

When recorded return to:

Canyon Creek Phase Two L.L.C.  
c/o Woodbury Corporation  
2733 East Parleys Way, Suite 300  
Salt Lake City, Utah 84109  
Attn: Legal Department

## DECLARATION OF RESTRICTIONS AND CROSS-EASEMENT AGREEMENT

This DECLARATION OF RESTRICTIONS AND CROSS-EASEMENT AGREEMENT ("Agreement") is made and entered into this 27<sup>th</sup> day of August, 2014, by and between CANYON CREEK PHASE TWO L.L.C., a Utah limited liability company, or its assigns ("CCSC PHASE TWO"), QDA, L.L.C., a Utah limited liability company, or its assigns ("QDA") and WELLS FARGO BANK, a National Association (hereinafter "Wells Fargo"). CCSC PHASE TWO, QDA, and Wells Fargo may hereinafter be referred to individually as an "Owner" or collectively as "Owners".

### RECITALS

- A. WHEREAS, CCSC PHASE TWO is the Owner of property located in Spanish Fork, Utah legally described in Exhibit "A", attached hereto and by this reference incorporated herein ("CCSC PHASE TWO Property"). The CCSC PHASE TWO Property is depicted and outlined on the site plan attached hereto and incorporated herein as Exhibit "A-1".
- B. WHEREAS, the CCSC Phase Two Property is encumbered by a Construction Deed of Trust with Absolute Assignment of Leases and Rents, Security Agreement, and Fixture Filing in favor of Wells Fargo, as recorded in the Utah County Recorder's Office on July 7, 2014 as Entry No. 46387:2014 at Pages 1 of 24 of the official records, and any subsequent amendments thereto.
- C. WHEREAS, QDA is the Owner of property located in Spanish Fork, Utah as legally described in Exhibit "B", attached hereto and by this reference incorporated herein ("QDA Property"). The QDA Property is depicted and outlined on the site plan attached hereto and incorporated herein as Exhibit "B-1".

- D. WHEREAS, the CCSC PHASE TWO Property and the QDA Property are two (2) parts of a larger integrated mixed-use development ("Master Planned Development"), as depicted on Exhibit "C", attached hereto and by this reference incorporated herein.
- E. WHEREAS, QDA Property and CCSC PHASE TWO Property are a part of the "Canyon Creek Shopping Center" as depicted on Exhibit "D", attached hereto and by this reference incorporated herein ("CCSC Phase Two Shopping Center").
- F. WHEREAS, the Master Planned Development is subject to a Declaration and Grant of Easements ("Grant of Easements"), recorded in the Utah County Recorder's Office, January 31, 2014, as Entry No. 7862:2014 at Pages 1 of 25 of the official records.
- G. WHEREAS, the Master Planned Development is subject to a Memorandum of Joint Development and Maintenance Agreement ("JDMA") recorded in the Utah County Recorder's Office, February 4, 2014, as Entry No. 7860:2014 at Pages 1 of 15 of the official records.
- H. WHEREAS, the Master Planned Development is subject to the Notice of Use Restrictions (the "Use Restriction") recorded in the Utah County Recorder's Office, February 4, 2014, as Entry No. 7859:2014 at Pages 1 of 8 of the official records.
- I. WHEREAS, the Master Planned Development is subject to Declaration of Easements and Covenants (the "Conservation Easement") recorded in the Utah County Recorder's Office, February 4, 2014, as Entry No. 7856:2017 at Pages 1 of 7 of the official records, and any subsequent amendments thereto.
- J. WHEREAS, the CCSC PHASE TWO Property is subject to an Architectural Control Standards Declaration (the "Architectural Control Standards") recorded in the Utah County Recorder's Office, June 19, 2014, as Entry No. 41845:2014 at Pages 1 of 13 of the official records, and any subsequent amendments thereto.
- K. WHEREAS, QDA and CCSC PHASE TWO desire to grant to each other an ingress and egress easement for vehicular and pedestrian traffic approximately across the location on their respective properties located at the Southwest Corner of Chappel Drive and Highway 6 and adjacent to 700 East.
- L. WHEREAS, QDA and CCSC PHASE TWO intend to restrict the uses of both the QDA Property and the CCSC PHASE TWO Property as well to establish standards for the maintenance thereof.

- M. WHEREAS, the CCSC PHASE TWO Property and the QDA Property may be hereinafter referred to individually as the "Property" or collectively as the "Properties".

AGREEMENT

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

1. CCSC PHASE TWO GRANT OF EASEMENT. CCSC PHASE TWO hereby grants to QDA a non-exclusive perpetual easement for ingress and egress over and across those portions of the CCSC PHASE TWO Property specifically designed for use by vehicular and pedestrian traffic from time to time (the "QDA Easement"). The proposed configuration of the CCSC PHASE TWO Property is as shown on Exhibit "A-1". The QDA Easement specifically excludes any areas of the CCSC PHASE TWO Property on which a building is, or may hereafter be located. QDA shall have the non-exclusive right to use the QDA Easement for the purpose of vehicular and pedestrian access only by QDA, its tenants, licensees, invitees, guests and employees to and from the QDA Property across the QDA Easement to the CCSC PHASE TWO Property and adjacent public right-of-ways. The easement herein granted shall not be construed to grant any parking rights on the CCSC PHASE TWO Property in favor of QDA, its tenants, licensees, invitees, guests and employees. CCSC PHASE TWO shall have the right to modify the location of the QDA Easement from time to time to accommodate the reasonable development of the CCSC PHASE TWO Property, provided that cross-access is reasonably maintained to provide for normal traffic flows between the CCSC PHASE TWO Property and the QDA Property as required by Spanish Fork City.
  
