

WHEN RECORDED RETURN TO:

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OBK Kimball Junction LLC  
1255 Post Street, #950  
San Francisco, CA 94109

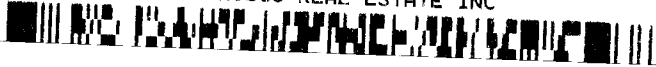
**ENTRY NO. 00808708**

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ALAN SPRIGGS, SUMMIT COUNTY RECORDER

FEE \$ 107.00 BY ROSCO REAL ESTATE INC



**TOTAL RESTATEMENT OF DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS  
GRANT OF EASEMENTS**

**THIS TOTAL RESTATEMENT OF DECLARATION OF COVENANTS,  
CONDITIONS AND RESTRICTIONS, GRANT OF EASEMENTS** (hereinafter referred to as "Declaration"), to become effective as of the date of recording, is made by OBK KIMBALL JUNCTION, LLC, a Delaware limited liability company ("OBK"), and SMITH'S FOOD & DRUG CENTERS, INC., an Ohio corporation ("SFDC").

**RECITALS:**

A. GFI - Park City Investments Limited Partnership, a Utah limited partnership ("GFI"), John W. Jarman, an individual, and Helen B. Jarman, an individual (together, "Jarman"), and Bailey & Sons Company, a Utah corporation ("Bailey"), made and executed that certain Declaration of Covenants, Conditions and Restrictions, Grant of Easements, dated as of December 31, 1991, and recorded March 11, 1992 as Entry No. 355433 in Book 650 at Page 418 of the Official Records of Summit County, Utah (the "1991 Declaration").

B. The 1991 Declaration was amended or otherwise affected by (i) that certain First Amendment to Declaration of Covenants, Conditions and Restrictions, Grant of Easements, recorded December 15, 1992 as Entry No. 370680 in Book 699 at Page 218 of the Official Records of Summit County, Utah, (ii) that certain Second Amendment to Declaration of Covenants, Conditions and Restrictions (this Amendment was never consented to or signed by the Responsible Owners, as required by the 1991 Declaration), recorded October 27, 1995 as Entry No. 441261 in Book 920 at Page 109 in the Official Records of Summit County, Utah, (iii) that certain Amendment to Declaration of Covenants, Conditions and Restrictions, recorded June 5, 1996 as Entry No. 455719 in Book 969 at Page 519 of the Official Records of Summit County, Utah, and (iv) that certain Amendment to Declaration of Covenants, Conditions and Restrictions, recorded December 9, 1996 as Entry No. 468923 in Book 1013 at Page 129 of the Official Records of Summit County, Utah and re-recorded January 7, 1997 as Entry No. 470945 in Book 1020 at Page 23 of the Official Records of Summit County, Utah. The 1991 Declaration, as and to the extent amended by the foregoing is herein referred to as the "Amended Declaration".

C. The Amended Declaration applied and pertained to certain real property located in Summit County, Utah, more particularly described in attached **Exhibit "A"** (the "Subject Land") and made a part hereof, as well as certain additional real property discussed herein.

D. OBK is the successor in interest to O'Brien Kiernan Investment Company, Inc. ("OKIC") and OKIC was the successor in interest to GFI, such that OBK is the owner of that portion of the Subject Land consisting of Parcel 1 and Parcel 1A, as herein defined.

E. SFDC is the successor in interest to Jarman and Bailey and is the owner of that portion of the Subject Land consisting of Parcel 2, as herein defined.

F. Boyer Spring Creek, L.C., a Utah limited liability company ("Boyer") succeeded to the interest of Jarman and Bailey with respect to the South Entry Road Parcel and Parcels A, B, C, D, and E, defined and sometimes referred to in the Amended Declaration as the "Common Area Parcels." OKIC is the successor in interest to Boyer with respect to and is the owner of Parcels A, D, and E, as herein defined.

G. The South Entry Road Parcel has been extended through Parcel C (as that Parcel was shown on the Site Plan attached to the Amended Declaration) to the east boundary of the Shopping Center as now shown on the revised site plan ("Site Plan") attached hereto as **Exhibit "O"** and the South Entry Road (as extended) has been dedicated to Summit County as a public road, as also shown on the Site Plan. Those Parcels identified in the Amended Declaration as Parcel B and Parcel C are hereby being removed from the Subject Land and Shopping Center. Use of Parcel B and the portion of Parcel C not made a part of the South Entry Road Parcel is now governed by that certain Construction, Operation and Easement Agreement ("COE Agreement") dated July 17, 2002, by and among OKIC, SFCD, and Boyer (Boyer may also be referred to herein as "BSC"), and recorded as Entry Number 3625328 in Book 1460 at Page 1324 of the official records of Summit County, State of Utah.

H. Boyer, together with certain other parties, owns and is developing certain property located generally south of and adjacent to the southern boundary of former Parcels B and C, constituting a portion of "Lot 7" as described in Exhibit "E" to the Amended Declaration, which property (the "Boyer Property") is more particularly identified on attached **Exhibit "B"** but is not part of the Shopping Center. Through the COE Agreement Boyer has obtained certain rights and accepted certain responsibilities pertaining to Parcels B and C and the South Entry Road Parcel in connection with development of the Boyer Property.

I. Jarman and Bailey are the owners of that portion of the Subject Land consisting of Parcel 2A, as herein defined.

J. Washington Mutual Federal Savings Bank has succeeded to the interest of Jarman and Bailey and is the owner of that portion of the Subject Land consisting of Parcel 3, as herein defined.

K. Edward H. Mark and Maura P. Mark, Trustees of the Mark Family Trust, as to an undivided one-half interest, and Ernest Mark and Alice Mark, Trustees of the Ernest and Alice Mark Family Trust, as to an undivided one-half interest, have succeeded to the interest of Jarman and Bailey and are the owners of that portion of the Subject Land consisting of Parcel 3A, as herein defined.

L. IHC Health Services, Inc. and First Security Bank of Utah (now Wells Fargo Bank), as their interests may appear, have succeeded to the interest of Jarman and Bailey and are the owners of that portion of the Subject Land consisting of Parcel 4, as herein defined.

M. CMG Retail, LLC, Braying Mule Properties, Inc. and Jeffrey O. Kelley, D.D.S. succeeded to the interest of Jarman and Bailey and became the owners of that portion of the Subject Land consisting of Parcel 5, as herein defined, which Parcel has been condominiumized.

N. That certain parcel of land designated as Lot 6 on Exhibit "D" to the Amended Declaration and included as part of the Subject Land thereunder, is no longer a part of the Subject Land.

O. The COE Agreement entered into by and among OKIC, SFDC and Boyer provides, among other things: (a) that there will be no more than four (4) accesses from the Boyer Property to the South Entry Road, without regard to public dedication of the South Entry Road Parcel; (b) that except for the landscaped area on the South Entry Road Parcel north of the north curb line of the South Entry Road, Boyer shall have total responsibility, at its sole cost and expense, to maintain and repair the South Entry Road Parcel until and unless Summit County assumes such responsibilities; (c) that Boyer, at its sole cost and expense, has or will extend the South Entry Road to the east boundary of the Subject Land; (d) that subject to certain restrictions running with the land, Parcel B and the remainder of Parcel C, described in and made a part of the Subject Land pursuant to the Amended Declaration, are no longer a part of the Subject Land or governed directly by this Declaration; (e) that Boyer has conveyed to OKIC, Parcels A, D, and E; and (f) that Boyer will obtain on behalf of the Shopping Center the right to transport storm water across land east of the Shopping Center, as generally shown on Exhibit "C" attached hereto.

P. OBK, SFDC, Boyer, or their predecessors or successors and assigns, have or will make and provide certain roadways, sidewalks, walkways, parking areas, and utility improvements and facilities, including grading, surfacing, lighting, striping, landscaping, and installing sewer, water, electrical and gas lines in, under, over, and upon the Subject Land, the South Entry Road Parcel and other lands, and intend for such purposes to set aside certain portions of the Subject Land and the South Entry Road Parcel (hereinafter referred to as the "Common Areas") for such purposes.

Q. OBK, OKIC, SFDC and others have improved the Subject Land to create a Shopping Center and related commercial uses under a general plan or scheme of development and for that purpose have heretofore and shall hereby create and establish certain easements, restrictions and obligations with respect to the Shopping Center.

R. OBK and SFDC now desire to totally restate the Amended Declaration to, among other things, incorporate and reflect the effect of pertinent portions of the COE Agreement. OBK and SFDC also intend by recording this Restated Declaration, together with the Exhibits attached hereto, to subject the Subject Land and all improvements situated or to be situated thereon to the provisions of this Declaration and to impose upon the Subject Land mutually beneficial restrictions for a general plan of improvement for the benefit of the Owners of all interests in the Subject Land.

NOW THEREFORE, OBK and SFDC hereby declare that the Amended Declaration is hereby merged and restated as follows:

## ARTICLE 1 DEFINITIONS

1.01 Defined Terms. Unless the context clearly indicates otherwise, certain terms as used in this Declaration shall have the meanings set forth in this Article I.

1.02 "Building" shall mean the building structure or structures constructed or to be constructed within the Building Areas.

1.03 "Building Area" or "Building Areas" shall mean the area or areas within a Parcel currently or hereafter designated for the construction of Buildings on the Site Plan.

1.04 "Common Areas" shall mean all areas of the Shopping Center (including the dedicated South Entry Road Parcel), together with common facilities thereon, except Buildings, associated structures and improvements, and those portions of the Building Areas on the Subject Land occupied by those Buildings and associated structures. The South Entry Road Parcel and Parcel A, herein referred to sometimes as "Common Areas Parcels," shall consist entirely of Common Areas.

1.05 "Floor Area" shall mean the area measured from exterior surface of exterior walls and from the center of common walls or interior demising partitions, but shall exclude mezzanines, if any.

1.06 "Owner" shall mean the record owner of the fee title to a Parcel.

1.07 "Parcel" shall mean each separate parcel of land making up the Subject Land. "Parcels" shall mean and refer to two or more of the Parcels.

1.08 "Parcel 1" shall mean the Parcel designated "Parcel 1" on the Site Plan, consisting of approximately 8.30 acres, more particularly described on **Exhibit "D"** attached hereto and made a part hereof.

1.09 "Parcel 1A" shall mean the Parcel designated "Parcel 1A" on the Site Plan, consisting of approximately .66 acres, more particularly described on **Exhibit D-1** attached hereto and made a part hereof.

1.10 "Parcel 2" shall mean the Parcel designated "Parcel 2" on the Site Plan, consisting of approximately 6.60 acres, more particularly described on **Exhibit "E"** attached hereto and made a part hereof.

1.11 "Parcel 2A" shall mean the Parcel designated "Parcel 2A" on the Site Plan, consisting of approximately 1.24 acres, more particularly described on **Exhibit "F"** attached hereto and made a part hereof.

1.12 "Parcel 3" shall mean the Parcel designated "Parcel 3" on the Site Plan, consisting of approximately 1.03 acres, more particularly described on **Exhibit "G"** attached hereto and made a part hereof.

1.13 "Parcel 3A" shall mean the Parcel designated "Parcel 3A" on the Site Plan, consisting of approximately 1.72 acres, more particularly described on **Exhibit "H"** attached hereto and made a part hereof.

1.14 "Parcel 4" shall mean the Parcel designated "Parcel 4" on the Site Plan, consisting of approximately 1.31 acres, more particularly described on **Exhibit "I"** attached hereto and made a part hereof.

1.15 "Parcel 5" shall mean the Parcel designated "Parcel 5" on the Site Plan, consisting of approximately 2.93 acres, more particularly described on **Exhibit "J"** attached hereto and made a part hereof.

1.16 "Parcel A" shall mean the Parcel designated "Parcel A" on the Site Plan, consisting of approximately 1.31 acres, more particularly described on **Exhibit "K"** attached hereto and made a part hereof, sometimes referred to herein as a "Common Area Parcel."

1.17 "Parcel D" shall mean the Parcel designated "Parcel D" on the Site Plan, consisting of approximately 1.09 acres, more particularly described on **Exhibit "L"** attached hereto and made a part hereof.

1.18 "Parcel E" shall mean the Parcel designated "Parcel E" on the Site Plan, consisting of approximately 0.69 acres, more particularly described on **Exhibit "M"** attached hereto and made a part hereof.

1.19 "South Entry Road Parcel" shall mean the parcel of land dedicated to Summit County as a public roadway and designated "South Entry Road Parcel" on the Site Plan, consisting of approximately 2.17 acres, more particularly described on **Exhibit "N"** attached hereto and made a part hereof.

1.20 "Responsible Owner" shall mean the Owner of a Parcel or Parcels with a combined maximum permissible Building Area thereon of at least twenty thousand (20,000) square feet of Floor Area. Responsible Owner shall also mean the lessee of a Parcel with a Building constructed thereon containing a minimum of twenty thousand (20,000) square feet of Floor Area under a ground or other lease having an initial term of at least twenty-five (25) years, so long as said lessee is designated in the lease as a "Responsible Owner" for the purposes of this Declaration.

