

12182736
12/04/2015 01:30 PM \$28.00
Book - 10385 Pg - 167-176
GARY W. OTT
RECORDER, SALT LAKE COUNTY, UTAH
LANDMARK TITLE
BY: TRP, DEPUTY - WI 10 P.

When recorded, return to:

City of South Salt Lake Redevelopment Agency
Attention: Craig Burton
220 East Morris Ave
Salt Lake City, Utah 84115

Parcel ID Nos. See Exhibit "A"

DECLARATION OF EASEMENTS AND USE RESTRICTION

THIS DECLARATION OF EASEMENTS AND USE RESTRICTION ("Declaration") is made this 4th day of DECEMBER, 2015 by the City of South Salt Lake Redevelopment Agency, a political subdivision of the State of Utah ("Declarant").

WHEREAS Declarant owns certain real property located in South Salt Lake, Utah, as more particularly described on attached Exhibit "A" and identified on the Site Plan attached hereto as Exhibit "B" as Lots 1, 2, 3, 4 and 5 (individually, a "Lot", and collectively, the "Lots"); and

WHEREAS, on the 4 day of Dec, 2015, Declarant filed with the Salt Lake County Recorder a subdivision plat of The Crossing at South Salt Lake Subdivision, as Entry No. 12182736 in Book 2015P, at page 273 (the "Subdivision Plat"); and

WHEREAS Declarant desires to establish certain easements over and across one or more Lots for the benefit of all or a portion of the remaining Lots as set forth below; and

WHEREAS Declarant desires to establish a use restriction for Lots 2, 3, 4 and 5,

NOW, THEREFORE, for and in consideration of the premises, covenants, conditions, restrictions, and encumbrances contained herein, which shall be binding upon and attach to and run with the Lots, and be for the benefit of and have limitations upon all future owners and tenants of the Lots, Declarant hereby declares as follows:

1. Creation of Easements.

(a) Declarant hereby establishes a perpetual non-exclusive easement over and across Lots 1, 2, and 3, in the locations depicted on attached Exhibit "B" as the "Cross Access Easement Areas", for vehicular and pedestrian access, ingress and egress between the Lots, provided however, in no event shall the easement area designated on attached Exhibit "B" as "Access A", and more particularly described on attached Exhibit "C", exceed thirteen feet six inches (13' 6") in height or extend below the base of any finished road or sidewalk. In no event shall Access A be used until such time as housing units are constructed on Lot 2.

(b) It is intended that employees, agents, tenants, guests and invitees of Lot 2 be prohibited from using any parking on Lot 1 or 3, except while shopping in the businesses on Lot 1 or Lot 3. Parking facilities on Lot 2 shall be designed and constructed such that they may only be accessed from Access A or Central Point Place. Vehicular access to Lot 2 shall be limited to (a) access over the Cross Access Easement Areas to an entrance point on Access A, or (b) access from Central Point Place. Additionally, except as provided herein, pedestrian entrances to building(s) or apartments located upon Lot 2 shall not be located upon the north or west facing building walls, but shall only be accessed from Access A and Central Point Place for building access and from the interior of the building for apartment access; provided, however, that individual apartments shall be permitted immediate access to patios or balconies to the north of the building(s) provided such patios and balconies are not intended to provide access to or egress from open courtyards or Cross Access Easement Areas to the north and located upon Lots 1 and 3; further provided that the Lot 2 owner shall construct a fence or other barrier to restrict pedestrian access to Lot 1 and Lot 3 from Lot 2 other than from Access A; and further provided that the buildings may have exit doors on the north to the extent required for emergency exit only in accordance with applicable building & fire codes. The owner of Lot 2 shall use its reasonable good faith efforts to prevent its employees, agents, tenants, guests and invitees (collectively, "**Occupants**") from parking on either Lot 1 or Lot 3 unless at the time they are shopping in the businesses on Lot 1 or Lot 3. In the event an Occupant of Lot 2 repeatedly violates the parking restrictions set forth herein, then upon written notice from the owner of Lot 1 or Lot 3, and such notice contains reasonable evidence of such violation, the owner of Lot 2 will take reasonable steps to end such violation at no cost or expense to the owner of Lot 1 or Lot 3.

