

**AGREEMENT
AS TO EASEMENTS AND
RESTRICTIONS**

THIS AGREEMENT, (hereinafter "Agreement") is made to be effective as of the _____ day of December, 2004, by and between **Aaron Smith, James F. Smith and Brenda A. Smith, and/or Assigns**, hereinafter referred to as "Smiths" and **Pugh Capital Investment, L.C.**, a Utah Limited Liability Company, hereinafter referred to as "Pugh," or "Declarant."

RECITALS

Pugh is the fee owner of that certain real property situated in the County of Iron, State of Utah, hereinafter referred to as the "Property," more particularly described in Exhibit "A;" which shall be subdivided into parcels and ultimately conveyed to other parties as indicated in the Site Plan (defined below) and

WHEREAS, Smiths, under a Real Estate Purchase Agreement with Pugh dated 29th day of Oct, 2004, shall be, upon closing of that Agreement, fee owner of that certain real property situated at Providence Center Drive, in the County of Iron, State of Utah, hereinafter referred to as the "Owner Parcel," more particularly described in Exhibit "B;" and

WHEREAS, Smiths and Pugh desire that the Owner Parcel and adjoining, or nearby Parcels, as set forth in the Site Plan, East of Providence Center Drive, attached hereto as Exhibit "C" and hereinafter referred to as the "Parcels" or "Parcel", be operated in conjunction with each other in an orderly fashion, allowing customer traffic to flow efficiently and safely between such Parcels and the Owner Parcel; and

WHEREAS, Smiths and Pugh desire to acknowledge this Agreement in this fully integrated, binding and enforceable writing and shall encumber the Owner Parcel and the Parcels;

NOW, THEREFORE, for good and valuable consideration, the receipt of which is hereby acknowledged, and in consideration that the following easements shall be binding upon the parties hereto and shall attach to and run with the Owner Parcel and shall be for the benefit of, and shall have limitations upon, all future Owners, Occupants or tenants of the Parcels, the parties do hereby agree as follows:

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PATSY CUTLER - IRON COUNTY RECORDER
2005 FEB 02 15:12 PM FEE \$33.00 BY PTC
REQUEST: SD UTAH TITLE CO/CEDAR CITY

DEFINED TERMS

Owner: Owner shall mean one or more persons or entities who are alone or collectively the record owner of fee simple title to a Parcel, including Pugh, or the vendee under an installment land sales contract, but excluding those having such interest merely as security for the performance of an obligation.

Occupants: Occupant shall mean and include Pugh, Owner, and their respective heirs, successors and assigns (including Mortgagees) and any person or entity who shall be, from time to time, entitled to the use and occupancy of space located within the Property, including the Owner Parcel and the Parcels, under any lease, sublease, license, concession agreement, or other instrument or arrangement under which such rights are acquired.

Permittees: Permittees shall mean all Occupants and all customers, employees, licensees and other business invitees of Occupants.

Parcel: Parcel shall mean any lot or parcel shown on Exhibit C to the extent such lots or parcels are part of the Property excluding, however, dedicated public rights-of-way and Common Facilities. If two or more contiguous parcels are held by the same Owner, such commonly owned parcels may not be combined and treated as a single Parcel for purposes of this Agreement and

the construction and location of any building or improvement thereon shall be subject to the restrictions and easements set forth in this Agreement. References in this Agreement to a specific Parcel shall refer to that particular Parcel as identified and set forth in Exhibit C. **Common Areas:** Common Areas shall mean all parts of each Parcel which are, from time to time, devoted primarily to parking, approaches, exits, entrances, sidewalks, exterior landscaping, incidental and interior roadways, service roads and other similar areas.

Common Facilities:

Building Footage: Building Footage for each respective Parcel shall mean the total square footage contained within the Building or Buildings constructed on that Parcel as measured from outside wall to outside wall and not including basements or mezzanines but including multiple stories or levels.

ACCESS EASEMENTS

Grant of Easements.

The following nonexclusive easements are hereby reserved and established for the benefit of each Owner, and the Occupants and Permittees of each Owner:

(a) Nonexclusive easement over, upon, across and between the Common Areas of each Parcel for the purpose of pedestrian traffic between each Parcel and (1) each other Parcel which is contiguous thereto; (2) the public streets and alleys now or hereafter abutting or located on any portion of the Property; (3) the Common Facilities; (4) the parking areas now and hereafter located on each Parcel; and (5) the Common Areas located on each Parcel; limited, however, to those portions of each Parcel which are improved by the Owner thereof, from time to time, for pedestrian walkways and made available by such Owner for general use, as such portions may be reduced, increased or relocated from time to time by each such Owner.

