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When Recorded Mail to:

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**DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS**

This Declaration of Covenants, Conditions and Restrictions (the "Declaration") is made and entered into as of this \_\_\_\_ day of November, 2002 by K. B. Family - Roy LLC, a Utah Limited Liability Company, its successors and assigns, whose address is 1346 North Highway 89 Kaysville, Utah 84037 (hereinafter referred to as "Declarant") and Cedar/Lombard L.C., a Utah Limited Liability Company (hereinafter, "Arctic Circle").

**RECITALS:**

A. Declarant and Arctic Circle are the owners of a certain parcel of real property located in the City of Roy, County of Weber, State of Utah (the "City") collectively described on Exhibit A attached hereto and depicted on Exhibit B attached hereto (collectively, hereinafter the "Property"). Specifically, Declarant is the owner of that certain parcel of real property described upon Exhibit "A-1" attached hereto and incorporated herein by reference (the "K.B. Parcel") and Arctic Circle is the owner of that certain parcel of real property described upon Exhibit "A-2" attached hereto and incorporated herein by reference (the "Arctic Circle Parcel").

B. Declarant anticipates that the Property will be subdivided in to multiple commercial retail parcels or pads (the "Parcels") a portion of which ultimately may be sold to third party users or investors. The Declarant, Arctic Circle, their successors and assigns as well as those who may subsequently acquire an interest in the Property shall be collectively referred to as the Owners.

C. Declarant, on behalf of itself, its successors in interest and the Owners of the Property desires: i) to manage the development of an integrated retail shopping center (the "Shopping Center"); ii) to impose and establish easements for ingress and egress, parking and common utilities upon and over the Common Areas (as hereinafter defined) of the Shopping Center, iii) to provide a mechanism by which the Common Areas may be maintained and repaired, and iv) to provide for certain permitted and prohibited uses within the Shopping Center.

**NOW, THEREFORE**, in consideration of the mutual covenants and agreements herein set forth and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged by each party hereto, the parties agree as follows:

E# 1896739 BK2296 PG788  
DOUG CROFTS, WEBER COUNTY RECORDER  
12-DEC-02 1257 PM FEE \$60.00 DEP SGC  
REC FOR: KB.FAMILY-ROY.LLC

Location, # \_\_\_\_  
Date

**ARTICLE I**  
**COMMON AREAS**

1.1 **Grant and Declaration of Reciprocal Access Easements.** There is hereby granted, declared, and reserved for the mutual and reciprocal benefit of each present and future Owners of the Shopping Center, their respective successors, assigns, mortgagees, lessees, sublessees, employees, agents, customers, licensees and invitees, a permanent, reciprocal non-exclusive easement and license of ingress and egress by vehicular and pedestrian traffic and vehicular parking on, over and across the parking areas, driveways and other common areas within the Shopping Center, including without limitation roadways, pedestrian sidewalks, landscaping and common areas for rest and convenience, exclusive of the Building Areas, defined below (herein called the "Common Areas") which are located on the Property, from time to time, when used for their intended purposes and as reasonably needed on a temporary basis for construction and repair of improvements upon the Common Areas within the Shopping Center.

1.2 **Grant and Declaration of Reciprocal Utility Easements.** There is further granted, declared and reserved for the mutual and reciprocal benefit of each of the present and future Owners of the Shopping Center, their respective successors, assigns, mortgagees, lessees, employees, agents, customers, licensees and invitees, a permanent, reciprocal non-exclusive easement and right to use, tie into, maintain and repair (relative to such tie in) the sanitary and storm sewers, water lines, gas, electric power, fiber optic, lighting and other common utilities as may be constructed upon, over or under the Common Areas of the Shopping Center, provided such use shall not overburden such utilities or interfere with the use thereof by the other Owners, lessees or sublessees of the Shopping Center.

1.3 **Relocation of Easements.** At any time and from time to time the Owner of a Parcel shall have the right to relocate on its Parcel any utility line or facility installed pursuant to the foregoing grant of easement which is located on the Owner's Parcel, provided that any such relocation (i) shall be performed only after sixty (60) days notice of the Owner's intention to undertake the relocation shall have been given to the Owner of each Parcel served by the utility line or facility, (ii) shall not unreasonably interfere with or diminish utility service to the Parcels served by the utility line or facility, (iii) shall not reduce or unreasonably impair the usefulness or function of the utility line or facility, (iv) shall be performed without cost or expense to the Owner or occupant of any Parcel, and (v) shall provide for the original and relocated area to be restored to the original specifications. The Owner performing such relocation shall provide as-built plans for all such relocated utility lines and facilities to the Owners of all Parcels served by such utility lines and facilities within thirty (30) days after the date of completion of such relocation.

1.4 **Additional Easements.** Each Owner agrees to grant such additional easements as are reasonably required by any public or private utility for the purpose of providing the utility lines and facilities described herein provided such easements are not otherwise inconsistent with the provisions of this Declaration.

1.5 **Parking Areas.** At all times each Parcel shall provide and maintain parking for at least 5 spaces for each 1,000 square feet of gross floor area of all buildings constructed upon the Parcel. Once the Shopping Center is subdivided and platted, each Parcel shall only be entitled to sustain as intensive of use as permitted by the parking spaces located upon the Parcel itself. No Parcel user shall be entitled to a more intensive use of its Parcel based upon parking spaces located on adjoining Parcels, notwithstanding the easements and licenses provided in this Declaration.

