

WHEN RECORDED, PLEASE RETURN TO:

Victor A. Taylor, Esq.
Kimball, Parr, Waddoups, Brown & Gee
185 South State Street, Suite 1300
Salt Lake City, Utah 84111

00439866 Bk00915 Pg00810-00833

ALAN SPRIGGS, SUMMIT COUNTY RECORDER
1995 OCT 11 10:32 AM FEE \$56.00 BY MAT
REQUEST: ASSOCIATED TITLE

DECLARATION OF EASEMENTS, COVENANTS AND RESTRICTIONS
[Snow Creek Crossing Shopping Center]

THIS DECLARATION (this "Declaration") is executed as of the 12th day of September, 1995, by SNOW CREEK CROSSING, L.C., a Utah limited liability company, whose address is 349 South 200 East, Suite 440, Salt Lake City, Utah, Attention: Fred W. Fairclough, Jr., and by such other parties as are signatories to this Declaration.

IN CONSIDERATION of the mutual benefits to be derived from this Declaration, the undersigned agree as follows:

1. Definitions. Each of the following terms shall have the indicated meaning:

"Buildings" means all buildings located in the Shopping Center at any time which are intended for permanent use or occupancy, including the area directly below such buildings, all projections and extensions of, and additions to, such buildings and areas used exclusively by the occupants of such buildings, including drive through areas, trash enclosures and playgrounds, and all platforms, ramps, docks and signage affixed to the outside of such buildings. "Building" means any of the Buildings.

"Common Area" means the Entrance Areas, the Common Roadway, the Common Utility Facilities, the Landscaping, the Vehicular and Pedestrian Areas and all other parts of the Shopping Center, except for those parts on which Buildings are constructed on or after the date of this Declaration.

"Common Expenses" means the following: (i) reasonable costs, expenses, fees and other amounts (including appropriate reasonable reserves) paid or incurred by Manager in connection with the improvement (excluding the initial development of the Shopping Center), operation, management, maintenance and repair of the Common Area and the performance of Manager's duties and rights under Paragraphs 4 or 5 or any other provision of this Declaration, including, without limitation, all reasonable costs, expenses, fees and other amounts relating to utilities, cleaning, sweeping, ice, snow and rubbish removal, landscaping, resurfacing, restriping, replacing damaged or worn-out Improvements located on the Common Area, insurance, licenses and permits, supplies, traffic regulation and control, fire, police protection and other security services, decorations for holidays and special events, personnel (other than managerial personnel) necessary to perform any of the foregoing and depreciation allowance on any machinery or equipment owned by Manager and used exclusively in connection with such matters; (ii) managerial, clerical and overhead charges, fees, costs and other amounts, all of which shall be deemed to be equal to ten

40/snow/decl.vat
September 11, 1995

10218

456.00

percent (10%) of the total of all other Common Expenses, excluding any insurance premiums and Taxes comprising the Common Expenses; (iii) Taxes on or allocable to the Entrance Areas and the Common Roadway; and (iv) Common Expenses due but not paid to Manager, which are determined by Manager not to be legally or practicably recoverable (after reasonable effort) from the responsible Owner, together with all interest, costs and attorneys' fees on such unpaid Common Expenses; provided, however, that if such unpaid Common Expenses are later received by Manager from or on behalf of the responsible Owner, any amounts previously paid by any other Owners pursuant to this paragraph (iv) shall be refunded pro rata to such other Owners. If either the Entrance Areas or the Common Roadway is not assessed and taxed as an independent parcel for tax purposes, the Taxes allocable thereto shall be an equitable proportion of the Taxes for all of the land and Improvements included within each relevant tax parcel assessed, such proportion to be determined by Manager from the respective valuations assigned in the assessor's work sheets or such other information as may be reasonably available. Any assessment for public improvements levied against the entire Shopping Center, rather than against individual Parcels, shall be paid by each Owner in accordance with its Common Expense Share, and shall be part of the Common Expenses.

"Common Expense Share" means the product obtained by multiplying the Common Expenses for the relevant period by a fraction, the numerator of which is the Floor Area of all Buildings located on the Parcel concerned, and the denominator of which is the total Floor Area of all Buildings located in the Shopping Center; provided, however, that until at least one Building is completed on the Parcel concerned, the Common Expense Share for each such Parcel shall be as follows:

<u>Parcel</u>	<u>Common Expense Share</u>
1	9.47%
2	60.06%
3	8.00%
4	8.00%
5	7.79%
6	6.68%

(The Common Expense Share shall be adjusted from time to time by written notice given by Manager to each Owner as Buildings are completed. A Building shall be deemed to be "completed" on the earlier of the date on which a certificate of occupancy for such Building is first issued by the appropriate governmental authority or the date on which such Building is first used or occupied. Any such notice shall also concurrently be recorded in the Official Records and shall be effective as an amendment to this Declaration, with no signature other than the Manager's being required.)

"Common Roadway" means the land in Summit County, Utah, described as follows:

Snow Creek Drive, SNOW CREEK CROSSING SUBDIVISION, according

to the official plat thereof on file and of record with the Summit County Recorder.

together with all Improvements on such land, and any real property defined as an additional part of the Common Roadway in any amendment to this Declaration executed and recorded pursuant to Paragraph 12.

"Common Utility Facilities" means all pipes, lines, wires, conduits and related facilities for electricity, natural gas, other fuels or power sources, telephone, sewage, storm drainage and all types of water that are intended, designed or used for the benefit of the Common Area or more than one Parcel.

"Developer" means Snow Creek Crossing, L.C., a Utah limited liability company; provided, however, that if Developer resigns its duties under this Declaration, Manager shall be deemed to have assumed, and shall perform, such duties. Developer's rights under this Declaration may be assigned at any time to any other person with the prior written approval of the Parcel 2 Owner, which approval shall not be unreasonably withheld or delayed. Notice of any such assignment shall be recorded in the Official Records and shall be effective as an amendment to this Declaration, with no signature other than the Developer's and the Manager's being required.

"Entrance Areas" means the two (2) parcels of land in Summit County, Utah, described as follows:

ENTRANCE AREA "A":

Entrance Lot A, SNOW CREEK CROSSING SUBDIVISION, according to the official plat thereof on file and of record with the Summit County Recorder.

ENTRANCE AREA "B":

Entrance Lot B, SNOW CREEK CROSSING SUBDIVISION, according to the official plat thereof on file and of record with the Summit County Recorder.

together with all Improvements on such land, and any real property defined as an additional part of the Entrance Areas in any amendment to this Declaration executed and recorded pursuant to Paragraph 12.

"Floor Area" means the area of each Building concerned, measured from the exterior surface of the exterior walls of such Building, including all levels of any multi-floor Building, but excluding any basements, mezzanines not generally open to the public and equipment penthouses of such Building.

