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3/30/2011 4:03:00 PM \$29.00  
Book - 9914 Pg - 8855-8864  
Gary W. Ott  
Recorder, Salt Lake County, UT  
INTEGRATED TITLE INS. SERVICES  
BY: eCASH, DEPUTY - EF 10 P.

**WHEN RECORDED, RETURN TO**

Scott P. Bates, Esq.  
Miller Family Real Estate, L.L.C.  
9350 South 150 East, Suite 1000  
Sandy, UT 84070

SPACE ABOVE THIS LINE FOR USE BY THE RECORDER

Affecting Parcels Nos. 34-06-328-161 (portion thereof)  
34-06-328-162

**STORM SEWER AND CONDUIT EASEMENT AGREEMENT**

THIS STORM SEWER AND CONDUIT EASEMENT AGREEMENT (the "Agreement") is made as of March 14, 2011 by and between MILLER FAMILY REAL ESTATE, L.L.C., a Utah limited liability company ("MFRE") and ROCKWELL HOUSING, LLC, a Utah limited liability company ("Rockwell"). The foregoing are sometimes referred to individually as a "Party" and collectively as the "Parties."

**RECITALS**

- A. MFRE is the owner of Lot 2, Rockwell Square Commercial Subdivision ("Lot 2"), a subdivision plat recorded with the Salt Lake County Recorder on March 18, 2011 as Entry No. 11152194.
- B. Rockwell is the owner of that certain real property located in Salt Lake County, State of Utah (the "Condominium Lot"), and more particularly described on the attached Exhibit A.
- C. Lot 2 and the Condominium Lot (collectively the "Parcels") are adjoining properties located in Draper City.
- D. The Parties desire through this Agreement to grant the right to use the "Easement Area" to the extent located within Lot 2, more particularly described on the attached Exhibit B, and which Easement Area is depicted, together with area in addition to the Easement Area, on the attached Exhibit C.

**AGREEMENT AND GRANT**

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

- 1. **Grant of Easement.** MFRE hereby grants to Rockwell a non exclusive, underground easement under and through the Easement Area for the purposes of installing and maintaining: (i) a storm sewer pipe and associated facilities and (ii) a single conduit for fiber optics or similar purposes. The facilities described herein must be located within the Easement Area and the rights granted hereby are solely for the purposes of benefitting the Condominium Lot, and no other.

2. **Installation of Improvements/ Payment Condition.** Some of the improvements contemplated to be located in the Easement Area have been constructed as of the date of this Agreement and Rockwell represents that it is satisfied with and does accept such improvements in an "as is," "where is" condition without any warranty whatsoever. MFRE agrees to cause the remaining portion of the storm sewer pipe improvements and the above described conduit ("**Improvements**") to be installed within the Easement Area and Rockwell agrees to pay MFRE the actual costs, which actual costs will include the costs from MFRE's contractor, including profit and overhead (the "**Installation Payment**"), within ten (10) days from Rockwell's receipt of an invoice for the Improvements from MFRE. Should Rockwell fail to pay timely to MFRE the Installation Payment this Agreement shall automatically terminate and MFRE may record a notice of termination with the Salt Lake County Recorder. Rockwell's delivery of the Installation Payment to MFRE shall constitute Rockwell's acceptance of all Improvements and Rockwell agrees that MFRE provides no warranty whatsoever concerning the condition of the Improvements. Rockwell represents that it has satisfied itself as to the condition and suitability of the Easement Area for its proposed facilities and affirms that Rockwell is not relying upon any representation from MFRE in determining the suitability of Easement Area for its facilities, including the Improvements.

3. **Maintenance/ Non Interference.** Rockwell agrees to maintain the facilities, including the Improvements, located in the Easement Area in good condition and to repair and restore any areas impacted by any such maintenance activities to the same or better condition than existed prior to the commencement of any maintenance activity. Despite the foregoing provision, Parties shall be responsible to repair any damage to the Easement Area caused by themselves. In maintaining the Easement Area, and the facilities contained therein, Rockwell covenants not to interfere with MFRE's use of Lot 2 and to coordinate, consult and schedule any construction and other maintenance work with MFRE.

4. **No Public Dedication.** The provisions of this Agreement are not intended to and do not constitute a dedication for public use of the easements, and the rights herein created are for the private use and for the benefit only of the Parties hereto and their successors and assigns.