1.6 **Barriers and Traffic Control.** No walls, fences, or barriers of any sort or kind shall be constructed or maintained in the Common Areas of the Shopping Center, or any portion thereof, which shall prevent or impair the use or exercise of any of the easements granted herein, or the free access and movement, including without limitation, pedestrian and vehicular traffic, between the various Parcels within the Shopping Center. However, reasonable traffic controls, including directional markers, speed bumps, curbs and landscape barriers as may be necessary to guide and control the orderly flow of traffic may be installed so long as access driveways to the Common Areas in the Shopping Center are not closed or blocked and the traffic circulation pattern of the Common Areas as depicted on Exhibit B is not changed or affected in any material way.

## **ARTICLE II BUILDINGS AND PARCELS**

2.1 **Building Areas.** All buildings and associated improvements erected on the Property shall be built only within the building limit lines depicted on Exhibit B (the "Building Areas"). No building constructed on the Property shall exceed the gross square footage shown on Exhibit B for such Parcel. No building constructed on a Parcel adjacent to 5600 South Street shall exceed one story or twenty-two (22) feet in height at the top of the building or eave (i.e. the overhanging lower edge of a roof). A gabled roof, parapets or other artistic or architectural structure on top of the building may not exceed twenty-six feet in height at its highest point. For the purposes of this Declaration, height shall be measured from the finished grade of the ground as to the highest point of the building, including decorative towers and peaks incidental to the design of the building. The building built upon Parcels A, B, C, D and D may only have a single user.

2.2 **Maintenance of Buildings and Parcels.** The Owner of each Parcel in the Shopping Center shall operate, maintain, and repair or cause to be operated, maintained, and repaired its Parcel and all buildings (including, but not limited to, all loading docks, truck facilities and compactor areas) located on its respective Parcel, in a safe, clean and habitable condition and in good order and repair, consistent in manner and appearance with a first-class shopping center. The Owner's duty of maintenance shall include: (a) cleaning, lighting, painting, striping, landscaping, paving, removing obstructions, snow removal and servicing the parking areas, curbs, walks, driveways, utilities, drainage facilities within the Parcel as necessary from time to time, (b) the payment of real estate taxes and assessments assessed against the Parcel to be paid before any penalty or late charge is payable with respect thereto and (c) comprehensive liability insurance on the Parcel to be maintained in the amount of (i) at least \$2,000,000 with respect to bodily injury or death to any one person, (ii)

at least \$5,000,000 with respect to bodily injury or death arising out of any one accident and (iii) at least \$2,000,000 with respect to property damage arising out of any one occurrence. Should an Owner fail to maintain its Parcel as provided in this section 2.2 or otherwise as required in this Declaration, Declarant shall have all of the enforcement rights provided in section 3.3 of the Declaration.

**2.3 Type and Design of Building.** Each building in the Shopping Center, now and in the future, shall be of first quality construction and architecturally designed so that its exterior elevations (including, without limitation, signs and color) will be architecturally and aesthetically compatible and harmonious with all other buildings in the Shopping Center. No building may be constructed nor the exterior of any existing building changed in any way (including, without limitation, color) without the prior written approval of the Declarant relative to the exterior elevations of the building to be constructed or modified. Prior to the construction or modification of any building or improvement upon a Parcel, the Owner of the affected Parcel shall provide sufficient information to the Declarant to enable it to make a reasonable determination as to the architectural and aesthetic compatibility of said building or modification with all other buildings in the Shopping Center. The Declarant's approval of a building or modification may not be arbitrarily or unreasonably withheld if such building or modification is architecturally and aesthetically compatible and harmonious with all other buildings in the Shopping Center and in compliance with this Declaration and the applicable building code and similar regulations. The Declarant must approve or reject the construction proposal within thirty (30) days after receipt of the proposal. If the Declarant rejects the proposal, it shall provide a written explanation in reasonable detail of its reasons for disapproval. If the Declarant fails to respond to a proposal within the thirty (30) day period, the proposal shall be deemed to be approved, provided that, upon submission, the proposal clearly stated that, if a written response was not made within the thirty (30) day period, approval would be deemed to have been given. If the proposal is disapproved as provided herein, then an alternate proposal may be submitted, which alternate proposal shall be handled in the same manner as the initial proposal.

(a) Every building shall be either equipped with automatic sprinkler systems which meets all the standards of the Insurance Services Office (or other similar local organization having jurisdiction) or shall be constructed in such a manner as not to adversely affect the fire rating of any building built upon any other Parcel within the Shopping Center. The purpose of this subparagraph (a) is to allow buildings built on each Parcel to be fire rated as separate and distinct units without deficiency charge.

(b) No building shall be built in such a manner as to adversely affect the structural integrity of any other building or improvement in the Shopping Center.

(c) Each Owner shall maintain or cause to be maintained the exterior of any building located on such Owner's Parcel(s) in a quality and condition comparable to that of first class shopping centers of comparable size and nature located in the same geographic area as the Shopping Center. All service facilities shall be attractively screened from view from the parking areas.

(d) All buildings shall be constructed in accordance with the Development Agreement with the City which has been recorded against the Shopping Center.

