


WHEN RECORDED, RETURN TO:
Metro National Title
345 East 300 South
Salt Lake City, UT 84111
File No. 03037239
Parcel ID # 30-063-0002


AFFIDAVIT OF CORRECTION

The attached Access & Utility Easement Agreement and Restrictive Covenant, by and between PAYSON FRUIT GROWERS, INC., a Utah corporation, and SDC3, LLC, a Utah limited liability company, recorded as part of that certain Temporary Access Easement Agreement on Jun 18, 2004, as Entry No. 70246:2004, is being re-recorded as a separate document, in Utah County, Utah:



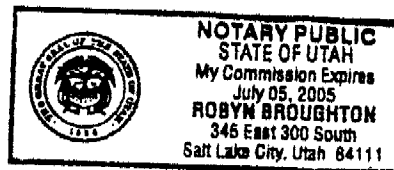
Anna Irons

Subscribed and Sworn before me this 5th day of October, 2004



Notary Public

Residing at:
My Commission Expires:



**RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:**

Kyle V. Leishman
Jones Waldo Holbrook & McDonough
170 South Main Street, Suite 1500
Salt Lake City, UT, 84101-1644

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Space Above For Recorder's Use Only

ACCESS & UTILITY EASEMENT AGREEMENT AND RESTRICTIVE COVENANT

This ACCESS AND UTILITY EASEMENT AGREEMENT AND RESTRICTIVE COVENANT ("Agreement") is entered into this 17th day of ~~April~~ ^{June}, 2004, by and between PAYSON FRUIT GROWERS, INC., a Utah corporation ("PFG") and SDC3, LLC, a Utah limited liability company ("SDC3") (individually, a "Party" and collectively, the "Parties").

RECITALS

A. PFG is the owner of the PFG Parcels as shown on the site plan attached hereto and incorporated herein as Exhibit "A" (the "Site Plan") and more particularly described in Exhibit "B" attached hereto and incorporated herein (the PFG Parcels shall collectively be referred to as the "PFG Property"); and

B. SDC3 is, or will be, the owner of the SDC3 Parcel as shown on Site Plan and more particularly described in Exhibit "C" attached hereto and incorporated herein (the "SDC3 Property"); and

C. SDC3 desires to have access to the SDC3 Property from Turf Farm Road across a portion of the PFG Property (hereafter referred to as the "Easement Area") shown as the "Easement Area" on the Site Plan and described in Exhibit "D" attached hereto; and

D. PFG desires to provide SDC3 with access to the SDC3 Property subject to the terms and conditions, set forth in the Agreement;

NOW, THEREFORE, in consideration of the mutual promises set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

AGREEMENT

1. **Grant of Easement:** PFG, as owner of the PFG Property, hereby grants to SDC3 a non-exclusive easement:

1.1 for access, ingress and egress by vehicular (including delivery trucks and customer trucks) and pedestrian traffic upon, over and across the Easement Area;

1.2 for maintenance as described in Paragraph 2.

1.3 for the purpose of constructing and maintaining a paved and marked, two-lane access road as depicted on the Site Plan

1.4 for the purpose of constructing, installing, maintaining, repairing and operating Utility Lines including main feeder lines, conduits, piping, wiring, valves, manholes and other appurtenant devices, over, upon, across, under and through the Easement Area. For purposes of this Agreement, Utility Lines include an eight (8) inch culinary water main line, four (4) inch secondary water line, eight (8) inch sanitary sewer line, storm drainage facilities, and any electric, gas, cable and telephone service utility lines depicted on the Utility Plan attached hereto as Exhibit "E". SDC3 shall perform any installation, operation, maintenance, repair and replacement as expeditiously as possible so as to minimize interference with the use of the PFG Property. This Agreement shall include the right of SDC3 to enter upon such other portions of the PFG Property as are reasonably necessary for the purpose of maintaining and/or repairing the Easement Area.

The foregoing grant of easement is to SDC3, as the owner of the SDC3 Property, for the benefit of the SDC3 Property and for the use of SDC3, its tenants, and their occupants, contractors, customers, agents, licensees, guests, permittees and invitees (collectively referred to in this Agreement as the "Permittees").

