

This Instrument Prepared by and Return to:
 Michael J. Levick
 Levick, Timm & Garfinkel, LLC
 770 Lake Cook Road, Suite 150
 Deerfield, IL 60015

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 RICHARD T. MAUGHAN
 DAVIS COUNTY, UTAH RECORDER
 6/30/2006 2:30:00 PM
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 DEP eCASH REC'D FOR INWEST TITLE SERVICES INC

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DECLARATION OF EASEMENTS, COVENANTS,
 CONDITIONS AND RESTRICTIONS

THIS DECLARATION OF EASEMENTS, COVENANTS, CONDITIONS AND RESTRICTIONS (the "**Declaration**") is made on this ___ day of _____, 2006, by HOLROB SYRACUSE, LLC, a Utah limited liability company ("**Declarant**"), whose address is 5500 Lonas Drive, Suite 300, Knoxville, TN 37909.

RECITALS

- A. Declarant is the owner of that certain real property situated on the northwest corner of the intersection of 1700 South and 2000 West in the City of Syracuse, County of Davis, State of Utah, more particularly described on Exhibit "A" attached hereto and incorporated herein by this reference (the "**Property**").
- B. Declarant has subdivided the Property and intends to sell or lease various portions of the Property for various retail and commercial uses. Currently, the Property is subdivided into Lot 1, Lot 2, Lot 3, Lot 4, Lot 5, Lot 6 and Lot 7 of the Syracuse Retail Subdivision, and Lot 3 of the Wal-Mart Syracuse Subdivision (the "Outparcel Lot"), all of which are legally described in Exhibits A-1, A-2, A-3, A-4, A-5, A-6, A-7 and A-8 respectively attached hereto and depicted on the Site Plan attached hereto.
- C. Declarant intends to sell Lot 5 to Wendy's Old Fashioned Hamburgers of New York, Inc., an Ohio corporation ("Wendy's").
- D. In order to promote the orderly development of the Property, Declarant desires to create certain easements, covenants, conditions and restrictions with respect to the Property, and the present and future owners and occupants thereof, on the terms and conditions hereinafter set forth.

NOW, THEREFORE, in consideration of the above premises and of the covenants herein contained, Declarant hereby subjects the Property to the following easements, covenants, conditions and restrictions, all of which shall be deemed covenants running with, and affecting, the land:

COURTESY RECORDING

This document is being recorded solely as a courtesy and an accommodation to the parties named therein. INWEST TITLE SERVICES, INC. hereby expressly disclaims any responsibility or liability for the accuracy of the content thereof.

DECLARATIONS1. Definitions. For purposes hereof:

- (a) The term "**Owner**" or "**Owners**" shall mean Declarant, and any and all successors or assigns of Declarant as the owner or owners of fee simple title to all or any portion of the Property, whether by sale, assignment, inheritance, operation of law, trustee's sale, foreclosure, or otherwise, but not including the holder of any lien or encumbrance on such real property.
- (b) The term "**Lot**" shall mean one (1) of the seven (7) separately identified parcels of the Syracuse Retail Subdivision labeled "Lot 1", "Lot 2", "Lot 3", "Lot 4", "Lot 5", "Lot 6", and "Lot 7" on the Site Plan and constituting a part of the Property and the Outparcel Lot, and any future subdivisions thereof. The term "**Lots**" shall mean Lot 1, Lot 2, Lot 3, Lot 4, Lot 5, Lot 6, Lot 7 and the Outparcel Lot collectively.
- (c) The term "**Parcel**" shall mean any Lot, individually and the term "**Parcels**" shall mean the Lots, collectively.
- (d) The term "**Permittees**" shall mean the tenant(s) or occupant(s) of a Parcel, and the respective employees, agents, contractors, customers, invitees and licensees of (i) the Owner of such Parcel, and/or (ii) such tenant(s) or occupant(s).
- (e) The term "**Common Area**" shall mean those portions of the Property that are outside the exterior walls of buildings or other structures from time to time located on the Parcels, and that are either unimproved, or are improved as parking areas, landscaped areas, driveways, roadways, walkways, light standards, curbing, paving, entrances, exits and other similar exterior site improvements (without limitation).
- (f) The term "**Site Plan**" shall mean the site plan of the Property attached hereto collectively as page 1 and page 2 of Exhibit "B" and by reference made a part hereof. Except as may be otherwise provided in this Declaration, the Site Plan is for identification purposes only.
- (g) The term "**Cross Access Easement**" shall mean that portion of the Parcels as depicted on the Site Plan that permits access from Lot 4, Lot 5, Lot 6 and Lot 7 to the Wal-Mart Service Drive.
- (h) The term "**Wal-Mart Service Drive**" shall mean that portion of the Parcels labeled "Private Street" on the Site Plan that is owned by the Wal-Mart Real Estate Business Trust ("Wal-Mart") and which shall be developed as a service drive and for vehicular and pedestrian ingress and egress, to, from and among the Parcels, Wal-Mart, and the adjacent rights-of-way as provided in that certain Easement With Covenants and Restrictions Affecting Land dated August 2, 2005 between Wal-Mart and Holrob Investments, LLC as predecessor in interest to Declarant (the "**Wal-Mart REA**").
- (i) The Term "**Wal-Mart Access Cuts**" shall mean those portions of the Parcels defined as "Access Cuts" in the Wal-Mart REA and depicted on the site plan to the Wal-Mart REA, and where access is permitted from the Parcels to the Wal-

Mart Service Drive and those access cuts that may be permitted in the future with the consent of both Wal-Mart and the Declarant as granted under the Wal-Mart REA.

- (j) The storm water detention areas, and all lines, conduits, pipes, laterals, pumping or lifting stations, and other apparatus for water drainage, and all storage systems necessary to drain storm water from the Holrob Tract to the property that Wal-Mart owns to the west of and contiguous with the Property more particularly described on Exhibit "C" attached hereto ("Wal-Mart Tract"), shall be hereinafter called the "*Water Detention and Drainage Facilities*"; provided, however that the Water Detention and Drainage Facilities shall expressly exclude the laterals and feeders located on the Holrob Tract that run from the respective Lots to the central collection point(s) from which the storm water drains in, on or through the Wal-Mart Tract ("Collection Points").

2. Easements.

- 2.1 Subject to any express conditions, limitations or reservations contained herein, each Parcel, and its occupants, invitees, licensees, employees and agents, shall have easements for reasonable access, ingress and egress over the Common Areas of the Parcels as may be constructed and/or relocated from time to time, so as to provide for the passage of motor vehicles and pedestrians between each Parcel and all portions of the Common Area of the Property intended for such purposes, including without limitation the driveway on the Cross Access Easement. Such easements shall expressly include reasonably direct access, ingress and egress over the Common Areas of the Parcels from any Lot through any other Lot or Lots to a Wal-Mart Access Cut on the Wal-Mart Service Drive.
- 2.2 Declarant hereby declares that the Lots, and all Owners and Permittees of the Lots, shall be benefited and burdened by a nonexclusive, perpetual easement over, across, between and among the Lots, for purposes of storm water drainage, *provided, however*, that such storm water shall not be released onto another Lot in amounts which exceed the flows rates experienced as of the date of this Agreement.
- 2.3 Declarant hereby declares that the Lots, and all Owners and Permittees of the Lots, shall be benefited and burdened by a nonexclusive, perpetual easement over, under and across the public utility easements as depicted on the Site Plan, for storm water drainage and detention and for the maintenance, installation and construction of the storm drain laterals and related improvements; provided that (i) the construction and installation of the storm drain laterals and related improvements shall at all times be exercised in such a manner as not to interfere materially with the normal operation of a Lot and the businesses conducted therein, (ii) except in an emergency, the rights of any Owner to enter upon the Lot of another Owner for maintenance, installation or construction the storm drain laterals and related improvements shall be conditioned upon providing reasonable prior advance written notice to the other Owner as to the time and manner of entry, (iii) the construction and installation of the storm drain laterals and related improvements by any Owner on another Owner's Lot shall be within the public

utility easements as depicted on the Site Plan, and (iv) any damage caused in connection with such construction and installation shall be repaired by the person performing such work, and the property shall be restored to the condition existing prior to such installation or construction. Notwithstanding the foregoing, the release rate of storm water from any Lot into such shared system shall be no greater than the flow rate existing prior to the initial development of each Lot.

