



W2379891

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

Intermountain Farmers Association
1147 West 2100 South
Salt Lake City, Utah 84130
Attention:

EN 2379891 PG 1 OF 21
ERNEST D ROWLEY, WEBER COUNTY RECORDER
12-DEC-08 333 PM FEE \$56.00 DEP LF
REC FOR: BUSH & GUDGALL

DECLARATION OF RESTRICTIONS
AND GRANT OF EASEMENTS

by

INTERMOUNTAIN FARMERS ASSOCIATION

12-233-0001 thru 0007 ✓

DATE: October 22, 2007

1069 West 12th Street
Ogden, Utah

812229.1

DECLARATION OF RESTRICTIONS AND GRANT OF EASEMENTS

THIS DECLARATION OF RESTRICTIONS AND GRANT OF EASEMENTS (this "Declaration") is made as of the _____ day of October, 2007 by INTERMOUNTAIN FARMERS ASSOCIATION, a Utah corporation ("IFA").

RECITALS

WHEREAS, IFA is, or will be at the time of recordation of this Declaration, the Owner of that certain real property located at 1069 West 12th Street, City of Ogden, County of Weber, State of Utah, as shown on the Site Plan attached hereto as Exhibit A (the "Site Plan"), which real property is hereinafter referred to as the "Shopping Center" and more particularly described on Exhibit B; and

WHEREAS, the Shopping Center has been, or will be, divided into various parcels as shown on the Site Plan (collectively referred to as the "Shopping Center Parcels" and individually as a "Parcel"); and

WHEREAS, IFA wants each of the Shopping Center Parcels to be developed together for the mutual benefit each and all of the Parcels, and accordingly does hereby establish a general plan for their improvement, protection, development, maintenance and use as a commercial shopping center and for such purposes does hereby establish easements, covenants, restrictions, liens and charges, (collectively the "Restrictions") as are hereinafter set forth, subject to which all of the Shopping Center Parcels shall be improved, held, exchanged, leased, sold and/or conveyed;

WHEREAS, each of the Restrictions (i) is imposed upon each Parcel as a mutual equitable servitude in favor of the other Shopping Center Parcels, (ii) shall create reciprocal rights and obligations between and among the Owners (as defined below); and (iii) shall create a privity of contract and estate between and among the Owners and their heirs, successors and assigns;

WHEREAS, each of the Restrictions are intended to and shall run with the land, and each Parcel is affected and burdened by the covenants of its Owner for the benefit of the other Parcels;

WHEREAS, IFA intends that the successive owners of all or any portion of any Parcel are bound hereby for the benefit of the other Parcels in the Shopping Center and any portion thereof and the Owners thereof.

NOW, THEREFORE, in consideration of the foregoing, and the covenants and agreements set forth herein, the Parties agree as follows:

I. PRELIMINARY

1. **Incorporation.** The above Recitals are incorporated herein and made a part hereof.

a. **Definitions.**

- (1) Building Area. That area shown as "Building Area" or "Building Envelope" on the Site Plan.
- (2) Common Area. All real property within the Shopping Center upon which buildings are not from time to time located or in the process of construction.
- (3) Hazardous Materials. Hazardous Materials means any substance or material which is defined as or included in the definition of "hazardous substances", "hazardous wastes", "hazardous materials", "extremely hazardous waste", "restricted hazardous waste", "toxic substances" or "known to cause cancer or reproductive toxicity", or words of similar import under any federal, state or local law, ordinance, regulation, order or decree now or hereafter in force regulating, relating to or imposing liability or standards concerning materials or substances known or suspected to be toxic or hazardous.
- (4) IFA Parcel. The Parcel shown on the Site Plan as the IFA Parcel.
- (5) Owner. IFA, and any other person or entity having fee record title to any Parcel in the Shopping Center and their respective assigns, grantees, and successors in interest.
- (6) Parcels. The Shopping Center is subdivided into multiple parcels as shown on the Site Plan. Where referred to herein by letter or number, such designation shall correspond to the parcel designations on the Site Plan.
- (7) Utilities. Utilities shall include without limitation, gas, electricity, storm and sanitary sewer, domestic water, fire sprinkler water, irrigation water and telephone services.

II. BUILDING AREA

1. Building Area. Except as otherwise permitted by this Declaration, no building or other structure shall be constructed upon any Parcel in the Shopping Center other than within the Building Area on each Parcel. Notwithstanding the foregoing, canopies and roof overhangs (including supporting columns or pillars), normal foundations, trash enclosures, and loading and delivery docks, covered areas attached to such docks, required emergency exits (including stairs, landings, footings and foundations associated therewith), and doors for ingress and egress may project from any building or structure up to a distance of twenty-five (25) feet over or outside of the Building Area on any Parcel; provided, any such projection or extension must comply with all applicable laws, rules, ordinances and regulations of every governmental body having jurisdiction over the Shopping Center; and provided further, no such extension or projection shall be allowed if it (i) reduces the number of parking spaces or materially alters the parking configuration or vehicular and pedestrian circulation, and/or access in and through the entire Shopping Center as shown on the Site Plan, or (ii) interferes with or prevents the location, placement or construction of a building or structure in the Building Area on any Parcel, or (iii) encroaches on, over or under any portion of any other Parcel any drive lane. Except as otherwise indicated on the Site Plan, the exterior walls of adjacent buildings constructed in the Shopping

Center shall abut (i.e., touch), except such exterior walls may have a gap of no more than four (4) inches, as reasonably approved by the Owner of the IFA Parcel. Such gap, if any, shall be properly flashed so that the building exteriors appear to be continuous and without any break. No portion of any building owned by IFA or located on the IFA Parcel may be used as a common wall.

