

RECEIVED JUL 14 2009

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RICHARD T. MAUGHAN  
DAVIS COUNTY, UTAH RECORDER  
7/14/2009 4:44:00 PM  
FEE \$23.00 Pgs: 4  
DEP eCASH REC'D FOR FOUNDERS TITLE CO - LAYT

## Shared Access and Use Agreement

This Shared Access and Use Agreement is made and entered into this 13<sup>th</sup> day of July, 2009, by and between Gailey Tree, LLC (Gailey); MKG Investment (MKG) and Elk Valley Construction, Inc. (Elk Valley).

### Recitals

1. The parties above are the current fee simple title holders to certain parcels of real property located in Syracuse, Utah. Said parcels are contiguous to each other and are depicted on the ownership map (cross-hatched) attached hereto as Exhibit "A" and which are more particularly described by record descriptions attached hereto as Exhibit "B".
2. Certain improvements have heretofore been constructed on portions of the Gailey property and the Elk Valley property. Access to these improved parcels are by way of 1700 South Street, 1900 South Street, 2000 West Street and/or those areas defined as access and public utility easements on the official plat of Gertge Business Park. Said areas defined as access and public utility easements may both benefit and burden the properties described herein.

Now therefore, in consideration of the mutual covenants and promises set forth below and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties herein agree as follows:

- A. Gailey, MKG and Elk Valley for themselves, their successors and assigns hereby grant to one another a non-exclusive easement for access, ingress and egress, to and from 1700 South Street; 1900 South Street and 2000 West street over an across those areas noted on the official plat of Gertge Business Park as access and public utility easements. In addition, the parties grant to one another access and use of all drive thru areas over and across those areas of Gertge Business Park and Lot 2, Care A Lot Child Care Subdivision. The parties further grant to one another cross parking rights over all properties described herein. These easements as noted shall serve as access for the employees, agents, patrons, customers, guests, etc., to the respective businesses now located or hereafter constructed and developed on the subject properties.
- B. This access easement is granted for vehicular and pedestrian access for ingress and egress and shall not be construed to create a reciprocal parking agreement.
- C. The parties hereto, their respective successors lessees and/or assigns shall keep the access areas free of debris, snow, etc. on their respective parcels and also keep the right of way in repair as it relates to asphalt, cement repairs and the like.
- D. This Agreement shall be binding on and inure to the benefit of the parties, their heirs, successors and assigns. This agreement shall encumber the respective parcels and shall run with the land.
- E. Any breach of this agreement shall entitle the non-breaching party(ies) to pursue all remedies available at law or in equity in order to enforce the terms of this agreement. In any such dispute, the non-defaulting party shall be entitled to recover all costs, including reasonable attorney fees, incurred in enforcing the terms of this agreement.
- F. This agreement shall be governed by and construed in accordance with the laws of the State of Utah.
- G. Nothing herein shall be deemed to create a partnership or a joint venture.

In witness whereof, the parties have caused this agreement to be executed as of the date first set forth above.

12-726-0000  
12-419-0002  
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Matt Gerbe member  
Gayley Tree, LLC (Gayley)

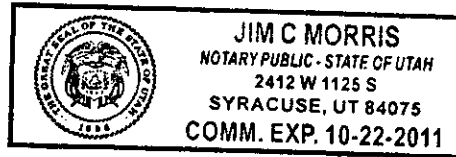
Matt Gerbe manager  
MKG Investment (MKG)

Matt Gerbe President  
Elk Valley Construction, Inc. (Elk Valley)

STATE OF UTAH  
COUNTY OF DAVIS

On the 13 day of July, 2009, before me, the undersigned Notary Public, personally appeared MATT GERBE MEMBER OF GAYLEY TREE, LLC, known to me to be the member(s) or designated agents of the limited liability company that executed the above and acknowledged to be the free and voluntary act and deed of the limited liability company, by authority of statute, its articles of organization or its operating agreement, for the uses and purposes therein mentioned, and an oath stated that they are authorized to execute said instrument freely and voluntarily for the purposes and use herein mentioned on behalf of the limited liability company.

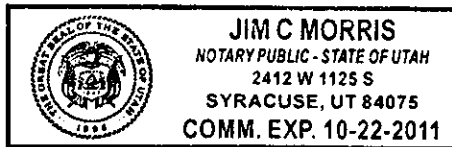
J.C. Morris  
Notary Public  
Residing at: Davis County  
Commission Expires: 10-22-11



STATE OF UTAH  
COUNTY OF DAVIS

On the 13 day of July, 2009, Personally appeared before me MATT GERBE, known to be the MANAGER of MKG Investment, authorized agent for the corporation that executed the within and foregoing instrument and acknowledged the instrument to be the free and voluntary act and deed of the corporation, by authority of its bylaws or by resolution of its Board of Directors, for the uses and purposes therein mentioned and on oath states that he was authorized to executed the instrument and that the seal affixed is the corporate seal of the corporation.