2. QDA GRANT OF EASEMENT. QDA hereby grants to CCSC PHASE TWO a non-exclusive perpetual easement for ingress and egress over and across those portions of the QDA Property specifically designed for use by vehicular and pedestrian traffic from time to time (the "CCSC PHASE TWO Easement"). The proposed configuration of the QDA Property is as shown on Exhibit "B-1". The CCSC PHASE TWO Easement specifically excludes any areas of the QDA Property on which a building is, or may hereafter be located. CCSC PHASE TWO shall have the non-exclusive right to use the CCSC PHASE TWO Easement for the purpose of vehicular and pedestrian access only by CCSC PHASE TWO, its tenants, licensees, invitees, guests and employees to and from the CCSC PHASE TWO Property

across the CCSC PHASE TWO Easement to the QDA Property and adjacent public right-of-ways. The easement herein granted shall not be construed to grant any parking rights on the QDA Property in favor of CCSC PHASE TWO, its tenants, licensees, invitees, guests and employees. QDA shall have the right to modify the location of the CCSC PHASE TWO Easement from time to time to accommodate the reasonable development of the QDA Property, provided that cross-access is reasonably maintained to provide for normal traffic flows between the QDA Property and the CCSC PHASE TWO Property as required by Spanish Fork City.

3. USE OF PROPERTY. The Properties shall be used for lawful purposes in conformance with all restrictions imposed by all applicable governmental laws, ordinances, codes, and regulations, and no use or operation shall be made, conducted or permitted on or with respect to all or any portion of the Properties which is illegal. Further, the Properties may not be used for any use which violates the Use Restriction and/or the Conservation Easement. The QDA Property shall be used solely as a restaurant primarily selling hamburgers and shakes, and for no other purpose without the prior written consent of CCSC PHASE TWO. It is expressly agreed that neither all nor any portion of the QDA Property shall be used, directly or indirectly, for any one or more of the following purposes: (i) the operation of a drug store or a so-called prescription pharmacy or prescription ordering, processing or delivery facility, whether or not a pharmacist is present at such facility, or for any other purpose requiring a qualified pharmacist or other person authorized by law to dispense medicinal drugs, directly or indirectly, for a fee or remuneration of any kind; (ii) the operation of a medical diagnostic lab and/or the provision of treatment services (other than as part of a medical, dental, physician, surgical or chiropractic office(s), which office(s) shall not be restricted by this paragraph); (iii) the sale of so-called health and/or beauty aids and/or drug sundries; (iv) the operation of a business in which alcoholic beverages shall be sold for consumption off the premises; (v) the operation of a business in which photofinishing services (including, without limitation, digital photographic processing or printing, or the sale of any other imaging services, processes or goods) or photographic film are offered for sale, however, any such operations shall not apply to any CCSC Phase Two outdoor advertising; (vi) the operation of a business in which greeting cards and/or gift wrap are offered for sale; and/or (vii) the operation of a business in which prepackaged food items for off premises consumption are offered for sale ("Walgreen's Exclusive Use"). In addition to the foregoing, throughout the term of this Agreement, it is expressly agreed that neither all nor any portion of the QDA Property or CCSC PHASE TWO Property shall be used for a cafeteria, theatre, bowling alley, billiard parlor, night club or other place of recreation or amusement, day care facility, child care facility, preschool or children's nursery,

any business which derives in excess of forty percent (40%) of its gross sales from the sale of alcoholic beverages, any business or facility used in growing, delivering, transferring, supplying, dispensing, dispersing, distributing or selling marijuana (whether by prescription, medical recommendation or otherwise, and whether consisting of live plants, seeds, seedlings or processed or harvested portions of the marijuana plant).

4. DESIGN AND CONSTRUCTION OF BUILDING. The building to be constructed on the QDA Property shall be designed and constructed in accordance with the plans as approved by the Architectural Control Committee, as defined in the Architectural Control Standards. Any modifications from the approved site plan and elevations, must be submitted to CCSC PHASE TWO and approved by the Architectural Control Committee.
  
5. LIMITATIONS ON USE.
  - a. Customers. QDA shall use commercially reasonable efforts to ensure that customers and invitees park only on the QDA Property, and further that shall not be permitted to park on the CCSC PHASE TWO Property except while shopping or transacting business on the QDA Property, QDA shall permit customers and invitees of occupants of the Master Planned Development to park on the QDA Property so long as they are shopping or transacting business within the Master Planned Development. CCSC PHASE TWO shall use commercially reasonable efforts to ensure that customers and invitees park only on the CCSC PHASE TWO Property, and further shall not be permitted to park on the QDA Property except while shopping or transacting business on the CCSC PHASE TWO Property.
  
  - b. Employees. QDA shall use commercially reasonable efforts to ensure that employees of occupants of the QDA Property park only on the QDA Property.
  