(b) Nonexclusive easement over, upon, across and between each Parcel for the purpose of vehicular traffic to each Parcel and (1) each other Parcel which is contiguous thereto; (2) the public streets and alleys now or hereafter abutting or located on any portion of the Property; and (3) the Common Facilities; limited, however, to those portions of the Property which are improved by the Owner thereof, from time to time, for vehicular access-ways as such portions may be relocated from time to time by such Owner.

(c) Nonexclusive easement over, upon, across and between the access points and driving lanes, from time to time, established on each Parcel for the purpose of providing ingress, egress, and access to (1) the easements hereby created; (2) the public streets and alleys now or hereafter abutting any portion of the Property; (3) the Common Areas; and (3) the Common Facilities.

(d) Nonexclusive easement in and to the parking areas, from time to time, located on each Parcel for access to and use for vehicular parking purposes.

Extension of Easements.

Each Parcel, whether now existing or whether in the future existing, as defined in accordance with the provisions of this Agreement, shall have appurtenant thereto, and shall be benefitted and burdened by, as applicable, the easements herein granted. Each Owner shall be entitled to the benefit of the easements herein granted and shall be entitled to permit each Occupant, together with any agent, contractor, licensee, employee and any business customer, invitee and guest of said Owner and/or Occupant ("Other Users"), the non-exclusive right to enjoy the benefits of the easements herein granted, but said Owner's and Other User's use and enjoyment of its Parcel shall be subject to and burdened by the easements also herein granted.

Maintenance of Respective Parcels and Easement Area.

At all times during the term of this Agreement, Smiths and Pugh shall keep and maintain their respective parcels, driveways and parking areas in a clean and slightly condition and in good condition and repair. This obligation shall be binding and imposed upon all subsequent and future owners, occupants or tenants of the Parcels.

Obstructions on Easements Areas.

Pugh and Smiths hereby covenant and agree that neither shall construct or maintain, or cause to be constructed or maintained, any walls, fences, buildings, structures or barriers on the Parcels which shall prevent or impair the use or exercise of the easements granted herein.

Benefits and Burdens.

The benefits and burdens of the easements established herein shall run with the land.

NON-TRANSFER OF COMMON AREAS

The Common Area held by Smiths or Pugh shall not be transferred, pledged leased, or alienated in any way, except upon the conveyance or encumbrance of the appurtenant entire Owner's Parcel, and then only to the transferee or Mortgagee of such Owner's Parcel or the Parcels. Any attempt to separate the Common Area from the rest of the appurtenant Owner's Parcel or the Parcels shall be void and of no effect.

TAXES AND INSURANCE

Taxes.

The Owner of each Parcel shall be solely and separately liable for the payment of all real property taxes and assessments levied against said Parcel, and no Owner shall have any liability for any tax or assessment levied against any of the other parcels.

Insurance.

The Owner of each Parcel shall obtain and keep in force, for so long as this Agreement remains in effect, a policy of General Liability and Property Damage Insurance providing coverage in an amount not less than \$1,000,000 per occurrence, insuring the owner thereof against any liability or damage arising out of the ownership, use and/or maintenance of each Parcel. Each Owner further agrees to name the other Parcel Owners as an additional insured on such policy with the provision that such policy cannot be cancelled without thirty (30) days prior notice thereof to the additional named insured.

NO INCREASE IN BUILDING FOOTAGE

Once the Building Footage has been approved by the Architectural Committee set forth in the CC&R's for The Providence Center, Cedar City, Utah, that Building Footage shall remain unchanged unless first obtaining the written consent of Pugh. This shall be of no further force and effect once Pugh no longer owns any of the Parcels.

NO VARIANCE IN BUILDING LOCATION ON PARCEL NOR ITS DIMENSIONS

Once the Building's location on the Parcel, and the Building's height, width and length dimensions have been approved by the Architectural Committee set forth in the CC&R's for The Providence Center, Cedar City, Utah, that Building location and those height, width and length dimensions shall remain unchanged without the written consent of Pugh. This shall be of no further force and effect once Pugh no longer owns any of the Parcels.

MISCELLANEOUS

(a). **Notices.** Any notice required or permitted to be delivered hereunder shall be deemed to be delivered (a) when delivered, if personally delivered or by an overnight or other courier service, or (b) whether or not actually received, when deposited in the United States mail,

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postage prepaid, certified mail, return receipt requested, addressed as follows or such other address as the parties shall hereafter designate in writing:

Pugh Capital Investment L.C.
288 North Westview Drive
Cedar City, Utah 84720

Aaron Smith, James F. Smith,
Brenda A. Smith, and/or Assigns
14935 New Vista Place
Hacienda Heights, California 91745

(b). **Effective Date.** All references to the "date of this Agreement" or the "date hereof" or similar references shall be deemed to mean the date first written above.