1.21 "Shopping Center" shall mean the Subject Land, together with the dedicated South Entry Road Parcel, and includes all improvements constructed or to be constructed thereon. The Shopping Center shall contain all Building Areas and Common Areas collectively.

1.22 "Site Plan" shall mean the Site Plan attached hereto as **Exhibit "O"** and made a part hereof, as it may be amended from time to time as provided by this Declaration.

1.23 "Subject Land" shall mean the real property described on **Exhibit "A"** attached hereto and comprised collectively of Parcels 1, 1A, 2, 2A, 3, 3A, 4 and 5, and Parcels A, D and E, depicted on the Site Plan attached hereto.

## ARTICLE II

2.01 Common Plan. The intent of this Declaration is to establish a common plan for the development of the Subject Land in order to insure the protection, maintenance, and improvement of the Subject Land and Shopping Center and, as hereinafter set forth by this Declaration and pertinent portions of the COE Agreement referenced herein and by such reference being incorporated herein, the parties hereto will establish certain easements, covenants, and reservations upon and subject to which the Subject Land and Shopping Center will be used, held, leased, sold, or conveyed by the Owners, their successors and assigns, which easements, covenants, and reservations are intended for the benefit of the Subject Land and each Owner of any interest therein, whether present or future, and which shall inure and pass with the Subject Land and each and every interest therein. The Subject Land will be developed and maintained with a generally harmonious appearance such that to the public it appears to be singly owned. Except as may be expressly provided in this Declaration there shall be no fences or barricades along ownership lines so that there will be no impediment to the flow of traffic from one Parcel to another Parcel within the Shopping Center.

ARTICLE III  
LAND USE

3.01 Permitted and Prohibited Uses. Except as otherwise provided in this Declaration and subject to any other legal restrictions, the Shopping Center and any portion thereof shall be used, if at all, only for the construction, operation, and maintenance thereon of retail or wholesale mercantile businesses, including the so-called fast food or drive-through restaurants, sit-down restaurants, convenience stores, theaters, business and professional offices including medical and dental, financial institutions, transportation centers or hubs, and related facilities common to neighborhood-community and regional type retail shopping centers, and for Common Areas related to and necessary to the operation of the foregoing. The Shopping Center and any portion thereof shall not be used as a bar, tavern, adult bookstore, massage parlor, nor for warehousing (other than the temporary storage of fixtures, equipment, and inventory by an occupant of the Shopping Center), industrial, manufacturing, or residential purposes, except for the storage and/or manufacture of such goods as are required as a necessary incident to the conduct of a particular retail mercantile business, business or professional office, financial institution or related facility situated in the Shopping Center. In no event shall any Building Area or portion thereof be used or operated at anytime for any use or purpose, and/or by any tenant or other occupant, which is not consistent and compatible with the intention of the parties to maintain and operate a first-class shopping center of a quality equal to that maintained and operated in other first-class shopping centers in the State of Utah.

3.02 No Interference with Common Areas. No use of the Shopping Center shall interfere with the use of the Common Areas within the Shopping Center for the purposes for which they were intended as provided in this Declaration or impede the free flow of vehicular or pedestrian traffic thereon. However, tenants and/or Owners of each of the Parcels shall have the right to conduct sidewalk or outdoor sales or entertainment within the Common Area within its Parcel in accordance with Section 5.01(l) below. It is further provided that any Owner otherwise in compliance with this Declaration and any other agreements, laws, rules, ordinances and regulations to which the Owner or the Subject Land is subject, may convert any portion of the Common Areas located on the Building Area within its Parcel to a Building, so long as said conversion does not result in a building larger than the maximum Floor Area allowed on that Parcel pursuant to Sections 4.05 through 4.11 below.

3.03 Conformity to Site Plan. Each Owner, or its successors and assigns, upon development of its Parcel, shall develop its Parcel as a part of the Shopping Center in the manner shown on the Site Plan. The Building Areas and the Common Areas within the Subject Land and Shopping Center are hereby established as set forth on the Site Plan. Except as expressly set forth herein, and as expressly set forth in Sections 4.05, 4.06, 4.07, 4.08 4.09 and 4.10, any changes to the Site Plan may be made only with the prior written consent of the Responsible Owners as provided in Article IX, which consent shall not be unreasonably withheld if such changes do not materially and adversely impact or affect traffic flow, visibility, parking upon (as allowed by this Declaration or the then current governmental parking standards or requirements) or access with respect to the Shopping Center. In no event shall the parking ratio within any Parcel be less than four (4) spaces per 1,000 square feet of Floor Area of all Buildings within that Parcel, and at no time shall any Owner use any parking spaces within another Parcel to satisfy the required parking ratio of that Owner's Parcel; provided further, however, that in the event Parcel D is no longer required to be used for a detention pond, upon obtaining appropriate

governmental approvals, said Parcel may be used to create a transportation center or hub, or such other use allowed by Section 3.01 hereof and approved by the County, including constructing additional parking for the Shopping Center and be used by Owners of other Parcels to help satisfy parking ratio requirements to the extent such Owners participate in the cost of constructing the parking thereon and thereafter maintain and repair the same at such Owner's cost.

ARTICLE IV  
RESTRICTIONS ON USE OF BUILDING AREAS

4.01 Building Design and Construction. Each Building or other improvement (including signs) to be constructed, altered, remodeled, repaired, or reconstructed in the Shopping Center shall be architecturally harmonious and compatible with the other Buildings and improvements from time-to-time located in the Shopping Center, except that if a Parcel is sold or leased to a national or regional chain, the Building on such Parcel may be constructed in accordance with the standard plans and specifications for that chain, including their standard colors, elevations, configurations and external building materials (if approved by the applicable governmental authorities). All construction of Buildings and modifications to the exterior of existing Buildings shall be subject to the prior written approval of all Responsible Owners as provided in Article IX, which approvals shall not be unreasonably withheld. No modifications to the elevation and exterior appearances, including changes of materials and colors, for Buildings in the Shopping Center shall take place prior to such approval. All construction, alteration, and repair work relative to the Shopping Center shall be accomplished in an expeditious manner and in compliance with all laws, rules, regulations, orders, permits, approvals, and licenses of governmental authorities having jurisdiction. The Owner undertaking such work shall take all necessary measures to minimize any disruption or inconvenience caused by such work. Such work shall be accomplished in such a manner as to minimize any damage or adverse effect which might be caused by such work to any other party, to the Parcel on which the work is being done or to any other Parcel in the Shopping Center. The Owner undertaking such work shall repair at its own cost and expense any and all damage caused by such work and shall restore the affected portion of the Parcel upon which such work is performed to a condition which is equal to or better than the condition which existed prior to the beginning of such work. In addition, the Owner undertaking such work shall promptly pay all costs and expenses associated therewith and shall indemnify and hold all other Owners harmless from all damages, losses, or claims, including reasonable attorneys fees, attributable to the performance of such work. Except in cases of emergency, all such work shall be undertaken only after giving said Responsible Owners thirty (30) days prior written notice of the work to be undertaken, the scope and nature of the work, the duration of the work, and the area in which the work is to be performed.

4.02 Building Height. In no event shall any Building in the Shopping Center be of a height in excess of twenty-five feet (25'), provided that any Building to be located within the Building Areas designated as Parcel 1 and Parcel 2 on the Site Plan shall not exceed a height of thirty-six and one-half feet (36.5'). For purposes of this Section 4.02, height shall be measured from finished grade of floor to the highest point of the Building.

4.03 Automatic Sprinklers. Every Building shall be equipped with either automatic sprinkler systems which meet all the standards of the Insurance Services Office (or other similar local organization having jurisdiction) or shall be constructed in such a manner as not to adversely affect the fire rating of any other Building built upon the Subject Land. One of

the purposes of this Section 4.03 is to allow Buildings built on each Building Area to be fire-rated as separate and distinct units without deficiency charge.

4.04 Location of Buildings. Subject to the restrictions set forth in this Declaration, all Buildings shall be placed or constructed upon the respective Parcels in the Shopping Center within the Building Areas, as said Building Areas may be amended pursuant to Section 3.03. Buildings or other structures may be placed or constructed in the Shopping Center within the Common Areas that are within Building Areas as provided in this Declaration; however, no Buildings or other structures shall otherwise be placed or constructed within any other Common Areas except pylon signs, directional signs, bumper guards or curbs, landscape planters, lighting standards, and other landscaping or other improvements as may be required under applicable controls and regulations of Summit County, Utah. In addition, subject to the provisions of Section 4.01, any Owner may construct, install, repair, remove, replace, and maintain sidewalks and walkways, and canopies and marquees (with signs which may be affixed thereto) which may encroach a reasonable distance (not to exceed fifteen feet (15')) over or upon, as the case may be, the sidewalks and walkways contiguous to its Building Area; and, provided further, that a bank or similar enterprise may extend an appropriate canopy or roof structure from its Building over its drive-through area upon obtaining approval of the Responsible Owners. The Building Area of each Parcel may, but need not be developed to the full gross square footage of Floor Area as set forth on the Site Plan, as it may be amended, or as allowed in Sections 3.03, 4.05, 4.06, 4.07, 4.08, 4.09 or 4.10 hereof; provided, however, except as provided in the preceding sentence regarding approved canopies or roof structures, no Building located on any Building Area may be extended beyond the boundaries of the Building Area as shown on the Site Plan, as it may be amended, nor may a Building be enlarged after it is initially constructed in such a manner that will extend the maximum Floor Area beyond the Floor Area allowed for such Building Area or reduce parking area ratios established for such area, such as basements or additions extending over present Common Areas, without the prior approval of Summit County to the extent required and the prior written consent of all Responsible Owners as provided in Article IX, which consent shall not be unreasonably withheld if such additions do not materially and adversely impact or affect traffic flow, visibility, parking upon (as allowed by the then current applicable parking standards or requirements) or access with respect to the Shopping Center.

4.05 Parcel 1 Building Size. The designated Building Area on Parcel 1 on the Site Plan may be developed, expanded or remodeled into one or more Buildings having a maximum cumulative Floor Area of no more than One hundred four thousand square feet (104,000 sq. ft.).

4.06 Parcel 1A Building Size. The Building Area on Parcel 1A on the Site Plan may be developed into not more than one (1) Building, which shall not exceed six thousand (6,000) square feet in Floor Area and shall otherwise comply with this Declaration and County requirements.

4.07. Parcel 2 Building Size. Subject to possible alteration as provided in Section 3.03, the Building Area designated as Smith's Food & Drug on Parcel 2 on the Site Plan may be developed into one or more Buildings which shall not exceed the combined total of Seventy-five Thousand (75,000) square feet in Floor Area.

A fuel center or other use ancillary to the supermarket on Parcel 2 may be constructed and operated on that area of Parcel 2 designated as "Ancillary Use" on the Site Plan or any other area on Parcel 2 chosen by the Owner of Parcel 2. The Owner or operator of Parcel 2 shall be



responsible for obtaining all necessary governmental approvals for such fuel center or Ancillary Use. No further consent or authorization shall be required from any Owner or occupant in the Shopping Center for Smith's to construct a fuel center or Ancillary Use on Parcel 2. As used herein, the term "Ancillary Use" shall mean any use which augments, serves or is ancillary to the operation of the grocery store/supermarket on Parcel 2.

4.08. Parcels 3, 3A, and 4 Building Size. The designated Building Area on Parcel 3 on the Site Plan may be developed into not more than one (1) Building, which shall not exceed Four Thousand Five Hundred Eighty-three (4,583) square feet in Floor Area (the canopy covering the drive-through area of the bank Building currently existing on Parcel 3 is hereby approved but is not included in the Floor Area of the Building, as stated in Section 4.04). The Building Area on Parcel 3A on the Site Plan may be developed into not more than one (1) Building, which shall not exceed Twelve Thousand Five Hundred (12,500) square feet in Floor Area. The Building Area on Parcel 4 on the Site Plan may be developed into not more than one (1) Building, which shall not exceed Five Thousand Five Hundred (5,500) square feet in Floor Area.

4.09. Parcel 5 Building Size. Subject to possible alteration as provided in Section 3.03, the Building Area on Parcel 5 on the Site Plan may be developed into one (1) or two (2) Buildings, which shall not exceed a combined total of Twenty-six Thousand (26,000) square feet in Floor Area.

4.10. Parcel D and Parcel E Building Size. In the event Parcel D is no longer required to be used as a detention basin, The Building Area on the Site Plan may be developed into one (1) or two (2) Buildings having a maximum total square footage of Floor Area such that there shall not be less than 4.0 parking stalls per 1000 square feet of Floor Area (based only on parking stalls located on Parcel D) and which also complies with other requirements of this Declaration and of Summit County. The Building Area on Parcel E on the Site Plan may be developed into not more than one (1) Building, which shall not exceed Four Thousand Five Hundred (4,500) square feet in Floor Area, subject to parking and other restrictions of this Declaration and of Summit County.

4.11. Parcel 2A Restrictions. There is currently no Building Area designated on Parcel 2A. No Buildings or other structures shall be constructed on Parcel 2A unless and until a Building Area is designated on Parcel 2A with the written approval of the Responsible Owners, which approval may be withheld in the Responsible Owners' sole and absolute discretion. SFDC has given its approval for certain development on Parcel 2A. OBK has not. Until such time as all Responsible Owners have consented to development on Parcel 2A, it shall remain undeveloped.

