

14-60

When recorded, return to:

McKinley C. Martin, Esq.
AutoZone, Inc.
Third Floor
123 S. Front Street
Memphis, TN 38103

11762374
11/19/2013 11:10 AM \$42.00
Book - 10193 Pg - 5707-5720
GARY W. OTT
RECORDER, SALT LAKE COUNTY, UTAH
FIRST AMERICAN TITLE CO
BY: DCD, DEPUTY - WI 14 P.

CROSS ACCESS AND CONSTRUCTION EASEMENT AGREEMENT

THIS CROSS ACCESS AND CONSTRUCTION EASEMENT AGREEMENT (the "**Agreement**") is made as of Nov, 4, 2013, by and between **Herriman Crossroads, LLC**, a Delaware limited liability company ("**Herriman Crossroads**") whose address is 716 E 4500 S #N260, Murray, Utah 84107; **Smith's Food & Drug Centers, Inc.**, an Ohio corporation ("**Smith's**"), whose address is 1550 S. Redwood Road, Salt Lake City, Utah 84104; and **AutoZone Development Corporation**, a Nevada corporation ("**AutoZone**"), whose address is 123 S. Front Street, Memphis, TN 38103.

WITNESSETH:

WHEREAS, AutoZone is, or will become, the owner of certain real property located in the City of Herriman, County of Salt Lake, State of Utah, as described in **Exhibit "A"** and depicted on **Exhibit "D"** as "**Parcel 1**" ("**Parcel 1**");

WHEREAS, Herriman Crossroads is the owner of certain real property located in said City, County and State, as described in **Exhibit "B"** and as approximately depicted on **Exhibit "D"** as "**Parcel 2**" ("**Parcel 2**");

WHEREAS, Smith's is the owner of certain real property located in said City, County and State, as described in **Exhibit "C"** and as approximately depicted on **Exhibit "D"** as "**Parcel 3**" ("**Parcel 3**", and together with Parcel 2, the "**Herriman Crossroads Shopping Center Parcel**");

WHEREAS, Herriman Crossroads and Smith's wish to grant to AutoZone a cross access easement and an easement for construction of certain improvements on Parcel 2, and AutoZone wishes to grant to Herriman Crossroads and Smith's a cross access easement on Parcel 1 for the benefit of the Herriman Crossroads Shopping Center Parcel, as depicted on **Exhibit "D"**; and

WHEREAS, Herriman Crossroads, LLC, Smith's, and AutoZone have agreed that Parcel 1, Parcel 2, and Parcel 3 shall each be held, sold and conveyed subject to the easements, covenants and restrictions contained herein.

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

1. AutoZone hereby grants to Herriman Crossroads and Smith's, for the benefit of the Herriman Crossroads Shopping Center Parcel, a perpetual, non-exclusive cross access easement providing continuous uninterrupted ingress and egress for two way vehicular traffic over and parking across Parcel

1, with such cross access and parking easement described in **Exhibit "E"** and being depicted on **Exhibit "D"** as the Parcel 2 Access Easement (the "Parcel 2 Access Easement").

2. Herriman Crossroads hereby grants to AutoZone, for the benefit of Parcel 1, a perpetual, non-exclusive cross access and construction easement providing continuous uninterrupted ingress and egress for two way vehicular traffic over and across Parcel 2, with such cross access and construction easement described in **Exhibit "F"** and being depicted on **Exhibit "D"** as the Parcel 1 Cross Access and Construction Easement (the "Parcel 1 Cross Access and Construction Easement"). Smith's hereby consents to the foregoing.

3. AutoZone shall, at all times, maintain Parcel 1 and the Parcel 1 Cross Access and Construction Easement (and any Improvements to such easement) in good repair, clean and clear of snow, ice, rubbish, and debris, properly drained, and adequately lighted, at AutoZone's sole cost and expense, which shall include the incidental rights of maintenance and repair. In no event shall AutoZone place any obstruction in the Parcel 1 Cross Access and Construction Easement or the Parcel 2 Access Easement, including, without limitation, parking controls, bollards, curbs, landscaping, or other matters, unless AutoZone has first obtained the written consent of Smith's and Herriman Crossroads, which consent such parties may withhold in their sole and absolute discretion.