- 2.4 Subject to any express conditions, limitations or reservations contained herein, the Owner(s) of Lot 4, Lot 5, Lot 6 and Lot 7 shall grant a nonexclusive and temporary easement to all present and future Owners of Lot 4, Lot 5, Lot 6 and Lot 7 to construct a driveway on the Cross Access Easement; provided that (i) the rights granted pursuant to this easement shall at all times be exercised in such a manner as not to interfere materially with the normal operation of a Lot and the businesses conducted therein, and (ii) except in an emergency, the right of any Owner to enter upon the Lot of another Owner for the exercise of any right pursuant to such easements shall be conditioned upon providing reasonable prior advance written notice to the other Owner as to the time and manner of entry. Should any Owner of either Lot 4, Lot 5, Lot 6 or Lot 7 exercise its rights under this Section 2.4, the remaining three Owners shall pay their proportionate rata share of the construction and installation costs and expenses for the driveway on the Cross Access Easement based on the portion of land it owns in relation to the other three Lots utilizing the Cross Access Easement.
- 2.5 Subject to any express conditions, limitations or reservations contained herein, Declarant hereby declares that the Lots, and all Owners and Permittees of the Lots, shall be benefited and burdened by a nonexclusive, perpetual easement under and across the public utility easement areas as depicted on page 2 of the Site Plan, for the installation, maintenance, repair and replacement of water mains, sewers, water sprinkler system lines, telephone or electrical conduits or systems, cable, gas mains and other utility facilities necessary for the orderly development and operation of the Common Areas and each building from time to time located within the Lots; provided that (i) the rights granted pursuant to such easements shall at all times be exercised in such a manner as not to interfere materially with the normal operation of a Lot and the businesses conducted therein, (ii) any damage caused in connection with such construction and installation shall be repaired and the property shall be restored by the person performing such work to the condition existing prior to such installation or construction, and (iii) except in an emergency, the right of any Owner to enter upon the Lot of another Owner for the exercise of any right pursuant to such easements shall be conditioned upon providing reasonable prior advance written notice to the other Owner as to the time and manner of entry. All such systems, structures, mains, sewers, conduits, lines and other public utilities shall be installed and maintained below the ground level or surface of the Lot (except for such parts thereof that cannot and are not intended to be placed below the surface, such as transformers and control panels, which shall be placed in such location as approved by the Owner of the affected Lot).

3. Operation, Repair and Maintenance of Driveways and Drainage Easements.

June 7, 2006
Holrob Syracuse, UT Declaration

- 3.1 Except as otherwise provided herein, each Owner shall maintain its own Parcel (including all Common Areas of its Parcel) in good order and repair, and at its sole cost and expense.
- 3.2 Except as set forth herein, each Owner or Permittee(s) of the Lots shall maintain all driveways on its own Parcel (including any portion of the driveway on the Cross Access Easement on its own Parcel) in good order and repair, and at its sole cost and expense. Any Owner of Lot 4, Lot 5, Lot 6 or Lot 7 may perform maintenance and/or repair the driveway on the entire Cross Access Easement, and shall be entitled to reimbursement for the cost and expense of such maintenance and repairs, provided that the remaining three Owners have consented in writing to such maintenance and repairs.
- 3.3 Once constructed, the driveway on the Cross Access Easement shall in no event be blocked, closed, altered, changed or removed and shall at all times remain in place as depicted on the Site Plan. Notwithstanding the foregoing, the Cross Access Easement may be relocated upon written approval of the Owners of Lot 4, Lot 5, Lot 6 and Lot 7. There shall be maintained between the driveway on the Cross Access Easement and all curb cuts from such driveway to Lot 4, Lot 5, Lot 6 and Lot 7, a smooth and level grade transition to allow the use of the Common Areas for pedestrian and vehicular ingress and egress as set forth in Section 2.1 above. No curb cut to the driveway on the Cross Access Easement may be relocated without written consent from the Owners of the remaining three Lots.
- 3.4 The locations of the Wal-Mart Access Cuts shall not be changed without the express written consent of the Declarant, and Declarant may withhold such consent in its sole and absolute discretion. Except during construction necessary for the installation and/or relocation of a Wal-Mart Access Cut, the Wal-Mart Access Cuts shall not be blocked, closed, altered, changed or removed. There shall be maintained between the Wal-Mart Access Cuts a smooth and level grade transition to allow the use of the Common Areas for pedestrian and vehicular ingress and egress as set forth in Section 2.1 above.
- 3.5 Except with respect to the Wal-Mart Access Cuts, and curb cuts to the driveway on the Cross Access Easement, each Owner shall be permitted to maintain a fence, curbing, landscaping or other improvements along the boundary line of its Parcel.
- 3.6
- (a) The Owners agree that the Owner of Lot 1 shall designate the location of the Collection Points, and shall design and construct, or cause to be designed and constructed, the Water Detention and Drainage Facilities, in accordance with the regulations of the City of Syracuse and all other applicable governmental authorities, and in such manner that the Water Detention and Drainage Facilities shall have sufficient capacity to drain storm water from the Holrob Tract as if the entire Holrob Tract were fully developed.
- (b) The Owner of Lot 1 shall operate and maintain, or cause to be operated and maintained, in good order, condition and repair, the Water Detention and

Drainage Facilities and make any and all repairs and replacements that may from time to time be required with respect thereto.

(c) Once constructed, the Owner of Lot 1 may modify, alter, relocate or otherwise change the Water Detention and Drainage Facilities, but only with the prior written consent of the other Owners which shall not be unreasonably withheld as long as such changes (i) accommodate the stormwater capacity of the initial Water Detention and Drainage Facilities, (ii) comply with all requirements of the City of Syracuse and is otherwise are in conformity with all applicable laws, codes, ordinances or regulations, (iii) will not result in any loss of use of stormwater drainage capacity at any time during the modification, alteration or relocation, and (iv) will not unreasonably interfere with the development and/or operations of any Owner.

(d) Each Owner shall pay, within thirty (30) days after written demand, the Owner of Lot 1, or its successors and assigns, its proportionate share, based on the portion of land it owns in relation to all other Lots, of the construction, operation, and maintenance costs and expenses, as may be incurred from time to time, that are necessary for the Water Detention and Drainage Facilities to drain storm water from the Property to the drainage and detention system on the Wal-Mart Tract, or to any publicly-dedicated facility adjacent thereto.

- 3.7 Prior to the development of any Lot, each Owner, at its sole, cost and expense, shall construct (or cause the construction of) those laterals and feeders necessary to drain storm water from its respective Lot to the Collection Points, in order to insure that the flow of discharge from its Lot is not increased by any improvements constructed thereon.