(c) Declarant hereby establishes a temporary construction easement (the "**Temporary Easement**") over and across Lots 1 and 3, in the location depicted on attached Exhibit "B" as the "**Temporary Easement Area**", for the installation of utilities (in the Public Utility Easements set forth on the Subdivision Plat (collectively, the "**PUEs**") and to provide construction services upon Lot 2. The Temporary Easement shall expire on the date that the owner of either Lot 1 or Lot 3 commences putting down base for asphalt on either Lot 1 or Lot 3. It is expressly understood that there shall be no construction activities in the Temporary Easement Area following the termination of such Temporary Easement as set forth in this section. Further, following the termination of such Temporary Easement, in no event shall a barrier any other type of impediment to the use of the Cross Access Easement Areas be located on Lot 1 or Lot 3.

(d) The Cross Access Easement Areas and Temporary Easement Area are collectively referred to herein as the "**Easement Areas**".

(e) The easements established by this Declaration are not intended to extinguish or modify the PUEs.

The easements established herein over and across Lots 1, 2, and 3 shall burden Lots 1, 2, and 3 and benefit the respective owners (and their heirs, successors and assigns) of all Lots.

The easements established herein shall not preclude the owner (or owners) of Lots 1, 2, and 3 from placing raised landscaping, curbs, parking bumpers, or raised sidewalks on Lots 1, 2, and 3, so long as reasonable vehicular and pedestrian access over and across the Easement Areas is maintained.

2. Maintenance of Easement Areas.

(a) Access Easements. Each owner of Lots 1, 2, and 3, at their respective sole cost and expense, shall perform such maintenance and repairs to the access improvements and utilities located in the PUEs, as may be reasonably necessary to maintain the Easement Areas on their Lot in a manner consistent with the first class nature, use, and occupancy of the Lots as an integrated development. Such maintenance and repair activities shall be conducted within a seventy-two (72) hour period weather permitting, and upon reasonable prior written notice to the affected Lot owner. Should such maintenance and repair activities require more time to complete than as set forth above, prior written consent for such maintenance and repair activities shall be obtained from the affected Lot owner, such consent not to be unreasonably withheld or delayed. In the event any Lot owner fails to properly maintain the Easement Areas on its Lot (the “**Non-Performing Lot Owner**”) and such failure continues for a period of thirty (30) days for non-emergency matters after written notice thereof, the owners of the other Lots, either individually or collectively (the “**Performing Lot Owner(s)**”), may maintain and repair the Easement Areas and invoice the Non-Performing Lot Owner, for the cost of such maintenance and repair. In the event of an emergency (as determined by the Performing Lot Owner(s) in their reasonable judgment) and after reasonable efforts are made to notify the Non-Performing Lot Owner, the Performing Lot Owner(s) shall have the right to immediately maintain or make repairs to Easement Areas and invoice the Non-Performing Lot Owner, for the costs of such maintenance and repair. The Non-Performing Lot Owner shall reimburse the Performing Lot Owner(s) for any amounts owed under this Section 2 within thirty (30) days from the date of the Performing Lot Owner(s)’ invoice. If the Non-Performing Owner fails to pay the amount owed within such thirty (30) day period, the Performing Lot Owner(s) may, at its discretion, place a lien for unpaid costs; with interest at an annual rate of fifteen percent (15%), upon the Non-Performing Owner’s Lot by recording a lien claim and notice.

(b) Utility Easements. Each Lot owner shall be responsible for maintaining utility lines which serve their individual Lot.

3. Monument Sign.

(a) Declarant hereby grants the owners of Lot 1 and Lot 4 (the “**Lot 1 Owner**” and the “**Lot 4 Owner**”), and their agents, employees and contractors a perpetual non-exclusive easement over, under and across Lot 5 for the purpose of constructing, repairing and maintaining a monument sign (the “**Monument Sign**”) in the approximate location shown and described on attached Exhibit “B”. The plans and specifications for the Monument Sign shall be subject to the reasonable approval of the owner of Lot 5 (the “**Lot 5 Owner**”), but shall not exceed ten feet (10’) in height, shall not exceed seventy-five (75) square feet in total sign space, and shall be located solely outside of any permissible building pad located on Lot 5 as establish by applicable zoning ordinances. Upon obtaining all required building approvals and permits, either of the Lot 1 Owner or the Lot 4 Owner shall have the right to construct the Monument

