

AGREEMENT

Between

The City of Grand Junction and
Dillon Real Estate Co., Inc., a Kansas corporation

This Agreement is made this 9th day of June, 2009, by and between Dillon Real Estate Co., Inc., a Kansas corporation ("Owner") and the City of Grand Junction, a Colorado home rule city ("City").

RECITALS:

A. Owner owns the property described on **Exhibit A** attached hereto and made a part hereof (the "Property"), which Property is generally described as located just north of the northeast corner of the intersection of Patterson Road and 24 Road, in the City of Grand Junction, Mesa County, Colorado. Owner proposes to construct a new City Market grocery store on the Property (the "Project").

B. The existing conditions in the area of the Project are such that additional improvements are required by the City to address access onto and improvements to 24 Road, improvements to Leach Creek, and improvements to Market Street. Current economic conditions are such that the City desires to facilitate the completion of the Project, within the framework of its existing Zoning and Development Code (the "Z&D Code"), adopted City regulations, and applicable law.

C. In addition, the Z&D Code contemplates that a new development will not be approved if any new traffic will result in unsafe conditions on- or off-site of the Project. Section 6.2 of the Z&D Code sets forth the City's policy that the Owner pays the calculated Traffic Capacity Payment (the "TCP") fees, based on 'new' traffic being generated by the Project, to the City and the City uses such fees to construct the needed off-site street improvements.

D. Due in large part to the rapid increase in costs associated with such construction in recent years, the amount of TCP fees frequently is not sufficient to allow the City to timely construct all needed improvements to its street system at the time that they are needed in light of new construction, such as the Project.

E. In addition, improvements to Leach Creek, a major drainage corridor in the area, are needed to meet modern engineering and design standards. Regarding the Project, the existing Leach Creek corridor is primarily located just off of the site of the Project, to the west of the Owner's Property, within the City's 24 Road right-of-way. The City's 24 Road corridor Design Standards and Guidelines (Ordinance No. 3305 effective 12/29/00) for urban trails and storm drainage plans contemplate improvements to Leach Creek to improve the City's storm drainage systems, and to provide a pedestrian/bicycle trail along Leach Creek; however, the City acknowledges that existing constitutional law contemplates that the Owner should only have to pay, in the form of impact fees or the requirement to build off-site improvements, its fair proportion of the costs of such off-site improvements, based on the Project's proportional increase in the demands relative to

traffic and usage. In the case of Leach Creek, the City has acknowledged that the amount of new pedestrian and non-motorized traffic generated by the Project will be a relatively small proportion of the total amount of the costs to improve the portion of Leach Creek which adjoins the Property.

F. In addition, the parties recognize that each may save costs overall if they cooperate to provide for the required improvements, as described generally above and as particularly shown in the City's approved plans for the construction of the Project and the required off-site improvements (the "Off-Sites" or the "Work"). Because there are times that private owners may obtain better overall pricing in certain circumstances, if the Owner engages contractors to construct the necessary improvements for the Project, the parties may each benefit if the Owner has its contractors also construct the Off-Sites at the same time and the City deposits its share of the costs of the Work, specifically \$1,200,000.00, into an escrow account from which such contractors shall be paid, as provided herein. Land Title Guarantee Company shall be the escrow agent; the form of the Escrow Agreement is attached hereto as **Exhibit D**.

G. The City represents, and understands that Owner relies on such representations, that the City has appropriated \$1,200,000.00 to implement the provisions hereof, for expenditure in calendar years 2009 and 2010 depending on the Owner's schedule in seeing that the Work is performed. If the City, including its field inspectors and/or engineers, requires changes to the approved Construction Plans and Standards (as defined herein), the City agrees to pay the costs of such changes, including without limitation resulting time-delay costs, in addition to the sums set forth herein.

NOW THEREFORE, to fulfill the goals stated herein and others, and to gain mutual benefits, the City and the Owner stipulate and agree that adequate consideration exists for the making and enforcement of this Agreement and the parties hereby agree as follows:

1. The above Recitals are a substantive part of this Agreement.
2. The Owner shall engage its consultants and contractor(s) to design and construct, and the City shall pay to the involved consultants and contractor(s) via an escrow account (the "Escrow," as described herein), once the engineering review and draw requests are approved, as set forth below, the following:
 - (a) The 24 Road Improvements, generally consisting of a deceleration lane, median improvements, and roadway widening. The City shall pay the set amount of \$671,909.00 in this regard, regardless of the actual costs of construction of said 24 Road Improvements.
 - (b) A substantial re-construction of the portion of Leach Creek adjacent to the Project, generally consisting of floodplain grading, a bicycle path, box culvert(s), pedestrian lighting, landscaping, and associated retaining walls. The Owner's engineer has estimated that such improvements will cost \$847,082.00. The City shall pay the set amount of \$377,665.00 in this regard, regardless of the actual costs of construction of the Leach Creek improvements.

(c) Grading and construction of the west ½ of Market Street that is adjacent to the Project, including pedestrian and street lighting. The Owner's engineers have estimated that the total construction cost for these improvements is \$189,199.00; the parties agree that the City shall pay the set amount of \$150,426.00 in this regard regardless of the actual costs of construction of the Market Street improvements.

3. In acknowledgement of the difficult economic times, and the level of the City's participation in light of its current revenues, as additional consideration for this Agreement, Owner specifically waives any claims it may have for payment for the dedication of the pedestrian plaza which adjoins Leach Creek, all as shown on the approved plans for the Project. By executing this Agreement, the City does not concede that Owner has any such valid claims. The City acknowledges that once it has accepted the dedication of the pedestrian plaza and the Leach Creek dedication that the City shall own and maintain the pedestrian plaza (as described on **Exhibit B** attached hereto and made a part hereof) and the dedicated Leach Creek corridor (the legal description of which is described on **Exhibit C** attached hereto and made a part hereof).

4. To implement the terms of this Agreement, the parties further agree to the following process for the City to pay for the described improvements:

(a) The Owner shall engage a Colorado Professional Engineer to review and inspect the Work of the general contractor hired by Owner. Each month, based on the approved plans and the City's regulations and standards that are adopted and in force as of the date of mutual execution hereof ("Construction Standards"), said Engineer shall submit his statement ("Engineer's Statement") to the City that the Work for which the general contractor desires payment fully comports with the Construction Standards.

(b) The City shall have ten (10) business days after receipt of each Engineer's Statement to reject any such Engineer's Statement, and if it rejects in whole or in part, the City shall detail the reasons for such rejection, measured against the Construction Standards, but payment to the general contractor shall be made for all portions of the Work which are not rejected.

(c) If the City does not reject any Engineer's Statement in writing (to said Engineer, with copies to the Owner's Representative (defined herein) and the involved general contractor), or portion thereof, within said ten (10) business day period, the City shall be deemed to have irrevocably approved the involved Work and the Engineer's Statement, AND the Owner shall either direct that all of such Work that is not rejected by the City shall be paid for from the Escrow or by the Owner to the respective general contractor, with a copy of proof of such payment being made to the Owner's Representative and to the City.

(d) The Owner shall designate its Owner's Representative who shall manage the general contractor(s) on behalf of the Owner (and the Work), and who shall have decision-making power relative to the Work and the Project.

Until notified otherwise from time-to-time in writing, the Owner's Representative shall be John Atwood. Cell phone: 303/416-0088. Mailing: City Market, 65 Tejon St., Denver CO 80223. Fax: 303/778-3085.

(e) The City shall designate its Engineer ("CE") who shall have decision-making power relative to the City's review of the Work, any rejection notices and approval of payment of all Engineer's Statements.

Until otherwise notified from time-to-time in writing, the CE is Trent Prall. Cell: 201-6384. Fax: 244-1456. Mailing: 250 N. First Street, Grand Junction, CO 81501.

2 (f) The total money to be paid into the Escrow by the City, to be paid at the direction of the Owner as described herein to the Owner's general and other contractors for the Work performed pursuant to this Agreement is \$1,200,000.00, and shall be paid as follows: Six Hundred Thousand and no/100 dollars (\$600,000.00) shall be paid on or before July 31, 2009, and Six Hundred Thousand and no/100 dollars (\$600,000.00) shall be paid on or before January 31, 2010. The Owner shall account for all costs and expenses of the Off-Site Work to the City. If the final costs of the Work are determined to be less than \$1,200,000.00, the Owner shall be reimbursed the construction, engineering, surveying and related costs incurred by Owner in developing the plans and specifications for the Work, and any remaining balance shall be paid from the Escrow to the City.

