

When recorded return to:  
Walker Kennedy III  
Woodbury Corporation  
2733 East Parleys Way  
Salt Lake City Utah 84115

## CROSS EASEMENT AGREEMENT

This Agreement ("Agreement") is made and entered into this 30<sup>th</sup> day of May, 2008, by and between UNIVERSITY MALL SHOPPING CENTER L.C., a Utah limited liability company ("University Mall"), UTAH TRANSIT AUTHORITY, a public transit district ("UTA"), and KC PROPCO, LLC, a Delaware limited liability company ("KC"). University Mall, UTA and KC may hereafter be referred to individually as "Party" or collectively as "Parties."

### RECITALS

- A. WHEREAS, University Mall is the owner of property as legally described in Exhibit "B" attached hereto ("University Mall Parcel"), which University Mall Parcel is located in Orem, Utah. The University Mall Parcel is depicted on the site plan attached hereto as Exhibit "A."
- B. WHEREAS, UTA is the owner of property adjacent to the University Mall Parcel as legally described in Exhibit "C" attached hereto ("UTA Parcel"), which UTA Parcel is located in Orem, Utah. The UTA Parcel is depicted on the site plan attached hereto as Exhibit "A."
- C. WHEREAS, KC is the owner of property legally described on Exhibit "D" attached hereto (the "KC Parcel"), which KC Parcel is located in Orem, Utah. The KC Parcel is also depicted on the Site Plan attached hereto as Exhibit "A".
- D. WHEREAS, University Mall desires to grant to both UTA and KC an ingress and egress easement for vehicular and pedestrian traffic across the existing drive aisle location adjacent to the UTA Parcel and KC Parcel as shown on Exhibit "A," and legally described in Exhibit "B". University Mall and KC may hereafter be referred to individually as an "Owner" or collectively as "Owners."
- E. WHEREAS, KC desires to grant to both University Mall and UTA an ingress and egress easement for vehicular and pedestrian traffic across the existing drive aisle location adjacent to the University Mall Parcel and UTA Parcel as shown on Exhibit "A," and legally described in Exhibit "B",

### COURTESY RECORDING

This document is being recorded solely as a courtesy to the parties.  
Title West assumes no responsibility for the contents hereof and  
makes no representations as to the effect or validity of this document.

- F. WHEREAS, the City of Orem, Utah will vacate that certain public street between the University Mall Parcel and the UTA Parcel and KC Parcel, and in connection therewith, UTA has agreed to quitclaim any interest in the property underlying the street that it might have or might otherwise acquire as a result of that vacation.

### AGREEMENT

NOW THEREFORE, in consideration of the mutual covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. UNIVERSITY MALL GRANT OF ACCESS EASEMENT. University Mall hereby grants to UTA and KC a non-exclusive easement for ingress and egress along and across the common boundary line over the drive aisles legally described in the attached Exhibit "E," over and across those portions of the University Mall Parcel specifically designed for use by vehicular and pedestrian traffic from time to time (the "University Mall Easement"). The University Mall Easement specifically excludes any areas of the University Mall Parcel on which are outside the area legally described in Exhibit "E." UTA and KC shall have the non-exclusive right to use the University Mall Easement for the purpose of vehicular and pedestrian access only by UTA and KC, their licensees, invitees, guests and employees to and from the UTA Parcel and the KC Parcel across the University Mall Easement to the University Mall Parcel and adjacent public right-of-ways. The easement herein granted shall not be construed to grant any parking rights on the University Mall Parcel in favor of UTA and KC, their licensees, invitees, guests and employees. University Mall shall have the right to modify the location of the University Mall Easement from time to time to accommodate the reasonable development of the University Mall Parcel provided that cross-access is reasonably maintained to provide for normal traffic flows between the University Mall Parcel, the UTA Parcel, and the KC Parcel as required by Orem City.
  
