

EASEMENT AGREEMENT

BETWEEN

CABELA'S WHOLESALE, INC.

AND

FARMINGTON CITY

E 2856184 B 6231 P 1289-1305
RICHARD T. MAUGHAN
DAVIS COUNTY, UTAH RECORDER
03/25/2015 03:24 PM
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DEP RTT REC'D FOR FARMINGTON CITY
CORP

08-500-0002

THIS EASEMENT AGREEMENT ("Agreement") is made and entered into as of the 24 day of March 2015, by and between FARMINGTON CITY, a municipal corporation and political subdivision of the State of Utah (together with its successors and Permitted Assignee(s), "City"), and CABELA'S WHOLESALE, INC., a Nebraska corporation (together with its successors and Permitted Assignee(s), "Owner").

RECITALS

WHEREAS, Owner is the contract purchaser of all or most of the Property described on Exhibit "A" (the "Property"), which Property forms a part of a larger commercial and/or mixed-use development (the "Development") in Farmington City, Utah; and

WHEREAS, Owner anticipates consummating its purchase of all or most of the Property for the intended purpose of constructing and operating a typical Cabela's "Next Generation" store with floor area of approximately 70,000 (+/-) square feet ("Store"), in addition to surface parking and ancillary improvements, which is expected to provide regional benefits to City; and

WHEREAS, the Parties will record this easement as a condition of final plat (the "Plat") approval and the easements will be referenced on the plat known as "Park Lane Commons, Phase 2", a current copy of which is attached hereto as Exhibit "B"; and

WHEREAS, the Parties, desiring that this Agreement will bind them and their successors and Permitted Assignee(s), as provided herein, and that its covenants will run with the land constituting the Property, enter into this Agreement for their mutual benefit.

WHEREAS, City ordinances generally require the installation of public improvements along streets fronting property to be subdivided or further developed; and

WHEREAS, the City is willing to grant Developer a deferral or waiver of the installation of public improvements including, but not limited to, landscaping and sidewalks on the northern boundary of the Property, (the "Improvements"), consistent with the promenade, a principal street depicted on the regulating plan set forth in Chapter 18 of the City's Zoning Ordinance;

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

1. **Incorporation of Recitals and Exhibits.** The foregoing recitals and each Exhibit to this Agreement are hereby incorporated into and made substantive terms of this Agreement.

2. **Grant of Easement.** For the sum on one dollar, (\$1.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Owner hereby grants and conveys to the City, its successors and assigns, a non-exclusive perpetual easement ("Easement"), ten feet in width, for the purpose of providing full and unrestricted pedestrian ingress and egress, and vehicular access limited to postal, fire, emergency medical service and police authorities and other authorities of the law, and to construct, maintain, operate, repair, inspect, and protect improvements, limited to sidewalk and associated landscaping, for such perpetual access, ingress and egress in, upon, over, and across a portion of Owner's property known (or to be known) as Lot 1 of the Park Lane Commons, Phase 2 subdivisions, according to the Plat, being ten (10) feet in width and abutting the Northern boundary of the Property, said easement area of the Easement being particularly described in Exhibit "A," attached hereto and incorporated herein by reference (the "Easement Area"). Said Easement shall be for use by the City and its invitees, designees, successors and assigns solely for the purposes set forth herein. Owner shall not build or construct, nor permit to be built or constructed, any building, structure, or other vertical improvement over or across said Easement Area, nor intentionally change the grade thereof, without the prior written consent of the City. Owner shall have the right to use the Easement Area for its own purposes so long as such use does not materially interfere with the rights herein granted. Subject to Article III below, Owner shall have no obligation to construct sidewalk, landscaping or other Improvements in the Easement Area. This easement grant shall be binding upon, and inure to the benefit of the successors and assigns of the Owner and the successors and assigns of the City, and may be assigned in whole or in part by City. Subject to Article III below, the City acknowledges and agrees that Owner shall have no obligation to construct, maintain, repair, restore or replace the Easement, Easement Area or any Improvements associated therewith as a result of the development of the Cabela's store and the land use approval granted for the Cabela's store or otherwise.