"Improvements" means all Buildings, Common Utility Facilities, Landscaping, roads, curbs, gutters, sidewalks, trails, exterior lighting, fences, walls, signs, utility systems and facilities and other improvements located on the realty concerned. **"Improvement"** means any of the Improvements.

"Landscaping" means all outdoor areas in the Shopping Center landscaped with lawn,

flowers, ground cover, shrubbery, trees, ponds, fountains, gardens or similar improvements.

"Manager" means the Owner of the Master Parcel.

"Master Parcel" means Parcel 1.

"Mortgage" means a mortgage or a deed of trust recorded in the Official Records.

"Mortgagee" means the mortgagee under a mortgage or the beneficiary under a deed of trust recorded in the Official Records.

"Official Records" means the official records of the Summit County, Utah Recorder.

"Owner" means the person who at the time concerned is the owner of record (in the Official Records) of a fee or an undivided fee interest in any part of the Parcel concerned; provided, however, that so long as (but only so long as) a ground lease with an original term of at least thirty (30) years covering all of Parcel 2 is in full force and effect and the lessee under such ground lease is not in default beyond any grace periods set forth in such ground lease, the sole "Owner" of Parcel 2 shall be such lessee for all purposes of this Declaration, subject, however, to the provisions of such ground lease. If any Parcel has more than one Owner, the liability of each such Owner under this Declaration shall be joint and several; provided, however, that so long as the lessee of Parcel 2 is the "Owner" of Parcel 2, as set forth in the immediately preceding sentence, the fee title owner of Parcel 2 shall have no liability under this Declaration as the Owner of Parcel 2, and only such lessee shall have such liability. Notwithstanding any applicable theory relating to a Mortgage, the term "Owner" shall not mean a Mortgagee unless and until such Mortgagee has acquired title to the realty concerned pursuant to foreclosure or any arrangement or proceeding in lieu of foreclosure.

"Parcel 2 Approval Area" means the area so designated on the Site Plan.

"Parcels" means the six (6) parcels of land in Summit County, Utah, described as follows:

PARCEL 1 ("Parcel 1"):

Lot 1, SNOW CREEK CROSSING SUBDIVISION, according to the official plat thereof on file and of record with the Summit County Recorder.

PARCEL 2 ("Parcel 2"):

Lot 2, SNOW CREEK CROSSING SUBDIVISION, according to the official plat thereof on file and of record with the Summit County Recorder.

PARCEL 3:

Lot 3, SNOW CREEK CROSSING SUBDIVISION, according to the official plat thereof on file and of record with the Summit County Recorder.

00439866 Bk00915 Pg00813

PARCEL 4:

Lot 4, SNOW CREEK CROSSING SUBDIVISION, according to the official plat thereof on file and of record with the Summit County Recorder.

PARCEL 5:

Lot 5, SNOW CREEK CROSSING SUBDIVISION, according to the official plat thereof on file and of record with the Summit County Recorder.

PARCEL 6:

Lot 6, SNOW CREEK CROSSING SUBDIVISION, according to the official plat thereof on file and of record with the Summit County Recorder.

together with all Improvements on such land, and any real property defined as an additional Parcel or as an additional part of any Parcel in an amendment to this Declaration executed and recorded pursuant to Paragraph 12. "Parcel" means any of the Parcels.

"Shopping Center" means the Entrance Areas, the Common Roadway, the Parcels and any real property defined as an additional part of the Shopping Center in an amendment to this Declaration executed and recorded pursuant to Paragraph 12, together with all Improvements located on such additional real property.

"Site Plan" means the site plan attached as Exhibit A and incorporated by this reference.

"Taxes" means all taxes, assessments, charges and fees imposed, assessed or levied by any governmental or other public authority on or against the realty concerned.

"Vehicular and Pedestrian Areas" means all areas located in the Shopping Center from time to time that are designed to be used for the parking of motor vehicles or for pedestrian or vehicular movement, including, without limitation, parking areas, roads, driveways, walkways, trails and sidewalks, but excluding any platforms, ramps and docks comprising a portion of the exterior of any Buildings.

2. Improvements.

2.1. Developer Approval. Except for maintenance and repair of the Common Area done in accordance with this Declaration, no excavation, grading or similar work in the Shopping Center shall be commenced, no Improvement in the Shopping Center shall be constructed or installed, and no alteration, refurbishing or repainting of the exterior of any Improvement shall be performed, unless and until complete plans (including, without limitation, exterior elevations, exterior building materials and colors and signage) have first been submitted to, and approved in writing by, Developer, such approval not to be unreasonably withheld. In determining whether to approve or disapprove plans submitted, Developer shall use its reasonable, good faith judgment to assure that all Improvements are of good quality and sound construction, harmonize with existing

surroundings and Improvements and comply with the other requirements of this Declaration. Developer may, however, approve plans which entail a variance from such requirements so long as in the reasonable judgment of Developer such variance is necessary or appropriate. The fact that Improvements comply with applicable zoning and other laws shall not necessarily mean that such Improvements will be permissible under this Declaration. Any plans submitted to Developer shall be approved or disapproved by Developer in writing within fifteen (15) days after submission. If Developer fails to take any action within such period, Developer shall be deemed to have approved the material submitted. Any disapproval of such material by Developer shall be in writing and shall be accompanied by a reasonably detailed explanation for such disapproval. Review or approval by Developer of any plans shall be solely for its own benefit, and shall not be deemed to be or to result in any warranty, representation or conclusion by Developer relative to the technical adequacy of such plans or the safety, soundness or compliance with applicable law of the Improvements described by such plans. Developer shall not be liable for damages by reason of any action, inaction, approval or disapproval by Developer with respect to any request made pursuant to this Declaration so long as such action, inaction, approval or disapproval did not occur as a result of actual malice. The approval of the Parcel 2 Owner (which approval shall not be unreasonably withheld and shall be subject to the same time period as set forth in this Paragraph 2.1 for Developer's approval) shall also be required for any material alteration to that portion of the Common Area located within the Parcel 2 Approval Area.

2.2 Use and Construction. No part of the Shopping Center may be occupied for any use which violates any applicable law, ordinance, rule or regulation or which is inconsistent with this Declaration. Buildings shall be used only for commercial purposes, including, without limitation, financial institutions, offices, retail stores and eating establishments. All Buildings shall be (a) first-class buildings designed for retail or other commercial use of the type and quality typically found in first-class, high-quality shopping center developments, (b) architecturally and aesthetically compatible with all other Buildings, (c) constructed and operated in such a manner as will preserve the fire insurance rating on any other then-existing Buildings, and (d) constructed in compliance with all applicable state, county and municipal subdivision, building, zoning, sign and other laws, ordinances, rules and regulations. All Buildings shall be located within those parts of the Shopping Center designated as "Building Area" on the Site Plan, except for any drive through, canopy, underground footing, trash enclosure or other incidental encroachment approved by Developer. Prior to or in conjunction with the construction and completion of any Building, related Landscaping and Vehicular and Pedestrian Areas shall be constructed by the Owner of the Building concerned in accordance with this Declaration. Vehicular and Pedestrian Areas shall be surfaced with asphalt or concrete, shall be adequately striped or otherwise marked and shall be graded and constructed in such a way as to ensure adequate water drainage. After the initial construction of any Landscaping or Vehicular and Pedestrian Areas, the same shall not be demolished, removed or altered in any material respect without the prior written approval of Developer. All parking spaces required under applicable zoning ordinances, development codes or other municipal requirements for all Buildings on any Parcel shall be wholly located within such Parcel.