2. KC GRANT OF EASEMENT. KC hereby grants to UTA and University Mall a non-exclusive easement for ingress and egress along and across the common boundary line over the drive aisles legally described in the attached Exhibit "E," over and across those portions of the KC Parcel specifically designed for use by vehicular and pedestrian traffic from time to time (the "KC Easement"). The KC Easement specifically excludes any areas of the KC Parcel on which are outside the area legally described in Exhibit "E." UTA and University Mall shall have the non-exclusive right to use the KC Easement for the purpose of vehicular and pedestrian access only by UTA and University Mall, their licensees, invitees, guests and employees to and from the UTA Parcel and the University Mall Parcel across the KC Easement to the KC Parcel and adjacent public right-of-ways. The easement herein granted shall not be construed to grant any parking rights on the KC Parcel in favor of UTA and University Mall, their licensees, invitees, guests and employees. KC shall have the right to modify the location of the KC Easement from time to time to accommodate the reasonable development of the KC Parcel provided that

cross-access is reasonably maintained to provide for normal traffic flows between the University Mall Parcel, the UTA Parcel, and the KC Parcel as required by Orem City.

3. INDEMNITY. Each Party shall indemnify, defend and hold each other Party, its successors, assigns, and agents harmless from any and all claims, liability, losses, costs, charges, or expenses which may be incurred as a result of any act or omission of the indemnifying Party in its use of the easement or other obligations under this Agreement. If any action, claim or demand is made against the indemnified Party for any act or omission of the indemnifying Party, the indemnifying Party agrees to assume the expense and shall pay all costs, charges, attorney fees, settlements, judgment or other expenses incurred by or obtained against the indemnified Party.
  
4. INSURANCE. Each of the Owners shall obtain and maintain at all times commercial general liability insurance insuring against claims on account of death, bodily injury or property damage that may arise from or be occasioned by the condition, use or occupancy of the easement located on its respective parcel. Said insurance shall be obtained and maintained in a reputable insurance company or companies qualified to do business in the State of Utah with a rating in the Best's Key Rating Guide of A- Class VII or better and having limits for bodily injury or death in the amounts of not less than \$1,000,000 for injury to or death of one person, \$2,000,000 for injury to or death of more than one person in one accident, and property damage insurance in an amount of not less than \$1,000,000 (or, as an alternative, single limit coverage in the amount of \$2,000,000). Such insurance shall name the other Owner as an additional insured. From time to time and upon written request by the other Owner, a certificate of insurance shall be furnished by the providing Owner showing the required coverage. Such insurance shall provide that the insurance may not be canceled without at least thirty (30) days prior written notice by the insurer to the other Owner named as an additional insured and shall provide for waiver of subrogation rights. Said insurance may be carried under a "blanket" policy or policies covering other properties of the providing Owner and its subsidiaries, controlling or affiliated corporations and entities.
  
5. BINDING EFFECT. All of the easements, covenants, conditions and declarations contained herein, including the benefits and burdens, shall run with the land and shall benefit and bind the heirs, successors and assigns of the Parties, and all current and future owners of the benefitted and burdened parcels.
  
6. NO PUBLIC DEDICATION. The Easement established, granted and conveyed is for the use and benefit of University Mall, UTA, and KC, and their respective tenants, licensees, guests and invitees and is not intended to confer any benefit or right upon the general public.
  
7. NO INTERFERENCE. Except to the extent necessary (on a temporary basis) for reasonable construction, for repair and maintenance, for traffic regulation and control or to prevent a public dedication or the accrual of any rights to the public, no fence, gate,

wall, barricade or other obstruction, whether temporary or permanent in nature, which limits or impairs the free and unimpeded use of the rights-of-way and easements granted in Paragraphs 1 and 2 shall be constructed or erected, nor shall any Party in any other manner obstruct or interfere with the use of such rights-of-way and easements.

8. Maintenance. The Easement Area shall at all times be properly surfaced with asphalt, concrete or other similar material, and University Mall shall at all times maintain or cause to be maintained the Easement Area in good, clean and safe condition and repair, reasonably free from debris, rubbish, snow, ice and other materials.
9. Payment of Real Property Taxes. Each Owner covenants to keep the portion of its Parcel encumbered by the Easement free and clear of all other encumbrances and liens, and to pay all taxes and assessments attributable thereto in a timely manner. If any Owner fails to comply with the provisions of the immediately preceding sentence, then the other Owner may (but is not obligated to), after giving at least twenty (20) days' written notice to the non-complying Owner in the manner required by Section 18 ("Notice"), pay or cause to be paid all taxes and assessment as is necessary to cause the Easement Area to be released from any such lien or encumbrance. In such event, all sums reasonably expended, and all costs and expenses reasonably incurred by the performing Owner in connection with such payment shall bear interest from the date expended or incurred (as the case may be) at the rate of eighteen percent (18%) per annum until paid or otherwise satisfied in full, and shall be paid promptly to the performing Owner by the non-complying Owner on written demand.
10. Duration. This Agreement and each right-of-way, easement, covenant and restriction set forth in this Agreement shall be perpetual.
11. Appurtenances to Parcels; Covenants Run with Land; Various Events.