  - c. General. CCSC PHASE TWO shall use commercially reasonable efforts to ensure that employees of the occupants of the CCSC PHASE TWO Property park only on the CCSC PHASE TWO Property.
  
6. UTILITY AND SERVICE EASEMENTS. Each party hereby establishes and grants to the other party a nonexclusive easement for the benefit of the Owner of each Property to install, use, maintain and repair public utility services and distribution systems (including storm drains, sewers, utilities and other proper services necessary for the orderly development and operation of each Property, now upon

or hereafter installed on, across or under each Property, to the extent necessary to service such tract or outparcel). Both parties shall use their best efforts to cause the installation of such utility and service lines prior to the paving of either Property. The location of any utilities hereafter installed shall be determined by the Owner of the Property upon which such utilities are to be installed, in such Owner's commercially reasonable discretion.

7. DEVELOPMENT, PARKING RATIOS, MAINTENANCE, AND TAXES.

a. Development. The layout and elevation of building has been submitted and approved by CCSC PHASE TWO and the Architectural Control Committee. The approved building on the QDA Property shall not be changed without the prior written consent of CCSC PHASE TWO and the Architectural Control Committee.

b. Parking Ratio.

QDA agrees to maintain a parking ratio of not less than twelve (12) parking stalls per one thousand (1,000).

CCSC PHASE TWO agrees to maintain a parking ratio of not less than what is required by the City.

c. Maintenance.

i. Standards. Both the QDA Property and CCSC PHASE TWO Property, are encumbered by the Architectural Standards Declaration and the Properties shall be kept neat, orderly, xeriscaping, water courses, planted in grass and trimmed until improved and constructed. Following completion of the improvements on the QDA Property and the CCSC PHASE TWO Property, each party shall maintain its property in good condition and repair. The maintenance is to include, without limitation, the following:

1. Maintaining the 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 in quality, use, and durability;
2. Removing all papers, ice and snow, mud and sand, debris, filth and refuse and thoroughly sweeping the area to the

extent reasonably necessary to keep the area in a clean and orderly condition;

3. Placing, keeping in repair and replacing any necessary appropriate directional signs, markers and lines, to the extent installed;
  4. Operating, keeping in repair and replacing, where necessary, such artificial lighting facilities as shall be reasonably required;
  5. Maintaining all perimeter and exterior building walls including but not limited to all retaining walls in a good condition and state of repair;
  6. Maintaining, mowing, weeding, trimming and watering all landscaped areas and making such replacements of shrubs and other landscaping as is necessary; and
  7. Maintaining elements of the storm drainage system, to the extent installed.
- ii. Expenses. Each party shall pay the maintenance expense of their respective Property.
  - iii. By Agent. Subject to the mutual agreement of the parties hereto, a third party may be appointed as an agent of QDA to maintain the QDA Property in the manner as above outlined.
- d. Taxes. Each of the parties hereto agrees to pay or cause to be paid, prior to delinquency, directly to the appropriate taxing authorities all real property taxes and assessments which are levied against its Property.
8. PERIMETER LANDSCAPE MAINTENANCE CHARGE. The Owner of the CCSC PHASE TWO shall construct and maintain uniform landscaping along the right-of-ways, including but not limited to xeriscaping, water courses, and grass located in the areas of the Canyon Creek Phase Two Shopping Center, as depicted on Exhibit "E", attached hereto and by this reference incorporated herein (the "Perimeter Landscape") for the mutual benefit and beautification of the Canyon Creek Phase Two Shopping Center. The Owner of the QDA Property shall use commercially reasonable efforts to minimize the disturbance of the Perimeter

- Landscape. The Owner of the QDA Property shall reimburse the Owner of the CCSC PHASE TWO Property for a pro-rated share which is currently estimated to be thirteen and twenty-three one hundredths of one percent (13.23%) of the total square footage of the QDA Property for the reasonable actual costs of maintaining the Perimeter Landscape, together with a ten percent (10%) administrative fee. Such pro-rated share shall be calculated based on the square footage of the QDA Property as a percentage of the total square footage of the CCSC Phase Two. The Owner of the QDA Property shall pay such reimbursement within ten (10) days of receiving an invoice therefor from the Owner of the CCSC PHASE TWO Property, which shall be based on the annual budget, reconciled annually, and invoiced monthly but not more frequently than twelve (12) times a year.
9. LIMITED LANDSCAPE MAINTENANCE CHARGE. The CCSC PHASE TWO Property and the QDA Property are benefitted by the Grant of Easements and the JDMA, which benefits and serves the entire Master Planned Development. The Master Planned Development, in accordance with the Architectural Standards Declaration, shall construct and maintain uniform landscaping, including but not limited to xeriscaping, water courses, and grass located in areas as determined by the Architectural Control Committee, from time to time (the "Limited Landscape"). The Owner of the CCSC PHASE TWO Property is responsible for paying its pro-rata share of the cost of maintaining the Limited Landscape based on the ratio of the total gross square footage of land contained in the Master Planned Development. The Owner of the QDA Property shall reimburse the Owner of the CCSC PHASE TWO Property for a pro-rated share of its actual share of the costs of maintaining the Limited Landscape, together with a ten percent (10%) administrative fee. The Owner of the QDA Property shall pay such reimbursement within ten (10) days of receiving an invoice therefor from the Owner of the CCSC PHASE TWO Property, which invoices shall be budgeted and reconciled annually, and billed monthly but not more frequently than twelve (12) times a year.
10. INDEMNITY. Each party shall indemnify, defend and hold each other party, its successors, assigns, and agents harmless from any and all claims, liability, losses, costs, charges, or expenses which may be incurred as a result of any act or omission of the indemnifying party in its use of the easement or other obligations under this Agreement. If any action, claim or demand is made against the indemnified party for any act or omission of the indemnifying party, the indemnifying party agrees to assume the expense and shall pay all costs, charges, attorney fees, settlements, judgment or other expenses incurred by or obtained against the indemnified party.