Sign according to the requirements imposed herein. The owner that constructs the Monument Sign (the "**Constructing Owner**") shall be responsible for obtaining all governmental approvals and permits necessary for construction of the Monument Sign. The Lot 5 Owner, at no cost to the Lot 5 Owner, agrees to use its good faith efforts to assist the Constructing Owner in obtaining such approvals and permits. The Constructing Owner shall be responsible for all costs of constructing, maintaining, repairing and replacing the Monument Sign, provided however, the other owner (the "**Non-Constructing Owner**") shall reimburse the Constructing Owner for its pro-rata share of the cost of all approval and permits fees and all costs of constructing, maintaining, repairing and replacing the Monument Sign. Such pro-rata share shall be determined based upon the size of the Non-Constructing Owner's portion of the Monument Sign in relation to the total size of the Monument Sign. In no event shall the Lot 5 Owner be responsible for any costs relating to the Monument Sign.

(b) The owners or occupants of Lots 1 and 4 shall have the right to place sign panels on the Monument Sign, provided however, the owner or occupant of Lot 1 shall be entitled to the top position on the Monument Sign. Each party placing a sign panel on the Monument Sign shall be responsible for: (i) all costs of manufacturing and installing of its sign panel on the Monument Sign, and (ii) its pro-rata share of all costs of maintaining, repairing and illuminating the Monument Sign. Such pro-rata share shall be determined based upon the size of such party's sign panel in relation to all sign panels on the Monument Sign.

4. Not a Public Dedication. Nothing contained herein shall be deemed to be a gift or dedication of any portion of the Easement Areas to the general public or for the general public or for any public purposes whatsoever, it being the intention of Declarant that this Declaration be strictly limited to and for the purposes set forth herein. The right of the public or any person to make any use whatsoever of the Easement Areas, or any portion thereof (other than any use expressly allowed by a written or recorded map, agreement, deed or dedication) is by permission, and subject to the control of the owner (or owners) of the Lots burdened by an Easement. Notwithstanding any other provisions herein to the contrary, the owner (or owners) of Lots burdened by an Access Easement may periodically restrict ingress and egress from the Easement Areas on their respective Lots in order to prevent a prescriptive easement from arising by reason of continued public use. Any restriction on ingress and egress shall be limited to the minimum period necessary to prevent the creation of a prescriptive easement and shall occur at such at time as to have a minimum effect on the parties.

5. Indemnification. The owner (or owners) of a Lot benefitted by an Easement Area (a "**Benefitted Owner**") shall indemnify, defend and hold the owner of the Lot burdened by an easement upon an Easement Area (a "**Burdened Owner**") harmless from and against any claims, liability, damages, or costs ("**Claims**") arising out of or relating to the use of the Easement Areas by any Benefitted Owner and their invitees, guests or customers (collectively the "**Benefitted Parties**") unless and to the extent that such Claims are the result of the negligence of such Burdened Owner.

6. Use Restriction. Provided that WinCo Foods, LLC is diligently proceeding towards the development, approval, and construction of its retail grocery store operation on Lot 1, and during such time period as WinCo is operating as a retail grocery operation on Lot 1, or within the past eighteen (18) months WinCo has operated as a retail grocery store operation on Lot 1 (or within the past twenty-four (24) months in the event WinCo notifies the Lot 1 owner in writing that WinCo has entered into

negotiations to sublease the premises located on Lot 1 to a retail grocery store operation within eighteen (18) months following the date on which WinCo ceased operating as a retail grocery store), and WinCo is not in uncured default under its lease with the Lot 1 owner, no portion of Lot 2, Lot 3, Lot 4 or Lot 5 shall be used as a retail grocery store operation (which is hereby defined to mean any store, bakery, or delicatessen engaged in the sale of food products or beverages for off-premises preparation and consumption). Upon the written request of an owner of a Lot, the owner of Lot 1 shall be obligated to notify such owner of a Lot as to the continuing nature or expiration of the Use Restriction contained herein. Without limiting the scope of the foregoing, the term "retail grocery store operation" shall include any small-format grocery stores including, without limitation and for illustrative purposes only, Aldi's, Trader Joe's and Wal-Mart's Express or Marketside stores, however, the term "retail grocery store" shall not include fast-food and other restaurant uses. Notwithstanding the foregoing, any occupant of Lot 2, Lot 3, Lot 4 and/or Lot 5 may operate a store or business that sells food or beverages for off-premises preparation and consumption provided that the area within such store or business dedicated to the sale of food and beverages for off-premises preparation and consumption shall not exceed the lesser of ten percent (10%) of said store or business's floor area, or two thousand square feet (2,000 s.f.) of floor area within such store or business. Provided that WinCo is a tenant on Lot 1, the restriction set forth above may not be waived or modified in any way without the prior written approval of WinCo, which may be given or withheld in WinCo's sole and absolute discretion.