11.1. Appurtenances to Parcels. Each right-of-way, easement, covenant and restriction created by this Agreement is an appurtenance to the Parcel benefited by such right-of-way, easement, covenant and restriction (but no other real property) and may not be transferred, assigned or encumbered except as an appurtenance to such Parcel. For the purposes of each such right-of-way, easement, covenant and restriction, the benefited Parcel shall constitute the dominant estate and the burdened Parcel shall constitute the subservient estate.

11.2. Covenants Run with Land; Various Events.

11.2.1. Covenants Run with Land. Each right-of-way, easement, covenant and restriction contained in this Agreement (whether affirmative or negative in nature) shall (a) create an equitable servitude on the burdened Parcel in favor of the benefited Parcel (but no other real property), (b) constitute a covenant running with the land, (c) benefit and bind every person having any fee, leasehold, Mortgage lien or other

interest in any portion of the Parcel concerned, and (d) benefit and bind any Owner whose title is acquired by judicial foreclosure, trustee's sale, deed in lieu of foreclosure or other means.

11.2.2. Transfer of Parcel. If any Owner transfers all or any portion of the Parcel owned by such Owner, the transferee shall automatically be deemed to have assumed and agreed to be personally bound by the covenants of such Owner contained in this Agreement, and if the transferring Owner has by such transfer transferred all of such Owner's ownership interest in such Parcel, such transferring Owner shall be released and discharged from all obligations under this Agreement with respect to such Parcel that accrue after (but not before) the date of recordation in the Official Records of the instrument effecting such transfer.

11.2.3. Effect of Breach. No breach of this Agreement shall entitle any Party to cancel, rescind or otherwise terminate this Agreement (but such limitation shall not affect any other right or remedy or limit any obligation that any Party may have under this Agreement by reason of any such breach), or defeat or render invalid the lien of any Mortgage made in good faith and for value as to any Parcel.

11.2.4. Identical Ownership. The ownership of both Parcels by the same person shall not result in the termination of this Agreement.

11.2.5. Priority of Agreement. The interests in and rights concerning any portion of the Parcels held by or vested in the Parties or any other person on or after the date of this Agreement (including, without limitation, any Mortgage lien) shall be subject and subordinate to this Agreement, and this Agreement shall be prior and superior to such interests and rights, as may be necessary to effectuate all of the terms and provisions set forth in this Agreement. As of the date of this Agreement, University Mall is the sole Owner of the University Mall Parcel, and KC is the sole Owner of the KC Parcel.

12. Mortgagee Protection. Unless and until it enters into possession or acquires title pursuant to foreclosure or any arrangement or proceeding in lieu of foreclosure, any Mortgagee interested under any Mortgage affecting any part of the Parcels shall have no obligation to take any action to comply with, and may not be compelled to take any action to comply with, this Agreement.
13. Modification. This Agreement and any right-of-way, easement, covenant or restriction contained in this Agreement may not be terminated, extended, modified or amended

without the consent of each Owner, and any such termination, extension, modification or amendment shall be effective on recordation in the Official Records of a written document effecting the same, executed and acknowledged by each Owner; provided, however, that no such termination, extension, modification or amendment shall affect the rights of any Mortgagee then holding a Mortgage constituting a lien on any Parcel unless such Mortgagee consents to the same in writing.

14. Attorneys' Fees. If any Party brings suit to enforce or interpret this Agreement or for damages on account of the breach of any provision of this Agreement, the prevailing Party shall be entitled to recover from the other Party its reasonable attorneys' fees and costs incurred in any such action or in any appeal from such action, in addition to the other relief to which the prevailing Party is entitled.
15. Estoppel. Any Owner shall, within fifteen (15) days after the request of another Party, execute and deliver to the requesting Party an estoppel certificate in favor of the requesting Party and such other persons as the requesting Party shall request setting forth the following:
- 15.1. a ratification of this Agreement;
  - 15.2. that this Agreement is in full force and effect and has not been assigned, modified, supplemented or amended by the responding Party (except by such writing as shall be stated);
  - 15.3. that there is no default existing under this Agreement and all conditions under this Agreement to be performed by the requesting Party have been satisfied or, in the alternative, those claimed by the responding Party to be unsatisfied;
  - 15.4. that no defenses or offsets exist against the enforcement of this Agreement by the requesting Party or, in the alternative, those claimed by the responding Party to exist;
  - 15.5. that the requesting Party does not owe any monies to the responding Party under this Agreement; and
  - 15.6. such other information as the requesting Party may reasonably request.