2. **Maximum Building Area.** The total square footage of floor area of all buildings and other structures within the Building Area on any Parcel in the Shopping Center may not exceed the maximum amount designated for each such Parcel on the Site Plan. Such maximum building area for each Parcel is hereinafter referred to as "Maximum Building Area". For purposes hereof, "floor area" shall be defined as the area within the exterior surfaces of the exterior walls of any building or structure, excluding any "Mezzanine" (i.e., any floor area above the ground floor that does not extend over the entire ground floor area of the building and which is used in connection with the primary commercial use of such building, but is not used for sales area or generally open to the public), trash enclosures, loading docks, covered areas attached to loading docks, doors for ingress and egress, canopies and roof overhangs (including supporting columns or pillars) and required emergency exits (including stairs, landings, footings and foundations associated therewith). The Maximum Building Area for any Parcel is only a limitation on building size and imposes no obligation whatsoever on the Owner of such Parcel to place, erect or construct a building or structure thereon having the Maximum Building Area.

3. **Design and Construction of Buildings.** All buildings constructed in the Shopping Center shall be designed so that the exterior elevation of each building will be architecturally and aesthetically compatible with the others, including the height, color, materials, design and architectural theme (including signs located thereon), but in no event shall any building exceed one (1) story plus Mezzanine nor a height of thirty-five (35) feet (collectively, the "Architectural Theme"). In the event any buildings are constructed within the Shopping Center which are not part of the original development of the Shopping Center, prior to the commencement of such construction, plans and samples showing the Architectural Theme of such building or buildings shall be submitted to the Owner of the IFA Parcel for its approval. All building construction must be diligently prosecuted to completion, shall be performed in a workmanlike manner and in accordance with the requirements of all governmental authorities having jurisdiction over such work and shall be performed in a manner that does not interfere with the operations of a business on any of the Shopping Center Parcels. All buildings constructed in the Shopping Center shall be constructed to comply with all governmental requirements (including sprinklering and setback requirements) which arise by reason of such use of the Construction Type or any other construction technique used in the buildings on the IFA Parcel. If an Owner or its tenant commences construction of a building within the Shopping Center, but such construction ceases prior to the completion of the building for a period in excess of one hundred twenty (120) days, and the Owner of the IFA Parcel in its reasonable discretion determines that such unfinished building creates an unsafe or unsightly condition detrimental to the Shopping Center, the Owner of the IFA Parcel may construct a barricade around such building. Upon any such work by the Owner of the IFA Parcel, the Owner upon whose Parcel the building is located shall reimburse the Owner of the IFA Parcel upon demand for monies so expended.

III. COMMON AREA

1. Common Area Use. The Common Area shall be used for vehicular access, circulation and parking, pedestrian traffic and the use of customers, invitees, licensees, agents and employees of the Owners and business occupants of the buildings constructed in the Building Area on the Shopping Center Parcels, and for the servicing and supplying of such businesses. In addition, the Common Area may be used (i) on a temporary basis, as a staging area in connection with the construction and repair of any buildings or Common Area in the Shopping Center so long as such use does not occupy more area than is reasonably required nor unreasonably restrict access to and from or the conduct of business within the buildings in the Shopping Center or access to and from the adjacent streets; (ii) in connection with the construction and maintenance of utility lines so long as such activity is undertaken in strict compliance with the requirements of Section IV.2 hereof; and (iii) for any other use required by any governmental authority having jurisdiction thereof. No building, barricade or structure may be placed, erected or constructed within the Common Area on any Parcel except loading and delivery docks and covered areas attached to such docks, trash enclosures, pylon and other free-standing signs (to the extent not herein prohibited) and directional signs, bumper guards or curbs, paving, landscaping and landscape planters, lighting standards, driveways, sidewalks, walkways, parking stalls, columns or pillars supporting roof overhangs, and any other improvements as may be required under applicable laws, rules, ordinances and regulations of any governmental body having jurisdiction over the Shopping Center.

2. Parking. The number of parking spaces maintained on each Parcel and the configuration thereof shall be as shown on the Site Plan. There shall be no charge or other validation for parking in the Common Area without the prior written consent of the Owner of the IFA Parcel.

3. Employee Parking. Each Owner shall use reasonable efforts to insure that all employees of such Owner or other occupant of a Parcel park only on their respective Parcel and not on the Parcel of any other Owner.