They need some (g) Because the Owner does not have any power of eminent domain, and to avoid concerns that it could be "held hostage" by the owners of required rights-of-way, including any construction or temporary easements, needed to complete the Work, it is agreed that the City shall acquire at its cost any necessary rights-of-way, including easements necessary to construct the Work, and shall do so in time to avoid any delays in the commencement and completion of the Work.

5. Owner acknowledges that by entering into this Agreement the City is not prejudging the merits of the Construction Plans and Standards ("CPS") which is defined to mean those plans and standards that are finally approved by the City as part of the Site Plan Approval. If the CPS are not approved, then this Agreement shall be null and void and of no effect. If the CPS are approved, the Owner agrees to complete the Project on or before January 1, 2011.

6. If, for whatever reason, the City does not timely fund the Escrow as provided in paragraph 4(f), in addition to all amounts owing pursuant to paragraph 4(f), the City agrees that it owes the Owner interest on the difference between each \$600,000.00 payment and the amount funded by the City from the date the \$600,000.00 was due until the amount of each \$600,000.00 payment is fully funded. Such interest shall accrue at the actual rate realized by the City from its investment portfolio (on the date each \$600,000.00 payment was due) until the City fully funds the Escrow as provided in this Agreement. If the actual rate realized by the City is zero or less, the applicable interest rate shall be the Wall Street Journal prime rate.

7. The City shall hold Owner harmless from any costs, expenses and/or attorneys' fees that result from any failure of the City to timely comply with the provisions hereof.

8. Because the City will be inspecting the Work and the CE will be approving each draw request prior to payment by the City, the parties recognize that the City can address any concerns regarding warranties of any aspect of the Work which will be identified before the completion of the Work, thus, Owner and the Project shall not be subject to any development improvements agreement, or associated security, relating to the Work on the 24 Road Improvements or relating to the improvements to the Leach Creek drainage.

9. In the event that any person, including a voter, challenges or sues in any forum regarding the City's duty or obligation to pay pursuant to this Agreement, the City agrees to vigorously defend any such challenge at its sole cost and expense and to defend the Owner from any costs, litigation, expenses and attorneys' fees arising out of or under this Agreement; the City warrants and represents by the signatures of the City hereon that it has the authority to enter into this Agreement and to make the payments and perform the duties described herein.

The City stipulates and agrees that the Owner is reasonably relying to its possible detriment on the City's promises to timely make the payments and perform its obligations pursuant to and in accordance with this Agreement. In the event that any court of competent jurisdiction, the voters or future City Councils of the City determine that they should not or will not pay or perform as stated herein, and any payment or performance required hereby is not timely made, the City stipulates and agrees that the principles of equitable estoppel and/or promissory estoppel or other similar doctrines of law and/or equity shall apply, in addition to any other legal or equitable basis, such as *quantum meruit*, and that the Owner may assert the same without being subject to the limitations of the Governmental Immunity Act or similar defenses. The City irrevocably agrees to confess any motion or action asserted by Owner or an owner of any portion of the Property which seeks to enforce the provisions hereof in order that the Owner may be paid as set forth herein.

10. The parties stipulate and agree that the amount of the TCP that the Owner must pay pursuant to the City's Z&D Code for the Project is \$181,987.00. Part of the basis for such amount of the TCP is that the Project is located near an existing high traffic area of the City. Once the Project is open for business, relatively few 'new' trips will be generated. Instead of traveling to other stores closer to the City's core, this new store will reduce both 'new' trips and the length of existing trips.

11. Venue for any action regarding this agreement shall in the Mesa County District Court.

For any disputes between the parties regarding this agreement, the parties agree to mediate such dispute by counsel for the parties mutually selecting a mediator and scheduling the mediation for completion within 60 days of written notice of the dispute given by either party to the other.

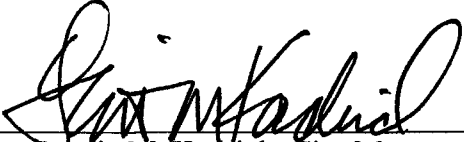
Written notice relating to this Agreement shall be given to the parties as follows:

To the City:
City Manager, with a copy to the City Attorney
250 N. First Street
Grand Junction, CO 81501

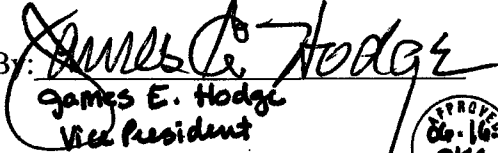
To the Owner:
Dillon Real Estate Co., Inc.
dba City Market
65 Tejon Street
Denver, CO 80223


with a copy to The Kroger Co., Law Department
1014 Vine Street
Cincinnati, OH 45202-1100

City of Grand Junction

By: 
Laurie M. Kadnich, City Manager

Dillon Real Estate Co., Inc.,
a Kansas corporation

By: 
James E. Hodge
Vice President



LEGAL DESCRIPTION

LOT 2A LOCATED IN THE REPLAT OF MESA VILLAGE SUBDIVISION, CITY OF GRAND JUNCTION, MESA COUNTY, STATE OF COLORADO AS RECORDED IN PLAT BOOK NO. 15, PAGES 37-38-39 RECEPTION NO. 1746811 DRAWER BB98



King Soopers

Division of Dillon Companies
65 Tejon Street
Denver, Colorado 80223
Phone: (303) 715-4500
Fax: (303) 778-3349

PREPARED BY:

Galloway

Planning, Architecture, Engineering.
5350 DTC Parkway
Greenwood Village, CO 80111
303.770.8884 O
303.770.3638 F
www.gallowayUS.com

Project No: MFD

Designed By: MFD

Date: 4/02/2009

City Market #451

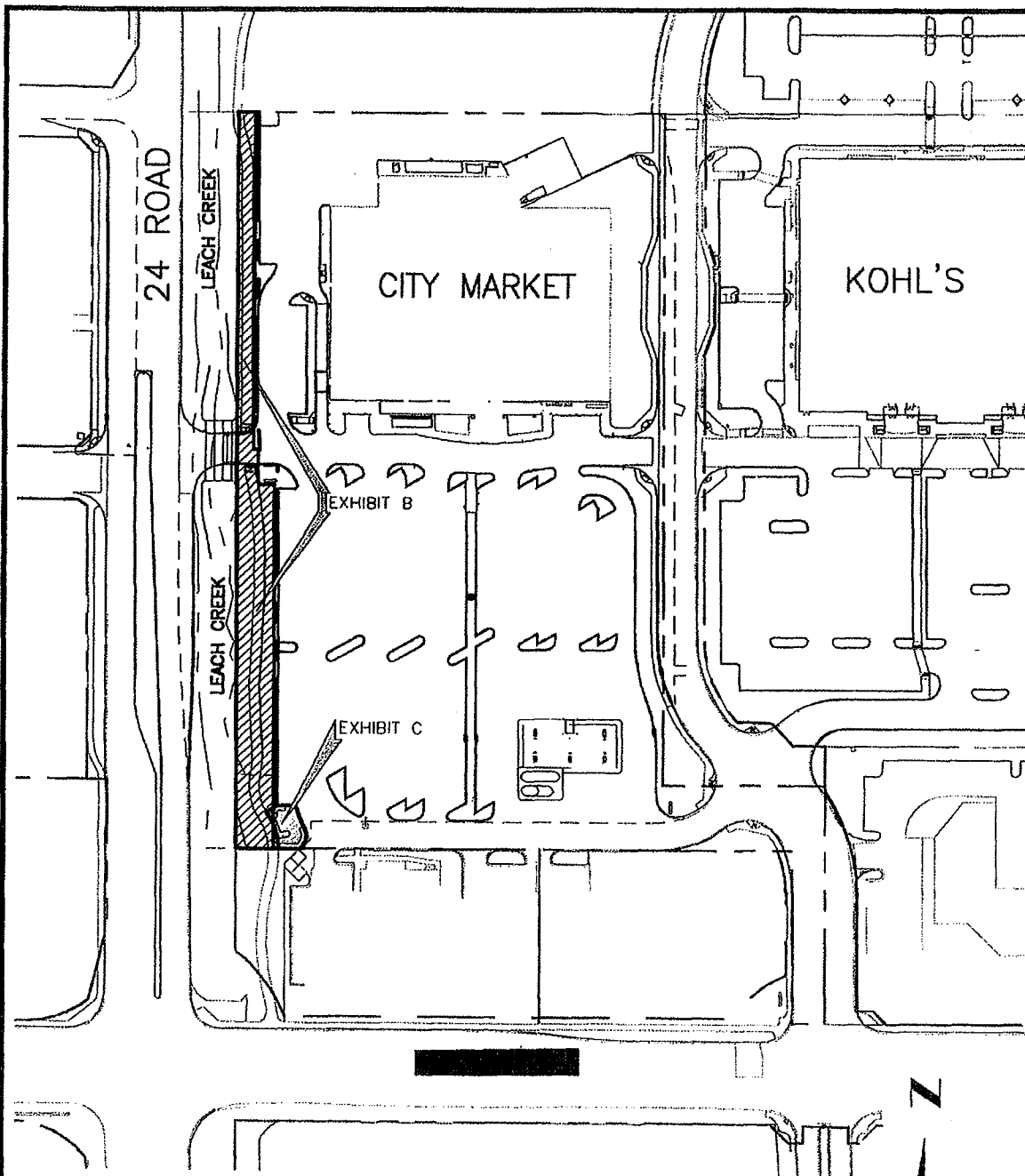
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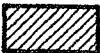