2.4 **Construction Requirements.** Construction of buildings and improvements within the Shopping Center shall be in accordance with the following:

(a) All work performed in the construction, maintenance, repair, replacement, alteration or expansion of any building, sign or Common Area improvement located in the Shopping Center shall be effected as expeditiously as possible and in such a manner as not to unreasonably interfere, obstruct or delay (i) access to or from the Shopping Center, or any part thereof, to or from any public right-of-way, (ii) customer vehicular parking in that portion of the improved Common Area located in front of any building constructed in the Shopping Center, or (iii) the receiving of merchandise by any business in the Shopping Center including, without limitation, access to service facilities. Staging for the construction, replacement, alteration or expansion of any building, sign or Common Area improvements located in the Shopping Center including without limitation, the location of any temporary buildings or construction sheds, the storage of building materials and the parking of construction vehicles and equipment shall be limited to that portion of the Shopping Center approved in writing by the Declarant. The person contracting for the performance of such work ("Contracting Party") shall, at its sole cost and expense, promptly clean, repair and restore or cause to be promptly repaired and restored to its prior condition all buildings, signs and Common Area improvements used, damaged or destroyed in the performance of such work.

(b) The Contracting Party shall not permit any liens to stand against any Parcel for any work done or materials furnished in connection with the performance of the work described in subparagraph (a) above; provided, however, that the Contracting Party may contest the validity of any such lien, but upon a final determination of the validity thereof, the Contracting Party shall cause the lien to be satisfied and released of record. The Contracting Party shall, within thirty (30) days after receipt of written notice from the Owner of any Parcel encumbered by any such lien or claim of lien, cause any such outstanding lien or claim of lien to be released of record or transferred to bond in accordance with applicable law, failing which the Owner said Parcel shall have the right, at the Contracting Party's expense, to transfer said lien to bond. The Contracting Party shall indemnify, defend and hold harmless the Owners and occupants of the Shopping Center from any and all liability, claims, damages, expenses (including reasonable attorneys' fees and reasonable attorneys' fees on appeal), liens, claims of lien, judgments, proceedings and causes of action, arising out of or in any way connected with the performance of such work, unless caused by the negligent or willful act or omission of the indemnified person, its tenants, subtenants, agents, contractors or employees.

(c) The parties acknowledge and agree that incidental encroachments upon the Common Area may occur as a result of the use of ladders, scaffolds, store front barricades

and similar facilities in connection with the construction, maintenance, repair, replacement, alteration or expansion of buildings, signs and Common Area improvements located in the Shopping Center, all of which are permitted hereunder so long as all activities requiring the use of such facilities are expeditiously pursued to completion and are performed in such a manner as to minimize any interference with use of the improved Common Area or with the normal operation of any business in the Shopping Center.

2.5 **Casualty and Condemnation.** In the event all or any portion of any building in the Shopping Center is (i) damaged or destroyed by fire or other casualty, or (ii) taken or damaged as a result of the exercise of the power of eminent domain or any transfer in lieu thereof, the Owner of such building shall promptly restore or cause to be restored the remaining portion of such building or, in lieu thereof, shall remove or cause to be removed the damaged portion of such building together with all rubble and debris related thereto. All Building Areas on which buildings are not reconstructed following a casualty or condemnation shall be graded or caused to be graded by the Owner thereof to the level of the adjoining property and in such a manner as not to adversely affect the drainage of the Shopping Center or any portion thereof, shall be covered by a one inch asphalt dust cap and shall be kept weed free and clean at the Owner's sole cost and expense until buildings are reconstructed thereon. However, if the damage or destruction exceeds more than twenty-five percent (25%) of the value of a building and which occurs more than twenty (20) years after the date of this Declaration, the Owner of such building may elect not to rebuild but shall raze the remainder of such building and pave over such Building Area.

2.6 **Indemnification.** Each Owner hereby agrees to indemnify, defend and hold the Declarant and the other Owners and occupants of the Shopping Center harmless against any and all liability, claims, damages, expenses (including reasonable attorneys' fees including attorneys' fees on any appeal), judgments, proceedings and causes of action, for personal injury or death or damage or destruction of any property resulting from the Owner's construction of buildings or improvements upon the Owner's Parcel, unless, and to the extent, caused by the negligent or willful act or omission of the indemnified person, its tenants, subtenants, agents, contractors or employees.

2.7 **Building Encroachments.** Each Owner, as grantor, hereby grants to the other Owners, for the benefit of each Parcel belonging to the other Owners, as grantees, an easement for any portion of any building or structure located on any such Parcel which may encroach into or over the grantor's adjoining Parcel(s); provided the easement for footings, piers, piles, grade beams and building encroachments does not exceed two (2) feet, and the easement for canopies, eaves and roof overhangs does not exceed four (4) feet. The easements granted in this Section 2.7 shall survive this Declaration and shall last so long as the encroaching building is standing following its initial construction or following its reconstruction where such building is substantially restored to its prior condition following a casualty or condemnation.

2.8 **Insurance on Buildings; Restoration.** The Owners agree that commencing with the start of construction on their respective Parcel, each Owner will keep, or cause to be kept, all

improvements and buildings on its Parcel insured against loss or damage by fire, windstorm, hail, explosions, damage from aircraft and vehicles and smoke damage and such other risks as are from time to time included in "extended coverage" endorsements in the State of Utah, in amounts sufficient to restore the same to or replace them with buildings and improvements of comparable size and of at least the quality thereof as originally designed. An Owner will also require the insurance coverage required under section 2.2 hereof. An Owner may adopt a plan of self-insurance from time to time, on the condition that such Owner maintains a tangible net worth of at least One Hundred Million Dollars (\$100,000,000) or has a market capitalization of at least One Billion Dollars (\$1,000,000,000).