2.3 Maintenance. Each Owner shall maintain in good and attractive order, condition and repair all Improvements situated on such Owner's Parcel which are not required by this Declaration to be maintained by Manager. No provision of this Declaration shall be construed to mean that any Building cannot be razed or removed at any time or must be restored or reconstructed if damaged or destroyed. However, if an Owner razes or removes any Building, or

if any Building is damaged or destroyed, within a reasonable time after such occurrence the Owner of the Parcel on which such Building is or was located shall either cause such Building to be replaced or restored or cause all debris to be removed and the site of such Building to be left in a level, clean and sightly condition pending construction of another Building.

2.4 Use Restrictions. For so long as (but only for so long as) Parcel 2 is occupied as a first-class, full service supermarket, no other Parcel shall be used for the purpose of the operation of a general grocery store (defined as any store containing at least 3,000 square feet of floor area, including aisle space and storage, primarily devoted to the retail sale of groceries for off-premises consumption), a pharmacy (defined as a facility selling pharmaceutical products requiring the services of a registered pharmacist), a store selling fresh or frozen meat or fish for off-premises consumption or a take-out delicatessen (which does not include sandwich shops such as Blimpies or Subway). The foregoing restrictions shall not apply to (a) the sale of the foregoing restricted items (other than a pharmacy) where the sale of such items does not constitute more than twenty-five percent (25%) of the gross sales of the seller, (b) an ice cream or frozen dessert store, or (c) a restaurant, fast food establishment or other public or private eating place. Merchandise may not be displayed outside of any Building.

3. Common Area Easements.

3.1 Access Easements. Each Parcel shall have appurtenant thereto and be benefited by, and the Common Roadway and the Vehicular and Pedestrian Areas shall be subject to and be burdened by, a perpetual, nonexclusive right-of-way and easement for vehicular and pedestrian ingress and egress and vehicular parking on, over and across those areas designed for such use. The use of such right-of-way and easement shall be limited to parking for the public and general commercial purposes, which shall include reasonable and customary deliveries. No Vehicular and Pedestrian Areas shall be reconfigured so as to eliminate or substantially impair the right-of-way and easement created pursuant to this Paragraph 3.1 without the prior written approval of Developer and the Parcel 2 Owner.

3.2 Utility Easements. Each Parcel shall have appurtenant thereto and be benefited by, and the Common Area shall be subject to and be burdened by, a perpetual, nonexclusive right-of-way and easement for the laying, construction, installation, operation, inspection, servicing, maintenance, repair, removal, alteration, enlargement, relocation and replacement of utility pipes, lines, wires, conduits and related facilities (including, without limitation, any Common Utility Facilities and, whether or not the same are part of the Common Utility Facilities, pipes, lines, wires, conduits and related facilities for electricity, natural gas, other fuels or power sources, telephone, sewage, storm drainage and all types of water) under, through and across the Common Area. If the rights provided for in this Paragraph 3.2 are exercised, the Owner intended to be served by the easement concerned shall pay the cost involved with such exercise and, at such Owner's sole cost, restore to their previous condition any Improvements which may be damaged as a result of such exercise. Each utility pipe, line, wire, conduit and related facility located within the Shopping Center shall be located underground to the extent reasonably possible.

3.3 No Obstruction. Except to the extent approved by Developer pursuant to Paragraph 3.1, no Owner shall permit to be constructed on the Common Area located on such Owner's Parcel any fence, wall, barricade or other obstruction, whether temporary or permanent in

nature, which materially limits or impairs vehicular and pedestrian traffic over any part of the Shopping Center, or shall otherwise obstruct or interfere with the free flow of such traffic, except as may be reasonably necessary or appropriate during periods that construction activities are ongoing or to the extent that Manager reasonably deems it necessary to do so temporarily to prevent a public dedication of, or the accrual of any rights of the public in, the Common Area. Any obstruction or interference permitted under this Paragraph 3.3 shall be done in a manner reasonably calculated to minimize its impact on businesses within the Shopping Center.

4. **Manager's Duties.** Manager shall timely perform or cause to be performed (for example, through subcontractors, including ones affiliated with Manager) the duties set forth in this Paragraph 4, for which Manager shall be reimbursed in accordance with this Declaration. Manager shall have no obligation to perform, and no liability for failure to perform, any obligation set forth in this Declaration, the cost of which is to be reimbursed (in whole or in part) by the Owners, if the funds to pay for such obligation are not timely received by Manager pursuant to this Declaration.

4.1 **Maintenance.** Manager shall keep the Common Area in a reasonably clean, orderly and usable condition and in a good state of maintenance and repair, consistent with a first-class shopping center development.

4.2 **Taxes.** Manager shall pay, prior to delinquency, all Taxes on the Entrance Areas and the Common Roadway, unless the collection of the Taxes involved and any sale or forfeiture of the Entrance Areas and the Common Roadway for nonpayment of such Taxes is prevented or suspended through appropriate proceedings; provided, however, that any such Taxes which are levied in a lump sum amount, but which may be paid in installments over a period of time, may be paid as such installments fall due.

4.3 **Insurance.** Manager shall maintain commercial general liability insurance insuring all Owners and such other persons who hold a leasehold estate or other interest in any Parcel and who are designated as a named insured in a writing delivered to Manager by the Owner of such Parcel, as their respective interests may appear, against all claims for personal injury, death or property damage occurring on the Common Area. Such insurance shall be written with an insurer licensed to do business in the State of Utah, and have limits of liability of at least Three Million Dollars (\$3,000,000.00) combined single limit, which may be increased by Manager in its sole discretion from time to time and shall be increased by Manager when directed to do so in a writing duly executed by the Owners of at least sixty percent (60%) of the total Floor Area of all Buildings located in the Shopping Center.

4.4 **Damage.** If all or any part of the Common Area is damaged or destroyed through casualty, Manager shall rebuild and restore the same to substantially the same condition as existed prior to the damage or destruction. Each Owner shall, within thirty (30) days after notice of the amount due, contribute an amount equal to the product obtained by multiplying the Common Expense Share of such Owner by the cost of such rebuilding and restoration (net of any insurance proceeds or recoveries from persons causing such damage actually received by Manager). Appropriate additional payments by, or refunds to, each Owner shall be made on completion of such rebuilding or restoration.