4. Use and Building Restrictions.

- 4.1 So long as the Wendy's has not been closed for business to the public on Lot 5 for a period in excess of six (6) months, no Owner shall lease or sell any other lots to a quick service restaurant with drive-through, excluding sit-down restaurants with take out, whose business generates more than 15% of gross sales (excluding taxes, beverage and dairy product sales) from hamburgers and/or is Chick-Fil-A or affiliated entity. Said restriction shall not apply to Wal-Mart, in line tenant's or stores not including a drive-through. Said restriction shall burden and run with the land from the date of recording of this Declaration for a period of twenty (20) years. Notwithstanding the foregoing, if Wendy's fails to take title to Lot 5 by October 10, 2006, then the terms and conditions of this Section 4.1 shall be null and void and of no further force or effect.
- 4.2 To provide for the orderly flow of traffic among the Parcels, certain driveways must run through and among the Parcels. Except as set forth in Sections 3.2, 3.3, 3.4 and 3.5 above, upon the development of each Parcel, each Parcel Owner, at its sole expense, shall cause (if not constructed previously) driveways and related improvements to be constructed and maintained, utilizing the same sub-base and paving materials as was constructed on the other Parcels within the Property, shall be paved in a smooth condition at an elevation that allows smooth transition of vehicular traffic between each Parcel and the adjacent rights-of-way and

driveways connecting the Property to adjacent properties, and constructed as otherwise required to be in compliance with all applicable laws, codes, regulations, ordinances and documents of record affecting the Property.

- 4.3 In the event that development by the Owner of a Parcel ("**Developing Party**") shall occur prior to the development by the Owner of an adjacent Parcel ("**Non-Developing Party**"), the Developing Party shall have (i) the right to grade, pave and use any portion of the Common Areas of the Non-Developing Party's Parcel for access and for construction of, but not limited to, drainage structures and utility lines as is necessary to provide essential services to the Developing Party's Parcel and (ii) the right to enter onto the Non-Developing Party's Parcel and construct, at its own cost and expense, any improvements required for ingress, egress and circulation, including but not limited to grading, paving, drainage, curbs, gutters, sidewalks, lighting, landscaping, directional signage, and striping on the Non-Developing Party's Tract, and the driveway on the Cross Access Easement (the "**Improvements**"); provided, however, that (i) except in an emergency, the right of any Owner to enter upon the Lot of another Owner for the exercise of any right in this Section 4.3 shall be conditioned upon providing reasonable prior advance written notice to the other Owner as to the time and manner of entry, and (ii) the construction and installation of any drainage structures or utility lines by any Owner on another Owner's Lot shall be within the public utility easements as depicted on the Site Plan. The Improvements shall be constructed in accordance with plans and specifications that are first approved by the City of Syracuse, Utah. All Non-Developing Parties hereby grant to all Developing Parties and their contractors a temporary easement to enter upon the Non-Developing Parties' Parcels and to use and occupy same for the purpose of constructing and installing the Improvements on the Non-Developing Parties' Parcels. If any Developing Party chooses to exercise the rights granted under this section, such Developing Party shall pay all costs and expenses associated therewith and shall indemnify and hold harmless the Non-Developing Party from all damages, losses, liens, claims, or expenses (including without limitation, all attorney's fees, costs and expenses) attributable to the performance of such work. In addition, prior to and as a condition of its entry onto the Non-Developing Party's Parcel, the Developing Party shall procure and maintain general and/or comprehensive public liability and property damage insurance as set forth in Section 6 of this Declaration.

5. Indemnification. Each Lot Owner shall indemnify and hold the remaining Owners harmless from and against all damages, losses, liens, claims, or expenses (including without limitation, all attorney's fees, costs and expenses) relating to the Lot Owner's entry or activities on the remaining Owners' Parcels or those of its Permittees or their respective contractors, employees, agents, or others acting on behalf of the Indemnifier.

6. Insurance.

- 6.1 Throughout the term of this Declaration, each Lot Owner shall procure and maintain general and/or comprehensive public liability and property damage insurance against claims for personal injury (including contractual liability arising under the indemnity contained in Section 5 above), death, or property damage

occurring upon the Owner's Parcel or any other Owner's Parcel, with single limit coverage of not less than an aggregate of Two Million Dollars (\$2,000,000.00) including umbrella coverage, if any, and naming the other Owners as additional insureds.

- 6.2 Notwithstanding anything to the contrary contained in this Section 6, so long as the net worth of an Owner, or Permittee carrying insurance on behalf of an Owner, shall exceed Two Hundred Fifty Million Dollars (\$250,000,000), that Owner or Permittee shall have the right to retain (in whole or in part) the financial risk for any claim.
7. No Rights in Public; No Implied Easements. Nothing contained herein shall be construed as creating any rights in the general public or as dedicating for public use any portion of any Parcels. No easement shall be implied from this Declaration that is not enumerated herein.
8. Remedies and Enforcement.
- 8.1 All Legal and Equitable Remedies Available. In the event of a breach or threatened breach by any Owner or its Permittees of any of the terms, covenants, restrictions or conditions hereof, the other Owner(s) shall be entitled forthwith to full and adequate relief by injunction and/or all other available legal and equitable remedies from the consequences of any such breach, including payment of any amounts due and/or specific performance.
- 8.2 Self-Help. In addition to all other remedies available at law or in equity, upon the failure of a defaulting Owner to cure a breach of this Declaration within thirty (30) days following written notice thereof by an Owner (unless, with respect to any such breach the nature of which cannot reasonably be cured within such 30-day period, the defaulting Owner commences the cure within that 30-day period and thereafter diligently prosecutes the cure to completion), any other Owner shall have the right to perform the obligation contained in this Declaration on behalf of the defaulting Owner and be reimbursed by the defaulting Owner upon demand for the reasonable costs thereof together with interest at the prime rate charged from time to time by J.P. Morgan/Chase Bank (its successors or assigns), plus two percent (2%) (not to exceed the maximum rate of interest allowed by law). Notwithstanding the foregoing, in the event of an emergency, an Owner may immediately cure the same and be reimbursed by the other Owner upon demand for the reasonable cost thereof together with interest at the prime rate, plus two percent (2%), as above described.
- 8.3 Lien Rights. Any claim for reimbursement, including interest as aforesaid, and all costs and expenses including reasonable attorneys' fees awarded to any Owner in enforcing any payment in any suit or proceeding under this Declaration shall be assessed against the defaulting Owner in favor of the prevailing party and shall constitute a lien (the "*Assessment Lien*") against the Parcel of the defaulting Owner until paid, effective upon the recording of a notice of lien with respect thereto in the Recorder's Office of Davis County, Utah; provided, however, that any such Assessment Lien shall be subject and subordinate to (i) liens for taxes and other public charges which by applicable law are expressly made superior, (ii)

all liens recorded in the Recorder's Office of Davis County, Utah, prior to the date of recordation of said notice of lien, and (iii) all leases entered into, whether or not recorded, prior to the date of recordation of said notice of lien. All liens recorded subsequent to the recordation of the notice of lien described herein shall be junior and subordinate to the Assessment Lien. Upon the timely curing by the defaulting Owner of any default for which a notice of lien was recorded, the party recording same shall record an appropriate release of such notice of lien and Assessment Lien.