2.9 **Waiver of Subrogation.** Each Owner of a Parcel in the Shopping Center, for itself, and, to the extent it is legally possible for it to do so, on behalf of its fire and extended coverage insurer or on its own behalf to the extent it is acting as a self-insurer as permitted hereunder, hereby releases the other Owner(s) and their respective tenants and occupants from any liability for (i) any loss or damage to the property of each Owner and its respective tenants and occupants located upon or in the Shopping Center, (ii) any loss or damage to buildings or other improvements in the Shopping Center or the contents thereof, and/or (iii) any other direct or indirect loss or damage caused by fire or other risks, which loss or damage under subparagraph (i), (ii) and/or (iii) of this section is of the type generally covered by standard fire and extended coverage insurance in the State of Utah. Each Owner shall, to the extent such insurance endorsement is available, obtain for the benefit of the other Owners and their respective tenants and occupants a waiver of any right of subrogation which the fire and extended coverage insurer of such Owner may acquire against the other Owners and their respective tenants and occupants by virtue of the payment of any such loss covered by such insurance. The foregoing waiver and release shall be operative only so long as the insurance required herein is obtained by the released party; the same shall not preclude any Owner from obtaining insurance, and shall have no effect to the extent that it diminishes, reduces, or impairs the liability of any insurer or the scope of any coverage under any policy applicable to any portion of the Shopping Center or any buildings therein.

2.10 **Real and Personal Property Taxes.** Each Owner shall also be solely responsible for and shall pay (without proration) before delinquency all real property taxes and assessments as well as all municipal, county, state or federal taxes assessed against any personal property or fixtures of any kind owned by an Owner relative to its Parcel. Should the taxing authorities include in the Real Estate Taxes applicable to the Common Areas (as defined in Paragraph 3.2(a)) the value of any improvements made by the Owner, or include machinery, equipment, fixtures, inventory or other personal property of the Owner or its tenant, then the Owner shall also pay the entire Real Estate Taxes for such items without proration. Owner shall reimburse Declarant, within thirty (30) days of receipt of a demand therefor, which demand shall be accompanied by documentation which substantiates the demand for payment of any and all taxes required to be paid by Declarant under this section.

### ARTICLE III

## REPAIR AND MAINTENANCE OF COMMON AREAS

3.1 **Common Area Management: Maintenance, Taxes and Insurance.** Subject to the reimbursements provided in paragraph 3.2, the Declarant, its designee, successor or assign shall at all times cause (a) that portion of the Common Areas within the Shopping Center consisting primarily of common driveways and thoroughfares as more specifically described upon Exhibit "C", regardless of ownership (the "Common Drives"), to be maintained and repaired in a safe, sightly and serviceable condition, which repair and maintenance shall include cleaning, lighting, painting, striping, landscaping, paving, removing obstructions, snow removal and servicing the parking areas, curbs, walks, driveways, utilities, drainage facilities, directional signs and lighting facilities as necessary from time to time, (b) the real estate taxes and assessments assessed against the Common Drives to be paid before any penalty or late charge is payable with respect thereto and (c) comprehensive liability insurance on the Common Drives to be maintained in the amount of (i) at least \$2,000,000 with respect to bodily injury or death to any one person, (ii) at least \$5,000,000 with respect to bodily injury or death arising out of any one accident and (iii) at least \$2,000,000 with respect to property damage arising out of any one occurrence.

3.2 **Common Area Expenses; Right to Reimbursement.** Each Owner of a Parcel within the Shopping Center shall pay its proportionate share (defined below) of the Common Drive expenses identified in paragraph 3.1 and more specifically described in this paragraph 3.2. (the "Common Area Maintenance Expenses"). Each Owner's proportionate share of Common Area Maintenance Expenses shall be determined by multiplying the Common Area Maintenance Expenses by a fraction, the numerator of which shall be the square footage of the respective Parcel and the denominator of which shall be the square footage of the Property less the Common Drives within the Shopping Center (the "Proportionate Share"). If a single Parcel is improved with multiple buildings, owners or tenants (i.e. inline shops), that Parcel's Proportionate Share shall be allocated amongst the various owners and/or tenants based upon a fraction the numerator of which shall be the square footage of each Owner's building or shop within the Parcel and the denominator of which shall be the total square footage of all buildings within the Parcel. Each Owner and/or tenant shall be jointly and severally liable for the payment of the Common Area Maintenance Expense attributable to that Parcel until paid.

(a). **Taxes.** Each Owner shall pay its Proportionate Share of all "Real Estate Taxes" levied or assessed by lawful taxing authorities against the Common Drives for a given fiscal year. "Real Estate Taxes" shall mean any form of taxes, general and special assessments, levies, bond obligations and charges, whether special, extraordinary or otherwise, whether foreseen or unforeseen, together with statutory interest and penalties which may be levied, assessed or imposed upon, on account of, or with respect to: (i) the ownership of and/or all other taxable interests in all land situated within the Common Drives; and (ii) all structures, improvements, fixtures or personal property including but not limited to street lighting, sewer and drainage systems, etc. situated within the Common Drives.

i. **Tax Payment Schedule.** Declarant may require the establishment of



reserves for Real Estate Taxes. Each Owner may be required to pay one-twelfth of its Proportionate Share of annual Real Estate Taxes each month in advance on the first day of each month. Declarant shall notify the Owners of this election in writing. The amount of Real Estate Taxes upon which such payment is based shall be the most current notice(s) of assessment of tax bill(s) concerning the Common Areas copies of which shall be provided to each Owner upon request. If the amount paid each Owner toward Real Estate Taxes exceeds the actual amount due (as determined from the notice(s), assessment or tax bill(s) actually covering the period in question), the excess shall be promptly refunded to the Owners. If the amount paid the Owners is less than said actual amount due, each Owner shall pay to the Declarant the deficiency within ten (10) days after notice from the Declarant. A tax bill submitted by the Declarant to the Owners shall be conclusive evidence of the amount of taxes, as well as the items taxed. Each Owner shall be responsible for the payment of all penalties and interest incurred as a result of such Owner's failure to timely pay Real Estate Taxes, as provided herein.