In the event the City determines to construct Improvements (or cause Improvements to be constructed) within the Easement Area, the City shall provide the Owner with prior written notice before the installation of any improvements pursuant to this Agreement (however, such improvements shall be limited to a sidewalk and associated landscaping). City shall construct, repair, restore and replace the Easement Area, and all improvements therein, but shall have no obligation for the clearing of snow and ice and the trimming and irrigation of landscaping and replacing of dead landscaping (as needed from time to time). Owner shall have the right to clear snow and ice from the Easement Area and/or trim and irrigate such landscaping and remove or replace any such dead landscaping. In the exercise of its rights and the performance of its obligations under this Agreement, the City agrees to use commercially reasonable efforts to minimize any interference with the commercial operations occurring on the Property specifically including but not limited to the Store.

3. **Installation of Improvements.** City hereby grants to Owner a deferral on the installation of Improvements not covered by Article II above along the Property's Northern Boundary within the Easement Area until such time that further site plan approval, building permits or any subdivision of the Property occurs (excluding any subdivision evidenced on the Plat), as provided below. If Owner applies for further land use approvals of the Property, as noted above, (excluding any subdivision evidenced on the Plat) and such applications are approved with conditions requiring Owner to install certain Improvements, then, as a condition to the development associated with such further approvals, Owner hereby agrees to pay for and cause to be installed

sidewalk, park strip and landscaping improvements and such other improvements as may be legally and lawfully required as a condition of approval of further development of the property along the Property's Northern Boundary frontage as set forth in the City's written conditions to such development approval. If Owner elects to proceed with the development associated with any such future development, then such Improvements shall be paid for and installed in accordance with the conditions imposed for approval of such development. The Parties reserve the right to set forth such rights and obligations associated with further development of the Property in an amendment to this Agreement or a separate agreement at such time as Owner applies for such further development.

4. Defaults and Remedies.

A. Default by a Party. A breach or default by the either Party under this Agreement ("Default") will be defined as such Party's failure to fulfill or perform any express material obligation of that Party stated in this Agreement (subject to Section IV.C below).

B. No Cross-Defaults. No default or breach by a Party arising under any agreement other than this Agreement will be construed as or constitute a Default under this Agreement or constitute a basis for the non-defaulting Party to assert or enforce any remedy against the defaulting Party under the terms of this Agreement. No Default by a Party arising under this Agreement will be construed as or constitute a default or breach of any agreement other than this Agreement or constitute a basis for the non-Defaulting Party to assert or enforce any remedy against the Defaulting Party under the terms of such other agreement(s). Without limiting any Party's other available remedies, no Default under this Agreement shall permit any Party to terminate this Agreement; however, a Party shall be entitled to injunctive relief as needed.

C. Notices of Default. In the event of a Default by either Party under this Agreement, the non-Defaulting Party will deliver written notice to the Defaulting Party of the Default, at the address specified in Section VI.K, and the Defaulting Party will have thirty (30) days from and after receipt of the notice to cure the Default without liability for the Default. If the Defaulting Party fails to cure such Default within such thirty (30) day period, then the non-Defaulting Party shall have the right to cure such Default, at the expense of the Defaulting Party, and the Defaulting Party agrees to reimburse the non-Defaulting Party for the reasonable costs and expenses incurred by the non-Defaulting Party in connection with curing such Default.

5. Representations. In addition to the other representations, warranties and covenants made by the Parties herein, the Parties make the following representations, warranties and covenants to each other, and may be held liable for any loss suffered as a consequence of any misrepresentation or breach under this Article V (and any other representations, warranties and covenants made herein).

A. Full Authority. Each Party has the full right, power and authority to enter into, perform and observe this Agreement.

B. Other Instruments. Unless otherwise specified herein, neither the execution of this Agreement, the consummation of the transactions contemplated hereunder, nor the

fulfillment of or the compliance with the terms and conditions of this Agreement by each Party will conflict with, violate or result in a breach of any terms, conditions, or provisions of, or constitute a default under, or result in the imposition of any prohibited lien, charge, or encumbrance of any nature under any agreement, instrument, indenture, or any judgment, order, law or decree to which either Party hereto is a party or by which either Party is bound.

C. Covenants. Each Party will keep and perform all of the covenants and agreements of such Party contained herein. Each Party acknowledges and agrees that the other Party is placing material reliance on this Agreement.

