

**FIRST AMERICAN TITLE
NCS 958069 PHX1**

When Recorded, Return to:

SimonCRE JC ASU V, LLC
6900 East 2nd Street
Scottsdale, AZ 85251
Attention: Joshua Simon

**DECLARATION OF EASEMENTS, COVENANTS,
CONDITIONS AND RESTRICTIONS**

THIS DECLARATION OF EASEMENTS, COVENANTS, CONDITIONS AND RESTRICTIONS (this "**Declaration**") is made as of the 17 day of September 2020 by and between SimonCRE JC ASU V, LLC, an Arizona limited liability company ("**Simon**") and MKG Investments, LLC, a Utah limited liability company ("**MKG**").

RECITALS:

A. Simon is the owner of that certain tract or parcel of land situated in the City of Syracuse, County of Davis, State of Utah, being more particularly described on **Exhibit B** attached hereto and made a part hereof by this reference (hereinafter referred to as the "**Simon Parcel**"); and

B. MKG is the owner of that certain tract or parcel of land situated in the City of Syracuse, County of Davis, State of Utah, being more particularly described on **Exhibit B** (hereinafter referred to as the "**MKG Parcel**"); with the Simon Parcel and the MKG Parcel being collectively referred to herein as the "**Parcels**" and depicted on the site plan attached hereto as **Exhibit A** (the "**Site Plan**").

C. The parties desire to clarify the obligations of Simon and MKG with regard to (i) access between the Parcels, and (ii) improvements to the MKG Parcel to be made by Simon.

NOW, THEREFORE, for and in consideration of Ten and No/100 Dollars (\$10.00), the premises, the mutual benefits to be derived by the provisions of this Agreement, and other good and valuable consideration, the receipt, adequacy and sufficiency of which are hereby acknowledged by the parties hereto, Simon and MKG do hereby covenant and agree as follows:

AGREEMENT:

NOW, THEREFORE, Simon and MKG hereby declare, for and on behalf of themselves, and all current and subsequent owners, that the Parcels and all portions thereof are now held and shall from and after the date hereof be acquired, held, conveyed, hypothecated, encumbered, leased, used, occupied and improved subject to the following easements, covenants, conditions, restrictions, reservations, servitudes, assessments, liens, charges and development standards, all of

which are declared to be in furtherance of a plan for the mutual and reciprocal benefit, common use and enjoyment, improvement of the Parcels and all portions thereof, and which are established for the purpose of enhancing and protecting the value of the Parcels, as follows:

TERMS:

**ARTICLE I
DEFINITIONS**

When used in this Declaration, the following capitalized terms shall have the following meanings:

1.1. **"Access Drives"** shall mean the access drive aisles and ancillary driveway corridors which provide interior access to the Simon Parcel from 1700 South depicted on the Site Plan. The Access Drives are intended to be paved and used for purposes of vehicular and pedestrian access, ingress and egress to the Parcels.

1.2. **"Improvements"** shall mean to survey, construct, repair, remove, replace, reconstruct, inspect, and improve the parking, curb and gutter, paving, dumpster enclosure, relocation of an existing light pole, and water line connection as detailed on the Improvement Plan attached hereto as **Exhibit C** to be used non-exclusively by Simon's agents, contractors, and employees.

1.3. **"Owner" or "Owners"** shall mean: (i) Simon, so long as Simon owns fee simple title to the Simon Parcel; (ii) MKG, so long as MKG owns fee simple title to the MKG Parcel; (iii) the subsequent holder(s) of fee simple title to the Simon Parcel and the MKG Parcel, whether by sale, assignment, inheritance, operation of law, trustee's sale, foreclosure, or otherwise.

1.4. **"Parking Easement"** shall mean the parking areas on the Simon Parcel and the MKG Parcel depicted on the Site Plan.

1.5. **"Person"** shall mean and refer to a natural individual, a corporation, a partnership, a limited liability company, association, a trust or any other legal entity.

1.6. **"Permittees"** shall mean the tenants(s) or lawful occupant(s) of the Parcels, and their respective employees, agents, contractors, customers, invitees, and licensees of (i) the Owner of such property, and/or (ii) such tenant(s) or occupant(s).

