

Murray, UT.

3/29/78

SEP 5 1978

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Request of SECURITY TITLE COMPANY

Fee Paid KATIE L. DIXON

Recorder, Salt Lake County, Utah

By *David Done* Deputy

David Done

DECLARATION OF RESTRICTIONS

AND

GRANT OF EASEMENTS

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T A B L E O F C O N T E N T S

SECURITY TITLE COMPANY
Richard

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DECLARATION OF RESTRICTIONS
AND GRANT OF EASEMENTS

THIS DECLARATION OF RESTRICTIONS AND GRANT OF EASEMENTS is made as of the 9 day of August, 1978, by OAKWOOD DEVELOPMENT COMPANY, a joint venture, ("First Party"), SKAGGS COMPANIES, INC., a Delaware corporation, ("Skaggs"), and ALBERTSON'S, INC., a Delaware corporation ("Albertson's"), sometimes hereinafter collectively referred to as "Declarants". This instrument is, for convenience, hereinafter referred to as the "Declaration".

P R E L I M I N A R Y

1. First Party is the owner of real property located at the northwest corner of the intersection of 900 East and 5600 South in the City of Murray, County of Salt Lake, State of Utah, as described in Schedule I, and shown as Parcels 1, 2, 3 and 4 on the plan attached as Exhibit A, hereinafter referred to as the "Shopping Center". Skaggs holds a leasehold estate in Parcel 1 by virtue of that certain Store Lease between Skaggs and Security Life and Accident Company ("Security") dated August 4, 1966, as amended on December 27, 1966. Albertson's holds a leasehold estate in Parcel 2 by virtue of that certain Store Lease between Skaggs and Security, dated December 15, 1967. Upon the opening of Albertson's building on Parcel 3 for business, Albertson's will assign its leasehold estate in Parcel 2 to Skaggs. From and after said assignment Albertson's will be and is hereby released from all obligations hereunder relating to Parcel 2, and Skaggs will assume and hereby assumes all of the obligations hereunder relating to Parcel 2. Albertson's holds a leasehold estate in Parcel 3 by virtue of that certain Shopping Center Ground Lease between First Party and Albertson's dated _____, 1978.

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2. Declarants plan to develop the Shopping Center as an integrated retail sales complex for the mutual benefit of all real property in the Shopping Center, and for such purposes do hereby establish easements, covenants, restrictions, liens and charges (hereinafter collectively referred to as "Restrictions"), subject to which all of said Shopping Center, and every part thereof, shall be improved, held, leased, sold and/or conveyed. Such Restrictions shall run with the land and shall inure to and pass with said property and shall apply to and bind the respective successors in interest thereof, and all and each thereof is imposed upon said property as a mutual equitable servitude in favor of said property and any portion thereof.

I. BUILDING AND COMMON AREA DEVELOPMENT

1. Building Area: Subject to the requirements set forth in Paragraph 5 of this Section 1, all buildings, structures, and drive-up windows shall be single story with mezzanine permitted, not to exceed 35 feet in height, and shall only be placed or constructed upon the respective parcels in the Shopping Center in those areas designated on said Exhibit A as Building Area; and further, no buildings or structures shall be placed or constructed in the Shopping Center within those areas on each respective parcel which constitutes Common Area (as defined in Paragraph 2) except pylon and directional signs, as provided in Section III, paving, bumper guards or curbs, landscape planters, lighting standards, and any other improvements as may be required under applicable controls and regulations of the City of Murray or any other governmental body having jurisdiction over the Shopping Center. In addition, it is also agreed that each of the parties hereto may construct and locate canopies and roof overhangs projecting from such Building Area, including columns or pillars supporting the same, normal foundations, and doors for ingress and egress

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projecting from such Building Area. All the foregoing must comply with all applicable laws, rules, ordinances and regulations of all governmental authorities sharing jurisdiction.