4. General. The Owner of each Parcel may use and cause to be used the Common Area on its Parcel exclusively for the uses specified herein and in such manner as will not unreasonably interfere with the primary purpose of the Common Area, which is to provide for parking and access for the Owners, customers, invitees, employees, agents and licensees of the businesses located within the buildings in the Shopping Center and for the servicing and supplying of such businesses. There shall be no sale or display of merchandise of any kind in any portion of the Common Area nor on any sidewalks adjacent to any buildings without the prior written consent of the Owner of the IFA Parcel. Notwithstanding the foregoing, the Owner or occupant of the IFA Parcel may establish and operate on the portion of the Common Area designated "Yard Sales" on the Site Plan, a yard and garden centering center provided such Owner shall maintain such center in good condition, appearance and repair. The Owner of the IFA Parcel may use reasonable portions of the sidewalk abutting the building on the IFA Parcel at any time for the installation of public telephones, storage of shopping carts, and display and sale of merchandise.

5. Maintenance and Repair. Each Owner shall, at its own expense, cause the Common Area located on its Parcel, together with the sidewalks immediately adjacent to the buildings located thereon, to be maintained at all times in good and clean condition and repair, which shall include, but not be limited to the following:

- a. Maintaining the paved surfaces in a level, smooth and evenly covered condition with the type of surfacing material originally installed or such substitute as shall in all respects be equal or superior in quality, use and durability;
- b. Removing all papers, debris, filth and refuse, ice and snow, and thoroughly sweeping the area to the extent reasonably necessary to keep the area in a clean and orderly condition;
- c. Placing, keeping in repair, and replacing appropriate directional signs, markers and lines, where necessary;
- d. Operating, keeping in repair, and replacing such artificial lighting facilities as shall be reasonably required;
- e. Maintaining all landscaped areas and repairing automatic sprinkler systems or water lines and replacing shrubs and other landscaping as is necessary;
- f. Maintaining and repairing any and all walls, common storm drains, utility lines, sewers and other facilities for Utilities which are necessary for the operation of the buildings and improvements within the Shopping Center; and
- g. Maintaining free and unobstructed access to and from its Parcel and the adjoining portions of the Shopping Center and to and from its Parcel and the streets adjacent thereto.

All Common Area artificial lighting facilities, water lines and other Utilities shall be separately metered to the Parcel on which they are located.

If an Owner or its tenant fails to maintain the Common Area located on its Parcel as set forth above, and the Owner of the IFA Parcel in its reasonable discretion determines that failure to maintain the Common Area creates an unsafe or unsightly condition detrimental to the Shopping Center, the Owner of the IFA Parcel may, but shall not be obligated to, maintain, or cause to be maintained, the Common Area. Upon any such work by the Owner of the IFA Parcel, the Owner upon whose Parcel the Common Area is located shall reimburse the Owner of the IFA Parcel upon demand for monies so expended.

IV. EASEMENTS

1. Ingress, Egress and Parking. Each Owner, with respect to its Parcel, hereby grants to each other Owners as grantee, for the benefit of each other Owner, and for the use of the Owners and their respective tenants, employees, agents, customers and invitees of such tenants, and for the benefit of the Parcels owned by such grantee and as a burden on the grantor's Parcel, a non-exclusive easement appurtenant to each grantee's Parcel for the purpose of ingress

and egress by vehicular and pedestrian traffic and for vehicular parking upon, over, across and through the Common Area within grantor's Parcel. The foregoing shall not create any rights in any parties other than the Owners.

2. **Utility Lines.** Each Owner, as grantor with respect to its Parcel, hereby grants to each other Owners as grantee, for the benefit of each other Owner and its Parcel, non-exclusive easements appurtenant to the Parcel owned by the grantee, under, through and across the Common Area of the Parcel owned by the grantor for the installation, maintenance, repair and replacement of water drainage systems or structures, water mains, storm drains, sewers, water sprinkler system lines, telephone or electrical conduits or systems, gas mains and other facilities for Utilities necessary for the orderly development and operation of the Common Area and each building in the Shopping Center; provided, the rights granted pursuant to such easements shall at all times be exercised in such manner as to cause the least interference with the normal operation of the Shopping Center; and provided further, except in an emergency, the right of any Owner to enter upon the Parcel of another Owner for the exercise of any right pursuant to such easements shall be conditioned upon obtaining the prior written consent of such other Owner, which consent shall not unreasonably be withheld. All such systems, structures, mains, sewers, conduits, lines and other facilities for Utilities shall be installed and maintained below the surface or ground level of such easements. In the event an Owner deems it necessary to cause the installation of a storm drain, electric line, sewer or other Utility line or facility across the Common Area of any other Parcel subsequent to the initial paving and improving thereof, the Owner thereof agrees not to unreasonably withhold the granting of any necessary additional easements; provided, in no event will such installation be permitted if it would unreasonably interfere with the normal operation of any business of the Shopping Center; and provided further, the Owner making or causing such installation shall, at its expense, completely restore all Common Area improvements and surfaces disrupted as a result of such installation.