**ARTICLE II
EASEMENTS**

2.1. The Owners hereby grant and reserve for the Simon Parcel and the MKG Parcel, for the mutual and reciprocal benefit of the Owners of the Simon Parcel and the MKG Parcel and their respective Permittees, the following easements, for the purpose of exercising the rights herein granted:

(a) Non-exclusive easements for ingress, egress, driveway purposes and the reasonable passage of pedestrians and motor vehicles (including trucks and delivery vehicles) over, upon and across the Access Drives.

(b) An easement for limited access for entry pursuant to any self-help provisions of this Declaration for the purpose of performing any obligation which an Owner is required to perform under this Declaration but fails or refuses to perform within the applicable time period provided for herein.

2.2. No walls, fences, or barriers of any kind may be constructed or maintained by any party which prevent or impair the use or exercise of any of the easements granted herein.

2.3. In no event shall the access easement granted herein limit the building area of any current or future improvements on the Parcels.

2.4. Simon hereby grants to MKG and its successors and assigns a non-exclusive and unobstructed easement on, over, across, and upon that portion of the Parking Easement located on the Simon Parcel for the purpose of installing and thereafter using the parking stalls within such portions of the Simon Parcel in order to benefit the MKG Parcel, and no other purposes. MKG hereby grants to Simon and its successors and assigns a non-exclusive and unobstructed easement on, over, across, and upon that portion of the Parking Easement located on the MKG Parcel for the purpose of installing and thereafter using the parking stalls within such portions of the MKG Parcel in order to benefit the Simon Parcel, and no other purposes. The Parking Easement shall be for the non-exclusive benefit of the Owner of the MKG Parcel and the Simon Parcel, their Permittees, and, to the extent any of the Parcels are leased, transferred or assigned, to each and every tenant, occupant, successor and/or assign of the Properties.

2.5. MKG hereby grants to Simon and its contractors, agents, employees and licensees, for the sole purpose of constructing the Improvements on the MKG Parcel, a temporary construction easement on, over, upon, across, and through those portions of the MKG Parcel located on the Site Plan, for use in the normal course of construction activities. This temporary construction easement shall automatically terminate, without any further action by either party, upon the completion of the Improvements, as provided for herein. During any use of the temporary construction easement, Simon shall use good, reasonable and diligent efforts not to unreasonably interfere with any use or business operations upon MKG Parcel. Upon the completion of all work by Simon upon the MKG Parcel, such area shall be restored to the condition which existed prior to such work, except to the extent that such portion of MKG Parcel has been improved as a result of such work.

ARTICLE III CONSTRUCTION

3.1 Upon Simon's receipt of a City of Syracuse permit for the Improvements, and upon commencement of work on Simon's Parcel, Simon, at its sole cost and expense, shall construct, or

cause to be constructed, the Improvements, including the relocation of the existing dumpster on the MKG Parcel and the construction of the new dumpster enclosure.

ARTICLE IV TERM OF AGREEMENT

The covenants, conditions and restrictions contained in this Declaration shall be effective commencing on the date of recordation of this Declaration in the Official Records of Davis County, Utah and shall remain in full force and effect for a period of twenty (20) years from and after said date of recordation, and the easements granted and reserved herein shall continue in perpetuity, unless this Declaration is cancelled or terminated in accordance the terms hereof. Upon the expiration of the initial twenty (20) year period, the term of this Declaration shall be automatically extended for successive periods of ten (10) years each, unless on or prior to the then expiration date of this Declaration, the requisite number of Owners necessary to effect an amendment of this Declaration elect to terminate this Declaration as of the expiration of its term by an instrument to such effect executed, acknowledged and recorded in accordance with the terms hereof.

ARTICLE V MAINTENANCE

Each Owner shall be responsible for maintaining its own Parcel and the improvements thereon, in a good condition and repair, at such Owner's sole cost. Each Owner shall have the right to improve and the obligation to maintain and repair (and if necessary, to replace) the pavement within the portions of the Access Easement located on its own Parcel, as applicable. Further, no Owner shall install, erect, construct, or cause to be installed, erected or constructed, anything on the Access Easement area that may in any manner interfere with or restrict the rights granted herein.