2. Common Area: The aforementioned Common Area is hereby defined to include all of those areas (as shown on Exhibit "A") on each of the respective parcels of the Shopping Center not defined as Building Area, which Common Area may be used for vehicular driving, parking, pedestrian traffic, directional signs, sidewalks, walkways and landscaping, and for no other purposes unless otherwise specifically provided in this Declaration. It is understood that the Common Area may be increased with respect to all parcels of the Shopping Center. This means that those portions of the Building Area on each parcel within the Shopping Center which are not from time to time or cannot under the terms of this Declaration be used for buildings (in order to maintain the respective Common Area requirements set forth below in Paragraph 5) shall become part of said Common Area to be used for the aforesaid vehicular driving, parking and pedestrian traffic areas and shall, if it is located on Parcel 3 or 4, be improved, kept and maintained as provided for in that certain Common Area Maintenance Agreement between First Party and Albertsons of even date with this Declaration, or if it is on Parcel 1 or 2, shall be improved, kept and maintained in accordance with this Agreement. Following the construction of any portion of the Common Area improvements, the sizes and arrangements of the Common Area improvements, 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, will not be changed without the written consent of Declarants.

3. Common Area Requirements: Anything to the contrary notwithstanding, each respective parcel within the Shopping Center must comply with the Common Area requirements set forth herein for that parcel. The Common Area (as defined above in Paragraph 2 of this Section I) for each respective

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parcel shall not be less than three (3) times the square footage of floor area contained in all buildings (but excluding mezzanines therein) allowed to be built on each parcel, and there shall be provided on each parcel parking for not less than five (5) standard-sized American cars for each 1,000 square feet of floor area on that parcel. It is understood that the areas designated Building Area for each respective parcel on Exhibit A are only to show where buildings may be located; but the entire amount of Building Area so designated for any parcel is not necessarily to be used for buildings. The maximum square footage of floor area contained in all buildings (but excluding mezzanines therein) situated on each of the said parcels is indicated as "Max. Bldg. Area" in the Shopping Center Parcel Statistics indicated on Exhibit A for each respective parcel.

4. Type and Design of Building:

(a) It is agreed that each building in the Shopping Center, now and in the future, will be of first quality construction and architecturally designed so that the exterior elevation (including signs) and color thereof will be architecturally and aesthetically compatible and harmonious with all other buildings of said Shopping Center. It is further agreed that the exterior design, color and elevations (including signs) of any building in the Shopping Center must first be approved in writing by the Declarants except that the standard signs of Skaggs and Albertson's as they may exist from time to time, and the opening, closing, or relocation of any door, shall not require such approval. Prior to construction of any new building or buildings upon any of the respective parcels within the Shopping Center, and prior to any exterior changes, alterations or modifications of any existing building or buildings, the party who desires to construct such building or buildings or make such exterior changes, alterations or modifications shall submit

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to the Declarants whatever portion of its plans, specifications, drawings and other pertinent information is necessary for the Declarants to adequately review the exterior design, color and elevations (including signs, except the aforesaid standard signs of Skaggs and Albertson's) that are proposed for all buildings, and shall obtain the approval of the Declarants. No Declarant may arbitrarily or unreasonably withhold its approval of such plans and specifications if same are in conformity with the intent of this paragraph. If one or more of the Declarants hereto reject or disapprove such plans and specifications, then each of said Declarants who disapprove must provide a written explanation within twenty (20) days of receipt of such plans and specifications of its reasons in reasonable detail for disapproving. If the plans and specifications of any party are disapproved as provided herein, then it may submit alternate plans and specifications, which alternate proposal shall be handled in the same manner as the initial proposal.

(b) Any building built on any portion of the Shopping Center shall be either equipped with such automatic sprinkler systems as meet all of the standards of the Insurance Services Office (or other similar local organization having jurisdiction) or shall be constructed in such a manner as not to adversely affect the fire rating of any building built upon any other parcel. The purpose of this paragraph is to allow buildings built on each separate parcel to be fire rated as separate and distinct units without deficiency charge. Notwithstanding anything to the contrary, the Declarants hereby approve the sprinkling system or lack thereof of the buildings presently existing on Parcels 1 and 2.

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

II. EASEMENTS

1. Ingress, Egress, and Parking: Each party hereto, as grantor, hereby grants to the other parties for the bene-

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fit of said other parties their respective successors, assigns, tenants, employees, agents, customers and invitees, and the customers, employees and invitees of such tenants, and for the benefit of each respective parcel or parcels belonging to the other parties as grantees, the right in common with each other of mutual nonexclusive ingress and egress by vehicular and pedestrian traffic and the right of vehicular parking upon, over and across the portion of the Common Area within the grantor's parcel or parcels. It is understood that the aforesaid reciprocal rights of ingress and egress shall apply to the Common Area for each parcel of the Shopping Center as such area shall be increased pursuant to Paragraph 2 of Section 1 above.