ii. Protest of Tax. The Declarant, on behalf of the Shopping Center, or an Owner shall be entitled to appeal any and all tax bills which the Declarant or Owner reasonably consider to be in excess of a reasonable tax upon the Common Drives based upon current market values. The Owner shall notify Declarant, in writing, of any tax bill that the Owner reasonably considers to be excessive. Declarant shall fully cooperate with an Owner in conjunction with Owner's appeal and shall reasonably provide the Owner with information pertaining to the current fair market value of the Common Drives. Declarant's expenses in pursuing such appeal shall constitute Operating Costs as provided in section 4.2(b) while an Owner's expenses in pursuing a protest which the Declarant is unwilling to pursue on behalf of the entire Shopping Center, shall be borne by the petitioning Owner.

(b) Operating Costs. Declarant shall be required to maintain and repair the Common Drives of the Shopping Center, at all times, in a safe, sightly and serviceable condition, which repair and maintenance shall include cleaning, lighting, painting, striping, landscaping, paving, removing obstructions, snow removal and servicing the parking areas, curbs, walks, driveways, utilities, drainage facilities, directional signs and lighting facilities as necessary from time to time. The Declarant shall also procure and maintain the property and liability insurance for the Common Areas of the Shopping Center as required in paragraph 3.1. Each Owner shall pay the Declarant its Proportionate Share of the Common Area Operating Expenses incurred by the Declarant for the maintenance and upkeep of the Common Drives. The "Common Area Operating Expense" shall equal the total cost and expense incurred in operating and maintaining the Common Drives of the Shopping Center, including, but not limited to common utility expenses, landscaping, maintenance, snow removal, exterior lighting, the repainting and repairing of Common Drive improvements, vandalism, parking lot maintenance and repair expenses including pavement patching and restriping, storm drainage assessments, sign maintenance expenses, property and liability

insurance required to be obtained by Declarant pursuant to paragraph 3.1, and all other common area and maintenance expenses incurred by the Declarant in the operation of the Property together with a management fee of ten percent (10%) of such Common Area Operating Expense. Notwithstanding the foregoing, if certain aspects of Owner's operation result in a disproportionate use of services, relative to other Owners, Declarant may require such Owner to provide such services itself and at Owner's sole cost. Owner's Proportionate Share of the Common Area Expenses shall be computed based upon a twelve (12) consecutive calendar months as designated by Declarant and estimated payments towards the same shall be made by Owner in equal installments in advance on the first day of each calendar month, in an amount to be established by the Declarant. Within sixty (60) days after the end of each twelve (12) month period, Declarant shall furnish to each Owner with a statement showing the Common Area Operating Expenses for the preceding period and any adjustments to be made as a result thereof. In the case of a deficiency, each Owner shall promptly remit the amount of such deficiency to Declarant. In the case of a surplus, Declarant shall promptly refund such surplus.

3.3 **Failure to Perform.** In the event an Owner shall fail to perform its obligations under Sections 2.2 or 3.2 the Declarant may send notice to the Owner who failed to perform setting forth the obligation which the Owner has failed to perform. In the event such obligation is not performed within thirty (30) days after receipt of such notice (unless the Owner shall have commenced to perform the same within such period and shall be diligently proceeding to perform the same), then the Declarant upon ten (10) days prior written notice to the Owner who failed to perform, shall have the right to perform the same. All such remedial work shall be performed in a reasonable manner but consistent with the type of work typically performed upon a first class shopping center within this community. An Owner shall not be deemed to have failed to perform its obligations hereunder for so long as such delay is prevented due to strikes, lockouts, inability to procure materials, power failure, acts of God, governmental restrictions, enemy action, civil commotion, fire, unavoidable casualty or other causes beyond the control of the Owner provided that lack of funds shall not be deemed a cause beyond the control of the Owner.

(a) In the event failure to perform any repair or maintenance causes an emergency, or performance of such repair or maintenance is necessary to prevent or relieve an emergency, then the notice required to be given hereunder need only be such reasonable notice, if any, as is warranted by the nature of the specific condition involved. If appropriate action is not timely taken by the Owner failing to perform, the Declarant shall be entitled immediately to perform such repair or maintenance.

(b) In the event the Declarant performs any of the obligations of a defaulting Owner, the Declarant, in addition to any other remedies it may have, shall be reimbursed by the defaulting Owner within thirty (30) days of presentation of the appropriate statement therefor, failing which, in addition to any other remedies it may have, the Declarant shall have a lien against real property and improvements of the defaulting Owner for the unpaid amount together with interest thereon from the date said reimbursement was due at the rate of 18%

per annum or the highest rate permitted by law, whichever is lower. Such lien shall be subordinate to the interest of any mortgagee, lessee or sublessee of the affected Parcel, irrespective of when their interest attached, and may be enforced and foreclosed in a suit or action brought in any court of competent jurisdiction.

3.4 **Cooperative Maintenance.** Nothing in this Declaration shall prevent the Declarant and one or more of the Owners of the Parcel to jointly contract with various service providers, insurance carriers, etc. to satisfy their respective obligations to maintain the Common Drives and Common Areas within their respective Parcels as required under sections 2.2 and 3.2 as well as other sections of this Declaration.

