



W2378718

E# 2378718 PG 1 OF 10
ERNEST D ROWLEY WEBER COUNTY RECORDER
05-DEC-08 2:23 PM FEE \$28.00 DEP JC
REC FOR: METRO NATIONAL TITLE
ELECTRONICALLY RECORDED

**RECORDING REQUESTED BY AND WHEN
RECORDED MAIL TO:**

Steven H. Usdan
Homestead Pavilion, LLC
c/o Kornwasser Shopping Center Properties, LLC
145 South Fairfax Avenue, Suite 401
Los Angeles, CA 90036

Space Above This Line for Recorder's Use Only

MNT 10774

DAVIS # 13-051-0046

WEBER # 09-092-0007 SETBACK AGREEMENT

This Setback Agreement (this "Agreement") is made and entered into as of December 5th, 2008, by and between Property Reserve, Inc., a Utah nonprofit corporation ("PRI") and Homestead Pavilion, LLC, a Delaware limited liability company ("Homestead"), with reference to the following facts and circumstances:

1. **Recitals.** PRI owns the unimproved real property legally described on Exhibit A attached hereto and made a part hereof by this reference (the "PRI Property"). Homestead owns the unimproved real property legally described on Exhibit B attached hereto and made a part hereof by this reference (the "Homestead Property"). Both PRI and Buyer agree that it is in their mutual interest to establish setbacks from the common boundary between the PRI Property and the Homestead Property such that no vertical improvements can be built in the "Setback Area" (as defined below) except as expressly permitted herein. The purpose of restricting vertical improvements in the Setback Area is to ensure that buildings adjacent to the Setback Area qualify for treatment under the International Building Code as Type V "non-rated" structures.

2. **Setback Area.** The "Setback Area" is shown and depicted on the preliminary site plan that was prepared by Homestead without assistance or input from PRI, which is attached hereto as Exhibit C and made a part hereof by this reference consisting of the strip of land between the buildings described on the site plan as "Major B" and "Major D" which is 40 feet in width extending perpendicularly from the common boundary into the Homestead Property and 20 feet in width extending perpendicularly from the common boundary into the PRI Property. Except as expressly set forth herein with regard to the setback agreement, neither party will be bound in anyway to develop its property as shown on Exhibit C. Each party agrees hereby in perpetuity that neither party nor their tenants, invitees, licensees or guests or any of their respective successors or assigns shall erect any structures in the Setback Area which would cause either party to lose or not have granted to it now or in the future a fire rating for the structures to be constructed by each on their respective properties equal to or greater than Type V as promulgated by the International Building Code and as same may be amended from time to time hereafter (collectively, the "Prohibited Structures"). Each party and its tenants, successors and assigns may develop, improve, repair and renovate the portion of the Setback Area

owned by them with such other improvements (for example, paving and landscaping) as are not "Prohibited Structures" now or in the future.

3. **Covenants Running with the Land.** This Agreement and the rights and restrictions granted and imposed herein are for the mutual benefit of PRI, Homestead and the PRI Property and Homestead Property and every portion thereof, and shall apply, inure to the benefit of, and bind the respective successors and assigns in interest to the PRI Property and Homestead Property, and every portion thereof. Each party hereto states that its respective property shall be held, transferred, encumbered, used, sold, conveyed, leased and occupied, subject to the covenants and obligations set forth herein, expressly for the use and benefit of the respective properties and of each and every person or entity who now or in the future owns any portion or portions thereof. Nothing contained in this Section 3 shall be deemed to be a gift or dedication of any portion of the respective properties to the general public or for the general public or for any public or third party purposes whatsoever.

4. **Enforcement.** Each party acknowledges that a breach or a threatened breach by the other of this Agreement will give rise to irreparable injury to the other and that monetary damages will not be adequate relief for such injury. Accordingly, each party agrees that the other shall be entitled to obtain injunctive relief, including, but not limited to temporary restraining orders, preliminary injunctions or permanent injunctions, without having to post any bond or other security, to restrain or prohibit such breach or threatened breach, in addition to any other legal remedies which may be available.