2. **SDC3's Responsibility to Maintain the Easement:** SDC3 shall be responsible for maintaining the Easement Area in good, clean condition and repair. Maintenance may include, as reasonably determined by SDC3, the following:

2.1 Maintaining, repairing and resurfacing the paved surface and restriping, when necessary; and

2.2 Removing snow, ice, papers, debris, filth and refuse and sweeping the area.

3. **No Obstructions:** PFG hereby agrees not to prohibit, restrain, or otherwise deter SDC3 and Permittees from passing freely into, out of, on and over the Easement Area. This grant is not a dedication to the public and PFG reserves the right to

close off the Easement Area on the PFG Property for such reasonable period or periods of time as may be legally necessary to prevent the acquisition of prescriptive rights by anyone, provided, however, prior to closing off any portion of the Easement Area, as herein provided, such party shall give written notice to SDC3 of its intention to do so, and shall coordinate such closing with SDC3 so that no unreasonable interference with the operation of SDC3 of Permittees shall occur. SDC3 shall not alter or change the improvements (including, without limitation, paving, curbs, curb cuts) located within the Easement Area without the prior written consent of PFG.

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4. **SDC3 to Provide Insurance:** SDC3 shall indemnify, defend and hold harmless PFG from any and all liabilities, claims, damages, expenses (including, without limitation, reasonable attorney's fees and reasonable attorney's fees on any appeal), judgments, proceedings, and causes of action of any kind whatsoever for injury to or death of any person or damage to any property arising or alleged to arise from or during an exercise of SDC3's rights granted under this agreement ("Claims"), unless caused by the negligent or willful wrongful act or omission of the indemnified party, its tenants and Permittees. SDC3 shall obtain and maintain commercial general liability insurance and property damage insurance against claims for personal injury, death or property damage occurring as a result of the exercise of SDC3's rights granted under this Agreement, naming PFG as additional insureds, with a single limit of not less than Two Million Dollars (\$2,000,000.00). The policies of such insurance shall provide that the insurance represented by such certificates shall not be canceled, materially changed or non-renewed without the giving of thirty (30) days prior written notice to the holder of such certificates.

5. **Restrictive Covenants.** In consideration of the grant of this easement, SDC3 agrees that no or other improvement or architectural feature building shall be constructed on the SDC3 Property that is higher than twenty feet six inches (20' 6").

6. **Agreement to Run With Land.** This Agreement shall run with the land and shall be binding on and inure to the benefit of the parties to this Agreement and their respective heirs, successors and assigns. Nothing herein contained shall be deemed to be a gift or dedication of any portion of the PFG Property to the general public or for the general public or for any public purpose whatsoever, it being the intention of the parties that this Agreement shall be strictly limited to and for the purposes herein expressed.

7. **Provisions Regarding the Interpretation and Amendment of this Agreement:** This Agreement may be amended or terminated only by the consent of each of the owners of the SDC3 Property and the PFG Property. This Agreement shall be recorded in the official records of Utah County, Utah. Except as set forth in that certain Development Agreement by and between the Parties of even date herewith, this Agreement contains the entire agreement between the parties hereto and supersedes all prior agreements, oral or written, with respect to the subject matter hereof. The attached

exhibits and the recitals are incorporated into this Agreement. This Agreement is not intended to create any third party beneficiary rights. The provisions of this Agreement shall be construed as a whole and not strictly for or against any party. In construing the provisions of this Agreement and whenever the context so requires, the use of a gender shall include all other genders, the use of the singular shall include the plural, and the use of the plural shall include the singular and headings are for reference only and do not define or limit the scope or meaning of any provision of this Agreement. If any provision of this Agreement is adjudicated invalid or unenforceable, the remaining provisions shall continue in full force and effect. This Agreement shall be governed by the laws of the State of Utah.

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8. **Provisions Regarding Enforcement of this Agreement:** This Agreement may be enforced by injunction. The failure of a person to insist upon strict performance of any of the provisions of this Agreement shall not be deemed a waiver of any rights or remedies that person may have, and shall not be deemed a waiver of any subsequent breach or default by the same or any other person. The prevailing party in a suit to enforce this Agreement shall be entitled to reasonable attorneys fees (and reasonable attorneys fees on appeal).