7. Miscellaneous.

(a) Covenants Running with the Land. This Declaration and all of the terms and conditions contained herein shall inure to the benefit of, and be binding upon the Lot owners and their respective successors and assigns, and shall be "covenants running with the land".

(b) No Waiver. A delay in enforcing or a failure to enforce any breach or violation of any restriction herein contained shall not be deemed to be a waiver or abandonment of any such restriction, or a waiver of the right to enforce any subsequent breach or violation of such restriction. The foregoing shall apply regardless of whether any person affected hereby (or having the right to enforce these restrictions) had knowledge of the breach or violation.

(c) Amendments. This Declaration may be amended only by a written agreement executed by the owners of the Lots.

(d) Severability. If any one or more of the provisions of this Declaration or the applicability of any such provision to a specific situation shall be held invalid or unenforceable by a court of competent jurisdiction, the validity and enforceability of all the provisions of this Declaration and all other applications of such provisions shall not be affected thereby.

(e) Governing Law and Attorneys' Fees. This Declaration shall be construed and enforced in accordance with the laws of the State of Utah. If any legal action or other proceeding is brought for the enforcement of this Declaration, or because of an alleged dispute, breach, default, or misrepresentation in connection with any of the provisions of this Declaration, the successful or prevailing party or parties shall be entitled to recover reasonable

attorneys' fees and other costs incurred in that action or proceeding, in addition to any other relief to which it or they may be entitled.

(f) Successors. This Declaration shall be binding upon the owners of the Lots and their respective heirs, successors, and assigns.

IN WITNESS WHEREOF, Declarant has executed this Declaration as of the date set forth above.

[Signature Page Follow]

CITY OF SOUTH SALT LAKE
REDEVELOPMENT AGENCY
a political subdivision of the State of Utah

[Signature]
Chair

[Signature]
Executive Director

Attest:

[Signature]
Secretary

STATE OF UTAH
COUNTY OF SALT LAKE

On the 2 day of December 2015, personally appeared before me Mike Rutter,
Cherie Wood & Craig Burton who duly acknowledged to me that he executed the foregoing Agreement
as Chair, Exec. Dir. & Sec. of City of South Salt Lake Redevelopment Agency.

[Signature]
Notary Public

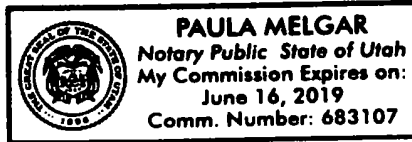


EXHIBIT "A"
Legal Description – Lots 1, 2, 3, 4 and 5

Lots 1, 2, 3, 4 and 5 of The Crossing at South Salt Lake Subdivision as shown on the plat thereof recorded as Entry No. 2182737 in Book 2015p in the Official Records of Salt Lake County, Utah.
page 273

For reference purposes only Tax Parcel Numbers:

16-19-103-017

16-19-103-020

16-19-104-015

16-19-104-024

16-19-104-025

16-19-104-026

~~16-19-104-027~~

16-19-105-004

16-19-105-007

16-19-105-008

16-19-105-009

16-19-105-010

16-19-105-011

16-19-105-012

16-19-105-013

16-19-105-014

16-19-104-028

Exhibit "B"