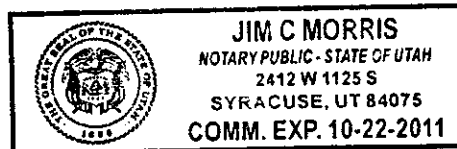
J.C. Morris  
NOTARY PUBLIC  
Commission Expires: 10-22-11  
Residing at: DAVIS COUNTY



STATE OF UTAH  
COUNTY OF DAVIS

On the 13 day of July, 2009, Personally appeared before me MATT GERBE, known to be the PRESIDENT of Elk Valley Construction, Inc., authorized agent for the corporation that executed the within and foregoing instrument and acknowledged the instrument to be the free and voluntary act and deed of the corporation, by authority of its bylaws or by resolution of its Board of Directors, for the uses and purposes therein mentioned and on oath states that he was authorized to executed the instrument and that the seal affixed is the corporate seal of the corporation.

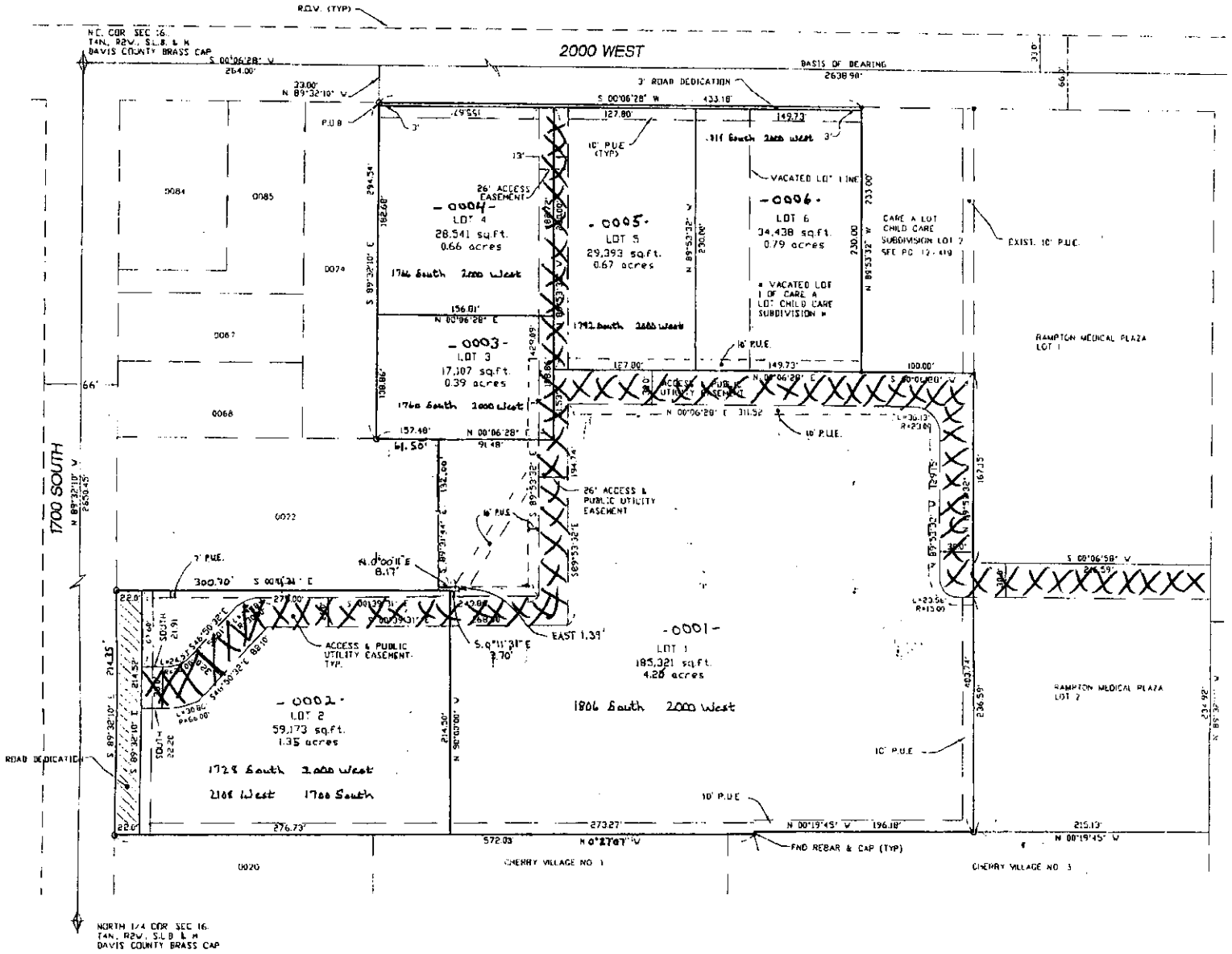
J.C. Morris  
NOTARY PUBLIC  
Commission Expires: 10-22-11  
Residing at: DAVIS COUNTY



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EXHIBIT "A"



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## Exhibit "B"

Gailey Tree, LLC as to:

Lots 2 thru 6, Gertge Business Park, according to the official plat thereof recorded in the offices of the Davis County Recorder. 12-726-0002 thru -0006

All of Lot 2, Rampton Medical Plaza, according to the official plat thereof recorded in the offices of the Davis County Recorder. 12-419-0002

Elk Valley Construction, Inc. as to:

All of Lot 1, Gertge Business Park, according to the official plat thereof recorded in the offices of the Davis County Recorder. 12-726-0001

MKG Investments as to:

All of Lot 2, Care a Lot Child Care Center Subdivision, according to the official plat thereof recorded in the offices of the Davis County Recorder. 12-458-0002