4.5 **Condemnation of Common Area.** If all or any part of the Common Area is

taken through condemnation or is conveyed to a condemning authority under threat of condemnation, the entire condemnation award or proceeds shall be paid to Manager; provided, however, that any such award or proceeds relating to the value of the land (as opposed to any Improvements on the land) shall be paid to the Owner of such land. Manager shall, as soon as reasonably possible, restore the remaining Improvements in compliance with all applicable laws, ordinances, rules and regulations. Such restoration shall be of equal or better quality in materials and workmanship as the original Improvements, and the cost of such restoration, in excess of the condemnation award and proceeds available, shall constitute Common Expenses. Any condemnation award or proceeds for the Improvements remaining after such restoration shall be distributed to each Owner on the basis of such Owner's Common Expense Share.

4.6 Public Parking. The Manager may, on behalf of the Shopping Center, enter into, and shall facilitate compliance with, an agreement with Park City regarding public parking (without charge) on the Common Area in connection with certain festivals and other public events in Park City, substantially in the form attached as Exhibit B; provided, however, that such agreement shall permit such parking only to the extent that sufficient capacity for such parking exists in the Common Area.

4.7 Default. If Manager fails to perform any obligation under this Paragraph 4, and such failure continues for a period of fifteen (15) days after written notice of such failure is given to Manager by any other Owner, or if the performance of such obligation would reasonably require more than fifteen (15) days, if Manager fails to commence such performance within such fifteen (15) day period or thereafter diligently prosecute such performance to completion, the Owner giving such notice may, on written notice to Manager and each other Owner, perform such obligation in the stead of Manager. Such Owner shall be reimbursed for such performance in the same manner as if such obligation had been performed by Manager.

5. Common Expenses.

5.1 Budget. At least annually, Manager shall submit to each Owner a proposed budget for the Common Expenses for the following year. No Owner shall unreasonably withhold or delay its approval of such budget. Each Owner shall give Manager written notice of its approval or disapproval of such budget within thirty (30) days after receipt. If any Owner fails to give such notice within such thirty (30) day period, such Owner shall be deemed to have approved of such budget. Any disapproval of such budget shall be accompanied by a reasonably detailed explanation for such disapproval. If the Owners of fifty percent (50%) or more of the total Floor Area of all Buildings located in the Shopping Center approve or are deemed to have approved of such budget, such budget shall be deemed to be approved. If the Owners of more than fifty percent (50%) of the total Floor Area of all Buildings located in the Shopping Center disapprove of such budget, Manager and such disapproving Owners shall reasonably cooperate to address and resolve the reasons for such disapproval as soon as reasonably possible so as to arrive at a budget which is approved or deemed approved by the Owners of fifty percent (50%) or more of the total Floor Area of all Buildings located in the Shopping Center. Whenever a budget is revised as a result of Owner disapproval, Manager shall submit such revised budget to each Owner, and the foregoing process shall be repeated, having the same time periods for approval and disapproval.

5.2 Collection. Each Owner shall, in the manner described in this Paragraph 5,

contribute such Owner's Common Expense Share. Manager shall make reasonable, good faith efforts to collect from each Owner such Owner's Common Expense Share and may, at its option, do either of the following: (a) invoice each Owner for such Owner's Common Expense Share on a monthly, quarterly or other periodic basis as the actual amount of the Common Expense Share becomes known (in which event, the Common Expense Share shall be due and payable within thirty (30) days after the delivery of such invoice); or (b) invoice each Owner in advance based on Manager's reasonable estimate of the Common Expense Share for the period concerned, which estimate shall be provided to each Owner at least annually. If Manager adopts the second alternative, each Owner shall pay such Owner's Common Expense Share in equal installments on the first day of each month, and within ninety (90) days after the end of each calendar year, Manager shall furnish each Owner with a reasonably detailed final statement of the actual amount of such Owner's Common Expense Share for such calendar year. If such final statement reveals that the monthly installments made by an Owner aggregate less than such Owner's Common Expense Share for such calendar year, such Owner shall pay the amount owing to Manager within thirty (30) days after such final statement is furnished. If such final statement reveals that an Owner's payments aggregate more than such Owner's Common Expense Share for such calendar year, the excess amount shall, at the option of Manager, either be returned to such Owner or be applied by Manager to amounts next due from such Owner under this Paragraph 5. Any amount required to be paid under this Paragraph 5 which is not timely paid shall accrue interest on and after the date due until paid in full, before and after judgment, at the rate of eighteen percent (18%) per annum. In addition, a late charge of five percent (5%) of such payment may be charged by Manager for any payment not made within ten (10) days after the date due. Such late charge is payable not as a penalty, but in order to compensate Manager for the additional expense involved in handling the delinquent payment. The acceptance by Manager of any payment that is less than the entire amount then due shall be on account only and shall not constitute a waiver of the obligation to pay such entire amount. All records and accounts maintained by Manager which relate to the Common Expenses shall be open to examination and audit by any Owner on at least ten (10) days' prior written notice to Manager.

5.3 Certain Obligations and Rights. The obligations of each Owner under Paragraph 5.2 and all other provisions of this Declaration are the personal obligations of such Owner and may be enforced by Manager or, on written notice to Manager and each Owner, by any other Owner. No Owner may avoid or diminish the personal nature of such obligations by waiver of the use and enjoyment of the Common Area, by abandonment of such Owner's Parcel or any Improvements on such Owner's Parcel or by waiver of any of the services or amenities provided for in this Declaration. Suit to recover a money judgment for any amount due may be maintained without foreclosing or waiving the lien described in Paragraph 5.4. All remedies set forth in this Paragraph 5 are cumulative and are in addition to any remedies otherwise available at law or in equity, which shall include the right to restrain by injunction any violation or threatened violation of this Declaration and to compel by decree specific performance, it being agreed that the remedy at law for any breach may be inadequate.

5.4 Lien. If not paid when due, the amounts due under this Paragraph 5 or any other amounts payable to Manager under this Declaration may be secured by a lien against the interest of the delinquent Owner in any Parcel. Such lien shall be evidenced by a notice of lien or similar instrument filed for record by Manager in the Official Records. A copy of such notice of lien or similar instrument shall be given to such Owner and any Mortgagee holding a Mortgage covering

the Parcel against which such lien is filed within ten (10) days following recordation. Such notice of lien or similar instrument shall set forth the unpaid amount, the date such amount was due, the name of such Owner and a description of the property subject to such lien, and shall be signed and acknowledged by Manager. Any such lien may be foreclosed in the same manner as is provided under applicable law for the foreclosure of mortgages covering real property, and shall be subject and subordinate to (a) each Mortgage recorded at the time such notice of lien or similar instrument is filed, (b) this Declaration, (c) each (recorded or unrecorded) utility right-of-way and easement existing at the time such notice of lien or similar instrument is filed, (d) the interests of each tenant or lessee under each lease, rental agreement or similar instrument (whether recorded or unrecorded) existing at the time such notice of lien or similar instrument is filed, and (e) the lien for general taxes and other governmental assessments, but shall be prior and superior to all other interests, whether recorded or unrecorded at the time such notice of lien or similar instrument is filed.