2. Signs: Each party hereto, as grantor, hereby grants to the other parties, for the benefit of said other parties, easements under, through and across the Common Area of the Shopping Center for the purpose of installing and maintaining the free-standing pylon signs hereinafter referred to in Section III of this Declaration.

3. Building Encroachments: Each of the parties hereto hereby grants to the other parties for the benefit of said other parties and their respective parcels, an easement for any portion of any buildings or structures on any parcel of the Shopping Center which may encroach into or over an adjoining parcel; provided the easement for footings, piers, piles, grade beams and building encroachments does not exceed two (2) feet and the easement for canopies, eaves, and roof overhangs does not exceed four (4) feet. The easements granted in this Paragraph 4 shall survive this Declaration and shall last so long as the encroaching building is standing following its initial construction or following a reconstruction where such building is substantially restored to its prior condition following a casualty or condemnation.

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III. OPERATION OF COMMON AREA

1. Parking: There shall be no charge for parking in the Common Area without the prior written consent of the Declarants unless otherwise required by law.

2. Employee Parking: Anything to the contrary notwithstanding, areas to be used for motor vehicle parking purposes by employees of occupants of the Shopping Center may be designated within the Shopping Center from time to time by unanimous consent of the Declarants. In the event employee parking areas are designated as provided herein, then employees of any owner, lessee, or other occupant of any part of the Shopping Center shall use only those portions of the Common Area designated for such motor vehicle parking purposes. In no event shall employees park within 250 feet of the front of any building on the property described herein. The authority herein granted shall be exercised in such manner as not to discriminate against any owner or commercial establishment in the Shopping Center.

3. Signs: Skaggs may place a free standing sign on Parcels 1 and 2 in the location shown as "Skaggs Sign" on Exhibit "A". Albertson's may place a free-standing sign on Parcel 3 in the location shown as "Albertson's Sign" on Exhibit "A". First party may place free-standing signs on Parcel 4 in the areas shown as "First Party Sign" on Exhibit "A". No free-standing signs shall be placed in the Shopping Center except as shown on Exhibit "A".

IV. RESTRICTIONS ON USE

1. Food Market Restrictions: No portions of Parcel 4 shall be used as a supermarket, (which shall be defined as any store or department containing at least 5,000 square feet of floor area, including aisle space and storage, primarily devoted to the retail sale of food for off-premises consumption), a bakery, a delicatessen, nor for the sale of fresh or frozen meat, fish, poultry or produce for off-premises consumption. No portion of Parcels 1 and 2 shall be used as a supermarket (which shall be defined for the purposes of this sentence only as any store or department containing at least 8,000 square feet of floor area, including aisle space and storage primarily devoted to the retail sale of food for off-premises consumption).

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2. Additional Restrictions: No part of the Shopping Center shall be used as a theater or bowling alley (except a theater or bowling alley shall be permitted in the area so designated on Exhibit "A" provided that the only entrances are on the north and/or east sides of the building and provided further that there shall be at least 2.5 parking spaces to the east, north and west of said building for each one thousand (1,000) square feet of floor space in said building), skating rink, bar or tavern, adult book store, gym, automotive repair facilities, dance halls, billiard or pool hall, game parlor, massage parlor, warehouse or car wash or for the renting, leasing or sale of or displaying for the purposes or renting, leasing or sale of any motor vehicle or trailer or for industrial purposes. No part of the Shopping Center within 150 feet of the buildings on Parcel 3, 2 or 1 shall be used as a restaurant; medical, dental, professional or business offices; health spa or studio; training or educational facility; or entertainment facility.

3. Driveup and Drive Through Facilities: No bank, or other facility featuring vehicular driveup or drive through customer service shall be located in the Shopping Center unless Albertson's and Skaggs have first given their written consent, which shall not be unreasonably withheld, to the location, parking and drive lanes of such facility.

