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Gary W. Ott
Recorder, Salt Lake County, UT
FOUNDERS TITLE
BY: eCASH, DEPUTY - EF 17 P.

RECORDING REQUESTED BY
AND WHEN RECORDED, RETURN TO:

Utah Capital, LLC
Attn: Ralph Johnson
802 East Winchester, Suite 225
Murray, Utah 84107

F-80593

(Space above for recorder's use only)

**CROSS-EASEMENT, RIGHTS-OF-WAY
AND RESTRICTION AGREEMENT**

This CROSS-EASEMENT, RIGHTS-OF-WAY AND RESTRICTION AGREEMENT ("Agreement") is made this 5th day of May, 2011, by and between RALPH B. JOHNSON, an individual ("Johnson") and Miller Family Real Estate, L.L.C., a Utah limited liability company ("Miller"). Johnson and Miller are sometimes generically referred to herein individually as an "Owner," and collectively as the "Owners."

RECITALS:

- A. Johnson is the owner of certain real property situated in the City of Riverton, County of Salt Lake, State of Utah, more particularly described in Exhibit "A", attached hereto and incorporated herein (the "**Johnson Property**").
- B. Miller is the owner of certain real property situated in the City of Riverton, County of Salt Lake, State of Utah, more particularly described in Exhibit "B", attached hereto and incorporated herein (the "**Miller Property**"). The Johnson Property and the Miller Property are each generically referred to herein individually as an "**Owner's Property**" as the case may be, and collectively as the "**Owners' Property**."
- C. The east boundary of the Johnson Property abuts the west boundary of the Miller Property as depicted on Exhibit "C", attached hereto.
- D. The Owners desire to subject the Owners' Property to the easements, covenants, restrictions and obligations set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual covenants and obligations expressed herein, and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Owners make the following grants, agreements and covenants:

1. Grant of Rights of Way and Easements.

1.1 *Access Easements.* Subject to the terms and conditions set forth herein, each Owner, as grantor, hereby grants and conveys to the other Owner, as grantee, and to its successors and assigns, and their respective tenants, employees, licensees and invitees, and the subtenants, contractors, employees, agents, licensees and invitees of such tenants, for the benefit of the other Owner's Property, as grantees, a private, nonexclusive right of way and easement for vehicular (motorized and non-motorized including bicycles and similar vehicles) and pedestrian traffic upon, over, across and through that portion or portions of the Owner's Property improved with drive ways or drive aisles or which may be improved as such at any time hereafter in such locations as they exist from time to time. Each such right of way and easement, respectively, shall be referred to as "Access Easement" and the area affected shall be referred to herein as the "Access Easement Area." Nothing herein shall be deemed to prevent an Owner from modifying, changing, or redeveloping its property in any manner that such Owner deems desirable in its sole and absolute discretion at any time in the present or future, except with respect to the driveway that straddles the common boundary of the Owners' Properties, the boundary of which is described in the subdivision plat recorded or to be recorded creating the Johnson Property and the Miller Property and which is identified as driveway "H" on the attached Exhibit "D" which driveway "H" must remain as depicted on Exhibit "D" unless the Owners mutually agree to change the same by an amendment of this Agreement. Said driveway shall be a non-buildable area and remain as vehicular and pedestrian access. The parties acknowledge and agree that no parking easement or rights have been granted to any Owner on the other Owner's Property and that each Owner and their respective tenants, contractors, employees, agents, licensees and invitees, and the subtenants, contractors, employees, agents, licensees and invitees of such tenants shall park only on such Owner's Property and will not park on the other Owner's Property.

1.2 *Utilities Easements.* The Owner of the Miller Property hereby grants to the Owner of the Johnson Property, and to its successors and assigns, and their respective tenants, contractors, employees, agents, licensees and invitees, and the subtenants, contractors, employees, agents, licensees and invitees of such tenants, for the benefit of the Johnson Property, as grantees, a private, nonexclusive easement over, under, in and across a portion of the Miller Property, the easement width and area as depicted on Exhibit "D" attached hereto, for the purpose of constructing, maintaining, repairing and replacing a storm drainage line and ancillary improvements. The Owner of the Johnson Property hereby grants to the Owner of the Miller Property, and to its successors and assigns, and their respective tenants, contractors, employees, agents, licensees and invitees, and the subtenants, contractors, employees, agents, licensees and invitees of such tenants, for the benefit of the Miller Property, as grantees, a private, nonexclusive easement over, under, in and across a portion of the Johnson Property, the easement width and area as depicted on Exhibit "D" attached hereto, for the purpose of constructing, maintaining, repairing and replacing a water line servicing the Owners' Property. Therefore, pertaining to the rights and responsibilities that follow hereafter, each Owner, respectively, shall be deemed to be a "Utility Easement Grantee" and a "Grantor" with respect to the easements granted by or to such Owner in this Section 1.2. Owners agree that the depictions of the width and areas for the easements shown on Exhibit "D" may be specified and more particularly described in a subdivision plat approved and executed by each Owner, and further

agree that such specific location descriptions shall govern in the case of a conflict with the general location descriptions shown on Exhibit "D".

(i) Utility Easement Grantee Rights. A Utility Easement Grantee and their respective agents, contractors, employees and consultants shall at all times have the right of ingress and egress over, upon and through the other Owner's Property for the purpose of constructing, reconstructing, replacing, inspecting, maintaining all or part of the Improvements related to the utilities for which the easements have been granted and as shown on Exhibit "D" without the further necessity of procuring the permission of anyone. Nevertheless, (i) Utility Easement Grantee shall give reasonable notice to the other Owner or its successors and assigns of its intent to enter onto the such Owner's Property; (ii) each such entry shall be conducted so as to minimize, to the extent reasonably practicable, interference with operations on such Owner's Property and the use and enjoyment thereof by that Owner, its tenants, any subtenants, and their respective invitees and guests; (iii) Utility Easement Grantee shall at its sole expense promptly repair any damage caused by Utility Easement Grantee's, or its agents, contractors, employees and consultants entry onto the other Owner's Property and restore same to at least the condition existing prior to entry by the Utility Easement Grantee, or its agents, contractors, employees and consultants; and (iv) Utility Easement Grantee shall indemnify, defend and hold harmless Grantor, its agents, employees, shareholders, members, partners, contractors, invitees, guests and tenants (as the case may be) 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 resulting from the entry by Utility Easement Grantee, or its agents, contractors, employees and consultants onto the Owner's Property belonging to such Grantor.