5.5 Default. If any Owner fails to perform any obligation under this Declaration and such failure continues for a period of fifteen (15) days after written notice of such failure is given to such Owner by Manager, or if the performance of such obligation would reasonably require more than fifteen (15) days, if such Owner fails to commence such performance within such fifteen (15) day period or thereafter diligently prosecute such performance to completion, Manager may, on written notice to such Owner, perform such obligation in the stead of such Owner. Manager shall be reimbursed by such Owner on demand for all costs and expenses (including attorneys' fees) incurred in connection with such performance, with interest on such costs and expenses, both before and after judgment, at the rate of eighteen percent (18%) per annum.

5.6 Estoppel Certificate. Manager shall, within ten (10) days after any Owner's request, execute and deliver to such Owner an estoppel certificate in favor of such Owner and such other persons as such Owner shall request setting forth any reasonably requested information regarding Common Expenses and liens recorded pursuant to Paragraph 5.4, to the extent that the Common Expenses and such liens relate to such Owner's Parcel. Such Owner's mortgage lenders and purchasers shall be entitled to rely on any such estoppel certificate.

6. Taxes. Each Owner shall pay, prior to delinquency, all Taxes on its Parcel, unless the collection of such Taxes and any sale or forfeiture of such Parcel for nonpayment of such Taxes is prevented or suspended through appropriate legal proceedings. If any Parcel is not assessed and taxed as an independent parcel for tax purposes, the Taxes allocable to such Parcel shall be an equitable proportion of the Taxes for all of the land and Improvements included within each relevant tax parcel assessed, such proportion to be determined by Manager from the respective valuations assigned in the assessor's work sheets or such other information as may be reasonably available.

7. Insurance. Each Owner shall maintain commercial general liability insurance providing coverage against bodily injury, death and property damage occurring, or by reason of activities, on or about the Shopping Center. Such insurance shall be carried with a responsible company and shall afford at least the coverage provided by a "combined single limit" of \$1,000,000.00 for bodily injury, death and property damage. With the prior written approval of Manager, any Owner may comply with the requirements of this Paragraph 7 by the purchase of blanket coverage, and may elect such deductible provisions as are consistent with good business practices. Each Owner shall, on request, furnish Manager with a certificate issued by its insurer evidencing that insurance is in force which complies with the requirements of this Paragraph 7.

8. Indemnification. Each Owner shall indemnify, defend and hold harmless Developer and each other Owner from and against all losses, damages, claims, causes of action, demands, obligations, suits, controversies, costs, expenses (including, without limitation, litigation expenses and attorneys' fees, whether incurred with or without the filing of suit, on appeal or otherwise), liabilities, judgments and liens, of whatever kind or character, which are caused by the use, deposit, storage, disposal, transportation or release of any hazardous substances, hazardous wastes, pollutants or contaminants on any part of the Shopping Center by the indemnifying Owner or any person leasing or occupying the Parcel owned by such indemnifying Owner, or by any agent, employee, contractor, invitee or licensee of the indemnifying Owner or any person leasing or occupying the Parcel owned by such indemnifying Owner.

9. Dedication of Common Roadway. Developer shall have the right at any time, in its sole discretion, to dedicate the Common Roadway to the public for purposes of vehicular ingress and egress by conveyance to the appropriate governmental authority, without the need for the consent of any person other than the Owner of the Common Roadway and any Mortgagee holding a Mortgage encumbering fee simple title to the Common Roadway. On such dedication, this Declaration shall cease to apply to the Common Roadway, and such governmental authority shall thereafter be responsible for maintenance and repair of the Common Roadway.

10. Title and Mortgage Protection. Except as set forth in Paragraph 5.4, breach of this Declaration shall not result in any forfeiture or reversion of title or of any other interest in any part of the Shopping Center, and shall not defeat, impair or render invalid the lien of, or other rights under, any Mortgage covering any part of the Shopping Center. Unless and until it enters into possession or acquires title pursuant to foreclosure or any arrangement or proceeding in lieu of foreclosure, any Mortgagee interested under any Mortgage affecting any part of the Shopping Center shall have no obligation to take any action to comply with, and may not be compelled to take any action to comply with, this Declaration (other than those provisions, if any, concerning a consent to be given by a Mortgagee, if a Mortgagee's failure to give such consent is wrongful).

11. Covenants to Run with Land. This Declaration shall constitute a covenant running with the land, and shall be binding on and shall inure to the benefit of Developer, each Owner, any other party which has or comes to have any interest in a Parcel or any other part of the Shopping Center, and their respective successors and assigns, all of which persons may enforce any obligation created by this Declaration. This Declaration shall be binding on each part of the Shopping Center, and all interests in any part of the Shopping Center shall be subject to this Declaration. By in any way coming to have any interest in or occupying any part of the Shopping Center, the person so coming to have such interest or occupying agrees to be bound by this Declaration; provided, however, that no such person shall have liability under this Declaration as an Owner until such person becomes an "Owner," as defined in Paragraph 1, nor shall such person have liability under this Declaration for any acts committed prior to the time such person became an Owner.

12. Amendment. This Declaration may only be amended by an instrument filed for record in the Official Records, executed by Developer, each Owner and each Mortgagee holding a Mortgage encumbering any part of the Shopping Center, except as follows:

(a) Any amendment to this Declaration which changes the metes and bounds description of the Entrance Areas only needs to be executed by Developer, the Parcel 2

Owner, each Owner of the realty involved in the metes and bounds description change and any Mortgagee holding a Mortgage encumbering such realty, and shall set forth an amended metes and bounds description of the Entrance Areas and any affected Parcel.

(b) Any amendment to this Declaration which expands the Shopping Center to include any other real property only needs to be executed by Developer, the Parcel 2 Owner, each Owner of such other property and any Mortgagee holding a Mortgage encumbering such other property, and shall set forth a metes and bounds description of such other property.

(c) Any amendment to this Declaration which changes the Parcel that is the Master Parcel only needs to be executed by each Owner of the Parcel that previously was the Master Parcel and the Parcel that is to become the Master Parcel and any Mortgagee holding a Mortgage encumbering either of such Parcels, and shall set forth a metes and bounds description of both such Parcels; provided, however, that if fee title to the new Master Parcel is not owned by Snow Creek Crossing, L.C., Fred W. Fairclough, Jr. or Keith S Christensen or any affiliate of Snow Creek Crossing, L.C., Fred W. Fairclough, Jr. or Keith S Christensen, such amendment must also be executed by the Parcel 2 Owner.