4.12. Maintenance of Buildings. The Owner of each Parcel in the Shopping Center shall maintain, or cause to be maintained, in a safe, clean, and tenantable condition and in good order and repair, consistent in manner and appearance with a first-class shopping center, all Buildings (including, but not limited to, all loading docks, truck facilities, and compactor areas) located on its respective Parcel.

## ARTICLE V COMMON AREAS

5.01. Use of Common Areas. The Common Areas shall be used for the following purposes only:

(a) The parking of passenger vehicles and pedestrian and vehicular traffic.

(b) The installation, maintenance, and operation of underground common and/or public utilities services serving any of the Building Areas, together with and including vaults, manholes, meters, pipelines, valves, hydrants, sprinkler controls, conduits, and related facilities on site, storm drainage piping, and retention and detention ponds, and related facilities, and sewage facilities, all of which (except hydrants) shall, to the extent reasonably possible, be even with or below the surface of the ground.

(c) The construction, maintenance and repair of mail boxes, public telephones, newspaper racks, and benches for the comfort and convenience of customers, visitors, invitees, licensees, and patrons of mercantile, restaurants, business or professional establishments and occupants located or to be located upon any of the Building Areas or any portion thereof, as the Responsible Owners and their legal representatives, successors, assigns, or grantees may from time to time deem appropriate.

(d) The construction, maintenance, repair, replacement, rearrangement, and reconstruction of parking sites or stalls, streets, sidewalks, covered or uncovered walkways, ramps, driveways, lanes, curbs, gutters, traffic control areas, signals, traffic islands, and traffic and parking lighting facilities.

(e) The construction, maintenance, repair, replacement, and reconstruction of pylon signs (with appropriate underground electrical connections), if otherwise permitted.

(f) The construction, maintenance, repair, replacement, and reconstruction of any landscaped areas, including planters, planting boxes, edgers, decorative walls, and sprinklers and valves.

(g) The ingress and egress of customers, visitors, invitees, licensees, and patrons (and their vehicles) to and from mercantile, restaurants, business or professional establishments, and any other establishments located on the Building Areas and to and from any public streets adjacent thereto; and the ingress and egress of delivery and service trucks and vehicles to and from the Building Areas or any portion thereof and to and from any public streets adjacent thereto, for the delivery of goods, wares, merchandise, and the rendition of services to Owners and their respective heirs, successors, grantees, assigns, and lessees.

(h) The ingress and egress of any of the persons designated in Subsection (g) above and their vehicles, to and from any portion of any Building Area and to and from the public streets adjacent thereto.

(i) Subject to adequate provision for the uses set forth in the other paragraphs in this Section 5.01, the rearrangement and reconstruction of truck loading and unloading areas, including ramps, docks, and similar facilities and trash, refuse, and garbage container storage areas.

(j) The temporary parking of trucks, tractors, trailers, and other delivery vehicles used in conjunction with the exercise of any of the activities described in Subsection (g) above.

(k) Subject to the foregoing limitations and restrictions, during the course of construction of any Buildings which may hereafter be constructed upon any of the Building Areas, those portions of the Common Areas immediately adjacent thereto may be used by the Owner of the Building Area and its contractors and subcontractors or,

with such Owner's written consent, by the tenant thereof and its contractors and subcontractors for the temporary storage of construction materials and equipment used and to be used in connection with the construction of the Building, provided that such use thereof does not unreasonably interfere with the normal use of such Common Areas; provided further, however, that no such temporary storage shall be allowed without the prior written consent, which shall not be unreasonably withheld, of the present Owner and tenant of the affected parcel.

(l) The conducting of sidewalk or outdoor sales or entertainment by the Owner or tenant of the Parcel containing said Common Area, provided that said sales or entertainment are conducted within said Parcel and the location, size and time period of the sale or entertainment does not unreasonably interfere with traffic flow, parking or access to the remaining Parcels not involved in the sale or entertainment.

(m) Other reasonable uses upon the consent of Responsible Owners.

5.02. Prohibited Use of Common Areas. The Common Areas shall not at any time be used for the parking of trucks (other than passenger trucks) or the loading or unloading thereof, except for the parking, loading or unloading of trucks during and in connection with construction of Buildings upon any of the Building Areas, the servicing and supplying of Building Areas (provided, however, that if at all possible such service and supplies shall be provided to the Building Areas from the Common Area at the rear of the Building Areas), the delivery or removal of trade fixtures, including signs, or the construction, repair, or maintenance of parking areas and improvements and facilities herein permitted, upon the condition, however, that any such use shall be confined to the portion of the Common Areas which is reasonably necessary in connection with the matters herein specified and shall be diligently and promptly completed.

5.03. Parking, Driveways, and Associated Areas. All driving aisles, parking aisles, driveways, and parking areas contained within the Common Areas of each developed Parcel shall be properly graded, leveled, and paved with concrete or asphalt and shall also be properly marked with painted lines for the orderly flow of traffic and the parking of motor vehicles. All parking areas within the Common Areas shall be provided with appropriate access to driving aisles and driveways of adequate width. To the extent required by the COE Agreement, Boyer and other parties shall construct, maintain and repair the South Entry Road, all landscaping on the South side of the South Entry Road, and a traffic signal to be installed at the intersection of the South Entry Road and Highway U-224, as shown on the Site Plan.

5.04. Lighting. Upon completion of the Common Area lighting system on its Parcel, each Owner and any other occupant thereof shall keep such Parcel fully illuminated each day during business hours after dusk and for a reasonable time thereafter, unless the Responsible Owners agree to a different time pursuant to Article IX. Each such Owner and occupant shall keep exterior building security lights on from dusk until dawn. During the term of this Declaration and thereafter as long as any portion of the Shopping Center continues to be used as a Shopping Center, each Owner grants an irrevocable license to each other Owner to permit the lighting from one Parcel to incidentally shine on the adjoining Parcel.

5.05. No Changes in Traffic Patterns. Following completion of construction of the Buildings or similar structures on the Building Areas, the sizes and arrangements of those portions of the Common Areas then used for parking areas and the traffic circulation and flow patterns thereon shall not be changed or altered without the prior written consent of the Responsible Owners as provided in Article IX, which consent shall not be unreasonably withheld

if such changes do not materially or adversely impact upon or affect traffic flow, visibility, parking upon (as allowed by the then current City parking standards or requirements) or access with respect to the Shopping Center and the respective Parcels.

5.06. Landscaped Areas. All landscaped areas shall have sprinkler irrigation lines installed, adequate to properly water and maintain lawns, shrubs, trees, flowers, ground cover, and all other planted vegetation. The landscaped areas are to be designed, planted and maintained so as to aesthetically enhance the appearance of each Parcel and the Shopping Center in general.

## ARTICLE VI EASEMENTS

### 6.01. Grant and Declaration of Reciprocal Easements.

(a) Each Owner and Responsible Owner hereby grants to each and every other Owner and their respective successors, assigns, mortgagees, lessees, sublessees, employees, agents, customers, licensees, and invitees, and declares for the benefit of each of the respective Parcels within the Subject Land permanent, mutual, reciprocal, and non-exclusive easements and rights to use the Common Areas of the Shopping Center, including the South Entry Road Parcel (subject to Summit County restrictions), for the purposes for which they are provided and intended, including, but not limited to, ingress, egress, access, and parking for vehicular or pedestrian traffic, upon or across the parking areas, entrances, exits, driveways, walks, or service drives located within the Common Areas and the use of storm drainage and retention facilities, landscaping, public rest rooms, if any, and other public facilities, directional signs and other areas intended for common use. It is specifically understood, as shown on the Site Plan, that the fifty (50.00) foot drive passing through or between Parcel 1, Parcel 1A, Parcel E and Parcel 2, from the South Entry Road to Ute Boulevard, may at some time be dedicated to Summit County as roadway and therefore become subject to such further restrictions as the County may impose.

(b) The right granted herein to each Owner for ingress, egress and access upon and across each of the respective Parcels within the Subject Land shall survive the termination of the Declaration to the extent necessary for reasonable access to and from the South Entry Road and all other publicly owned and maintained streets and roadways.

6.02. Separate Utility Lines. Each Owner and Responsible Owner hereby grants to each and every other Owner, respectively, nonexclusive easements in, to, over, under, and across the Common Areas of the respective Parcels and the South Entry Road Parcel (as also governed by the COE Agreement and Summit County), provided that no such easement shall encroach within fifteen feet of any boundary to a Building Area within said Parcel without the prior written consent of the Owner thereof, for the installation, operation, flow, and passage, use, maintenance, repair, relocation and removal of sanitary sewers, storm drains, retention and detention ponds, water and gas mains, electrical power lines, telephone lines and other utility lines, all of such sewers, drains, mains, and lines to be underground, serving the respective Parcels of each of the Owners. However, the easement for separate utility lines provided herein shall be limited to such portion of the Common Areas as necessary to provide reasonable utility services to each Parcel, together with such area on both sides of the utility line as is the ordinary custom and practice in the industry to provide for the installation, operation, and maintenance of the utility. The easements shall be defined and placed of record in conjunction with installation.

All separate utility easements shall, to the extent possible, follow the most direct route to tie into common transmission lines except where such direct route would unnecessarily disrupt or damage Buildings and/or structures located upon the Common Areas or Building Areas.

6.03. Common Utility Lines. Each Owner and Responsible Owner hereby grants to each and every other Owner, respectively, nonexclusive easements in, to, over, under, and across the Common Areas of the respective Parcels and the South Entry Road Parcel (as also governed by the COE Agreement), provided that no such easement shall encroach within fifteen feet of any boundary to a Building Area within said Parcel without the prior written consent of the Owner thereof, for the installation, operation, flow and passage, use, maintenance, repair, relocation and removal of sanitary sewers, storm drains, retention and detention ponds, water and gas mains, electrical power lines, cable television, telephone lines and other utility lines, all of such sewers, drains, mains, and lines to be underground, for the service of Common Areas and for use in common with other parties. The Responsible Owners hereby further reserve to each and every Owner the right to grant such easements in, to, over, under, and across its respective Parcels, for the purposes hereinabove enumerated, to such other parties as may from time to time be entitled thereto. Easements identifying the exact location and use of such common utility lines shall be placed of record in conjunction with the installation of the utility.

6.04 Survival of Utility Easements. The nonexclusive easements and associated rights, obligations and responsibilities granted herein to each Owner pursuant to Sections 6.02 and 6.03 for the installation, operation, flow, passage, use, maintenance, repair, etc. of separate or common utilities, storm drains, etc., under and upon each of the respective Parcels and the South Entry Road Parcel shall survive the termination of this Declaration to the extent necessary to maintain appropriate utility and related services for the proper and efficient operation of the Buildings and businesses on each Parcel.

6.05. Location of Utility Easements. The location of all utility easements of the character described in this Article shall be subject to the prior written reasonable approval of the Owner in, to, over, and under whose Parcel the same is to be located. If requested by any utility company or any Owner upon completion of construction of such utility facilities, the Owners of Parcels affected thereby shall join in the execution of an agreement, in recordable form, appropriately identifying the type and location of such respective utility facility.

6.06. Installation, Maintenance and Repair. The grantee of any of the utility easements referred to in this Article shall be responsible as between the grantor and the grantee thereof for the installation, maintenance, and repair of all sanitary sewers, storm drains, pipes and conduits, mains and lines and related equipment installed pursuant to such grant. Any such maintenance and repair shall be performed only after two (2) weeks notice to the grantor of the grantee's intention to do such work, except in the case of emergency, and any such work shall be done without cost or expense to the grantor, and in such manner as to cause as little disturbance in the use of the Common Area, Building Area, or Parcel as may be practicable under the circumstances.

6.07. Relocation. At any time the grantor of any of the utility easements granted pursuant to this Article shall have the right to relocate on the land of the grantor any such sewers, drains, mains, and lines and related equipment then located on the land of the grantor, provided that such relocation shall be performed only after thirty (30) days notice shall be given to the grantee of the grantor's intention to so relocate, and such relocation: (a) shall not unreasonably interfere with or diminish the utility services to the grantee; (b) shall not reduce or unreasonably

impair the usefulness or function of such utility; (c) shall be performed without cost or expense to grantee; and (d) shall be made in accordance with and subject to applicable governmental ordinances, building codes, regulatory review, restrictions, etc. Notwithstanding such relocation, maintenance shall be the obligation of the grantee; provided that if there shall be any material increase in such cost, the grantor shall bear such excess.

6.08. Use of Easements. The easements and rights-of-way established by this Article shall be for the benefit of and restricted solely to the use of the Owners and their respective successors and assigns, the lessees and sub-lessees of the Owners, mortgagees under mortgages covering any of the Subject Land, beneficiaries and trustees under deeds of trust covering any of the Subject Land and to their agents, customers, employees, licensees, and business invitees and the same is not intended and shall not be construed as creating any rights in or for the benefit of the general public; provided further that the grant herein is subject to the provisions of Section 6.09 below.