5. **Miscellaneous.**

(a) **Entire Agreement.** This Agreement represents the entire integrated agreement between the parties relating to the subject matter of this Agreement. The parties agree that there are no other agreements or understandings, written or oral, express or implied, tacit or otherwise in respect of the subject matter of this Agreement. This Agreement may be amended only in writing.

(b) **Attorneys' Fees.** If any action is threatened or commenced to interpret or enforce the terms and provisions of this Agreement, the prevailing party shall be entitled to recover its attorney's fees and costs of suit from the other.

(c) **Fair Meaning.** This Agreement shall be interpreted according to its fair meaning and not for or against any party hereto or the drafter of the agreement. This Agreement has been negotiated between independent counsel separately representing each party to this Agreement.

(d) **Independent Representation.** The parties hereto acknowledge that each has been represented by separate legal counsel of their own choice, and that no legal advice in respect of this Agreement has been rendered by the counsel of one party to the other party.

advice in respect of this Agreement has been rendered by the counsel of one party to the other party.

(e) Cooperation. The parties hereto agree to cooperate with each other to the extent necessary to effect the purposes of this Agreement, including without limitation executing additional documents, providing introductions to other persons and providing copies of books and records.

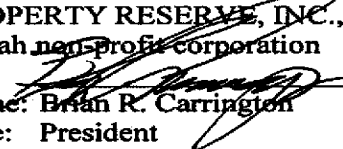
(f) Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument. This Agreement may be executed by facsimile signatures which shall be deemed original signatures for all purposes.

(g) Successors and Assigns. This Agreement shall bind the successors, assigns, heirs, administrators and executrixes of each party hereto.

Executed as of the day and year first above written.

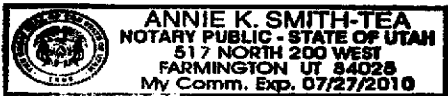
HOMESTEAD: HOMESTEAD PAVILION, LLC,
a Delaware limited liability company

By: _____
Name: _____
Title: _____

PRI: PROPERTY RESERVE, INC.,
a Utah non-profit corporation
By: 
Name: Brian R. Carrington
Title: President

STATE OF UTAH)
)
COUNTY OF SALT LAKE) SS

On this 4 day of December, 2008, personally appeared before me Brian R. Carrington, known or satisfactorily proved to me to be the President of Property Reserve, Inc., a Utah non-profit corporation, who acknowledged to me that he signed the foregoing instrument as President for said corporation.



Annie K. Smith-Tea

Notary Public for Utah

(Name of Notary)

(e) Cooperation. The parties hereto agree to cooperate with each other to the extent necessary to effect the purposes of this Agreement, including without limitation executing additional documents, providing introductions to other persons and providing copies of books and records.

(f) Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which taken together shall constitute one and the same instrument. This Agreement may be executed by facsimile signatures which shall be deemed original signatures for all purposes.

(g) Successors and Assigns. This Agreement shall bind the successors, assigns, heirs, administrators and executrixes of each party hereto.

Executed as of the day and year first above written.

HOMESTEAD: HOMESTEAD PAVILION, LLC,
a Delaware limited liability company

By: 
Name: Steven Usdan
Title: Vice President

PRI: PROPERTY RESERVE, INC.,
a Utah non-profit corporation

By: _____
Name: Brian R. Carrington
Title: President

STATE OF UTAH)
)
COUNTY OF SALT LAKE) ss

On this ____ day of _____, 2008, personally appeared before me Brian R. Carrington, known or satisfactorily proved to me to be the President of Property Reserve, Inc., a Utah non-profit corporation, who acknowledged to me that he signed the foregoing instrument as President for said corporation.

