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W2410395

E# 2410395 PG 1 OF 10
ERNEST D ROWLEY, WEBER COUNTY RECORDER
11-MAY-09 930 AM FEE \$30.00 DEP SPY
REC FOR: SOLSTICE INVESTMENTS

_____(Space above this line for Recording Data)_____

ACCESS EASEMENT AGREEMENT

This Access Easement Agreement ("Agreement") is made this 24 day of April, 2009, by and between SPIRIT SPE PORTFOLIO 2006-1, LLC, a Delaware limited liability company ("Spirit"), and PENNY CLEMENTS, an individual residing at 583 West 3950 South, Riverdale, Utah ("Clements") (singularly, a "Party" and, collectively, the "Parties").

RECITALS:

A. Spirit owns fee simple absolute title to certain property located in the City of Riverdale, County of Weber, State of Utah, and ShopKo Stores Operating Co., LLC, a Delaware limited liability company ("ShopKo") is the tenant of such property, as such property is more particularly described on **EXHIBIT A** attached hereto (the "Spirit Parcel"); and

B. Clements owns fee simple absolute title to certain property located in the City of Riverdale, County of Weber, State of Utah, which property adjoins the Spirit Parcel and is more particularly described on **EXHIBIT B** attached hereto (the "Clements Parcel"); and

C. Clements desires and Spirit is willing to create an easement upon, over, across, and through the Spirit Parcel for the benefit of the Clements Parcel for the use of the existing roadway, pursuant to the terms and conditions hereof.

AGREEMENT

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

1. **GRANT OF EASEMENT.** Spirit hereby grants for the benefit of the Clements Parcel a non-exclusive easement and right-of-way for vehicular ingress and egress over, upon and across the roadway located on the Spirit Parcel and located within the area depicted on the

attached **EXHIBIT C** (the "Easement Area"). The easement granted herein is for the benefit of the owners of the fee title to the Clements Parcel or any portions thereof, and the agents, employees, designees, licensees, tenants and occupants of the Clements Parcel.

2. **ACCESSABILITY.** Neither party shall allow any structure, permanent or temporary nor any materials, sand, gravel, soil or snow (excluding natural snowfall), to be placed on or plowed onto the Easement Area in such manner that it would impede the free flow of traffic over the Easement Area.

3. **TERM.** Subject to Section 6 below, the easements and all other rights and obligations herein established herein shall be perpetual.

4. **PROPERTY CONDITION.** Clements hereby accepts the Easement Area on an "as is," "where is" basis, "with all faults" and without representation or warranty, express or implied, of any kind, with respect to the physical condition thereof.

5. **MAINTENANCE.** To the extent that Spirit or any tenant of Spirit, including without limitation, ShopKo ("Tenant") maintains the Easement Area (without having any express obligation to do so, except as may otherwise be agreed upon solely between Spirit and Tenant), then in such event, Spirit or Tenant, as the case may be, may charge, and Clements shall be liable for, a reasonable maintenance charge based upon actual out-of-pocket costs and expenses associated with the Easement Area. In the event that the Spirit Parcel is not occupied for a period of sixty (60) days or longer, then in such event, Clements, at her sole cost and expense, shall keep the Easement Area at all times in a safe and functional manner, in the same condition and repair that existed at the time that the Spirit Parcel became unoccupied by Spirit or any Tenant.

6. **TERMINATION.** In the event that Clements shall fail to perform any obligation hereunder, then upon written notice thereof by Spirit to Clements, this Agreement and all of the rights granted to Clements hereunder shall become null and void and of no further force or effect, except for those provisions which are intended to survive termination hereof, including without limitation, the obligations of Clements set forth in Section 7 below.

7. **INDEMNITY.** Clements shall indemnify, defend and hold Spirit and its Tenant, and their respective officers, directors, members, managers, employees, agents and representatives, harmless from and against any and all claims for damages, expenses, liabilities, courses of action, penalties, losses and costs (including reasonable attorneys' and experts' fees), which arise as a result of exercise of the rights herein granted to the owners of the fee title to the Clements Parcel or any portions thereof, and the agents, employees, designees, licensees, tenants and occupants of the Clements Parcel. The provisions of this Section 7 shall survive termination of this Agreement for any reason whatsoever.