In the event it should be necessary to grant any of the foregoing easements and rights to local utility companies as a condition of their providing or continuing service, such rights shall be granted so long as the Owners required to execute such instruments deem the terms and conditions of such a grant to be acceptable.

3. **Building Encroachments.** Each Owner, with respect to its Parcel, hereby grants to each other Owner for the benefit of its Parcel, an easement for any portion of any building or structures on any Parcel which may encroach onto or over an adjoining Parcel; provided, the easement for footings, piers, piles, grade beams, canopies, eaves, roof overhangs and building encroachments granted herein shall not exceed two (2) feet; and provided further, the encroachment easement shall not extend to encroachments which are intentional or which materially and adversely affect the location, orientation, design or construction of buildings to be constructed on the Building Area of the Parcel upon which the encroachment has taken place, unless first approved in writing by the Owner of the affected Parcel. The easement granted herein shall last so long as the building of which such encroachment is a part is standing, and in the event this Declaration expires first, the easement shall survive such expiration.

4. **Emergency Exits.** Each Owner, with respect to its Parcel, hereby grants to each other Owner, for the benefit of each other Owner and its respective Parcel: (i) an easement for any portion of any stairs and landings (including any footings and foundations related thereto)

constructed in connection with building emergency exits required by any governmental entity, which may encroach onto or over an adjoining Parcel not then occupied by a building; and (ii) an easement for emergency egress from such emergency building exits; provided, the easement for stairs, landings, foundations and footings granted herein shall not exceed six (6) feet.

V. RESTRICTIONS

1. Business. The types of uses permitted in the Shopping Center shall be of a retail and/or commercial nature found in first class Shopping Centers of a similar size in the metropolitan marketing area in which the Shopping Center is located. Without the prior written consent of the Owner of the IFA Parcel, which consent may be granted or denied in its sole, subjective discretion, no Parcel (nor any part thereof) in the Shopping Center other than the IFA Parcel shall be used for the sale of any of the following: (1) pet supplies; (2) agriculture supplies; (3) feed; (4) home and garden supplies; (5) fencing, livestock equipment or horse tack; or (6) clothing.

In addition, none of the following uses shall be conducted in any part of the Shopping Center at any time without the prior written consent of the Owner of the IFA Parcel, which consent may be granted or denied in its sole, subjective discretion:

- a. Offices (except retail offices or as may be incidental to a permitted retail or commercial business).
- b. Funeral homes.
- c. Any production, manufacturing, industrial, or storage use of any kind or nature, except for storage and/or production of products incidental to the retail sale thereof from the Shopping Center.
- d. Entertainment or recreational facilities. As used herein, "entertainment or recreational facilities" includes, but is not limited to, a bowling alley, skating rink, electronic or mechanical games arcade (except as an incidental use to a retail or commercial business, in which case such use shall be restricted to less than five percent (5%) of the floor area occupied by such business), theater, billiard room or pool hall, health spa or studio or fitness center, massage parlor, discotheque, dance hall, banquet hall, night club, bar or tavern, "head shop", pornographic or "adult" store, racquetball courts or gymnasium or other place of public amusement.
- e. Training or educational facilities. As used herein, "training or educational facilities" includes, but is not limited to, a beauty school, child care facility, barber college, library, reading room, church, school, place of instruction, or any other operation catering primarily to students or trainees rather than to customers.
- f. Restaurants. Unless parking for such restaurants can be self supporting and satisfy all applicable laws. To be self-supporting, the parking spaces must be located on each such parcel so that parking spaces available on other parcels or available through easements with other parcels cannot be counted in meeting the applicable parking requirements.

- g. Car washes, gasoline or service stations, or the displaying, repairing, renting, leasing or sale of any motor vehicle, boat or trailer.
- h. Dry cleaner with on-premises cleaning.
- i. Any use which creates a nuisance or materially increases noise or the emission of dust, odor, smoke, gases, or materially increases fire, explosion or radioactive hazards in the Shopping Center.
- j. Any business with drive-up or drive-through lanes except as shown on the Site Plan.
- k. Second-hand or thrift stores, or flea markets.
- l. Any use involving Hazardous Materials, except as may be customary in first class neighborhood shopping centers in the metropolitan area where the Shopping Center is located.

It is the intent of this provision that the parking and other common facilities should not be burdened by either large scale or protracted use by persons other than customers of occupants of the Shopping Center.

Nothing contained herein shall be construed to prohibit the Owner of the IFA Parcel or any occupant thereof from storing, using and/or selling any item on or from the IFA Parcel, or engaging in any activity on the IFA Parcel, which such party(ies) customarily stores, uses, sells or engages in at any of their other locations.

The restrictions contained in this Section shall be a servitude upon the entire Shopping Center and shall be binding upon any person acquiring any interest in any part of the Shopping Center.

Nothing contained herein shall be construed to require the Owner of the IFA Parcel or any occupant thereof to open or operate any form of business in the Shopping Center for any period of time or at all.