Notary Public for Utah

(Name of Notary)

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

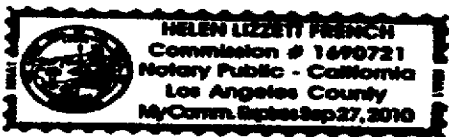
State of California

County of Los Angeles } ss.

On November 6, 2008, before me, Helen Lizzett French, Notary Public
Date Name and Title of Officer (e.g., "Jane Doe, Notary Public")
personally appeared Steven Herschel Usdam
Name(s) of Signer(s)

personally known to me

proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Helen Lizzett French
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

Description of Attached Document Setback Agreement
Title or Type of Document:

Document Date: not dated Number of Pages: 3

Signer(s) Other Than Named Above: n/a

Capacity(ies) Claimed by Signer(s)

Signer's Name: Steven Herschel Usdam

- Individual
- Corporate Officer — Title(s): Vice President
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

Signer Is Representing: Homestead Pavilion, LLC

Signer's Name: _____

- Individual
- Corporate Officer — Title(s): _____
- Partner — Limited General
- Attorney in Fact
- Trustee
- Guardian or Conservator
- Other: _____

RIGHT THUMBPRINT OF SIGNER
Top of thumb here

Signer Is Representing: _____

EXHIBIT A

ALL THAT LAND LOCATED IN DAVIS COUNTY, UTAH, BEING A PART OF THE SOUTHWEST QUARTER OF SECTION 22, TOWNSHIP 5 NORTH, RANGE 2 WEST, SALT LAKE BASE AND MERIDIAN, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT ON EAST LINE OF SR-108 (2000 WEST STREET), SAID POINT BEING S89°43'33"E ALONG THE QUARTER SECTION LINE 33.00 FEET AND S00°20'59"W 946.71 FEET FROM THE NORTHWEST CORNER OF THE SOUTHWEST QUARTER OF SAID SECTION 22; THENCE S89°39'01"E 942.11 FEET, TO A POINT ON THE EXTENSION OF THE WEST LINE OF THE ROY 10TH & 30TH WARD SUBDIVISION RECORDED MARCH 1, 2000 AS ENTRY NO. 1692487, IN BOOK 51, AT PAGE 63, WEBER COUNTY RECORDER OFFICIAL RECORDS; THENCE ALONG SAID EXTENSION LINE S00°16'27"W 704.85 FEET, TO THE NORTH LINE OF THE ELLIS AND EMMA SUMMERS PARCEL; THENCE ALONG SAID NORTH LINE N89°39'01"W 943.04 FEET, TO THE EAST LINE OF SAID SR-108; THENCE ALONG SAID EAST LINE N00°20'59"E 704.85 FEET TO THE POINT OF BEGINNING.

DAVIS CO

CONTAINS 15.25 ACRES MORE OR LESS

EXHIBIT BHomestead Pavilion Property (Including Winco Parcel)

09-092-0008

ALL THAT LAND LOCATED IN WEBER COUNTY AND DAVIS COUNTY, UTAH, BEING A PART OF THE SOUTHWEST QUARTER OF SECTION 22, TOWNSHIP 5 NORTH, RANGE 2 WEST, SALT LAKE BASE AND MERIDIAN, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