6. Miscellaneous Provisions.

A. Contract Formation. After this Agreement has been approved by official action of the City Council and executed by the Parties, this Agreement will constitute a contract between the Parties, the impairment of the obligations of which will be precluded pursuant to the Utah Constitution (and United States Constitution). The recording of this Agreement in the Public Records (with the execution of both Parties) will be deemed a conclusive determination that this Agreement has been approved by official action of the City Council. Owner's obligations under this Agreement are expressly contingent upon Owner acquiring title to the Property (or a material portion thereof), which shall be evidenced by the recording of a deed vesting title thereto in Owner.

B. Amendment of this Agreement.

1. Written Amendment Required. This Agreement may be amended, terminated or superseded only by mutual consent in writing of the Parties. No consent of any third party will be required for the negotiation and execution of any such amendment. If the Property is ever subdivided, then the owner of the largest portion of the Property shall be deemed to be the Owner hereunder with authority to make all decisions hereunder with respect to the Property.

2. Effectiveness and Recordation. Any such written amendment will be effective upon the later to occur of (a) execution by the Parties or (b) the date of City Council action approving such amendment.

C. Repealer. All orders, bylaws, ordinances, rules and resolutions of City or parts thereof inconsistent or in conflict with this Agreement are hereby repealed to the extent only of such inconsistency or conflict. Similarly, to the extent this Agreement conflicts with the Plat, the terms of this Agreement shall govern and control (however, the balance of the Plat shall remain unmodified and in full force and effect).

D. Assignment; Binding Effect. This Agreement is the valid, binding and legally enforceable obligation of the Parties and is enforceable in accordance with its terms. This Agreement may not be assigned or delegated by either Party without prior written consent of the other Party; provided, however, that Owner may assign and delegate this Agreement to a subsidiary or affiliate or to an entity which merges with Owner or to an entity which acquires all or substantially all of Owner's stock (or other ownership interest) or assets and this Agreement shall run to the benefit of successive owner of the Property (or

any portion thereof) from time to time (each, a "Permitted Transferee(s)" or "Permitted Assignee(s)") and may collaterally assign and delegate its rights to receive Funding Disbursements hereunder to a lender (a "Lender") providing construction and/or permanent financing with respect to the Property and the improvements thereon, without the prior written consent of City. Any purported assignment or delegation not in compliance herewith shall be null and void. This Agreement will extend to, inure to the benefit of, and be binding upon City, Owner and their respective Permitted Assignees. This Agreement will constitute an agreement running with the Property until modification or release by mutual agreement of the City and Owner or their respective permitted successors and assigns.

E. Relationship of Parties. This Agreement does not and will not be construed as creating a relationship of joint venturers, partners, or employer-employee between the Parties. No Party will, with respect to an activity, be considered as agent or employee of any other Party.

F. Entire Agreement. This Agreement contains the entire agreement between the Parties regarding the subject matter hereof and no statement, representation, promise or inducement (whether verbally or written) made by either Party or the agent of either Party that is not contained in this Agreement will be valid or binding.

G. Third Party Challenges. In the event of any Legal Challenge by a third party to the validity or enforceability of any provision of this Agreement, the Parties will cooperate in the defense of such challenge and will bear their own costs and attorneys' fees. Unless otherwise provided herein, during the pendency of any such Legal Challenge, the Parties will abide by and carry out all of the terms of this Agreement, unless otherwise ordered by a court of competent jurisdiction. If any Legal Challenge successfully voids, enjoins, or otherwise invalidates any constituent element of this Agreement, the Parties will cooperate to cure the legal defect and to process to completion such instruments as may be necessary or desirable to most fully implement the intent and purpose of this Agreement.

H. Severability of Provisions. If any term, provision, covenant or condition of this Agreement is held by a court of competent jurisdiction to be invalid, void or unenforceable, the remaining provisions of this Agreement will continue in full force and effect so long as enforcement of the remaining provisions would not be inequitable to the Party against whom they are being enforced under the facts and circumstances then pertaining, or substantially deprive such Party of the benefit of its bargain.

I. Applicable Law. This Agreement will be enforceable according to the laws of the State of Utah.

J. Reasonable Efforts. Each Party will use its reasonable efforts and will cooperate, where prudent, with regard to any other action as may be reasonably required to effectuate the intention of this Agreement.