6.09. Right to Close Common Areas. The Responsible Owners, for themselves and the then Owners of any portion of the Common Areas reserve the right to close temporarily all or any portion of the Common Areas to such extent as in the opinion of the Responsible Owners or the then Owners of the Common Areas is legally necessary and sufficient to prevent the dedication thereof or any accrual of any rights therein in any person other than as created hereby or in the public generally. The rights of the Responsible Owners and other Owners to close portions of the Common Areas as provided herein shall survive the termination of this Declaration to the extent necessary to protect property rights.

6.10. No Further Easements. No Owner of any real property interest in the Subject Land shall grant any easement, right-of-way, or right of use with respect to any of the Common Area, except as provided herein; or shall any such Owner grant any easement, right-of-way, or right of use with respect to any Building Area, the fee ownership of which is not vested in said party.

## ARTICLE VII CERTAIN RIGHTS AND OBLIGATIONS OF THE OWNERS AND RESPONSIBLE OWNERS

7.01. Management, Maintenance and Repair of Common Areas. Except as provided in Section 7.02 below with respect to the Common Area Parcels, each Owner shall be responsible, at its own expense, for the exclusive management, maintenance, repair and control of the Common Areas and all improvements thereon within its respective Parcel and shall keep the same in a good, clean, attractive, safe, and sanitary condition, order, and repair, including, without limitation, the following:

(a) Drive and Parking Areas. Maintaining all paved surfaces and curbs in a smooth and evenly covered condition, including, without limitation, replacement of base, skin patch, resealing and resurfacing. (For the purpose of this Section, an overlay of the drives and parking areas shall be considered a maintenance item.) In particular, the Owner shall be responsible for the maintenance of the roads and associated improvements located or to be located in whole or in part upon the Common Areas within its Parcel.

(b) Debris and Refuse; Ice and Snow. Periodic removal of all ice and snow, papers, debris, filth, refuse, including sweeping, vacuuming and broom sweeping to the extent necessary to keep the Common Areas in a first-class, clean, orderly and safe condition. All sweeping and vacuuming shall be at appropriate intervals during such times as shall not

interfere with the conduct of business or use of the Common Area by persons intending to conduct business with occupants of the Shopping Center.

(c) Non-Occupant Signs and Markers. Maintaining, cleaning and replacing any appropriate directional stop or handicapped parking signs. Restripe parking lot and drive lanes as needed, and keep clearly marked fire lanes, loading zones, no parking areas and customer cross-walks.

(d) Lighting. Maintaining, cleaning and replacing Common Area lighting facilities, including light standards, wires, conduits, lamps, ballasts and lenses, time clocks and circuit breakers.

(e) Landscaping. Maintaining and replacing of all landscape plantings, trees and shrubs in an attractive and thriving condition, trimmed and weed free. Maintain and replace landscape planters, including those adjacent to exterior walls of buildings. Irrigation systems are to be properly maintained and kept operational during months that require landscape irrigation.

(f) Separate or Common Utility Lines. Maintaining, cleaning, replacing and repairing any and all separate or common utility lines, except as otherwise specifically provided in Article VI above.

(g) Obstructions. Keeping the Common Area free from any obstructions, including those caused by the sale or display of merchandise, unless such obstruction is permitted under the provisions of this Declaration.

(h) Sidewalks. Maintaining, cleaning, repairing and replacing of all sidewalks, including those adjacent and contiguous to Buildings located within the Shopping Center. Sidewalks shall be cleaned and swept at appropriate intervals during such time as shall not interfere with the conduct of business or use of the Common Area.

(i) Covered Walkways. Maintaining, cleaning, repairing and replacing of any covered walkways, including supports, covers and any other structures related thereto, located or that may later be constructed within the Shopping Center. Cleaning and maintenance of covered walkways shall be accomplished at appropriate intervals during times that shall not interfere with the conduct of business or use of the Common Area associated therewith.

(j) Materials Quality. All Common Area improvements shall be repaired or replaced with materials at least equal to the quality of the materials being repaired and replaced so as to maintain the architectural and aesthetic harmony of the Shopping Center as a whole.

Notwithstanding anything to the contrary, each Owner shall maintain and repair, at its sole cost, in a clean, sightly and safe condition any exterior shipping/receiving dock area, any truck ramp or truck parking area, and any refuse, compactor or dumpster area.

Notwithstanding this Section 7.01 or any other provision herein, the parties agree that no Owner shall be required to construct the Common Areas on its respective Parcel until such Owner constructs one or more Buildings on the applicable Parcel. However, the Owner shall be responsible for the maintenance of its Parcel prior to development thereof, maintaining the same in a good, clean, attractive, safe and sanitary condition, order and repair including initial rough grading and subsequent necessary refuse and weed control.

Should any Owner fail and/or refuse to properly maintain any part of the Common Areas within its respective Parcel designated as a "Drive" or "Service Drive" on the Site Plan, or any other similar access roadways or any improvements thereon as provided herein,

then any other Owner may, upon thirty (30) days written notice to the defaulting Owner, perform and fulfill the obligations of the defaulting Owner and recover from the defaulting Owner that Owner's share of the reasonable costs therefor. The reasonable costs expended by such other Owner shall become an automatic lien upon the Parcel of the defaulting Owner until paid in full, including interest at the legal rate, court costs and reasonable attorney's fees. Alternatively, such other Owner may institute an action for specific performance against the defaulting Owner. In such action the prevailing party shall be entitled to recover all court costs and reasonable attorney's fees from the other party.

7.02 Management of Common Area Parcels. Notwithstanding the provisions of Section 7.01 above, subject to the rights and duties of the Owners as set forth in this Declaration and the rights and responsibilities of Boyer as set forth in the COE Agreement with respect to the South Entry Road Parcel and former Parcels B and C, OBK shall be responsible for the exclusive management and control of the Common Area Parcels and all improvements thereon and shall keep the same in a good, clean, attractive, safe, and sanitary condition, order, and repair. OBK shall be responsible for the maintenance and repair of the Common Area Parcels, including without limitation, painting thereof, snow and ice removal, repair and replacement of surfacing and maintenance of landscaping, walkways, and driveways. In particular, OBK shall be responsible for the maintenance of the roads and associated improvements including landscaping located or to be located in whole or in part upon the Common Area Parcels. All maintenance of landscaping within the Common Area Parcels as required of OBK herein shall include those landscaped areas immediately adjacent to the outside boundaries of the Common Area Parcels which form a continuous part of the landscaping within the Common Area Parcels such as the Entry Flag Court and the Olympic Flag Court. Those landscaped areas which are included within the management of OBK as provided herein are set forth and outlined by cross-hatch on the Site Plan. OBK shall also be responsible for the payment of all real property taxes which may be levied or assessed against Common Area Parcels. OBK shall also be responsible to maintain general public liability insurance against claims for personal injury or death and damage occasioned by accident occurring upon, in or on the Common Area Parcels, such insurance to afford that protection to the limits determined to be adequate by OBK, or its successors or assigns. All contracts of OBK necessary to carry out its duties of management hereunder shall be subject to the prior review and approval by Responsible Owners on an annual basis.

7.03 Delegation to Professional or Other Manager. OBK may by written contract or agreement delegate in whole or in part to a professional Manager or OBK's Tenant such of OBK's duties, responsibilities, functions, and powers hereunder as are properly delegable.

7.04 Miscellaneous Goods and Services. OBK or its delegatee may obtain and pay for the services of such personnel as OBK or its delegatee shall determine to be necessary or desirable for the proper operation of the Common Area Parcels, whether such personnel are furnished or employed directly by OBK or by any person or entity with whom or which it contracts. OBK may obtain and pay for legal and accounting services necessary or desirable in connection with the operation of the Common Area Parcels, the enforcement of this Declaration, or any other matter. In addition to the foregoing, OBK may acquire and pay for water, sewer, garbage collection, electrical, gas, and other necessary or desirable utility services for the Common Area Parcels, and insurance, bonds, and other goods and services reasonably required for the maintenance and repair of the Common Area Parcels.



7.05 Reimbursement of Common Area Parcel Expenses, Insurance and Taxes.

Within thirty (30) days after receipt of a statement therefor, together with (i) certification that the work has been done, (ii) invoices for the work and (iii) proof that work has been paid for, each of the other Owners agrees to reimburse OBK for its "Pro Rata Share" of the direct costs, including management, for operation, maintenance, repair, and improvements of the Common Area Parcels in the Shopping Center, and liability insurance and taxes, including a maximum service charge of ten percent (10%) of said expenses to cover administration/management fees and overhead costs, as set forth in this Section. Taxes, assessments and insurance premiums for the Common Area Parcels shall not be included when calculating the ten percent (10%) service charge. The term "Pro Rata Share," as used in this Section, shall be the fractional share determined by the fraction, the numerator of which is the total square footage of the Owner's Parcel and the denominator of which is the total square footage of all of the Parcels contained within the Subject Land; provided, however, that the square footage of Parcel 4 shall not be included in the denominator for purposes of calculating the Pro Rata Share of each Owner until such time as Parcel 4 is partially or fully developed by the Owner thereof. (The square footage of the Common Area Parcels shall be totally excluded from any numerator or denominator.) All sums assessed to any Parcel or Owner pursuant to this Declaration, together with interest, collection costs, and attorneys' fees as provided herein, shall be secured by a consensual lien upon such Parcel in favor of OBK, its successors and assigns, or any delegatee pursuant to Section 7.03. The purchaser of each Parcel, or portion thereof, by his acceptance of a Deed, covenants and agrees to pay Common Area Parcel Assessments imposed hereunder and consents to the imposition of a lien upon its Parcel in the event of non-payment. OBK, its successors, assigns, or delegatee, may record a written notice of lien setting forth the amount of assessments, the due date, and the amount remaining to be paid upon each Parcel or portion thereof. OBK, its successors, assigns, or delegatee, may collect upon a lien in contract or by judicial foreclosure as provided for under the laws of the State of Utah. In the event of foreclosure or any other method of collection other than foreclosure, the Owner shall be required to pay the costs and expenses of such proceeding, including reasonable attorneys' fees.

7.06. Common Area Liability Insurance. At all times each Owner (excluding, however, OBK with respect to its ownership of the Common Area Parcels) shall maintain, or cause to be maintained, commercial general all-risk liability insurance against claims for personal injury or death and property damage occasioned by accident occurring upon, in or on the Common Areas within the respective Parcel or Parcels of each Owner, such insurance in each case to afford protection to the limits determined adequate by each Owner and consented to by the Responsible Owners, which consent shall not be unreasonably withheld. OBK shall maintain similar insurance on the Common Area Parcels under its ownership and control, as provided in Section 7.02, with the cost of said insurance being reimbursed to OBK pursuant to Section 7.05. Each Owner, with the consent of the Responsible Owners, which consent shall not be unreasonably withheld, may from time to time increase or decrease the amounts of insurance maintained hereunder to reflect any actual and substantial decrease in the value of the dollar or increase in risk occurring after the date of this Agreement. The general liability insurance requirements herein may be satisfied by a blanket policy carried by an Owner or, if the Owner or its parent company has a net worth of at least Fifty Million Dollars (\$50,000,000.00), then the Owner may be self-insured.

7.07. Taxes. Each Owner shall pay, or cause to be paid, unless otherwise required by the terms of any lease, directly to the tax assessor, prior to delinquency, all real

property taxes and other special taxes and assessments which may be levied or assessed against the Parcel owned by said Owner, including the portion of the Common Area within such Owner's Parcel; provided, however, that with respect to the Common Area Parcels under its ownership and control, OBK shall pay such taxes pursuant to Section 7.02 and be reimbursed therefor pursuant to Section 7.05. The obligation of each Owner to pay taxes shall include any assessment attributable to appurtenant interests created by this Declaration, subject to the right of any party to contest such taxes and assessments in the manner provided by law.

7.08. Rules and Regulations. OBK, as owner of Parcel 1 and Parcel 1A, with the consent of the other Responsible Owners, may make reasonable rules and regulations governing the use of the Common Areas, which rules and regulations shall be consistent with the rights and duties established in this Declaration. OBK, its successors, assigns, or its delegatee may take judicial action against any Owner to enforce compliance with such rules and regulations or other obligations of Owners arising hereunder, or to obtain damages for noncompliance therewith, as permitted by law. In the event of such judicial action, OBK, its successors, assigns, or its delegatee shall be entitled to recover all costs, including reasonable attorneys' fees, as provided in Section 10.04 hereof.

7.09. Implied Rights. The Responsible Owners may exercise any right or privilege given to it expressly by this Declaration or by law, and every other right or privilege reasonably implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.

#### ARTICLE VIII CONDEMNATION OR CASUALTY

8.01. Condemnation. If at any time or times all or any part of the Subject Land shall be taken or condemned by any public authority under power of eminent domain, the provisions of this Article shall apply. A voluntary sale or conveyance of all or any part of the Subject Land in lieu of condemnation but under threat of condemnation, shall be deemed to be a taking by eminent domain.