8. **BINDING EFFECT; AMENDMENT.** The covenants contained herein and the easement established hereunder shall bind and inure to the benefit of all fee simple absolute titleholders of the Clements Parcel and the Spirit Parcel or any portion thereof, and to their respective successors and assigns; shall constitute covenants that run with the Clements Parcel

and the Spirit Parcel; and may be amended, modified, or terminated only by the written agreement of all parties holding (at the time of such amendment, modification, or termination) fee simple absolute title to the Clements Parcel or the Spirit Parcel shown of record by the County Recorder in Weber County, Utah, or otherwise known to such parties.

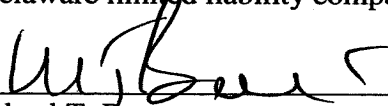
9. GOVERNING LAW. This Agreement shall be construed and enforced in accordance with the laws of the State of Utah.

10. ENTIRE AGREEMENT. This Agreement and the documents referred to in this Agreement and to be delivered pursuant to this Agreement constitute the entire agreement among the Parties regarding the easements created hereunder.

[Remainder of page intentionally left blank; signature page(s) to follow]

SPIRIT SPE PORTFOLIO 2006-1, LLC
a Delaware limited liability company

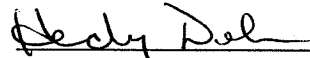
By:



Michael T. Bennett
Senior Vice President

STATE OF ARIZONA)
) SS.
COUNTY OF MARICOPA)

Personally came before me this 16th day of April, 2009, the above named Michael T. Bennett who acknowledged himself to be the Senior Vice President of Spirit SPE Portfolio 2006-1, LLC, and to me known to be the person who executed the foregoing instrument as such officer of such company, by its authority, and acknowledged the same.



Notary Public, State of Arizona
My Commission: 4/30/2010



Penny Clements

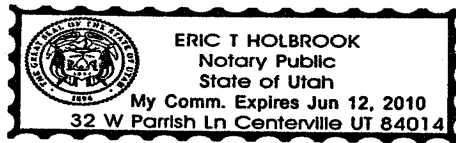
Penny Clements

STATE OF UTAH)
) SS.
COUNTY OF WEBER)

Personally come before me this 17 day of April, 2009, the above named Penny Clements, to me known to be the person who executed the foregoing instrument and acknowledged the same.

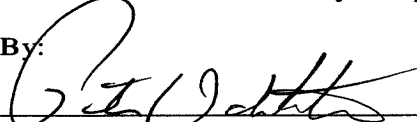
Eric T. Holbrook

Notary Public, State of Utah
My Commission: June 12, 2010



The undersigned, as the current Tenant of the Spirit Parcel, hereby consents to the foregoing Agreement, and acknowledges that nothing contained in such Agreement shall be deemed or construed to modify that certain Master Lease dated May 31, 2006, between Spirit and Spirit SPE Portfolio 2006-2, LLC, as landlord, and ShopKo Stores Operating Co., LLC, as tenant (together with all amendments thereto, the "Lease"), and such Lease shall remain in full force and effect..

SHOPKO STORES OPERATING CO., LLC
a Delaware limited liability company

By: 
Peter Vandenhouten
Sr. Vice President-Gen. Counsel/Secretary

Attest: 
Greg Polacheck
Vice President of Real Estate

STATE OF WISCONSIN)
) SS.
COUNTY OF BROWN)

Personally come before me this 24 day of April, 2009, the above named Peter Vandenhouten and Greg Polacheck who acknowledged themselves to be the Sr. Vice President-General Counsel/Secretary and Vice President of Real Estate, respectively, of Shopko Stores Operating Co., LLC, and to me known to be the persons who executed the foregoing instrument as such officers of such company, by its authority, and acknowledged the same.


Amy J. Bouressa
Notary Public, State of Wisconsin
My Commission expires 2/5/12.