5. **Running of Benefits and Burdens.** All provisions of this instrument, including the benefits and burdens, touch, concern, and run with the Parcels, and are binding upon and inure to the benefit of the successors and assigns of the Parties hereto.

6. **Amendments.** This Agreement may be amended only by recording, in the office of the Recorder of Salt Lake County, Utah, an instrument in writing reciting such amendment, bearing the acknowledged signatures of the owners of the Parcels.

7. **Miscellaneous.** This Agreement may be executed in one or more counterparts, each of which, when taken together, constitutes the original. If any term, provision or condition contained in this Agreement shall to any extent be deemed invalid or unenforceable, the remainder of the Agreement shall not be affected thereby, and each remaining term, provision and condition of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

8. **Entire Agreement.** This Agreement constitutes the entire agreement between the Parties pertaining to the subject matter contained in this Agreement. All prior and contemporaneous agreements, representations and understandings of the Parties regarding this easement and its improvements, oral or written, are superseded by and merged in this Agreement.

9. **Attorney Fees.** In the event of any action to enforce the provisions of this Agreement, the prevailing party shall be entitled to receive its costs and attorney fees.

IN WITNESS WHEREOF, the undersigned parties have created this Agreement effective as of the date first written above.

MFRE:

MILLER FAMILY REAL ESTATE, L.L.C.

BY:   
Gregory S. Miller, Operating Manager

ROCKWELL:

ROCKWELL HOUSING, LLC, a Utah limited liability company

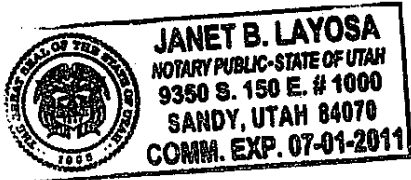
BY: HOUSING PLUS, a Utah non-profit corporation  
Its Manager

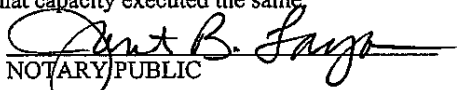
BY: \_\_\_\_\_  
Michael Plazier  
Its: Secretary

ACKNOWLEDGMENTS

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

On the 29 day of March, 2011, personally appeared before me Gregory S. Miller, signer of the foregoing instrument, who being by me duly sworn, did say and duly acknowledge to me that he is the operating manager of MILLER FAMILY REAL ESTATE, L.L.C., and in that capacity executed the same.



  
NOTARY PUBLIC

IN WITNESS WHEREOF, the undersigned parties have created this Agreement effective as of the date first written above.

MFRE:

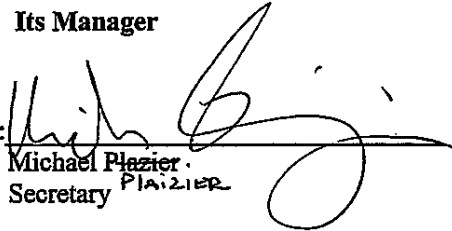
MILLER FAMILY REAL ESTATE, L.L.C.

BY: \_\_\_\_\_  
Gregory S. Miller, Operating Manager

ROCKWELL:

ROCKWELL HOUSING, LLC, a Utah limited liability company

BY: HOUSING PLUS, a Utah non-profit corporation  
Its Manager

BY:   
Michael Plazier  
Its: Secretary *Plazier*

**ACKNOWLEDGMENTS**

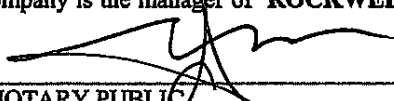
STATE OF UTAH                    )  
  : ss.  
COUNTY OF SALT LAKE        )

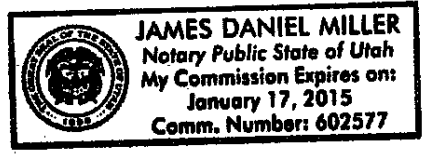
On the \_\_\_ day of March, 2011, personally appeared before me Gregory S. Miller, signer of the foregoing instrument, who being by me duly sworn, did say and duly acknowledge to me that he is the operating manager of MILLER FAMILY REAL ESTATE, L.L.C., and in that capacity executed the same.