4. In the event of a default of any of the provisions hereof by either party, the non-defaulting party shall have the right to cure the default at the other party's sole expense if the defaulting party has not commenced curing said default within thirty (30) days after receipt of a written default notice from the non-defaulting party. Notwithstanding the above, either party may cure a default immediately in an emergency situation. The defaulting party agrees to reimburse the non-defaulting party for any amount so paid by the non-defaulting party to cure any default within ten (10) days after receipt of a written invoice from the non-defaulting party. The non-defaulting party may take such other proceedings at law or in equity as the non-defaulting party deems necessary.

5. The agreements described in this Agreement shall run with the land and shall be binding upon and inure to the benefit of Herriman Crossroads, Smith's, and AutoZone, and their respective successors, lessees, and the future owners and leases of Parcel 2, Parcel 3, and Parcel 1, respectively, and shall be perpetual.

6. Nothing contained herein shall be deemed to be a gift or dedication of any portion of any property to the general public. This Agreement shall not be construed as conferring upon any third party any right or benefit and any and all claims which may arise hereunder may be enforced solely by the parties and their respective successors and assigns.

7. The buildings located on Parcel 1 shall be commercial buildings of the type usually found in first-class retail shopping centers in the Salt Lake County metropolitan area. The tenants occupying the buildings on Parcel 1 shall be primarily retail sales and retail service tenants of the type normally associated with first-class retail shopping centers in such metropolitan area. "Retail services" means restaurants, financial institutions, real estate and stock brokerage offices, travel or insurance agencies, medical and dental offices, and similar uses providing services directly to the public, but "retail services" specifically excludes uses that do not involve direct service to consumers, office uses in excess of 5,000 square feet of floor area, and other uses not customarily associated with or contained in first-class retail developments. Without limiting the generality of the foregoing, in no event shall Parcel 1 be used for (i) flea markets, fire, bankruptcy or liquidation sales, or sales of "second-hand" or "surplus" merchandise; (ii) training or educational facilities (other than on-site employee training by an occupant incidental to the conduct of its business); or (iii) automotive or other vehicle service or tire or battery sales or service facilities (except that a "Pep Boys", "Auto Zone", "Jiffy Lube" or other auto parts store or similar service

center shall be permissible); and (iv) the renting, leasing, sale or display of any motor vehicle, truck, trailer, recreational vehicle or boats. Parcel 1 shall not be used for any supermarket or grocery store or drug store (which for purposes of this agreement means any store, department or area within a store, containing at least 1,000 square feet of sales floor area, including aisle space and storage, primarily devoted to the retail sale of food or liquor for off-premises consumption) or the retail sale of pharmaceutical or non-pharmaceutical drugs; or for the sale of fresh or frozen meat, fish, poultry or produce for off-premises consumption; any delicatessen or convenience store; any gasoline/fuel station; the sale of any prescription pharmaceuticals requiring the service of a registered pharmacist; or the operation of a cigarette or smoke shop or any other shop or store the primary business of which is to sell tobacco products.

8. Parcel 1 shall not be leased, subleased, operated or otherwise used for a restaurant serving Mexican or Tex-Mex style food, a coffee shop, a sports-themed pub, a Chinese or other Asian restaurant; or for the display, distribution or sale of any "adult" books, "adult" films, "adult" periodicals or "adult" entertainment; the establishment or maintenance of a massage parlor, "adult" theater, "adult" bookstore, "sex" shop, "peep show" or bawdy house or brothel, the operation, establishment or maintenance of a movie theater, children's play land, (other than in connection with a fast-food restaurant, such as McDonalds), night club, dance hall, bowling alley, skating or roller rink, large animal veterinary clinic (small animal veterinary clinic is allowed), pool or billiard hall, health spa (more than 2,000 square feet in floor area and not to exclude small additional day spa services offered incidental to a full service tanning or beauty salon), or pawn shop type of business, or any use in violation of applicable zoning and other governmental laws and regulations.

9. Except as otherwise specifically approved in writing by both Smith's and Herriman Crossroads (which either may withhold in its sole discretion), in no event shall any portion of Parcel 1 be used for any bar, tavern or other business operation involved in the sale of alcoholic beverages for on-site or off-site consumption; provided, however, that liquor sales for on-premises consumption shall be permitted in conjunction with a restaurant or other eating or food service establishment, in which case, the bar area of the restaurant shall not exceed twenty-five percent (25%) of the restaurant's total sales floor area.