(c). **Governing Law.** THIS AGREEMENT SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF UTAH.

(d). **Attorneys' Fees.** In the event that a legal action is brought to enforce the terms of this Agreement, the prevailing party shall be entitled to collect its costs, including court fees and reasonable attorneys' fees.

(e). **Interpretation.** Smiths and Pugh acknowledge that each party and its counsel have reviewed this Agreement, or have determined that they have read and understand this Agreement without the assistance of counsel, and that the normal rule of construction to the effect that any ambiguities are to be resolved against the drafting party shall not be employed in the interpretation of this Agreement or any amendments of exhibits hereto.

(f). **Severability.** If any provision of this Agreement is held to be illegal, invalid or unenforceable under present or future laws, such provision shall be fully severable, and this Agreement shall be construed and enforced as if such illegal, invalid or unenforceable provision had never comprised a part of this Agreement, and the remaining provisions of this Agreement shall remain in full force and effect and not be affected by the illegal, invalid or unenforceable provision or by its severance from this Agreement, provided that both parties may still effectively realize the complete benefit of the transaction contemplated hereby.

(g). **Amendments.** No modification or amendment of this Agreement shall be effective unless made in writing and executed by both parties. In the event any approval or consent is required pursuant to any provision of this Agreement, such approval or consent shall be deemed given only if it is in writing, executed by the party whose approval or consent is required.

(h). **Further Documents.** Both Smiths and Pugh shall execute such documents hereafter from time to time as may be required to carry out the respective obligations of the parties hereunder.

(i). **Indemnification:** The Owner of each Parcel shall indemnify and save the other Owners harmless from any and all claims, damages, liens, losses, costs, expenses and other liabilities founded upon, arising out of, or otherwise relating to a breach of this Agreement by the Owner of said Parcel, and/or any uninsured or under insured acts or omissions of the Owner of said Parcel, or his tenants and lessees, or their respective customers, clients, guests, suppliers, employees and invitees.

IN THE WITNESS WHEREOF, authorized representatives of the respective parties have executed this Agreement as of the day and year written above.

Pugh Capital Investment, L.C.

By: [Signature]
Thomas A. Pugh
Managing Director

[Signature]
Aaron Smith

[Signature]
James F. Smith

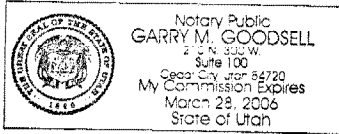
Brenda A. Smith

STATE OF UTAH)
) ss.
COUNTY OF IRON)

On the 3/5 day of ~~December~~ JANUARY 2005, 2004, personally appeared before me Thomas A. Pugh known to me to be the managing director of **Pugh Capital Investment L.C.**, a limited liability company, who executed foregoing instrument and acknowledge to me that said Agreement was signed on behalf of said limited liability company by authority of its managing director.

[Signature]
Notary Public
Residing at SCARLETT, UT

My commission expires:
3/23/2006



STATE OF CALIFORNIA)
) ss.
COUNTY OF LOS ANGELES)

On the 25th day of ~~December~~ JANUARY 2005, 2004, personally appeared before me, **Aaron Smith**, respectively, personally known to me to be the person whose name is subscribed to the foregoing instrument, who acknowledged to me that he executed the said instrument at his own free and voluntary act for the purposes therein set forth.

