DAVIS COUNTY, UTAH.



EXHIBIT A-2

LOT 2 OF THE SYRACUSE WEST PHASE 1 SUBDIVISION AMENDING LOT 7 OF SYRACUSE WAL-MART SUBDIVISION LOCATED IN THE SOUTHEAST QUARTER OF SECTION 9, TOWNSHIP 4 NORTH, RANGE 2 WEST, SALT LAKE BASIN & MERIDAN, SYRACUSE, DAVIS COUNTY, UTAH, LOCATED AT 2372 WEST 1700 SOUTH IN SYRACUE, DAVIS COUNTY, UTAH.

EXHIBIT A-3

LOT 3 OF THE SYRACUSE WEST PHASE 1 SUBDIVISION AMENDING LOT 7 OF SYRACUSE WAL-MART SUBDIVISION LOCATED IN THE SOUTHEAST QUARTER OF SECTION 9, TOWNSHIP 4 NORTH, RANGE 2 WEST, SALT LAKE BASIN & MERIDAN, SYRACUSE, DAVIS COUNTY, UTAH, LOCATED AT 2392 WEST 1700 SOUTH IN SYRACUE, DAVIS COUNTY, UTAH.

EXHIBIT A-4

LOT 4 OF THE SYRACUSE WEST PHASE 1 SUBDIVISION AMENDING LOT 7 OF SYRACUSE WAL-MART SUBDIVISION LOCATED IN THE SOUTHEAST QUARTER OF SECTION 9, TOWNSHIP 4 NORTH, RANGE 2 WEST, SALT LAKE BASIN & MERIDAN, SYRACUSE, DAVIS COUNTY, UTAH, LOCATED AT 2432 WEST 1700 SOUTH IN SYRACUE, DAVIS COUNTY, UTAH.

EXHIBIT A-5

LOT 5 OF THE SYRACUSE WEST PHASE 1 SUBDIVISION AMENDING LOT 7 OF SYRACUSE WAL-MART SUBDIVISION LOCATED IN THE SOUTHEAST QUARTER OF SECTION 9, TOWNSHIP 4 NORTH, RANGE 2 WEST, SALT LAKE BASIN & MERIDAN, SYRACUSE, DAVIS COUNTY, UTAH, LOCATED AT 2478 WEST 1700 SOUTH IN SYRACUE, DAVIS COUNTY, UTAH.