10. AutoZone shall maintain Parcel 1 in good condition and repair, including, without limiting the generality of the foregoing, the following:

A. Maintaining the surfaces in a level, smooth and evenly covered condition with the type of surfacing material originally installed or such substitute as shall in all respects be equal in quality, use and durability.

B. Removing all papers, debris, filth and refuse and thoroughly sweeping the area to the extent reasonably necessary to keep the area in a clean and orderly condition, and free of snow, ice, dirt, and debris.

C. Placing, keeping in repair and replacing any necessary or appropriate directional signs, markers and lines.

D. Operating, keeping in repair and replacing, where necessary, such artificial lighting facilities as shall be reasonably required for adequate lighting.

E. Maintaining all perimeter walls in good condition and state of repair; and

F. Maintaining all landscaped areas in a thriving and trimmed condition and making such replacements of shrubs and other landscaping as is necessary.

G. Maintaining all common area lighting, electrical and other utilities serving the Common Areas, as well as the cost of operating and maintaining pylon or monument signs.

11. Each party hereby agrees to indemnify, defend, and save the other party harmless from any and all liability, damage, expense, causes of action, suits, claims, or judgments arising from injury to person or property and occurring on its own parcel, except if caused by the act or neglect of the other party hereto.

12. Each party shall provide commercial general liability insurance affording protection to itself and the other parties on its own parcel(s), naming the other party as an "additional insured" under the policy or policies, for a combined bodily injury and property damage limit of liability of not less than \$2,000,000.00 per occurrence, \$3,000,000.00 aggregate. The insurance company providing such insurance shall be rated at least A- VII, A.M. Best's rating. Such insurance may be part of blanket liability coverage carried by a party so long as such blanket policy does not reduce the limits or diminish the coverage required herein.

13. Each party shall have the right to satisfy its insurance obligations hereunder by means of self-insurance to the extent of all or part of the insurance required hereunder, in accordance with each party's established corporate policy; provided, however, that the party electing to self-insure must show its financial stability by having Annual Operating Cash Flow in excess of \$900 million or a net worth of at least Fifty Million Dollars (\$50,000,000). Any party providing self-insurance shall, upon request, provide the other party with a description of such self-insurance program, financial statements, and evidence of any partial insurance coverage which may be supplementing any plan of partial self-insurance.

14. All policies of insurance required by this Agreement shall insure the performance of the party insured thereunder of the indemnity agreement contained herein, shall name the other party an additional insured and shall contain a provision that the insurance company will provide all parties with 20 days advance written notice of any cancellation or lapse, or the effective date of any material reduction in the amounts or scope of coverage. AutoZone shall deliver to Smith's and Herriman Crossroads a certificate or statement from the party's insurance company that such insurance insures the performance by the party insured of the indemnity agreement specified herein and the existence of the insurance coverage to the limits herein required. Each party shall promptly notify each other party of any asserted claim with respect to which such party is or may be indemnified against hereunder and shall deliver to such party copies of process and pleadings.

15. Each of the parties hereto agrees to pay or cause to be paid, prior to delinquency, directly to the appropriate taxing authorities, all real property taxes and assessments that are levied against such party's parcel.

16. Notices or other communications 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 to the referenced addresses in the first paragraph of this Agreement.

17. The term of this Agreement shall commence upon the recording hereof and shall expire upon the expiration or earlier termination of that certain Restrictions and Easements Agreement, dated as of February 13, 2003, and recorded in the records of the Salt Lake County Recorded on February 26, 2003, as entry number 8544976, in book 8745, at page 1714.

IN WITNESS WHEREOF, the parties hereto have executed this Agreement on the date hereinabove.

AutoZone Development Corporation

By: Rebecca W. Ballou

Its: Vice President

APPROVED, VERIFIED AND PASSED FOR SIGNING

MM

By: [Signature]

Its: Vice President

Herriman Crossroads, LLC

By: [Signature]

Its: MANAGER

Smith's Food & Drug Centers, Inc.