(ii) Construction Requirements. All such utilities shall be installed and maintained below the ground level or surface of such easements except for such facilities as are required to be above ground by the utility providing such service (including, without limitation, any meters or related equipment and temporary service required during the construction, maintenance, repair, replacement, alteration or expansion of any buildings, or related improvements located on the Owners' Property). The parties shall bear the costs related to the installation, operation, maintenance, repair and replacement of such utility easement facilities as provided herein.

(iii) Relocation. At any time and from time to time the Grantor shall have the right to relocate on the Owner's Parcel owned by Grantor any utility line or facility installed pursuant to the foregoing grant of easement which is then located on the land of such Owner, provided that any such relocation (i) shall be performed only after sixty (60) days' notice of the Owner's intention to undertake the relocation shall have been given to the other Owner whose property is served by the utility line or facility, (ii) shall not unreasonably interfere with or diminish utility service to the property served by the utility line or facility, (iii) shall not reduce or unreasonably impair the usefulness or function of the utility line or facility, (iv) shall be performed without cost or expense to the Utility Easement Grantee or occupant of such Utility Easement Grantee's property, and (v) shall

provide for the original and relocated area to be restored to their original specifications. The Owner performing such relocation shall provide as-built plans for all such relocated utility lines and facilities to the other Owner within thirty (30) days after the date of completion of such relocation.

Each easement and right of way granted under this Section 1 is sometimes referred to herein individually as an "Easement" and collectively as the "Easements."

2. Use of Easements.

2.1 *Use.* Each Easement may be used solely for the purposes set forth herein by the Owners and their guests, invitees (business or social), employees, agents, servants, tenants, and contractors. The foregoing shall include all reasonable and necessary uses for each Owner's full and complete enjoyment and utilization of its respective land.

2.2 *No Public Rights.* Nothing contained in this Agreement will be deemed a gift or dedication of any portion of any Easement to the general public or for a public purpose whatsoever, it being the intent of the Owners that this Agreement be strictly limited for the purposes expressed herein. As such, this Agreement does not convey, gift, grant or transfer any rights, title or interest in the Easement to the public, and the Easement shall remain the private property of the Owners. Each Owner shall take reasonable steps to guard against the public or any third-party acquiring any right in the Easement, including the temporarily closing or restricting access to the Easement as may be required by law to preserve the Easement as a private right of way and easement as provided herein. Such action shall not be done a manner to interfere with the reasonable enjoyment of the Owners respective properties.

3. **Compliance with Laws/Approvals and Permits/Parking Ratios.** Each Owner shall comply with any and all applicable ordinances, orders, rules, regulations, codes (including building and safety codes), permits, conditions, and requirements of any governmental entity (collectively, "Laws") related to its use of its property.

4. Construction Cost Sharing.

4.1 *Design of Improvements.* The Owner that develops its respective property first will be known as the "Constructing Owner." It is anticipated that the Owner of the Miller Property will be developing the Miller Property prior to the Owner of the Johnson Property developing the Johnson Property and that the Owner of the Miller Property, as the Constructing Owner, has designed improvements and intends to construct Improvements on its property and a portion of the Johnson Property as generally depicted on Exhibit "D" labeled "A" through "I" (referred to herein as the "Improvements"). The Improvements shall consist of drive aisle "H," water lines, storm water lines, sanitary sewer lines, curb cuts, a concrete driveway, a sidewalk along the driveway, a concrete median in 12600 South and traffic striping all as identified on Exhibit "D". The Constructing Owner will cause the Improvements to be designed in a professional manner by a licensed professional engineer and in accordance with all applicable laws to accommodate and support its intended use, including the weight of trucks and equipment that may use the surface above which the Improvements are installed.

4.2 *Approval of Plans.* The plans and specifications for the Improvements will be approved by both Owners, which approval shall not be unreasonably withheld, conditioned or delayed. Upon obtaining plans and specifications, the Constructing Owner shall provide to the other Owner a copy of such plans and specifications. The other Owner shall have ten (10) days after receipt to approve or disapprove of such plans and specifications. If such other Owner disapproves the proposed plans and specifications, it shall provide a written explanation in reasonable detail of its reasons for disapproval. If such other Owner rejects or disapproves the proposal and fails to provide such explanation within the 10-day period, then such Owner shall be deemed to have approved the same. If the proposed plans and specifications are disapproved as provided herein, then an alternate proposed plans and specifications may be submitted, which alternate proposal shall be handled in the same manner as the initial proposal. The Owners agree to use good faith efforts to amicably resolve such reasons for disapproval. The approved plans and specifications are referred to herein as the "Plans." Notwithstanding the foregoing, the approval of the Plans shall not prevent the Owners from otherwise developing their respective properties in the manner each Owner desires subject to the restrictions set forth in this Agreement and subject to governmental approvals; *provided, however* that each building and other structure or improvement to be constructed on an Owner's Property, now and in the future, shall be of first quality construction and of new good quality materials.

4.3 *Alternate Constructing Owner.* The Owners acknowledge that they may develop their respective properties at different times. Accordingly, if the Owner of the Johnson Property shall develop its property prior to the Owner of the Miller Property then the Owner of the Johnson Property shall be deemed to be the Constructing Owner and may install the Improvements and shall have the right of contribution and reimbursement of the Owner of the Miller Property's share of costs therefore in a similar manner as the Owner of the Miller Property shall have as provided herein. Furthermore, the Owner of the Miller Property shall have the same approval rights for the Plans as the Owner of the Johnson Property. Each Owner's share of the cost of the Improvements in this case shall again be according to the cost sharing ratios specified on the attached Exhibit "D."