(d) Any amendment to this Declaration which changes the Common Expense Share in accordance with the definition of "Common Expense Share" in Paragraph 1 only needs to be executed by Manager.

(e) Any amendment to this Declaration which assigns the rights of Developer in accordance with the definition of "Developer" in Paragraph 1 only needs to be executed by Developer and Manager.

Unless under this Paragraph 12 it is a required party to the amendment concerned, no other person need execute such amendment in order to make such amendment in all respects effective, valid, binding and enforceable.

13. Attorneys' Fees. If any action is brought because of a default under or to enforce or interpret this Declaration, in addition to the relief to which such party is entitled, the party prevailing in such action shall be entitled to recover from the unsuccessful party reasonable attorneys' fees (including those incurred in connection with any appeal), the amount of which shall be fixed by the court and made a part of any judgment rendered.

14. Release On Transfer. On and after the date an Owner transfers (other than merely for purposes of security) or is otherwise divested of such Owner's interest in any Parcel, such Owner shall be relieved of all liabilities and obligations under this Declaration related to such Parcel, except for such liabilities or obligations as may have accrued as of the date of such transfer or divestiture.

15. No Merger. The easements, covenants, restrictions and other provisions contained in this Declaration shall remain in full force and effect despite the fact that all or a part of the Shopping Center may be owned by the same person from time to time, it being the intention of Developer to create a common scheme for the development and operation of the Shopping Center which will not be terminated by the doctrine of merger or otherwise, unless this Declaration is terminated in accordance with Paragraph 18.

16. Force Majeure. Any Owner or other person obligated under this Declaration shall be excused from performing any obligation set forth in this Declaration, except the payment of money, so long as (but only so long as) the performance of such obligation is prevented or delayed by an act of God, weather, avalanche, fire, earthquake, flood, explosion, act of the elements, war, invasion, insurrection, riot, malicious mischief, vandalism, larceny, inability to procure or general shortage of labor, equipment, facilities, materials or supplies in the open market, failure of transportation, strikes, lockouts, order of government or civil defense authorities or any other cause beyond the control of the Owner or other person prevented or delayed.

17. Certain Agreements. The purpose of this Declaration is to create certain easements, covenants, restrictions and other provisions which are to apply among the Parcels and which are to define and govern the rights and obligations as between those persons interested in a given Parcel, on the one hand, and those persons interested in other Parcels, on the other. Accordingly, this Declaration shall not alter any agreements which allocate rights and obligations of persons having an interest in the same Parcel among such persons or third parties, but such agreements shall not limit the liability or obligation of any person under this Declaration.

18. Effective Dates and Duration. This Declaration and any amendment to this Declaration shall take effect as of the date on which it is filed for record in the Official Records. This Declaration shall remain effective until terminated and extinguished by an instrument filed in the Official Records and executed by each Owner of the Shopping Center and the Mortgagee under each Mortgage then affecting the Shopping Center.

19. Interpretation. The captions which precede the Paragraphs of this Declaration are for convenience only and shall in no way affect the manner in which this Declaration is construed. This Declaration shall be governed by and construed in accordance with the laws of the State of Utah. The invalidity or unenforceability of any part of this Declaration shall not affect the validity or enforceability of the remainder of this Declaration, and each provision of this Declaration shall be valid and enforceable to the fullest extent permitted by law.

THE UNDERSIGNED have executed this Declaration on the respective dates set forth below, to be effective as of the date first set forth above. The undersigned agree that (i) the interests in and rights concerning each part of the Shopping Center held by or vested in the undersigned on or after the date of this Declaration shall be subject and subordinate to the arrangement provided for in this Declaration, and (ii) the arrangement provided for in this Declaration shall be prior and superior to such interests and rights, as may be necessary to effectuate all of the provisions set forth in this Declaration.

DEVELOPER:

SNOW CREEK CROSSING, L.C.

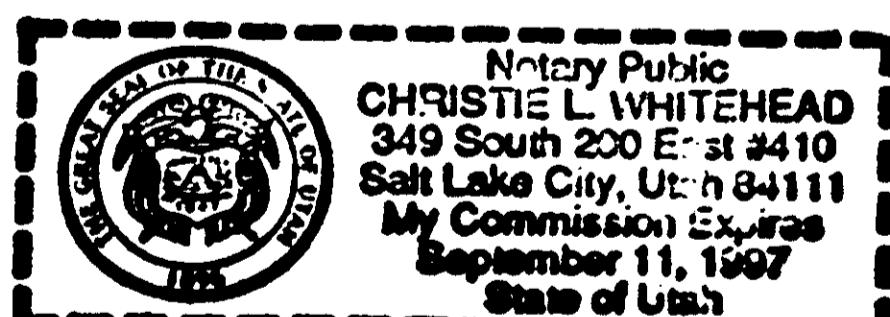
By *Fred W. Fairclough, Jr.*
Fred W. Fairclough, Jr.
Manager
Date *9/18/95*

The foregoing instrument was acknowledged before me this 18th day of September, 1995,
by Fred W. Fairclough, Jr., one of the managers of Snow Creek Crossing, L.C.

(Seal)

Residing at:

Salt Lake City, Utah



00439866 Bk00915 Pe00824

40/snow/decl.vat
September 12, 1995

-15-

ZIONS FIRST NATIONAL BANK, N.A.

By Steven K. Earley
Its Vice President
Date 9-18-95

State of Utah)
County of Salt Lake) ss.

The foregoing instrument was acknowledged before me this 18th day of September, 1995,
by Steven K. Earley, the Vice-President of Zions
First National Bank, N.A.

(Seal)

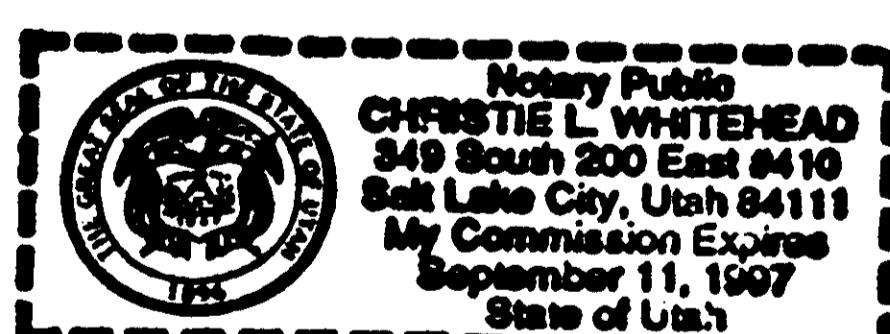
Christie L. Whitehead
Notary Public

My Commission Expires:

9-11-1997

Residing at:

Salt Lake City, Utah

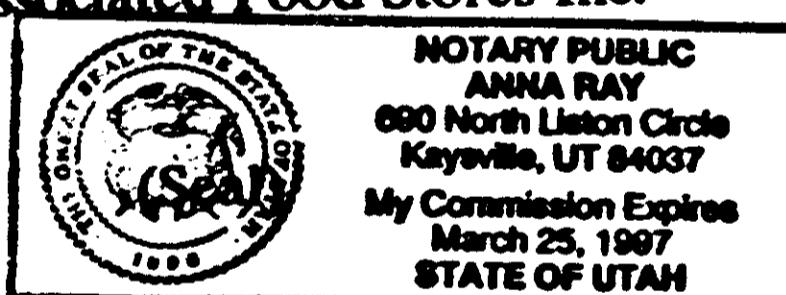


ASSOCIATED FOOD STORES INC.,
a Utah corporation

By Howard Miner
Its President
Date September 25, 1995

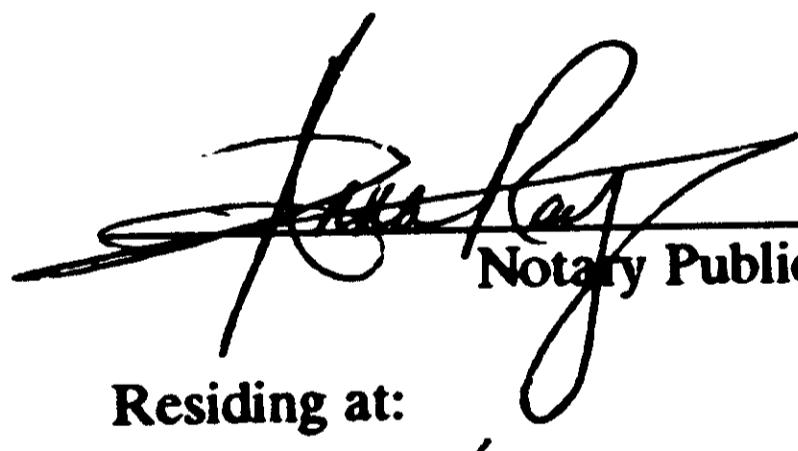
State of Utah)
County of Salt Lake) ss.

The foregoing instrument was acknowledged before me this 25 day of September, 1995,
by STEVEN C. MINER, the V. Pres. Gen. of
Associated Food Stores Inc.



My Commission Expires:

3/25/97


Notary Public

Residing at:

Kayville, UT

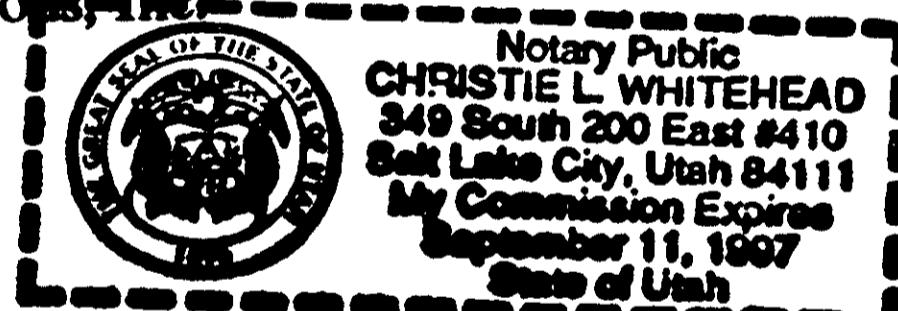
00439866 Bk00915 Pg00826

DAN'S FOODS, INC.,
a Utah corporation

By John R. Goodell
Its Vice Pres.
Date 9/19/95

State of Utah)
County of Salt Lake) ss.

The foregoing instrument was acknowledged before me this 19th day of September, 1995,
by John R. Goodell, the Vice President of Dan's
Foods, Inc.



My Commission Expires:

9-11-1995

Residing at:

Salt Lake City, Utah

EXHIBIT A

to

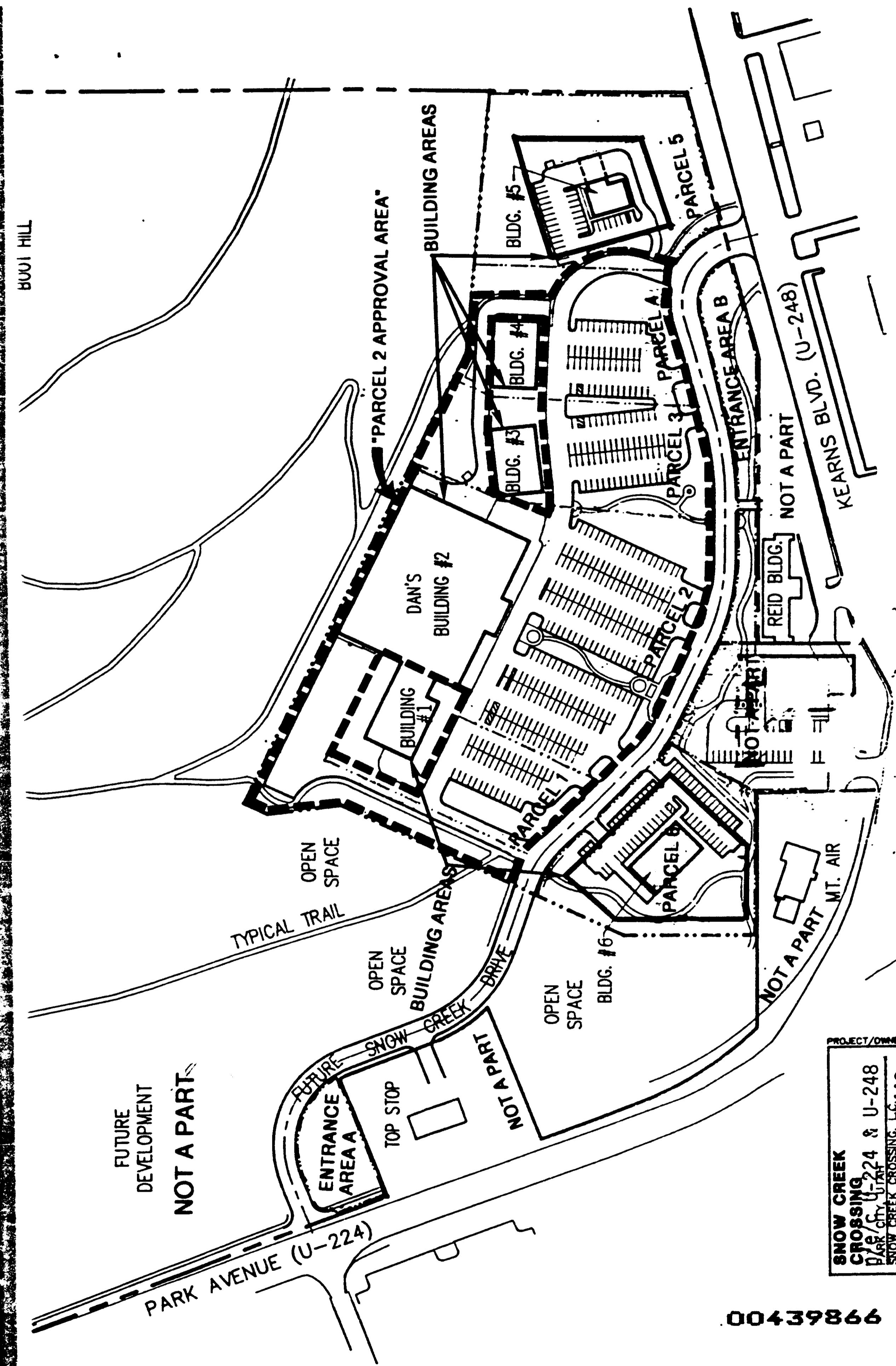
DECLARATION OF EASEMENTS, COVENANTS AND RESTRICTIONS

