

103  
When recorded, mail to:  
Keith W. Meade  
COHNE, RAPPAPORT & SEGAL  
P.O. Box 11008  
Salt Lake City, UT 84147-0008

7260396  
02/18/99 4:16 PM 103.00  
NANCY WORKMAN  
RECORDER, SALT LAKE COUNTY, UTAH  
ASSOCIATED TITLE  
REC BY: R JORDAN  
DEPUTY - WI

## AGREEMENT

THIS AGREEMENT is made this 29<sup>th</sup> day of December, 1998, between Dennis C. Summerhays, Carma S. Summerhays and Neil B. Summerhays (hereinafter referred to collectively as "Dennis") and N. Alan Summerhays and Kristine H. Summerhays (hereinafter collectively referred to as "Alan") ("Dennis" and "Alan" are sometimes referred to singly as a "Party", and collectively as the "Parties").

### RECITALS

WHEREAS, Alan owns real property situated in Salt Lake County, State of Utah, described as Parcels A-1 and A-2 on Exhibit "A" attached (hereinafter collectively "Parcel A"), the location of which Parcel A (and the other parcels referred to hereinbelow) is depicted on Exhibit "J" attached; and

WHEREAS, Dennis owns adjoining property situated in Salt Lake County, State of Utah, which adjoins Parcel A to the east and is described in Exhibit "B" attached (hereinafter the "Parcel B"); and

WHEREAS, Dennis is a grantee in a deed (Entry 6710102, Book 7729, Page 1577) of certain property, which deed is Exhibit "C" attached (the property purported to be conveyed by such deed is hereinafter referred to as "Parcel C"); and

WHEREAS, Alan owns property described as Parcels D-1, D-2, and D-3 on Exhibit "D" attached (hereinafter collectively "Parcel D") which adjoins Parcel C to the south, which property is bounded on the east by a retail shopping center known as Draper Crossings Shopping Center (which center is located on property described on Exhibit "E" attached) (hereinafter collectively "Parcel E"), on the south by 12450 South, and on the west by Minuteman Drive; and

WHEREAS, Dennis believes that Terra Horizons Ltd. or Robert R. Goff (collectively "Goff") owns or may claim an interest in property described on Exhibit "F" attached (such property being hereinafter "Parcel F", and being described in the form of deed attached as Exhibit "F", and such deed herein the "Parcel F Deed"), and that Parcel F may encroach on some part of the southerly boundary of Parcel C and/or some part of the northerly boundaries of Parcels D-1 or D-2; and

WHEREAS, a dispute has arisen between Dennis and Alan regarding the ownership of Parcel C; and

WHEREAS, Dennis asserts and Alan denies that Dennis may have some right to purchase some portion of Parcels D-1 and D-2 pursuant to what Dennis claims to be an oral contract to purchase the same and Dennis' detrimental reliance on such contract; and

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7260396

WHEREAS, the Parties desire to settle such disputes by (i) Goff conveying to Alan Parcel F pursuant to the Parcel F Deed. (ii) Dennis conveying to Alan all such interest as Dennis may have in the westerly 132 foot portion of Parcel C, which portion lies south of Parcel A beginning at the western edge of Parcel A and to the north of Parcel D-1 pursuant to a deed in the form of Exhibit "G" attached (such 132 foot portion being described in such deed, and hereinafter Parcel G, and such deed herein the "Parcel G Deed") so that, after giving effect to such acquisition, Alan will be the fee title owner of Parcel G, and (ii) Alan conveying to Dennis all such interest as Alan may have in the remainder of Parcel C (i.e., the east 192 feet) pursuant to a deed in the form of Exhibit "H" attached (herein the "Exhibit H Deed"), together with an Easement as described in the attached Easement Agreement (such form of easement herein the "Easement") so that Dennis and customers, guests and invitees of the business conducted on Parcel B shall be able to access Parcel D-3, and shall be able to cross Parcels D-2 and D-3 for purposes of having access to Parcel E,

NOW, THEREFORE, the Parties, in consideration of the matters set forth in the foregoing recitals (which recitals are by this reference incorporated in and made a part of this Agreement) and other good and valuable consideration, the receipt and sufficiency of which is hereby mutually acknowledged, agree as follows:

1. Contemporaneously herewith, Alan shall obtain execution and delivery by Goff of the Parcel F Deed, and Alan shall execute and deliver the Parcel H Deed and the Easement to Dennis, and Dennis shall execute and deliver the Parcel G Deed to Alan, and all such Deeds and the Easement shall be delivered to Security Title Company (the "Title Company") in recordable form with instructions that they be recorded promptly.
2. Alan shall have the right, in his reasonable discretion, to request that Dennis saw-cut and take up at Dennis' expense all of the asphalt installed by Dennis that is located on Parcels D-1, D-2, and F pursuant to at least twenty (20) days' notice from Alan to Dennis.
3. Subject to the easement rights granted pursuant to the Easement for the benefit of Parcel 2 as defined in the Easement, Dennis waives, releases, and hereby quit-claims to Alan any right, title, or interest he may have now or in the future, to any portion of Parcel D-2 and any portion of F not lying within Parcel C.
4. This Agreement reflects the entire agreement of the Parties with respect to the parcels described herein. No other promises or consideration have been offered or proposed, or are a part of this Agreement. The Parties agree to execute upon reasonable request such additional documents as are reasonably necessary to accomplish the purposes of this Agreement.
5. In the event that either Party breaches the terms of this Agreement, the non-breaching Party shall be entitled to recover all of their costs and attorneys' fees incurred, whether with or without litigation, as a result of the breach.