Payment shall be made to the Constructing Owner within thirty (30) days of submission of documentation that includes invoices for the cost of the Improvements, inspection approvals from each governing authority and lien waivers.

4.4 *Construction of the Improvements.* Upon approval of the Plans, the Constructing Owner shall use good faith and diligent efforts to obtain any and all necessary governmental permits and approvals for the construction of the Improvements. If any changes or modifications to the Plans are requested or required by any governmental entity as a condition to a required permit or approval, any such changes or modifications shall be subject to the prior review and approval by the other Owner, which approval shall not be unreasonably withheld, conditioned or delayed and which shall follow the approval process set forth in Section 4.2 above. Upon receipt of all necessary and required permits for the construction of the Improvements, the Constructing Owner shall commence to construct, and thereafter use good faith and diligent efforts to complete in a timely manner, the Improvements in a professional manner using good workmanship and new, quality materials in accordance with the Plans and in accordance with any applicable laws. The contractor constructing the Improvements shall be licensed in the State of Utah and maintain adequate insurance, and shall perform its obligations pursuant to a

written construction contract, which will provide indemnification, insurance coverage, and warranties. Each Owner will be entitled to the benefits afforded the Constructing Owner (i.e., insurance, indemnification, releases, warranties, etc.) under the construction contract for the Improvements. The Owners will inform each other of their plans to develop their respective properties and coordinate the construction and development of their respective properties and the Improvements.

4.5 *Contribution Toward Construction.* The Owner who is not the Constructing Owner shall reimburse the Constructing Owner for its share of the costs to design and construct the Improvements as depicted on Exhibit "D" in the ratios for each such improvement shown thereon. Such costs shall include the design costs and, fee for permits, including applications fees for UDOT up to \$1,000, but shall not include professional fees of Fehr and Peers (the "Construction Costs").-Payment shall be made to the Constructing Owner within 30 days of submission of documentation that includes invoices for the cost of the Improvements, inspection approvals from each governing authority and lien waivers.

4.6 *Extra Improvements.* In addition, if any improvements other than the Improvements are made at the request of the Owner who is not the Constructing Owner (such as utility lines and extensions from main lines that service only the Owner who is not the Constructing Owner) (the "Extra Improvements"), the Owner who is not the Constructing Owner must inform the Constructing Owner on or before the commencement of construction of the Improvements hereunder of such Extra Improvements and the Owner that is not the Constructing Owner shall pay the entire cost to design and construct the Extra Improvements (including any change order costs to Constructing Owner's construction contract, if any, related to the Extra Improvements). The Owner who is not the Constructing Owner will pay its share of the Construction Costs and the entire cost of the Extra Improvements within thirty (30) days after (i) the Extra Improvements have been completed pursuant to the Plans, (ii) any and all governmental approvals for the completed Extra Improvements, if any, have been obtained, and (iii) receipt of a detailed statement itemizing the costs incurred by the Constructing Owner to construct the Extra Improvements. After receipt by the Constructing Owner of the other Owner's share of the Construction Costs and costs of the Extra Improvements, and upon request by either Owner, the Owners will execute in recordable form an Acknowledgment of Receipt wherein the Constructing Owner acknowledges receipt of the contribution by the other Owner. Failure of the Owners to execute and record such instrument shall not be deemed or inferred to be evidence of non-compliance with the terms and conditions of this Section.

4.7 *Maintenance of Improvements.* Each Owner shall, at such Owner's sole cost and expense, maintain those Improvements including the portion of the common drive aisle "H" installed on its own Property and shall be responsible for keeping them in good condition and repair without contribution from the other Owner. If the common drive aisle "H" requires reconstruction due solely to usage, then the Owners shall share in the cost equally. Notwithstanding the foregoing the owner of the Johnson Property shall be responsible for the costs of maintaining storm drain line "G" and the Owners shall be jointly responsible for maintaining water loop consisting of lines "A," "C," and "D" and shall share the maintenance and replacement costs thereof equally.

Maintenance to the Improvements on an Owner's property shall include, without limitation, the following:

(i) Maintaining, repairing, resurfacing, and re-striping, when necessary, all paved 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 or superior in quality, use and durability;

(ii) Removing all snow, 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;

(iii) Maintaining, repairing and replacing, when necessary, all traffic directional signs, markers and lines;

(iv) Operating, maintaining, repairing and replacing, when necessary, artificial lighting facilities as shall be reasonably required including, but not limited to, poles, pole bases, wiring, lamps, ballasts, lenses, photocells, time clocks, and contactors;

(v) Maintaining and watering all landscaped areas; maintaining, repairing and replacing, when necessary, automatic landscape sprinkler systems and water lines; and replacing shrubs and other landscaping as is necessary;

(vi) Except as expressly provided to the contrary in this Agreement, maintaining, repairing and replacing, when necessary, all storm drains, detention pond and drainage facilities, sewers and other utility lines and facilities not dedicated to the public or conveyed to any public or private utility which are necessary for the operation of the buildings and improvements located on such Owner's property;

(vii) Performing itself or contracting with a third party or parties to perform any of the services described herein; provided, however, that each Owner shall remain responsible and liable for the performance of all of said services upon its own property; and

(viii) Maintaining the exterior of any building located on such Owner's Property in a quality and condition comparable to that of first class buildings of comparable size and nature located in the same geographic area as the Owners' Property.