The requesting Party's Mortgagees and purchasers shall be entitled to rely on any estoppel certificate executed by the responding Party pursuant to this Paragraph 15.

16. GENERAL PROVISIONS. This Agreement shall be governed by, and construed and interpreted in accordance with, the laws (excluding the choice of laws rules) of the state

of Utah. This Agreement shall inure to the benefit of, and shall be binding on, each Owner and the heirs, personal representatives, successors and assigns of each Party. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be valid under applicable law; but, if any provision of this Agreement shall be invalid or prohibited under applicable law, such provision shall be ineffective to the extent of such invalidity or prohibition without invalidating the remainder of such provision or the remaining provisions of this Agreement.

17. MODIFICATION. This Agreement shall not be modified unless expressly agreed to in writing by each of the Parties.
18. NOTICE. All notices, demands, requests and other communications required or desired to be given hereunder shall be in writing and shall be deemed delivered on the earlier of (i) posting of registered or certified mail, addressed to the addressee at its address set forth below or at such other address as such Party may have specified theretofore by notice delivered in accordance with this Section, (ii) attempted delivery or refusal to accept delivery if sent by courier or other personal delivery service, or (iii) actual receipt by the addressee regardless of the method of delivery.

If to University Mall: University Mall  
c/o Woodbury Corporation  
Attn: Office of General Counsel  
2733 East Parleys Way, Suite 300  
Salt Lake City, UT 84109

With a copy to: University Mall  
575 E. University Parkway, Suite -260  
Orem, UT 84097  
Attn: Office of Mall Manager

If to KC PROPCO,  
LLC: KC Propco, LLC  
c/o Knowledge Learning Corporation, Inc.  
650 NE Holladay Street, Suite 1400  
Portland, Oregon, 97232

In the event any notice alleging KC to be in default under the terms of this Agreement, such notice shall also be sent to the address below in accordance with the procedures in this Section:

Knowledge Learning Corporation  
650 NE Holladay Street, Suite 1400  
Portland, OR 97232  
Attn: Legal Department

①  
W

If to UTA: Utah Transit Authority  
Property Management  
P.O. Box 30810  
669 West 200 South  
Salt Lake City, UT 84130-0810

With a copy to: Utah Transit Authority  
Office of General Counsel  
P.O. Box 30810  
3600 South 700 West  
Salt Lake City, UT 84130-0810

19. APPROVAL. Any initial construction, modifications or changes relating to the access area between the University Mall Parcel, UTA Parcel, and the KC Parcel must be approved in writing by the Owners, which approval shall not be unreasonably withheld.

IN WITNESS WHEREOF, the undersigned have caused this Agreement to be executed the day and year first above written.

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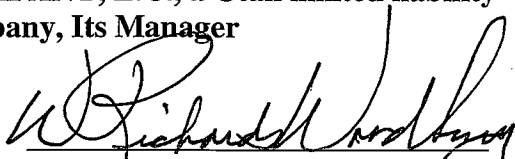


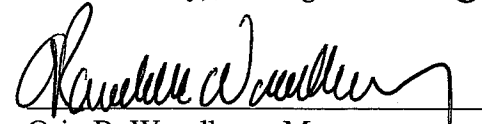
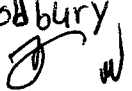


University Mall:

**UNIVERSITY MALL SHOPPING CENTER, L.C., a Utah limited liability company**

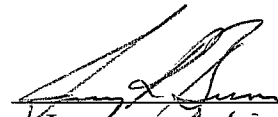
**By: WOODBURY MANAGEMENT COMPANY, L.C., a Utah limited liability company, Its Manager**

By:   
(W. Richards Woodbury or Jeffrey K. Woodbury), Manager

By:   
Erin R. Woodbury, Manager  
O. Randall Woodbury  


UTA:

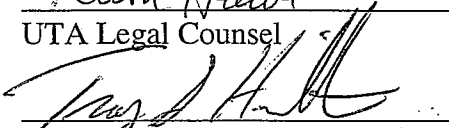
**UTAH TRANSIT AUTHORITY, a public transit district**