\_\_\_\_\_  
NOTARY PUBLIC

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

On the 29<sup>th</sup> day of March, 2011, personally appeared before me Michael <sup>Plazier</sup> ~~Plazier~~, signer of the foregoing instrument, who being by me duly sworn, did say and duly acknowledge to me that he/she is the Secretary of Housing Plus, a Utah non-profit corporation, which company is the manager of **ROCKWELL HOUSING, LLC**, and in that capacity executed the same.

  
\_\_\_\_\_  
NOTARY PUBLIC



**EXHIBIT A**

**Legal Description for "Condominium Lot"**

BEGINNING WEST 244 FEET AND SOUTH 33 FEET CENTER SECTION 6, TOWNSHIP 4 SOUTH, RANGE 1 EAST, SALT LAKE BASE AND MERIDIAN; SOUTH 765 FEET; EAST 244 FEET; SOUTH 261 FEET; WEST 502 FEET; NORTH 261 FEET; WEST 331 FEET TO EAST LINE OF BANGERTER PARKWAY; NORTH 290 FEET; EAST 14.18 FEET; NORTH 0°15'30" WEST 33 FEET; SOUTH 89°45'37" WEST 6 FEET; NORTH 45°13'01" WEST 11.31 FEET; NORTH 35.84 FEET; NORTHEASTERLY ALONG 555 FEET RADIUS CURVE TO RIGHT 78.71 FEET (CHORD 4°03'46" EAST 78.64 FEET); NORTH 12°01'21" EAST 109.97 FEET; NORTHEASTERLY ALONG 652.48 FEET RADIUS CURVE TO LEASE 43.50 FEET (CHORD 10°20' EAST 43.49 FEET); NORTHEASTERLY ALONG 655 FOOT RADIUS CURVE TO LEFT 2.44 FEET (CHORD NORTH 4°49'25" E 2.44 FEET); EAST 284.51 FEET; NORTH 167 FEET; E 268 FEET TO BEGINNING 12.03 ACRES MORE OR LESS. LESS DEDICATED STREET. LESS CONVERTIBLE SPACE. LESS UNITS. (BEING THE COMMON AREA OF ROCKWELL SQUARE CONDO AMD)

**EXHIBIT B**

**Legal Description for the "Easement Area"**

**DESCRIPTION  
FOR  
UTILITY EASEMENT LOT 2**

BEING A PORTION OF THE SOUTHWEST QUARTER OF SECTION 6, TOWNSHIP 4 SOUTH, RANGE 1 EAST, SALT LAKE BASE AND MERIDIAN, SALT LAKE COUNTY, UTAH AND ALSO BEING A PORTION OF ROCKWELL SQUARE COMMERCIAL SUBDIVISION (NOT RECORDED) AND BEING DESCRIBED AS FOLLOWS:

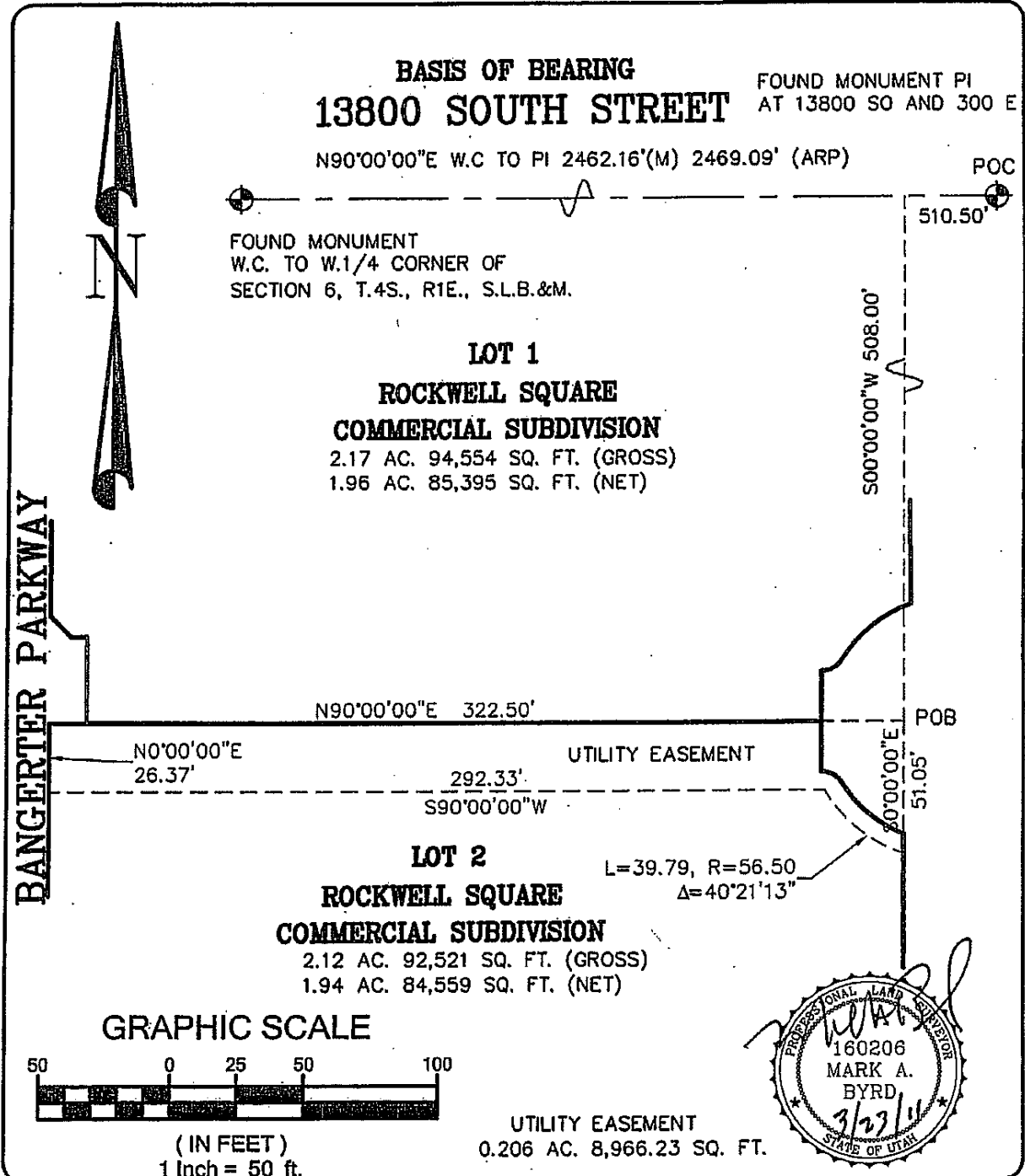
COMMENCING AT A MONUMENT FOUND IN THE INTERSECTION OF 13800 SOUTH STREET AND 300 EAST; THENCE SOUTH 90°00'00" WEST, ALONG THE MONUMENT LINE OF 13800 SOUTH STREET, 510.50 FEET; THENCE DEPARTING SAID MONUMENT LINE SOUTH 00°00'00" WEST, 508.00 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING SOUTH 00°00'00" EAST, 51.05 FEET TO A POINT, SAID POINT BEING THE BEGINNING OF A NON-TANGENT CURVE CONCAVE NORTHEASTERLY AND HAVING A RADIUS OF 56.50 FEET, THE CENTER BEARS AT SAID POINT (NORTH 19°06'47" EAST); THENCE NORTHWESTERLY ALONG THE ARC OF SAID CURVE, 39.79 FEET THROUGH A CENTRAL ANGLE OF 40°21'13"; THENCE SOUTH 90°00'00" WEST, 292.33 FEET TO A POINT ON THE EASTERLY LINE OF BANGERTER PARKWAY; THENCE ALONG THE EASTERLY LINE OF SAID BANGERTER PARKWAY NORTH 00°00'00" EAST, 26.37 FEET; THENCE DEPARTING SAID EASTERLY LINE NORTH 90°00'00" EAST, 322.50 FEET TO THE POINT OF BEGINNING.

THIS PARCEL CONTAINS 0.206 ACRES OR 8,966.23 SQUARE FEET MORE OR LESS.



**EXHIBIT C**

**Depiction of Easement Area over Lot 2**



**B** Byrd & Associates L.L.C.  
 Engineers & Land Surveyors  
 505 South Main Street  
 Bountiful, Utah 84010  
 Phone (801)-292-0400  
 Fax (801)-292-8216

**UTILITY EASEMENT  
 OVER LOT 2**  
 DRAPER Date: 03/23/11 249-28