4.8 *Liens.* Each Owner ("**Constructing Owner**") shall keep the other Owner's property free from any liens arising out of any work performed, materials furnished, or obligations incurred by or for the Constructing Owner. The Constructing Owner hereby indemnifies, holds harmless and agrees to defend the other Owner from and against any and all liability, loss, damage, costs, attorneys' fees and all other expenses on account of claims of lien of laborers or materialmen or others for work performed or materials or supplies furnished to or for the Constructing Owner or persons claiming under the Constructing Owner. Where liens have been filed against an Owner's Property, the Constructing Owner and/or its bonding company, which has issued bonds relative to the improvements or the work performed, will obtain lien releases and record them in the appropriate county and/or local jurisdiction. In the event that the Constructing Owner and its bonding company are unable to obtain a lien release,

the affected Owner in its absolute discretion may require the Constructing Owner to provide a bond around the lien or a bond to discharge the lien at the Constructing Owner's sole expense. Nothing herein shall preclude the Constructing Owner from contesting the validity and/or amount of any lien claimed on the Access Drive or any Owner's Property, provided that the Constructing Owner has taken the actions described above. If the Constructing Owner shall fail to perform as described above, then such Owner may, but shall not be obligated to, pay the claim. Any such payment by such Owner as well as other costs and attorneys' fees incurred by the affected Owner in connection therewith (including without limitation copy costs, consultant and expert fees) shall be immediately due and owing from the Constructing Owner.

5. Restriction on Use.

5.1 *Restriction of Use on Johnson Property.* For as long as the Miller Property is being developed or redeveloped or used as a convenience store and/or location for fuel dispensing using Fuel Sales Facilities, no part of the Johnson Property shall be developed for or used for those purposes. As used herein "convenience store" shall mean a retail store: (i) located within a building that is less than 5,000 square feet of floor area; (ii) that is open for extended hours of operation (which may be up to 24 hours per day, seven days per week); (iii) stocks a limited variety of food and non-food products including: (a) prepackaged food items; (b) beverages (including both alcoholic and non-alcoholic beverages); (c) snack foods (including confectionery items); (d) tobacco products; (e) espresso and/or any brewed coffee or espresso-based or coffee-based drink; (f) assorted baked goods including, but not limited to, bagels, muffins and donuts; (g) a limited variety of household and personal products consistent with convenience stores of the type set forth in the follow sentence. Examples of convenience stores include 7-Eleven, Circle K, Top Stop, ABC, Maverik Stores, and the like.

As used herein, "Fuel Sales Facilities" shall mean fuel pumps, fuel storage tanks, piping, tank filling ports, compressed air islands, air hoses, water hoses, vacuums, and any other facilities and/or equipment associated with selling and dispensing of gasoline, natural gas, propane, motor fuel and/or other petroleum fuel and lubricant products (including packaged and non-packed petroleum products) or for motor vehicle servicing.

Notwithstanding the foregoing, the restrictive covenant in this Section 5.1 shall not prohibit: (1) stores that are not typically considered to be a "convenience store"; (2) a "quick service" or fast food restaurant [e.g., McDonald's, Burger King, Kentucky Fried Chicken, Pizza Hut, Taco Bell, Subway, and the like]; (3) grocery stores; (4) drug stores; (5) sporting goods stores; (6) restaurants; (7) household products stores; (8) clothing stores; (9) stores whose sales of any item sold in a convenience store that amounts to 20% or less of its total sales of such store or (10) other specialty shops whose primary use does not directly compete with the convenience store use and products described above in 5.1 (e) or (f).

This restrictive covenant and prohibition shall run with the land as a benefit to the Miller Property and a burden on or limitation to the use of the Johnson Property. This restriction shall no longer apply to a use described above when the said use of the Miller Property shall cease for a continuous period of six (6) months or more, excluding any periods of construction for development, redevelopment or remodeling or as a result of a casualty event or natural disaster. Notwithstanding the foregoing, if at least fifty percent (50%) of the Johnson Property has not

been leased or sold to a purchaser within one (1) year of the date of this Agreement, then the restrictions set forth in subsections (e) and (f) in this Section 5.1 above shall be of no further force or effect as of the date that is one (1) year after the date this Agreement is recorded in the official records of the Salt Lake County Recorder's office but only as to those portions of the Johnson Property that have not been leased or otherwise approved for use by a tenant or sold to a purchaser within one (1) year of the date of this Agreement.

5.2 *Remedies for Owner of Miller Property.* Johnson agrees that damages at law for violation of the restrictive covenants contained herein would not be an adequate or proper remedy to Miller, and that should Johnson or its successors or assigns or their respective tenants, contractors, employees, agents, licensees and invitees, and the subtenants, contractors, employees, agents, licensees and invitees of such tenants violate or threaten to violate any of the provisions of this Section 5, Miller, its successors or assigns, shall be entitled to obtain a temporary or permanent injunction against Johnson or its successors or assigns or their respective tenants, contractors, employees, agents, licensees and invitees, and the subtenants, contractors, employees, agents, licensees and invitees of such tenants in any court having jurisdiction over the person and the subject matter, prohibiting any further violation of any such covenants, and to recover from Johnson or its successors or assigns, or any other person engaged in such violation the benefits derived therefrom. Johnson shall not be responsible for the actions of successor owners. In such circumstance, Johnson shall not be made a party in any action to enforce the covenant.

5.3 *Enforceability of Restrictions on Johnson Property.* Furthermore, Johnson acknowledges that this Section 5 has been negotiated at arms length by the parties, with none of the parties being under any compulsion to enter into this Agreement, and that the restrictive covenants contained herein do not in any respect inhibit Johnson's ability to profitably use the Johnson Property or earn a livelihood in its chosen market without violating the restrictive covenants contained herein. Miller by these presents has attempted to limit Johnson's rights to compete only to the extent necessary to protect Miller from unfair competition. The parties agree that, if the scope or enforceability of the restrictive covenants contained herein is in any way disputed at any time, it is the intent of the parties that a court or other trier of fact shall modify and enforce the covenants to the extent required to render the same enforceable.

The restrictions set forth in this Section 5 are hereinafter collectively referred to herein as the "Restrictions."