4. Severability: If any term or provision of this Section IV or the application thereof to any person or circumstance shall to any extent be invalid and unenforceable, the remainder of this Section IV 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 Section IV shall be valid and shall be enforced to the extent permitted by law.

V. GENERAL PROVISIONS

1. Covenants Run With the Land: Each easement, restriction and covenant over Parcels 1, 2, 3 and 4 shall be appurtenant to and for the benefit of the other parcels in the Shopping Center and each part thereof. Each covenant, restriction and undertaking as to Parcels 1, 2, 3 and 4

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shall be a burden thereon for the benefit of the other parcels and each part thereof, and shall run with the land.

2. Successors and Assigns: This Declaration and the easements, covenants, restriction, benefits and obligations created hereby shall inure to the benefit of and be binding upon Declarants and their successors and assigns; provided, however, that if any owner sells any portion or all of its interest in any parcel, the vendor shall thereupon be released and discharged from any and all further obligations under this Declaration as such owner in connection with the property sold by it.

3. Duration: Except as otherwise provided herein, the term of this Declaration shall be for seventy (70) years from the date hereof.

4. Injunctive Relief: In the event of any violation or threatened violation by any owner, lessee, or occupant of any portion of the Shopping Center of any of the terms, covenants and conditions herein contained, in addition to the other remedies herein provided, any or all of the owners of the property included within the Shopping Center, and Skaggs and Albertson's as long as they are owners or occupants, shall have the right to enjoin such violation or threatened violation in a court of competent jurisdiction.

5. Modification Provision: This Declaration may not be modified in any respect whatsoever or rescinded, in whole or in part, except with the consent of the owners of the parcels containing ninety percent (90%) of the total square footage of existing buildings in the Shopping Center, at the time of such modification or rescision, and then only by written instrument duly executed and acknowledged by all of said owners and Skaggs and Albertson's so long as they are owners or occupants, duly recorded in the office of the Recorder of Salt Lake County. So long as Albertson's is an occupant of or has a leasehold (or subleasehold) estate in,

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Parcel 3, only Albertson's shall be entitled to give the consent for and on behalf of all those entities having an interest in Parcel 3, anything in this Declaration to the contrary notwithstanding.

6. 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 the general public or for any public purposes whatsoever, it being the intention of the Declarants that this Declaration shall be strictly limited to and for the purposes herein expressed.

7. Breach Shall Not Permit Termination: It is expressly agreed that no breach of the Declaration shall entitle any Declarant to cancel, rescind or otherwise to terminate this Declaration, but such limitations shall not affect in any manner any other rights or remedies which such Declarant may have hereunder by reason of any breach of this Declaration. Any breach of any of said covenants or restrictions, however, shall not defeat or render invalid the lien of any mortgage or deed of trust made in good faith for value, but such covenants or restrictions shall be binding upon and be effective against such owner of any of said property or any portion thereof whose title thereto is acquired by foreclosure, trustee sale, or otherwise.

VI. COMMON AREA MAINTENANCE.

For the duration of the leases under which Skaggs holds its leasehold estate in Parcels 1 and 2, Skaggs shall maintain the Common Area of Parcels 1 and 2 in good order and repair and shall keep the Common Areas of Parcels 1 and 2 clean, well-swept and adequately striped. Until such time as Albertson's delivers possession of the building on Parcel 2 to Skaggs and such possession is accepted by Skaggs, all in accordance with the Assignment and Acceptance of Store Lease executed contemporaneously hereto by Skaggs and Albertson's, Albertson's shall be obligated to perform the above obligations of Skaggs as to Parcel 2. Oakwood shall maintain

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the Common Areas of Parcels 3 and 4 (and Parcels 1 and 2 when Oakwood regains possession of Parcels 1 and 2) in good order and repair and shall keep the Common Areas of Parcels 3 and 4 (and Parcels 1 and 2 when Oakwood regains possession of Parcels 1 and 2) clean, well swept and adequately striped.

IN WITNESS WHEREOF, Declarants have duly executed this Declaration as of the day and year first hereinabove set forth.

Executed by Skaggs Companies, Inc.
subject to addendum attached hereto.