By: [Signature]

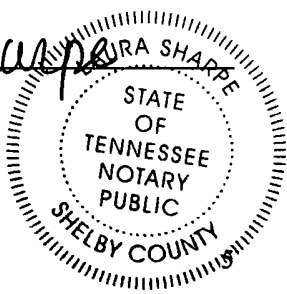
Its: VP

STATE OF TENNESSEE)
: ss.
COUNTY OF SHELBY)

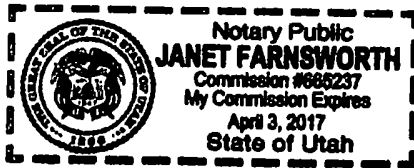
On the 25th day of October, 2013, personally appeared before me Rebecca W. Ballou and James C. Griffith, with whom I am personally acquainted, or proved to me on the basis of satisfactory evidence, and who, upon oath, acknowledged themselves to be the Vice President and Vice President, respectively, of AutoZone Development Corporation, a Nevada corporation, the within named bargainors, and that they as such Vice President and Vice President being authorized to do so, executed the foregoing instrument, for the purposes therein contained by signing the name of the corporation by themselves as such officers.

MY COMMISSION EXPIRES
APRIL 27, 2016
My Commission Expires: _____

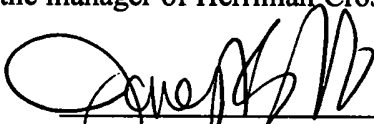
Laura Sharpe
Notary Public



STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

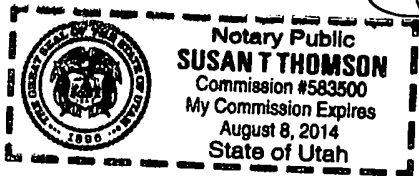


The foregoing instrument was acknowledged before me this 31st day of October, 2013, by DAVID J. BROWN, the manager of Herriman Crossroads, LLC, for and on behalf of such company.


Notary Public
Residing at: Salt Lake Utah
My commission expires: 4/3/17

STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

The foregoing instrument was acknowledged before me this 4th day of Nov, 2013, by STEVEN M. SORESEN, the VICE PRESIDENT of Smith's Food & Drug Centers, Inc., for and on behalf of such corporation.





Notary Public
Residing at: SALT LAKE COUNTY, UT
My commission expires: 8-8-14

Exhibit "A"

Parcel 1 Legal Description

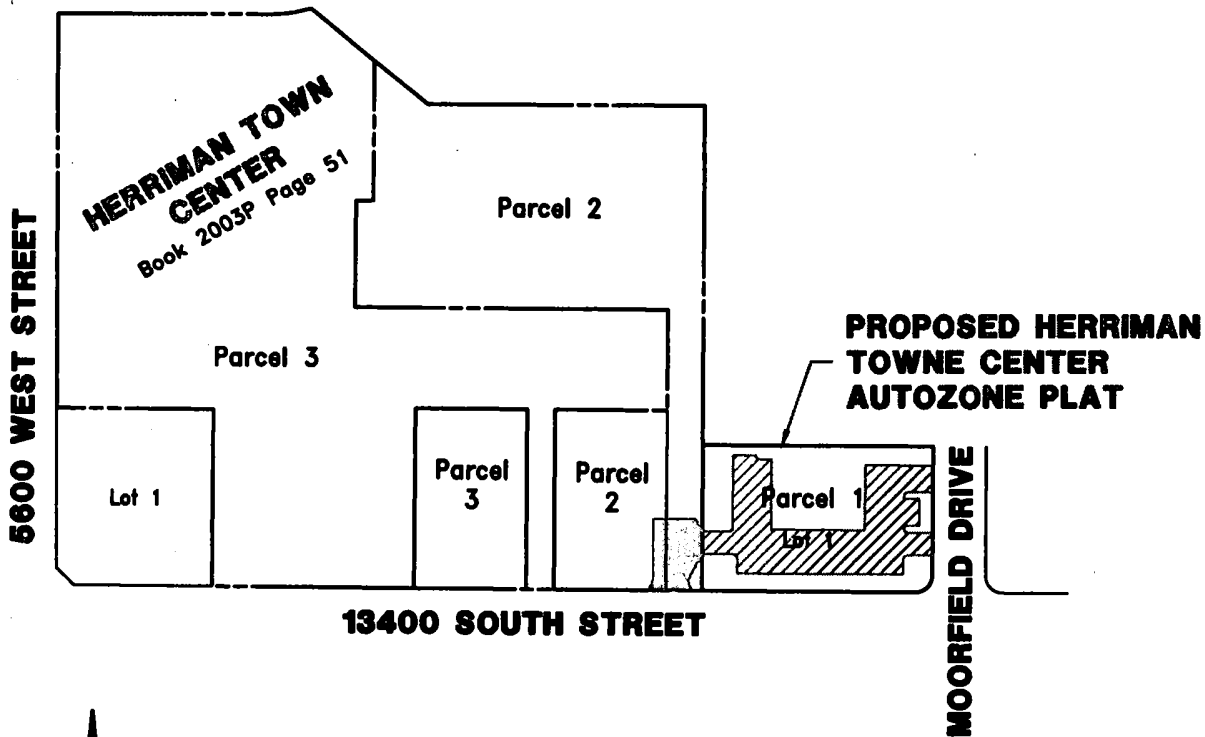
Lot 1 of the Herriman Towne Center AutoZone Plat, located in the Southwest Quarter of Section 36, Township 3, Range 2 West, Salt Lake Base and Meridian, Salt Lake County, Utah according to the official plat thereof on file with the Salt Lake County Recorder's Office, recorded October 3, 2013 as Instrument Number 11735981, in Book 2013p, Page 198.