IN WITNESS WHEREOF, this Agreement has been executed as of the date first written above.

PAYSON FRUIT GROWERS, INC.
a Utah corporation

By: Claudia Rowley
Name:
Title: attorney-in-fact

SDC3, LLC
a Utah limited liability company

By: Taylor DeBy 6-17-04
Name: Taylor DeBy
Title: Manager

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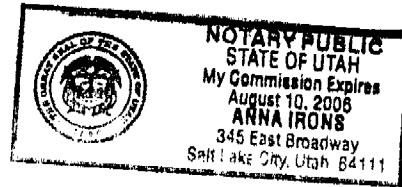
STATE OF UTAH)
 Utah : SS
COUNTY OF SALT LAKE)

~~June~~ The foregoing instrument was acknowledged before me this 17th day of ~~April~~, 2004, by Claude A. Rowley, as Attorney-in-Fact of Payson Fruit Growers, Inc.

Anna Irons
NOTARY PUBLIC
Residing at: *Salt Lake City*

My Commission Expires:

8-10-2006



STATE OF UTAH)
 : SS
COUNTY OF SALT LAKE)

~~June~~ The foregoing instrument was acknowledged before me this 17th day of ~~April~~, 2004, by Taylor DeBruy, as Manager of SDC3, LLC.

Anna Irons
NOTARY PUBLIC
Residing at: *Salt Lake City*

My Commission Expires:

8-10-2006

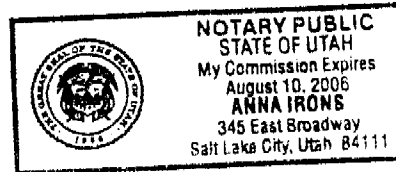
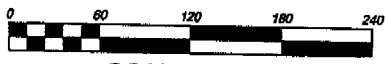
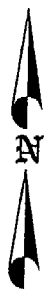


Exhibit "A"
Site Plan

800 SOUTH STREET



SCALE 1"=120'

PAYSON CITY

PFG PARCEL
PARCEL 1
112,035 sq (2.57 ac)
COMMERCIAL

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SDC3
PARCEL 2
37,416 sq (0.86 ac)
COMMERCIAL

PAYSON RETAIL SUBDIVISION

TURF FARM ROAD

PAYSON FRUIT GROWERS

PFG PARCEL
PARCEL 3
189,035 sq (4.34 ac)
COMMERCIAL

 SHARED ACCESS & UTILITY EASEMENT

 TEMPORARY ACCESS EASEMENT

 PAYSON FRUIT GROWERS WATERLINE EASEMENT

PAYSON MEADOWS PLAT "A"

EXHIBIT "A" SITE PLAN

SOWBY & BERG CONSULTANTS
45 N. 490 W. 492-1277
AMERICAN FORK, UTAH 84003

SCALE:
1"=120'

DESIGN BY: KRN
DRAWN BY: KRB

DATE:
REV:

DRAWING NAME:
SITE PLAN

SHEET NO.
1

Exhibit B
Legal Description of PFG Property

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Parcel 3

Adjusted Legal Description

All that land in the City of Payson, County of Utah, State of Utah, being part of the Southeast Quarter of Section 18, Township 9 South, Range 2 East, Salt Lake Base & Meridian, U.S. Survey; more particularly described as follows:

Beginning at a rebar and cap stamped with number 150228, being an original monument at the Northeast corner of Lot 13 Plat "A" Payson Meadows Subdivision recorded as Entry # 77590 Map # 7268 Page 85, said point being North 89°54'12" East 1453.88 feet; Thence North 00°11'30" West 731.48 feet; along the East line of said Payson Meadows Subdivision from the South Quarter Corner of said Section 18, said point also being North 04°47'17" West 11.74 feet, and North 89°54'12" East 1453.88 feet, and North 00°11'30" West 731.48 feet from the found reference corner of the South Quarter Corner of said Section 18;