Drafted by:

Attorney Peter Vandenhouten
Shopko Stores Operating Co., LLC
700 Pilgrim Way
Green Bay, WI 54304

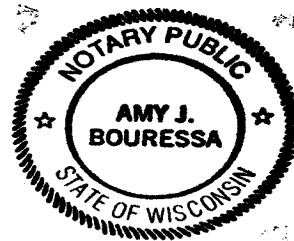


EXHIBIT A**Legal Description of Spirit Parcel**

A portion of the Northwest Quarter of Section 8, Township 5 North, Range 1 West, Salt Lake Base and Meridian:

Beginning at the Northeast Corner of the Northwest Quarter of said Section 8 and running thence South $00^{\circ}28'$ West 104.97 feet to a point on a 175 foot radius curve to the right (center bears North $84^{\circ}33'00''$ West and has a central angle of $28^{\circ}48'00''$); thence along the arc of said curve 87.96 feet; thence South $34^{\circ}15'00''$ West 425.03 feet to the true point of beginning of this parcel and running thence South $34^{\circ}15'00''$ West 609.38 feet; thence North $52^{\circ}46'00''$ West 164.96 feet; thence South $37^{\circ}43'00''$ West 197.48 feet to a point of the Northerly line of Washington Terrace Road as described in Book 160 at Page 517 of the Official Records of Weber County, said point also being a point on a 345 foot radius curve to the left (center bears South $50^{\circ}38'20''$ West and has a central angle of $10^{\circ}14'50''$); thence Northwesterly along the arc of said curve and said road 61.70 feet; thence North $37^{\circ}42'00''$ East 110.98 feet; thence North $48^{\circ}41'00''$ West 80.86 feet; thence North $39^{\circ}55'00''$ East 272.21 feet; thence North $51^{\circ}27'52''$ West 14.76 feet to a fence corner; thence along said fence North $51^{\circ}27'52''$ West 367.09 feet; thence North $38^{\circ}02'43''$ East 19.05 feet; thence North $51^{\circ}59'43''$ West 198.76 feet to the Easterly line of Riverdale Road; thence North $38^{\circ}21'00''$ East 402.99 feet along said Easterly line; thence South $51^{\circ}48'01''$ East 493.55 feet; thence South $38^{\circ}21'00''$ West 10.72 feet; thence South $51^{\circ}48'01''$ East along a building line 342.00 feet to the place of beginning.

Also known as 4060 Riverdale Road, Riverdale, UT 84405.

06-029-0027 ✓
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EXHIBIT B**Legal Description of Clements Parcel**

06-029-0020 ✓ 7

Part of the Northwest Quarter of Section 8, Township 5 North, Range 1 West, Salt Lake Meridian, U.S. Survey: Beginning at a point which is South 0° 28' West 144 feet and South 34° 15' West 1086.28 feet from the Northeast Corner of said Quarter Section; North 52° 46' West 164.96 feet, thence South 37° 43' West 272.36 feet; thence South 52° 46' East 181.74 feet, more or less, to a point which is South 34° 16' West from beginning; thence North 34° 15' East 272.72 feet, more or less, to the place of beginning.

Excepting however, that portion thereof lying within Washington Terrace Drive.

Also excepting therefrom that portion lying within the boundaries of Deed 494/493 as conveyed to the city of South Ogden.