By:   
Its: Acting General Manager

By:   
Its: **KENNETH D. MONTAGUE, JR.**  
**TREASURER**

Approved as to Form:

  
UTA Legal Counsel

  
Property Management

KC PROPCO, LLC:

**KC PROPCO, LLC, a Delaware limited liability company**

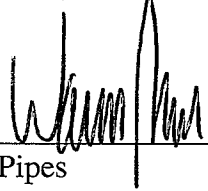
**By: KC Mezco I LLC, a Delaware limited liability company, its Sole Member**

**By: KC Mezco II LLC, A Delaware limited liability company, its Sole Member**

**By: KC Propco Holding I LLC, a Delaware limited liability company, its Sole Member**

**By: KC Propco Holding II LLC, a Delaware limited liability company, its Sole Member**

**By: Kindercare Learning Centers, Inc., a Delaware corporation, its Sole Member**

By:  \_\_\_\_\_

Wayne Pipes

Its: Vice President Facilities and Development



ACKNOWLEDGMENT OF UNIVERSITY MALL

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

On the 30th day of May, 2008, before me personally appeared W. RICHARDS WOODBURY (or JEFFREY K. WOODBURY) and ORIN R. WOODBURY, to me personally known to be the Managers of WOODBURY MANAGEMENT COMPANY, L.C., known to be the Manager of UNIVERSITY MALL SHOPPING CENTER, L.C., the company that executed the within instrument, known to me to be the person who executed the within instrument on behalf of said company therein named, and acknowledged to me that such company executed the within instrument pursuant to its articles of organization.



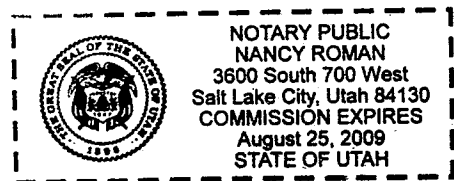
[Signature]
Notary Public

ACKNOWLEDGMENT OF UTA

STATE OF UTAH )
: ss.
COUNTY OF )

On this 20th day of May, 2008, before me personally appeared Jerry Benson and Kenneth D. Montague, Jr., to me personally known to be the Acting Gen Mgr and Treasurer of UTAH TRANSIT AUTHORITY, the corporation that executed the within instrument, known to me to be the person(s) who executed the within instrument on behalf of said corporation therein named, and acknowledged to me that such corporation executed the within instrument pursuant to its by-laws or a resolution of its board of directors.

[Signature: Nancy Roman]
Notary Public

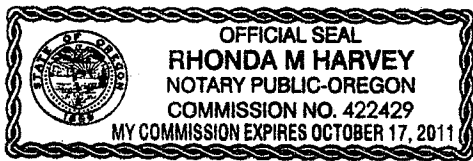


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ACKNOWLEDGMENT OF KINDERCARE