2. Common Area Uses. No persons other than customers, employees, agents and contractors of the occupants of the Shopping Center shall be permitted to park in the Common Area, unless all Owners give prior written approval thereto. In the event the Owner of the IFA Parcel determines that the Common Area is being used for purposes inconsistent with this Declaration, the Owner of the IFA Parcel shall have the right to construct a barricade around all or any portion of the perimeter of the Shopping Center to prevent such use; provided, such barricade shall not impede circulation within the Shopping Center nor prohibit access to abutting streets at such times as the Shopping Center is open for business.

VI. SIGNS

Each Owner shall have the right to maintain such signs on the interior of buildings located on its Parcel as it desires, whether or not such signs are visible from the exterior. As

permitted by applicable governmental regulations, each Owner shall have the right to erect, maintain and replace signs on the exterior of the buildings located on its Parcel; provided, such signs shall be constructed so as to lie flat against such exterior facia facing outward and shall not protrude more than two (2) feet from the surface thereof, and provided further, in no event shall signs be located on the roofs (excluding canopies so long as no sign is erected on a canopy which sign will extend above the height of the building roof) of any buildings in the Shopping Center without the prior written consent of all other Owners.

Each Owner, with respect to its Parcel, as grantor, hereby grants to each other Owner as grantee, easements under, through and across the Common Area of the Shopping Center for the purpose of installing and/or maintaining utility lines to service free standing pylon signs, if any, and all other signs, if any. The Owner of the IFA Parcel may, at its option and expense, construct free standing pylon signs at the locations in the Shopping Center indicated on the Site Plan. If other Owners desire to participate in the approval and construction of one of such signs with the Shopping Center's name displayed in equal prominence with the occupant of the IFA Parcel, such Owners may request the Owner of the IFA Parcel to so participate and if it elects to do so, the Owner of the IFA Parcel will determine at which such location the sign will be placed. The cost of constructing and maintaining such sign shall be borne by the Owners, in the proportion that each Owner's sign bears to the total on such sign.

Except as expressly permitted herein, there shall be no signs in the Shopping Center without the prior written approval of all Owners.

VII. INDEMNIFICATION AND INSURANCE

1. Indemnification. Each Owner ("Indemnifying Party") hereby indemnifies, holds harmless and agrees to defend the other Owners ("Indemnified Party(ies)") from and against all claims, damages, expenses (including, without limitation, reasonable attorneys' fees and reasonable investigative and discovery costs), liabilities and judgments on account of injury to persons, loss of life, or damage to property occurring in the Shopping Center and on the ways immediately adjoining the Shopping Center, caused by the active or passive negligence or willful misconduct of the Indemnifying Party, its agents, servants or employees; provided, the Indemnifying Party does not indemnify the Indemnified Party against any injury, loss of life, or damage which is caused by the active or passive negligence or willful misconduct of the Indemnified Party, the other Owners in the Shopping Center, its or their agents, servants or employees. The Parties' obligations with respect to indemnification hereunder shall remain effective, notwithstanding the expiration or termination of this Declaration, as to claims arising or accruing prior to the expiration or termination of this Declaration.

2. Liability Insurance Coverage and Limits. Each Owner agrees to maintain, and/or cause to be maintained, at no cost to the other Owners, liability insurance insuring its interests against claims for personal injury, bodily injury, death and property damage occurring on, in or about the Shopping Center and the ways immediately adjoining the Shopping Center, with a "Combined Single Limit" (covering personal injury liability, bodily injury liability and property damage liability) of not less than Five Million Dollars (\$5,000,000.00) for total claims for any one occurrence.

The insurance limits in this Section shall be subject to increase from time to time by such amounts as the Owners may reasonably agree is necessary or desirable, as may be evidenced by the practice of similarly situated properties.

3. **Contractor's Insurance.** During the period of any construction in the Shopping Center by or at the request of any Owner, such Owner agrees to obtain or require its contractor(s) to obtain, and thereafter maintain so long as such construction activity is occurring, at least the following minimum insurance coverage:

- a. Workers' compensation - statutory limits;
- b. Employer's liability - One Hundred Thousand Dollars (\$100,000.00); and
- c. Comprehensive General and Commercial Automobile Liability as follows:
 - (i) "Combined Single Limit" (covering personal injury liability, bodily injury liability, and property damage liability) of not less than Five Million Dollars (\$5,000,000.00) for total claims for any one occurrence;
 - (ii) Independent Contractor's Liability or Owner's Protective Liability with the same coverage as in (i) above;
 - (iii) Products/Completed Operations Coverage which shall be kept in effect for two (2) years after completion of work;
 - (iv) "XCU" Hazard Endorsement, if applicable;
 - (v) "Broad Form" Property Damage Endorsements;
 - (vi) "Personal Injury" Endorsements; and
 - (vii) "Blanket Contractual Liability" Endorsement.