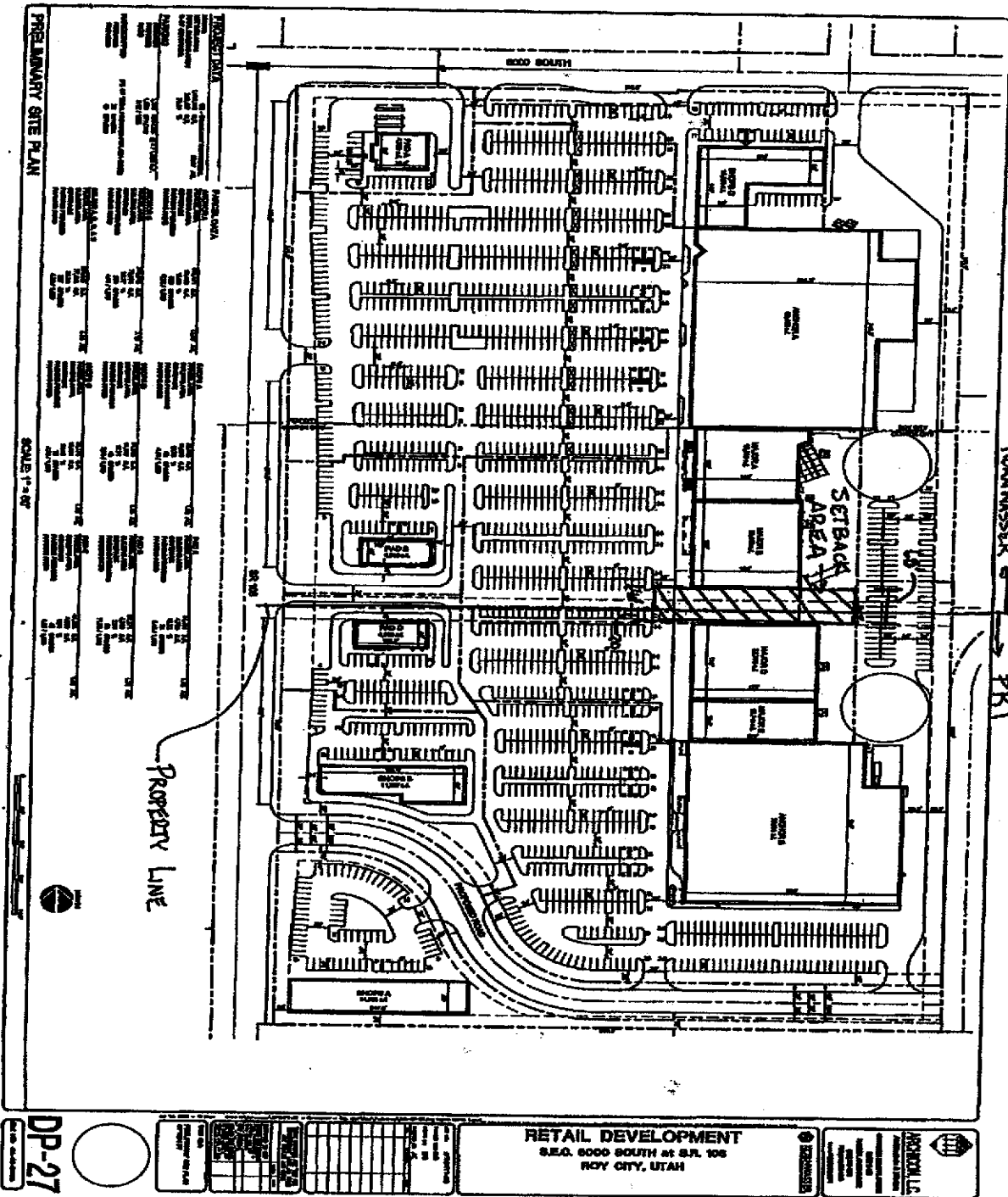
BEGINNING AT A POINT ON THE SOUTH LINE OF 6000 SOUTH STREET AND THE EAST LINE OF 3500 WEST (ROY CITY), STREET, SAID POINT BEING $S89^{\circ}43'33''E$ ALONG THE QUARTER SECTION LINE 33.00 FEET AND $S00^{\circ}20'59''W$ 33.00 FEET FROM THE NORTHWEST CORNER OF THE SOUTHWEST QUARTER OF SAID SECTION 22; THENCE ALONG SAID SOUTH LINE $S89^{\circ}43'33''E$ 19.82 FEET; THENCE $S00^{\circ}20'58''W$ 15.02 FEET; THENCE $N59^{\circ}17'18''E$ 29.18 FEET, TO THE SOUTH LINE OF 6000 SOUTH STREET; THENCE $S89^{\circ}43'33''E$ ALONG SAID SOUTH LINE 896.08 FEET, TO THE WEST LINE OF THE ROY 10TH & 30TH WARD SUBDIVISION RECORDED MARCH 1, 2000 AS ENTRY NO. 1692487, IN BOOK 51, AT PAGE 63, WEBER COUNTY RECORDER OFFICIAL RECORDS; THENCE ALONG SAID LINE AND THE EXTENSION THEREOF $S00^{\circ}16'27''W$ 581.03 FEET TO THE SOUTH LINE OF WEBER COUNTY AS ESTABLISHED IN THE DECLARATION OF COUNTY LINE COMMON TO WEBER COUNTY AND DAVIS COUNTY, UTAH, AND SHOWN ON RECORD OF SURVEY NO. 2993, RECORDED AS ENTRY NO. 1885948, BOOK 56, PAGES 88-92, WEBER COUNTY RECORDER OFFICIAL RECORDS; THENCE ALONG SAID LINE $N89^{\circ}35'08''W$ 941.67 FEET TO THE EAST LINE OF 3500 WEST STREET; THENCE ALONG SAID EAST LINE $N00^{\circ}20'59''E$ 578.72 FEET TO THE POINT OF BEGINNING.