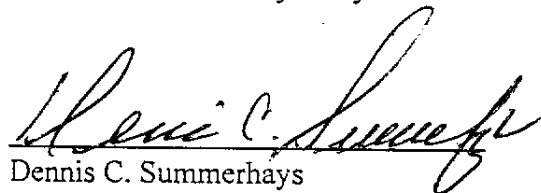
6. Each of the Parties have participated in the preparation of this Agreement, and no rule of construction shall be applied construing this Agreement against either Party based on the claim that they were the drafter of the Agreement. This Agreement is deemed to have been made in Salt Lake County, Utah.
7. This Agreement shall be binding upon and inure to the benefit of the Parties, their successors, assigns, heirs and grantees.
8. Any notice, consent, approval, demand or other communication required or permitted to be given hereunder (a "notice") must be in writing and may be served personally or by U.S. Mail. If served by U.S. Mail, it shall be addressed as follows:

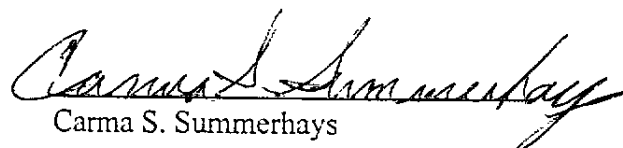
If to Alan:                    N. Alan Summerhays  
                                      136 East 12300 South  
                                      Draper, UT 84020  
                                      Phone: (801) 571-8134

If to Dennis:                Dennis C. Summerhays  
                                      112 East 12300 South  
                                      Draper, UT 84020  
                                      Phone: (801) 571-1114

Any notice which is personally served shall be effective upon the date of service; any notice given by U.S. Mail shall be deemed effectively given, if deposited in the United States Mail, registered or certified with return receipt requested, postage prepaid and addressed as provided above, on the date of receipt, refusal or non-delivery indicated on the return receipt. In addition, either Party may send notices by facsimile or by a nationally recognized overnight courier service which provides written proof of delivery (such as U.P.S. or Federal Express). Any notice sent by facsimile shall be effective upon confirmation of receipt in legible form, and any notice sent by a nationally recognized overnight courier shall be effective on the date of delivery to the Party at its address specified above as set forth in the courier's delivery receipt. Either Party may, by notice to the other from time to time in the manner herein provided, specify a different address for notice purposes.

In witness whereof, the parties have signed their names on the day and year first written above.

  
Dennis C. Summerhays

  
Carma S. Summerhays

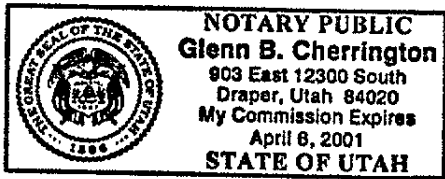
Neil B. Summerhays  
Neil B. Summerhays

\_\_\_\_\_  
N. Alan Summerhays

\_\_\_\_\_  
Kristine H. Summerhays

STATE OF UTAH )  
                              : ss.  
COUNTY OF SALT LAKE )

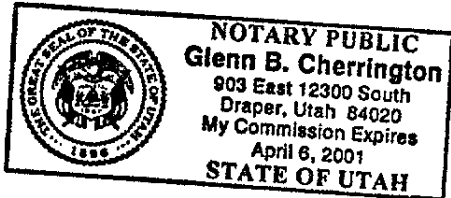
SUBSCRIBED AND SWORN to before me this 8 day of January, 1998, by  
Dennis C. Summerhays, the signer of the foregoing instrument.



[Signature]  
\_\_\_\_\_  
NOTARY PUBLIC  
Residing in Draper, Utah County, Utah  
My Commission Expires: 4-6-2001

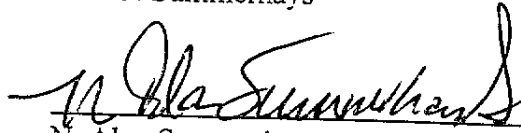
STATE OF UTAH )  
                              : ss.  
COUNTY OF SALT LAKE )

SUBSCRIBED AND SWORN to before me this 8 day of January, 1998, by  
Carma S. Summerhays, the signer of the foregoing instrument.

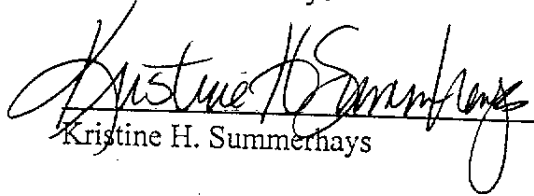


[Signature]  
\_\_\_\_\_  
NOTARY PUBLIC  
Residing in Draper, Utah County, Utah  
My Commission Expires: 4-6-2001

\_\_\_\_\_  
Neil B. Summerhays



N. Alan Summerhays



Kristine H. Summerhays

STATE OF UTAH            )  
                                      : ss.  
COUNTY OF SALT LAKE )

SUBSCRIBED AND SWORN to before me this \_\_\_\_\_ day of \_\_\_\_\_, 1998, by  
Dennis C. Summerhays, the signer of the foregoing instrument.

\_\_\_\_\_  
NOTARY PUBLIC  
Residing in \_\_\_\_\_ County, Utah  
My Commission Expires: \_\_\_\_\_

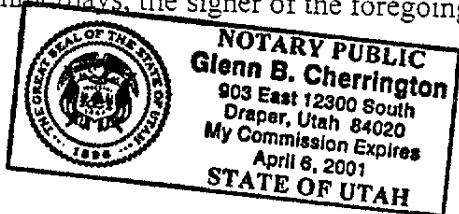
STATE OF UTAH            )  
                                      : ss.  
COUNTY OF SALT LAKE )

SUBSCRIBED AND SWORN to before me this \_\_\_\_\_ day of \_\_\_\_\_, 1998, by  
Carma S. Summerhays, the signer of the foregoing instrument.

\_\_\_\_\_  
NOTARY PUBLIC  
Residing in \_\_\_\_\_ County, Utah  
My Commission Expires: \_\_\_\_\_

STATE OF UTAH )  
 : ss.  
COUNTY OF SALT LAKE )

SUBSCRIBED AND SWORN to before me this 8 day of January, 1998, by  
Neil B. Summerhays, the signer of the foregoing instrument.



[Signature]  
NOTARY PUBLIC  
Residing in Wasatch County, Utah  
My Commission Expires: 4-6-2001

STATE OF UTAH )  
 : ss.  
COUNTY OF SALT LAKE )

SUBSCRIBED AND SWORN to before me this \_\_\_\_\_ day of \_\_\_\_\_, 1998, by  
N. Alan Summerhays, the signer of the foregoing instrument.