11. INSURANCE. Each party shall obtain and maintain at all times commercial general liability insurance insuring against claims on account of death, bodily injury or property damage that may arise from or be occasioned by the condition, use or occupancy of the easement located on its respective Property. Said insurance shall be obtained and maintained in a reputable insurance company or companies qualified to do business in the State of Utah with a rating in the Best's Key Rating Guide of A- Class XI or better and having limits for bodily injury or death in the amounts of not less than \$1,000,000 for injury to or death of one person, \$2,000,000 for injury to or death of more than one person in one accident, and property damage insurance in an amount of not less than \$1,000,000 (or, as an alternative, single limit coverage in the amount of \$2,000,000). Such insurance shall name each other party as an additional insured. From time to time and upon written request by any party, a certificate of insurance shall be furnished by the providing party showing the required coverage. Such insurance shall provide that the insurance may not be canceled without at least thirty (30) days prior written notice by the insurer to the party named as an additional insured and shall provide for waiver of subrogation rights. Said insurance may be carried under a "blanket" policy or policies covering other properties of the providing party and its subsidiaries, controlling or affiliated corporations and entities.
12. BINDING EFFECT. All of the easements, covenants, conditions and declarations contained herein, including the benefits and burdens, shall run with the land and shall benefit and bind the heirs, successors and assigns of the parties, and all current and future Owners of the benefitted and burdened Property.
13. NO PUBLIC DEDICATION. The CCSC PHASE TWO Easement and QDA Easement established, granted and conveyed is for the use and benefit of QDA and CCSC PHASE TWO, and their respective tenants, licensees, guests and invitees and is not intended to confer any benefit or right upon the general public.
14. DURATION. The easements, covenants, conditions and restrictions contained in this Agreement shall be effective commencing on the date of recordation of this Agreement in the office of the Utah County Recorder and shall remain in full force and effect thereafter in perpetuity, unless this Agreement is modified, amended, canceled or terminated by the written consent of all then recorded Owners of QDA and CCSC PHASE TWO.
15. MODIFICATION. This Agreement shall not be modified unless expressly agreed to in writing by each of the parties.



16. NOTICE. All notices, demands, requests and other communications required or desired to be given hereunder shall be in writing and shall be deemed delivered on the earlier of (i) posting of registered or certified mail, addressed to the addressee at its address set forth below or at such other address as such party may have specified theretofore by notice delivered in accordance with this Section 15, (ii) attempted delivery or refusal to accept delivery if sent by courier or other personal delivery service, or (iii) actual receipt by the addressee regardless of the method of delivery.

If to QDA: QDA , L.L.C.  
770 East Main Street, Suite 323  
Lehi, Utah 84042  
Attention: William B. Gibson

If to CCSC PHASE TWO: Canyon Creek Phase Two L.L.C.  
c/o Woodbury Corporation  
2733 East Parleys Way, Suite 300  
Salt Lake City, Utah 8109  
Attn: Office of General Counsel

With a copy to: WPI Enterprises  
5455 West 11000 North, Suite 202  
Highland, Utah 84003  
Attn: Richard Mendenhall

17. SUBORDINATION. Any mortgage or deed of trust affecting any portion of the QDA Property or the CCSC PHASE TWO Property shall at all times be expressly made subject and subordinate to the terms of this Agreement, whether by a supplemental consent appended to this Agreement or else by separate agreement, and any party foreclosing any such mortgage or deed of trust, or acquiring title by deed in lieu of foreclosure or trustee sale, shall acquire title subject to all the terms and conditions of this Agreement.
18. APPROVAL. Any initial construction, modifications or changes relating to the access area between the QDA Property and the CCSC PHASE TWO Property made by either Owner must be approved in writing by both Owners, which approval shall not be unreasonably withheld.



19. ENTIRE AGREEMENT. This Agreement contains the complete understanding and agreement of the parties hereto with respect to all matters referred to herein, and all prior representations, negotiations, and understandings are superseded hereby.

*[Remainder of page left intentionally blank]*



IN WITNESS WHEREOF, the undersigned have caused this Agreement to be executed the day and year first above written.