4. **Waiver of Certain Rights.** With respect to any loss or damage that may occur to the Shopping Center (or any improvements thereon) or the respective property of the Owners therein, arising from any peril customarily insured under a fire and extended coverage insurance policy, regardless of the cause or origin, excluding willful acts but including negligence of the Owners, their agents, servants or employees, the Owner suffering such loss hereby releases the other Owners from all claims with respect to such loss; and the Owners each agree that their respective insurance companies shall have no right of subrogation against the other Owners on account of any such loss, and each Owner shall procure from its respective insurers under all policies of fire and extended coverage insurance a waiver of all rights of subrogation against the other Owners which the insurers might otherwise have under such policies.

5. **Policy Requirements.** Insurance coverage required by this Declaration may contain the following elements, so long as the required coverage is not diminished, the required limits are not reduced, and the elements thereof are otherwise commercially reasonable: an Owner's insurance program may include blanket, layered, umbrella, conventional and/or manuscript forms of policies, as well as retention levels and loss reserves which are charged against earnings or otherwise funded, and commercially reasonable deductibles.

Upon request, each Owner shall cause certificates of insurance reasonably evidencing compliance with the requirements of this Article to be delivered to the other Owner. The insurance policies and certificates required by this Article shall require the insurance company to furnish all Owners thirty (30) days' prior written notice of any cancellation or lapse, or the effective date of any reduction in the amounts or scope of coverage.

6. Performance of Indemnity Declarations. All policies of liability insurance shall insure the performance by the Owner insured thereunder of the indemnity Declarations contained herein. Each Owner shall promptly notify the other Owners of any asserted claim with respect to which such Owner is or may be indemnified against hereunder and shall deliver to such other Owners copies of process and pleadings.

VIII. DAMAGE OR DESTRUCTION

In the event any building in the Shopping Center is damaged or destroyed by fire or other casualty or any other cause whatsoever, the Owner of the Parcel upon which such building is located shall, in its discretion, either tear down or rebuild the damaged building. However, if an Owner determines to tear down a damaged building, that Owner shall either promptly rebuild a new building on the same location or leave and maintain the Parcel of land on which the building was located in a smooth, level condition, free and clear of all refuse and weeds and sealed against dust by paving, lawn or other ground cover acceptable to the Owner of the IFA Parcel. In the event the Common Area of the Shopping Center or any portion thereof shall be damaged or destroyed by fire or other casualty or any other cause whatsoever, the Owner of the Common Area so damaged or destroyed shall forthwith proceed with due diligence to restore such Common Area to a condition to permit vehicular parking (in the manner required by this Declaration) and free and safe vehicular and pedestrian access and circulation in the Shopping Center and to and from all streets adjacent thereto.

IX. EMINENT DOMAIN

1. Owner's Right to Award. Nothing herein shall be construed to give any Owner any interest in any award or payment made to any other Owner in connection with any exercise of eminent domain or transfer in lieu thereof affecting any other Owner's Parcel or giving the public or any government any rights in the Parcels. In the event of any exercise of eminent domain or transfer in lieu thereof of any part of the Common Area located within the Shopping Center, the award attributable to the land and improvements of such portion of the Common Area shall be payable only to the Owner in fee thereof and no claim thereon shall be made by the Owners of any other portion of the Common Area.

2. Collateral Claims. All other Owners or persons having an interest in the Common Area so condemned may file collateral claims with the condemning authority for their losses which are separate and apart from the value of the land area and improvements taken.

3. Tenant's Claim. Nothing in this Section shall prevent a tenant from making a claim against an Owner pursuant to the provisions of any lease between tenant and Owner for all or a portion of any such award or payment.

4. Restoration of Common Area. The Owner of the fee of each portion of the Common Area so condemned shall promptly repair and restore the remaining portion of the Common Area so owned as near as practicable to the condition of the Common Area immediately prior to such condemnation or transfer to the extent that the proceeds of such award are sufficient to pay the cost of such restoration and repair and without contribution from any other Party.

5. Restoration of Building Area. In the event any building or a portion thereof located in the Shopping Center is condemned, the remaining portion of the building shall be demolished or restored by the Owner of the Parcel on which it is located and such Owner shall remove all debris resulting therefrom. Such election shall be made within ninety (90) days from the date of taking. In the event the remaining building improvements are removed, thereafter the Owner shall either promptly rebuild a new building on the same location or leave and maintain the Parcel of land on which the building was located in a smooth, level condition, free and clear of all refuse and weeds and sealed against dust by paving, lawn or other ground cover acceptable to the Owner of the IFA Parcel.

X. TAXES

Each Owner shall pay or cause to be paid directly to the tax collector when due, the real property taxes and other special taxes and assessments assessed against the property owned by such Owner, including the portion of the Common Area owned by such Owner.

In the event any Owner fails at any time to pay or cause to be paid before delinquency its taxes or assessments on any portion of any Parcel(s) in which such Owner has a fee interest, and which may become a lien on any of the Common Area, then any other Owner may pay such taxes and/or assessment together with interest, penalties, and costs, and in any such event the Owner obligated to pay such taxes and/or assessment shall promptly reimburse such other Owner for all such taxes and/or assessments, interest, penalties, and other charges and until such reimbursement has been made, the amount thereof shall constitute a lien and charge on the Parcel(s) of the defaulting Owner. Nothing contained herein, however, shall prevent an Owner from paying its taxes under protest or challenging the validity or amount of an assessment so long as such Owner takes steps to prevent the delinquent taxes from becoming a lien on its Parcel or the occurrence of a tax sale of such Parcel.