Exhibit "B"
Parcel 2 Legal Description

All of Lots 4 and 5 of the Herriman Crossroads, a commercial subdivision located in Herriman City, Salt Lake County, Utah, according to the official plat thereof.

Exhibit "C"
Parcel 3 Legal Description

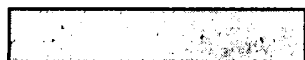
All of Lots 2 and 3 of the Herriman Crossroads, a commercial subdivision located in Herriman City, Salt Lake County, Utah, according to the official plat thereof.



LEGEND



Parcel 2 Access Easement
(See Exhibit E)



Parcel 1 Cross Access & Construction
Easement (See Exhibit F)

EXHIBIT D

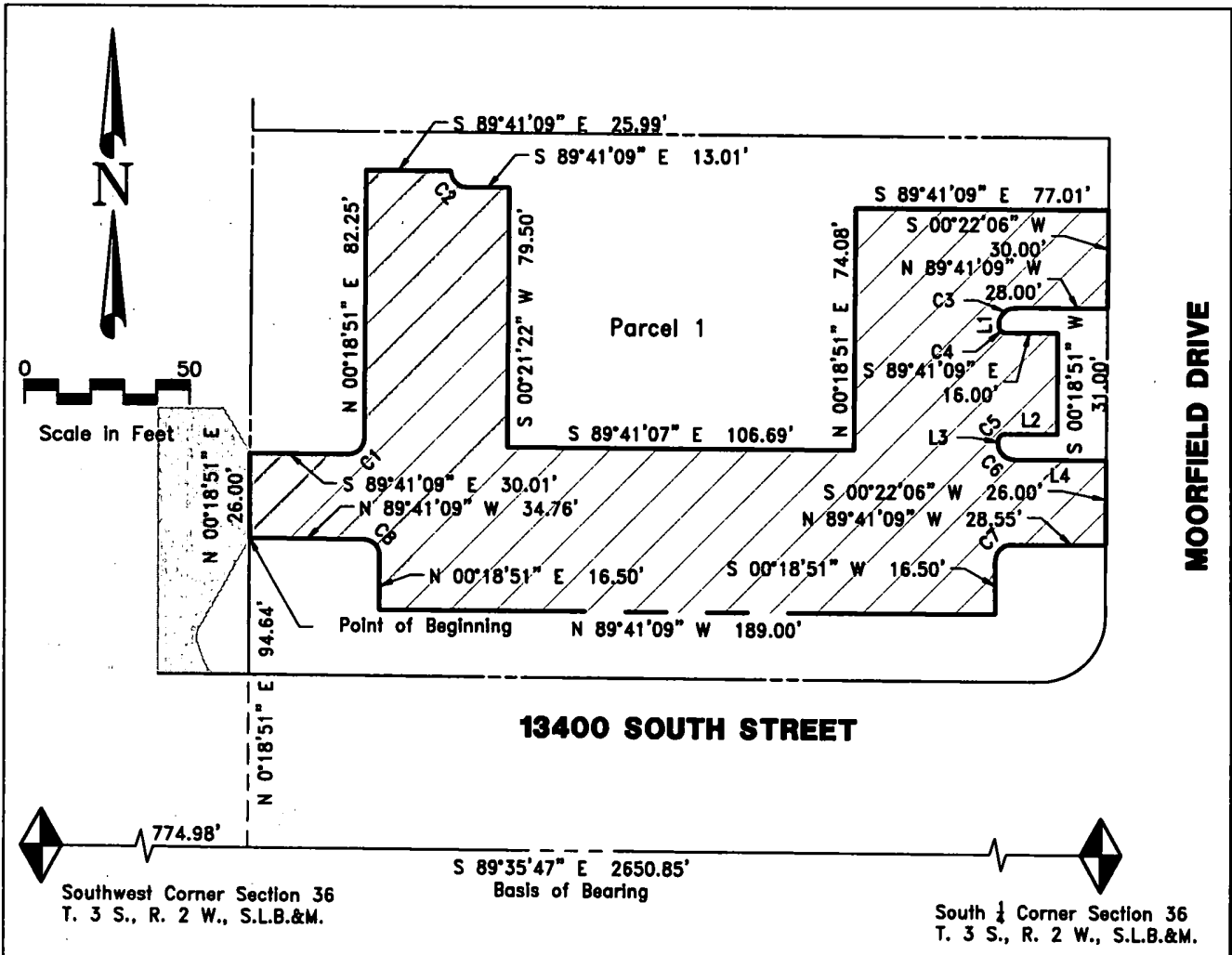


DOMINION
Engineering Associates, L.C.
5684 South Green Street
Murray, Utah 84123 801-713-3000

Exhibit E, page 1 of 2

A permanent, non-exclusive access and parking easement located in the Southwest Quarter of Section 36, Township 3 South, Range 2 West, Salt Lake Base and Meridian, Salt Lake County, Utah, described as follows:

BEGINNING at a point South 89°35'47" East 774.98 feet along the south line of Section 36, Township 3, Range 2 West, Salt Lake Base and Meridian and North 00°18'51" East 94.64 feet from the Southwest Corner of said Section 36, and thence along the east line of Herriman Town Center Commercial Subdivision, recorded February 26, 2003 as Entry No. 8544974 in Book 20033P at Page 51 of the Salt Lake County records North 00°18'51" East 26.00 feet; thence South 89°41'09" East 30.01 feet to a point of tangency of a 4.75 foot radius curve to the left; thence Northeasterly 7.46 feet along said curve through a central angle of 90°00'00" and a long chord of North 45°18'51" East 6.72 feet; thence North 00°18'51" East 82.25 feet; thence South 89°41'09" East 25.99 feet to a point on the arc of a 5.00 foot radius non-tangent curve to the left, the center of which bears South 89°41'09" East; thence Southeasterly 7.85 feet along said curve through a central angle of 90°00'00" and a long chord of South 44°41'09" East 7.07 feet; thence South 89°41'09" East 13.01 feet; thence South 00°21'22" West 79.50 feet; thence South 