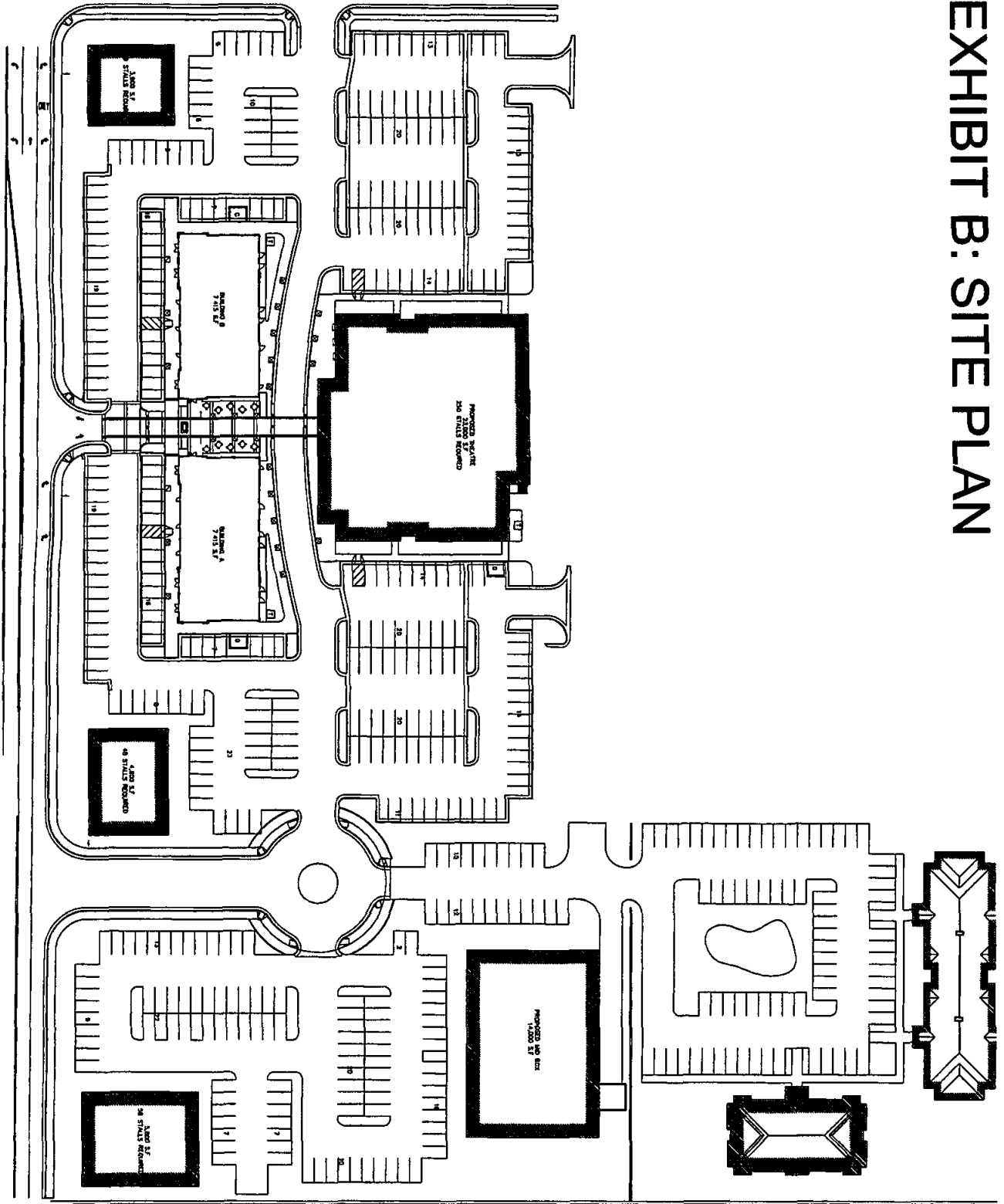
EXHIBIT A-6

LOT 6 OF THE SYRACUSE WEST PHASE 1 SUBDIVISION AMENDING LOT 7 OF SYRACUSE WAL-MART SUBDIVISION LOCATED IN THE SOUTHEAST QUARTER OF SECTION 9, TOWNSHIP 4 NORTH, RANGE 2 WEST, SALT LAKE BASIN & MERIDAN, SYRACUSE, DAVIS COUNTY, UTAH, LOCATED AT 2428 WEST 1700 SOUTH IN SYRACUE, DAVIS COUNTY, UTAH.

EXHIBIT A-7

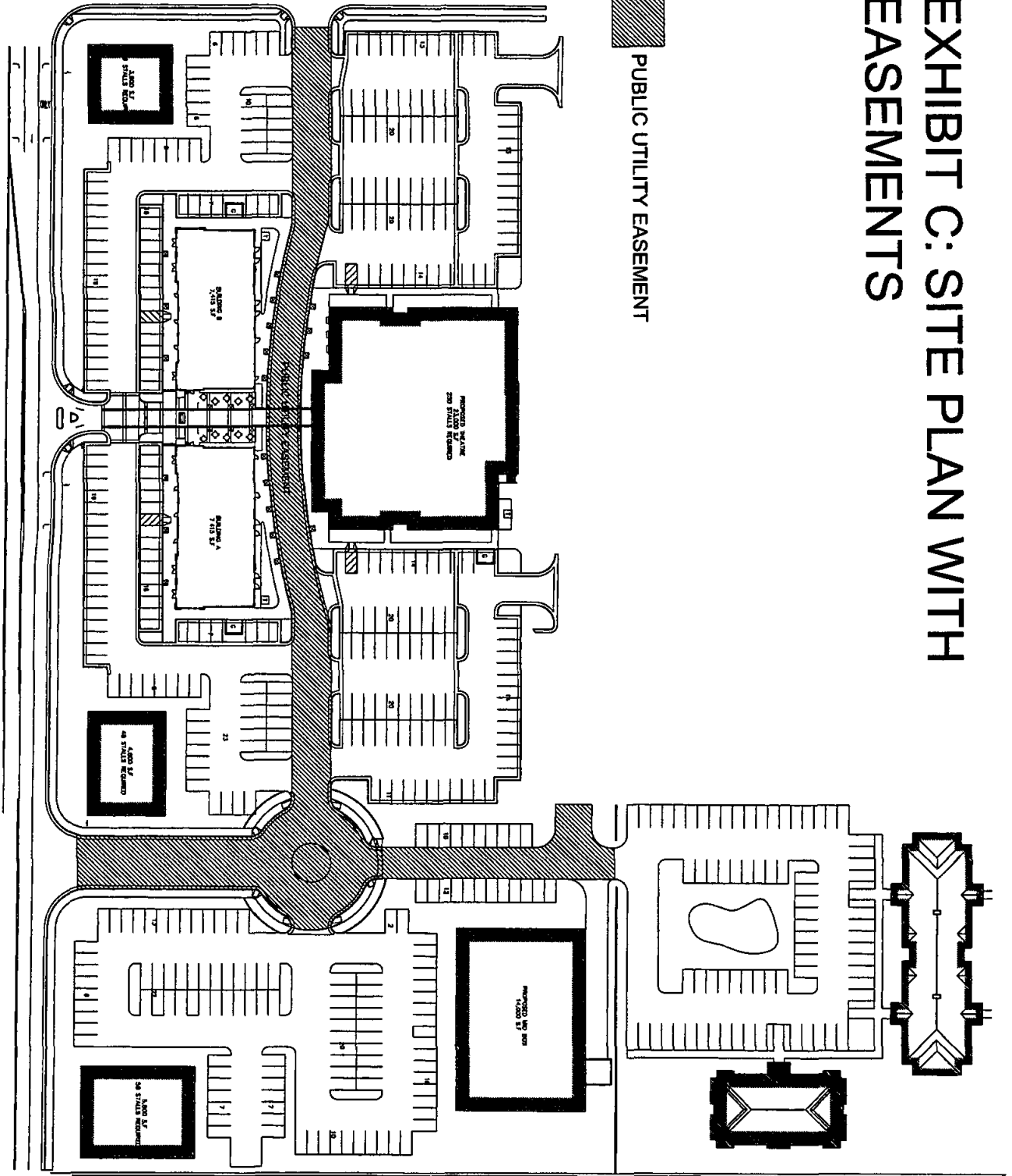
LOT 7 OF THE SYRACUSE WEST PHASE 1 SUBDIVISION AMENDING LOT 7 OF SYRACUSE WAL-MART SUBDIVISION LOCATED IN THE SOUTHEAST QUARTER OF SECTION 9, TOWNSHIP 4 NORTH, RANGE 2 WEST, SALT LAKE BASIN & MERIDAN, SYRACUSE, DAVIS COUNTY, UTAH, LOCATED AT 2376 WEST 1700 SOUTH IN SYRACUE, DAVIS COUNTY, UTAH.