K. Notices. Any notice or communication required or permitted under this Agreement must be in writing, and may be given either personally, by Federal Express or similar next-day delivery service, or by registered or certified mail, return receipt requested.

If given by registered or certified mail, the same will be deemed to have been given and received on the first to occur of (i) actual receipt by any of the addressees designated below as the Party to whom notices are to be sent, or (ii) five days after a registered or certified letter containing such notice, properly addressed, with postage prepaid, is deposited in the United States mail. If given by Federal Express or similar next-day delivery service (and sent by overnight or next-day service), a notice will be deemed to have been given and received on the immediately following business day. If personally delivered, a notice will be deemed to have been given and received when delivered to the Party to whom it is addressed. Any Party hereto may at any time, by giving written notice to the other Party hereto as provided in this Section VI.K, designate additional persons to whom notices or communications will be given, and designate any other address in substitution of the address to which such notice or communication will be given. Such notices or communications will be given to the Parties at their addresses set forth below:

To City:

Farmington City
160 S. Main
Farmington, Utah 84025
Attn: City Manager

To Owner:

Cabela's Wholesale, Inc.
Attn: Vice President of Property Development
One Cabela Drive
Sidney, NE 69160

With copy to:

Cabela's Incorporated
Attn: Legal Department – Real Estate
One Cabela Drive
Sidney, NE 69160

L. Authorization to Execute Documents. The Mayor and City Attorney and the City Engineer (collectively, "Authorized City Official") will, and are hereby authorized and directed to, take all actions necessary or appropriate to effectuate the provisions of this Agreement including, but not limited to, executing such certificates and affidavits on behalf of the City as may be reasonably required. The execution by any Authorized City Official of any document authorized or contemplated herein will be conclusive proof of the approval by City of the terms thereof.

M. Holidays. If the date for making any payment or performing any action hereunder falls on a legal holiday or a day on which the principal office of City is authorized or required by law to remain closed, such payment may be made or act performed on the next succeeding day that is not a legal holiday or a day upon which

the principal office of City is authorized or required by law to remain closed.

N. No Third Party Beneficiaries/Third Party Agreements. Nothing expressed or implied in this Agreement is intended or will be construed to confer upon, or to give to, any legal person other than the Parties (and Permitted Assignees), any right, remedy, or claim under or by reason of this Agreement or any covenants, terms, conditions, or provisions thereof, and all of the covenants, terms, conditions, and provisions in this Agreement by and on behalf of the Parties will be for the sole and exclusive benefit of the Parties (and Permitted Assignees). Nothing in this Agreement is intended to interfere with the agreements of the Parties with third parties. Nothing in this Agreement shall confer, grant to or establish any rights in the public in or to the Store or the land within the Property.

O. Attorneys' Fees. In the event of any litigation between the Parties hereto concerning the subject matter hereof, the substantially prevailing Party in such litigation will be entitled to receive from the non-prevailing Party, and will be awarded, in addition to the amount of any judgment or other award entered therein, all reasonable costs and expenses, including attorney fees, incurred by the substantially prevailing Party in such litigation.

P. Good Faith of Parties. In any situation under this Agreement where consent of one of the Parties is required, or where one of the Parties requests an extension of time, the Parties will act in good faith and will not unreasonably withhold, delay, deny, or condition any approval or consent required or contemplated by this Agreement.

Q. Further Assurances. Each Party will execute and deliver such documents or instruments and take such action as may be reasonably requested by the other Party to confirm or clarify the intent of the provision hereof and to effectuate the agreements herein contained and the intent hereof. This Agreement will be recorded in the public records.

R. Rights of Lenders and Interested Parties. City is aware that financing for acquisition, development, construction and/or permanent financing of the Property may be provided in whole or in part, from time to time, by one or more third parties, including, without limitation, lenders. In the event of any asserted default by Owner, City will provide notice of such asserted default, at the same time notice is provided to Owner, to any such interested party previously identified in writing to City by Owner. If such interested Parties are permitted, under the terms of its agreement with Owner to cure the default and/or to assume Owner's position with respect to this Agreement, City will recognize such rights of interested Parties and to otherwise permit such interested Parties to assume all of the rights and obligations of Owner under this Agreement.

S. Waiver. No waiver of one or more of the terms of the Agreement will constitute a waiver of other terms. No waiver of any provision of this Agreement in any instance will constitute a waiver of such provision in other instances.