ARTICLE VI INDEMNIFICATION AND INSURANCE

6.1 Indemnification.

(a) Each Owner covenants to and does hereby indemnify and hold harmless all other Owners and their respective Permittees for, from and against all claims and all costs, expenses and liabilities (including reasonable attorneys' fees) incurred in connection with all claims, including any action or proceeding brought thereon, arising from or as a result of any accident, injury, death, loss or damage whatsoever to any Person, or to the property of any Person, proximately caused by the acts or omission of such Owner or its Permittees and occurring on such Owner's Parcel, except to the extent of the negligence or intentional misconduct in whole or in part of another Owner or its Permittees.

(b) Each Owner having rights with respect to an easement granted hereunder covenants to and does hereby indemnify and hold harmless the Owner whose Parcel is subject to the easement for, from and against all claims and all costs, expenses and liabilities (including reasonable attorneys' fees) incurred in connection with all claims, including any action or proceeding brought thereon, arising from or as a result of any accident, injury, death,

loss or damage whatsoever to any Person, or to the property of any Person, proximately caused by the acts or omissions of such owner or its Permittees in the use of any such easement granted hereunder, except to the extent of the negligence or intentional misconduct in whole or in part of the Owner whose Parcel is subject to the easement or its Permittees.

(c) No Owner shall be liable to any other Owner or such Owner's Permittees for any mistakes or errors in judgment or for any other act performed or omitted hereunder if the same is not fraudulent, grossly negligent or in bad faith, and each Owner hereby expressly waives and relinquishes any and all claims against any other Owner on account thereof.

6.2 **Insurance by Owners.** Each Owner shall provide and maintain such policies of fire and extended coverage (all risk) insurance on all building(s) located on such Owner's Parcel (in an amount not less than eighty percent (80%) of the full replacement value thereof), and commercial general liability and property damage insurance protecting against loss or losses from liability imposed by law or assumed in any written contract (including this Declaration) and arising from personal injury (including bodily injury or death), and/or property damage, occurring in, on or about such Owner's Parcel, with a limit of liability of not less Two Million Dollars (\$2,000,000.00) combined single limit coverage. Such insurance shall be issued by insurance companies authorized to do business in the State of Utah having a rating in Best's Insurance Guide of A-/VII or better, and must be written on an occurrence basis so as to provide blanket contractual liability, broad form property damage coverage and coverage for products liability and completed operations. Each Owner agrees to furnish the other Owner's, upon written request, with certificates of insurance evidencing that insurance meeting the requirements hereof has been obtained and fully paid for by such Owner and is in full force and effect.

6.3 **Mutual Waiver.** The Owner of each Parcel, for itself, and, to the extent legally permissible, on behalf of its Permittees and insurance carriers, hereby waives the right of recovery against the other Owners for (a) any loss or damage to the Parcel of such Owner, (b) any loss or damage to the Buildings or other improvements in the Project or the contents thereof, and (c) any other direct or indirect loss or damage caused by fire or other risks, which loss or damage is or would be covered by the insurance required to be carried pursuant to this Article 6; provided, however, this waiver shall be effective only if and to the extent of actual recovery or payment under the applicable insurance policy or policies. Each Owner hereby covenants to obtain for the benefit of other Owner a waiver of any right of subrogation which the insurance carrier(s) of the waiving Owner may acquire against any other Owner by virtue of the payment of any such loss covered by such insurance.

ARTICLE VII AMENDMENTS

This Declaration may not be modified or amended in any respect, or cancelled, terminated or rescinded, in whole or in part, except as provided herein or by the written consent of each of the Owners of the Simon Parcel and the MKG Parcel, and then only by a written instrument fully executed and acknowledged by said parties and duly recorded in the Official Records of Davis County, Utah.

ARTICLE VIII
MISCELLANEOUS

8.1 **No Waiver.** No waiver of any term or condition of this Declaration shall be effective unless it is in writing and is signed by the person against whom enforcement of the waiver is sought, and then only in the particular circumstances specified. No failure by a person to exercise any right or privilege provided for in this Declaration, or to require timely performance of any obligation in strict accordance with the provisions of this Declaration, shall preclude the exercise of those rights or privileges or the enforcement of those obligations in different circumstances or upon the reoccurrence of the same or similar circumstances. Moreover, the exercise of any remedy provided for at law, in equity, or in this Declaration shall not impliedly preclude the exercise of any other remedy except when, and then only to the extent that, the other remedy is expressly forbidden or limited by the provisions of this Declaration.