8.02. Proceeds. All compensation, damages, and other proceeds from any such taking by power of eminent domain (hereinafter the "Condemnation Award") attributable to the value of any land within the Common Areas shall be payable only to the Owner thereof and no claim thereon shall be made by other Owners; provided, however, that all Owners may file collateral claims with the condemning authority over and above the value of the land and improvements located within the Common Areas so taken to the extent of any damage suffered by their respective Building Areas within their Parcels resulting from severance of the appurtenant portions of the Common Areas so taken. The Owner of the portions of the Common Areas so condemned shall promptly repair and restore the remaining portion of the Common Areas so owned by such Owner as near as practicable to the condition of the same immediately prior to the condemnation and without contribution from any other Owner; provided, however, that the obligation to repair or reconstruct shall be limited such that the cost thereof shall not exceed the amount of the Condemnation Award payable to the Owner of the Common Areas for the Common Areas so condemned less said Owner's costs, including, but not limited to, attorneys' fees and court costs arising out of the condemnation proceedings.

8.03. Casualty. In the event of destruction or damage from fire or any other casualty to any buildings or improvements erected on the Subject Land, the Owner having its Buildings or improvements destroyed or damaged, at its sole cost and expense, shall within six

(6) months of the date of such fire or casualty (subject to obtaining all necessary permits and approvals); (i) start to rebuild or repair the same; (ii) remove debris and level the same; or (iii) if so authorized under the terms and conditions of a lease on the Building and/or improvements then in effect, cause the tenant under said lease to start to rebuild or repair the same. If any Owner elects to rebuild or repair such Building or improvement, the same shall be repaired and rebuilt within fifteen (15) months of the date of such fire or casualty to at least substantially the same size and as good a condition as such was in immediately preceding such fire or casualty. If the Owner elects to level the Buildings or improvements destroyed or damaged and remove the debris, the same shall be removed promptly and in a manner to minimally affect the remainder of the Shopping Center, and the Parcel shall be leveled so that the affected area conforms substantially to the Common Areas surrounding it. In such event, the Owner shall retain the right to rebuild such Building or improvement at a later date subject to the terms of this Declaration. If the Owner elects under the terms of a lease then in effect to cause the tenant thereunder to rebuild or repair such Building or improvement, such tenant shall promptly and with due diligence either (i) rebuild or repair the same as nearly as practicable to the condition existing just prior to such fire or casualty, or (ii) rebuild or repair the same for the same use and purposes but in accordance with such plans and specifications as may be then generally in use by such tenant for the construction of tenant's premises and related structures; provided, however, the rebuilt or repaired Building or improvement shall have a value not less than its value just prior to such fire or casualty. Anything in this subparagraph notwithstanding, if such fire or casualty shall destroy five percent (5%) or less of the ground floor area of such Building or structure, then the Owner of such Building or structure shall have no option to remove debris and level the building or improvement, but shall, in accordance with this subparagraph, either (i) rebuild or repair the same or (ii) cause the tenant at the time of such fire or casualty to rebuild or repair the same.

#### ARTICLE IX APPROVALS AND CONSENTS

9.01 Approvals. In the event the approval or consent (including consents required pursuant to Article XII hereof) of any Owner, Responsible Owner, mortgagee, beneficiary or trustee (collectively referred to in this Article as "requestees"), is desired or required pursuant to this Declaration, within thirty (30) days after receipt of a written request for such approval or consent, each requestee shall return a signed approval or consent, or notify the requestor in writing of any objections thereto (any objections and the reasons therefore to be specifically enumerated). Within fifteen (15) days following receipt of any objections, the requestor may resubmit to an objecting requestee, the request for approval or consent rectifying or otherwise responding to the objections of said requestee. Within fifteen (15) days following receipt of a new request for approval or consent, said requestee shall either give approval or consent or submit further written specifically enumerated objections and the reasons therefore. In the event of further objections, the requestor shall again have fifteen (15) days from receipt thereof to address said objections and again request approval or consent. The requestee shall then approve or consent or disapprove or withhold consent within fifteen (15) days following receipt of such further request. Failure of a requestee to provide any written notice of specific objections, disapproval or withholding of consent in the manner and within the time periods provided above shall constitute approval or consent by such requestee.

ARTICLE X  
ENFORCEMENT

10.01. The right to enforce the terms, covenants, and easements contained herein shall belong only to the Owners, tenants of the Owners, if any, and to mortgagees under mortgages covering any of the Subject Land and beneficiaries and trustees under deeds of trust covering any of the Subject Land of the Owners, provided that the lease or memorandum of lease in favor of such lessee, mortgage in favor of such mortgagee, or deed of trust in favor of such beneficiary and trustee is duly recorded in the office of the Summit County Recorder, State of Utah.

10.02. In the event of any violation or threatened violation of any of the terms, restrictions or covenants contained herein, any person entitled to enforce this Declaration will have, in addition to the right to collect damages, the right to enjoin such violation or threatened violation in a court of competent jurisdiction.

10.03. If performance of any act or obligation of any party is prevented or delayed by an act of God, war, labor disputes, strikes, lockouts, or other cause or causes beyond the reasonable control of such party, the time for the performance of the act or obligation shall be extended for the period that such act or performance is actually delayed or prevented by any such cause.

10.04. In the event that any suit is brought for the enforcement of any provision of this Declaration or as the result of any alleged breach thereof or for a declaration of rights and duties hereunder, the successful party or parties to such suit shall be entitled to collect costs and reasonable attorneys' fees (including legal assistants' and clerks' fees) from the losing party or parties, and any judgment or decree rendered shall include an award thereof.

10.05. It is expressly agreed that no breach or violation of this Declaration will terminate this Declaration, but this limitation will not affect, in any manner, any other rights or remedies for any breach of this Declaration.

10.06. A breach or violation of any of the terms, covenants, or restrictions of this Declaration will not defeat or render invalid the lien of any first mortgage or first deed of trust, made in good faith and for value, or any mortgages securing construction financing on Parcel 1 or any other Parcel, but such terms, covenants, or restrictions will be binding on and be effective against anyone whose title to any portion of the Subject Land is acquired by foreclosure, trustee's sale, or otherwise.

10.07. The specified remedies to which any person entitled to enforce this Declaration may resort under the terms of this Declaration are cumulative and are not intended to be exclusive of any other remedies or means of redress to which any person entitled to enforce this Declaration may be lawfully entitled in case of any breach or threatened breach of any provision of this Declaration. Failure to insist in any one or more cases upon the strict performance of any of the covenants of this Declaration or to exercise any remedy herein contained shall not be construed as a waiver or a relinquishment for the future breach or threatened breach of such covenant or remedy.

ARTICLE XI  
DURATION

11.01 This Declaration and each easement, covenant, condition, and restriction hereby created shall continue until December 31, 2050, unless the Declaration, easement, etc. is

terminated, extended, modified, or amended by an instrument executed as herein set forth and duly recorded in the office of the Summit County Recorder, State of Utah.

ARTICLE XII  
AMENDMENTS OR MODIFICATIONS

12.01. Consent to Modification. This Declaration and any provision, covenant, or easement herein contained may be terminated, deleted, amended, modified or extended only upon the written consent, or assumed consent as provided in Article IX above, of each of the then Responsible Owners, each mortgagee under valid and duly recorded mortgages covering any of the Subject Land owned by a Responsible Owner, and each beneficiary and trustee under valid and duly recorded trust deeds covering any of the Subject Land owned by a Responsible Owner; provided that each such mortgagee, beneficiary and trustee has properly notified the Responsible Owners of the name and address to which a request for consent is to be sent. It shall be a further condition that no termination, deletion, amendment, modification or extension of this Declaration shall be effective unless a written instrument setting forth the terms thereof has been executed and consented to as herein provided, acknowledged and duly recorded in the office of the Summit County Recorder of State of Utah.

12.02. No Consent of Other Persons. Anything in this Article XII to the contrary notwithstanding, no Owner, tenant or licensee or any other person having any interest in the Subject Land other than those persons specifically designated in Section 12.01 above need consent to or approve any termination, deletion, extension, modification, or amendment of this Declaration or any part hereof.

ARTICLE XIII  
MISCELLANEOUS

13.01. Not a Public Dedication. Except to the extent specifically provided in this Declaration, nothing contained in this Declaration shall be deemed to be a gift or dedication of any portion of the Subject Land to the general public or for the general public or for any public purposes whatsoever, it being the intention that this Declaration will be strictly limited to and for the purposes expressed herein.

13.02. Severability. If any clause, sentence, or other portion of the terms, covenants, or restrictions of this Declaration becomes illegal, null, or void for any reason, or is held by any Court of competent jurisdiction to be so, the remaining portions shall remain in full force and effect.

13.03. Dominant and Servient Estates. Each and all of the easements and rights granted or created herein are appurtenances to the applicable Parcels of the Subject Land and none of such easements and rights may be transferred, assigned, or encumbered except as an appurtenance to such Parcels. For the purposes of such easements and rights, any Parcel benefited shall constitute the dominant estate, and the particular areas of the Shopping Center which respectively are burdened by such easements and rights shall constitute the servient estate.

13.04. Covenants Run with Land. Each and all of the covenants, restrictions, and provisions contained in this Declaration and the COE Agreement (to the extent made a part hereof) (whether affirmative or negative in nature): (a) are made for the direct, mutual, and reciprocal benefit of each Parcel hereinabove described; (b) will create mutual equitable servitudes in favor of the Subject Land, upon each Parcel of the Subject Land or upon former Parcels B and C of the Subject Land pursuant to the COE Agreement; (c) will bind every person

having any fee, leasehold, or other interest in any Parcel of the Subject Land or former Parcels B and C at any time or from time to time to the extent that such Parcel or former Parcel is affected or bound by the covenant, restriction, or provision; and (d) will inure to the benefit of the Owners and their respective successors and assigns as to the respective Parcels in the Subject Land and to the benefit of mortgagees under recorded mortgages covering Parcels in the Subject Land and beneficiaries and trustees under recorded trust deeds covering Parcels in the Subject Land.

13.05. Compliance with Laws. All Owners shall comply promptly with all federal, state, and municipal statutes and ordinances, and with all regulations, orders, and directives of appropriate governmental agencies pertaining to the use or occupancy of the Subject Land and the Shopping Center, as such statutes, ordinances, regulations, orders, and directives now exist or may hereafter provide.

13.06. Benefit and Burden. The terms, covenants, and conditions contained herein shall inure to the benefit of and shall be binding upon the Responsible Owners, Owners, and any other person or entity having any interest in the Subject Land and their respective legal representatives, successors, and assigns.

13.07. Intent and Purpose. The provisions of this Declaration, and any Supplemental or Amended Declaration, shall be liberally construed to effectuate the purpose of creating a uniform plan for the development and operation of a shopping center. Failure to enforce any provision, restriction, covenant, or condition in this Declaration, or in any Supplemental or Amended Declaration, shall not operate as a waiver of any such provision, restriction, covenant, or condition or of any other provisions, restrictions, covenants, or conditions.

13.08. Construction. Wherever used herein, unless the context shall otherwise provide, the singular number shall include the plural, the plural shall include the singular, and the use of any gender shall include all genders. The articles and section headings set forth herein are for convenience and reference only and are not intended to describe, interpret, define, or otherwise affect the content, meaning, or intent of this Declaration or any article, section, or provision hereof. The provisions hereof shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any one provision or portion thereof shall not affect the validity or enforceability of any other provision hereof.

13.09. Registration of Mailing Address. Each Owner, Responsible Owner, mortgagee, beneficiary or trustee, in order to be eligible to receive notices, shall register its current mailing address from time-to-time with OBK and the other Owners and Responsible Owners. All notices or demands intended to be served upon any Owner, Responsible Owner, mortgagee, beneficiary or trustee may be sent by first-class U.S. Mail, postage prepaid, or by nationally recognized overnight delivery service, prepaid, addressed to such Owner, Responsible Owner, mortgagee, beneficiary or trustee at the then registered mailing address provided as required above. If no address has been registered as required herein, notice may be sent as a courtesy to the Building (if any) constructed on the Parcel of the Subject Land owned or in which the Owner, Responsible Owner, mortgagee, beneficiary or trustee has a valid and duly recorded interest. All notices or demands intended to be served upon OBK shall be addressed to 1255 Post Street, Suite 950, San Francisco, CA 94109, or to such other address as OBK may hereafter furnish to the Owners in writing. All notices or demands intended to be served upon SFDC shall be addressed to 1550 S. Redwood Rd, Salt Lake City, UT. 84104, attn: David Nielson, or to such other address as SFDC may hereafter furnish to OBK and the other Owners

in writing. Any notices or demands referred to in this Declaration shall be deemed given three (3) business days after deposit when deposited in the U.S. mail, postage prepaid, or the next business day after deposit with an established national overnight delivery service, and if such notice is in the form required by this Declaration.

13.10. Effective Date. This Declaration shall take effect immediately upon recording.

13.11. Owner Obligations. All obligations of each Owner under and by virtue of the provisions contained in this Declaration shall continue, notwithstanding that it may be leasing, renting, or selling its Parcel under contract. The Owner shall have no obligation for expenses or other obligations accruing after it conveys the fee title to the Parcel being conveyed to another party. Immediately upon such conveyance, however, the new fee title holder shall become responsible for all obligations and responsibilities of the conveying Owner.