- 8.4 Remedies Cumulative. The remedies specified herein shall be cumulative and in addition to all other remedies permitted at law or in equity.
- 8.5 No Termination for Breach. Notwithstanding the foregoing to the contrary, no breach hereunder shall entitle any Owner to cancel, rescind, or otherwise terminate this Declaration. No breach hereunder shall defeat or render invalid the lien of any mortgage or deed of trust upon any Parcel made in good faith for value, but the easements, covenants, conditions and restrictions hereof shall be binding upon and effective against any Owner of a Parcel covered hereby whose title thereto is acquired by foreclosure, trustee's sale, or otherwise.
- 8.6 Irreparable Harm. In the event of a violation or threat thereof of any of the provisions of Sections 2 and 4.1 of this Declaration, each Owner agrees that such violation or threat thereof shall cause the nondefaulting Owners and/or their respective Permittees to suffer irreparable harm and such nondefaulting Owners and their respective Permittees shall have no adequate remedy at law. As a result, in the event of a violation or threat thereof of any of the provisions of Sections 2 or 4.1 of this Declaration, the nondefaulting Owners and their respective Permittees, in addition to all remedies available at law or otherwise under this Declaration, shall be entitled to injunctive or other equitable relief to enjoin a violation or threat thereof.
9. Term. The easements, covenants, conditions and restrictions contained in this Declaration shall be effective commencing on the date of recordation of this Declaration in the Recorder's Office of Davis County, Utah, and shall remain in full force and effect, unless this Declaration is modified, amended, canceled or terminated by the written consent of all then record Owners of the Parcels.
10. Miscellaneous.
- 10.1 Attorneys' Fees. If a party institutes any legal action or proceeding for the enforcement of any right or obligation herein contained, the prevailing party after a final adjudication shall be entitled to recover its costs and reasonable attorneys' fees incurred in the preparation and prosecution of such action or proceeding.
- 10.2 Amendment.
- (a) This Declaration may be modified or amended, in whole or in part, or terminated, only by the written consent of all record Owners of the Parcels evidenced by a document that has been fully executed and acknowledged by all such voting record Owners and recorded in the Recorder's Office of Davis County, Utah.

- (b) An Owner who has consent or approval or voting rights relating to this Declaration may delegate to another party with an interest in the subject matter of this Declaration its right to approve a termination, modification or amendment; *provided, however*, that any such delegation shall only be effective upon the recordation of notice of such delegation in the Recorder's Office of Davis County, Utah, against all of the Parcels.
- 10.3 No Waiver. No waiver of any default of any obligation by any party hereto shall be implied from any omission by the other party to take any action with respect to such default.
- 10.4 No Agency. Nothing in this Declaration shall be deemed or construed by either party or by any third person to create the relationship of principal and agent or of limited or general partners or of joint venturers or any other association between or among the parties.
- 10.5 Covenants to Run with Land. It is intended that each of the easements, covenants, conditions, restrictions, rights and obligations set forth herein shall run with the land and create equitable servitudes in favor of the real property benefited thereby, shall bind every person having any fee, leasehold or other interest therein and shall inure to the benefit of the respective parties and their successors, assigns, heirs, and personal representatives. Notwithstanding the foregoing, any rights granted in favor of the Declarant under this Declaration and any consent or approval rights of the Developer under the Wal-Mart REA shall be personal to the Declarant, and not run with land, until such time as the Declarant has conveyed its last remaining property interest in the Property. On or before such time, Declarant shall designate its rights under this Declaration to another Owner or Owners.
- 10.6 Grantee's Acceptance. The grantee of any Parcel, or any portion thereof, by acceptance of a deed conveying title thereto or the execution of a contract for the purchase thereof, whether from an original party or from a subsequent owner of the Parcel, shall accept any such deed or contract upon and subject to each and all of the easements, covenants, conditions, restrictions and obligations contained herein. By such acceptance, any such grantee shall for himself and his successors, assigns, heirs, and personal representatives, covenant, consent, and agree to and with the other party, to keep, observe, comply with, and perform the obligations and Declarations set forth herein with respect to the property so acquired by that grantee.
- 10.7 Severability. Each provision of this Declaration and the application thereof to the Property is hereby declared to be independent of and severable from the remainder of this Declaration. If any provision contained herein is held to be invalid or to be unenforceable or not to run with the land, then that holding shall not affect the validity or enforceability of the remainder of this Declaration. If the validity or enforceability of any provision of this Declaration is held to be dependent upon the existence of a specific legal description, the parties agree to promptly cause such legal description to be prepared.

- 10.8 Time of Essence. Time is of the essence for this Declaration with respect to each and every covenant, agreement, and obligation of the Declarant and each subsequent Owner.
- 10.9 Notices. Notices or other communication hereunder shall be in writing and shall be sent certified or registered mail, return receipt requested, or by other national overnight courier company, or personal delivery. Notice shall be deemed given upon receipt or refusal to accept delivery. The parties may change from time to time their respective addresses for notice hereunder by like notice to the other party. The notice address of Declarant is set forth in the first section of this Declaration. In addition, upon the transfer of fee simple ownership of all or any part of the Property of any Owner, that purchasing party or entity which shall become an Owner shall execute a supplement to this Declaration substantially in the form attached hereto as Exhibit D, and that purchasing party or entity shall send a copy of the supplement in the manner provided for notice herein to every other Owner, and the previous Owner shall remain liable for all obligations as an Owner until a copy of the supplement is recorded in the county in which the real estate subject to this Declaration is located, and after such notice is delivered, the other parties shall be required to give any notices required to the persons and at the addresses stated in that notice, rather than the notice information stated herein.
- 10.10 Governing Law. The laws of the State of Utah shall govern the interpretation, validity, performance, and enforcement of this Declaration.
- 10.11 Estoppel Certificates. Each Owner, within twenty (20) days of its receipt of a written request from the other Owner, shall from time to time provide the requesting Owner, a certificate binding upon that Owner stating: (a) to the best of the Owner's knowledge, whether any party to this Declaration is in default or violation of this Declaration and, if so, identifying the default or violation; and (b) that this Declaration is in full force and effect and identifying any amendments to the Declaration as of the date of the certificate.
- 10.12 Bankruptcy. In the event of any bankruptcy affecting any Owner or occupant of any Parcel, the parties agree that this Declaration shall, to the maximum extent permitted by law, be considered a Declaration that runs with the land and that is not rejectable, in whole or in part, by the bankrupt person or entity.

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Signature Page of the Declaration of Easements, Covenants, Conditions and Restrictions

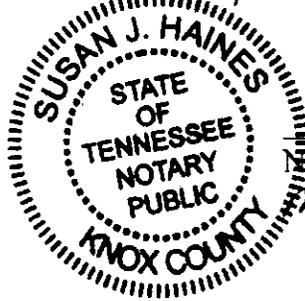
IN WITNESS WHEREOF, Declarant has executed this Declaration as of the date first written above.

HOLROB SYRACUSE, LLC
a Utah limited liability company

By: ✓
Its: Authorized Signatory

STATE OF Tennessee §
 §
COUNTY OF Knox §

This instrument was acknowledged before me on this 26 day of June, 2006, by Robert S. Talbot the Authorized Signatory of Holrob Syracuse, LLC, a Utah limited liability company.



Susan J. Haines
Notary Public in and for the State of TN
My commission expires: 10-02-06

- Exhibit A – Legal Description of the Property
- Exhibit A-1 – Legal Description of Lot 1
- Exhibit A-2 – Legal Description of Lot 2
- Exhibit A-3 – Legal Description of Lot 3
- Exhibit A-4 – Legal Description of Lot 4
- Exhibit A-5 – Legal Description of Lot 5
- Exhibit A-6 – Legal Description of Lot 6
- Exhibit A-7 – Legal Description of Lot 7
- Exhibit A-8 – Legal Description of the Outparcel Lot
- Exhibit B – Site Plan
- Exhibit C – Legal Description of the Wal-Mart Tract
- Exhibit D – Supplement to Declaration of Easements, Covenants, Conditions and Restrictions