TOGETHER WITH:

BEGINNING AT A POINT ON THE NORTH LINE OF DAVIS COUNTY AS ESTABLISHED IN THE DECLARATION OF COUNTY LINE COMMON TO WEBER COUNTY AND DAVIS COUNTY, UTAH, AND SHOWN ON RECORD OF SURVEY NO. 2993, RECORDED AS ENTRY NO. 1885948, BOOK 56, PAGES 88-92, WEBER COUNTY RECORDER OFFICIAL RECORDS, AND THE EAST LINE OF SR-108 (2000 WEST STREET), SAID POINT BEING $S89^{\circ}43'33''E$ ALONG THE QUARTER SECTION LINE 33.00 FEET AND $S00^{\circ}20'59''W$ 611.72 FEET FROM THE NORTHWEST CORNER OF THE SOUTHWEST QUARTER OF SAID SECTION 22; THENCE ALONG SAID COUNTY LINE $S89^{\circ}35'08''E$ 941.67 FEET TO A POINT AT THE EXTENSION OF THE WEST LINE OF THE ROY 10TH & 30TH WARD SUBDIVISION RECORDED MARCH 1, 2000 AS ENTRY NO. 1692487, IN BOOK 51, AT PAGE 63, WEBER COUNTY RECORDER OFFICIAL RECORDS; THENCE ALONG SAID EXTENSION LINE $S00^{\circ}16'27''W$ 333.93 FEET; THENCE $N89^{\circ}39'01''W$ 942.11 FEET, TO THE EAST LINE OF SR-108 (2000 WEST STREET); THENCE ALONG SAID EAST LINE $N00^{\circ}20'59''E$ 334.99 FEET TO THE POINT OF BEGINNING

CONTAINS 19.76 ACRES MORE OR LESS.

EXHIBIT C



NO.	DESCRIPTION	AREA (SQ. FT.)	PERCENTAGE	REMARKS
1	ASPHALT DRIVEWAY	1,200	0.15	
2	ASPHALT DRIVEWAY	1,200	0.15	
3	ASPHALT DRIVEWAY	1,200	0.15	
4	ASPHALT DRIVEWAY	1,200	0.15	
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99	ASPHALT DRIVEWAY	1,200	0.15	
100	ASPHALT DRIVEWAY	1,200	0.15	

ARCHITECTURAL
FIRM

RETAIL DEVELOPMENT
S.E.O. 6000 SOUTH at S.R. 106
ROY CITY, UTAH

DP-27