Thence North 00°11'36" West 0.38 feet; to the fence line called out in the Boundary Line Agreement recorded as Entry # 11238 Book 1197 Page 391;

Thence North 89°59'03" East 60.63 feet along said fence line to the intersection of the fence line called out in the Boundary Line Agreement Entry # 30214 Book 2633 Page 775;

Thence North 00°45'56" West 603.79 feet along said fence line;
Thence West 210.26 feet;

Thence along the arc of a non-tangent 20.00 foot radius curve to the right a distance of 31.42 feet (Central Angle equals 90°00'00" and Long Chord bears S 45°00'00" E 28.28 feet) to a point of tangency;

Thence South 193.24 feet;

Thence West 186.36 feet to a point along the Easterly right-of-way line of Turf Farm Road

Thence Southerly along said right-of-way the following course:
South 00°42'44" East 389.00 feet;

Thence South 89°39'20" East 319.22 feet to the point of beginning

Contains: 189,033 sf or 4.34 acres

Basis of Bearing = The South line of the Southeast Quarter of Section 18, Township 9 South, Range 2 East, Salt Lake Base & Meridian; (North 89°54'12" East)

Also subject to a 10 foot public utility easement around the perimeter of the property.

EXHIBIT B TO ACCESS & UTILITY EASEMENT AGRMT AND RESTRICTIVE COVENANT

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Parcel 1**Adjusted Legal Description**

All that land in the City of Payson, County of Utah, State of Utah, being part of the Southeast Quarter of Section 18, Township 9 South, Range 2 East, Salt Lake Base & Meridian, U.S. Survey; more particularly described as follows:

Beginning at a Point along the Easterly Right-of-way Line of Turf Farm Road. Said Point is North 04°47'17" West 11.74 feet, and North 89°54'12" East 1182.29 feet, and North 1336.07 feet from the found reference corner of the South Quarter corner of Section 18, Township 9 South, Range 2 East, Salt Lake Basin and Meridian;

- Thence East 321.71 feet to the intersection of the fence line called out in the Boundary Line Agreement Entry # 30214 Book 2633 Page 775;
- Thence North 00°45'56" West 18.19 feet along said fence line;
- Thence leaving said fence line and running North 49°46'57" East 139.45 feet to the third fence line called for in said Boundary Line Agreement;
- Thence North 00°15'45" East 247.80 feet along said fence line to the Right-of-Way line being 25 feet perpendicular South of the Centerline of 800 South Street per Deed recorded in Book 1573 Page 675;
- Thence North 89°46'25" West 147.85 feet along said line;
- Thence South 85°42'46" West 139.60 feet;
- Thence South 01°18'19" West 6.17 feet;
- Thence along a non-tangent curve to the left through a central angle of 90°18'59", a radius of 19.00 feet, a distance of 29.95 feet (Chord bears South 45°08'56" West 26.95 feet) to a point along the Easterly right-of-way line of Turf Farm Road
- Thence Southerly along said right-of-way the following three courses:
 South 00°40'11" West 80.23 feet to a point of curvature, Along a curve to the right through a central angle of 35°43'17", a radius of 237.99 feet, a distance of 148.38 feet (Chord bears South 18°31'49" West 145.99 feet) to a point of tangency, and South 36°23'28" West 127.16 feet to the point of beginning.

Contains: 112,035 sf or 2.57 acres

Basis of Bearing = The South line of the Southeast Quarter of Section 18, Township 9 South, Range 2 East, Salt Lake Base & Meridian; (North 89°54'12" East)

Also subject to a 10 foot public utility easement around the perimeter of the property.