\_\_\_\_\_  
NOTARY PUBLIC  
Residing in \_\_\_\_\_ County, Utah  
My Commission Expires: \_\_\_\_\_

STATE OF UTAH )  
 : ss.  
COUNTY OF SALT LAKE )

SUBSCRIBED AND SWORN to before me this \_\_\_\_\_ day of \_\_\_\_\_, 1998, by  
Kristine H. Summerhays, the signer of the foregoing instrument.

\_\_\_\_\_  
NOTARY PUBLIC  
Residing in \_\_\_\_\_ County, Utah  
My Commission Expires: \_\_\_\_\_

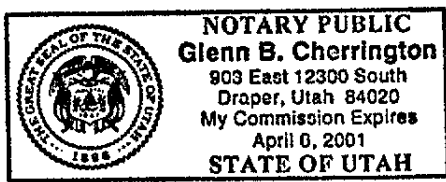
STATE OF UTAH )  
 : SS.  
COUNTY OF SALT LAKE )

SUBSCRIBED AND SWORN to before me this \_\_\_\_\_ day of \_\_\_\_\_, 1998, by  
Neil B. Summerhays, the signer of the foregoing instrument.

\_\_\_\_\_  
NOTARY PUBLIC  
Residing in \_\_\_\_\_ County, Utah  
My Commission Expires: \_\_\_\_\_

STATE OF UTAH )  
 : SS.  
COUNTY OF SALT LAKE )

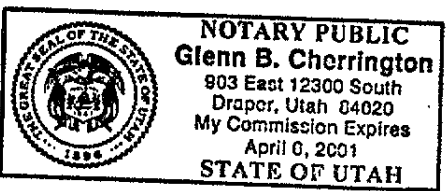
SUBSCRIBED AND SWORN to before me this 29 day of December, 1998, by  
N. Alan Summerhays, the signer of the foregoing instrument.



*[Handwritten Signature]*  
\_\_\_\_\_  
NOTARY PUBLIC  
Residing in Draper, Utah County, Utah  
My Commission Expires: 4-6-2001

STATE OF UTAH )  
 : SS.  
COUNTY OF SALT LAKE )

SUBSCRIBED AND SWORN to before me this 29 day of December, 1998, by  
Kristine H. Summerhays, the signer of the foregoing instrument.



*[Handwritten Signature]*  
\_\_\_\_\_  
NOTARY PUBLIC  
Residing in Draper, Utah County, Utah  
My Commission Expires: 4-6-2001

BK8250PG5191

## EXHIBIT "A"

Parcel A-1: Beginning North 1542.75 feet and East 806.25 feet and South 44.42 feet from the Southwest Corner of Section 30, Township 3 South, Range 1 East, Salt Lake Meridian; thence North  $45^{\circ}07'15''$  East 34.41 feet; thence South  $89^{\circ}40'10''$  East 25.62 feet; thence South 190 feet; thence West 50 feet; thence North 165.58 feet to the beginning. Contains .21 acres more or less.

VTDI 28-30-351-032-0000

Parcel A-2: Beginning North 1575.75 feet and East 938.25 feet and South 53 feet from the Southwest Corner of Section 30, Township 3 South, Range 1 East, Salt Lake Meridian; thence North  $89^{\circ}40'10''$  West 82 feet; thence South 190 feet; thence East 82 feet; thence North 190 feet to the point of beginning. Contains .36 acres more or less.

VTDI 28-30-351-033-0000



## EXHIBIT "B"

Beginning North 1542.75 feet and East 1130.25 feet and South 20 feet from the Southwest Corner of Section 30, Township 3 South, Range 1 East, Salt Lake Meridian; thence South 190 feet; thence West 192 feet; thence North 190 feet; thence East 192 feet to the beginning. Contains 0.84 acres.

VTDI 28-30-351-004-0000

BK8250P65193

## EXHIBIT "C"

[Attach copy of Smith Deed]  
Entry No. 6710102

Recorded at Request of Dennis C. Summerhays

at M. Fee Paid \$

by \_\_\_\_\_ Dep. Book \_\_\_\_\_ Page \_\_\_\_\_ Ref: \_\_\_\_\_

Mail tax notice to Dennis C Summerhays Address 13062 S. 1300 E. Draper, UT. 84020

6710102

### WARRANTY DEED

Smith, J Leon grantor

of Draper, County of Salt Lake State of Utah, hereby

CONVEY and WARRANT to Dennis C. & Carma Summerhays JOINT TENANCY  
& Neil B. Summerhays

of Draper County Salt Lake , State of Utah

for the sum of \$ Ten and no/100 ----- DOLLARS

the following described tract of land in Salt Lake Country,

State of Utah, to-wit: BEG N 1575.75 FT & E 806.25 FT & S 243 FT FR SW  
COR SEC 30, T 3S, R 1E, SLM; E 324 FT; S 10.65 FT  
M OR L; W 324 FT; N 10.65 FT M OR L TO BEG.  
.03 AC M OR L.

(Parcel: 28-30-351-050)

WITNESS the hand of said grantor, this 7 day of aug. A. D. 1997

Signed in the presence of  
Barbara A. Forman  
Charles Smith  
Wanda J. Cline  
Paul Moller  
STATE OF UTAH }  
COUNTY OF \_\_\_\_\_ } ss



On the 7<sup>th</sup> day of Aug A. D. 1997 personally  
appeared before me Barbara Forman, Charles Smith, Wanda Smith,  
Wanda Cline & Paul Moller.  
the signor of the within instrument who duly acknowledged  
to me that he executed the same.

My Commission Expires: Jan. 10, 2000  
Lori W. Brewster  
Notary Public  
Residing at Draper, Ut

37729801577

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FOR COPY-  
CO. RECORDER

6710102  
08/08/97 10:16 AM 10.00  
NANCY WORKMAN  
RECORDER, SALT LAKE COUNTY, UTAH  
DENNIS SUTHERLAND  
13042 S 1300 E  
DR. UT 84020  
REC BY: R ZITO DEPUTY - WI

9K7729061578

BK8250PG5196

## EXHIBIT "D"

Parcel D-1: Beginning South 89°48'40" East 1130.25 feet along the Section Line and North 1323.82 feet and North 89°40'10" West 192 feet from the Southwest Corner of Section 30, Township 3 South, Range 1 East, Salt Lake Meridian; thence North 89°40'10" West 132 feet; thence South 20 feet; thence South 89°40'10" East 132 feet; thence North 20 feet to the beginning. Contains .06 acres more or less.