BK 10385 PG 174

EXHIBIT "B"
Depiction of Easement Areas and Monument Sign

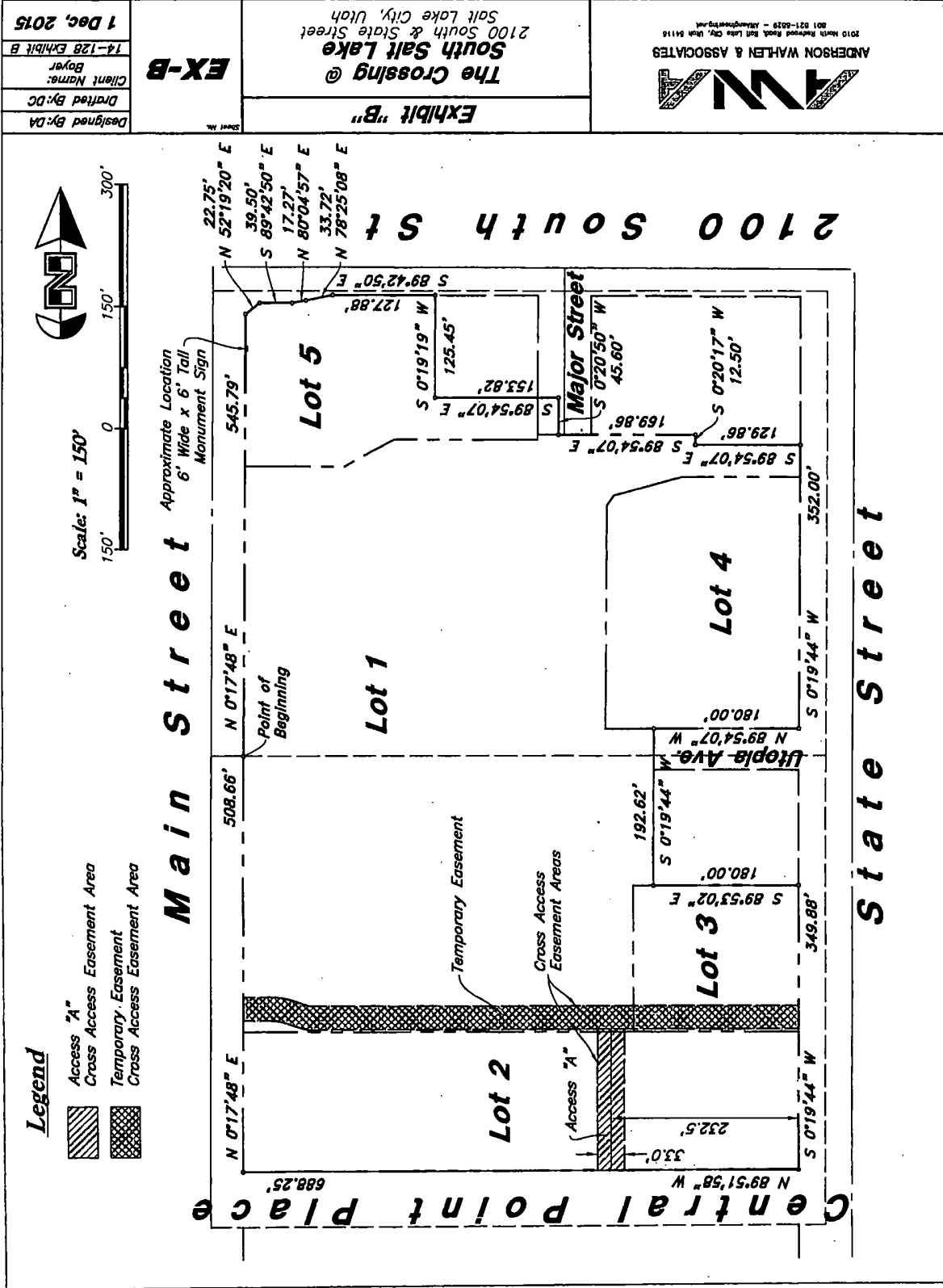


EXHIBIT "C"
Legal Description – Access A

A part of Lot 2 of The Crossing at South Salt Lake Subdivision, lying within Lot 11, Block 40, Ten Acre Plat "A", Big Field Survey in Salt Lake City, Salt Lake County, Utah:

Beginning at a point on the North Line of said Lot 2 located 439.34 feet South 89°42'12" East from the Northeast Corner thereof said point also being located 479.53 feet South 89°53'02" East along the North Line of said Lot 11 and 338.45 feet South 0°19'44" West from the Northwest Corner of said Lot 11 of the Ten Acre Plat "A"; and running thence South 89°42'12" East 33.00 feet along said North Line of Lot 2; thence South 0°19'44" West 170.26 feet to the South Line of said Lot 2 and the North Line of Central Point Place; thence North 89°51'58" West 33.00 feet along said North Line of Central Point Place; thence North 0°19'44" East 170.35 feet to the point of beginning.

Exhibit "C"