# EXHIBIT B: SITE PLAN



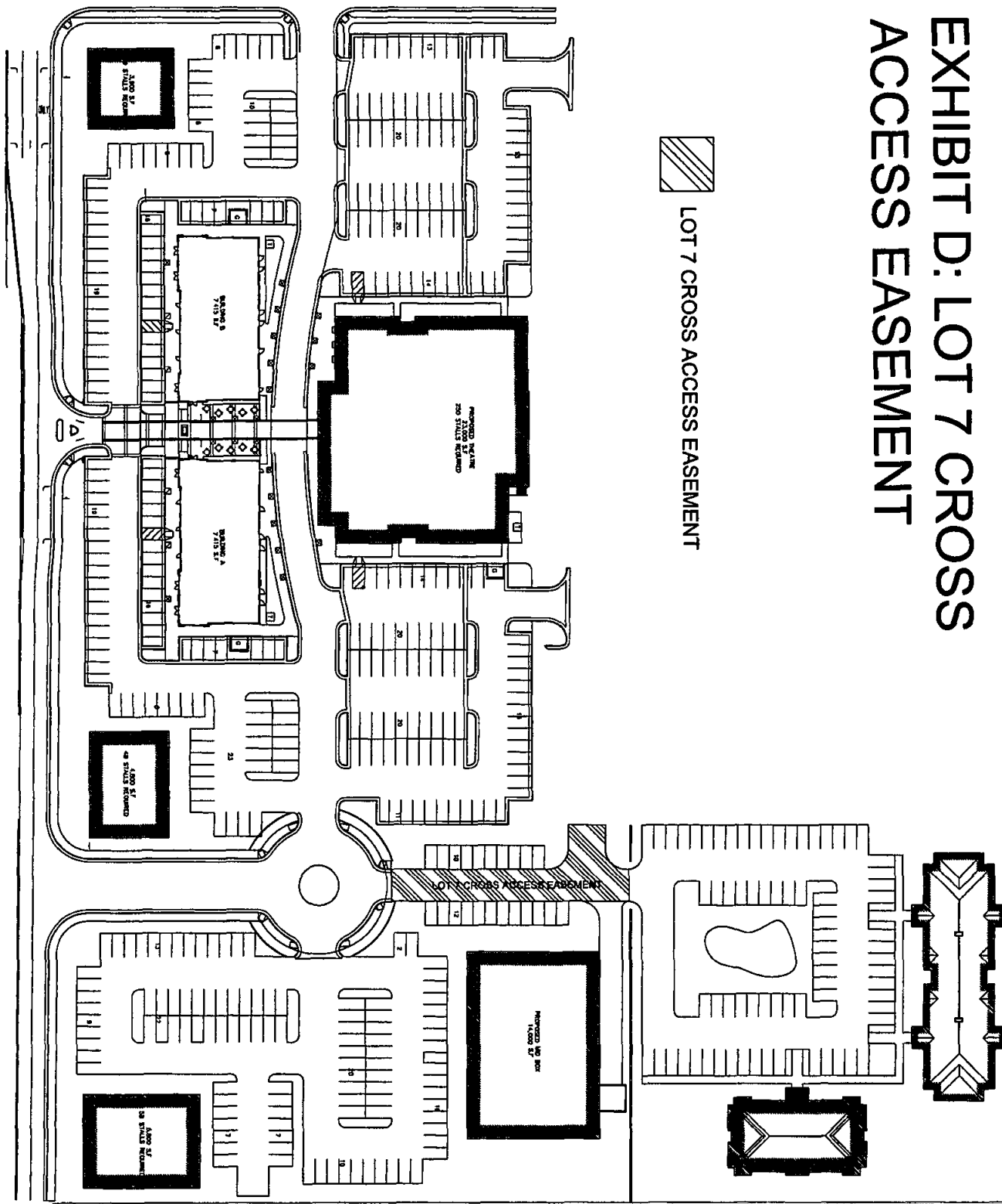
# EXHIBIT C: SITE PLAN WITH EASEMENTS

 PUBLIC UTILITY EASEMENT