VTDI 28-30-351-038-0000

Parcel D-2: Beginning South 89°48'40" East 1130.25 feet along the Section Line and North 1323.82 feet from the Southwest Corner of Section 30, Township 3 South, Range 1 East, Salt Lake Meridian; thence North 89°40'10" West 192 feet; thence South 20 feet; thence South 89°40'10" East 192 feet; thence North 20 feet to the beginning. Contains .09 acres more or less.

VTDI 28-30-351-039-0000

Parcel D-3: Lot 2, Draper Crossing Subdivision.

VTDI 28-30-351-046-0000

BK8250PG5197

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**EXHIBIT "E"**

**(Draper Crossings Shopping Center)**

Lot 3, Draper Crossings Subdivision, VTDI 28-30-376-096.

BK8250PG5198

**EXHIBIT "F"**

**[Deed from Goff to Alan conveying 28-30-351-043-0000].**

**BK8250PG5199**

When recorded, mail to:  
Keith W. Meade  
COHNE, RAPPAPORT & SEGAL  
P.O. Box 11008  
Salt Lake City, UT 84147-0008

## Quit-Claim Deed

TERRA HORIZONS LTD., A UTAH LIMITED PARTNERSHIP, grantor, for consideration the receipt of which is acknowledged QUIT-CLAIM their interest, in the following described property to N. ALAN SUMMERHAYS and KRISTINE H. SUMMERHAYS, grantee, of 136 East 12300 South, Draper, UT 84102.

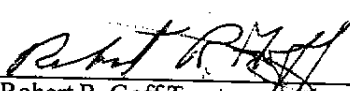
Located in Salt Lake County, Utah:

Beginning South 89°48'40" East 1130.25 feet along section line and North 1323.82 feet from Southwest corner section 30, Township 3 South, Range 1 East, Salt Lake Base and Meridian; North 89°40'10" West 324 feet; thence East 324 feet; South 2.17 feet more or less to beginning. .01 acre more or less. 7109-1920 6484-2037 5692-483 5596-2509.

Tax No. 28-30-351-043-0000

WITNESS the hand of said grantors, this 25<sup>th</sup> day of January, A.D., one thousand nine hundred and ninety-nine.

TERRA HORIZONS LTD.  
a Utah limited partnership

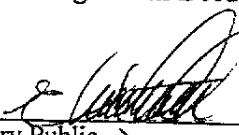
  
by: Robert R. Goff Trust, general partner by Robert R. Goff, Trustee

STATE OF UTAH

)  
:ss.

COUNTY OF SALT LAKE

On the 25<sup>th</sup> day of January, 1999, personally appeared before me Robert R. Goff, the signer of the foregoing instrument, who duly acknowledged to me that he is the Trustee of the Robert R. Goff Trust, and further that the Robert F. Goff Trust is the general partner of Terra Horizons Ltd. and that he is duly authorized to execute this Deed on behalf of Terra Horizons Ltd. and that he has signed this Deed on behalf of the grantor.

  
Notary Public  
Residing at: Draper, Utah



NOTARY PUBLIC  
ERIC FRISBEE  
1207 East Draper Parkway  
Draper, UT 84020  
My Commission Expires  
November 6, 2001  
STATE OF UTAH

My Commission Expires:

Nov. 6, 2001

F:\LAWAYNE\SUMMERHA\QUIT-CLM

BK 8250 PG 5200



**EXHIBIT "G"**

**[Deed from Dennis to Alan]**

BK8250PG5201

When recorded, mail to:  
Keith W. Meade  
COHNE, RAPPAPORT & SEGAL  
P.O. Box 11008  
Salt Lake City, UT 84147-0008

## DEED

Dennis C. Summerhays, Carma S. Summerhays and Neil B. Summerhays, of Salt Lake City, Salt Lake County, State of Utah (herein jointly, severally and collectively "Grantor") hereby quit claims to N. Alan Summerhays and Kristine H. Summerhays, as joint tenants ("Grantees"), for the sum of TEN DOLLARS (\$10.00) and other good and valuable consideration, the following described property (the "Subject Property") in Salt Lake County, State of Utah, including all improvements thereon or thereto:

Parcel 1: BEGINNING North 1575.75 feet and East 806.25 feet and South 243 feet from the Southwest corner of Section 30, Township 3 South, Range 1 East, Salt Lake Base & Meridian, thence East 132 feet, thence South 10.65 feet, more or less, thence West 132 feet, thence North 10.65 feet, more or less, to the point of beginning. This parcel is the West 132 feet of tax parcel 28-30-351-050.

SUBJECT TO LIENS, COVENANTS, CONDITIONS, RESTRICTIONS, AND OTHER MATTERS OF RECORD AND TAXES AND OTHER ASSESSMENTS FOR 1998.

Grantor warrants to Grantee that Grantor has made no transfer or encumbrance of the Subject Property since the Warranty Deed from J. Leon Smith, et al. was recorded in the records of the Salt Lake County Recorder as Entry No. 6710102. Grantor also hereby conveys any title which it may subsequently acquire in the Subject Property.

WITNESS, the hand of said grantors, this \_\_\_\_\_ day of \_\_\_\_\_, 1999.

GRANTOR:

\_\_\_\_\_  
Dennis C. Summerhays

\_\_\_\_\_  
Carma S. Summerhays

\_\_\_\_\_  
Neil B. Summerhays

BK8250PG5202

STATE OF UTAH )  
 : ss.  
COUNTY OF SALT LAKE )

On the \_\_\_\_ day of \_\_\_\_\_, 1999, personally appeared before me Dennis C. Summerhays, who duly acknowledged before me that he executed the foregoing instrument.

My Commission Expires: \_\_\_\_\_  
Notary Public  
Residing in \_\_\_\_\_ County, Utah

STATE OF UTAH )  
 : ss.  
COUNTY OF SALT LAKE )

On the \_\_\_\_ day of \_\_\_\_\_, 1999, personally appeared before me Carma S. Summerhays, who duly acknowledged before me that she executed the foregoing instrument.