ALBERTSON'S, INC.,
a Delaware corporation

SKAGGS COMPANIES, INC.,
a Delaware corporation

BY *Nirvi Wood*
Senior Vice President

BY *Salvo E. Di...*
Senior Vice President

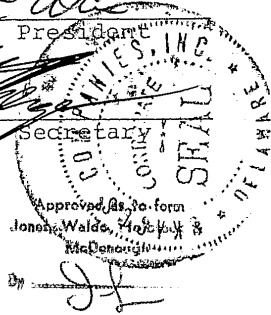
BY *Michael F. Kent*
Assistant Secretary

BY *[Signature]*
Secretary

OAKWOOD DEVELOPMENT COMPANY,
a Joint Venture
D & A PROPERTIES

BY *William Ballard*
Joint Venturer

BY *Hampshire*
Joint Venturer



STATE OF UTAH)
County of Salt Lake) ss.

On this 9th day of August, 1978, before me, the undersigned, a Notary Public in and for said State, personally appeared Ralph Davis and Scott Bergeson, to me known to be the Senior vice president and secretary respectively, of Skaggs Companies, Inc., the corporation that executed the foregoing instrument, and acknowledged to me that the said instrument is the free and voluntary act and deed of said Corporation, for the uses and purposes therein mentioned, and on oath stated that they are authorized to execute the said instrument and that the seal affixed is the corporate seal of said Corporation.

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

My commission expires:

10-19-80

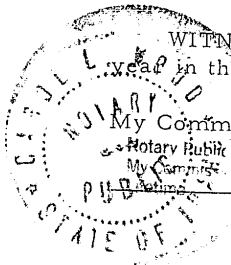
Jacques P. McBrine
Notary Public for the State of Utah
Residing at Salt Lake City, Utah

STATE OF IDAHO)
County of Ada) ss.

On this 28th day of July, 1978, before me, the undersigned Notary Public in and for said State, personally appeared James A. Wood and Michael F. Reuling, known to me to be the Senior Vice President and Assistant Secretary, respectively, of Albertson's, Inc., the corporation that executed the foregoing instrument, and acknowledged to me that they are authorized to execute the said instrument on behalf of said corporation.

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

My Commission expires:



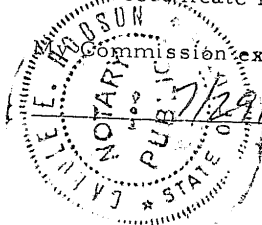
Carol L. Wood
Notary Public for Idaho
Residing at Boise, Idaho

STATE OF Utah)
County of Salt Lake) ss.

On this 11th day of August, 1978, before me, the undersigned Notary Public in and for said State, personally appeared Dale H. Ballard and John Hampshire, known to me to be the joint venturers of Oakwood Development Company, the Joint Venture that executed the foregoing instrument, and acknowledged to me that they are authorized to execute the said instrument on behalf of said Joint Venture.

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

My Commission expires:



Carole E. Johnson
Notary Public for Salt Lake County, Utah
Residing at Salt Lake City, Utah

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A D D E N D U M

Notwithstanding anything to the contrary set forth in this Declaration, and in particular, notwithstanding the asserted duration of this Declaration, Skaggs Companies, Inc., in executing this Agreement represents the following:

1. Skaggs Companies, Inc. presently possesses Parcel 1 pursuant to a store lease dated August 4, 1966, as amended, which lease will expire on January 31, 1987, unless such lease is extended pursuant to four (4) five (5) year option terms.
2. Skaggs Companies, Inc., upon the above-discussed assignment from Albertsons, will possess Parcel 2 pursuant to a store lease dated December 15, 1967, unless such lease is extended pursuant to four (4) five (5) year option terms.

and by reason of the foregoing, Skaggs Companies, Inc., by executing this Declaration, does not purport, intend or agree to encumber Parcel 1 and/or Parcel 2 for a period of time greater than the period of time during which Skaggs Companies, Inc. or its successors continues to have the right of possession of Parcel 1 and/or Parcel 2 pursuant to the above-described leases; upon the expiration or earlier termination of such leases, this Declaration shall have no further force and effect upon the parcel governed by such expired or terminated lease.

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EXECUTED CONTEMPORANEOUSLY WITH THE DECLARATION

this 9th day of August, 1978.