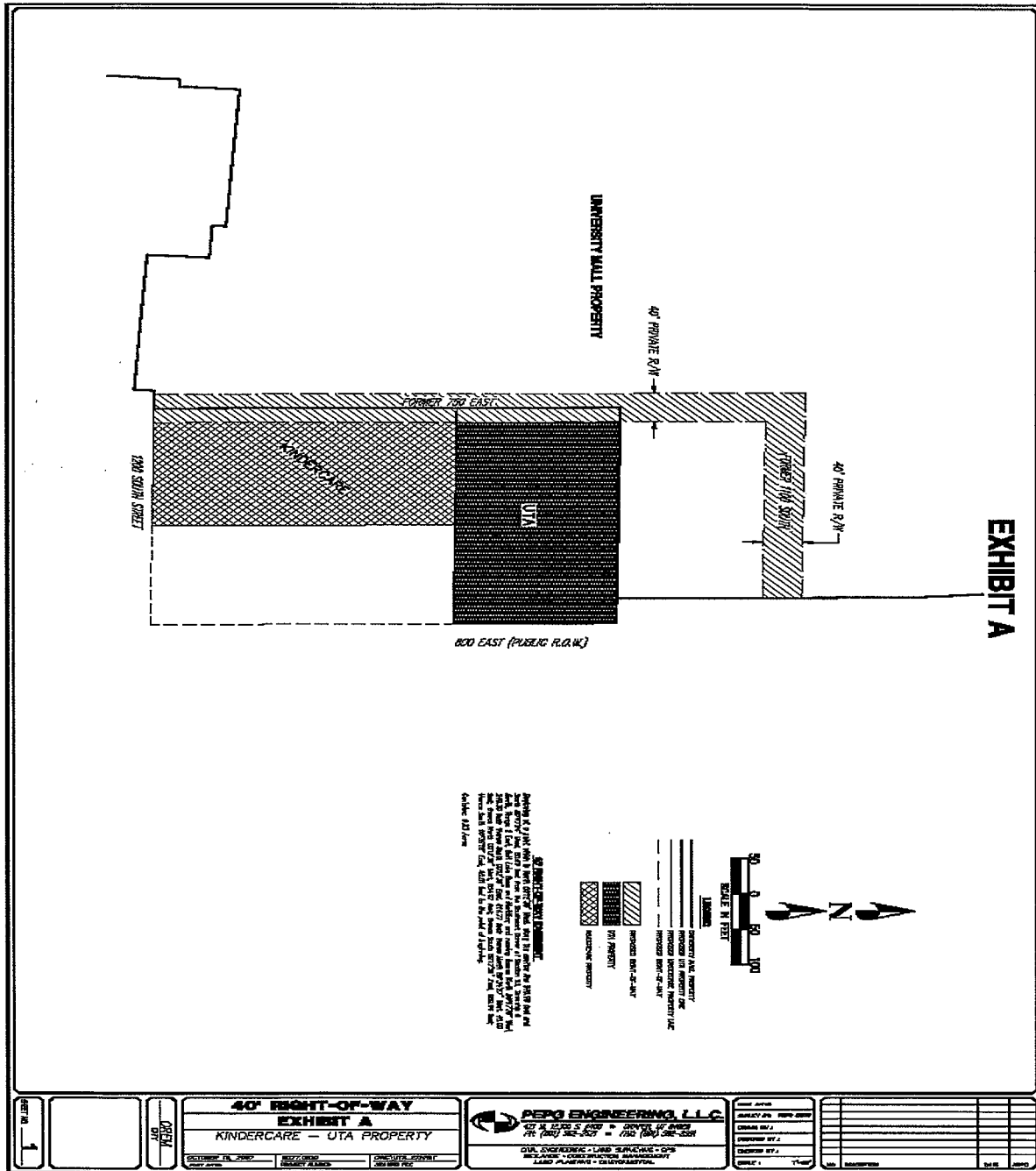
STATE OF OREGON )  
 ) ss.  
COUNTY OF MULTNOMAH )

This instrument was acknowledged before me on May 7, 2008, by Wayne Pipes as Vice President Facilities and Development of KinderCare Learning Centers, Inc., a Delaware corporation, in its capacity as Sole Member of KC Propco Holding II LLC, a Delaware limited liability company, in its capacity as Sole Member of KC Propco Holding I LLC, a Delaware limited liability company, in its capacity as Sole Member of KC Mezco II LLC, a Delaware limited liability company, in its capacity as Sole Member of KC Mezco I LLC, a Delaware limited liability company, in its capacity as Sole Member of KC Propco, LLC, a Delaware limited liability company.