Drawn By: MFD

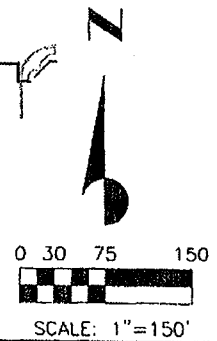
Disk File: CM#451legal.dwg



24th & Patterson

EXHIBIT A (Page 1 of 2)



 DEDICATION DESCRIPTION AND EXHIBIT B
 DEDICATION DESCRIPTION AND EXHIBIT C



 City Market Food & Pharmacy City Market Supermarket Petroleum 65 1/2 Ave. S, Suite 100 Denver, CO 80223 Phone: (303) 778-3953 Fax: (303) 811-9262		 Galloway Planning, Architecture, Engineering 5350 DTC Parkway Greenwood Village, CO 80111 303.770.8884 O 303.770.3636 F www.gallowayUS.com <small>© 2008, Galloway & Company, Inc. All Rights Reserved.</small>		PROPOSED CITY MARKET STORE #451 24 ROAD & PATTERSON ROAD GRAND JUNCTION, COLORADO	
Project No: KSS451	Designed By: JDJ	Date: 02/04/09	SITE PLAN DEDICATIONS EXHIBIT		A
Sheet Scale: 1" = 150'	Drawn By: CWB	Disk File: KSS00451			

(Page 2 of 2)

ILLUSTRATION FOR "DEDICATION EXHIBIT B"







LOT 1, CANYON VIEW MARKETPLACE
 PARCEL NO. 2945-043-21-001
 S89°59'06"E

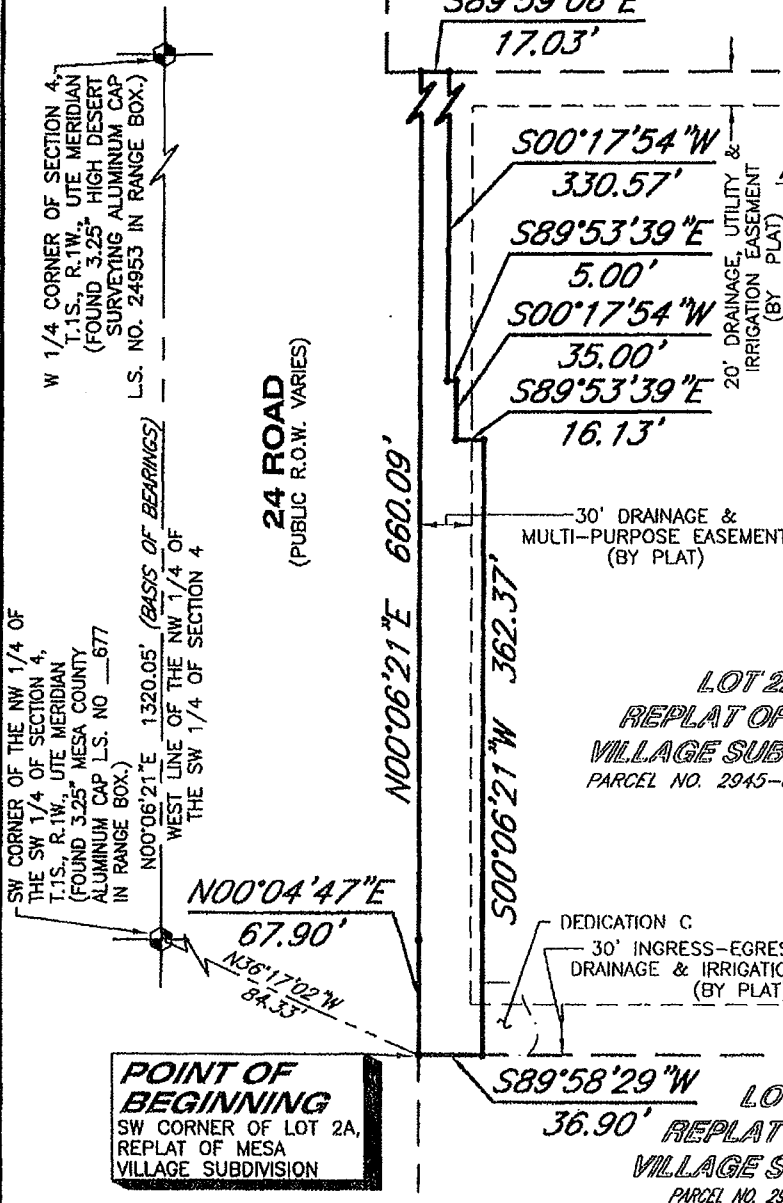
OWNER:
DILLON REAL ESTATE CO INC
 P.O. BOX 5567
 DENVER, COLORADO 80217
 PREPARED BY:

ENGINEERING SERVICE COMPANY
 1300 SOUTH POTOMAC STREET, SUITE 126
 AURORA, COLORADO 80012

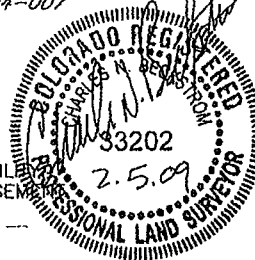
PARCEL CONTAINS
19,558 SQUARE FEET
0.4490 ACRES

LEGEND

-  DEDICATION LINE
-  ADJACENT PROPERTY
-  SECTION LINE
-  TIE LINE
-  ANGLE POINT
-  ALIQUOT CORNER

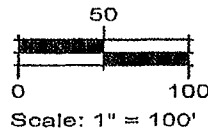


LOT 2A
 REPLAT OF MESA VILLAGE SUBDIVISION
 PARCEL NO. 2945-043-04-007



DEDICATION C
 30' INGRESS-EGRESS, UTILITY
 DRAINAGE & IRRIGATION EASEMENT
 (BY PLAT)

LOT 3A
 REPLAT OF MESA VILLAGE SUBDIVISION
 PARCEL NO. 2945-043-04-008



CITY OF GRAND JUNCTION

DEDICATION EXHIBIT B

NOTE: THIS EXHIBIT DOES NOT REPRESENT A MONUMENTED SURVEY. IT IS INTENDED ONLY TO DEPICT THE ATTACHED DESCRIPTION.