[Signature]
Notary Public
Residing at LOS ANGELES
CALIFORNIA

My commission expires:
JUNE 10th 2005

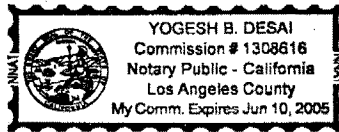


EXHIBIT A

OVERALL PARCEL EAST OF PROVIDENCE CENTER DRIVE

COMMENCING AT THE SOUTHWEST CORNER OF SECTION 22, TOWNSHIP 36 SOUTH, RANGE 11 WEST, OF THE SALT LAKE BASE MERIDIAN; THENCE N0°09'20"W, 2239.41 FEET; THENCE N90°00'00"E, 1213.51 FEET TO THE POINT OF BEGINNING; THENCE S12°08'19"W, 1121.56 FEET TO A NON-TANGENT CURVE TO THE RIGHT, HAVING A RADIUS OF 246.48 FEET, AND A CENTRAL ANGLE OF 29°15'22". RADIUS POINT BEARS N49°32'25"W. THENCE SOUTHWESTERLY ALONG SAID CURVE 125.86 FEET TO A POINT OF REVERSE CURVATURE HAVING A RADIUS OF 1084.93 FEET AND A CENTRAL ANGLE OF 17°25'33"; THENCE SOUTHWESTERLY ALONG SAID CURVE 329.97 FEET TO A NON-TANGENT CURVE TO THE LEFT, HAVING A RADIUS OF 1245.00 FEET, AND A CENTRAL ANGLE OF 02°32'36". RADIUS POINT BEARS N64°50'39"W. THENCE NORTHEASTERLY ALONG SAID CURVE 55.26 FEET; THENCE N22°36'45"E, 473.15 FEET TO A CURVE TO THE LEFT HAVING A RADIUS OF 915.00 FEET AND A CENTRAL ANGLE OF 28°30'49"; THENCE NORTHERLY ALONG SAID CURVE 455.36 FEET; THENCE N05°54'04"W, 156.76 FEET; THENCE N84°05'56"E, 118.30 FEET; THENCE N08°19'46"E, 68.45 FEET; THENCE N30°24'32"E, 88.38 FEET; THENCE N08°19'46"E, 54.22 FEET; THENCE N01°24'13"W, 50.10 FEET; THENCE N40°18'04"E, 16.91 FEET; THENCE N53°19'46"E, 11.57 FEET; THENCE S81°40'14"E, 9.41 FEET TO A NON-TANGENT CURVE TO THE RIGHT, HAVING A RADIUS OF 1150.00 FEET, AND A CENTRAL ANGLE OF 05°29'51". RADIUS POINT BEARS S08°09'45"W. THENCE EASTERLY ALONG SAID CURVE 110.34 FEET; THENCE S70°49'42"E, 58.25 FEET TO THE POINT OF BEGINNING. CONTAINING 7.022 ACRES.

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EXHIBIT B

PARCEL 1 (NORTH PARCEL):

COMMENCING AT THE SOUTHWEST CORNER OF SECTION 22, TOWNSHIP 36 SOUTH, RANGE 11 WEST, OF THE SALT LAKE BASE MERIDIAN; THENCE N01°09'20"W, ALONG THE SECTION LINE 2,035.30 FEET; THENCE N90°00'00"E, 1,165.50 FEET TO THE POINT OF BEGINNING; THENCE S12°08'19"W, 476.95 FEET; THENCE N77°51'41"W, 142.18 FEET; THENCE N81°10'41"W, 79.36 FEET TO A NON-TANGENT CURVE TO THE LEFT, HAVING A RADIUS OF 915.00 FEET AND A CENTRAL ANGLE OF 14°43'23", RADIUS POINT BEARS N81°10'41"W. SAID POINT ALSO BEING ON THE EASTERLY RIGHT-OF-WAY LINE OF PROVIDENCE CENTER DRIVE; THENCE NORTHERLY ALONG SAID CURVE AND ALONG SAID RIGHT-OF-WAY LINE 235.12 FEET; THENCE N05°54'04"W, 156.76 FEET; THENCE DEPARTING SAID RIGHT-OF-WAY LINE AND RUNNING N84°05'56"E, 329.60 FEET TO THE POINT OF BEGINNING. CONTAINING 2.596 ACRES.

SUBJECT TO AND TOGETHER WITH A 36.00 FOOT SHARED ACCESS EASEMENT 18.00 FEET EACH SIDE OF THE FOLLOWING DESCRIBED CENTER LINE:

COMMENCING AT THE SOUTHWEST CORNER OF SECTION 22, TOWNSHIP 36 SOUTH, RANGE 11 WEST, OF THE SALT LAKE BASE MERIDIAN; THENCE N01°09'20"W, ALONG THE SECTION LINE 2,001.41 FEET; THENCE N90°00'00"E, 836.91 FEET TO THE POINT OF BEGINNING. SAID POINT ALSO BEING LOCATED ON THE EASTERLY RIGHT-OF-WAY LINE OF PROVIDENCE CENTER DRIVE; THENCE N84°05'56"E, 329.60 FEET TO THE EAST LINE OF SAID PARCEL, TO THE POINT OF ENDING.