QDA: **QDA , L.L.C., a Utah limited liability company**

By: [Signature]  
Its: LLC MGR/CEO  
**WILLIAM B. GIBSON**

By: [Signature] N/A.  
Its: [Signature]

CCSC PHASE TWO: **CANYON CREEK PHASE TWO L.L.C., a Utah limited liability company**

By: CANYON CREEK COMMERCIAL CENTER L.L.C.,  
a Utah limited liability company, Its Manager

By: TENEDOR L.L.C., a Utah limited liability  
company, Its Manager

By: WOODBURY CORPORATION, a Utah  
corporation, Its Manager

By: [Signature]  
**William K Woodbury, Its VICE PRESIDENT**

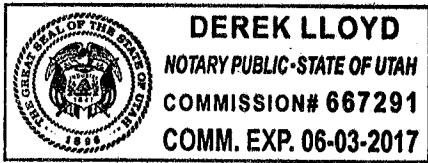
By: [Signature]  
**Gary R. Woodbury, Its VICE PRESIDENT**

By: [Signature]  
**Richard L.K. Mendenhall, Manager**

ACKNOWLEDGEMENTS

STATE OF UT )  
 : SS.  
COUNTY OF UT )

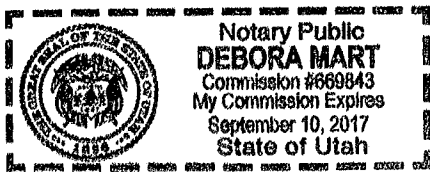
On the 15 day of August, 2014, before me personally appeared William B. Gibson and N/A, to me personally known to be the LLC mgr / CEO and N/A of QDA, L.L.C., a Utah limited liability company, the company that executed the within instrument, known to me to be the persons who executed the within instrument on behalf of said company therein named, and acknowledged to me that such company executed the within instrument pursuant to its articles of organization.



[Signature]  
Notary Public

STATE OF Utah )  
 : SS.  
COUNTY OF Salt Lake )

On the 20<sup>th</sup> day of August, 2014, before me personally appeared Jeffrey K. Woodbury and Guy B. Woodbury, to me personally known, who being by me duly sworn did say that they are the Vice President and Vice President of WOODBURY CORPORATION, which is a Manager of TENEDOR L.L.C., manager of CANYON CREEK COMMERCIAL CENTER L.L.C., Manager of the company that executed the within instrument, known to me to be the persons who executed the within instrument on behalf of said company therein named, and acknowledged to me that such company executed the within instrument pursuant to its articles of organization.

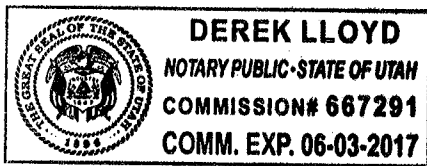


[Signature]  
Notary Public

[Handwritten initials]

STATE OF UT )  
 : SS.  
COUNTY OF UT )


On the 18 day of August, 2014, before me personally appeared RICHARD L.K. MENDENHALL, to me personally known, who being by me duly sworn did say that he is the Manager of TENEDOR L.L.C., Manager of CANYON CREEK COMMERCIAL CENTER L.L.C., Manager CANYON CREEK PHASE TWO L.L.C., the company that executed the within instrument, known to me to be the persons who executed the within instrument on behalf of said company therein named, and acknowledged to me that such company executed the within instrument pursuant to its articles of organization.



Derek Lloyd  
Notary Public

**WELLS FARGO does hereby consent to and subordinate its lien to this  
DECLARATION OF RESTRICTIONS AND CROSS-EASEMENT AGREEMENT.**

**WELLS FARGO BANK, A NATIONAL  
ASSOCIATION**

By:   
Erik W. Bengtzen, Vice President

STATE OF UTAH )

:SS

COUNTY OF SALT LAKE )

The foregoing instrument was acknowledged before me this 27<sup>th</sup> day of August  
2014, by Erik W. Bengtzen, Vice President of Wells Fargo Bank, National Association.

  
Notary Public

My commission expires: 3/10/15

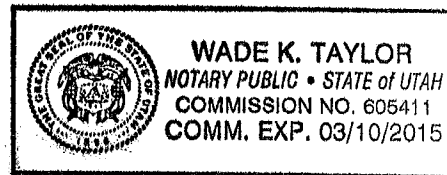




EXHIBIT "A"

LEGAL DESCRIPTION OF CCSC PHASE TWO PROPERTY

Lots 3 and Lot 4, Phase 2, Canyon Creek Shopping Center Subdivision, according to the official plat there of recorded December 19, 2013, as Entry No. 115075:2013, as Map Filing No. 14098, in the office of the Utah County Recorder.