8.2 **Warranty of Title.** Each Owner covenants and warrants that, as of the date of recording of this Declaration, it is the Owner in fee simple of its respective Parcel and that it has a good and lawful right to convey these easements herein granted. Each Owner and its successors and assigns hereby warrants and shall defend the right and title to the above-described easements unto each other Owner, their successors and assigns against the lawful claims of all persons claiming by, though or under any other Owner.

8.3 **Remedies.** In the event an Owner breaches the terms of this Declaration, the other Owner shall notify the breaching Owner and shall specify the breach. If such deficiencies are not corrected or the breach not cured within ten (10) days or such other period of time reasonably required if such cure cannot reasonably be completed within such ten (10) day period after receipt of such notice, then the non-breaching Owner shall have the right to cure the breach (even if such work must be undertaken on the defaulting Owner's parcel), and recover all costs and expenses related thereto from breaching Owner. Notwithstanding the foregoing, in the event that the failure to perform the work, or failure to perform the work in the manner required in this Declaration or the breach of this Declaration, creates an imminent danger of damage to persons or properties, or jeopardizes the continuance of business operations on the Simon Parcel or the MKG Parcel, no notice shall be required prior to an Owner commencing such work or commencing a cure. In addition to any other rights and remedies that may be available to the Owners hereunder, in the event that any Owner breaches any of the terms, conditions, obligations under this Declaration, the non-breaching Owner shall be entitled to full and adequate relief by injunction and/or all such other available legal and equitable remedies from the consequences of such breach from the breaching Owner. The rights and remedies of each Owner herein are intended to be cumulative, non-exclusive and exercisable singularly, consecutively or concurrently with any others.

8.4 **Notices.** All notices, requests, consents, demands and other communications required or which any party desires to give hereunder shall be in writing and shall be deemed sufficiently given or furnished if delivered by certified United States mail, postage prepaid, addressed to the party and sent to the address on file with the Maricopa County Assessor for delivery of property tax notices.

8.5 **Attorneys' Fees.** If any person commences litigation or other legal proceedings for a default under this Declaration, the prevailing party in that litigation shall be entitled to recover its costs and expenses, including reasonable attorneys' fees and expert witness fees, with attorneys' fees to be determined by the court and not a jury in that litigation.

8.6 **Interpretation.** As used in this Declaration, the masculine, feminine, and neuter gender and the singular or plural shall each be construed to include the other whenever the context so requires. This Declaration shall be construed as a whole and in accordance with its fair meaning, without regard to any presumption or rule of construction causing this Declaration or any part of it to be construed against the person causing this Declaration to be written. If any words or phrases in this Declaration have been stricken, whether or not replaced by other words or phrases, then this Declaration shall be construed (if otherwise clear and unambiguous) as if the stricken matter had never appeared and no inference shall be drawn from the former presence of the stricken matters or from the fact that those matters were stricken.

8.7 **Invalidity.** If any term, condition, or covenant of this Declaration is deemed to be invalid, illegal, or unenforceable, then the invalidity, illegality, or unenforceability shall not affect the remaining portion of that provision or any other provision of this Declaration.

8.8 **Effective Upon Recording.** This Declaration shall take effect upon its recordation in the Official Records of Davis County.

8.9 **Governing Law; Venue.** This Declaration shall be governed by and construed in accordance with the laws of the State of Utah without respect to choice-of-law principles.

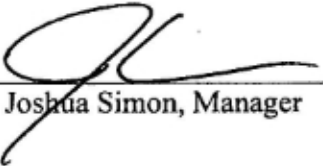
8.10 **Covenants to Run with Land.** It is intended that each of the easements, covenants, conditions, restrictions, rights and obligations set forth herein shall run with the land and create equitable servitudes in favor of the real property benefited thereby, shall bind every person having any fee, leasehold or other interest therein and shall inure to the benefit of the respective parties and their successors, assigns, heirs, and personal representatives.