6. **Notices.** All notices, demands, consents, approvals and other communications which are required or desired to be given by either Owner to the other Owner hereunder shall be in writing and shall be hand delivered or sent by United States registered or certified mail, postage prepaid, return receipt requested, or by overnight courier addressed to the appropriate party at its address set forth below, or at such other address as such Owner shall have last designated by written notice to the other Owner. Notices, demands, consents, approvals, and other communications shall be deemed given when hand delivered or three (3) days after mailing or one (1) day after delivery by overnight courier: provided, however, that if any such notice or other communications shall also be sent by telecopy or fax machine, such notice shall be deemed given at the time and on the date of machine transmittal if the sending Owner receives a written send

verification on its machines and forwards a copy thereof with its mailed or courier delivered notice or communications.

To Johnson: Ralph B. Johnson
 802 Winchester
 Murray, Utah 84107
 Phone: (801) 270-8890-6200
 Fax: (801) 290-5550

To Miller: Miller Family Real Estate, L.L.C.
 9350 South 150 East, Suite 1000
 Sandy, Utah 84070
 Attn: Jay K. Francis
 Phone: (801) 563-4111
 Fax: (801) 304-4691

7. Miscellaneous.

7.1. *Entire Agreement.* This Agreement constitutes the entire contract and understanding between the Owners related to the subject matter herein and supersedes all prior agreements, arrangements and understandings relating to the subject matter of this Agreement. Any modifications to this Agreement must be in writing and signed by all Owners.

7.2. *Successors and Assigns.* The terms and conditions of this Agreement shall run with the Owners' Property. The mutual easements granted herein shall be appurtenant to the Property of each Owner, and may not be transferred, assigned, or conveyed apart or separately from such Property. The rights, conditions and provisions of this Agreement shall inure to the benefit of, and will be binding upon, the Owners hereto and their respective successors and assigns.

7.3. *Termination of Covenant Liability.* Whenever a transfer of fee simple ownership of any portion of the Easement shall occur, then from and after the transfer date, the transferor shall be released and discharged from any and all further obligations and responsibilities under this Agreement with respect to the portion transferred, and shall have no liability for any breach of any covenant arising or accruing after the date of such transfer with respect to the real portion transferred.

7.4. *Legal Rights.* This Agreement, and the interpretation, validity, effect and performance hereof, shall be governed by the laws of the State of Utah. Venue and jurisdiction for any legal proceedings shall be in Salt Lake County, Utah. If any action at law or in equity, or any legal proceeding, is instituted by any Owner against the other Owner to enforce this Agreement or any rights arising hereunder, or in connection with the subject matter hereof, the prevailing Owner, in any such action or proceeding, shall be entitled to recover from the other Owner all costs of suit and reasonable attorneys' and paralegal fees. For purposes of this Section, the term "prevailing Owner" shall, in the case of a claimant or counter-claimant, be the Owner who is successful in obtaining substantially all of the relief sought, and in the case of the

defendant or respondent, the Owner who is successful in denying substantially all of the relief sought by the claimant, regardless of whether such action proceeds to final judgment.

7.5. *Remedies.* If any Owner fails according to the terms of this Agreement to substantially commence to perform and/or complete performance as required by this Agreement, as the circumstances may require, the other Owner may perform such obligations after providing the non-performing Owner ten (10) days' prior written notice that it has failed to perform in accordance with its obligations under this Agreement. In the event a ten (10) day notice is given, such notice will specify the non-performance. If the non-performing Owner does not cure its non-performance within such ten (10) day period, the other Owner shall be entitled to cure such non-performance, whereupon the non-performing Owner shall pay the performing Owner the non-performing Owner's share of the costs to perform such obligations within thirty (30) days after written demand. Notwithstanding anything in this Agreement to the contrary, in the event of any violation or threatened violation by any person of any of the Restrictions, any or all of the Owners of the Owners' property subjected to this Agreement shall have the right to enjoin such violation or threatened violation in a court of competent jurisdiction. The right of injunction shall be in addition to all other remedies set forth in this Agreement or provided by law.

7.6. *Remedies Not Exclusive; No Waiver.* The various rights and remedies herein contained and reserved to each of the Owners, except as otherwise expressly provided herein, shall not be considered as exclusive of any other right or remedy of such Owner but shall be construed as cumulative and shall be in addition to every other remedy now or hereafter existing at law, in equity or by statute. No delay or omission of the right to exercise any power or remedy by any Owner shall impair any such right, power or remedy or be construed as a waiver of any default, breach or non-performance or as acquiescence therein. Any waiver of any breach of this Agreement, or the breach of any covenant, representation or warranty contained herein (a "**Breach**"), in any one instance, shall not operate as or be deemed to be a further or continuing waiver of such Breach or any other Breach, nor shall any failure at any time or times to enforce or require performance of any provision hereof operate as a waiver of or affect in any manner such Owner's right at a later time to enforce or require performance of any such provision. No Owner shall be deemed to have waived any term, covenant or condition unless such Owner gives the other Owner written notice of such waiver.

7.7. *Interpretation.* This Agreement shall be interpreted and construed only in accordance with the terms and conditions of this Agreement, and there shall be no presumption or standard of construction in favor of or against any Owner.

7.8. *Captions.* The captions in this Agreement are for convenience only and do not constitute a part of the provisions hereof.

7.9. *Time is of the Essence.* Time is expressly made of the essence of each and every provision of this Agreement.

7.10. *Authority.* If any Owner is a corporation or a limited liability company, the Each Owner hereby covenants and warrants as of the date of the execution of this Agreement by such Owner that the Owner is a duly constituted corporation or limited liability company, qualified to do business in the state of Utah. Each Owner represents and warrants that the individuals

executing this Agreement have the power and authority to do so on behalf of such Owner and to bind such Owner to the terms and conditions of this Agreement, that all company approvals and authorizations required by such Owner's governing instruments, have been secured, and obtained and complied with, and that this Agreement is a binding obligation of such Owner.

7.11. Relationship. The Owners hereto expressly disclaim and disavow that any partnership, joint venture, fiduciary, agency or employment status or relationship between them is created by this Agreement, and the Owners expressly affirm that they have entered into this Agreement as part of an "arms-length" transaction. No Owner hereto has the authority to make any representation or warranty or incur any obligation or liability on behalf of the other Owner hereto, nor shall any Owner make any representation to any third party inconsistent with this provision. Each Owner to this Agreement is a separate and independent entity. No Owner will have the right to act as agent for the other Owner.