SUBJECT TO A 20.00 FOOT DRAINAGE EASEMENT 10.00 FEET EACH SIDE OF THE FOLLOWING DESCRIBED CENTERLINE:

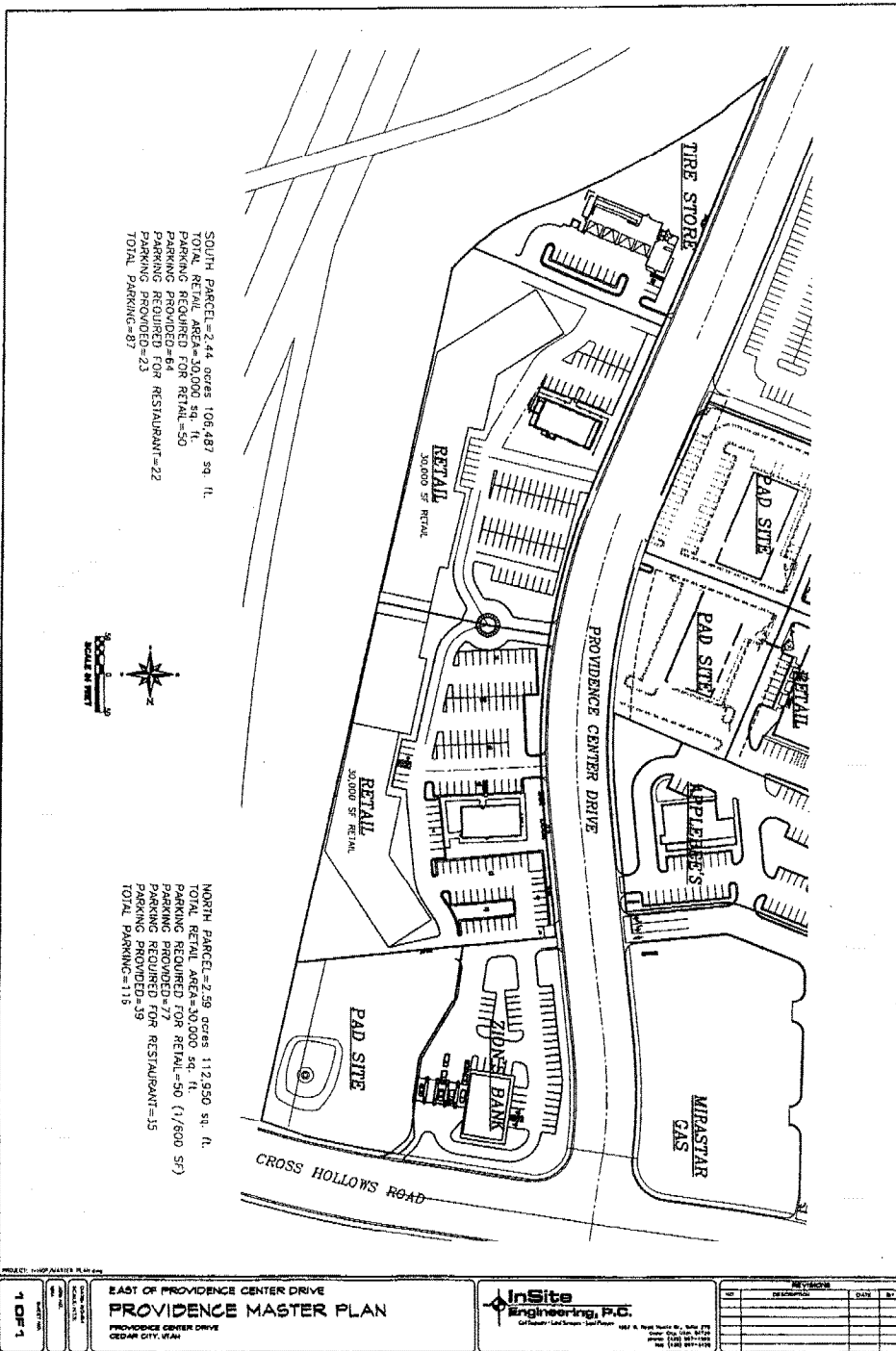
COMMENCING AT THE SOUTHWEST CORNER OF SECTION 22, TOWNSHIP 36 SOUTH, RANGE 11 WEST OF THE SALT LAKE BASE MERIDIAN. THENCE N01°09'20"W ALONG THE SECTION LINE 2032.01 FEET; THENCE N90°00'00"E 1133.54 FEET TO THE POINT OF BEGINNING; SAID POINT ALSO BEING LOCATED ON THE NORTH PROPERTY LINE OF SAID PARCEL; THENCE S59°54'44"E 32.05 FEET TO A POINT LOCATED ON THE EAST PROPERTY LINE OF SAID PARCEL TO THE POINT OF ENDING.

SUBJECT TO A 20.00 FOOT PUBLIC UTILITY EASEMENT ON THE WEST PROPERTY LINE OF SAID PARCEL.

SUBJECT TO A 10.00 FOOT PUBLIC UTILITY EASEMENT ON THE EAST PROPERTY LINE OF SAID PARCEL.

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EXHIBIT C



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