#### **ARTICLE IV SIGNS**

4.1 **Shopping Center Pylon Signs.** Subject to the approval of the City, Declarant shall be entitled to locate, build and operate one or more pylon signs within the Shopping Center (the "Pylon Signs"). The Declarant, its successors or assigns, hereby reserves unto itself a construction, maintenance and utility easement over and across such portions of the Shopping Center as necessary to construct, maintain and operate the Pylon signs. Such easement shall include the right to install and maintain underground utilities to service the Pylon Signs. Regardless of their location, the Pylon Signs shall be for the primary benefit and use of the major retail and shop space which abuts 5500 South but faces 5600 South Street (totaling approximately 77,000 square feet of retail space) as set forth upon Exhibit B (the "Pylon Sign Users"). The Declarant, its successor or assign, shall be entitled to allocate the useable sign space upon the Pylon Signs among the Pylon Sign Users in its sole discretion. If the City does not permit the remaining Parcel Owners to have a Monument Sign upon their respective Parcels or to utilize another monument sign as contemplated in paragraph 4.2, the user of such Parcel shall be entitled to have its named displayed upon the Pylon Sign closest to the Parcel. Otherwise only the Pylon Sign Users shall be entitled to utilize the Pylon Signs. The use and operation of the Pylon Signs shall be subject to applicable City regulations.

4.2 **Monument Signs.** Subject to the City's approval, the owner of each Parcel shall have the right to construct, maintain and operate one monument sign upon its Parcel at the locations designated on Exhibit "B" or otherwise approved by the Declarant in its sole discretion. If each Parcel, adjacent to 5600 South Street, is allowed to have its own monument sign then each monument sign shall be for the exclusive benefit of the user of such Parcel. If each Parcel along 5600 South is not permitted to have its own monument sign, then users of the omitted Parcels may utilize a portion of the closest monument sign equal to all users of that sign (i.e. 1/2 if 2 users, 1/3 if 3 users, etc.) Notwithstanding the foregoing, if the Pylon Sign Users are not able to obtain approval of at least one Pylon Sign along 5600 South Street, each of the Pylon Sign Users shall be entitled to utilize an equal portion of one or more monument signs located along 5600 South in such fashion as determined by the Declarant. Each Parcel Owner shall have the right to construct additional pylon signs upon its Parcel, without the consent of the other Owners, provided the construction of additional signs does not preclude the construction of at least one pylon sign upon each of the other Parcels within the

Shopping Center.

**ARTICLE V**  
**LAND USE**

5.1 **Permitted and Prohibited Uses.** Except as otherwise provided in this Declaration, the Property and any portion thereof shall be used, if at all, only for the construction, operation and maintenance of retail businesses, restaurants, financial institutions and businesses and related facilities and common areas for a family-type, mixed use shopping center or as otherwise permitted under the Development Agreement applicable to the Shopping Center or by City ordinance. Accordingly, the Property and any portion thereof shall not be used for:

- (a) warehousing, industrial or manufacturing purposes (except for the storage and/or manufacture of such goods as are required as a necessary incident to the conduct of a particular retail mercantile business);
- (b) entertainment or recreational purposes, including without limitation, cinema, theater, bowling alley, skating rink, health studio or gym (except for one aerobics or health studio not to exceed 3,000 square feet in size), billiard room, game arcade or amusement center (except as incidental to other permitted uses);
- (c) bar or tavern (except where incidental to the operation of a restaurant or delicatessen);
- (d) "adult" book store or massage parlor;
- (e) place of instruction or any other operation catering primarily to students or trainees rather than to customers including beauty school, barber college or reading room; or
- (f) purposes which would necessitate the long-term (over 24 hours) use of the parking areas for the storage of motor vehicles.

In no event shall any portion of the Shopping Center be used or operated for any use or purpose and/or by any Owner or other occupant which is not otherwise permitted by the terms of this Declaration as necessary to maintain and operate the facility as a first-class, family oriented shopping center.

5.2 **Fast Food Restaurant Restriction.** Without the prior written consent of Arctic Circle, no portion of the Shopping Center other than the Arctic Circle Parcel shall be used as a fast food, drive through restaurant primarily serving various varieties of burgers, french fries and milkshakes (the "Fast Food Restrictions"). The Fast Food Restrictions shall automatically terminate, without further action by the parties upon the earlier of: i) July 30, 2022; or, ii) the date that a Fast Food Restaurant is no longer operated on the Arctic Circle Parcel. The Fast Food Restrictions shall

not restrict the use of the remaining portion of the Shopping Center as a sit down restaurant, a convenience store, a yogurt shop, an ice cream store, a coffee shop, a bagel shop, a pizza restaurant for on- or off-site consumption, a bakery, a delicatessen, or another drive through restaurant which does not primarily serve burgers, french fries and milk shakes. All other prohibited and permitted uses for the Shopping Center as set forth in paragraph 5.1 of the Declaration, which are not inconsistent herewith, shall continue to apply to both the K.B. Parcel and the Arctic Circle Parcel.

## ARTICLE VI

### NATURE OF DECLARATION

6.1 **Easements Run With Land.** All easements and covenants contained in this Declaration (a) are a burden on each Parcel and are for the benefit of each other Parcel, (b) run with each Parcel, and (c) shall be binding upon each successive Owner during its ownership of such Parcel, or portion thereof, or interest therein, and each person having any interest therein derived in any manner through an Owner of such Parcel, or any portion thereof, and shall benefit each other Owner and its Parcel. It is understood that a portion of the Property may hereafter be subdivided into one or more separate Parcels in the sole discretion of the Declarant. In such event and except as otherwise herein expressly provided, the terms of this Declaration shall be deemed to continue to apply to and benefit and burden the subdivided Parcel, or any one or more of them, and to create the same rights, easements and obligations as between and among such subdivided Parcel as are herein created with respect to the remainder of the Property.