7.12. No Third Party Beneficiaries. Except as explicitly stated herein, there is no intent by any Owner to create or establish third party beneficiary status or rights in any third party and no such third party shall have any right to enforce any right or enjoy any benefit created or established under this Agreement. The mutual easements granted herein may be utilized only to service the Grantee's Property. No lands outside the perimeter of the Owners' Property, whether or not owned or controlled by one or more of the Owners, shall be serviced by or from the Private Drive. The Owners' Property may be expanded only upon the unanimous written consent of the Owners, which consent may be granted or withheld in the sole and absolute discretion of each Owner, and which consent shall not be effective until an amendment to this Agreement is duly recorded.

7.13. Counterparts. This Agreement may be executed in any number of duplicate counterparts, each of which shall be deemed an original, and when taken together shall constitute one and the same original Agreement, which shall be fully binding upon each Owner who executes the same.

7.14. Indemnification. Each Owner shall indemnify, defend and hold harmless the other Owner and occupants of such other Owner's property 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 resulting from the willful misconduct or negligent act or omission of the indemnifying Owner. The foregoing indemnification obligation shall survive any termination of this Agreement.

7.15. Miscellaneous. The Owners, and each of them, acknowledge, declare, and agree, that: (i) they have consulted legal counsel about this Agreement, including the meaning and effect of waiving any legal rights, or have had the opportunity to do so and have voluntarily chosen not to do so; (ii) they have had adequate time and opportunity to review the terms of this Agreement and have carefully read it; (iii) they are sophisticated parties that have negotiated this Agreement at arm's length, and accordingly, expressly waive any rule of law or any legal decision that would require interpretation of any ambiguities in this Agreement against the Owner that has drafted it; and (iv) they intend to be legally bound to the provisions of this

Agreement, which shall be interpreted in a reasonable manner to effect the purposes of this Agreement and intent of the Owners as outlined herein.

IN WITNESS WHEREOF, the Owners have executed this Agreement as of the date first above written.

JOHNSON:

Ralph B. Johnson
Ralph B. Johnson

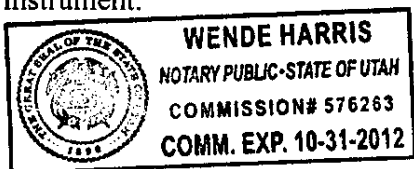
MILLER:

Miller Family Real Estate, L.L.C.,
a Utah limited liability company

By: Stephen F. Miller
Its: Stephen F. Miller, Vice-Operating Manager

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

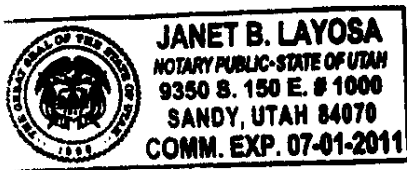
On this 6th day of May, 2011, personally appeared before me Ralph B. Johnson, personally known to me, who acknowledged to me that he signed the foregoing instrument.



Wende Harris
Notary Public for Utah

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

On this 5th day of May, 2011, personally appeared before me Stephen F. Miller, personally known to me to be the Vice-Operating Manager of Miller Family Real Estate, L.L.C., a Utah limited liability company, who acknowledged to me that he/she signed the foregoing instrument as the Vice-Operating Manager for said entity, and the said person acknowledged to me that by such action the company executed the same.



Janet B. Layosa
Notary Public for Utah

Exhibit "A"

[Legal Description of Johnson Property]

BEING A PORTION OF THE NORTHWEST QUARTER OF SECTION 34 TOWNSHIP 3 SOUTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN, SALT LAKE COUNTY, UTAH AND BEING DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF THE NORTHWEST QUARTER OF SAID SECTION 34; THENCE N89°58'55" EAST, ALONG THE NORTH LINE OF SAID NORTHWEST QUARTER, 670.72 FEET; THENCE DEPARTING SAID NORTH LINE SOUTH 00°01'05" EAST, 69.65 FEET TO A POINT ON THE EASTERLY RIGHT OF WAY LINE OF PARK AVENUE, SAID POINT ALSO BEING THE POINT OF BEGINNING; THENCE NORTH 44°46'29" EAST, 25.27 FEET TO A POINT ON THE SOUTHERLY RIGHT OF WAY LINE OF 12600 SOUTH STREET, SAID POINT BEING THE BEGINNING OF A NON-TANGENT CURVE CONCAVE SOUTHERLY AND HAVING A RADIUS OF 8157.00 FEET, RADIUS BEARS AT SAID POINT (SOUTH 00°15'07" EAST); THENCE EASTERLY LONG THE ARC OF SAID CURVE COINCIDENT WITH THE SOUTHERLY LINE OF SAID 12600 SOUTH STREET, 63.83 FEET THROUGH A CENTRAL ANGLE OF 00°26'54"; THENCE CONTINUING ALONG SAID SOUTHERLY LINE SOUTH 89°48'13" EAST, 567.26 FEET; THENCE DEPARTING SAID SOUTHERLY LINE SOUTH 00°01'05" EAST, 289.08 FEET; THENCE SOUTH 89°58'55" WEST, 647.75 FEET TO A POINT ON THE EASTERLY LINE OF SAID PARK AVENUE; THENCE NORTH 00°15'31" WEST, ALONG SAID EASTERLY LINE, 273.26 FEET TO THE POINT OF BEGINNING.