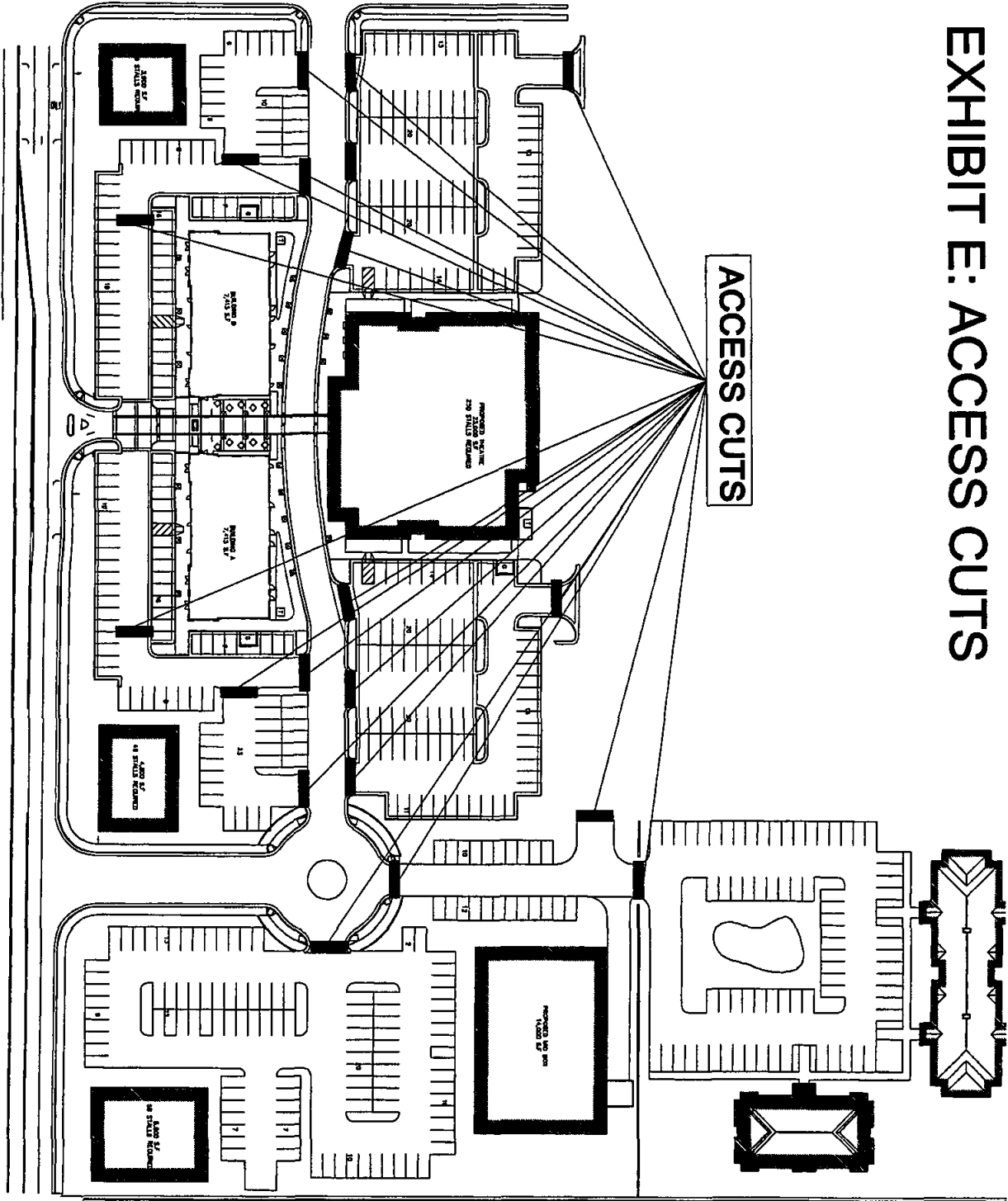




# EXHIBIT D: LOT 7 CROSS ACCESS EASEMENT

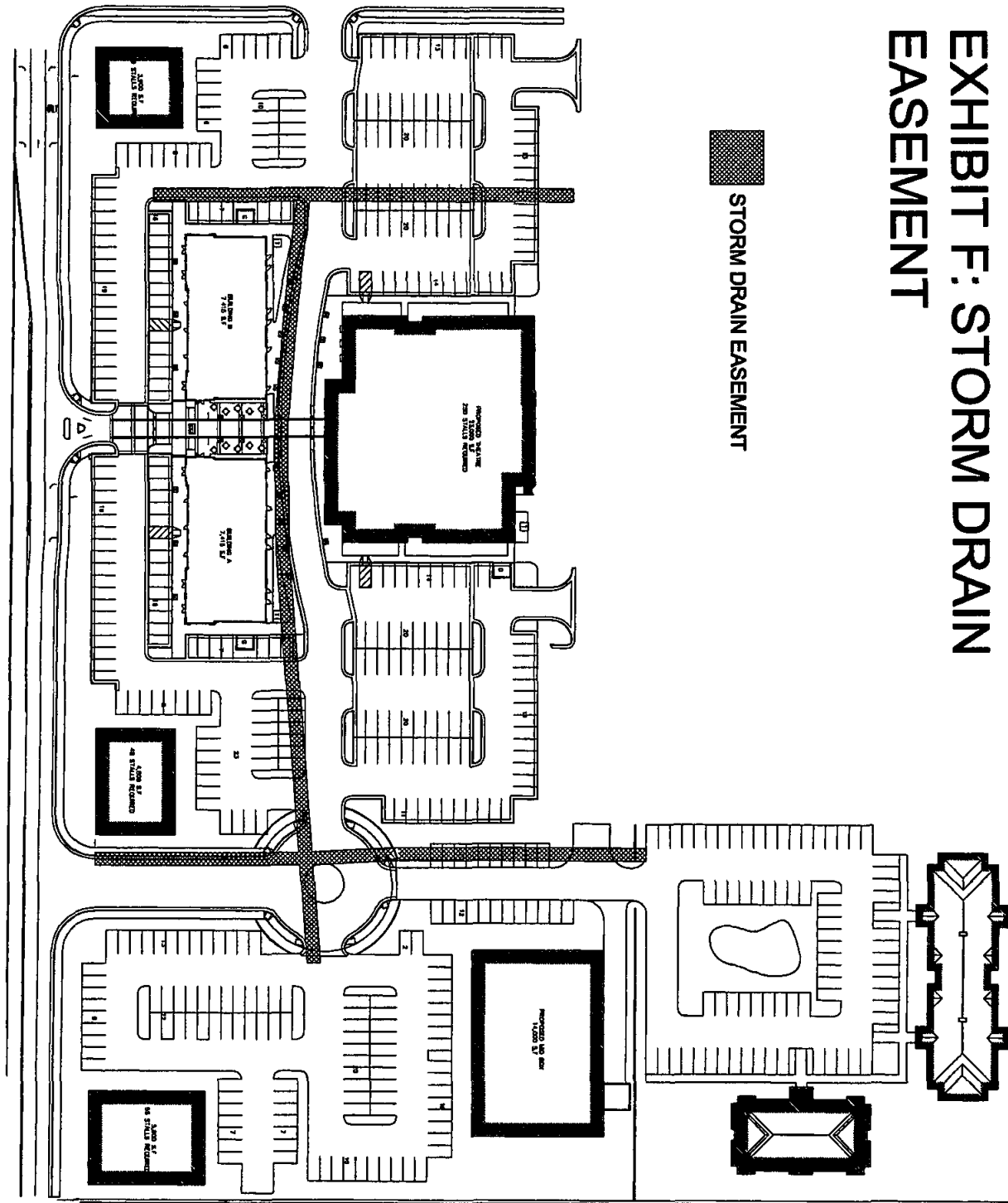


# EXHIBIT E: ACCESS CUTS



# EXHIBIT F: STORM