My Commission Expires: \_\_\_\_\_  
Notary Public  
Residing in \_\_\_\_\_ County, Utah

STATE OF UTAH )  
 : ss.  
COUNTY OF SALT LAKE )

On the \_\_\_\_ day of \_\_\_\_\_, 1999, personally appeared before me Neil B. Summerhays, who duly acknowledged before me that he executed the foregoing instrument.

My Commission Expires: \_\_\_\_\_  
Notary Public  
Residing in \_\_\_\_\_ County, Utah

**EXHIBIT "H"**

**[Attach form of Deed from Alan to Dennis]**

BK8250PG5204

When recorded, mail to:  
Michael Jones  
BAIRD & JONES  
201 South Main Street, Suite 900  
Salt Lake City, UT 84111

## DEED

N. Alan Summerhays and Kristine H. Summerhays, of Salt Lake City, Salt Lake County, State of Utah, (herein jointly, severally and collectively "Grantor") hereby convey and warrant against all claiming by, through or under Grantor to Dennis C. Summerhays, Carma S. Summerhays, and Neil B. Summerhays, as joint tenants with rights of survivorship, for the sum of TEN DOLLARS (\$10.00) and other good and valuable consideration, the following described property in Salt Lake County, State of Utah, including all improvements thereon or thereto and any after acquired title therein or thereto:

Beginning North 1575.75 feet and East 806.25 feet and South 243 feet and East 132 feet from the Southwest corner of Section 30, Township 3 South, Range 1 East, Salt Lake Base & Meridian, thence East 192 feet, thence South 10.65 feet, more or less, thence West 192 feet, thence North 10.65 feet, more or less, to the point of beginning. This parcel is the East 192 Feet of tax parcel 28-30-351-050-0000.

SUBJECT TO LIENS, COVENANTS, RESTRICTIONS, AND OTHER MATTERS OF RECORD AND TAXES AND OTHER ASSESSMENTS FOR 1998.

WITNESS, the hand of said grantors, this \_\_\_\_\_ day of \_\_\_\_\_, 1998.

GRANTOR:

\_\_\_\_\_  
N. Alan Summerhays

\_\_\_\_\_  
Kristine H. Summerhays

STATE OF UTAH

COUNTY OF SALT LAKE

)  
: ss.  
)

On the \_\_\_\_\_ day of \_\_\_\_\_, 1998, personally appeared before me N. Alan Summerhays, the signer of the foregoing instrument, who duly acknowledged to me that he executed the foregoing instrument.

My Commission Expires:

\_\_\_\_\_  
Notary Public  
Residing in \_\_\_\_\_ County, Utah

BK8250PG5205

STATE OF UTAH

)

COUNTY OF SALT LAKE

: ss.

)

On the \_\_\_\_\_ day of \_\_\_\_\_, 1998, personally appeared before me Kristine H. Summerhays, the signer of the foregoing instrument, who duly acknowledged to me that she executed the foregoing instrument.

My Commission Expires:

\_\_\_\_\_  
Notary Public

Residing in \_\_\_\_\_

\_\_\_\_\_  
County, Utah

F:\LAW\YNE\SUMMERHA\SUMMERHA.QCD

BK8250PG5206

**EXHIBIT "I"**

**[Attach form of Easement Agreement between Alan and Dennis]**

BK8250PG5207

## EASEMENT AGREEMENT

This EASEMENT AGREEMENT (this "Agreement") is made this \_\_\_\_ day of \_\_\_\_\_, 1998, by and between Dennis C. Summerhays, Carma S. Summerhays and Neil B. Summerhays (hereinafter referred to collectively as "Dennis") and N. Alan Summerhays and Kristine H. Summerhays (hereinafter collectively referred to as "Alan"; Dennis and Alan are sometimes referred to collectively as the "Parties").

### WITNESSETH:

WHEREAS, Alan is the owner of those tracts or parcels of land located in Draper City, Salt Lake County, Utah, being more particularly described on Exhibit "A" attached hereto and incorporated herein by this reference (said tracts or parcels of land, together with all improvements and personal property located thereon, including any future development or subdivision of said tracts or parcels of land, being hereinafter collectively referred to as "Parcel 1"); and

WHEREAS, Dennis is the owner of those tracts or parcels of land located in Draper City, Salt Lake County, Utah, being more particularly described on Exhibit "B" attached hereto and incorporated herein by this reference (said tracts or parcels of land, together with all improvements and personal property located thereon, including any future development or subdivision of said tracts or parcels of land, being hereinafter collectively referred to as "Parcel 2"); and

WHEREAS, Alan and Dennis have contemporaneously herewith entered into an Agreement, and it is a condition of closing the transactions contemplated thereby that the parties execute and deliver this Agreement; and

WHEREAS, Parcel 2 is contiguous with Parcel 1 (Parcel 1 and Parcel 2 hereinafter being collectively referred to as the "Parcels" and individually being referred to as a "Parcel"); and

WHEREAS, Alan desires to dedicate, create, grant and establish an easement over Parcel 1 in favor of Parcel 2 and to otherwise create certain rights benefitting Parcel 2 and obligations burdening Parcel 1 (the owners, occupants, successor and assigns of any Parcel, or any portion thereof, as well as any lessee of any Parcel or portion thereof who has assumed all of the obligations of the owning party, are hereinafter individually called the "Owner", and collectively the "Owners"),

NOW, THEREFORE, for and in consideration of the premises and other benefits to be derived by Alan and each and every subsequent Owner and its successors and assigns of each of the Parcels, Alan hereby declares that Parcel 1 shall be held, sold, and conveyed subject to the easements and other rights and obligations granted, created, established, declared or otherwise set forth herein for the use, benefit and enjoyment of Parcel 2.

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1. Easement.

(a) Grant.

(1) Alan does hereby dedicate, create, grant and establish for the benefit of, and as an appurtenance to the ownership of, Parcel 2 and the Owner thereof, its officers, agents, employees, customers, guests, invitees, licensees, tenants, subtenants and the successors and assigns of each of them, the right, privilege and easement of a perpetual, non-exclusive easement to go upon and use Parcel 1 for the purposes of access, ingress, egress, and regress by vehicular and pedestrian traffic to and from Parcel 1 and, to the extent that Parcel 1 or the Owner thereof shall from time to time have such rights (whether as an appurtenance to the ownership of any portion of Parcel 1, or otherwise), to and from an adjacent retail shopping center known as Draper Crossings Shopping Center (which center is located on property described on Exhibit "C" attached (hereinafter collectively "Parcel 3" ).