*Rhonda M Harvey*  
Notary Public for Oregon  
My commission expires 10/17/2011

# EXHIBIT A PROPERTY SITE PLAN



## EXHIBIT B

## UNIVERSITY MALL PARCEL LEGAL DESCRIPTION

Beginning at a point which is North  $00^{\circ}12'36''$  West, along the section line 495.95 feet and South  $89^{\circ}47'24''$  West, 60.73 feet from the Southeast Corner of Section 23, Township 6 South, Range 2 East, Salt Lake Base and Meridian; and running thence North  $89^{\circ}17'36''$  West, 244.25 feet; thence South  $00^{\circ}12'36''$  East, 454.90 feet to a point on a 15.00 foot radius curve to the left; thence 23.30 feet along said curve through a central angle of  $89^{\circ}00'53''$  (chord bears South  $44^{\circ}43'02''$  East, 21.03 feet); thence North  $89^{\circ}34'27''$  West, 64.75 feet; thence North  $00^{\circ}12'36''$  West, 387.48 feet; thence North  $89^{\circ}17'35''$  West, 140.04 feet; thence South  $00^{\circ}06'50''$  East, 116.90 feet; thence North  $85^{\circ}58'00''$  West, 380.91 feet; thence South  $04^{\circ}02'00''$  West, 151.52 feet; thence North  $85^{\circ}58'00''$  West, 142.68 feet; thence South  $04^{\circ}06'35''$  West, 25.57 feet; thence North  $85^{\circ}57'35''$  West, 213.15 feet; thence North  $04^{\circ}02'25''$  East, 427.00 feet; thence South  $85^{\circ}57'35''$  East, 317.01 feet; thence North  $04^{\circ}02'25''$  East, 72.00 feet; thence South  $85^{\circ}57'35''$  East, 38.00 feet; thence North  $04^{\circ}02'25''$  East, 245.22 feet; thence South  $85^{\circ}58'00''$  East, 240.44 feet; thence North  $00^{\circ}12'35''$  West, 432.79 feet; thence South  $89^{\circ}10'36''$  East, 231.57 feet; thence South  $84^{\circ}26'32''$  East, 80.72 feet; to a point on a 202.00 foot radius curve to the left; thence 16.79 feet along said curve through a central angle  $4^{\circ}45'49''$  (chord bears South  $86^{\circ}49'26''$  East, 16.79 feet); thence South  $89^{\circ}12'21''$  East, 59.00 feet; thence South  $00^{\circ}11'36''$  East, 80.88 feet to a point on a 1165.35 foot radius curve to the left; thence 224.78 feet along said curve through a central angle of  $11^{\circ}03'09''$  (chord bears South  $05^{\circ}43'10''$  East, 224.43 feet); thence South  $11^{\circ}14'43''$  East, 25.86 feet to a point on a 1035.29 foot radius curve to the right; thence 197.96 feet along said curve through a central angle of  $10^{\circ}57'20''$  (chord bears South  $05^{\circ}46'03''$  East, 197.66 feet); thence South  $00^{\circ}17'24''$  East, 73.00 feet; thence South  $00^{\circ}35'18''$  East, 58.92 feet; thence South  $00^{\circ}10'05''$  East, 136.31 feet to the point of beginning.

Contains: 16.03 Acres

EXHIBIT C

UTA PARCEL LEGAL DESCRIPTION

All of Lot 1 of "Plat B UTA Subdivision" according to the official plat thereof on file and of record in the Utah County Recorder's office as Entry #64142, Map #7203.



EXHIBIT D

KINDERCARE PARCEL LEGAL DESCRIPTION

Entry # 16089  
Book: 4206 Page:7

Parcel 1:

All of Lot 6, Block 6, Plat "A", Clark Acres, Orem, Utah County, Utah, according to the official plat thereof on file in the office of the Recorder, Utah County, Utah.

Parcel 2:

All of Lot 7, Block 6, Plat "A", Clark Acres, Orem, Utah County, Utah, according to the official plat thereof on file in the office of the Recorder, Utah County, Utah.

Parcel 3:

Beginning at a point on the North line of the 1200 South Street, Orem, Utah, said point being North 27.85 feet and West 164.99 feet from the Southeast corner of Section 23, Township 6 South, Range 2 East, Salt Lake Base and Meridian; thence North 89 deg. 02' West along the North line of said 1200 South Street 125.24 feet; thence along the arc of a 15 foot radius curve to the right 23.32 feet (the chord bears North 44 deg. 29'25" West 21.04 feet; thence North 0 deg. 03' East 125.24 feet along the East line of 750 East Street; thence South 89 deg. 02' East 140.00 feet; thence South 0 deg. 03' West 140.00 feet to the point of beginning. (Basis of bearing is the East line of 750 East Street, Orem, UTAH, which is called North 0 deg. 03' East according to Clark Acres Subdivision.



EXHIBIT E

EASEMENT LEGAL DESCRIPTION

Beginning at a point which is North 00°12'36" West, along the section line 640.96 feet and South 89°47'24" West, 60.69 feet from the Southeast Corner of Section 23, Township 6 South, Range 2 East, Salt Lake Base and Meridian; and running thence North 89°17'36" West, 249.30 feet; thence South 00°12'36" East, 614.77 feet; thence North 89°34'27" West, 40.00 feet; thence North 00°12'36" West, 654.97 feet; thence South 89°17'36" East, 289.04 feet; thence South 00°35'18" East, 40.01 feet to the point of beginning.

Contains: 0.832 Acres