XI. DEFAULT

1. Right to Cure. Should any Owner fail to timely perform any of its obligations hereunder and thereafter fail to perform such obligation within twenty (20) days after its receipt of any other Owner's written demand therefor, the Owner giving such notice shall, in addition to any other remedy provided at law or in this Declaration, have the right (but not the obligation) to perform such obligation on behalf of the defaulting Owner and the defaulting Owner shall reimburse the curing Owner for the cost of performing such obligation within ten (10) days after receipt of billing therefor and proof of payment thereof. In the event the defaulting Owner does not reimburse the curing Owner within such ten (10) days, the curing Owner shall have (i) the right to exercise any and all rights which such curing Owner might have at law to collect the same, and (ii) a lien on the Parcel(s) owned by the defaulting Owner to the extent of the amount paid by the curing Owner but not reimbursed by the defaulting Owner, which amount shall bear interest at a rate equal to the then published Prime Rate as published in the Money Section of the Wall Street Journal plus four percent (4%) per annum, or the highest legal rate of interest, whichever is less, (the "Effective Rate") from the date of billing until paid. Such lien may be filed for record by the curing Owner as a claim against the defaulting Owner, in the form required by law, in the office wherein mortgages are recorded, which lien shall contain at least the following information:

- a. The name of the lien claimant;
- b. The name of the defaulting Owner;
- c. A description of the work performed on behalf of such Owner and a statement itemizing the cost thereof; and
- d. A description of the property being liened.

The lien so claimed shall attach from the date of recordation in the amount claimed by the Owner curing the default and it may be enforced and foreclosed in any manner allowed by law, including, but not limited to, suits to foreclose a mechanic's lien, trust deed or mortgage under applicable law. Such lien, when so recorded against the real property described in such lien, shall be prior and superior to any right, title, interest, lien or claim which may be or is acquired or attached to such real property after the time of recording the claim of lien.

2. Injunctive Relief. In the event of any violation or threatened violation of any provision of this Declaration, any Owner shall have the right, in addition to any other remedies herein or by law provided, to enjoin such violation or threatened violation. Notwithstanding the foregoing, tenants in the Shopping Center shall not have the right of injunction but shall rather be limited to their rights granted by law and by their respective leases.

3. Breach Shall Not Permit Termination. No breach of this Declaration shall terminate this Declaration or entitle any Owner to cancel, rescind or otherwise terminate this Declaration, but such limitation shall not affect in any manner any other rights or remedies which such Owner may have hereunder by reason of any breach of this Declaration.

4. No Limitation of Remedies. The various rights and remedies herein contained and reserved to the Owners, except as otherwise provided in this Declaration, shall not be considered as exclusive of any other right or remedy, but shall be construed as cumulative and shall be in addition to every other remedy now or hereafter existing at law, in equity or by statute. No delay or omission of the right to exercise any power or remedy shall impair any such right, power or remedy or be construed as a waiver of any default or nonperformance or as acquiescence therein.

XII. NOTICES

Any notice or demand given or served by one Owner to another shall not be deemed to have been duly given or served unless in writing and personally delivered or forwarded by postage prepaid certified or registered mail, return receipt requested, or by another commercially recognized means of delivery.

IFA: INTERMOUNTAIN FARMERS ASSOCIATION
 1147 West 2100 South
 Salt Lake City, Utah 84130
 Attn: _____

With a
copy to:

Keven M. Rowe, Esq.
Jones, Waldo, Holbrook & McDonough
170 South Main Street, Suite 1500
Salt Lake City, Utah

Notices and demands shall be deemed effective upon receipt. The person and place to which notices are to be given may be changed by the Owners by written notice to the other Owners.

XIII. ATTORNEYS' FEES

In the event legal proceedings are brought or commenced to enforce any of the terms of this Declaration against any Owner or other person with an interest in the Shopping Center, the successful party in such action shall be entitled to receive and shall receive from the defaulting Owner, a reasonable sum as attorneys' fees and costs, to be fixed by the court in the same action.

XIV. DURATION

Except as otherwise provided herein, this Declaration shall remain in full force and effect for a term of sixty-five (65) years from the date hereof. Notwithstanding the foregoing, the Owner of the IFA Parcel shall have the right to extend the term of this Declaration for successive ten (10)-year periods upon written notice to the other Owners served prior to the expiration of the then current term, and recordation in the Official Records of the County Recorder of Salt Lake County, Utah of a notice extending the term of this Declaration. Upon written request, all other Owners shall sign such and acknowledge such notice.

XV. MODIFICATION

All negotiations and oral Declarations acceptable to the Owners have been incorporated herein. Except as otherwise provided herein, this Declaration may not be modified in any respect whatsoever or rescinded, in whole or in part, except by a writing executed by the Owners of seventy-five percent (75%) of the land area in the Shopping Center (which must include the Owner of the IFA Parcel, so long as it has any interest in the Shopping Center) and duly recorded.