T. Titles of Sections and Articles. Any titles of the several parts, articles and

sections of this Agreement are inserted for convenience or reference only and will be disregarded in construing or interpreting any of its provisions.

U. Exhibits and Attachments. All exhibits and attachments to this Agreement are hereby incorporated herein and deemed a part of this Agreement.

[Rest of this page intentionally left blank; signatures start on next page.]

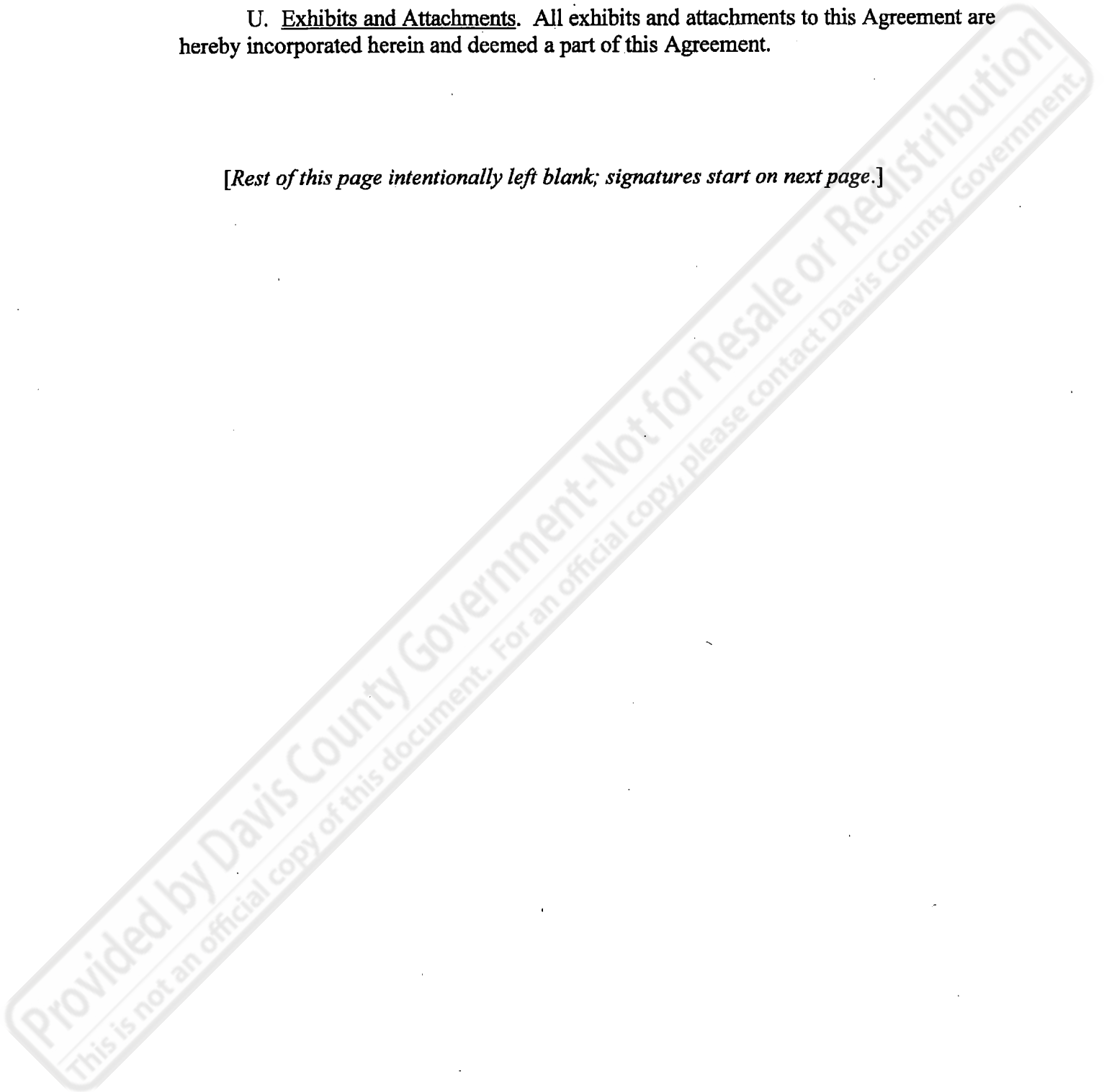
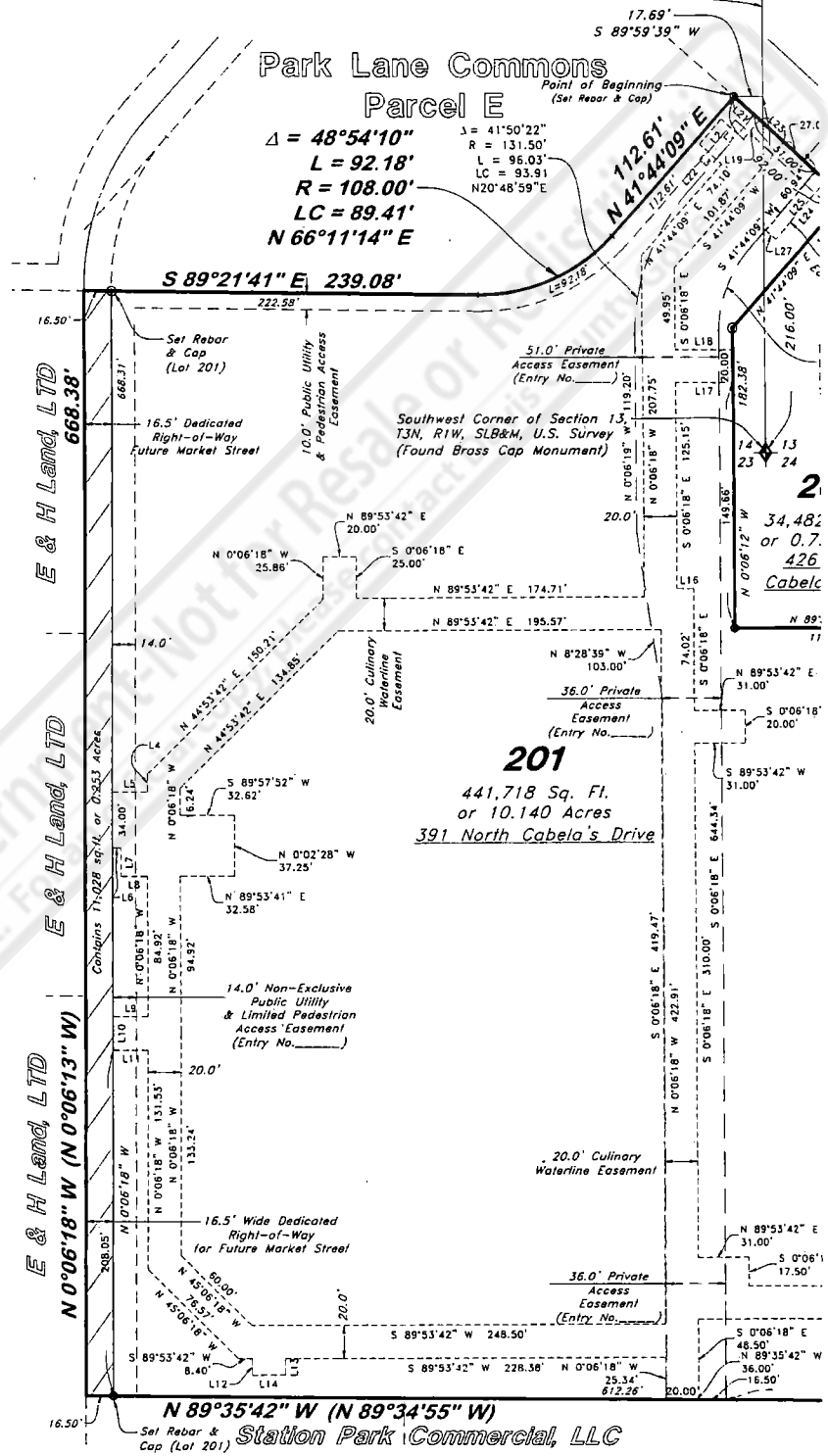