8.11 **No Rights in Public.** Nothing contained herein shall be construed as creating any rights in the general public or as dedicating for public use any portion of the Parcels.

[SIGNATURES BELOW]

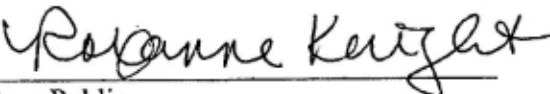
IN WITNESS WHEREOF, SimonCRE JC ASU V, LLC has caused this Declaration to be executed as of the date set forth above.

SimonCRE JC ASU V, LLC,
an Arizona limited liability company

By: 
Joshua Simon, Manager

STATE OF ARIZONA)
) ss.
County of Maricopa)

The foregoing instrument was acknowledged before me this 15th day of September, 2020 by Joshua Simon, the manager of SimonCRE JC ASU V, LLC, for and on behalf thereof.


Notary Public

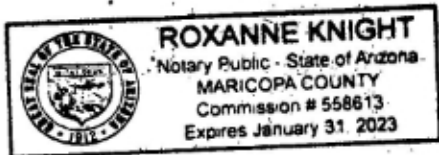


Exhibit A
Site Plan

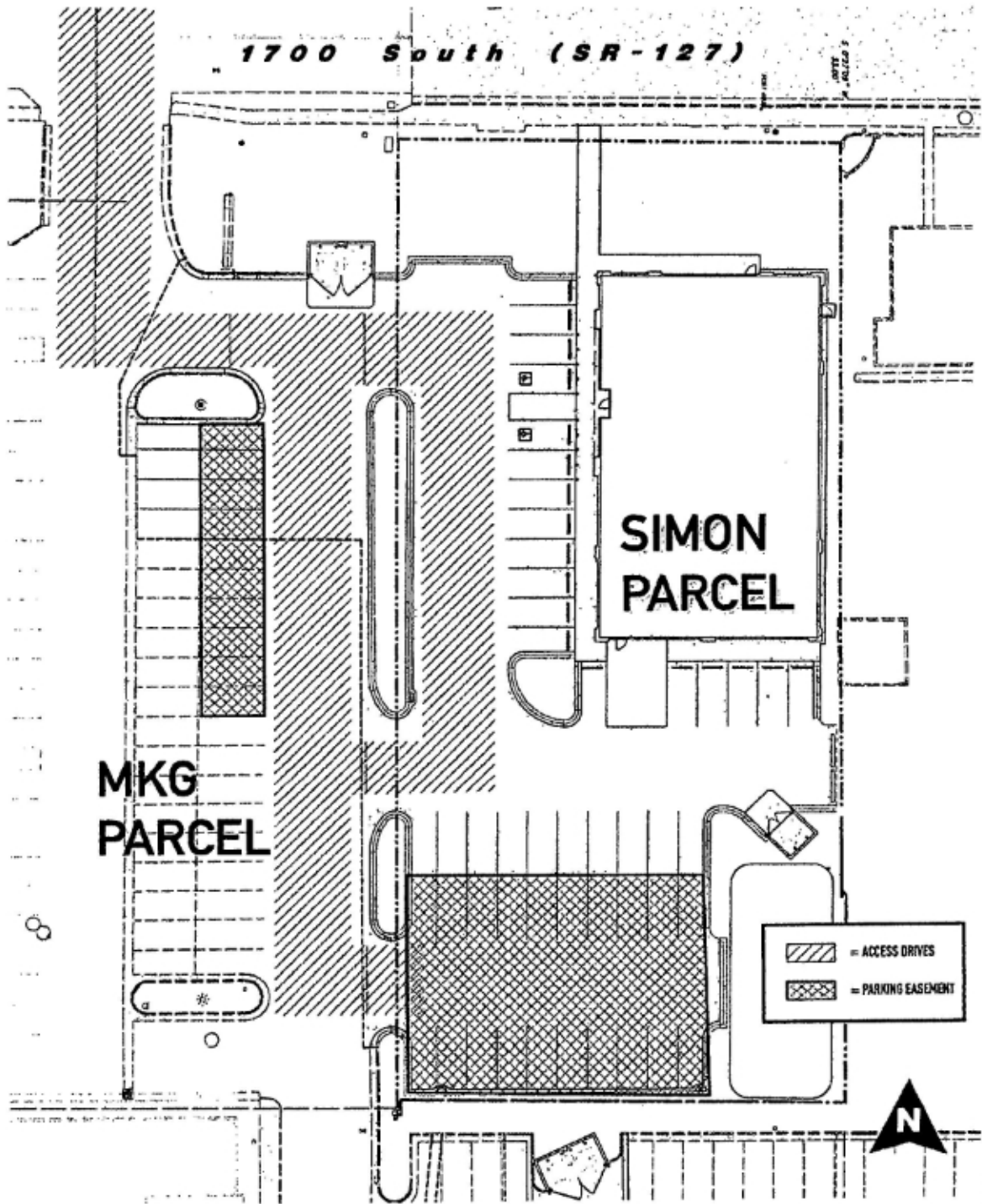


Exhibit B

Legal Description Simon Parcel and MKG Parcel

Simon Parcel

BEGINNING 5 CHAINS WEST FROM THE NORTHEAST CORNER OF SECTION 16, TOWNSHIP 4 NORTH, RANGE 2 WEST, SALT LAKE BASE AND MERIDIAN; THENCE SOUTH 5 CHAINS; THENCE WEST 2 CHAINS; THENCE NORTH 5 CHAINS; THENCE EAST 2 CHAINS TO THE POINT OF BEGINNING.