DRAIN EASEMENT

 STORM DRAIN EASEMENT



# EXHIBIT G: DUMPSTER AREA

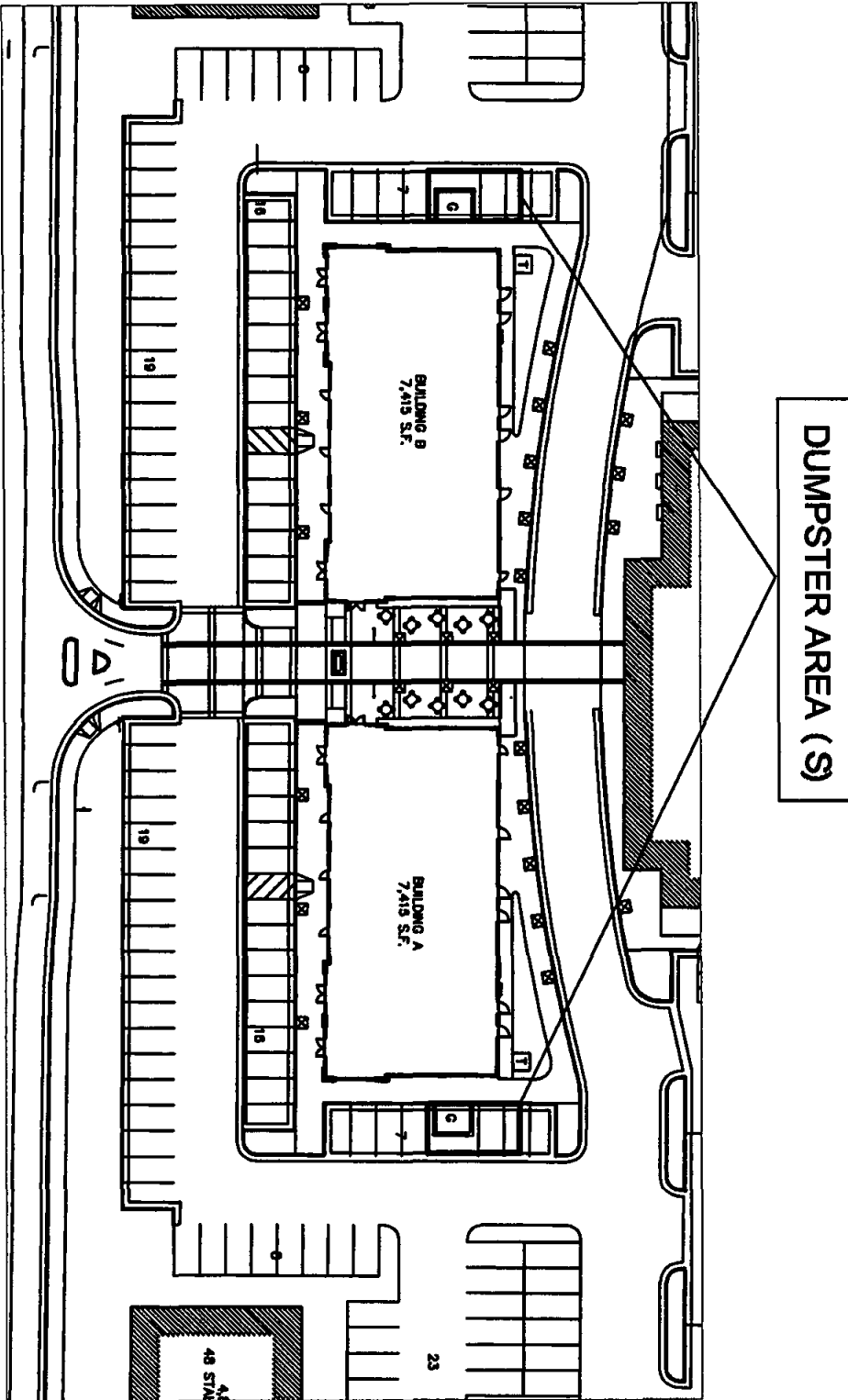
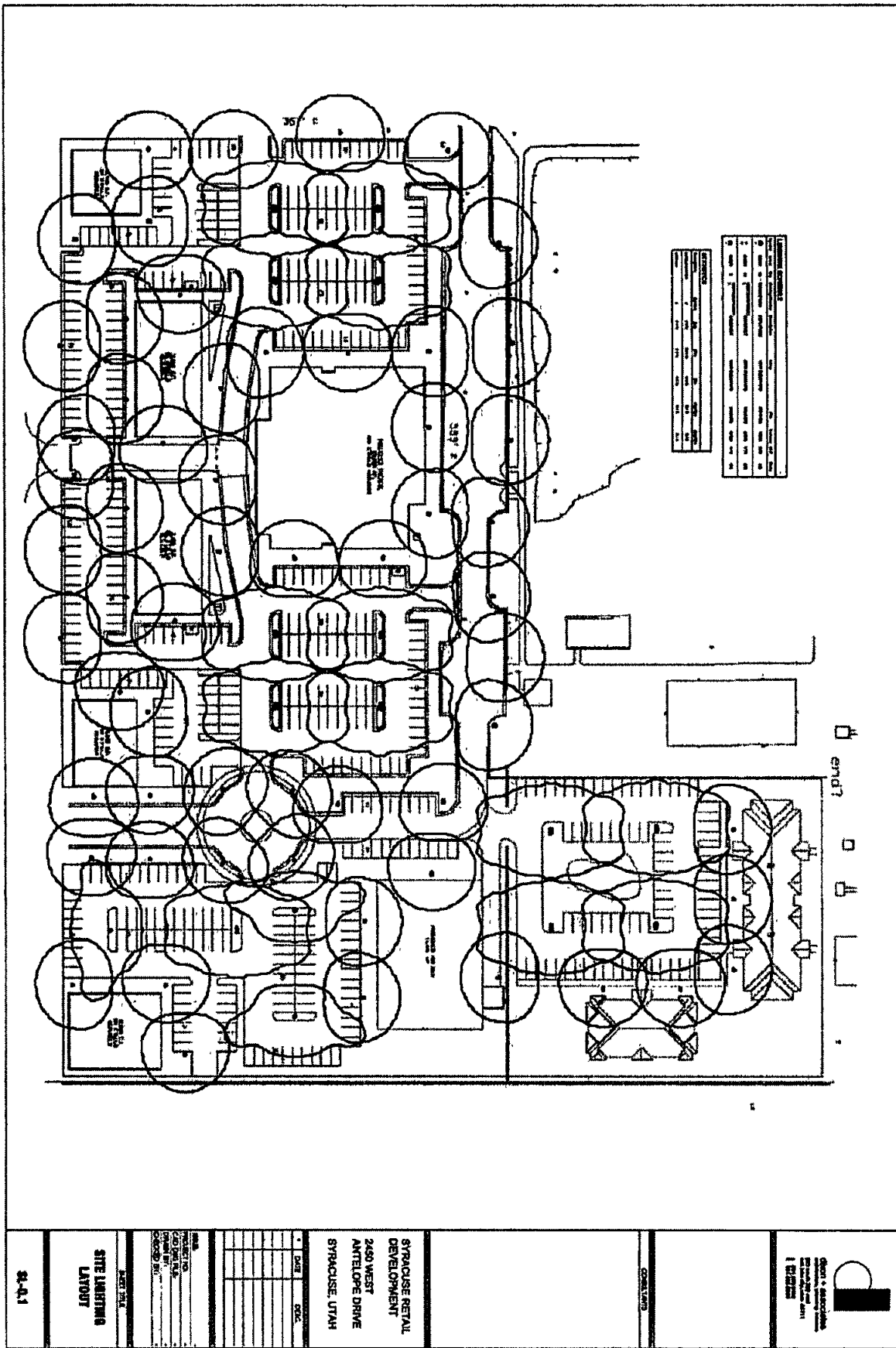