13.12. Not a Partnership. The Owners do not by this Declaration, in any way or for any purpose, become partners or joint venturers of the other Owners in the conduct of their respective businesses or otherwise. The provisions of this Agreement relating to the management of the Parcels, and the granting of reciprocal easements are included solely for the purpose of providing a reasonable method for maintaining shared facilities and providing for mutual ingress and egress to contiguous Parcels.

13.13. Incorporation of Recitals and Exhibits. All Recitals and Exhibits hereto are by this reference incorporated herein and made an integral part hereof.

13.14. Counterparts. This Declaration may be executed in counterparts, each of which shall be deemed an original, but all of which together, shall constitute one and the same instrument, with the same effect as if all parties had signed the same signature page, and which individual signature pages may be attached together for recording purposes.

13.15. No Covenant to Operate. Notwithstanding anything contained in this Declaration to the contrary, no Owner shall be under an obligation, express or implied, to operate any business on its Parcel. Whether or not an Owner elects to operate a business on its Parcel shall be determined in the sole and absolute discretion of each Owner. Nevertheless, if an Owner does not operate a business on its Parcel, it shall still be obligated to maintain its Parcel consistent with the requirements set forth herein.

The foregoing Declaration shall supersede and replace the Amended Declaration.

IN WITNESS WHEREOF, OBK and SFDC have duly executed this Declaration as of the 30th day of March, 2007.

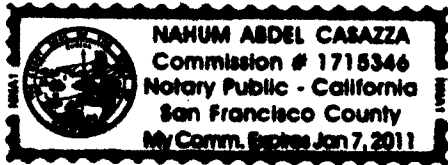
OBK:

**OBK Kimball Junction, LLC, a Delaware limited liability company**

By: Randall Sperring  
Randall Sperring, on behalf of  
O'Brien Kiernan Investment Co.,  
Its managing Member

STATE OF CALIFORNIA )  
  : ss.  
COUNTY OF San Francisco )

On the 30th day of March, 2007, personally appeared before me Randall Sperring, who being by me duly sworn, did say that he is the Manager of OBK Kimball Junction, LLC, a Delaware limited liability company, and that the foregoing instrument was signed by him on behalf of said limited liability company by authority of its Articles of Organization and Operating Agreement, and said Randall Sperring acknowledged to me that said limited liability company executed the same.



Nahum Casazza  
NOTARY PUBLIC  
Residing  
at: 1300 Van Ness Ave  
My Commission Expires: 1/7/2011



SFDC:

SMITH'S FOOD & DRUG CENTERS, INC.,  
an Ohio corporation

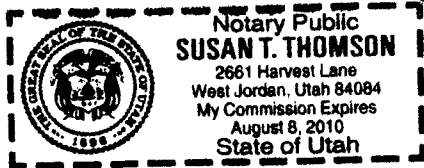
By: Kyle S. McKay  
Its: Vice President

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

On the 29~~th~~ day of MARCH, 2007, personally appeared before me  
Kyle S. McKay, who being by me duly sworn, did say that he is a Vice-President  
of Smith's Food & Drug Centers, Inc., an Ohio corporation, and that the foregoing instrument  
was signed on behalf of said corporation by authority of its Bylaws or a resolution of its Board of  
Directors, and said Kyle S. McKay acknowledged to me that said corporation  
executed the same.

Susan L. Thomson

NOTARY PUBLIC

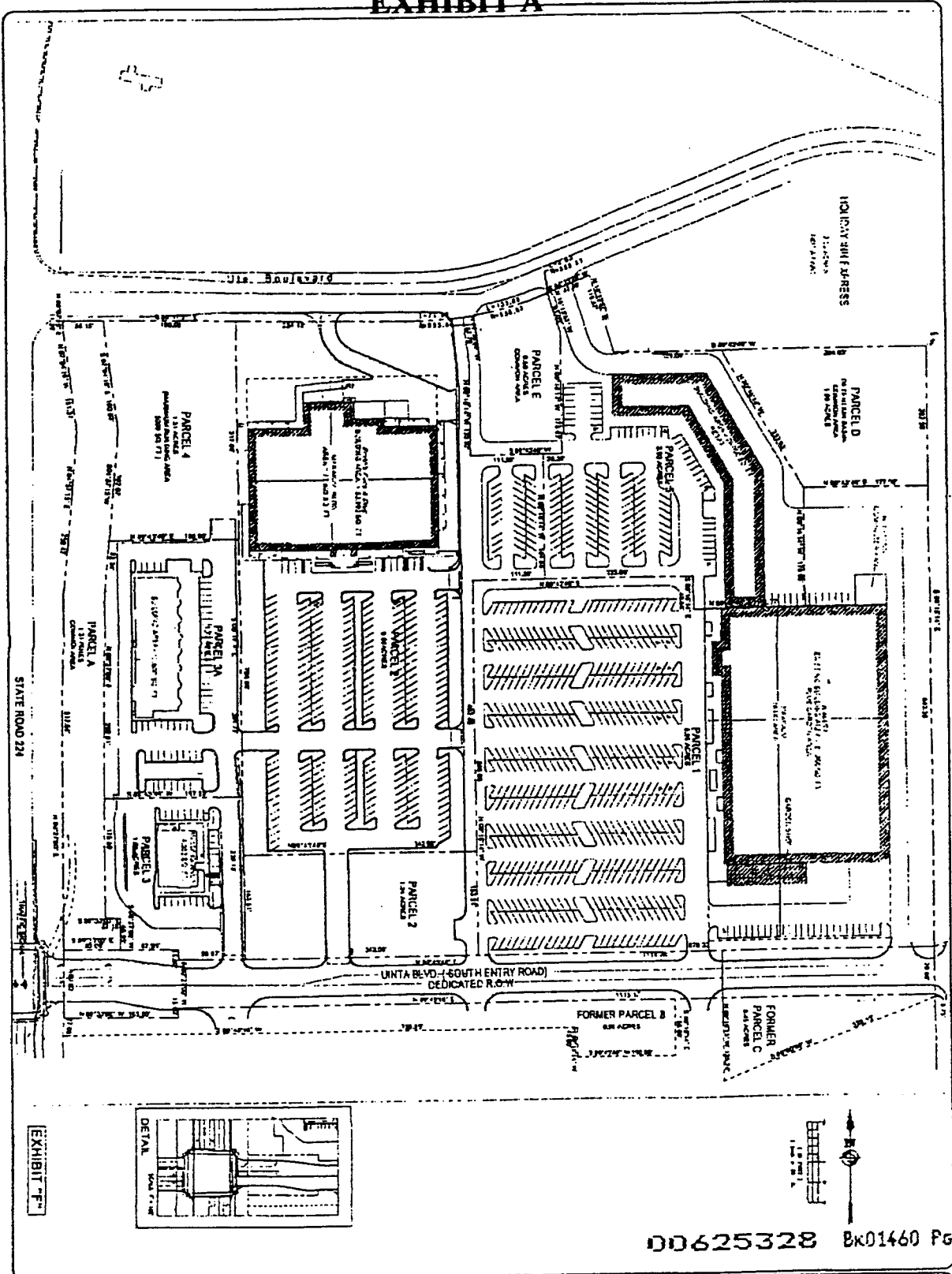


Residing at: SALT LAKE COUNTY, UTAH  
My Commission Expires: 8-8-10

**List of Exhibits to Total Restatement of Declaration of Covenants  
and Restrictions, Grant of Easements**

Exhibit "A"	Description of Subject Land
Exhibit "B"	Description of Boyer Property
Exhibit "C"	Plan showing transportation of Storm water across land east of Shopping Center
Exhibit "D"	Description of Parcel 1
Exhibit "D-1"	Description of Parcel 1A
Exhibit "E"	Description of Parcel 2
Exhibit "F"	Description of Parcel 2A
Exhibit "G"	Description of Parcel 3
Exhibit "H"	Description of Parcel 3A
Exhibit "I"	Description of Parcel 4
Exhibit "J"	Description of Parcel 5
Exhibit "K"	Description of Parcel A
Exhibit "L"	Description of Parcel D
Exhibit "M"	Description of Parcel E
Exhibit "N"	Description of South Entry Road Parcel
Exhibit "O"	Site Plan for Shopping Center

# EXHIBIT A



00625328 Bk01460 Pg01356

PROJECT: VILLAGE AT RABBALL JUNCTION SHEET NO: 14931 DATE: 11/11/03 EX - F		PREPARED BY: J. BLANCHARD CHECKED BY: J. BLANCHARD DATE: 11/11/03	SCALE: AS SHOWN NORTH:
		PROJECT NO: 00625328 SHEET NO: 14931 DATE: 11/11/03	STATION:

## EXHIBIT B

### LEGAL DESCRIPTION OF BOYER & EQUIMARK

Lot 7A Description (Boyer Spring Creek): Revised to exclude 40' x 70' jog along Unita Blvd.

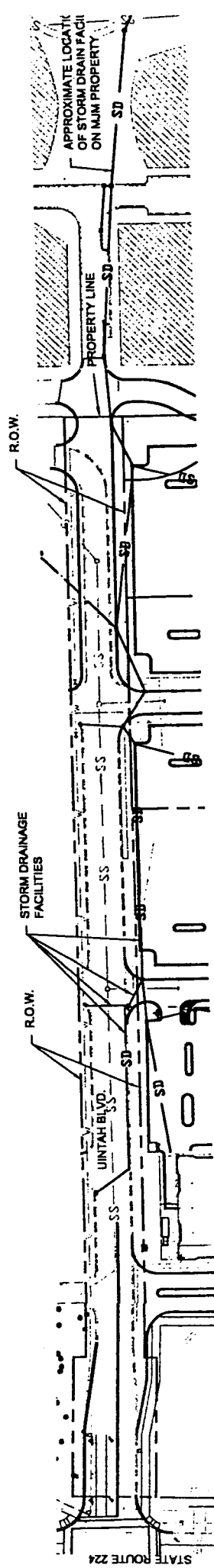
Beginning at a point on the East line of Lot 7, The Village at Kimball Junction, a subdivision in the West half of Section 19, Township 1 South, Range 4 East, Salt Lake Base and Meridian, said point being North 0° 16' 14" West 1238.18 feet from the Southeast Corner of said Lot 7; thence North 0° 16' 14" West 826.33 feet; thence South 89° 43' 46" West 1115.17 feet; thence South 0° 27' 00" West 15.00 feet; thence North 89° 33' 00" West 165.00 feet; thence South 0° 27' 00" West 232.83 feet; thence South 89° 33' 00" East 186.82 feet; thence South 31° 25' 02" West 187.41 feet; thence South 58° 34' 58" East 191.33 feet; thence South 31° 25' 02" West 33.35 feet; thence South 58° 34' 58" East 21.15 feet; thence South 31° 25' 02" West 17.61 feet; thence South 58° 34' 58" East 81.60 feet; thence North 31° 25' 02" East 79.23 feet; thence North 76° 25' 02" East 55.53 feet; thence South 58° 34' 58" East 45.91 feet; thence North 31° 25' 02" East 48.44 feet; thence South 58° 34' 58" East 80.94 feet; thence South 31° 25' 02" West 21.00 feet; thence South 58° 34' 58" East 44.00 feet; thence South 31° 25' 02" West 17.50 feet; thence South 58° 34' 58" East 206.00 feet; thence North 31° 25' 02" East 31.50 feet; thence South 58° 34' 58" East 44.00 feet; thence North 31° 25' 02" East 13.55 feet; thence South 58° 34' 58" East 215.00 feet; thence South 31° 25' 02" West 5.00 feet; thence South 58° 34' 58" East 88.00 feet; thence North 31° 25' 02" East 5.00 feet; thence South 58° 34' 58" East 44.00 feet; thence North 31° 25' 02" East 88.90 feet; thence South 58° 34' 58" East 38.54 feet; thence North 89° 43' 46" East 114.04 feet to the point of beginning. Contains 18.554 acres.