(2) The Owner of Parcel 1 shall have the right to locate and relocate the roadways and drives that provide the access across Parcel 1 and to locate or relocate and configure or reconfigure, on Parcel 1, the structures, improvements, parking areas and individual parking places located thereon; provided that it shall be a condition precedent of any such location, relocation or reconfiguration that the access, ingress, egress, and regress by vehicular traffic across Parcel 1 for the benefit of Parcel 2 may not be blocked or otherwise impeded, and, without limiting the generality of such condition precedent, (A) any roadway or drive shall be at least twenty-five feet (25') in width, with such radii of any curved portions thereof as shall permit smooth vehicular traffic flow, (B) there shall remain continuous curb-cut access between Parcel 1 and Parcel 2 as provided in Section 2 hereof, (C) there shall remain continuous access from Parcel 1 to Parcel 3 for the benefit of Parcel 2, and (D) access, ingress, egress, and regress by vehicular and pedestrian traffic to and from Parcel 1 shall at all times comply with the federal, state and local requirements (including, without limitation, the Americans With Disabilities Act and zoning requirements) applicable to Parcel 1 as if Parcel 2 did not exist.

(b) General Use. The Owner of Parcel 1 shall be entitled to use Parcel 1 for any purpose not inconsistent with the rights or limitations hereby granted or created.

(c) No Rights to General Public. Nothing contained herein shall ever be deemed to create any rights for the benefit of the general public, or to constitute any of the affected areas a dedicated public thoroughfare for either vehicles and/or pedestrians or other lawful use. The parties shall do all things necessary to perpetuate the status of the easement created by this Agreement as a private easement, including cooperating with each other in the

periodic publication of legal notices or physically barring access to the affected areas as may be required by law.

2. Operating Covenants. In addition to the easements set forth in Paragraph 1 above, Parcel 1 shall be held, transferred, sold, conveyed, used, occupied, rented, mortgaged or otherwise encumbered subject to the following covenants and restrictions:

(a) No Interference with Access. No improvement shall be created on Parcel 1 which blocks or otherwise impedes all access to and from Parcel 2 or the access from Parcel 2 across Parcel 1 to and from Parcel 3. It is agreed that the access need not be the most direct or the most convenient route.

(b) Curb Construction. Concrete curbs shall be constructed on Parcel 1 as the Owner of Parcel 1 shall see fit, provided that in all events if curbs are installed between Parcel 1 and Parcel 2 there shall be a curb-cut twenty-five feet (25') in width through any and all such curbs, the centerline of which curb-cut shall be not less than forty-five (45) feet nor more than sixty-five (65) feet east of the west boundary of Parcel 2.

3. Notice. Any notice, consent, approval or other communication provided for or required by this Agreement (a "notice") shall be in writing and shall be deemed to have been given (i) when delivered in person, or (ii) when deposited in the United States Mail, certified or registered, return receipt requested, postage prepaid, or (iii) when sent by nationally recognized overnight courier service which maintains evidence of receipt, properly addressed to the party to whom such notice is intended to be given. Until notice of change of address is given to the other party in accordance with the provisions of this paragraph, notices shall be delivered, addressed or directed to the parties hereto at the following addresses:

Owner of Parcel 1:                    N. Alan Summerhays  
   136 Est 12300 South  
   Draper, Utah 84020

Owner of Parcel 2:                    Dennis C. Summerhays  
   112 East 12300 South  
   Salt Lake City, Utah 84020

Notice sent by United States Mail shall be deemed received three (3) Business Days (as hereinafter defined) from the date mailed. Notice sent by personal delivery or nationally recognized overnight courier service shall be deemed received when actually delivered. As used herein, the term "Business Day" means any day except Saturday, Sunday or a legal holiday under the laws of the State of Utah.

4. Miscellaneous.

(a) Grants and Declarations. The parties hereby agree and declare that this Agreement, and all of the provisions contained herein and all of the rights, easements and obligations hereunder, shall be and constitute covenants running with the fee simple estate of the Parcels. The grants of easements, rights and privileges in this Agreement are independent of any contractual agreements undertaken by the parties in this Agreement and a breach by either party of any such contractual agreements shall not cause or result in a forfeiture or reversion of the easements, rights and privileges granted in this Agreement.

(b) Recording and Filing. A counterpart of this Agreement shall be recorded in the Office of the Recorder of Salt Lake County, State of Utah, or in such other office as may at the time be provided by law as the proper place for recordation thereof.

(c) Waiver. No consent or waiver, express or implied, by any party to or any breach of default by any other party in the performance by such other party of the obligations thereof under this Agreement shall be deemed or construed to be a consent or waiver to or of any other breach or default in the performance by such other party of the same or any other obligations of such other party under this Agreement. Failure on the part of any party to complain of any act or failure to act of any other party or to declare such other party in default, irrespective of how long such failure continues, shall not constitute a waiver of such party of the rights thereof under this Agreement.

(d) Severability. If any provision of this Agreement or the application thereof to any entity or circumstances shall be invalid or unenforceable to any extent, the remainder of this Agreement and the application of such provisions to any other entity or circumstance shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

(e) Status Reports. Recognizing that any party may find it necessary from time to time to establish to third parties such as accountants, banks, mortgagees or the like, the then current status of performance hereunder, the parties each agree, upon the written request of the other party, made from time to time by notice as provided in Paragraph 3 hereof, to furnish promptly a written statement (in recordable form, if requested) containing any reasonably requested information which pertains to (i) the status of this Agreement, or (ii) whether there are any defaults hereunder qualified to the best of the knowledge and belief of the party making such statement.

(f) Terminology. All personal pronouns used in this Agreement, whether used in the masculine, feminine or neuter gender, shall include all other genders; the singular shall include the plural; and the plural shall include the singular. Titles of paragraphs of this Agreement are for convenience only, and neither limit nor amplify the provisions of this

Agreement, and all references in this Agreement to paragraphs thereof shall refer to the corresponding paragraphs of this Agreement unless specific reference is made to the paragraphs of another document or instrument.