A PART OF LOT 2A, REPLAT OF MESA VILLAGE SUBDIVISION
 SITUATED IN THE SW 1/4 OF SECTION 4,
 TOWNSHIP 1 SOUTH, RANGE 1 WEST, UTE MERIDIAN
 CITY OF GRAND JUNCTION, COUNTY OF MESA,
 STATE OF COLORADO

DRAWN BY: SAM	SCALE: 1"=100'	R.O.W. FILE#
CHECKED BY: GNB	DATE: 02/05/09	

DEDICATION EXHIBIT "B"

LEGAL DESCRIPTION:

A PARCEL LAND SITUATED IN THE SW ¼ OF SECTION 4, TOWNSHIP 1 SOUTH, RANGE 1 WEST, UTE MERIDIAN, BEING A PART OF LOT 2A, REPLAT OF MESA VILLAGE SUBDIVISION AS RECORDED FEBRUARY 16, 1996 AT RECEPTION NO. 1746811, CITY OF GRAND JUNCTION, COUNTY OF MESA, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SOUTHWEST CORNER OF SAID LOT 2A, SAID POINT LYING ON THE EASTERLY R.O.W. LINE OF 24 ROAD; THENCE N00°04'47"E ALONG SAID EASTERLY R.O.W. LINE AND THE WESTERLY LINE OF SAID LOT 2A A DISTANCE OF 67.90 FEET; THENCE N00°06'21"E CONTINUING ALONG SAID WESTERLY LINE AND SAID EASTERLY R.O.W. LINE A DISTANCE OF 660.09 FEET TO THE NORTHWEST CORNER OF SAID LOT 2A; THENCE S89°59'06"E ALONG THE NORTHERLY LINE OF SAID LOT 2A A DISTANCE OF 17.03 FEET; THENCE S00°17'54"W A DISTANCE OF 330.57 FEET; THENCE S89°53'39"E A DISTANCE OF 5.00 FEET; THENCE S00°17'54"W A DISTANCE OF 35.00 FEET; THENCE S89°53'39"E A DISTANCE OF 16.13 FEET; THENCE S00°06'21"W A DISTANCE OF 362.37 FEET TO A POINT LYING ON THE SOUTHERLY LINE OF SAID LOT 2A; THENCE S89°58'29"W ALONG SAID SOUTHERLY LINE A DISTANCE OF 36.90 FEET TO THE POINT OF BEGINNING.

PARCEL CONTAINS (19,558 SQUARE FEET) 0.4490 ACRES.

BEARINGS ARE BASED ON THE WEST LINE OF THE NW ¼ OF THE SW ¼ OF SECTION 4, TOWNSHIP 1 SOUTH, RANGE 1 WEST, OF THE UTE MERIDIAN BEARING N00°06'21"E AS REFERENCED AND BOUNDED BY A 3.25" MESA COUNTY ALUMINUM CAP L.S. NO. 677 IN A RANGE BOX AT THE SW CORNER OF THE NW ¼ OF THE SW ¼ OF SAID SECTION 4 AND A 3.25" HIGH DESERT SURVEYING ALUMINUM CAP L.S. NO. 24953 IN A RANGE BOX AT THE NW CORNER OF THE NW ¼ OF THE SW ¼ OF SECTION 4.

DATE PREPARED: FEBRUARY 5, 2009

DATE OF LAST REVISION:

PREPARED BY: CHARLES N. BECKSTROM, PLS NO. 33202
FOR AND ON BEHALF OF
ENGINEERING SERVICE COMPANY
1300 SOUTH POTOMAC STREET, SUITE 128
AURORA, COLORADO 80012
PHONE: (303) 337-1393



DEDICATION EXHIBIT "C"

LEGAL DESCRIPTION:

A PARCEL LAND SITUATED IN THE SW ¼ OF SECTION 4, TOWNSHIP 1 SOUTH, RANGE 1 WEST, UTE MERIDIAN, BEING A PART OF LOT 2A, REPLAT OF MESA VILLAGE SUBDIVISION AS RECORDED FEBRUARY 16, 1996 AT RECEPTION NO. 1746811, CITY OF GRAND JUNCTION, COUNTY OF MESA, STATE OF COLORADO, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE SOUTHWEST CORNER OF SAID LOT 2A, SAID POINT LYING ON THE EASTERLY R.O.W. LINE OF 24 ROAD; THENCE N89°58'29"E ALONG THE SOUTHERLY LINE OF SAID LOT 2A A DISTANCE OF 36.90 FEET TO THE POINT OF BEGINNING. THENCE N00°06'21"E A DISTANCE OF 42.87 FEET; THENCE S89°53'39"E A DISTANCE OF 18.92 FEET TO A POINT OF CURVE; THENCE ALONG A CURVE TO THE RIGHT WHOSE CHORD BEARS S50°11'56"E A DISTANCE OF 4.47 FEET, SAID CURVE HAVING A CENTRAL ANGLE OF 79°23'27", RADIUS OF 3.50 FEET, AN ARC LENGTH OF 4.85 FEET TO A POINT OF REVERSE CURVE; THENCE ALONG A CURVE TO THE LEFT WHOSE CHORD BEARS S22°08'14"E A DISTANCE OF 20.37 FEET, SAID CURVE HAVING A CENTRAL ANGLE OF 23°16'03", A RADIUS OF 50.50 FEET, AN ARC LENGTH OF 20.51 FEET TO A POINT OF REVERSE CURVE; THENCE ALONG A CURVE TO THE RIGHT WHOSE CHORD BEARS S12°18'58"W A DISTANCE OF 21.58 FEET, SAID CURVE HAVING A CENTRAL ANGLE OF 92°10'26", A RADIUS OF 14.98 FEET, AND ARC LENGTH OF 24.10 FEET TO A POINT LYING ON SAID SOUTHERLY LINE OF LOT 2A; THENCE S89°58'29"W NON-TANGENT TO THE LAST DESCRIBED CURVE AND ALONG SAID SOUTHERLY LINE A DISTANCE OF 25.51 FEET TO THE POINT OF BEGINNING.

PARCEL CONTAINS (1,197 SQUARE FEET) 0.0275 ACRES.

BEARINGS ARE BASED ON THE WEST LINE OF THE NW ¼ OF THE SW ¼ OF SECTION 4, TOWNSHIP 1 SOUTH, RANGE 1 WEST, OF THE UTE MERIDIAN BEARING N00°06'21"E AS REFERENCED AND BOUNDED BY A 3.25" MESA COUNTY ALUMINUM CAP L.S. NO. 677 IN A RANGE BOX AT THE SW CORNER OF THE NW ¼ OF THE SW ¼ OF SAID SECTION 4 AND A 3.25" HIGH DESERT SURVEYING ALUMINUM CAP L.S. NO. 24953 IN A RANGE BOX AT THE NW CORNER OF THE NW ¼ OF THE SW ¼ OF SECTION 4.

DATE PREPARED: FEBRUARY 5, 2009

DATE OF LAST REVISION:

PREPARED BY: CHARLES N. BECKSTROM, PLS NO. 33202
FOR AND ON BEHALF OF
ENGINEERING SERVICE COMPANY
1300 SOUTH POTOMAC STREET, SUITE 126
AURORA, COLORADO 80012
PHONE: (303) 337-1393

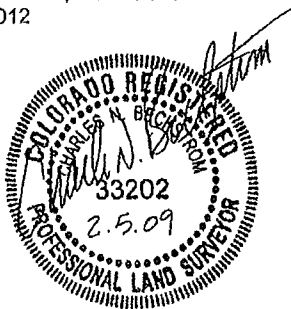


ILLUSTRATION FOR "DEDICATION EXHIBIT C"

CURVE DATA TABLE

COURSE	DELTA	RADIUS	LENGTH	Chd BEARING	Chd LENGTH
C1	79°23'27"	3.50'	4.85'	S50°11'56"E	4.47'
C2	23°16'03"	50.50'	20.51'	S22°08'14"E	20.37'
C3	92°10'28"	14.98'	24.10'	S12°18'58"W	21.58'

OWNER:

DILLON REAL ESTATE CO INC



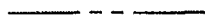
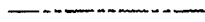