EXHIBIT H

LIGHTING PLAN AND EQUIPMENT LIST

<b>LUMINAIRE SCHEDULE</b>									
Symbol	Label	Qty	Catalog Number	Description	Lamp	File	Lumens	LLF	Watts
●	ES175	60	ES150HP0004	ESPLANE	150W CLEAR HPB	47248.IES	16000	0.75	150
⊕	SMST2	13	SMST250HP0000C L	SOMERSET	250W CLEAR HPB	38002.IES	27500	0.75	610
⊕	SMST1	3	SMST250HP0000C L	SOMERSET	250W CLEAR HPB	38002.IES	27500	0.75	305

<b>STATISTICS</b>						
Description	Symbol	Avg	Max	Min	Max/Min	Avg/Min
parking/common	+	2.4 fc	13.4 fc	0.0 fc	N/A	N/A
perimeter	+	0.4 fc	2.0 fc	0.0 fc	N/A	N/A






















NO.	DESCRIPTION	QTY	UNIT	DATE
1	100' WATT	1	100'	10/11/01
2	200' WATT	1	200'	10/11/01
3	300' WATT	1	300'	10/11/01
4	400' WATT	1	400'	10/11/01
5	500' WATT	1	500'	10/11/01
6	600' WATT	1	600'	10/11/01
7	700' WATT	1	700'	10/11/01
8	800' WATT	1	800'	10/11/01
9	900' WATT	1	900'	10/11/01
10	1000' WATT	1	1000'	10/11/01

 Design & Associates 1000 West 1000 South Salt Lake City, UT 84111 801.466.1234	CONSTRUCTION SYRACUSE RETAIL DEVELOPMENT 2450 WEST ANTELOPE DRIVE SYRACUSE, UTAH	DATE: 10/11/01 DRAWN BY: [blank] CHECKED BY: [blank]	SHEET NO. 1005 PROJECT NO. 01-01 SITE LIGHTING LAYOUT 10-A-1
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EXHIBIT I