6.2 **No Dedication to Public.** Nothing contained in this Declaration shall be deemed to be a gift or dedication of any portion of the Shopping Center to the general public or for any public use or purpose whatsoever, it being the intention of the parties hereto that this Declaration is for the exclusive benefit of all Owners of any portion of the Shopping Center and their successors, assigns, mortgagees, tenants, customers and invitees, and that nothing in this Declaration, express or implied, shall confer upon any person, other than such Owners, and their successors, assigns, mortgagees, tenants, customers and invitees any rights or remedies under or by reason of this Declaration. The Declarant shall have the right from time to time to close all or any portion of the Shopping Center to such extent as may be necessary to prevent a dedication thereof to the public or the accrual of any rights in any person, not expressly granted rights hereunder.

6.3 **Amendment, Modification or Termination.** This Declaration may be amended or modified at any time by a declaration in writing mutually agreed to, executed and acknowledged by the Owners of all the Property which are affected by such amendment and thereafter duly recorded in the Office of the County Recorder of the County in which the Shopping Center is located. This Declaration shall not be terminated, amended, altered or modified in any way without the prior written consent of and the Declarant.

6.4 **Term of Declaration.** This Declaration shall be effective as of the date of recording hereof in the Office of the County Recorder of Weber County, State of Utah and shall continue in full force and effect in perpetuity.

## ARTICLE VII

### **MISCELLANEOUS**

7.1 **Successors.** This Declaration shall be binding upon and inure to the benefit of the parties designated herein, their heirs, executors, administrators, beneficiaries, successors and assigns; provided that the respective Owners from time to time of the Property forming the Shopping Center shall be liable in money damages and subject to the action for specific performance only for breaches of the undertakings contained in this Declaration occurring during their respective periods of ownership of each Parcel; provided further, however, that such successor-in-title to any of the Property shall be subject only to an action for specific performance with respect to breaches of undertakings hereunder which occurred during the ownership of any predecessor-in-title. The Owners, by accepting and recording a deed conveying an interest in the Property, acknowledge, accept and agree to have each of the covenant, conditions and restrictions set forth in this Declaration binding against them and their interest in the Property.

7.2 **Governing Law.** This Declaration shall be construed in accordance with the laws of the State of Utah.

7.3 **Headings.** The section headings in this Declaration are for convenience only, shall in no way define or limit the scope or content of this Declaration and shall not be considered in any construction or interpretation of this Declaration or any part thereof.

7.4 **No Partnership.** Nothing in this Declaration shall be construed to make the Owners partners or joint venturers or render any of said Owners liable for the debts or obligations of the others.

7.5 **Notices.** Any notice, demand, request, consent, approval, designation, or other communication made pursuant to this Declaration by one Owner to any other Owner shall be in writing and shall be given or made or communicated by personal delivery, by United States registered or certified mail, return receipt requested, or by prepaid Federal Express or other recognized overnight delivery service addressed, to the address in the first paragraph hereof, subject to the rights of any Owner to designate a different address by notice similarly given. Any notice, demand, request, consent, approval, designation or other communication so sent shall be deemed to have been given, made or communicated, as the case may be, on the date the same was personally delivered or delivered by the United States mail as registered or certified matter, with postage thereon fully prepaid or by Federal Express or other recognized overnight delivery service.

7.6 **Consent and Acknowledgment** Each Owner of the Property and each subsequent Owner of the Property, as evidenced by their acceptance and recordation of a grant deed in their favor do hereby accept the covenants, conditions and restrictions set forth in this Declaration and reserve and grant unto themselves and the other Owners of the Property anew each of the easements, rights of way and restrictions set forth in this Declaration.

7.7 **Further Subdivision** Declarant shall be entitled to further subdivide the K.B. Parcel as necessary to complete the development and sale of the Shopping Center. Provided such further subdivision does not violate the provisions of this Declaration, Declarant shall not be required to obtain Arctic Circle's or any other Owner's consent to such subdivision. Each of the Owners agree to execute such documentation and plats as necessary for Declarant to complete the further subdivision of the K.B. Parcel as contemplated herein.

**IN WITNESS WHEREOF**, the parties hereto have hereunto set their respective authorized signatures as of the day and year first above written.

WITNESSES:

K. B. Family - Roy LLC  
a Utah Limited Liability Company

\_\_\_\_\_  
\_\_\_\_\_

By: *Scott M. Roberts*  
Its: MANAGING PARTNER Pres.  
Date: 12-12-2002

WITNESSES:

Cedar/Lombard, L.C.  
a Utah Limited Liability Company

\_\_\_\_\_  
\_\_\_\_\_

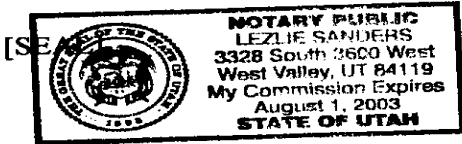
*William G. Gee*  
William G. Gee  
Its: Manager  
Date: 11/21/02

E# 1896739 BK2296 PG802

ACKNOWLEDGMENTS

STATE OF UTAH            )  
  )  
COUNTY OF SALT LAKE )

The foregoing instrument was acknowledged before me this 12 day of December, 2002 by Kent Erickson, as Manager of K. B. Family - Roy LLC., a Utah limited liability company, on behalf of the company.