(g) Counterparts. This Agreement may be executed in any number of counterparts, each of which shall be deemed to be an original and all of which together shall comprise but a single instrument.

(h) Binding Agreement. The provisions of this Agreement shall apply to, inure to the benefit of and bind the parties hereto and their respective heirs, transferees, successors and assigns thereof, including, without limitation, any mortgagee acquiring an interest in any portion of the respective Parcels thereon by reason of foreclosure, deed or assignment in lieu of foreclosure or purchase at foreclosure sale; but any such mortgagee shall not incur or be required to assume any obligation under this Agreement unless and until such mortgagee has so acquired an interest in any portion of the respective Parcel thereon, and then only such as may arise by operation of law by reason or privity of estate as limited by the provisions of this Agreement. Subject to the above, whenever in this Agreement a reference to any party is made, such reference shall be deemed to include a reference to the heirs, transferees, executors, legal representatives, successors and assigns of such party.

(i) Interpretation. Each of the parties have participated in the preparation of this Agreement, and no rule of construction shall be applied construing this Agreement against either party based on the claim that they were the drafter of the Agreement. This Agreement is deemed to have been made in Salt Lake County, Utah.

(j) Relationship of Parties. No express or implied term, provision or condition of this Agreement shall be deemed to constitute the parties as partners or joint venturers nor shall anything herein create the relationship of landlord and tenant.

(k) Non-Terminable Agreement. No breach of the provisions of this Agreement shall entitle any Owner of a Parcel or other party to cancel, rescind or otherwise terminate this Agreement, but such limitation shall not affect, in any manner, any other rights or remedies which any party may have hereunder by reason of any breach of the provisions of this Agreement. No breach of the provisions of this Agreement shall defeat or render invalid the lien of any mortgage or deed to secure debt made in good faith for value covering any Parcel or any portion thereof or any improvements thereon.

(l) Term. This Agreement and the easements, rights, restrictions, obligations and liabilities created hereby shall be perpetual to the extent permitted by law. To the extent applicable law would limit the term of any of the foregoing, the term thereof shall be automatically renewed for a period equal to the lesser of twenty (20) years or the longest

period permitted by applicable law unless both Owners agree to the contrary and file a notice to such effect with the County Recorder of the county in which the Parcels are located prior to the expiration of the then current term.

(m) Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Utah.

(n) Modifications. This Agreement may be modified, amended or terminated in whole or in part, only by a written instrument executed and acknowledged by all of the then Owners (and their respective mortgagees, if any) of Parcel 1 and Parcel 2.

(o) Taxes. The Parcel Owners shall be responsible for paying the real estate taxes assessed on their respective Parcels.

(p) Non-Merger. In the event that fee simple title to the Parcels is held by one Owner, the terms, covenants, easements and obligations set forth in this Agreement shall not automatically merge into said fee simple estate.

(q) No Third-Party Beneficiaries. The rights and obligations under this Agreement are for the benefit of the Owner of Parcel 1 and the Owner of Parcel 2 and shall not be construed as conferring upon or giving to any person other than the Owners (including, without limitation, their successors and assigns) any rights or benefits under or by reason of this Agreement.

IN WITNESS WHEREOF, Alan and Dennis have signed and sealed this Agreement effective as of the day and year first above written.

\_\_\_\_\_  
Dennis C. Summerhays

\_\_\_\_\_  
Carma S. Summerhays

\_\_\_\_\_  
Neil B. Summerhays

\_\_\_\_\_  
N. Alan Summerhays

\_\_\_\_\_  
Kristine H. Summerhays

STATE OF UTAH                    )  
  : ss.  
COUNTY OF SALT LAKE         )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 1998, by Dennis C. Summerhays.

\_\_\_\_\_  
NOTARY PUBLIC  
Residing in \_\_\_\_\_ County, Utah  
My Commission Expires: \_\_\_\_\_

STATE OF UTAH                    )  
  : ss.  
COUNTY OF SALT LAKE         )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 1998, by Carma S. Summerhays.

\_\_\_\_\_  
NOTARY PUBLIC  
Residing in \_\_\_\_\_ County, Utah  
My Commission Expires: \_\_\_\_\_

STATE OF UTAH )  
 : ss.  
COUNTY OF SALT LAKE )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 1998, by Neil B. Summerhays.

\_\_\_\_\_  
NOTARY PUBLIC  
Residing in \_\_\_\_\_ County, Utah  
My Commission Expires: \_\_\_\_\_

STATE OF UTAH )  
 : ss.  
COUNTY OF SALT LAKE )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 1998, by N. Alan Summerhays.

\_\_\_\_\_  
NOTARY PUBLIC  
Residing in \_\_\_\_\_ County, Utah  
My Commission Expires: \_\_\_\_\_

STATE OF UTAH )  
 : ss.  
COUNTY OF SALT LAKE )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 1998, by Kristine H. Summerhays.

\_\_\_\_\_  
NOTARY PUBLIC  
Residing in \_\_\_\_\_ County, Utah  
My Commission Expires: \_\_\_\_\_

# EXHIBIT "A"

(Parcel 1 - Alan)

Located in Salt Lake County, Utah:

The East 192 feet of the following described parcel: Beginning South 89°48'40" East 1130.25 feet along section line and North 1323.82 feet from Southwest corner section 30, Township 3 South, Range 1 East, Salt Lake Base and Meridian; North 89°40'10" West 324 feet more or less; thence East 324 feet; South 2.17 feet more or less to beginning. Contains .01 acres more or less.  
Tax No. 28-30-351-043-0000

Beginning South 89°48'40" East 1130.25 feet along the Section Line and North 1323.82 feet from the Southwest Corner of Section 30, Township 3 South, Range 1 East, Salt Lake Meridian; thence North 89°40'10" West 192 feet; thence South 20 feet; thence South 89°40'10" East 192 feet; thence North 20 feet to the beginning. Contains .09 acres more or less.  
VTDI 28-30-351-039-000

Lot 2, Draper Crossing Subdivision. Contains 4.13 acres, more or less.  
VTDI 28-30-351-046-0000



## EXHIBIT "B"

(Parcel 2 - Dennis)

Parcel B-1: Beginning North 1542.75 feet and East 1130.25 feet and South 20 feet from the Southwest Corner of Section 30, Township 3 South, Range 1 East, Salt Lake Meridian; thence South 190 feet; thence West 192 feet; thence North 190 feet; thence East 192 feet to the beginning. Contains 0.84 acres.