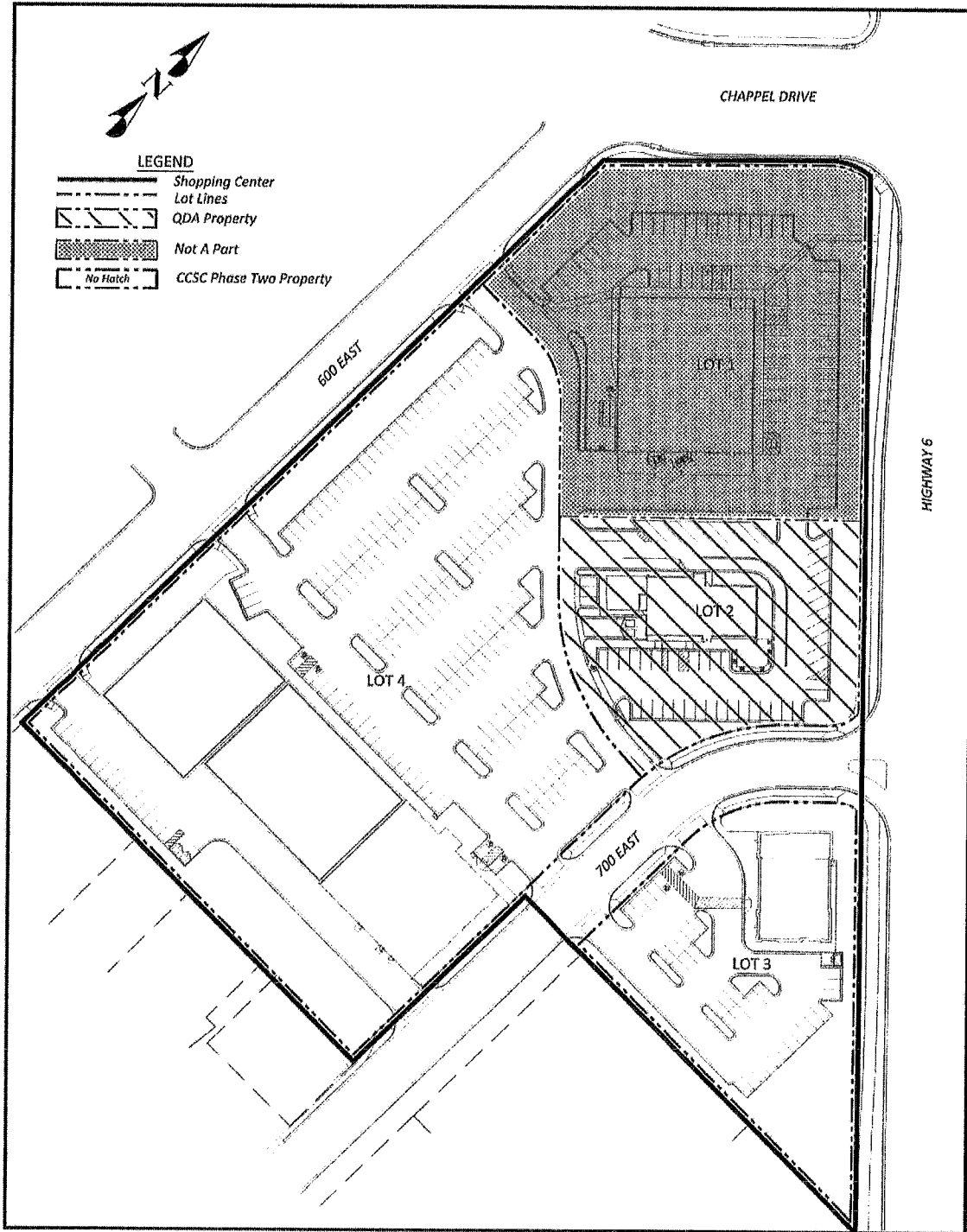
212,980 square feet

4.89 acres





EXHIBIT "A-1"  
DEPICTION OF CCSC PHASE TWO PROPERTY



*(Handwritten initials)*

EXHIBIT "B"  
LEGAL DESCRIPTION OF QDA PROPERTY

Lot 2, Phase 2, Canyon Creek Shopping Center Subdivision, according to the official plat there of recorded December 19, 2013, as Entry No. 115075:2013, as Map Filing No. 14098, in the office of the Utah County Recorder.