Exhibit C
Legal Description of SDC3 Property

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Parcel 2

Adjusted Legal Description

All that land in the City of Payson, County of Utah, State of Utah, being part of the Southeast Quarter of Section 18, Township 9 South, Range 2 East, Salt Lake Base & Meridian, U.S. Survey; more particularly described as follows:

Beginning at a Point along the Easterly Right-of-way Line of Turf Farm Road. Said Point is North 04°47'17" West 11.74 feet, and North 89°54'12" East 1141.34 feet, and North 00°42'44" West 1122.99 feet from the found reference corner of the South Quarter corner of Section 18, Township 9 South, Range 2 East, Salt Lake Basin and Meridian;

Thence East 186.36 feet;

Thence North 193.24 feet to a point of curvature;

Thence along the arc of a 20.00 foot radius curve to the left a distance of 31.42 feet (Central Angle equals 90°00'00" and Long Chord bears N 45°00'00" W 28.28 feet) to a point of tangency;

Thence West 111.45 feet to a point along the Easterly right-of-way line of Turf Farm Road.

Thence Southerly along said right-of-way the following three courses:

South 36°23'28" West 41.05 feet to a point of curvature, Along the arc of a 162.00 foot radius curve to the left a distance of 104.96 feet (Central Angle equals 37°07'19" and Long Chord bears South 17°49'48" West 103.13 feet) to a point of tangency, and South 00°42'44" East 82.03 feet to the point of beginning

Contains: 37,416 sf or 0.86 acres

Basis of Bearing = The South line of the Southeast Quarter of Section 18, Township 9 South, Range 2 East, Salt Lake Base & Meridian; (North 89°54'12" East)

Also subject to a 10 foot public utility easement around the perimeter of the property.

Exhibit D
Legal Description of Easement Area

SHARED ACCESS EASEMENT

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Shared access easement shall be for constructing, operating, and maintaining a driveway over, and through said property and constructing, operating, and maintaining public utilities for the private benefit of each parcel and future subdivided parcels and shall be perpetual and run with the land and be binding upon the heirs, successors, and assigns. The easement shall include rights of access, ingress, egress, and other utilities as needed. The easement is more particularly described as follows:

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Beginning at a Point along the Easterly Right-of-way Line of Turf Farm Road. Said Point is North 04°47'17" West 11.74 feet, and North 89°54'12" East 1182.29 feet, and North 1336.07 feet from the found reference corner of the South Quarter corner of Section 18, Township 9 South, Range 2 East, Salt Lake Basin and Meridian;

Thence East 111.45 feet to a point of curvature;
Thence along the arc of a 20.00 foot radius curve to the right a distance of 31.42 feet (Central Angle equals 90°00'00" and Long Chord bears S 45°00'00" E 28.28 feet) to a point of tangency;

Thence South 243.18 feet;
Thence East 24.00 feet;
Thence North 287.18 feet;
Thence West 58.06 feet;

Thence along the arc of a 30.00 foot radius curve to the right a distance of 20.78 feet (Central Angle equals 39°40'48" and Long Chord bears N 70°09'36" W 20.36 feet) to a point of tangency;

Thence North 50°19'12" West 29.12 feet;

Thence along the arc of a 25.00 foot radius curve to the right a distance of 17.26 feet (Central Angle equals 39°33'17" and Long Chord bears N 30°32'33" W 16.92 feet) to a point along the Easterly right-of-way line of Turf Farm Road.

Thence Southwesterly along said right-of-way the following course: South 36°23'28" West 79.60 feet to the point of beginning.

Basis of Bearing = The South line of the Southeast Quarter of Section 18, Township 9 South, Range 2 East, Salt Lake Base & Meridian; (North 89°54'12" East)

All GRANTORS acknowledge and agree to the following:

1. That they are legal possession of the properties and will defend title to said parcels.
2. That no fence, wall, or other obstruction may be placed, built, or constructed in, on, or over this easement that will impede the access to either parcel.
3. That the other party or its agents, heirs, successors, assigns, and family have legal right and full use to said easement.