SITE PLAN

The site plan referred to in the foregoing instrument is attached and consists of one (1) page.

00439866 Bk00915 Pg00828

40/snow/decl.vat
September 12, 1995



SITE PLAN

SCALE: 1" = 200' 400'
0 50 100 200

EXHIBIT "A"
TO DECLARATION OF EASEMENTS, COVENANTS, & RESTRICTIONS

00439866 Bk00915 Pg00829

EXHIBIT B

to

DECLARATION OF EASEMENTS, COVENANTS AND RESTRICTIONS

PARKING AGREEMENT

The form of parking agreement referred to in the foregoing instrument is attached and consists of three (3) pages.

40/snow/decl.vat
September 12, 1995

00439866 Bk00915 Pg00830

PARKING AGREEMENT
[Snow Creek Crossing, L.C./Park City Municipal Corporation]

THIS AGREEMENT (this "Agreement") is entered into as of the 12th day of September, 1995, between SNOW CREEK CROSSING, L.C., a Utah limited liability company (the "Owner"), whose address is 349 South 200 East, Suite 440, Salt Lake City, Utah 84111, and PARK CITY MUNICIPAL CORPORATION, a Utah municipal corporation (the "City"), whose address is 445 Marsac Avenue, P.O. Box 1480, Park City, Utah 84060-1480.

FOR GOOD AND VALUABLE CONSIDERATION, the receipt and sufficiency of which are acknowledged, the Owner and the City agree as follows:

1. **Definitions.** Each of the following terms shall have the indicated meaning:

Parking Lot means the parking lot comprising a part of the Shopping Center, as the same may exist from time to time, which includes all parking in the common areas of the Shopping Center.

Shopping Center means the Snow Creek Crossing Shopping Center, currently under construction in Park City, Utah, located near the intersection of Park Avenue (Highway U-224) and Kearns Boulevard (Highway U-248), more particularly described as Lots 1 through 6, inclusive, SNOW CREEK CROSSING SUBDIVISION, according to the official plat thereof on file and of record with the Summit County Recorder.

2. **Parking.** On request by the City, the Owner will make available to the City (without charge by the Owner or the City) a portion of the Parking Lot for purposes of overflow parking for special city-wide events, including, but not limited to, the Park City Arts Festival, the Sundance Film Festival and the events leading up to and including the 2002 Winter Olympic Games and the celebrations held in connection with the 2002 Winter Olympic Games, but for no other purpose, if and to the extent that, but only if and to the extent that:

(a) such parking will not adversely affect any tenant in the Shopping Center or the operations of any tenant in the Shopping Center, as reasonably determined by the Owner;

(b) the Shopping Center has parking available in the Parking Lot in excess of that reasonably required by the tenants of the Shopping Center for their employees and customers, as reasonably determined by the Owner;

(c) such request is made in writing by the City to the Owner at least ninety (90) days prior to the date on which such parking is required;

(d) such request is not made more than five (5) times in any twelve-month period, unless otherwise agreed by the Owner, which agreement may be given or withheld by the Owner in its sole, absolute and unfettered discretion; and

(e) the period of the parking to be provided pursuant to any one such request

will not exceed three (3) consecutive days, unless otherwise agreed by the Owner, which agreement may be given or withheld by the Owner in its sole, absolute and unfettered discretion.

Subject to the foregoing conditions, within thirty (30) days after the receipt of such written request from the City, the Owner shall give the City written notice designating the approximate number and location of the parking spaces available for such parking. The Owner shall act reasonably and in good faith in determining the amount of available parking, but the determination of the location of such parking within the Parking Lot shall be made in the Owner's sole discretion, taking into account the needs and requirements of the Shopping Center tenants.

3. **Indemnity.** The City shall indemnify, defend and hold harmless the Owner and its tenants and subtenants from and against all claims, demands, obligations, liabilities, losses, costs and expenses (including, without limitation, attorneys' fees) arising out of any property damage or personal injury or death resulting from the use of the parking rights provided by this Agreement, except those caused solely by the intentional torts or negligence of Owner or Owner's employees. Except as expressly set forth in the immediately preceding sentence, nothing in this Agreement shall constitute a waiver by the City of any rights or immunities established by the Utah Governmental Immunity Act.

4. **Notices.** Any notice or demand to be given by the Owner or the City to the other shall be given in writing by personal service, telecopy, express mail, Federal Express, DHL or any other similar form of courier or delivery service, or mailing in the United States mail, postage prepaid, certified, return receipt requested and addressed to such party as set forth at the outset of this Agreement. Either the Owner or the City may change the address at which such party desires to receive notice on written notice of such change to the other party. Any such notice shall be deemed to have been given, and shall be effective, on delivery to the notice address then applicable for the party to which the notice is directed; provided, however, that refusal to accept delivery of a notice or the inability to deliver a notice because of an address change which was not properly communicated shall not defeat or delay the giving of a notice.

5. **Binding on Successors.** This Agreement shall run with the land and shall inure to the benefit of, and be binding on, the Owner and the City and their respective successors and assigns; provided, however, that the rights of the City under this Agreement may not be assigned or transferred in any way.

6. **Governing Law.** This Agreement shall be governed by, and construed and interpreted in accordance with, the laws (excluding the choice of laws rules) of the State of Utah.

7. **Term.** This Agreement shall terminate on the execution by the Owner and the City, or their successors or assigns, of a written termination of this Agreement.

8. **No Assignment.** In no event and under no circumstance whatsoever may the City transfer or assign any of the City's rights under this Agreement.

THE OWNER AND THE CITY have executed this Agreement on the respective dates set forth below, to be effective as of the date first set forth above.

THE OWNER:

SNOW CREEK CROSSING, L.C.

By _____

Its _____

Date _____

THE CITY:

PARK CITY MUNICIPAL CORPORATION

By _____

Its _____

Date _____

ATTEST:

City Recorder

APPROVED AS TO FORM:

City Attorney