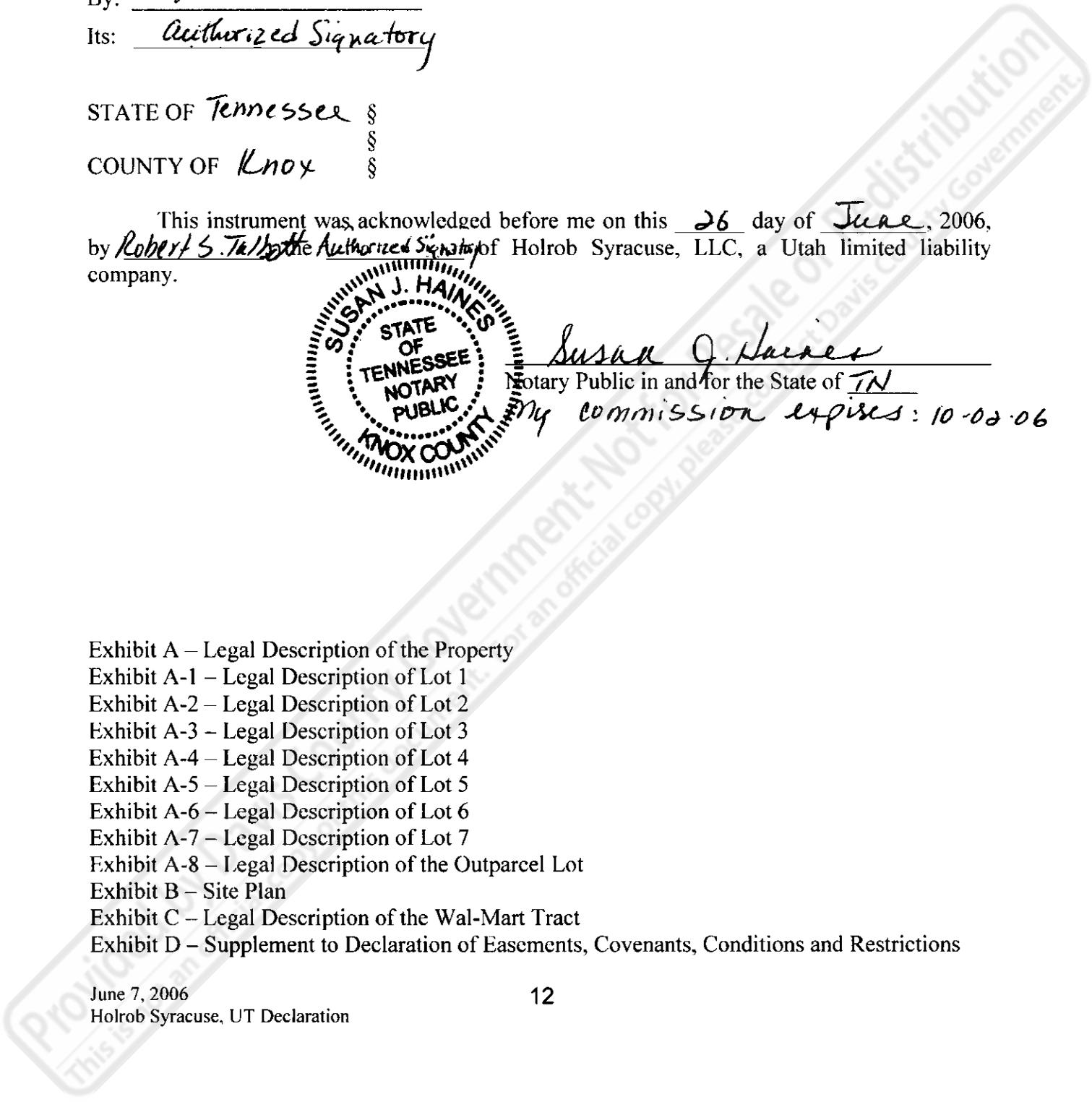


Exhibit A

Legal Description of the Property

ALL LOTS 1, 2, 3, 4, 5, 6 AND 7 OF THE SYRACUSE RETAIL SUBDIVISION, AS SHOWN ON A PLAT RECORDED IN BOOK 3845, PAGE 1435 OF OFFICIAL DAVIS COUNTY RECORDS,

AND

LOT 3 OF THE SYRACUSE WAL-MART SUBDIVISION, A SUBDIVISION OF DAVIS COUNTY RECORDS.

June 7, 2006
Holrob Syracuse, UT Declaration

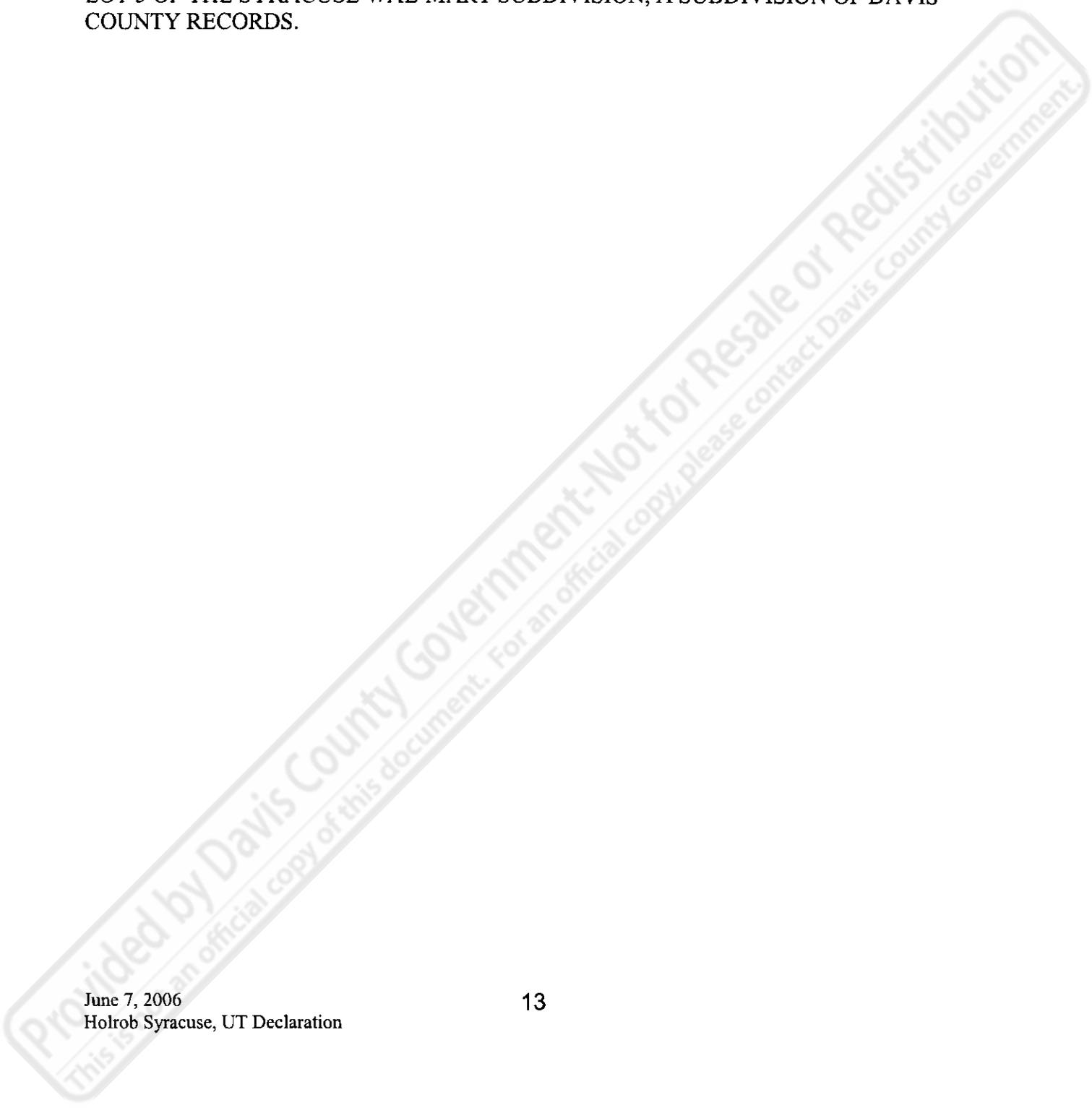


Exhibit A-1

Legal Description of Lot 1

ALL LOT 1 OF THE SYRACUSE RETAIL SUBDIVISION, AS SHOWN ON A PLAT
RECORDED IN BOOK 3845, PAGE 1435 OF OFFICIAL DAVIS COUNTY RECORDS.