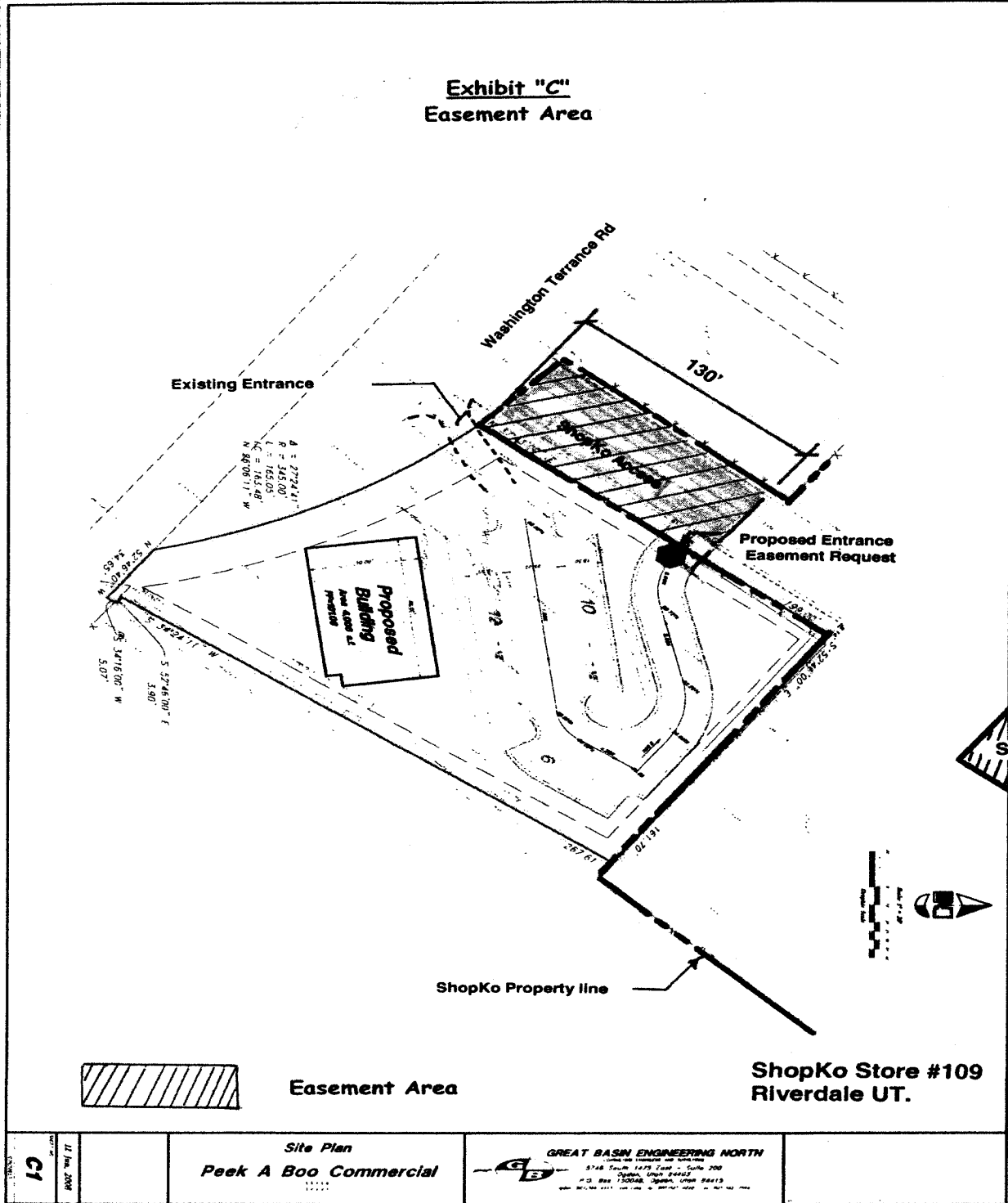
Also Excepting: A parcel of land in fee for the widening of 300 West Street, known as Project No. STP-3328(1)0, Being part of an entire tract of property situate in the Southeast ¼ of the Northwest ¼ of Section 8, Township 5 North, Range 1 West, Salt Lake Base and Meridian, in Riverdale City, Weber County, Utah, the boundaries of said parcel of land are described as follows: Beginning at a point located 67.37 feet perpendicularly distant Easterly from the center line of 300 West Street at engineer station 14+93.37; said point being located West 885.66 feet (West 910.49 feet deed) and South 1099.48 feet (South 1099.51 feet deed) from the North Quarter Corner of said Section 8 and running thence South 37° 43' 00" West 73.36 along the Northwesterly property line of grantors property; thence South 52° 46' 00" East 146.71 feet along the Southwesterly property line of grantors property to a point located 82.03 feet perpendicularly distant Easterly from Engineer Station 16+28.08, said point being located on the Easterly right of way line of 300 West Street; thence Northeasterly 165.04 feet along a 345.00 foot radius curve to the left (long chord bears North 26° 08' 15" West 163.47 feet) along the Easterly right of way line to the point of beginning. (2132622)

EXHIBIT C

Depiction of Easement Area

See attached.

Exhibit "C"
Easement Area



<p>12/14/2008 G1</p>	<p>Site Plan Peek A Boo Commercial</p>	<p>GREAT BASIN ENGINEERING NORTH 5748 South 1475 East - Suite 200 Cottonwood, Utah 84302 P.O. Box 150048, Ogden, Utah 84415</p>	
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