Lot 7B Description (Equimark): VKJ - Lot 7

Beginning at a point on the East line of Lot 7, The Village at Kimball Junction, a subdivision in the West half of Section 19, Township 1 South, Range 4 East, Salt Lake Base and Meridian, said point being North 0° 16' 14" West 906.94 feet from the Southeast Corner of said Lot 7; thence South 60° 10' 50" West 379.24 feet; thence North 58° 34' 58" West 467.70 feet; thence South 31° 25' 15" West 323.60 feet; thence South 67° 09' 15" West 154.43 feet; thence North 89° 23' 22" West 90.22 feet; thence North 38° 02' 57" West 42.24 feet; thence North 0° 36' 38" East 108.13 feet; thence North 58° 34' 58" West 15.333 feet; thence North 0° 27' 00" East 105.79 feet; thence North 31° 25' 02" East 136.12 feet; thence North 0° 26' 38" East 332.59 feet; thence North 58° 34' 58" West 64.59 feet; thence North 0° 27' 00" East 105.72 feet; thence North 31° 25' 02" East 127.81 feet; thence South 58° 34' 58" East 191.33 feet; thence South 31° 25' 02" West 33.35 feet; thence South 58° 34' 58" East 21.15 feet; thence South 31° 25' 02" West 17.61 feet; thence South 58° 34' 58" East 81.60 feet; thence North 31° 25' 02" East 79.23 feet; thence North 76° 25' 02" East 55.53 feet; thence South 58° 34' 58" East 45.91 feet; thence North 31° 25' 02" East 48.44 feet; thence South 58° 34' 58" East 80.94 feet; thence South 31° 25' 02" West 21.00 feet; thence South 58° 34' 58" East 44.00 feet; thence South 31° 25' 02" West 17.50 feet; thence South 58° 34' 58" East 206.00 feet; thence North 31° 25' 02" East 31.50 feet; thence South 58° 34' 58" East 44.00 feet; thence North 31° 25' 02" East 13.55 feet; thence South 58° 34' 58" East 215.00 feet; thence South 31° 25' 02" West 5.00 feet; thence South 58° 34' 58" East 88.00 feet; thence North 31° 25' 02" East 5.00 feet; thence South 58° 34' 58" East 44.00 feet; thence North 31° 25' 02" East 88.90 feet; thence South 58° 34' 58" East 38.54 feet; thence North 89° 43' 46" East 114.04 feet; thence South 0° 16' 14" East 331.24 feet to the point of beginning. Contains 17.514 acres or 762.901 sq. ft.

VKJ - Lot 7

EXHIBIT C



SEAR-BROW 181 SOUTH REGENT STREET SLAT LAKE CITY, UT 84111 (801) 523-0887	
PROJECT NO. E.D. 0023	DATE E.D. 0023
DRAWN BY JAMES BLANDIN	CHECKED BY J. COY
I HEREBY CERTIFY THAT THE ABOVE IS A TRUE AND CORRECT COPY OF THE ORIGINAL AS SUBMITTED TO THE CITY ENGINEER.	

## EXHIBIT D

### LEGAL DESCRIPTION

A tract of land being a portion of Lot 1, of The Village at Kimball Junction Subdivision, located in the West half of Section 19, Township 1 South, Range 4 East, Salt Lake Base and Meridian, Summit County, State of Utah. The basis of bearing being between the Northwest corner and the Southwest corner of said section the bearing being South 00°04'26" East. Tract being more particularly described as follows;

Beginning at a point, said point being 144.57 feet North 00°16'14" West from the Southwest corner of said Lot 1 (said Southwest corner being 2667.41 feet South 89°46'57" East along the section line and 1857.05 feet South 00°16'14" East from the Northwest corner of said section), and running thence North 00°16'14" West, a distance of 411.43 feet; thence North 89°43'46" East, a distance of 336.50 feet; thence South 00°16'14" East, a distance of 49.58 feet; thence East, a distance of 162.77 feet; thence North 00°16'14" West, a distance of 177.74 feet; thence North 89°43'46" East, a distance of 177.06 feet; thence South 00°16'14" East, a distance of 683.38 feet; thence South 89°43'46" West, a distance of 503.98 feet; thence North, a distance of 142.74 feet; thence North 89°39'59" West, a distance of 173.05 feet to the POINT OF BEGINNING. Containing 365,658.09 square feet or 8.3944 acres, more or less.

VKJ - Lot 1

## EXHIBIT D-1

### LEGAL DESCRIPTION (Parcel 1A)

A tract of land being a portion of Lot 1, of The Village at Kimball Junction Subdivision, located in the West half of Section 19, Township 1 South, Range 4 East, Salt Lake Base and Meridian, Summit County, State of Utah. Basis of bearing being between the Northwest corner and the Southwest corner of said section, bearing being South 00°04'26" East. Tract being more particularly described as follows;

Beginning at the Southwest corner of Lot 1, of said subdivision (said Southwest corner being 2667.41 feet South 89°46'57" East along the section line and 1857.05 feet South 00°16'14" East from the Northwest corner of said section), and running thence North 00°16'14" West, a distance of 144.57 feet; thence South 89°39'59" East, a distance of 173.05 feet; thence South, a distance of 142.74 feet; thence South 89°43'46" West, a distance of 172.37 feet to the POINT OF BEGINNING. Containing 24,809.28 square feet or 0.5695 acres, more or less.

VKJ - Lot 1

## EXHIBIT E

### FOOD MARKET PARCEL OR "LOT 2":

Beginning at the Northwest Corner of Section 19, Township 1 South, Range 4 East, Salt Lake Base and Meridian, Summit County, Utah; thence South  $89^{\circ} 46' 57''$  East 2667.41 feet, said point being North Quarter Corner of Section 19, Township 1 South, Range 4 East, Salt Lake Base and Meridian, Summit County, Utah; thence South  $00^{\circ} 16' 14''$  East 1857.05 feet along center section line of Section 19; thence South  $89^{\circ} 43' 46''$  West 676.33 feet to the true point of beginning.

Commencing at the true point of beginning, thence South  $89^{\circ} 43' 46''$  West 342.08 feet; thence North  $00^{\circ} 16' 14''$  West 941.57 feet to a point on the southerly right-of-way of the so called East Frontage Road; thence South  $89^{\circ} 17' 51''$  East 254.16 feet to the beginning of a radial curve, concave to the north, having a radius of 555.87 feet; thence easterly along said curve 79.62 feet through a central angle of  $08^{\circ} 12' 25''$ ; thence South  $07^{\circ} 30' 00''$  East 67.70 feet; thence South  $00^{\circ} 16' 14''$  East 133.92 feet; thence North  $89^{\circ} 43' 46''$  East 111.50 feet; thence South  $00^{\circ} 16' 14''$  East 184.53 feet; thence South  $89^{\circ} 43' 46''$  West 111.50 feet; thence South  $00^{\circ} 16' 14''$  East 556.00 feet to said true point of beginning, containing 7.84 acres, more or less.

VKJ - Lot 2

### A PORTION OF "LOT 2" OF THE VILLAGE AT KIMBALL JUNCTION:

According to the official plat thereof on file and of record with the Recorder of Summit County, State of Utah, and also described as follows:

Beginning at the Northwest Corner of Section 19, Township 1 South, Range 4 East, Salt Lake Base and Meridian, Summit County, Utah; thence South  $89^{\circ} 46' 57''$  East 2667.41 feet, said point being North Quarter Corner of Section 19, Township 1 South, Range 4 East, Salt Lake Base and Meridian, Summit County, Utah; thence South  $00^{\circ} 16' 14''$  East 1857.05 feet along center section line of Section 19; thence South  $89^{\circ} 43' 46''$  West 676.33 feet to the true point of beginning.

Commencing at the true point of beginning, thence South  $89^{\circ} 43' 46''$  West 342.08 feet; thence North  $00^{\circ} 16' 14''$  West 788.06 feet to a point on the southerly right-of-way of the so called East Frontage Road; thence South  $89^{\circ} 17' 51''$  East 254.16 feet to the beginning of a radial curve, concave to the north, having a radius of 555.87 feet; thence easterly along said curve 79.62 feet through a central angle of  $08^{\circ} 12' 25''$ ; thence South  $07^{\circ} 30' 00''$  East 67.70 feet; thence South  $00^{\circ} 16' 14''$  East 133.92 feet; thence North  $89^{\circ} 43' 46''$  East 111.50 feet; thence South  $00^{\circ} 16' 14''$  East 184.53 feet; thence South  $89^{\circ} 43' 46''$  West 111.50 feet; thence South  $00^{\circ} 16' 14''$  East 402.49 feet to said true point of beginning, containing 6.60 acres, more or less.

VKJ - Lot 2A



## EXHIBIT F

Beginning at the Southeast corner of Lot 3, The Village at Kimball Junction as recorded and on file in the Summit County Recorder's Office, and running thence North  $00^{\circ} 16' 14''$  West, 153.51 feet; thence North  $89^{\circ} 43' 46''$  East, 342.08 feet; thence South  $00^{\circ} 16' 14''$  East, 153.51 feet; thence South  $89^{\circ} 43' 46''$  West, 342.08 feet to the point of beginning, also to be shown as Lot 2A. Reserving unto the owner of Lot 2 a 35.0 foot access easement over and across the following:

Beginning at a point which is N  $89^{\circ} 43' 46''$  East 115.00 feet from the Southwest corner of Lot 2, The Village at Kimball Junction, according to the Original Plat of Lot 2, on file in the Office of the Summit County Recorder; thence North  $0^{\circ} 16' 14''$  West 153.51 feet; thence North  $89^{\circ} 43' 46''$  East 35.00 feet; thence South  $0^{\circ} 16' 14''$  East 153.51 feet; thence South  $89^{\circ} 43' 46''$  West 35.00 feet to the point of beginning; with a 7.5 foot landscape buffer easement on the east and west sides of the easement. The 35.00 foot access easement with adjacent landscape buffer is relocatable by the owner of Lot 2A but only with the advanced written approval of the owner of Lot 2 which approval shall be in its sole and absolute discretion.

VKJ - Lot 2A

# EXHIBIT G

## WASHINGTON MUTUAL - PARCEL 3

A portion of Lot 3, of THE VILLAGE AT KIMBALL JUNCTION, being part of the Northwest Quarter of Section 19, Township 1 South, Range 4 East, Salt Lake Base and Meridian, Summit County, Utah, described as follows:

Beginning at the Northwest corner of Section 19, Township 1 South, Range 4 East, Salt Lake Base & Meridian, Summit County, Utah; thence South  $89^{\circ}46'57''$  East 2667.41 feet along the North section line of said Section 19 to the North Quarter Corner of said Section 19; thence South  $00^{\circ}16'14''$  East 752.13 feet along the East line of the Northwest Quarter of said Section 19 to a point which lies on the South right-of-way line of the East Frontage Road UDOT #060; thence along said right-of-way line the following five courses: 1) North  $34^{\circ}19'06''$  West 23.15 feet to a point of tangency; 2) along a curve to the left 173.34 feet whose central angle is  $39^{\circ}29'32''$  and whose radius is 251.48 feet to a point of tangency; 3) South  $68^{\circ}25'28''$  West 397.20 feet to a point of tangency; 4) along a curve to the right 216.14 feet whose central angle is  $22^{\circ}16'41''$  and whose radius is 555.87 feet to a point of tangency; 5) North  $89^{\circ}17'51''$  West 444.24 feet to the Northwest corner of Lot 4, The Village at Kimball Junction, as recorded in the Summit County Recorder's Office; thence along the West line of said Lot 4 the following three courses: 1) South  $07^{\circ}04'10''$  East 160.62 feet, 2) South  $04^{\circ}57'15''$  West 254.43 feet; 3) South  $00^{\circ}27'00''$  West 99.59 feet to the Southwest corner of said Lot 4; thence South  $00^{\circ}27'00''$  West 193.22 feet to the true point of beginning; thence North  $89^{\circ}43'46''$  East 197.89 feet to the West line of Lot 2, The Village at Kimball Junction, as recorded in the Summit County Recorder's Office; thence South  $00^{\circ}16'14''$  East 239.13 feet along the West line of said Lot 2 to the Southwest corner of said Lot 2, said point also lying on the North right-of-way line of a public road known as "Uintah Way"; thence along said North right-of-way line of Uintah Way the following three courses: 1) South  $89^{\circ}43'46''$  West 95.87 feet; 2) North  $00^{\circ}27'00''$  East 15.00 feet; 3) North  $89^{\circ}33'00''$  West 82.91 feet to the Southeast corner of Parcel A, The Village at Kimball Junction, as recorded in the Summit County Recorder's Office; thence along the East line of said Parcel A the following three courses: 1) North  $00^{\circ}27'00''$  East 46.95 feet; 2) North  $89^{\circ}33'00''$  West 22.10 feet; 3) North  $00^{\circ}27'00''$  East 175.89 feet to the point of beginning.