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Exhibit A-2

Legal Description of Lot 2

ALL LOT 2 OF THE SYRACUSE RETAIL SUBDIVISION, AS SHOWN ON A PLAT
RECORDED IN BOOK 3845, PAGE 1435 OF OFFICIAL DAVIS COUNTY RECORDS.

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Exhibit A-3

Legal Description of Lot 3

ALL LOT 3 OF THE SYRACUSE RETAIL SUBDIVISION, AS SHOWN ON A PLAT RECORDED IN BOOK 3845, PAGE 1435 OF OFFICIAL DAVIS COUNTY RECORDS.

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Exhibit A-4

Legal Description of Lot 4

ALL LOT 4 OF THE SYRACUSE RETAIL SUBDIVISION, AS SHOWN ON A PLAT
RECORDED IN BOOK 3845, PAGE 1435 OF OFFICIAL DAVIS COUNTY RECORDS.

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Exhibit A-5

Legal Description of Lot 5

ALL LOT 5 OF THE SYRACUSE RETAIL SUBDIVISION, AS SHOWN ON A PLAT
RECORDED IN BOOK 3845, PAGE 1435 OF OFFICIAL DAVIS COUNTY RECORDS.

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Exhibit A-6

Legal Description of Lot 6

ALL LOT 6 OF THE SYRACUSE RETAIL SUBDIVISION, AS SHOWN ON A PLAT
RECORDED IN BOOK 3845, PAGE 1435 OF OFFICIAL DAVIS COUNTY RECORDS.

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Exhibit A-7

Legal Description of Lot 7

ALL LOT 7 OF THE SYRACUSE RETAIL SUBDIVISION, AS SHOWN ON A PLAT
RECORDED IN BOOK 3845, PAGE 1435 OF OFFICIAL DAVIS COUNTY RECORDS.

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Exhibit A-8

Legal Description of the Outparcel Lot

ALL OF LOT 3 OF THE SYRACUSE WAL-MART SUBDIVISION, AS SHOWN ON PLAT RECORDED IN BOOK 3845, PAGE 1424 OF OFFICIAL DAVIS COUNTY RECORDS.

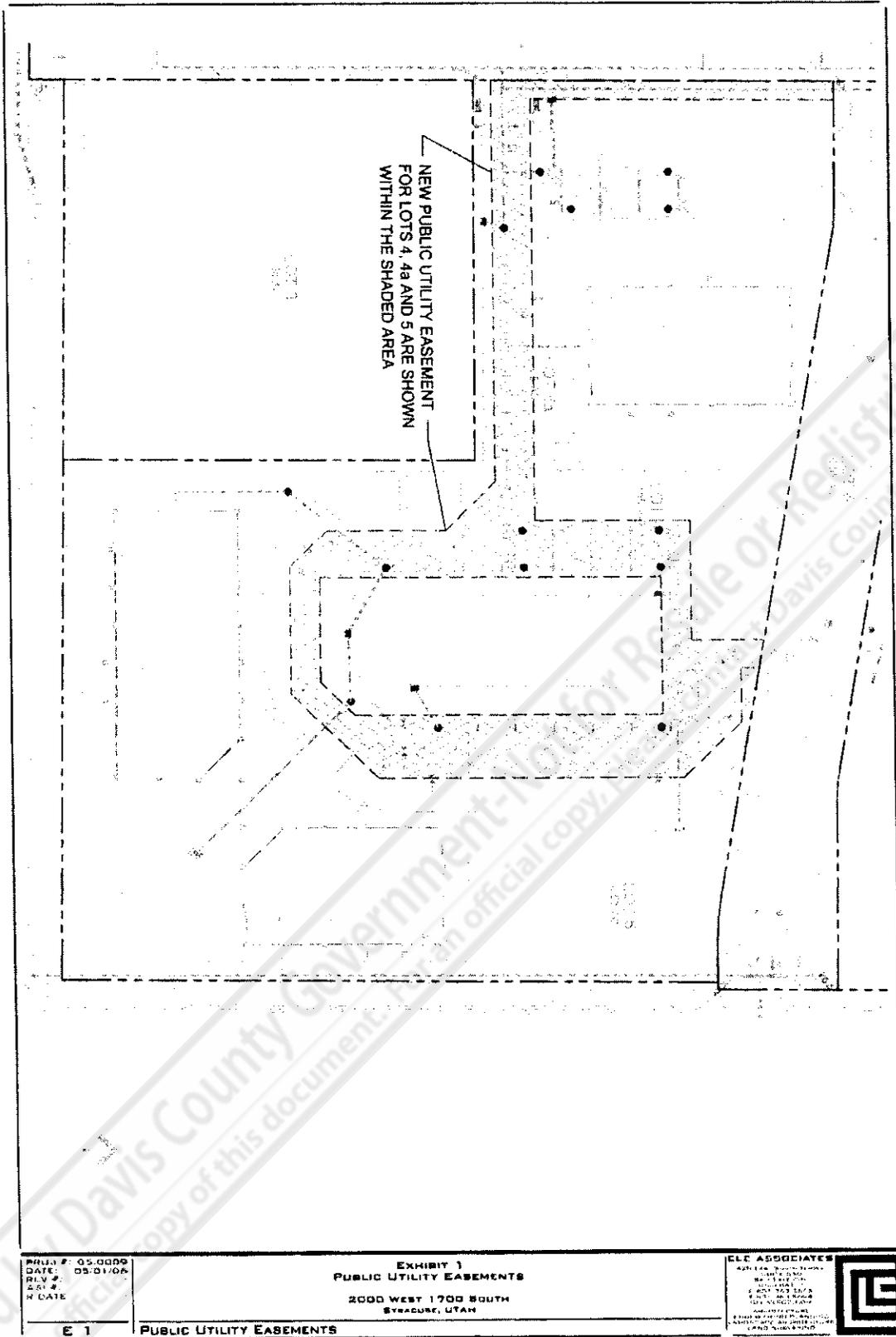
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Exhibit B (page 2 of 2)
Site Plan

J:\2005-05-0009\HELMEN\T\2005-1774 & 201-EXHIBIT-EASEMENT EXHIBIT 1-0009 PARCELS D1.DWG, 6/1/2006 2:57:40 PM, ROBERTA



June 7, 2006
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Exhibit C

Legal Description of the Wal-Mart Tract

ALL LOTS 1, 2 & 6 OF THE SYRACUSE WAL-MART SUBDIVISION, AS SHOWN ON PLAT RECORDED IN BOOK 3845, PAGE 1424 OF OFFICIAL DAVIS COUNTY RECORDS.

June 7, 2006
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EXHIBIT D
to
Declaration of Easements and Restrictions

**THIS DOCUMENT
WAS PREPARED
BY AND AFTER
RECORDING
RETURN TO:**

Above space for recorder's use

**SUPPLEMENT TO DECLARATION OF EASEMENTS, COVENANTS, CONDITIONS
AND RESTRICTIONS**

THIS SUPPLEMENT TO DECLARATION OF EASEMENTS, COVENANTS, CONDITIONS AND RESTRICTIONS (this "**Supplement**") dated this ___ day of _____, 20__ is executed by the undersigned pursuant to the terms of the Declaration of Easements Covenants, Conditions and Restrictions identified herein.