89°41'07" East 106.69 feet; thence North 00°18'51" East 74.08 feet; thence South 89°41'09" East 77.01 feet to the west line of Moorfield Drive; thence along said line South 00°22'06" West 30.00 feet; thence North 89°41'09" West 28.00 feet to a point of tangency of a 5.00 foot radius curve to the left; thence Southwesterly 7.85 feet along said curve through a central angle of 90°00'00" and a long chord of South 45°18'51" West 7.07 feet; thence South 00°18'51" West 0.79 feet to a point of tangency of a 2.00 foot radius curve to the left; thence Southeasterly 3.14 feet along said curve through a central angle of 90°00'00" and a long chord of South 44°41'09" East 2.83 feet; thence South 89°41'09" East 16.00 feet; thence South 00°18'51" West 31.00 feet; thence North 89°41'09" West 16.00 feet to a point of tangency of a 2.00 foot radius curve to the left; thence Southwesterly 3.14 feet along said curve through a central angle of 90°00'00" and a long chord of South 45°18'51" West 2.83 feet; thence South 00°18'51" West 0.79 feet to a point of tangency of a 5.00 foot radius curve to the left; thence Southeasterly 7.85 feet along said curve through a central angle of 90°00'00" and a long chord of South 44°41'09" East 7.07 feet; thence South 89°41'09" East 27.96 feet to said west line of Moorfield Drive; thence along said line South 00°22'06" West 26.00 feet; thence North 89°41'09" West 28.55 feet to a point of tangency of a 5.00 foot radius curve to the left; thence Southwesterly 7.85 feet along said curve through a central angle of 90°00'00" and a long chord of South 45°18'51" West 7.07 feet; thence South 00°18'51" West 16.50 feet; thence North 89°41'09" West 189.00 feet; thence North 00°18'51" East 16.50 feet to a point of tangency of a 5.00 foot radius curve to the left; thence Northwesterly 7.85 feet along said curve through a central angle of 90°00'00" and a long chord of North 44°41'09" West 7.07 feet; thence North 89°41'09" West 34.76 feet to the POINT OF BEGINNING. Said easement encompasses 19,836 square feet or 0.45 acres, more or less.