P.O. BOX 5567
DENVER, COLORADO 80217

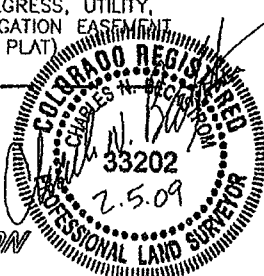
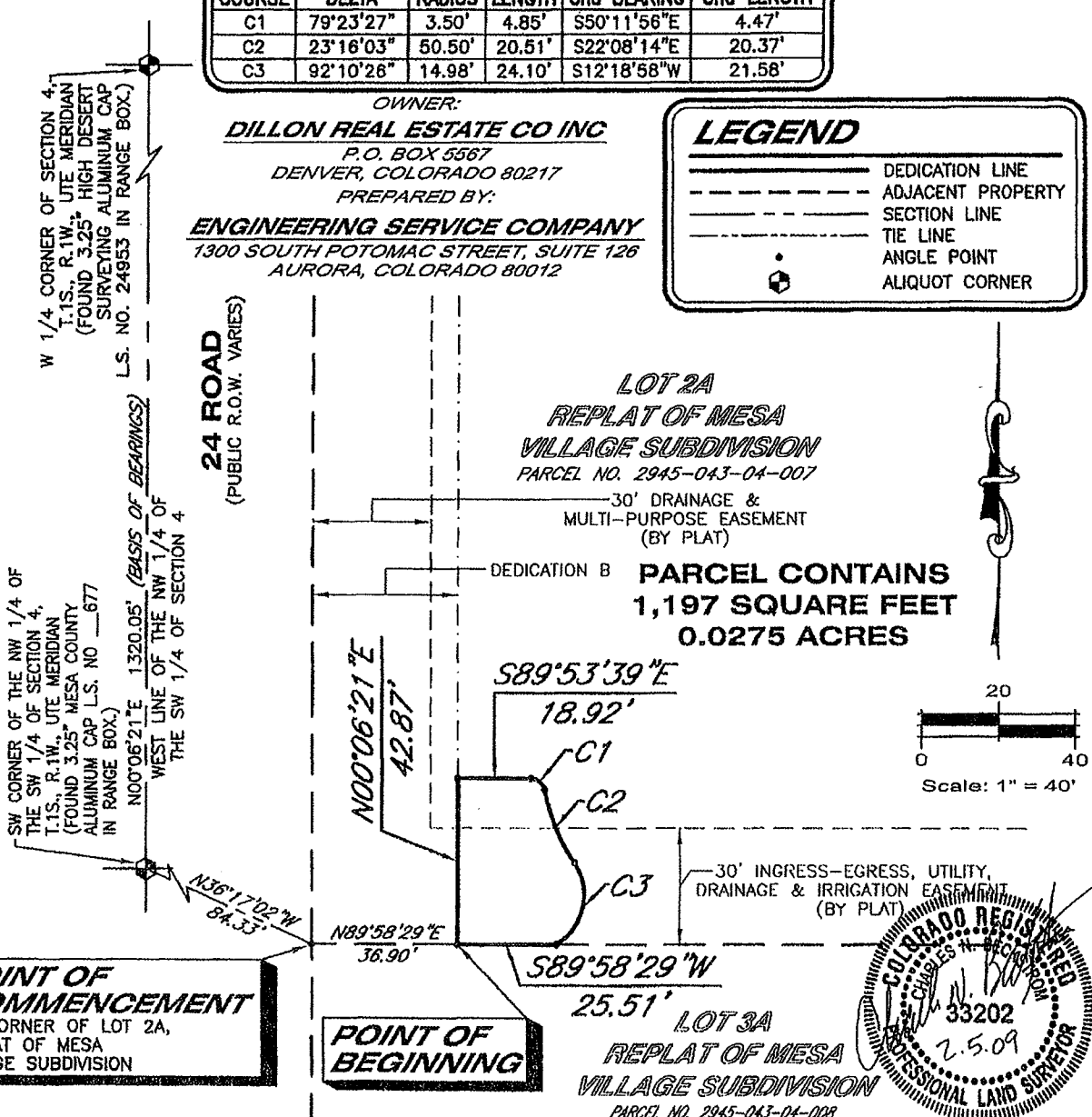
PREPARED BY:

ENGINEERING SERVICE COMPANY

1300 SOUTH POTOMAC STREET, SUITE 126
AURORA, COLORADO 80012

LEGEND

-  DEDICATION LINE
-  ADJACENT PROPERTY
-  SECTION LINE
-  TIE LINE
-  ANGLE POINT
-  ALIQUOT CORNER



CITY OF GRAND JUNCTION		
NOTE: THIS EXHIBIT DOES NOT REPRESENT A MONUMENTED SURVEY. IT IS INTENDED ONLY TO DEPICT THE ATTACHED DESCRIPTION.		
DRAWN BY: SAM	SCALE: 1"=40'	R.O.W. FILE#
CHECKED BY: CNB	DATE: 02/05/09	

DEDICATION EXHIBIT C

A PART OF LOT 2A, REPLAT OF MESA VILLAGE SUBDIVISION
SITUATED IN THE SW 1/4 OF SECTION 4,
TOWNSHIP 1 SOUTH, RANGE 1 WEST, UTE MERIDIAN
CITY OF GRAND JUNCTION, COUNTY OF MESA,
STATE OF COLORADO

Exhibit D

ESCROW AND DISBURSING AGREEMENT

THIS ESCROW AND DISBURSING AGREEMENT ("Escrow Agreement") is entered into this 9 day of July, 2009, by and among Land Title Guarantee Company, 5975 Greenwood Plaza, Ste. 125, Greenwood Village, CO 80111 ("Escrow Agent"), Dillon Real Estate Co., Inc., a Kansas corporation ("Owner"), and the City of Grand Junction, CO, a Colorado home rule city ("City").

Recitals.

A. On even date herewith, the Owner and City have executed an agreement (the "Agreement") setting forth various development obligations of the Owner and payment obligations of the City.

B. In the Agreement, the parties recognized that each may save costs overall if they cooperate to provide for the required improvements, as described in the Agreement. Because there are times that private owners may obtain better overall pricing in certain circumstances, if the Owner engages contractors to construct the necessary improvements for the Project (described in the Agreement), the parties may each benefit if the Owner has its contractors also construct the Off-Sites (defined in the Agreement) at the same time and the City deposits its share of the costs of the Work (described in the Agreement) into an escrow account from which the cost of the Work shall be paid or reimbursed, as provided herein.

NOW THEREFORE, in consideration of Five Hundred and 00/100 Dollars (\$500.00) and other good and valuable consideration paid to the Escrow Agent by the Owner, the receipt and sufficiency of which are hereby acknowledged by the Escrow Agent, the parties agree as follows:

1. On or before July 31, 2009, the City shall deposit with Escrow Agent the sum of SIX HUNDRED THOUSAND and 00/100 Dollars (\$600,000.00) (the "First Deposit"). On or before January 15, 2010 without demand from Dillon, the City shall deposit with the Escrow Agent an additional SIX HUNDRED THOUSAND and 00/100 Dollars (\$600,000.00) (the "Second Deposit"). The First Deposit and Second Deposit shall be held in an interest bearing account designated by Owner (the "Escrow Account") with a FDIC insured banking institution with the interest held to pay the costs of the Work; however, if funds remain after all costs of the Work have been paid in full, then all accrued interest shall be paid to Owner at the close of the Escrow Account as partial reimbursement for Owner's already incurred planning, engineering and surveying costs associated with the Work.

2. (a) As described in the Agreement, the Owner shall engage a Colorado Professional Engineer ("Owner's Engineer") to review and inspect the Work of the general contractor hired by Owner. Each month, in accordance with the terms of the Agreement, said Engineer shall submit his statement ("Engineer's Statement") to the City that the Work for which the general contractor desires payment complies with the standards set forth in the Agreement.

(b) If the City does not object in writing to the Owner's Engineer, with a copy to the Escrow Agent, within ten (10) business days after receipt of each periodic Engineer's Statement (which statement shall not be submitted more frequently than monthly), the Owner shall: (i) direct the Escrow Agent in writing to make the specified payments to the specified contractor(s) (the "Direction"); (ii) Provide to the Escrow Agent proof of delivery of the Engineer's Statement to the City, including the date delivered to the City; and (iii) provide a copy of each Direction to the City.

(c) If no timely objection from the City is received, the Escrow Agent shall forthwith pay according to the Owner's Direction, and provide proof of such payment, and a copy of the fully executed unconditional mechanic's lien waiver in the form attached as **Exhibit A** and made a part hereof, to the Owner's Engineer and the City. Owner shall be responsible to obtain each fully executed mechanic's lien waiver and deliver it to Escrow Agent, so that Escrow Agent can provide a copy thereof to the City, as provided above.

(d) If the City timely objects to any Owner's Direction in writing addressed to the Owner, with a copy to the Escrow Agent, the Escrow Agent shall do nothing for thirty (30) days regarding such Direction; if within said thirty (30) day period the City and Owner have not resolved their differences regarding that particular Direction, and provided notice thereof is given to all parties, the Escrow Agent shall be governed by paragraph 3, below, regarding said Direction.

3. (a) In the event of any disagreement or presentation of adverse or conflicting claims or demands in connection with a Direction, Escrow Agent may refuse to comply with any such claims or demands during the continuance of such disagreement between the Owner and the City and may refrain from making any disbursements of the contested amount of funds or taking any other affirmative action under this Escrow Agreement. In so doing, the Escrow Agent shall not be liable to any party hereto or to any other person for or because of its failure or refusal to comply with such adverse or conflicting claims or demands, except to the extent that Escrow Agent willfully acts or is negligent.

(b) Escrow Agent assumes no liability that the Work contemplated under the Agreement will be performed, or that sufficient funds will be available for completion of same.