WITNESSETH:

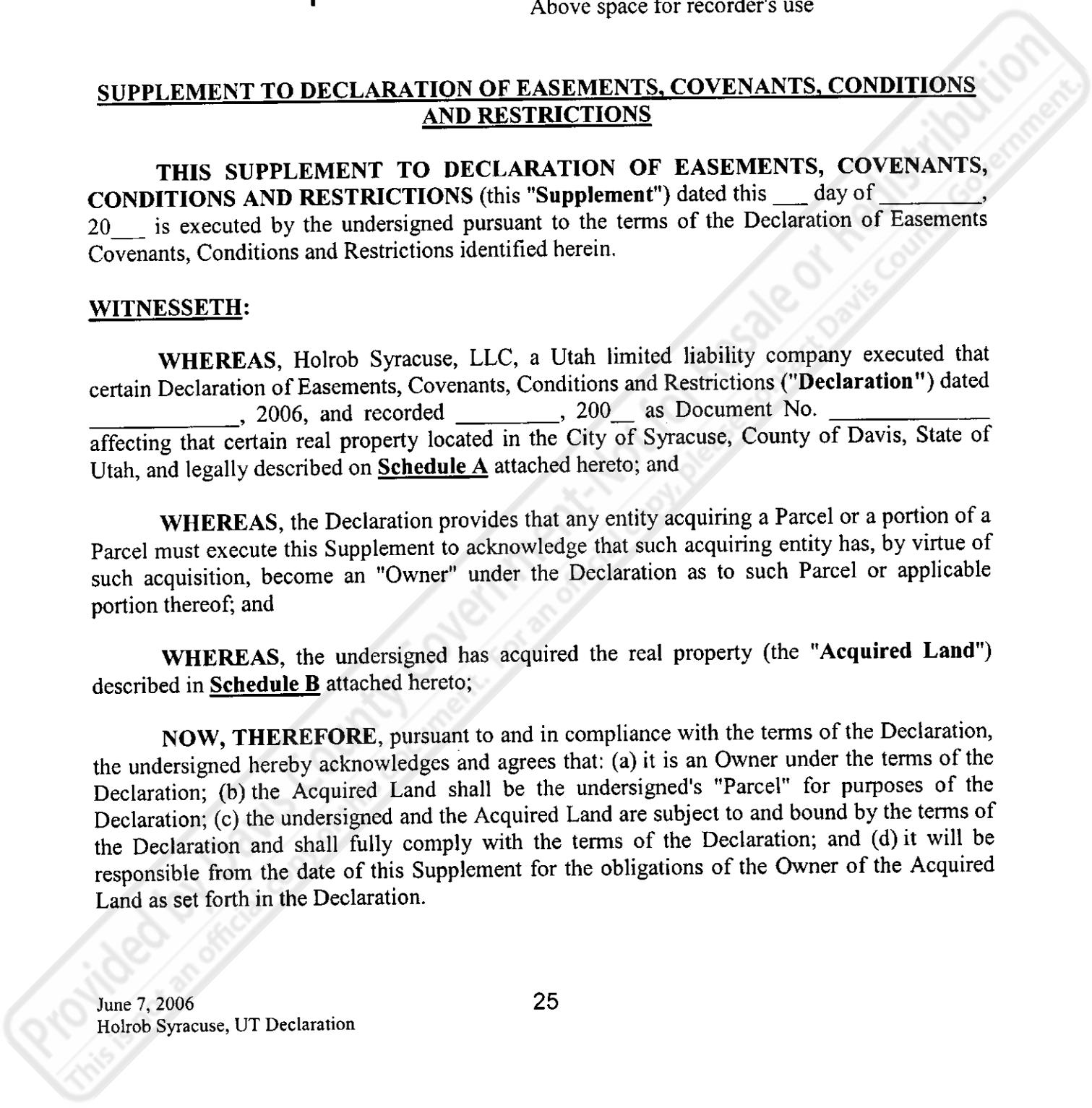
WHEREAS, Holrob Syracuse, LLC, a Utah limited liability company executed that certain Declaration of Easements, Covenants, Conditions and Restrictions ("**Declaration**") dated _____, 2006, and recorded _____, 200__ as Document No. _____ affecting that certain real property located in the City of Syracuse, County of Davis, State of Utah, and legally described on **Schedule A** attached hereto; and

WHEREAS, the Declaration provides that any entity acquiring a Parcel or a portion of a Parcel must execute this Supplement to acknowledge that such acquiring entity has, by virtue of such acquisition, become an "Owner" under the Declaration as to such Parcel or applicable portion thereof; and

WHEREAS, the undersigned has acquired the real property (the "**Acquired Land**") described in **Schedule B** attached hereto;

NOW, THEREFORE, pursuant to and in compliance with the terms of the Declaration, the undersigned hereby acknowledges and agrees that: (a) it is an Owner under the terms of the Declaration; (b) the Acquired Land shall be the undersigned's "Parcel" for purposes of the Declaration; (c) the undersigned and the Acquired Land are subject to and bound by the terms of the Declaration and shall fully comply with the terms of the Declaration; and (d) it will be responsible from the date of this Supplement for the obligations of the Owner of the Acquired Land as set forth in the Declaration.

June 7, 2006
Holrob Syracuse, UT Declaration



Pursuant to Article 10.9 of the Declaration, the undersigned hereby states that notices and other communications issued under the Declaration to the undersigned should be sent as follows (telephone and fax numbers are shown for informational purposes and do not amend the manner in which Notice shall be given):

Entity Name: _____

Entity Address: _____

Attn/Contact Person:
Telephone No.
Fax No.

with a copy to: _____

Attn/Contact Person:
Telephone No.
Fax No.

IN WITNESS WHEREOF, The undersigned hereby executes and delivers this Supplement as of the day and year first above written and authorizes an executed copy of this Supplement to be recorded in the Recorder's Office of Davis County, Utah.

ACQUIRING ENTITY:

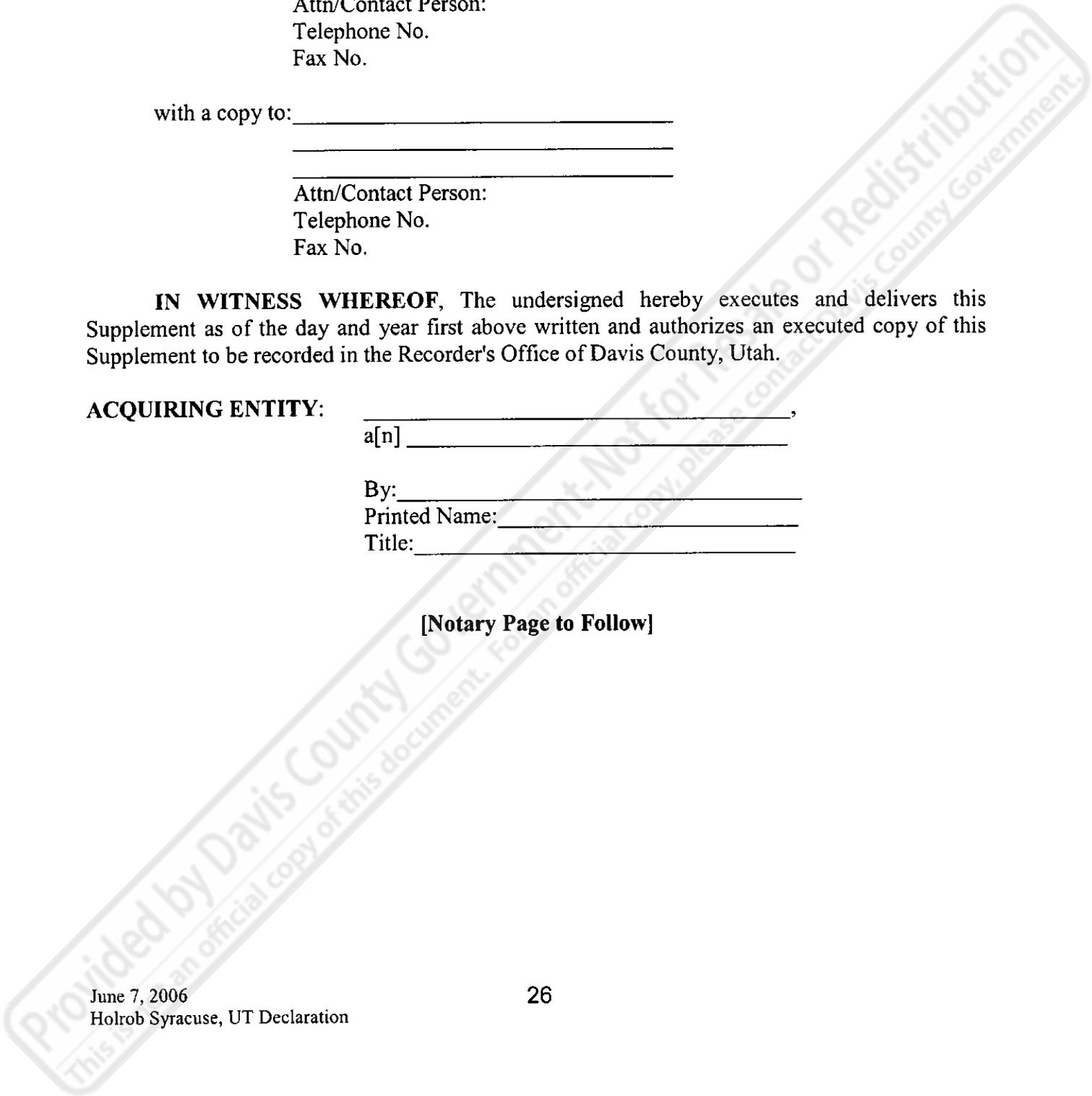
_____,
a[n] _____

By: _____

Printed Name: _____

Title: _____

[Notary Page to Follow]



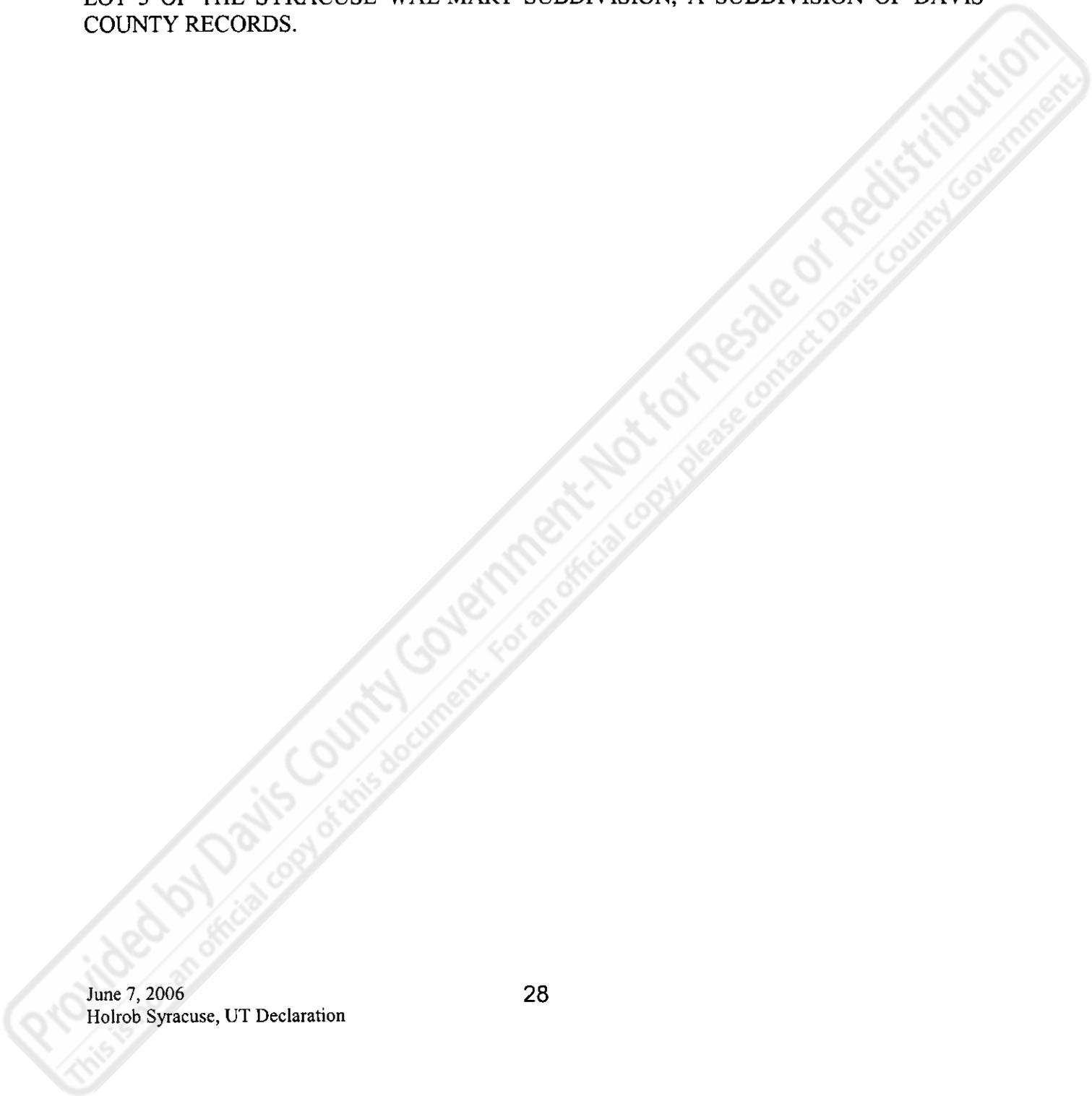
Schedule A

Legal Description of Tracts Subject to Declaration

ALL LOTS 1, 2, 3, 4, 5, 6 AND 7 OF THE SYRACUSE RETAIL SUBDIVISION, AS SHOWN ON A PLAT RECORDED IN BOOK 3845, PAGE 1435 OF OFFICIAL DAVIS COUNTY RECORDS,

AND

LOT 3 OF THE SYRACUSE WAL-MART SUBDIVISION, A SUBDIVISION OF DAVIS COUNTY RECORDS.



Schedule B

Legal Description of Acquired Land

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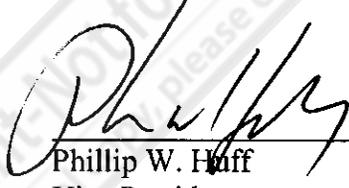
MORTGAGEE CONSENT

PNC Bank, National Association, a national banking association ("PNC"), is the Lender under that certain Construction Deed of Trust, Assignment of Rents and Security Agreement from Holrob-Syracuse, LLC, a Utah limited liability company ("Holrob"), dated August 8, 2005, recorded on August 10, 2005, as Entry No. 2095789, as amended pursuant to a First Amendment to Construction Deed of Trust, Assignment of Rents and Security Agreement of even date herewith, and related security instruments (collectively the "Loan Documents"), encumbering the real property and improvements ("Property") described in the attached DECLARATION OF EASEMENTS, COVENANTS, CONDITIONS AND RESTRICTIONS (the "Declaration"). Holrob presently owns fee title to Property subject to, among other things, the Loan Documents. PNC on behalf of itself and its successors and assigns, hereby consents to the terms and provisions of the Declaration to which this consent is attached, and to Holrob's execution and delivery of the same, and agrees that in the event that PNC shall succeed to all or a portion of Holrob's interest as the fee owner of the Property by foreclosure, deed in lieu thereof, or otherwise pursuant to the Loan Documents, the Declaration shall remain in full force and effect.

In Witness Whereof, PNC has executed this Consent as of this 27~~th~~ day of June, 2006.

**PNC BANK, NATIONAL
ASSOCIATION,**
a national banking association

By: _____


Phillip W. Huff
Vice President

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