MOORFIELD DRIVE

13400 SOUTH STREET

Southwest Corner Section 36
T. 3 S., R. 2 W., S.L.B.&M.

S 89°35'47" E 2650.85'
Basis of Bearing

South 1/4 Corner Section 36
T. 3 S., R. 2 W., S.L.B.&M.

CURVE TABLE

CURVE	RADIUS	LENGTH	DELTA	BEARING	CHORD	TANGENT
C1	4.75'	7.46'	90°00'00"	N 45°18'51" E	6.72'	4.75'
C2	5.00'	7.85'	90°00'00"	S 44°41'09" E	7.07'	5.00'
C3	5.00'	7.85'	90°00'00"	S 45°18'51" W	7.07'	5.00'
C4	2.00'	3.14'	90°00'00"	S 44°41'09" E	2.83'	2.00'
C5	2.00'	3.14'	90°00'00"	S 45°18'51" W	2.83'	2.00'
C6	5.00'	7.85'	90°00'00"	S 44°41'09" E	7.07'	5.00'
C7	5.00'	7.85'	90°00'00"	S 45°18'51" W	7.07'	5.00'
C8	5.00'	7.85'	90°00'00"	N 44°41'09" W	7.07'	5.00'

Line Table

Line	BEARING	LENGTH
L1	S 00°18'51" W	0.79
L2	N 89°41'09" W	16.00
L3	S 00°18'51" W	0.79
L4	S 89°41'09" E	27.96

EXHIBIT E

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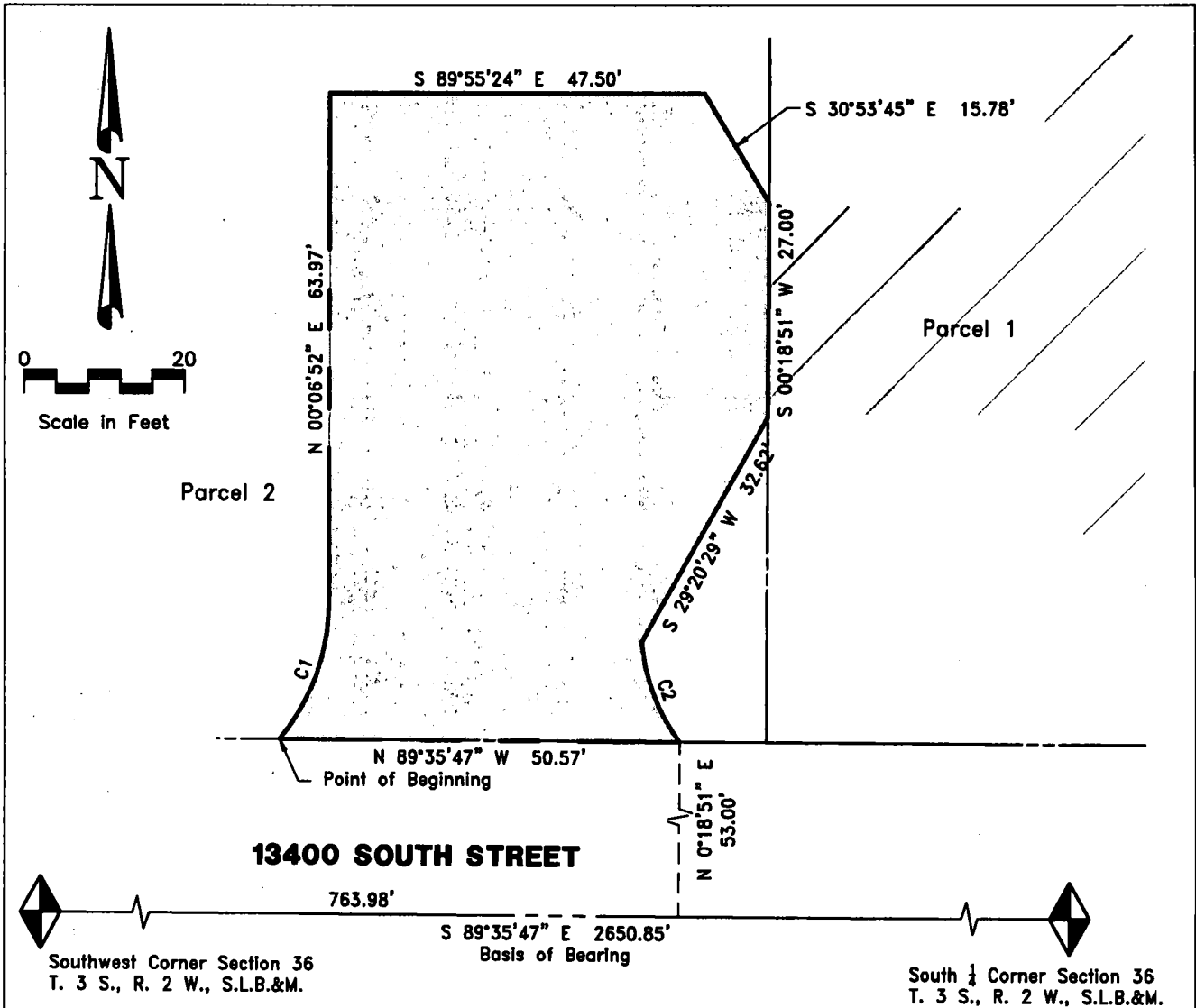


DOMINION
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5684 South Green Street
Murray, Utah 84123 801-713-3000

Exhibit F, page 1 of 2

A permanent, non-exclusive access easement and temporary construction easement located in the Southwest Quarter of Section 36, Township 3 South, Range 2 West, Salt Lake Base and Meridian, Salt Lake County, Utah, described as follows:

BEGINNING at a point on the north line of 13400 South Street, said point being South 89°35'47" East 763.98 feet along the south line of Section 36, Township 3, Range 2 West, Salt Lake Base and Meridian and North 00°18'51" East 53.00 feet from the Southwest Corner of said Section 36, and thence along said north line North 89°35'47" West 50.57 feet to a point on the arc of a 27.50 foot radius non-tangent curve to the left, the center of which bears North 50°44'35" West; thence Northerly 18.79 feet along said curve through a central angle of 39°08'32" and a long chord of North 19°41'09" East 18.42 feet; thence North 00°06'52" East 63.97 feet; thence South 89°55'24" East 47.50 feet; thence South 30°53'45" East 15.78 feet to the east line of Herriman Town Center Commercial Subdivision, recorded February 26, 2003 as Entry No. 8544974 in Book 20033P at Page 51 of the Salt Lake County records; thence along said line South 00°18'51" West 27.00 feet; thence South 29°20'29" West 32.62 feet to a point on the arc of a 24.61 foot radius non-tangent curve to the left, the center of which bears North 85°15'07" East; thence Southerly 13.67 feet along said curve through a central angle of 31°49'38" and a long chord of South 20°39'42" East 13.50 feet to the POINT OF BEGINNING. Said easement encompasses 4,102 square feet or 0.09 acres, more or less.



CURVE TABLE						
CURVE	RADIUS	LENGTH	DELTA	BEARING	CHORD	TANGENT
C1	27.50'	18.79'	39°08'32"	N 19°41'09" E	18.42'	9.78'
C2	24.61'	13.67'	31°49'38"	S 20°39'42" E	13.50'	7.02'

EXHIBIT F
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