XVI. GENERAL PROVISIONS

1. Not a Public Dedication. Nothing herein contained shall be deemed to be a gift or dedication of any portion of the Shopping Center to the general public or for any public purposes whatsoever, it being the intention of the Owners that this Declaration shall be strictly limited to and for the purposes herein expressed.

2. Severability. If any term or provision of this Declaration or the application of it to any person or circumstance shall to any extent be invalid and unenforceable, the remainder of this Declaration or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable shall not be affected thereby, and each term

and provision of this Declaration shall be valid and shall be enforced to the extent permitted by law.

3. **Pronouns.** When required by context, the singular shall include the plural, and the neuter gender shall include a person, corporation, firm, association, or other business arrangement.

4. **Captions.** The captions in this Declaration are for convenience only and do not constitute a part of the provisions hereof.

5. **Not a Partnership.** The provisions of this Declaration are not intended to create, nor shall they be in any way interpreted to create, a joint venture, a partnership, or any other similar relationship between the Owners.

6. **Governing Law.** This Declaration shall be construed and enforced in accordance with, and governed by, the law of the state of Utah.

7. **No Presumption.** This Declaration shall be interpreted and construed only by the contents hereof and there shall be no presumption or standard of construction in favor of or against any Owner.

8. **Inurement.** This Declaration and the easements, covenants, benefits and obligations created hereby shall inure to the benefit and be binding upon each Owner and its successors and assigns; provided, if any Owner conveys all of its interest in any Parcel owned by it, such Owner shall thereupon be released and discharged from any and all further obligations under this Declaration as fee owner of the property conveyed by it if the buyer assumes in writing all of such obligations; and provided further, no such sale shall release such Owner from any liabilities, actual or contingent, existing as of the time of such conveyance.

9. **Estoppel Certificate.** Each Owner agrees that upon request by any other Owner, it will issue to a prospective lender of such other Owner or to a prospective purchaser of such other Owner's interest, an estoppel certificate stating:

- a. whether the Owner to whom the request has been directed knows of any default by the requesting Owner under this Declaration, and if there are known defaults, specifying the nature thereof;
- b. whether this Declaration has been assigned, modified or amended in any way (and if it has, then stating the nature thereof); and
- c. that to the Owner's knowledge this Declaration as of that date is in full force and effect.

Such statement shall act as a waiver of any claim by the Owner furnishing it to the extent such claim is based upon facts contrary to those asserted in the statement and to the extent the claim is asserted against a bona fide encumbrancer or purchaser for value without knowledge of facts to the contrary of those contained in the statement, and who has acted in reasonable reliance upon the statement; however, such statement shall in no event subject the Owner furnishing it to

any liability whatsoever, notwithstanding the negligent or otherwise inadvertent failure of such Owner to disclose correct and/or relevant information.

10. Authority. Each of the individuals who have executed this Declaration represents and warrants that he or she is duly authorized to execute this Declaration on behalf of IFA; that all corporate, partnership, trust or other action necessary for such Party to execute and perform the terms of this Declaration have been duly taken by such Party; and that no other signature and/or authorization is necessary for such Party to enter into and perform the terms of this Declaration.

11. Exhibits. Exhibits A, B, and C, attached hereto are incorporated herein by this reference.

IN WITNESS WHEREOF, this Declaration has been executed as of the date first above written.

INTERMOUNTAIN FARMERS ASSOCIATION,
a Utah corporation

By: Bryan Coulter
Name: Bryan Coulter
Title: VP Retail Operations IFA

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

The foregoing instrument was acknowledged before me this 22 day of October, 2007,
by Bryon Sauter, the Vice President of Intermountain Farmers
Association, a Utah corporation.

Barry C. Hatch
NOTARY PUBLIC

Residing at: _____

My Commission Expires:

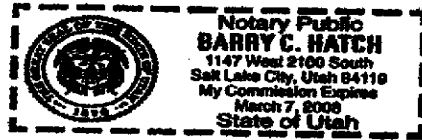


Exhibit B**Legal Description of the Shopping Center**

Beginning at a point on the South Right-Of-Way line of 12th Street, said point being 1057.75 feet North from the West Quarter Corner of Section 19, Township 6 North, Range 1 West, Salt Lake Base and Meridian, and running thence South 88°44'13" East along said South Right-Of-Way line 404.62 feet; thence South 00°40'47" West 742.36 feet; thence South 01°44'29" West 417.82 feet; thence North 78°14'54" West 513.23 feet; thence North 01°21'24" East 1066.70 feet to a point on the South Right-Of-Way line of 12th Street; thence South 88°44'13" East along said Right-Of-Way 99.40 feet to the point of beginning.

Contains: 561,478 SQ. FT. or 12.89 Acres and 7 Lots

Exhibit C

Legal Description of the IFA Parcel

All of lot 7, of the IFA Country Store Subdivision, as the same is recorded in the office of the Weber County Recorder.