LANDSCAPING PLAN

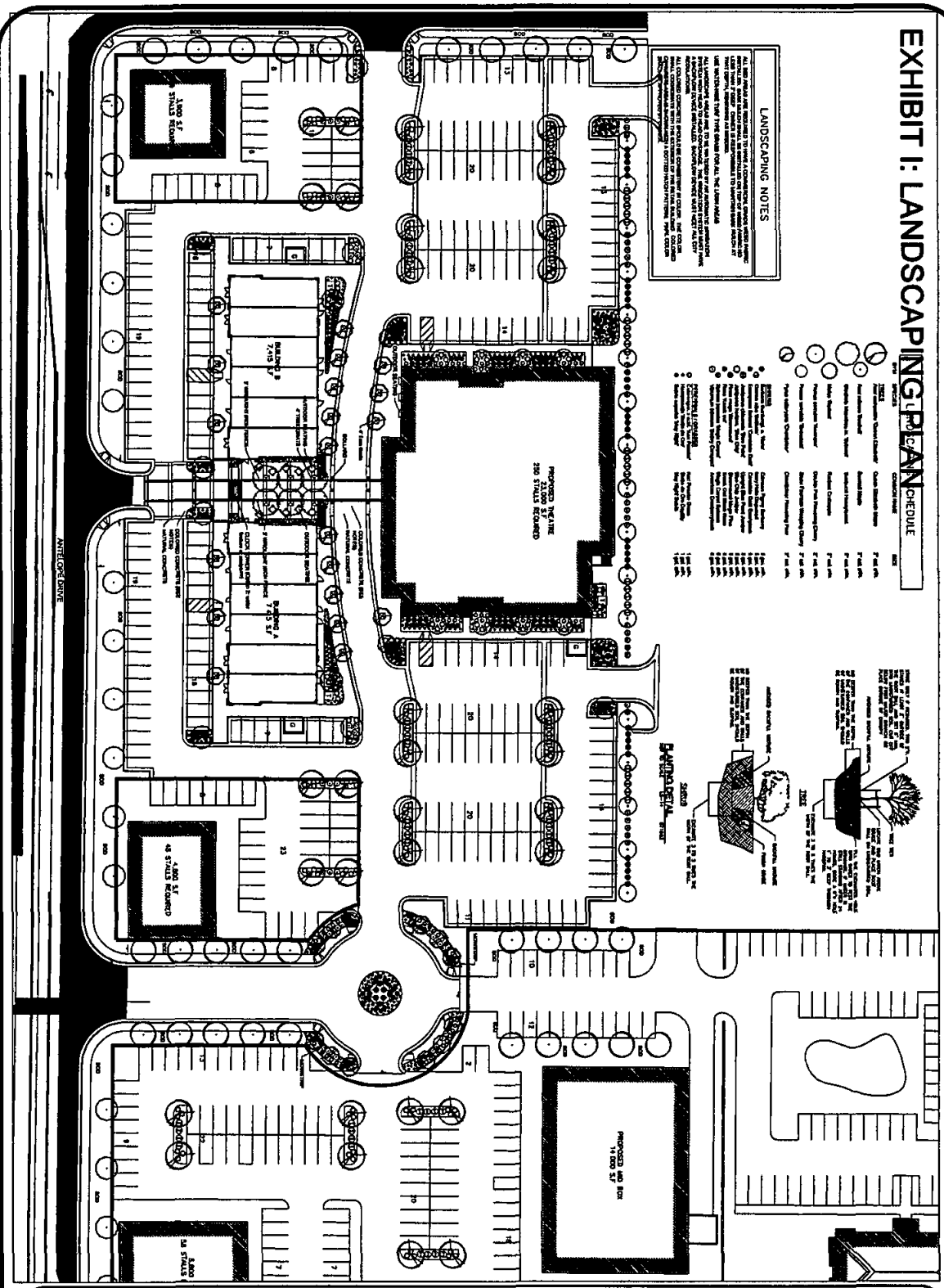
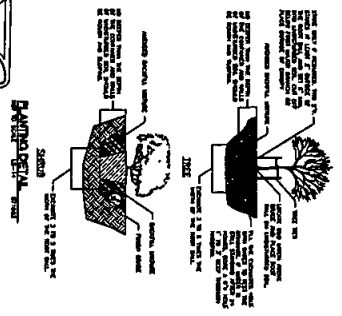
SYM	SPECIES	COMMON NAME	SIZE
<u>TREES</u>			
	Acer campestre 'Queen Elizabeth'	Queen Elizabeth Maple	2" cal. min.
	Acer rubrum 'Bowhall'	Bowhall Maple	2" cal. min.
	Gleditsia tricanthos In. 'Suburst'	Sunburst Honeylocust	2" cal. min.
	Malus 'Radiant'	Radiant Crabapple	2" cal. min.
	Prunus serrulata 'Kwanzan'	Double Pink Flowering Cherry	2" cal. min.
	Prunus serrulata 'Snowzani'	Snow Fountainian Weeping Cherry	2" cal. min.
	Pyrus calleryana 'Chanitchae'	Chanitchae Flowering Pear	2" cal. min.
<u>SHRUBS</u>			
	Berberis thunbergi. a. 'Nana'	Crimson Pigmy Barbary	5 gal. min.
	Cornus alba 'Bailetho'	Ivory Halo Dogwood	5 gal. min.
	Euonymus fortunei 'Canadale Gold'	Canadale Gold Euonymus	5 gal. min.
	Juniperus chinensis 'Blue Point'	Upright Blue Point Juniper	5 gal. min.
	Juniperus horizon. 'Blue Chip'	Blue Chip Juniper	5 gal. min.
	Pinus mugo 'Slowmound'	Slowmound Mugo Pine	5 gal. min.
	Rosa 'Knock out'	Knock Out Shrub Rose	5 gal. min.
	Spiraea japonica 'Magic Carpet'	Magic Carpet Spiraea	5 gal. min.
	Viburnum trilobum 'Bailey Compact'	American Cranberrybush	5 gal. min.
<u>PERENNIALS / GRASSES</u>			
	Calamagro. x acif. 'Karl Foester'	Karl Foester Grass	1 gal. min.
	Hemerocallis 'Stella de Oro'	Stella de Oro Daylily	1 gal. min.
	Salvia superba 'May Night'	May Night Salvia	1 gal. min.