LESS AND EXCEPTING PORTION OF THE PROPERTY CONVEYED IN THAT CERTAIN WARRANTY DEED RECORDED AUGUST 07, 2008, AS ENTRY NO. 2384694, IN BOOK 4589, AT PAGE 705 OF OFFICIAL RECORDS,

ALSO AS DESCRIBED IN THAT CERTAIN WARRANTY DEED RECORDED SEPTEMBER 11, 2008, AS ENTRY NO. 2391787, IN BOOK 4613, AT PAGE 169 OF OFFICIAL RECORDS,

ALSO AS DESCRIBED IN THAT CERTAIN WARRANTY DEED RECORDED OCTOBER 16, 2008, AS ENTRY NO. 2398903, IN BOOK 4637, AT PAGE 506 OF OFFICIAL RECORDS, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE NORTHEAST CORNER OF SAID ENTIRE TRACT, WHICH POINT IS 330.00 FEET NORTH 89°11'50" WEST FROM THE NORTHEAST CORNER OF SAID SECTION 16; AND RUNNING THENCE SOUTH 00°48'10" WEST 33.00 FEET; THENCE NORTH 89°11'50" WEST 132.00 FEET TO THE WESTERLY BOUNDARY LINE OF SAID ENTIRE TRACT, AT A POINT 35.85 FEET RADIALLY DISTANT SOUTHERLY FROM THE CENTERLINE OF SAID PROJECT, OPPOSITE APPROXIMATE ENGINEERS STATION 31+87.66; THENCE NORTH 00°48'10" EAST 33.00 FEET TO THE NORTHERLY BOUNDARY LINE OF SAID ENTIRE TRACT; THENCE SOUTH 89°11'50" EAST 132.00 FEET TO THE POINT OF BEGINNING.

ALSO LESS AND EXCEPTING THEREFROM LOT 2, GERTGE BUSINESS PARK AND LOT 1 OF GERTGE BUSINESS PARK LOT 1 & RAMPTON MEDICAL PLAZA LOT 2 AMENDED, ACCORDING TO THE OFFICIAL PLATS THEREOF.