44,415 square feet  
1.020 acres



EXHIBIT "B-1"  
DEPICTION OF QDA PROPERTY

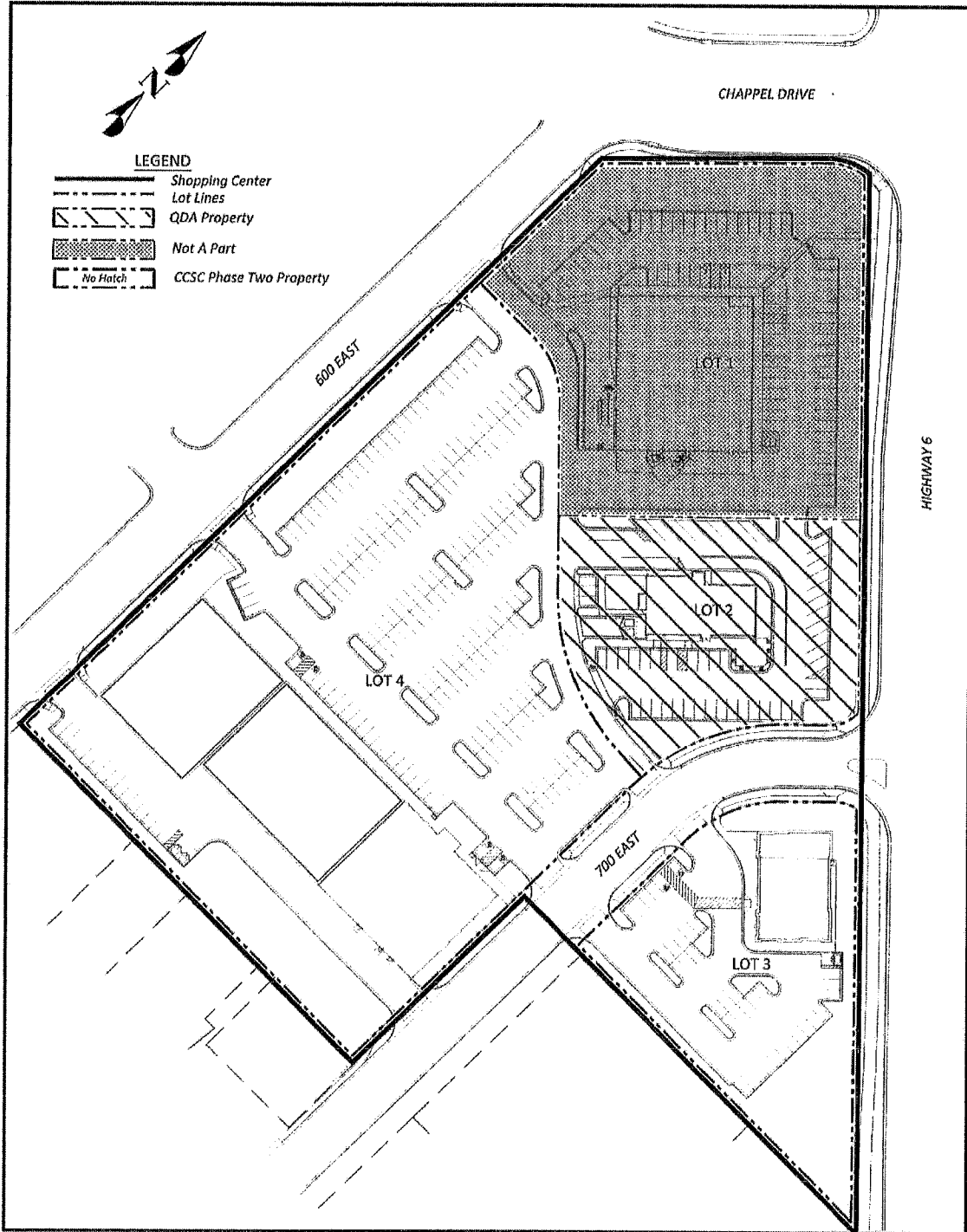


EXHIBIT "C"  
MASTER PLANNED DEVELOPMENT DEPICTION

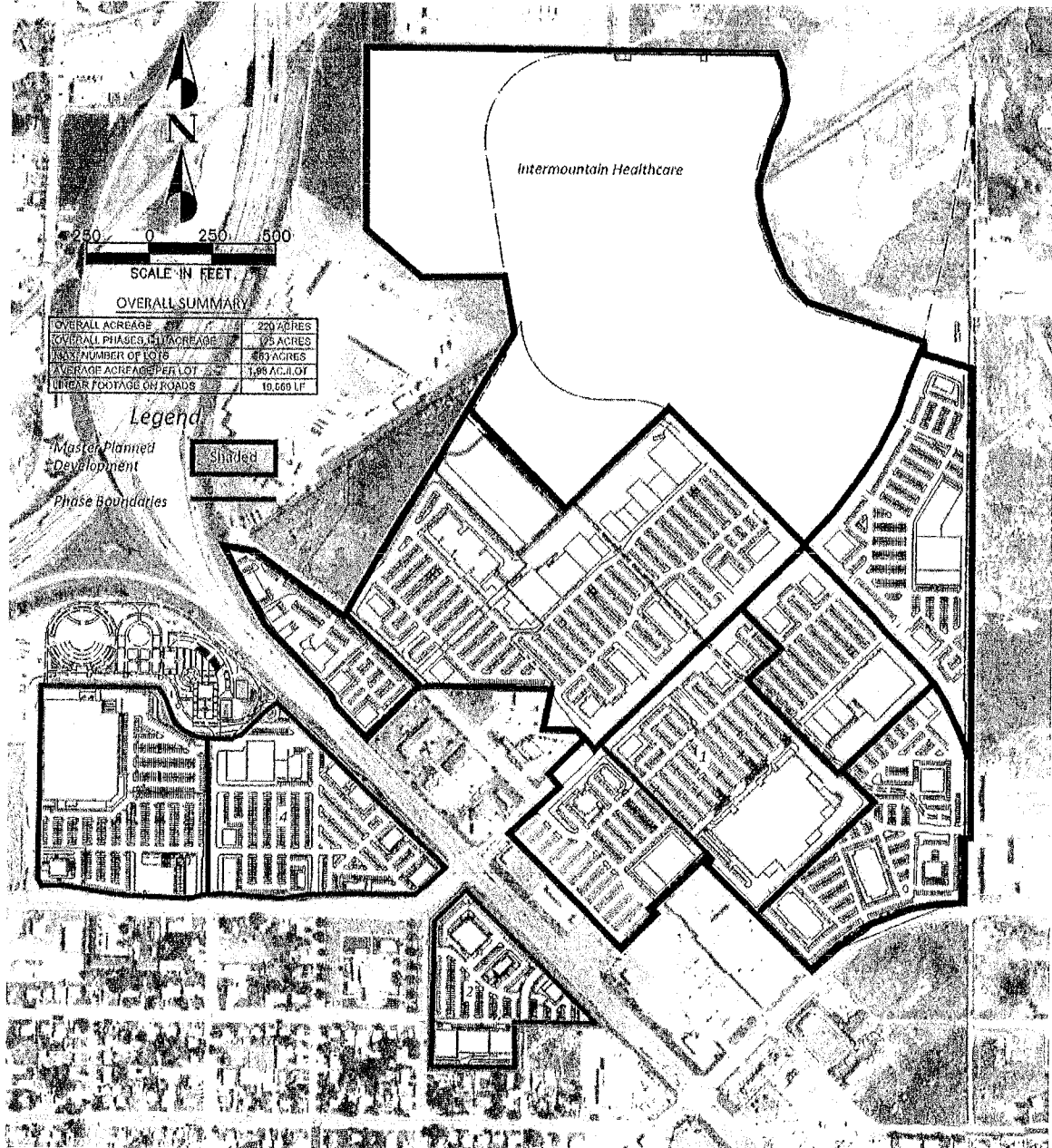