Exhibit E
Utility Plan

W. A. M.
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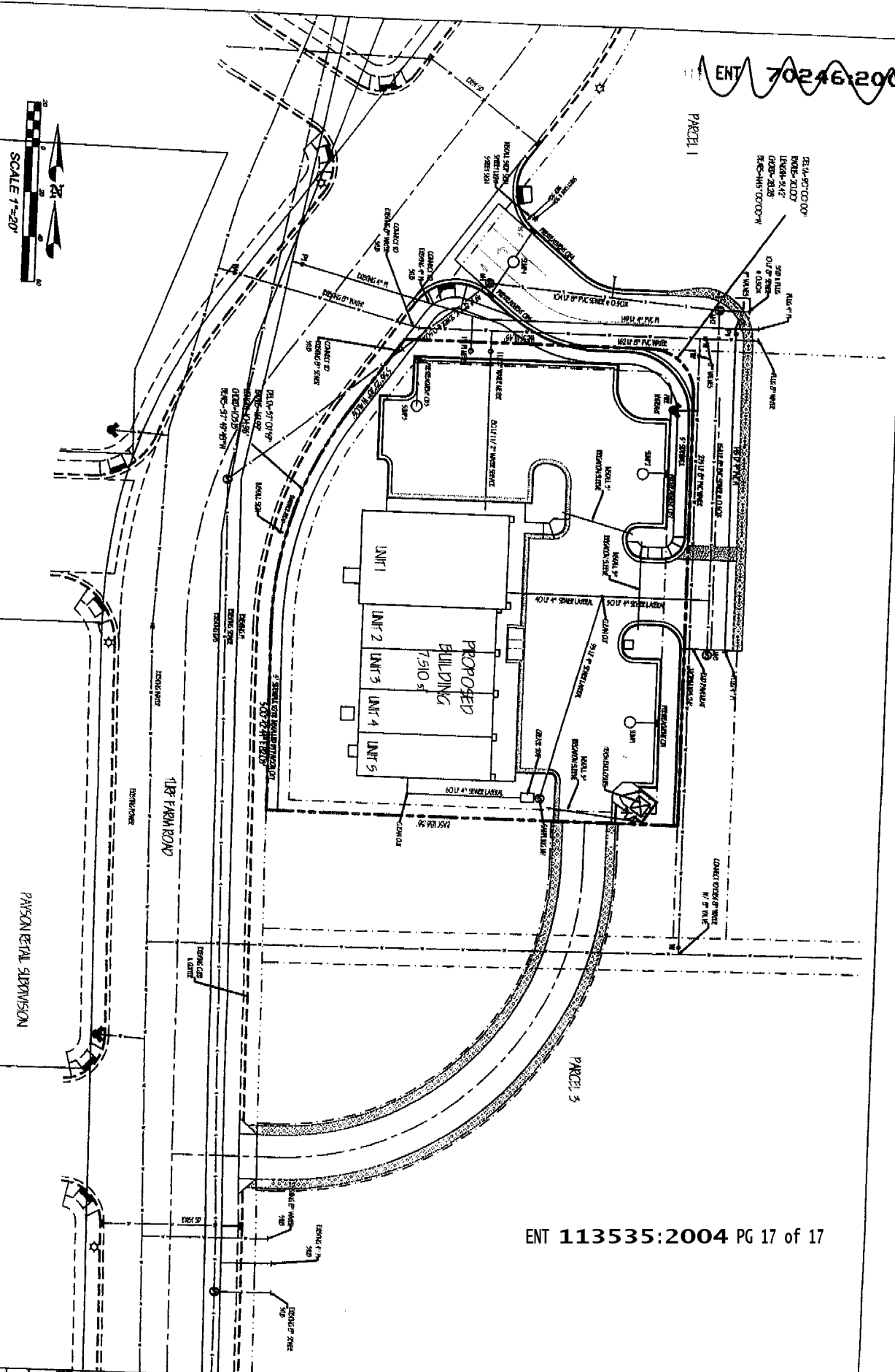
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EXHIBIT E TO ACCESS & UTILITY EASEMENT AGREEMENT AND RESTRICTIVE COVENANT



SCALE 1"=20'

PAVING PERMIT SUBMISSION



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C3

NO.	DATE	REVISION
1		
2		
3		
4		
5		

PARCEL 2
800 SOUTH 11th FARM ROAD
PARCEL 17 6869

UTILITY PLAN



SOWBY & BERG CONSULTANTS
45 NORTH 200 WEST (RD) 433-1277
AMERICAN FORK, UTAH 84603

ELM GROUP INC
1800 S. 900 E. (RD) 979-3334
SALT LAKE CITY, UT 84144