(c) Escrow Agent shall not be required to provide any architectural supervision or similar oversight regarding the Work.

(d) Escrow Agent shall not be charged with any liability for complying with any and all legal processes, court orders, judgments and decrees of any court or governmental authority, whether or not subsequently vacated, modified, set aside or reversed. Escrow Agent shall not be charged with or be liable for loss arising from compliance with the requirements of any federal, state or local laws dealing with the disbursement of construction funds, even though Escrow Agent's compliance with said laws should be in conflict with this Escrow Agreement.

(e) Notwithstanding any termination of this Escrow Agreement, the parties agree that, in the event of any controversy regarding the Escrow Account, the First Deposit, the Second Deposit or other value or money held by Escrow Agent (unless identical written instructions are

received from Owner and the City) the Escrow Agent shall not be required to take any action but may await any proceeding, or at Escrow Agent's option and sole discretion, may interplead all parties and deposit any moneys or things of value into the Mesa County District Court and shall be entitled to its court costs and reasonable attorneys' fees.

4. This Escrow Agreement shall not inure to the benefit of any parties other than the parties hereto, and any liability to such other parties is expressly disclaimed.

5. Escrow Agent's fees for providing the services hereunder shall be Five Hundred and 00/100 Dollars (\$500.00).

6. All notices to be sent hereunder shall be delivered personally or sent by first class mail to the addresses set forth below. Notices sent by mail shall be deemed received on the second business day after the mailing of such notice.

7. This Escrow Agreement is governed by Colorado law; venue shall only be in Mesa County, Colorado.

8. The Owner shall deliver its Form W-9 Request for Taxpayer Information to Escrow Agent within 30 days of execution hereof.

9. The Escrow Agent may resign under this Agreement by giving written notice to the Owner and to the City, effective 30 days after the date of said notice. Upon the appointment by the Owner and the City of a new escrow agent, or upon written instructions to the Escrow Agent by the Owner and the City for other disposition of the Escrow monies, Escrow Agent shall, after retention of its accrued escrow fees and expenses, if any, deliver the Escrow monies within a reasonable amount of time as directed, and shall thereby be relieved of any and all liability arising thereafter.

10. This Agreement shall be governed by the laws of Colorado; venue for any action shall be in Mesa County, Colorado.

11. This Agreement may be executed in any number of counterparts, each of which when so executed shall constitute the entire agreement between the Owner and the City and may be executed in facsimile and such facsimile shall be accepted as original signatures. There are no intended or third party beneficiaries of this Agreement.

IN WITNESS HEREOF, the parties hereto have executed this Escrow and Disbursing Agreement on the day, month and year first written above.

ESCROW AGENT:
LAND TITLE GUARANTY COMPANY
5975 Greenwood Plaza, Ste. 125
Greenwood Village, CO 80111

By: [Signature]
Its: Branch mgr. Co

CITY OF GRAND JUNCTION
250 North 5th Street
Grand Junction, CO 81501

By: [Signature]
Its: City Manager

DILLON REAL ESTATE CO., INC., a Kansas corporation
65 Tejon Street
Denver, Colorado 80223

By: [Signature]
Its: James E. Hodges
Vice President



THIS SPECIFICATION SECTION SHALL NOT BE EDITED BY THE DESIGN PROFESSIONAL.

This Section is included for reference only. All Contractors shall use the electronic form located on the Owner's project management website. Download the form and follow the instructions to complete the General Contractor's Progress Affidavit.

SECTION 00 65 19 - GENERAL CONTRACTOR'S PROGRESS AFFIDAVIT

Affidavit No. _____

Date: _____

STATE OF: _____

EIN: _____

Store No.: _____

COUNTY OF: _____

Being first duly sworn, deposes and say

that he/she is _____

of _____

the contractor performing work at _____

under a contract with the Owner, which contract is dated _____ 20 _____

and deponent says that he/she makes this affidavit in behalf of said contractor and that set forth below is a list of each and every subcontractor and major material supplier who has performed work on or supplied material and supplies or equipment for the performance of said contract and that set forth after the name of each subcontractor or major material supplier, respectively, under the columns noted below is:

Column 1, the original contract amount.

Column 2, the extra work authorization amounts

Column 3, revised contract amount

Column 4, the total work completed

Column 5, the retainage amount

Column 6, previous payments

Column 7, the total amount due this request for payment. This amount is the total of the work completed less the retainage and less the previous payments.

<Store No.>
 <Store Location>

Date: _____ 20 _____

Store No.: _____

Name of Subcontractor or Major Material Supplier	Column #1	Column #2	Column #3	Column #4	Column #5	Column #6	Column #7
	Original Contract Amount (\$)	EWA Amount (\$)	Revised Contract Amount (\$)	Total Work Completed (\$)	Retainage Amount (\$), Rate of %	Previous Payment (\$)	Amount Due (\$)
Subcontractor and Major Material Supplier Request for Payment Subtotal	\$	\$	\$	\$	\$		
General Contractor Request for Payment Subtotal	\$	\$	\$	\$	\$		
General Contractor, Subcontractor and Major Material Supplier Request for Payment Total	\$	\$	\$	\$	\$		

GENERAL CONTRACTOR'S PROGRESS AFFIDAVIT

00 65 19 - 2

The Kroger Co.
Kroger Master Building Specifications
<Consultant Name><Consultant Comm. No.>

006519_GeneralContractorsProgressAffidavit_05-12-09 (2).doc

<Store No.>
<Store Location>

SAMPLE

<Store No.>
<Store Location>

Date: _____ 20 ____

Store No.: _____

The Request for Payment # _____ submitted herewith contains a request for
\$ _____, which sum is currently due or has been paid under the Contractor
Financed option to my subcontractors and major material suppliers and for
\$ _____, which sum is currently due this Contractor herein for work
performed under the Project for the current pay period through _____ 20 ____.

Date

Affiant further states all payroll taxes or contributions imposed upon the affiant by statute or law has been
paid through _____ 20 ____.

Date

Signature

Title

Company

STATE OF: _____

ETN: _____

COUNTY OF: _____

Before me, a Notary Public, in and for the State of _____,

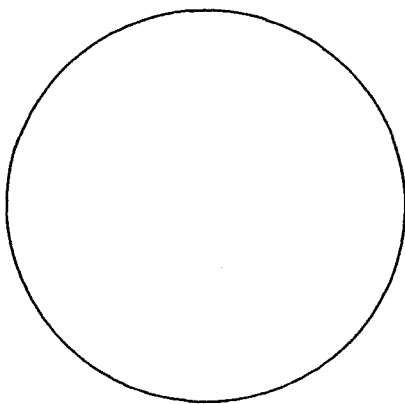
came _____, by me known, and made oath that he/she is

of _____

foregoing affidavit and subscribed the same and that
he/she knows it to be true to the best of his/her knowledge,
information and belief.

My commission expires: _____ 20 ____

Notary Public



NOTARY SEAL

END OF SECTION 00 65 19

SAMPLE

THIS SPECIFICATION SECTION SHALL NOT BE EDITED BY THE DESIGN PROFESSIONAL.

This Section is included for reference only. All Contractors shall use the electronic form located on the Owner's project management website. Download the form and follow the instructions to complete the Subcontractor's Progress Affidavit.

SECTION 00 65 20 - SUBCONTRACTOR'S PROGRESS AFFIDAVIT

Affidavit No. _____

Date: _____

STATE OF: _____

EIN: _____

Store No.: _____

COUNTY OF: _____

Being first duly sworn, deposes and say

that he/she is _____

of _____

a subcontractor performing certain work at _____

under a contract dated _____ 20 _____ with _____

and deponent says that he/she makes this affidavit in behalf of said subcontractor and that set forth below is a list of each and every sub-subcontractor and major material supplier who has performed work on or supplied material and supplies or equipment for the performance of said contract and that set forth after the name of each sub-subcontractor or major material supplier, respectively, under the columns noted below is:

Column 1, the original contract amount.

Column 2, the extra work authorization amounts

Column 3, revised contract amount

Column 4, the total work completed

Column 5, the retainage amount

Column 6, previous payments

Column 7, the total amount due this request for payment. This amount is the total of the work completed less the retainage and less the previous payments.

<Store No.>
<Store Location>

Date: _____ 20 ____

Store No.: _____

The Request for Payment # _____ submitted herewith contains a request for \$ _____, which sum is currently due my sub-subcontractors and major material supplier and for \$ _____, which sum is currently due this subcontractor herein for work performed under the Project for the current pay period through _____ 20 ____.