SKAGGS COMPANIES, INC.,
a Delaware corporation

By Ralph E. Davis
Senior Vice President



ATTEST:

Scott Bergeson
Scott Bergeson

Approved as to form
Jones, Waido, Holbrook &
McDonough

[Signature]

STATE OF UTAH)
) ss.
County of Salt Lake)

I, Frederick P. McBrier, a notary public in and for said county and state, certify that on the 9th day of August, 1978, personally appeared before me Ralph E. Davis and Scott Bergeson, who being by me duly sworn did say, each for himself, that he, the said Ralph E. Davis is a Senior Vice President, and he, the said Scott Bergeson is the Corporate Secretary of SKAGGS COMPANIES, INC., a Delaware corporation, and that the within and foregoing Declaration was signed in behalf of said corporation by authority of a resolution of its Board of Directors and said Ralph E. Davis and Scott Bergeson each duly acknowledged to me that said corporation executed the same as its free act and deed and that the seal affixed is the seal of said corporation.

WITNESS my hand and official seal as of the day and year above written.

My Commission Expires:

10-19-80

(Notary Seal)

Frederick P. McBrier
Notary Public
Residing at: Salt Lake City, Utah

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SCHEDULE I

TO

DECLARATION OF RESTRICTIONS AND
GRANT OF EASEMENTS

Parcel I

Beginning at a point on the West line of 900 East Street at a point North 89°48'51" East along the Section line 1712.44 feet and South 0°04'30" East 905.08 feet from the Northwest corner of Section 17, Township 2 South, Range 1 East, Salt Lake Base and Meridian, and running thence South 0°04'30" East along said West line of 900 East Street 224.94 feet; thence North 89°49'35" West 125 feet; thence South 0°04'30" East 150.00 feet to the North line of 5600 South Street; thence North 89°49'35" West along said North line 525.00 feet; thence North 0°04'30" West 372.23 feet; thence North 89°56'05" East 650.00 feet to the point of beginning.

Parcel II

Beginning at a point on the West line of 900 East Street at a point North 89°48'51" East along the Section line 1712.44 feet and South 0°04'30" East 746.71 feet from the Northwest corner of Section 17, Township 2 South, Range 1 East, Salt Lake Base and Meridian and running thence South 0°04'30" East along said West line of 900 East Street 158.78 feet; thence South 89°56'05" West 650.00 feet; thence North 0°04'30" West 158.78 feet; thence North 89°56'05" East 650.00 feet to the point of beginning.

Parcel III

Beginning at a point on the West line of 900 East Street at a point North 89°48'51" East along the Section line 1712.44 feet and South 0°04'30" East 487.45 feet from the Northwest corner of Section 17, Township 2 South, Range 1 East, Salt Lake Base and Meridian; and running thence South 0°04'30" East along said West line of 900 East Street 260.00 feet; thence North 89°57'50" West 650.00 feet; thence North 0°04'30" West 260.00 feet; thence South 89°57'50" East 215.00 feet; thence South 0°02'10" West 60.00 feet; thence South 89°57'50" East 100.00 feet; thence North 0°02'10" East 60.00 feet; thence South 89°57'50" East 335.00 feet to the point of beginning.

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Parcel IV

Beginning on the West line of 900 East Street at a point North 89°48'51" East along the Section line 1712.44 feet and North 0°04'30" West 124.65 feet from the Northwest corner of Section 17, Township 2 South, Range 1 East, Salt Lake Base and Meridian; and running thence South 0°04'30" East along said West line of 900 East Street 612.10 feet; thence North 89°57'50" West 335.00 feet; thence South 0°02'10" West 60.00 feet; thence North 89°57'50" West 100.00 feet; thence North 0°02'10" East 60.00 feet; thence North 89°57'50" West 145.00 feet; thence North 45°20'53" East 77.20 feet; thence North 0°04'30" West 550.00 feet; thence North 89°11' East 525.05 feet to the point of beginning.

Parcels III and IV will be subject to a 20-foot set-back along the East side of said Parcels and Parcel IV will be subject to a 6-foot set-back along the North side of said Parcel, as indicated on Exhibit "A", for roadway purposes and related uses as required by governmental authorities in connection with the issuance of approvals and permits for the development of said Parcels III and IV.

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