# EXHIBIT I: LANDSCAPING PLAN SCHEDULE

## LANDSCAPING NOTES

1. ALL PLANTINGS SHALL BE INSTALLED IN ACCORDANCE WITH THE LANDSCAPING SCHEDULE. THE SCHEDULE IS A SUMMARY OF THE PLANTINGS AND DOES NOT REPRESENT THE FINAL PLANTING LIST. THE FINAL PLANTING LIST SHALL BE PROVIDED BY THE LANDSCAPER. THE LANDSCAPER SHALL BE RESPONSIBLE FOR THE SELECTION OF PLANTINGS THAT ARE APPROPRIATE TO THE CLIMATE AND SOIL CONDITIONS OF THE PROJECT. THE LANDSCAPER SHALL ALSO BE RESPONSIBLE FOR THE MAINTENANCE OF THE PLANTINGS THROUGHOUT THE PROJECT. THE LANDSCAPER SHALL BE RESPONSIBLE FOR THE PROTECTION OF ALL EXISTING PLANTINGS AND UTILITIES. THE LANDSCAPER SHALL BE RESPONSIBLE FOR THE INSTALLATION OF ALL LANDSCAPING MATERIALS AND THE PROTECTION OF ALL EXISTING UTILITIES. THE LANDSCAPER SHALL BE RESPONSIBLE FOR THE PROTECTION OF ALL EXISTING UTILITIES. THE LANDSCAPER SHALL BE RESPONSIBLE FOR THE PROTECTION OF ALL EXISTING UTILITIES.

Symbol	Description	Quantity
1	Planting Schedule	1
2	Planting Schedule	1
3	Planting Schedule	1
4	Planting Schedule	1
5	Planting Schedule	1
6	Planting Schedule	1
7	Planting Schedule	1
8	Planting Schedule	1
9	Planting Schedule	1
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94	Planting Schedule	1
95	Planting Schedule	1
96	Planting Schedule	1
97	Planting Schedule	1
98	Planting Schedule	1
99	Planting Schedule	1
100	Planting Schedule	1



**IBNL THEATRE**  
2400 WEST ANTELOPE DR.  
STRACOUSE, UT

**Aspen**  
LANDSCAPE DESIGN  
LLC

Project Name: \_\_\_\_\_  
Project Number: \_\_\_\_\_  
Date: \_\_\_\_\_

NORTH

Sheet Number: \_\_\_\_\_  
Total Sheets: \_\_\_\_\_



EXHIBIT J

SUPPLEMENT TO DECLARATION OF EASEMENTS, COVENANTS,  
CONDITIONS AND RESTRICTIONS

THIS SUPPLEMENT TO DECLARATION OF EASEMENTS, COVENANTS, CONDITIONS AND RESTRICTIONS (this "Supplement") dated this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ is executed by the undersigned pursuant to the terms of the Declaration of Easements, Covenants, Conditions and Restrictions identified herein.

WITNESSETH:

WHEREAS, HBN V, LLC, a Utah limited liability company executed that certain Declaration of Easements, Covenants, Conditions and Restrictions ("Declaration") dated \_\_\_\_\_, 20\_\_, and recorded \_\_\_\_\_, 20\_\_ as Document No. \_\_\_\_\_ affecting that certain real property located in the City of Syracuse, County of Davis, State of Utah, and legally described on Schedule A attached hereto; and

WHEREAS, the Declaration provides that any entity acquiring a Parcel or a portion of a Parcel must execute this Supplement to acknowledge that such acquiring entity has, by virtue of such acquisition, become an "Owner" under the Declaration as to such Parcel or applicable portion thereof; and

WHEREAS, the undersigned has acquired the real property (the "Acquired Land") described in Schedule B attached hereto;

NOW, THEREFORE, pursuant to and in compliance with the terms of the Declaration, the undersigned hereby acknowledge and agrees that: (a) it is an Owner under the terms of the Declaration; (b) the Acquired Land shall be the undersigned's "Parcel" for purposes of the Declaration; (c) the undersigned and the Acquired Land are subject to and bound by the terms of the Declaration and shall fully comply with the terms of the Declaration, and (d) it will be responsible from the date of this Supplement for the obligations of the Owner of the Acquired Land as set forth in the Declaration.

Pursuant to Article 10.9 of the Declaration, the undersigned hereby states that notices and other communications issued under the Declaration to the undersigned should be sent as follows (telephone and fax numbers are shown for informational purposes and do not amend the manner in which Notice shall be given):

Entity Name: \_\_\_\_\_

Entity Address: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Attn./Contact Person:

Telephone Number:

Fax Number:

With a copy to: \_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Attn./Contact Person:

Telephone Number:

Fax Number:

IN WITNESS WHEREOF, the undersigned hereby executes and delivers this Supplement as of the day and year first above written and authorizes an executed copy of this Supplement to be recorded in the Recorder's Office of Davis County, Utah.

ACQUIRING ENTITY: \_\_\_\_\_

A(n) \_\_\_\_\_

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Title: \_\_\_\_\_

{Notary Page to Follow}

STATE OF: \_\_\_\_\_

COUNTY OF : \_\_\_\_\_

This instrument was acknowledged before me on this \_\_\_\_\_ day of \_\_\_\_\_  
20\_\_\_\_ by \_\_\_\_\_ the \_\_\_\_\_ of HBN,  
LLC, a Utah limited liability company.

\_\_\_\_\_  
Notary Public in and for the State of Utah