LESS AND EXCEPTING THAT PROPERTY OWNED BY MILLER FAMILY REAL ESTATE, L.L.C., WHICH IS MORE PARTICULARLY DESCRIBED AS:

BEING A PORTION OF THE NORTHWEST QUARTER OF SECTION 34 TOWNSHIP 3 SOUTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN, SALT LAKE COUNTY, UTAH AND BEING DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF THE NORTHWEST QUARTER OF SAID SECTION 34; THENCE NORTH 89°58'55" EAST, ALONG THE NORTH LINE OF SAID NORTHWEST QUARTER, 670.72 FEET; THENCE DEPARTING SAID NORTH LINE SOUTH 00°01'05" EAST, 69.65 FEET TO A POINT ON THE EASTERLY RIGHT OF WAY LINE OF PARK AVENUE; THENCE NORTH 44°46'29" EAST, 25.27 FEET TO A POINT ON THE SOUTHERLY RIGHT OF WAY LINE OF 12600 SOUTH STREET, SAID POINT BEING THE BEGINNING OF A NON-TANGENT CURVE CONCAVE SOUTHERLY AND HAVING A RADIUS OF 8157.00 FEET, RADIUS BEARS AT SAID POINT (SOUTH 00°15'07" EAST); THENCE EASTERLY LONG THE ARC OF SAID CURVE COINCIDENT WITH THE SOUTHERLY LINE OF SAID 12600 SOUTH STREET, 63.83 FEET THROUGH A CENTRAL ANGLE OF 00°26'54"; THENCE CONTINUING ALONG SAID SOUTHERLY LINE SOUTH 89°48'13" EAST, 244.83 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING ALONG SAID SOUTHERLY LINE SOUTH 89°48'13" EAST, 322.43 FEET; THENCE DEPARTING SAID SOUTHERLY LINE SOUTH 00°01'05" EAST, 289.08 FEET; THENCE SOUTH 89°58'55" WEST, 322.52 FEET; THENCE NORTH, 290.29 FEET TO THE POINT OF BEGINNING.

Exhibit "B"

[Legal Description of Miller Property]

BEING A PORTION OF THE NORTHWEST QUARTER OF SECTION 34 TOWNSHIP 3 SOUTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN, SALT LAKE COUNTY, UTAH AND BEING DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTHWEST CORNER OF THE NORTHWEST QUARTER OF SAID SECTION 34; THENCE NORTH $89^{\circ}58'55''$ EAST, ALONG THE NORTH LINE OF SAID NORTHWEST QUARTER, 670.72 FEET; THENCE DEPARTING SAID NORTH LINE SOUTH $00^{\circ}01'05''$ EAST, 69.65 FEET TO A POINT ON THE EASTERLY RIGHT OF WAY LINE OF PARK AVENUE; THENCE NORTH $44^{\circ}46'29''$ EAST, 25.27 FEET TO A POINT ON THE SOUTHERLY RIGHT OF WAY LINE OF 12600 SOUTH STREET, SAID POINT BEING THE BEGINNING OF A NON-TANGENT CURVE CONCAVE SOUTHERLY AND HAVING A RADIUS OF 8157.00 FEET, RADIUS BEARS AT SAID POINT (SOUTH $00^{\circ}15'07''$ EAST); THENCE EASTERLY LONG THE ARC OF SAID CURVE COINCIDENT WITH THE SOUTHERLY LINE OF SAID 12600 SOUTH STREET, 63.83 FEET THROUGH A CENTRAL ANGLE OF $00^{\circ}26'54''$; THENCE CONTINUING ALONG SAID SOUTHERLY LINE SOUTH $89^{\circ}48'13''$ EAST, 244.83 FEET TO THE POINT OF BEGINNING; THENCE CONTINUING ALONG SAID SOUTHERLY LINE SOUTH $89^{\circ}48'13''$ EAST, 322.43 FEET; THENCE DEPARTING SAID SOUTHERLY LINE SOUTH $00^{\circ}01'05''$ EAST, 289.08 FEET; THENCE SOUTH $89^{\circ}58'55''$ WEST, 322.52 FEET; THENCE NORTH, 290.29 FEET TO THE POINT OF BEGINNING.

THIS PARCEL CONTAINS 2.145 ACRES OR 93,415 SQUARE FEET MORE OR LESS



Exhibit "C"

[Depiction of Miller Property and Johnson Property]