Affiant further states all payroll taxes or contributions imposed upon the affiant by statute or law has been paid through _____ 20 ____.

Signature

Title

Company

STATE OF: _____

EIN: _____

COUNTY OF: _____

Before me, a Notary Public, in and for the State of _____,

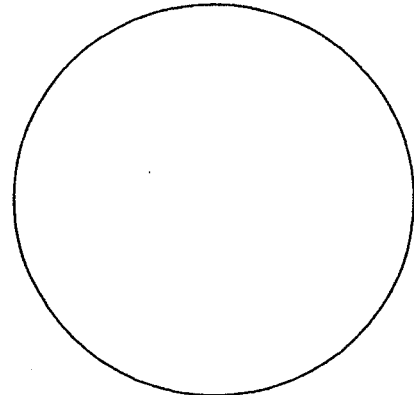
came _____, by me known, and made oath that he/she is

of _____,

foregoing affiant and subscribed the same and that he/she knows it to be true to the best of his/her knowledge, information and belief.

My commission expires: _____ 20 ____

Notary Public



NOTARY SEAL

END OF SECTION 00 65 20

SAMPLE

THIS SPECIFICATION SECTION SHALL NOT BE EDITED BY THE DESIGN PROFESSIONAL.

This Section is included for reference only. All Contractors shall use the electronic form located on the Owner's project management website. Download the form and follow the instructions to complete the Unconditional Waiver And Release Upon Progress Payment

SECTION 00 65 22 - UNCONDITIONAL WAIVER AND RELEASE UPON PROGRESS PAYMENT

Store No.: _____

The undersigned has been paid and has received a progress payment in the Sum of \$ _____

for labor, services, equipment, or material furnished to _____

on the job of _____
(Owner)

located at _____
(Job Description)

and does hereby release any mechanic's lien, stop notice, or bond right that the undersigned has on the above referenced job to the following extent. This release covers a progress payment for labor, services, equipment, or materials furnished to

_____ (Customer)

From _____ through _____
(Date) (Date)

only and does not cover any retentions retained before or after the release date: extras furnished before the release date for which payment has not been received; extras or items furnished after the release date. Rights based upon work performed or items furnished under a written change order which has been fully executed by the parties prior to the release date are covered by this release unless specifically reserved by the claimant in this release. This release of any mechanic's lien, stop notice, or bond right shall not otherwise affect the contract rights, including rights between parties to the contract based upon a rescission, abandonment, or breach of the contract, or the right of the undersigned to recover compensation for furnished labor, services, equipment, or material covered by this release if that furnished labor services, equipment, or material was not compensated by the progress payment.

IN WITNESS WHEREOF, the undersigned has caused these presents to be duly executed this

_____ day of _____, 20 _____.

"NOTICE: THIS DOCUMENT WAIVES RIGHTS UNCONDITIONALLY AND STATES THAT YOU HAVE BEEN PAID FOR GIVING UP THOSE RIGHTS. THIS DOCUMENT IS ENFORCEABLE AGAINST YOU IF YOU SIGN IT, EVEN IF YOU HAVE NOT BEEN PAID. IF YOU HAVE NOT BEEN PAID, USE A CONDITIONAL RELEASE FORM."

(Signature and Notary seal on next page)

Store No.: _____

Signature _____

Title _____

Company _____

STATE OF: _____)

EIN: _____

COUNTY OF: _____)

Before me, a Notary Public, in and for the State of _____,

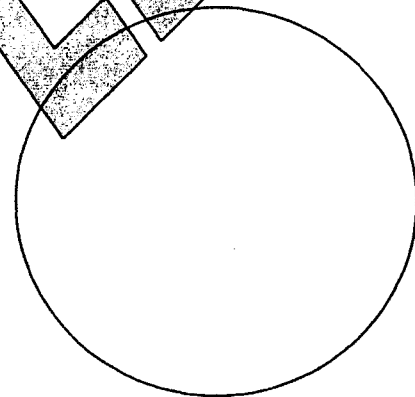
came _____, by me known, and made oath that he/she is

of _____

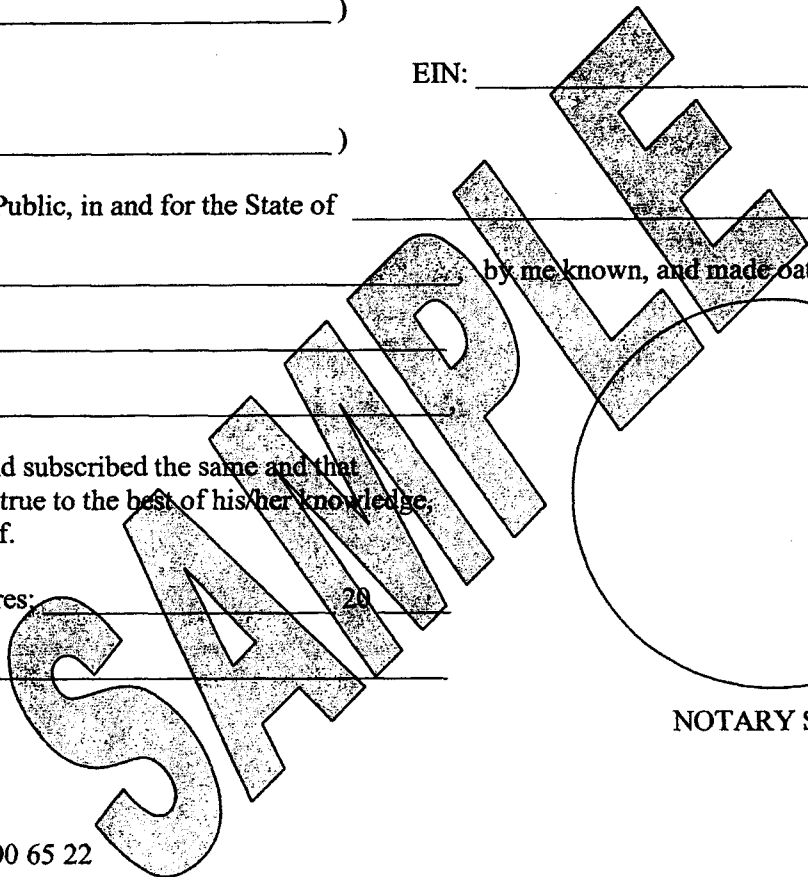
foregoing affidavit and subscribed the same and that he/she knows it to be true to the best of his/her knowledge, information and belief.

My commission expires: _____ 20_____

Notary Public _____



NOTARY SEAL



END OF SECTION 00 65 22

THIS SPECIFICATION SECTION SHALL NOT BE EDITED BY THE DESIGN PROFESSIONAL.

This Section is included for reference only. All Contractors shall use the electronic form located on the Owner's project management website. Download the form and follow the instructions to complete the General Contractor's Final Affidavit.

SECTION 00 65 25 - GENERAL CONTRACTOR'S FINAL AFFIDAVIT

Affidavit No. _____

Date: _____

STATE OF: _____

EIN: _____

COUNTY OF: _____

Store No.: _____

_____, Being first duly sworn, deposes and say

that he/she is _____

of _____,

the contractor performing work at _____,

under a contract with the Owner, or its subsidiaries or affiliates, which contract is dated:

_____ 20 _____

and deponent says that he/she makes this affidavit in behalf of said contractor and that set forth below is a list of each and every subcontractor and major material supplier who has performed work on or supplied material and supplies or equipment for the performance of said contract and that set forth after the name of each subcontractor or major material supplier, respectively, under the columns noted below is:

Column 1, The total amount of work completed by the subcontractor or the total cost of materials and supplies furnished by such major material supplier on such subcontract. This amount is the total of the adjusted subcontract including all extras.

Column 2, the total amount paid.

Column 3, the remaining amount owed to the Contractor.