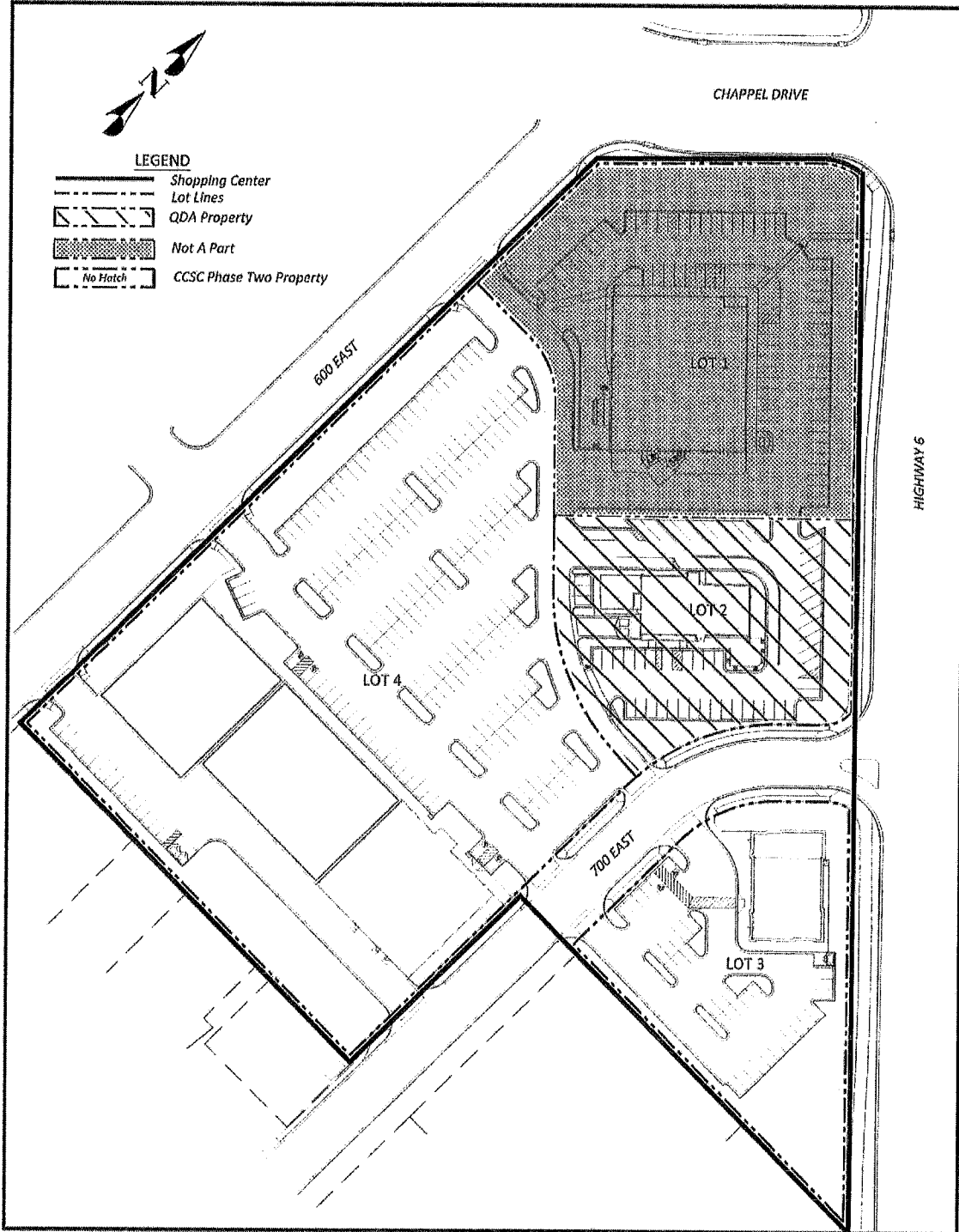


EXHIBIT "D"  
CCSC PHASE TWO SHOPPING CENTER SITE PLAN



*(Handwritten initials)*

EXHIBIT "E"  
PERIMETER LANDSCAPE LOCATION DEPICTION