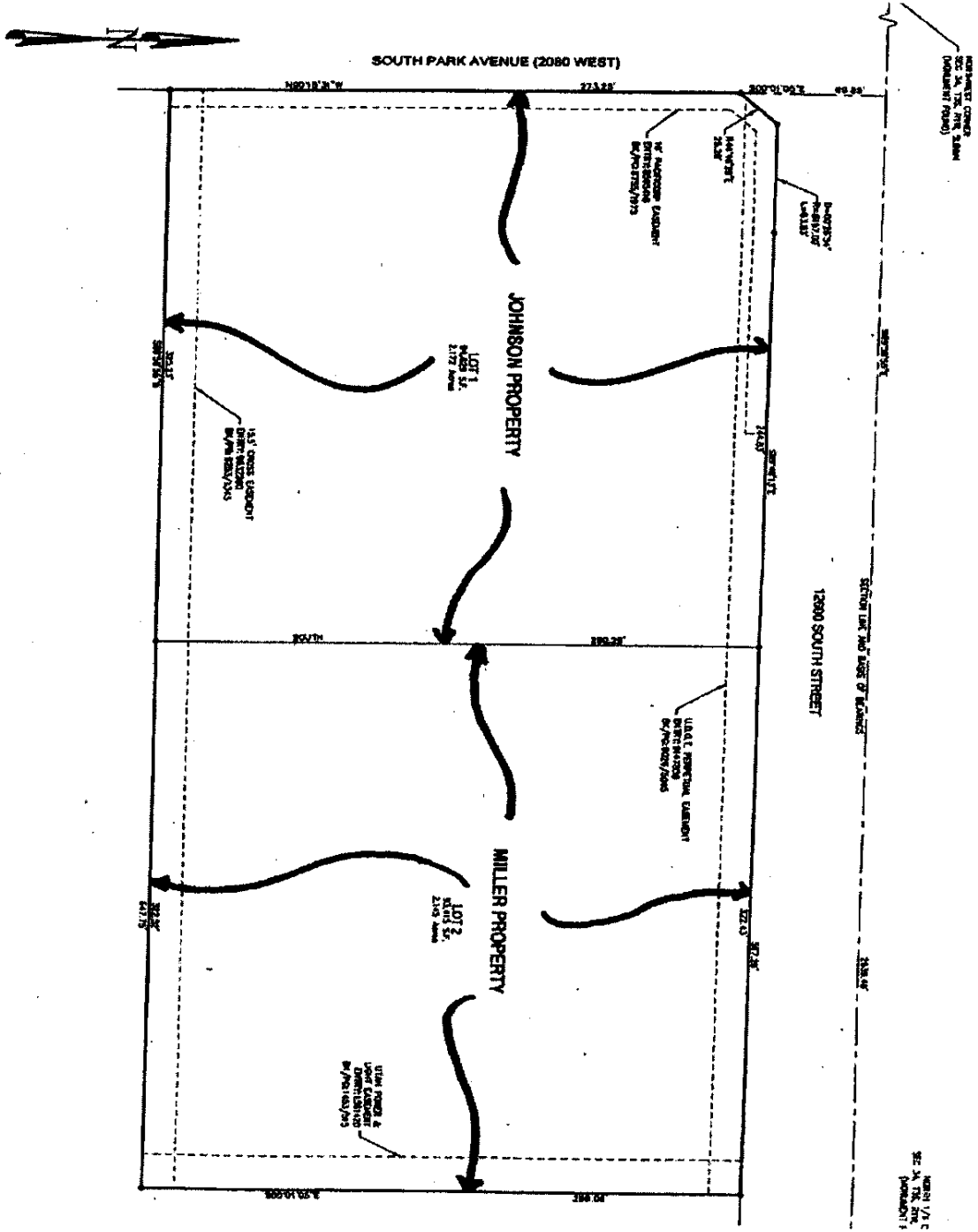
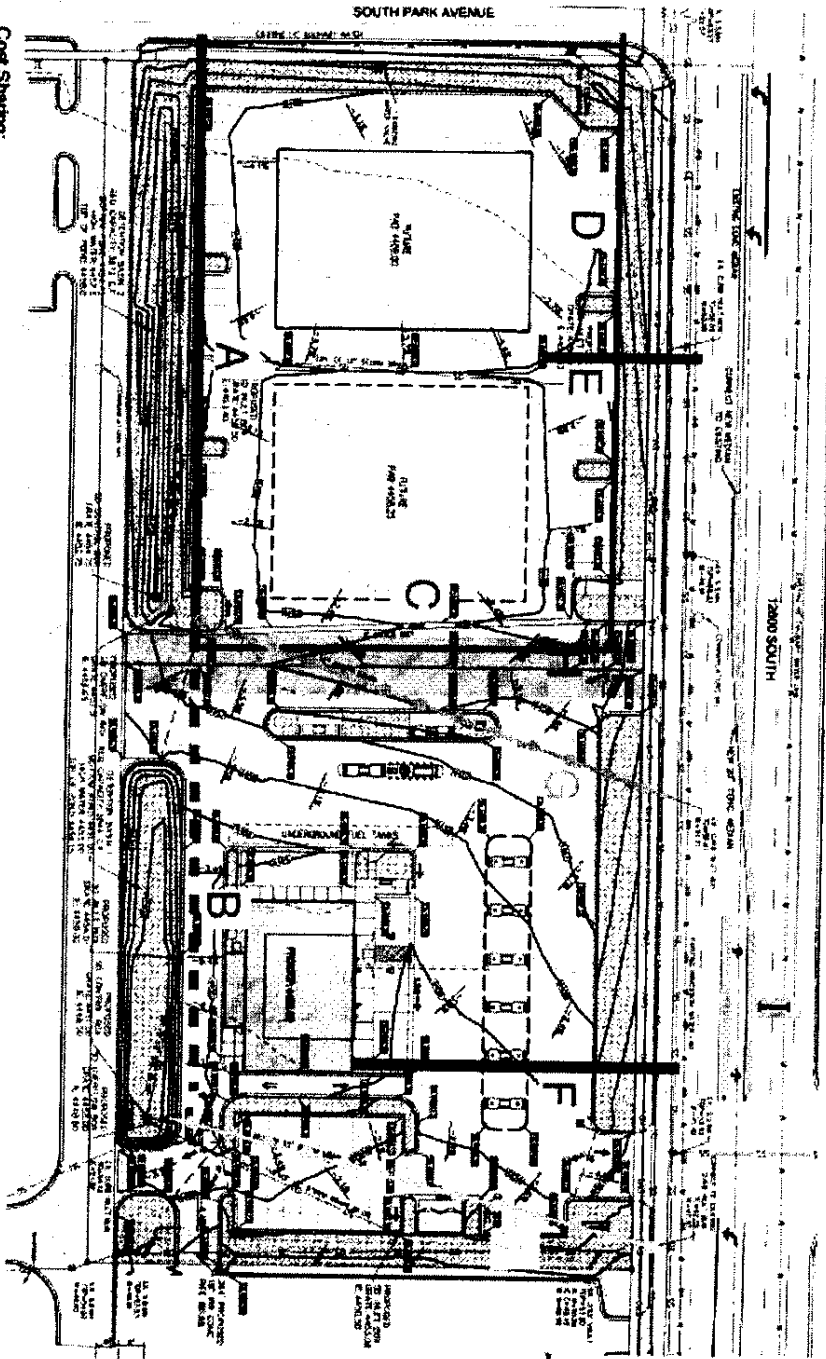


Exhibit "D"

[Improvements and Cost Sharing Ratios]

- Cost Sharing:**
- Water lines A, C & D = 50 / 50
 - Water line B = Miller
 - Sewer line E = Johnson
 - Sewer line F = Miller
 - Storm drain line G = Johnson
 - Diveway H = 50 / 50
 - Extend divider & setpup I = 50 / 50
 - Stormdrain J = Miller



[Handwritten signature]