<Store No.>
 <Store Location>

Date: _____ 20__

Store No.: _____

	Column #1	Column #2	Column #3
Name of Subcontractor or Major Material Supplier	Total Value of Work Completed or Materials Supplied (\$)	Total Amount Paid (\$)	Draw Amount (\$)
Subcontractor and Major Material Supplier Total	\$	\$	\$
General Contractor Total	\$	\$	\$

SAMPLE

The Kroger Co.
Kroger Master Building Specifications
<Consultant Name><Consultant Comm. No.>

006525_GeneralContractorsFinalAffidavit_05-12-09.doc

<Store No.>
<Store Location>

General Contractor and His/Her Subcontractor and Major Material Supplier Grand Total	\$	\$	\$
-----------------------------------------------------------------------------------------	----	----	----

SAMPLE

<Store No.>
<Store Location>

Date: _____ 20 ____

Store No.: _____

The Request for Payment submitted herewith contains a request for

\$ _____, which sum is currently due my subcontractors and Major Material

Suppliers and for \$ _____, which sum is currently due this contractor herein for

work performed under the Project.

Affiant further states all payroll taxes or contributions imposed upon the affiant by statute or law has been paid.

Affiant further stated that all the foregoing is true and complete to the best of his/her knowledge, information and belief.

Signature _____

Title _____

Company _____

STATE OF: _____

EIN: _____

COUNTY OF: _____

Before me, a Notary Public, in and for the State of _____,

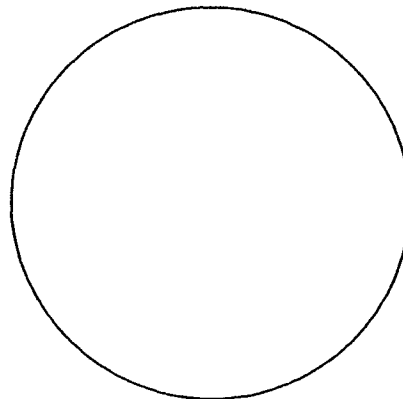
came _____, by me known, and made oath that he/she is

of _____

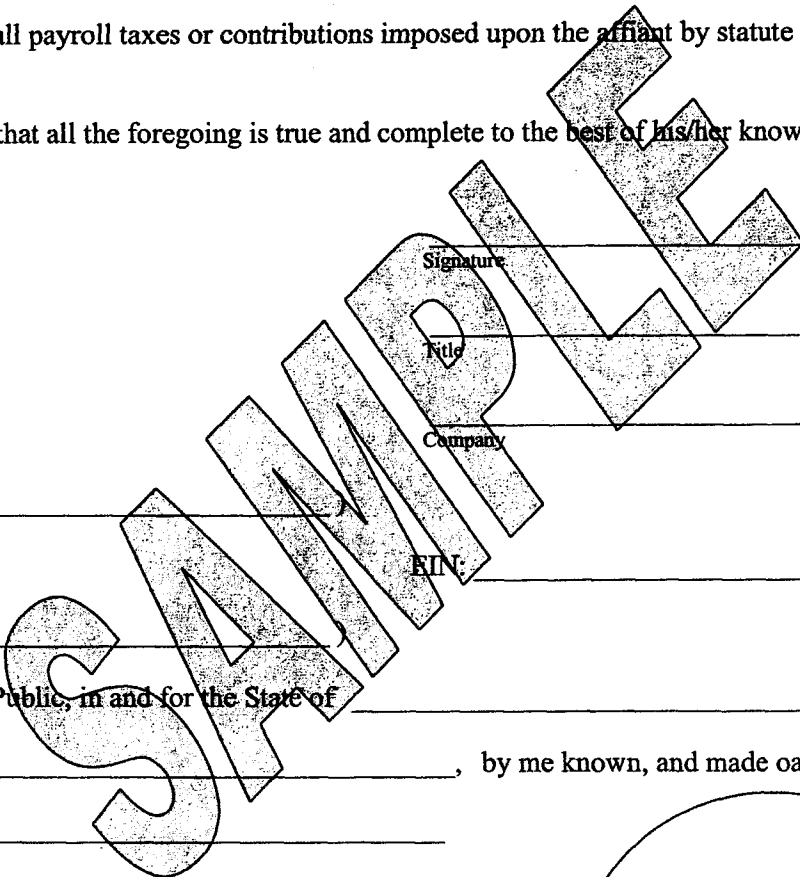
foregoing affidavit and subscribed the same and that he/she knows it to be true to the best of his/her knowledge, information and belief.

My commission expires: _____ 20 ____

Notary Public



NOTARY SEAL



The Kroger Co.
Kroger Master Building Specifications
<Consultant Name><Consultant Comm. No.>

006525_GeneralContractorsFinalAffidavit_05-12-09.doc

<Store No.>
<Store Location>

END OF SECTION 00 65 25

SAMPLE

THIS SPECIFICATION SECTION SHALL NOT BE EDITED BY THE DESIGN PROFESSIONAL.

SECTION 00 65 26 - SUBCONTRACTOR'S FINAL AFFIDAVIT

This Section is included for reference only. All Contractors shall use the electronic form located on the Owner's project management website. Download the form and follow the instructions to complete the Subcontractor's Final Affidavit.

Affidavit No. _____

Date: _____

STATE OF: _____

EIN: _____

Store No.: _____

COUNTY OF: _____

Being first duly sworn, deposes and say

that he/she is _____

of _____

a subcontractor performing certain work at _____

under a contract dated _____ 20____ with _____

a General Contractor to the Owner or its subsidiaries and affiliates, and deponent says that he/she makes this affidavit in behalf of said subcontractor and that set forth below is a list of each and every sub-subcontractor and major material supplier who has performed work on or supplied material and supplies or equipment for the performance of said contract and that set forth after the name of each sub-subcontractor or major material supplier, respectively, under the columns noted below is:

Column 1, The total amount of work completed by the sub-subcontractor or the total cost of materials and supplies furnished by such major material supplier on such sub-subcontract. This amount is the total of the adjusted sub-subcontract including all extras.

Column 2, the total amount paid.

Column 3, the remaining amount owed to the Subcontractor.

The Kroger Co.
Kroger Master Building Specifications
<Consultant Name><Consultant Comm. No.>

006526_SubcontractorsFinalAffidavit_05-12-09.doc

<Store No.>
<Store Location>

Subcontractor and His/Her Sub-subcontractor and Major Material Supplier Grand Total	\$	\$	\$
-------------------------------------------------------------------------------------	----	----	----

SAMPLE

<Store No.>
<Store Location>

Date: _____ 20 ____

Store No.: _____

The Request for Payment submitted herewith contains a request for

\$ _____, which sum is currently due my sub-subcontractors and major material
supplier and for \$ _____, which sum is currently due this contractor herein for
work performed under the Project.

Affiant further states all payroll taxes or contributions imposed upon the affiant by statute or law has been
paid.

Affiant further stated that all the foregoing is true and complete to the best of his/her knowledge, informa-
tion and belief.

Signature _____

Title _____

Company _____

STATE OF: _____

EIN _____

COUNTY OF: _____

Before me, a Notary Public, in and for the State of _____,

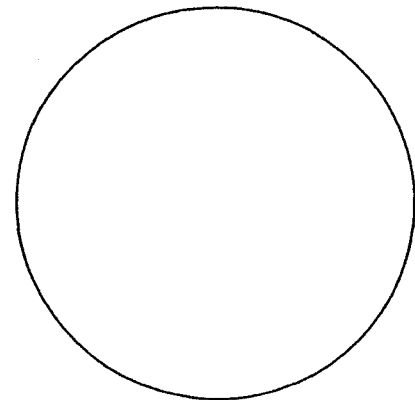
came _____, by me known, and made oath that he/she is

of _____,

foregoing affidavit and subscribed the same and that
he/she knows it to be true to the best of his/her knowledge,
information and belief.

My commission expires: _____ 20 ____

Notary Public



NOTARY SEAL

Store No.: _____

Name of Company

By: _____

Signature

Title

STATE OF: _____)

EIN: _____

COUNTY OF: _____)

Before me, a Notary Public, in and for the State of _____

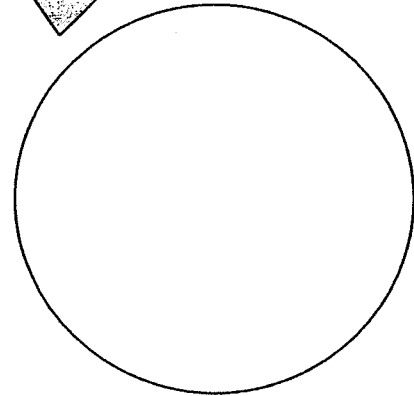
came _____ by me known, and made oath that he/she is

of _____

foregoing affidavit and subscribed the same and that he/she knows it to be true to the best of his/her knowledge, information and belief.

My commission expires: _____ 20_____

Notary Public



NOTARY SEAL

END OF SECTION 00 65 28