EXHIBIT B

Current Copy of Plat

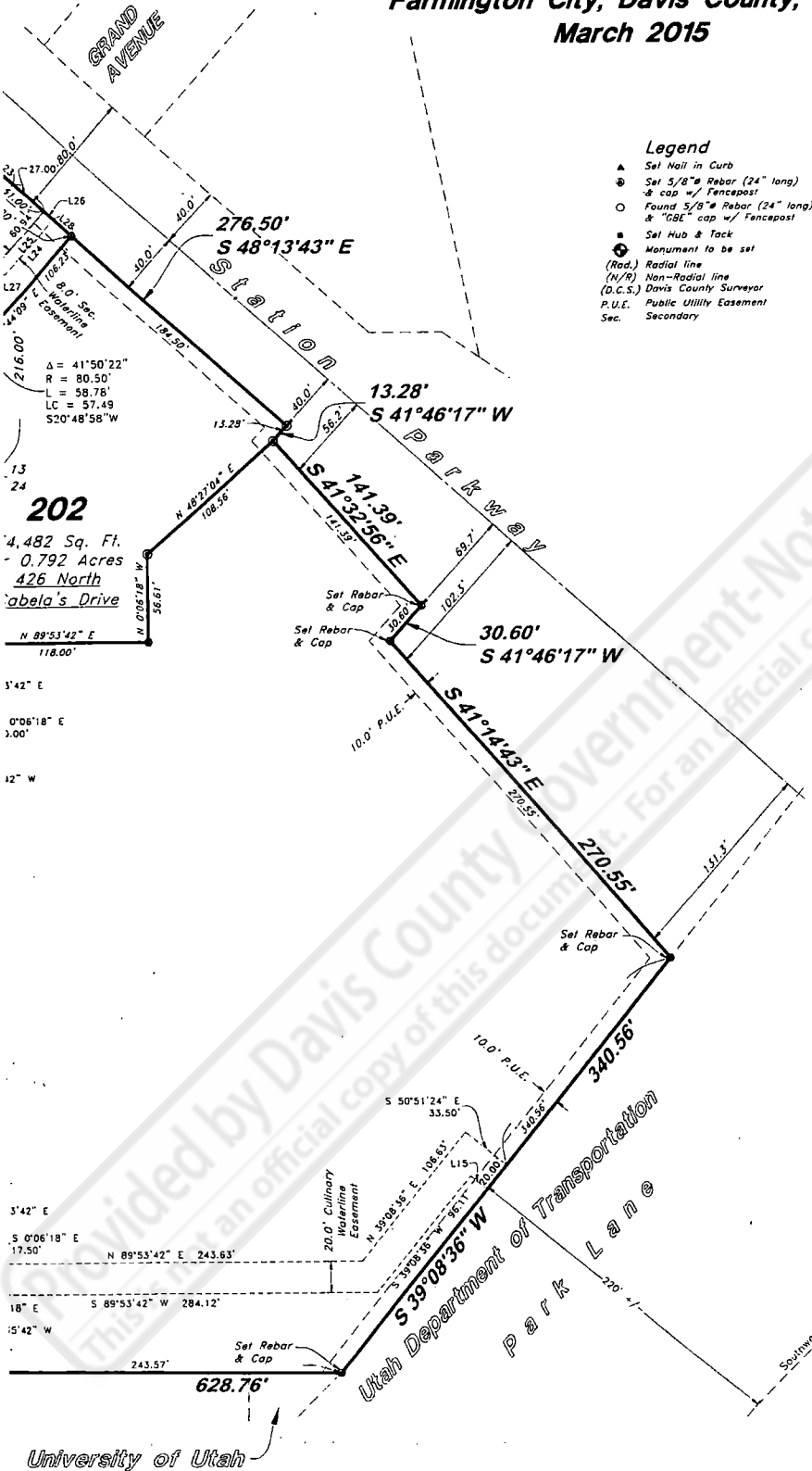
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West Quarter Corner
of Section 13, T3N,
R1W, SLB&M, U.S.
Survey (Found Brass
Cap Monument)
2636.85'
N 0°00'21" W
(Basis of Bearings)



Park Lane Commons - Phase 2

All of Parcel H, of Park Lane Commons Parcel E Amended and H,
being a part of Sections 13, 14, 23 & 24 T3N, R1W, SLB&M, U.S. Survey
Farmington City, Davis County, Utah
March 2015