VKJ - Lot 3

# EXHIBIT H

## PARCEL 3

A PORTION OF LOTS 3 AND 4, THE VILLAGE AT KIMBALL JUNCTION, ACCORDING TO THE OFFICIAL PLAT THEREOF ON FILE AND OF RECORD, IN THE OFFICE OF THE SUMMIT COUNTY RECORDER, ALSO BEING A PART OF THE NORTHWEST QUARTER OF SECTION 19, TOWNSHIP 1 SOUTH, RANGE 4 EAST OF THE SALT LAKE BASE AND MERIDIAN, SUMMIT COUNTY, UTAH DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF SECTION 19, TOWNSHIP 1 SOUTH, RANGE 4 EAST OF THE SALT LAKE BASE AND MERIDIAN, SUMMIT COUNTY, UTAH: THENCE SOUTH  $89^{\circ}46'57''$  EAST, 2667.41 FEET ALONG THE NORTH SECTION LINE OF SAID SECTION 19 TO THE NORTH QUARTER CORNER OF SAID SECTION 19; THENCE SOUTH  $00^{\circ}16'14''$  EAST, 752.13 FEET ALONG THE EAST LINE OF THE NORTHWEST QUARTER OF SAID SECTION 19 TO A POINT WHICH LIES ON THE SOUTH RIGHT-OF-WAY LINE OF THE EAST FRONTAGE ROAD UDOT #060; THENCE ALONG SAID RIGHT-OF-WAY LINE THE FOLLOWING FIVE COURSES: 1) NORTH  $34^{\circ}19'06''$  WEST 23.15 FEET TO A POINT OF NON-TANGENCY; 2) ALONG A CURVE TO THE LEFT, 173.34 FEET WHOSE CENTRAL ANGLE IS  $39^{\circ}29'32''$  AND WHOSE RADIUS IS 251.48 FEET TO A POINT OF TANGENCY (CHORD BEARS SOUTH  $88^{\circ}10'15''$  WEST, A DISTANCE OF 169.93 FEET THENCE; 3) SOUTH  $68^{\circ}25'28''$  WEST 397.20 FEET TO A POINT OF TANGENCY; 4) ALONG A CURVE TO THE RIGHT 216.14 FEET WHOSE CENTRAL ANGLE IS  $22^{\circ}16'41''$  AND WHOSE RADIUS OF 555.87 FEET, TO A POINT OF TANGENCY; 5) NORTH  $89^{\circ}17'51''$  WEST 444.24 FEET TO THE NORTHWEST CORNER OF LOT 4, THE VILLAGE AT KIMBALL JUNCTION, AS RECORDED IN THE SUMMIT COUNTY RECORDER'S OFFICE; THENCE SOUTH  $01^{\circ}01'50''$  EAST 320.92 FEET TO THE POINT OF BEGINNING; THENCE NORTH  $89^{\circ}43'46''$  EAST, 185.80 FEET TO THE WEST LINE OF LOT 2 OF SAID VILLAGE AT KIMBALL JUNCTION; THENCE SOUTH  $00^{\circ}16'14''$  EAST 384.77 FEET ALONG SAID WEST LINE; THENCE SOUTH  $89^{\circ}43'46''$  WEST 197.89 FEET TO THE EAST LINE OF PARCEL A OF SAID VILLAGE AT KIMBALL JUNCTION; THENCE NORTH  $00^{\circ}27'00''$  EAST 292.81 FEET ALONG SAID EAST LINE; THENCE NORTH  $04^{\circ}57'15''$  EAST, 92.36 FEET ALONG SAID EAST LINE TO THE POINT OF BEGINNING.

BASIS BEARING USED WAS THE NORTH LINE OF THE NORTHWEST CORNER OF SECTION 19, TOWNSHIP 1 SOUTH, RANGE 4 EAST, SALT LAKE BASE AND MERIDIAN, ASSUMED TO BE SOUTH  $89^{\circ}46'57''$  EAST.

VKJ - Lot 3A

# EXHIBIT I

## PARCEL 4:

Part of Lot 4, of the Village at Kimball Junction, according to the official plat thereof on file and of record with the Recorder of Summit County, State of Utah, and also being more particularly described as follows:

Part of the Northwest Quarter of Section 19, Township 1 South, Range 4 East of the Salt Lake Base and Meridian, Summit County, Utah described as follows:

Beginning at the Northwest Corner of Section 19, Township 1 South, Range 4 East of the Salt Lake Base and Meridian, Summit County, Utah; thence South  $89^{\circ} 46' 57''$  East, 2667.41 feet along the North section line of said Section 19 to the North Quarter Corner of said Section 19; thence South  $00^{\circ} 16' 14''$  East, 752.13 feet along the east line of the Northwest Quarter of said Section 19 to a point which lies on the south right-of-way line of the East Frontage Road UDOT #060; thence along said right-of-way line the following five courses: 1) North  $34^{\circ} 19' 06''$  West, 23.15 feet to a point on a curve; 2) along a curve to the left, 173.34 feet whose central angle is  $39^{\circ} 29' 32''$  and whose radius is 251.48 feet and whose chord bears South  $88^{\circ} 10' 15''$  West 169.93 feet to a point of tangency; 3) South  $68^{\circ} 25' 28''$  West, 397.20 feet to a point of tangency; 4) along a curve to the right, 216.14 feet whose central angle is  $22^{\circ} 16' 41''$  and whose radius is 555.87 feet, to a point of tangency; 5) North  $89^{\circ} 17' 51''$  West, 444.24 feet to the Northwest corner of Lot 4 and true point of beginning; thence along the West line of said Lot 4 the following two courses: 1) South  $07^{\circ} 04' 10''$  East, 160.62 feet; 2) South  $04^{\circ} 57' 15''$  West, 162.07 feet; thence North  $89^{\circ} 43' 46''$  East, 185.80 feet to the East line of said Lot 4; thence North  $00^{\circ} 16' 14''$  West, 317.67 feet along said East line of said Lot 4 to the Northeast corner of said Lot 4 said corner lying on the south right-of-way line of said East Frontage Road UDOT #060; thence North  $89^{\circ} 17' 51''$  West, 190.08 feet along said south right-of-way line to the point of beginning.

VKJ- Lot 4

## PARCEL 2:

Part of the Northwest Quarter of Section 19, Township 1 South, Range 4 East of the Salt Lake Base and Meridian, Summit County, Utah described as follows:

Commencing at the Northwest Corner of Section 19, Township 1 South, Range 4 East, Salt Lake Base and Meridian, Summit County, Utah; thence South  $89^{\circ} 46' 57''$  East, 2667.41 feet along the North Section line of said Section to the North Quarter Corner of said Section 19; thence South  $00^{\circ} 16' 14''$  East 752.13 feet along the East line of the Northwest Quarter of said Section 19 to a point which lies on the south right-of-way line of East Frontage Road UDOT #060; thence along said Right-of-Way Line the following five courses: 1) North  $34^{\circ} 19' 06''$  West, 23.15 feet to a point on a curve; 2) Along a curve to the left, 173.34 feet whose central angle is  $39^{\circ} 29' 32''$  and whose radius is 251.48 feet chord bears South  $88^{\circ} 10' 15''$  West, 169.93 feet to a point of tangency; 3) South  $68^{\circ} 25' 28''$  West, 397.20 feet to a point of tangency; 4) Along a curve to the right, 216.14 feet whose central angle is  $22^{\circ} 16' 41''$  and whose radius is 555.87 feet, to a point of tangency; 5) North  $89^{\circ} 17' 51''$  West, 444.24 feet to the Northwest Corner of Lot 4 and the true point of beginning; thence South  $7^{\circ} 04' 10''$  East, a distance of 160.62 feet to a point; thence South  $4^{\circ} 57' 15''$  West, a distance of 162.07 feet to a point; thence North  $1^{\circ} 01' 50''$  West, a distance of 320.92 feet to the point of beginning.

VKJ- Lot 4

## EXHIBIT J

### RETAIL SHOPS PARCEL OR LOT "5":

Beginning at the Northwest Corner of Section 19, Township 1 South, Range 4 East, Salt Lake Base and Meridian, Summit County, Utah; thence South  $89^{\circ} 46' 57''$  East 2667.41 feet, said point being North Quarter Corner of Section 19, Township 1 South, Range 4 East, Salt Lake Base and Meridian, Summit County, Utah; thence South  $00^{\circ} 16' 14''$  East 1173.67 feet along center section line of Section 19; thence South  $89^{\circ} 43' 46''$  West 177.06 feet to the true point of beginning.

Commencing at the true point of beginning, thence South  $00^{\circ} 16' 14''$  East 176.96 feet; thence South  $89^{\circ} 43' 46''$  West 162.77 feet; thence North  $00^{\circ} 16' 14''$  West 49.58 feet; thence South  $89^{\circ} 43' 46''$  West 225.00 feet; thence North  $00^{\circ} 16' 14''$  West 184.53 feet; thence North  $89^{\circ} 43' 46''$  East 28.36 feet; thence North  $00^{\circ} 16' 14''$  West 175.63 feet; thence North  $18^{\circ} 15' 57''$  West 61.05 feet to the beginning of a radial curve concave to the north having a radius of 555.87 feet; thence northeasterly along said curve 2.63 feet through a central angle of  $00^{\circ} 16' 16''$ ; thence North  $68^{\circ} 25' 28''$  East 67.49 feet; thence South  $18^{\circ} 15' 57''$  East 119.57 feet; thence North  $89^{\circ} 43' 46''$  East 159.04 feet; thence South  $30^{\circ} 16' 14''$  East 233.93 feet to said true point of beginning, containing 2.93 acres, more or less.

VKJ- Lot 5

## EXHIBIT K

### PARCEL "A"

Beginning at the Northwest Corner of Section 19, Township 1 South, Range 4 East, Salt Lake Base and Meridian, Summit County, Utah; thence South  $89^{\circ}46'57''$  East 2667.41 feet, said point being North Quarter Corner of Section 19, Township 1 South, Range 4 East, Salt Lake Base and Meridian, Summit County, Utah; thence South  $00^{\circ}16'14''$  East 1173.67 feet along center section line of Section 19; thence South  $89^{\circ}43'46''$  West 1114.29 feet; thence North  $00^{\circ}27'00''$  East 15.00 feet; thence North  $89^{\circ}33'00''$  West 82.91 feet to the true point of beginning.

Commencing at the true point of beginning, thence North  $89^{\circ}33'00''$  West 82.09 feet to a point on the easterly right-of-way of Utah Highway 224; thence North  $00^{\circ}27'00''$  East 517.64 feet; thence North  $04^{\circ}57'15''$  East 250.47 feet; thence North  $07^{\circ}04'10''$  West 151.37 feet; thence North  $00^{\circ}07'59''$  East 11.39 feet to the intersection of the U-224 right-of-way and the southerly right-of-way of the so-called East Frontage Road; thence South  $89^{\circ}17'51''$  East 59.15 feet; thence South  $07^{\circ}04'10''$  East 160.62 feet; thence South  $04^{\circ}57'15''$  West 254.43 feet; thence South  $00^{\circ}27'00''$  West 468.70 feet; thence South  $89^{\circ}33'00''$  East 22.10 feet; thence South  $00^{\circ}27'00''$  West 46.95 feet to said true point of beginning, containing 1.31 acres, more or less.

VKJ - Lot A  
Parcel

## EXHIBIT L

### PARCEL "D"

Beginning at the Northwest Corner of Section 19, Township 1 South, Range 4 East, Salt Lake Base and Meridian, Summit County, Utah; thence South  $89^{\circ}46'57''$  East 2667.41 feet, said point being North Quarter Corner of Section 19, Township 1 South, Range 4 East, Salt Lake Base and Meridian, Summit County, Utah; thence South  $00^{\circ}16'14''$  East 971.08 feet along center section line of Section 19 to the true point of beginning.

Commencing at the true point of beginning, thence South  $00^{\circ}16'14''$  East 202.59 feet; thence South  $89^{\circ}43'46''$  West 177.06 feet; thence North  $30^{\circ}16'14''$  West 233.93 feet; thence North  $89^{\circ}43'46''$  East 294.03 feet to said true point of beginning, containing 1.09 acres, more or less.

VKJ- Parcel D

## EXHIBIT M

### PARCEL "E"

Beginning at the Northwest Corner of Section 19, Township 1 South, Range 4 East, Salt Lake Base and Meridian, Summit County, Utah; thence South  $89^{\circ}46'57''$  East 2667.41 feet, said point being North Quarter Corner of Section 19, Township 1 South, Range 4 East, Salt Lake Base and Meridian, Summit County, Utah; thence South  $00^{\circ}16'14''$  East 1173.67 feet along center section line of Section 19; thence South  $89^{\circ}43'46''$  West 676.33 feet; thence North  $00^{\circ}16'14''$  West 740.53 feet to the true point of beginning.

Thence commencing from said true point of beginning, thence North  $00^{\circ}16'14''$  West 133.92 feet; thence North  $07^{\circ}30'00''$  West 67.70 feet to a point on a radial curve along the southerly right-of-way line of the so-called East Frontage Road, said curve being concave to the north and having a radius of 555.87 feet; thence easterly along said curve 133.88 feet through a central angle of  $13^{\circ}48'00''$  thence South  $18^{\circ}15'57''$  East 61.05 feet; thence South  $00^{\circ}16'14''$  East 175.63 feet; thence South  $89^{\circ}43'46''$  West 139.86 feet to said true point of beginning, containing 0.69 acres, more or less.

VKJ- Parcel E



## EXHIBIT N

### NEW PARCEL DESCRIPTION FOR UINTA BLVD:

Beginning at a point on the west line of the Village at Kimball Junction subdivision, said point being S 0° 16' 14"E 1857.05 feet from the North Quarter corner of Section 19, Township 1 South, Range 4 East, Salt Lake Base and Meridian; Thence S 0° 16' 14" E 70.00 feet; Thence S 89° 43' 46" W 1115.17 feet; Thence S 0° 27' 00" W 15.00 feet; Thence N 89° 33' 00" W 165.00 feet; Thence N 0° 27' 00" E 100.00 feet; Thence S 89° 33' 00" E 165.00 feet; Thence S 0° 27' 00" W 15.00 feet; Thence N 89° 43' 46" E 1114.29 feet to the point of beginning. Contains 94,531 sq. ft. or 2.17 acres.

VKJ- South ENTRY ROAD