VTDI 28-30-351-004-0000

Parcel B-2: Beginning North 1575.75 feet and East 806.25 feet and South 243 feet and East 132 feet from the Southwest corner of Section 30, Township 3 South, Range 1 East, Salt Lake Base & Meridian, thence East 192 feet, thence South 10.65 feet, more or less, thence West 192 feet, thence North 10.65 feet, more or less, to the point of beginning. This parcel is the East 192 Feet of tax parcel 28-30-351-050-0000.

# EXHIBIT "C"

(Parcel 3)

(Shopping Center Description)

Lot 3, Draper Crossing Subdivision, VTDI 28-30-376-096.

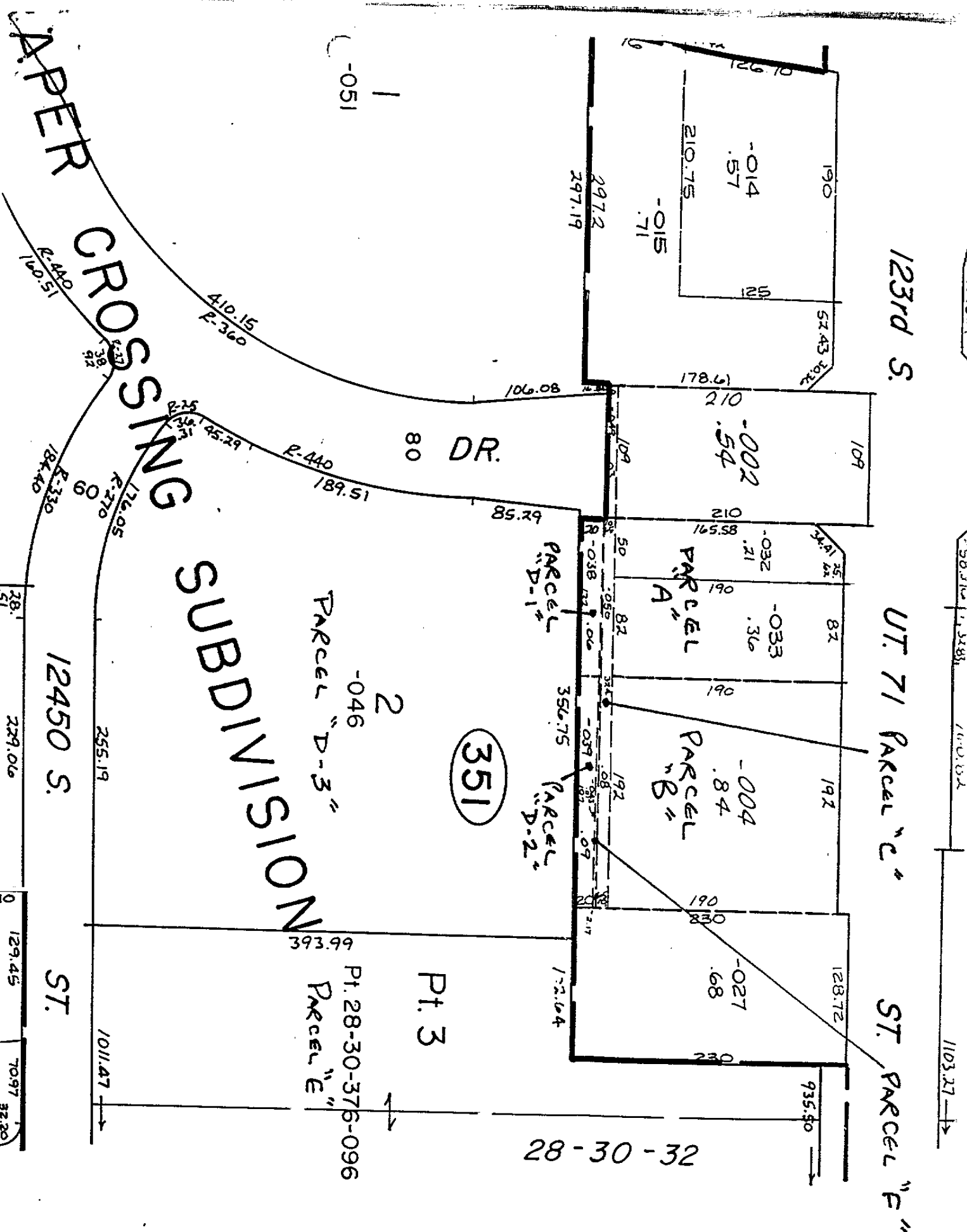
F:\LAW\WAYNE\SUMMERHA\SUMMERH.AGM

**EXHIBIT "J"**

**[Sidwell Map marked to show Parcels]  
described in the Agreement  
(but not in the Easement)**

F:\LAW\YNE\SUMMERHAS\SUMMERHA.J

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UPPER CROSSING SUBDIVISION

123rd S.

80 DR.

UT 71 Parcel "C"

ST. PARCEL "E"

351

28-30-32

BK 8250 PG 5220

-051

-015  
.71

-014  
.57

-002  
.54

-032  
.21

-033  
.36

-004  
.84

-027  
.68

-046

Parcel "D-3"

Parcel "D-1"

Parcel "D-2"

Parcel "B"

Pt. 28-30-376-096  
Parcel "E"

Pt. 3

R-440  
150.51

R-360  
410.15

R-330  
184.40

R-270  
176.05

R-440  
189.51

R-038  
85.29

38.51

229.06

12450 S.

255.19

0.01

129.45

ST.

1011.47

7097  
32.20

393.99

123.64

935.50

297.19

106.08

178.61

210

165.51

190

190

217

128.72

190

5243.40

109

82

192

128.72

38.92

R-225  
145.29

341.41

82

192

128.72

1103.27

150.11

160.02

1103.27