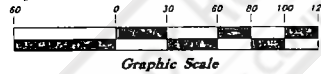


Legend

- ▲ Set Nail in Curb
- ⊙ Set 5/8" Rebar (24" long) & cap w/ Fencepost
- Found 5/8" Rebar (24" long) & "108" cap w/ Fencepost
- ⊕ Set Hub & Tack Monument to be set (Rad.) Radial line (N/R) Non-Radial line (D.C.S.) Davis County Surveyor P.U.E. Public Utility Easement Sec. Secondary



Scale: 1" = 60'



EASEMENT LINE DATA		
SEGMENT	LENGTH	BEARING
L1	18.00'	S 48°15'51" E
L2	20.00'	N 41°44'09" E
L3	18.00'	N 48°15'51" W
L4	10.56'	N 0°06'18" W
L5	21.25'	N 89°53'42" E
L6	5.00'	S 89°53'42" W
L7	17.25'	N 0°06'18" W
L8	16.25'	S 89°53'41" W
L9	21.25'	N 89°53'42" E
L10	20.00'	N 0°06'18" W
L11	21.25'	S 89°53'42" W
L12	10.00'	N 0°06'18" W
L13	10.00'	S 0°06'18" E
L14	20.00'	S 89°53'42" W

EASEMENT LINE DATA		
SEGMENT	LENGTH	BEARING
L15	13.54'	N 50°51'24" W
L16	10.00'	N 89°53'42" E
L17	35.00'	S 89°53'48" W
L18	35.00'	N 89°53'48" E
L19	15.42'	N 41°44'09" E
L21	16.58'	N 48°13'43" W
L22	60.97'	N 41°44'09" E
L23	20.00'	S 48°15'51" E
L24	47.48'	N 41°44'09" E
L25	47.48'	S 41°44'09" W
L26	8.00'	N 48°13'43" W
L27	8.00'	S 48°15'51" E
L28	15.92'	N 48°13'43" W

Sheet 1 of 2

DAVIS COUNTY RECORDER

ENTRY NO. _____ FEE PAID _____
FILED FOR RECORD AND
RECORDED _____ AT _____
IN BOOK _____ OF OFFICIAL
RECORDS, PAGE _____ RECORDED
FOR _____

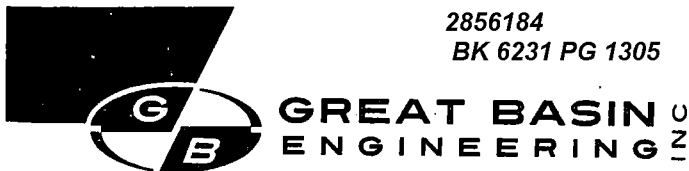
DAVIS COUNTY RECORDER

BY: _____ DEPUTY

EXHIBIT C

Easement Area

Provided by Davis County Government-Not for Resale or Redistribution
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March 20, 2015

Cabela's Farmington

10.0' Wide Public Utility & Pedestrian Access Easement

A part of Parcel H, of Park Lane Commons Parcel E Amended and H, in Farmington City, Davis County, Utah being a part of the Southeast Quarter of Section 14, Township 3 North, Range 1 West, Salt Lake Base & Meridian;

Beginning at the Most Easterly corner of Parcel E of Park Lane Commons Parcel E Amended and H, in Farmington City Davis County Utah, said point being on the Southwesterly right of way line of Station Parkway; said point is 216.00 feet North 00°00'21" West along the Section line and 17.69 feet South 89°59'39" West from the Southeast Corner of Section 14; and running thence South 48°13'43" East 10.00 feet along said Southwesterly right of way line; thence South 41°44'09" West 112.61 feet to a point of curve; thence Southwesterly along the arc a 118.00 foot radius curve to the right a distance of 100.71 feet (Central Angle equals 48°54'10", and Long Chord bears South 66°11'14" West 97.69 feet) ; thence North 89°21'41" West 222.45 feet; thence North 00°06'18" West 10.00 feet to the North boundary line of said Parcel H; thence three (3) courses along said North boundary line as follows: (1) South 89°21'41" East 222.58 feet to a point of curve; (2) Northeasterly along the arc a 108.00 foot radius curve to the left a distance of 92.18 feet (Central Angle equals 48°54'10", and Long Chord bears North 66°11'14" East 89.41 feet); and (3) North 41°44'09" East 112.61 feet to the point of beginning.

44 08-500-0002

Contains 4,315 square feet