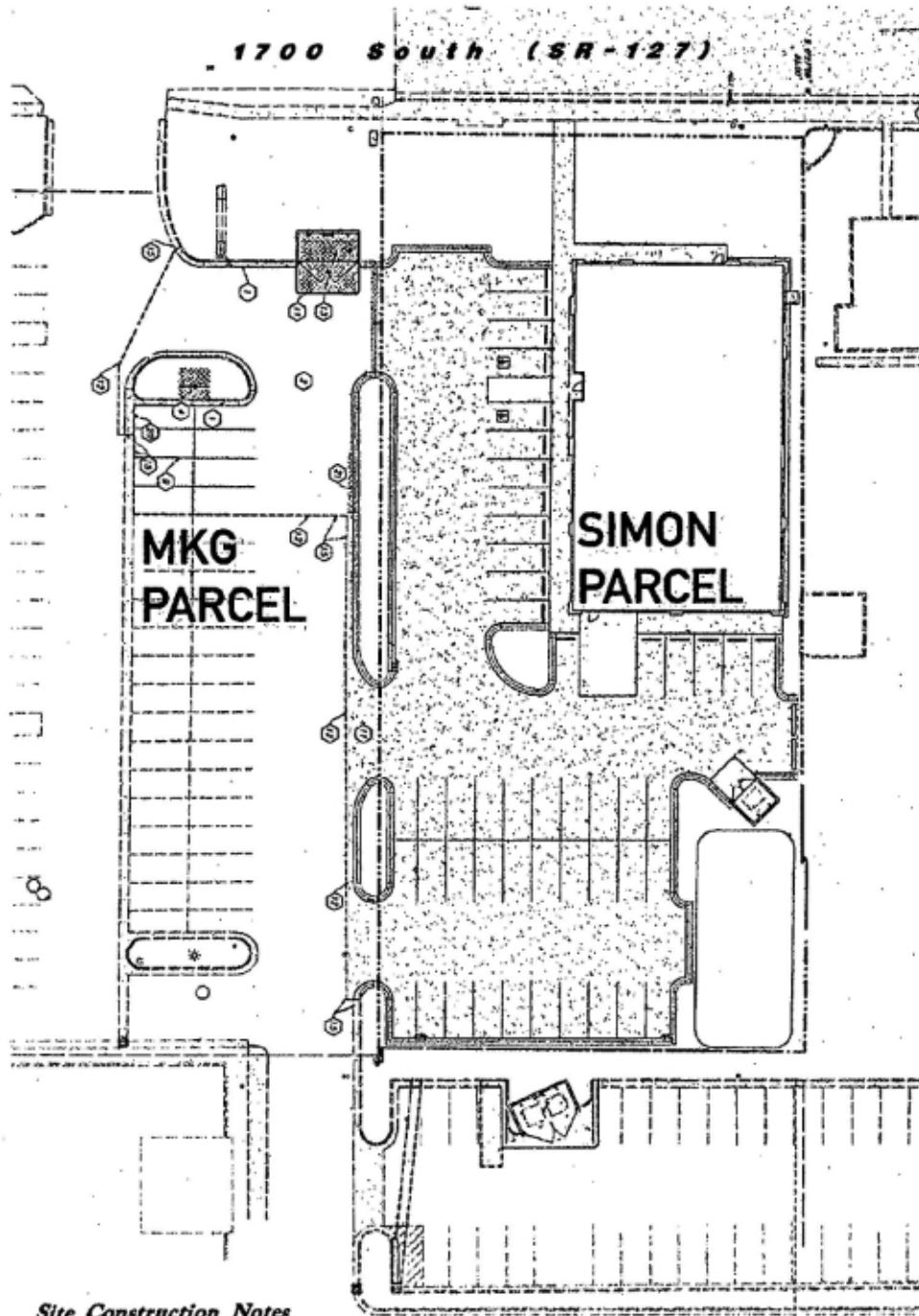
MKG Parcel

ALL OF LOT 2, GERTGE BUSINESS PARK ACCORDING TO THE OFFICIAL PLAT THEREOF, RECORDED IN THE OFFICE OF THE COUNTY RECORDER OF DAVIS COUNTY, STATE OF UTAH.

Address is: 2071 W. 1700 S., Syracuse UT 84075

Tax Parcel: 12-092-0146

Exhibit C
Improvement Plan



Site Construction Notes

- | | |
|---------------------------------------|--|
| 1 Const. 26" Curb & Gutter | 12 Sawcut. Provide Smooth Clean Edge |
| 2 Const. Heavy Duty Asphalt Paving | 13 Dumpster Enclosure |
| 3 Relocated Existing Light Pole | 14 Conn. & Match Existing Improvements |
| 4 Const. 4" White Paint Stripe (Typ.) | 15 Const. 3" Waterway |
| 5 Const. Heavy Duty Conc. Paving | 16 Const. 1" Waterline Conn. |