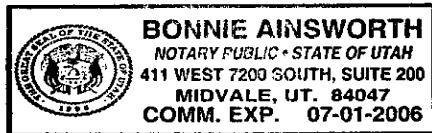


Leslie Sanders  
Notary Public  
County Salt Lake  
My commission expires: 8/1/2003

STATE OF UTAH            )  
  )  
COUNTY OF SALT LAKE )

The foregoing instrument was acknowledged before me this 21st day of November, 2002 by William G. Gee, as Manager of Cedar/Lombard, L.C., a Utah limited liability company, on behalf of the company.

[SEAL]



Bonnie Ainsworth  
Notary Public  
County Salt Lake  
My commission expires: 7-01-06

E# 1896739 BK2296 PG803



**EXHIBIT A**

**Legal Description of The Property**

All of Kent's, a Commercial Subdivision in Roy City, Weber County, Utah  
according to the official plat thereof.

**Contains 563,041 sq. ft.  
Or 12.926 acre**

09.509.0001 - 0013

E# 1896739 BK2296 PG804

Kents#2

**EXHIBIT A-1**

**Legal Description of the K.B. Parcel**

All of Lot 8 of Kent's, a Commercial Subdivision in Roy City, Weber County, Utah according to the official plat thereof.

**Contains 182,163 sq. ft.  
Or 4.182 acres**

E# 1896739 BK2296 PG805

Kents#2

**EXHIBIT A-2**

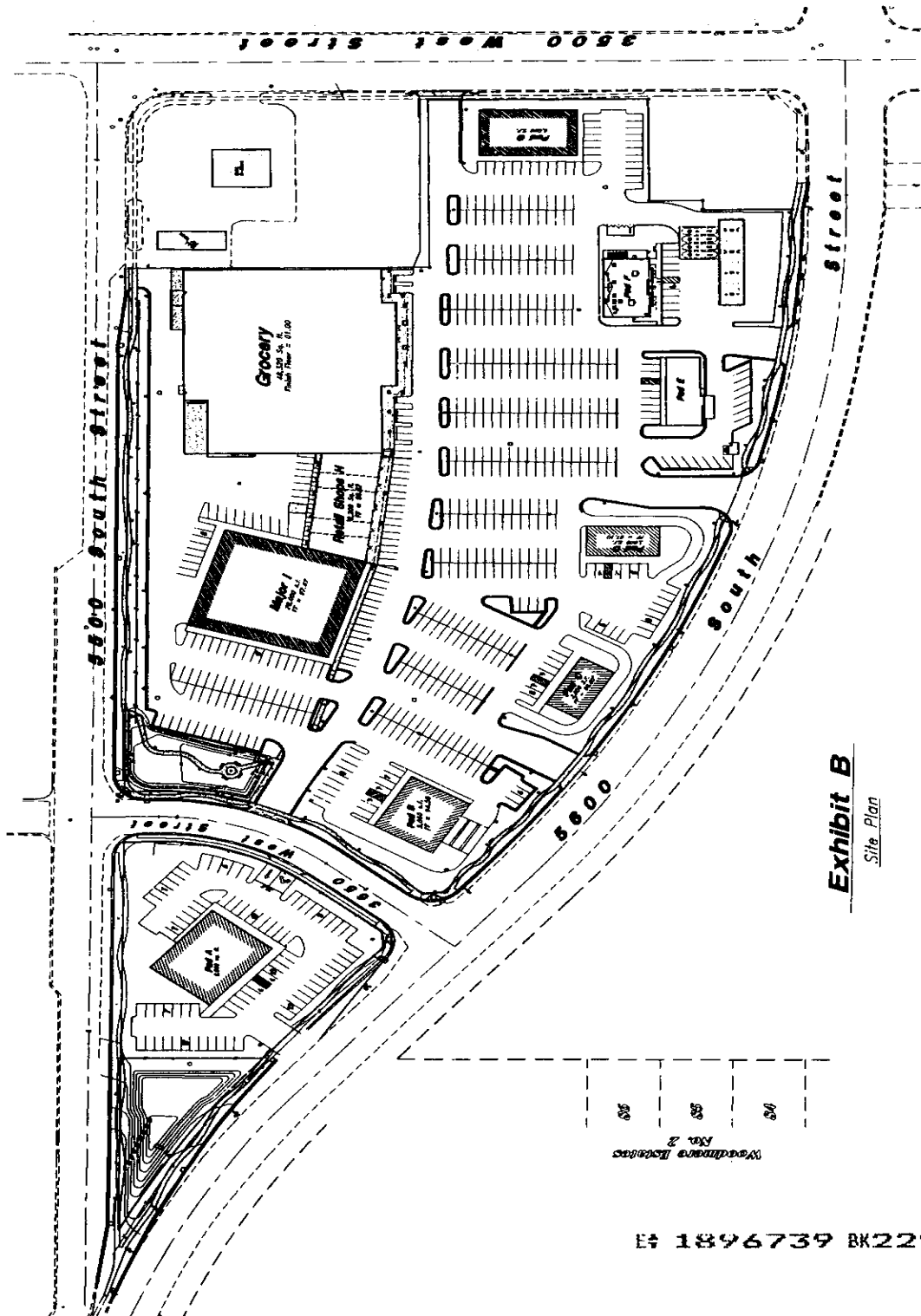
**Legal Description of the Artic Circle Parcel**

All of Lot 5 of Kent's, a Commercial Subdivision in Roy City, Weber County,  
Utah according to the official plat thereof.

**Contains 31,588 sq. ft.  
Or 0.725 acre**

EE 1896739 BK2296 PG806

Kents#2



**Exhibit B**  
Site Plan

Woodman's Licenses  
Rev. 2  
55  
55  
55

