AFTER RECORDING RETURN TO:

Cheryl Peacock Cottle, City Recorder City of Taylorsville 2600 West Taylorsville Blvd. Taylorsville, Utah 84129 11834118
04/16/2014 11:18 AM \$□.□□
Book - 10223 P9 - 9788-9810
GARY W. □TT
RECORDER, SALT LAKE COUNTY, UTAH
TAYLORSVILLE CITY
2600 TAYLORSVILLE BLVD
TAYLORSVILLE UT 84118-2208
BY: SSA, DEPUTY - WI 23 P.

Reciprocal Easement Agreement

THIS RECIPROCAL EASEMENT AGREEMENT (this "Agreement") is made effective April 10, 2014, by and among CITY OF TAYLORSVILLE, a Utah municipality, whose address is 2600 West 5400 South, Taylorsville, UT 84129 ("City"); FPA WEST POINT, LLC, a Delaware limited liability company, whose address is 3855 West 5400 South, Taylorsville UT 84129 ("West Point"); and AC PROPERTIES, L.C., a Utah limited liability company, whose address is 411 West 7200 South #400 P.O. Box 339, Midvale, UT 84047 ("AC").

RECITALS:

- A. City is the fee owner of two parcels of real property that are located at or near 3901 West 5400 South and 3891 West 5400 South, Taylorsville, Salt Lake County, Utah (the "City Parcels"). The City Parcels are more particularly described on exhibit "A" attached hereto.
- B. West Point is the fee owner of a parcel of real property that is located at or near 3855 West 5400 South, Taylorsville, Salt Lake County, Utah (the "West Point Parcel"). The West Point Parcel is more particularly described on exhibit "B" attached hereto.
- C. AC is the fee owner of a parcel of real property that is located at or near 3883 West 5400 South, Taylorsville, Salt Lake County, Utah (the "AC Parcel"). The AC Parcel is more particularly described on exhibit "C" attached hereto.
- D. The City Parcels, the West Point Parcel, and the AC Parcel are contiguous with each other (collectively, the "Parcels").
- E. The City is also in the process of a redevelopment project that will construct a new access road ("Access") to the development known as West Point Shopping Center that abuts the Parcels. A drawing showing the Access is attached as exhibit, "D."
- F. Consequently, the parties desire to create and reciprocally grant easements (the "Easements") across portions of the Parcels for the purposes specified in this Agreement.
- G. The parties intend to set forth herein their entire agreement concerning the Easements, and to consolidate herein and to supersede hereby all other negotiations and/or agreements, oral and/or written, concerning the Easements.

AGREEMENT:

- **NOW, THEREFORE,** in consideration of the premises and for other good and valuable consideration, the receipt and legal sufficiency of which is hereby acknowledged, the parties hereto agree as follows:
- Section 1. Reciprocal Grant of Access Rights. Subject to the terms and conditions specified in this Agreement, City, West Point, and AC hereby convey and grant to each other perpetual, reciprocal, nonexclusive vehicular rights-of-way and access easements, appurtenant to each of the Parcels, over, along, and across the drive lanes existing, from time to time, on said Parcels. Subject to the terms and conditions specified in this Agreement, City, West Point, and AC hereby convey and grant to each other perpetual, reciprocal, nonexclusive pedestrian rights-of-way and access easements, appurtenant to each of the Parcels, over, along, and across the sidewalks and other areas intended for pedestrian travel existing, from time to time, on said Parcels.
- Section 2. Reciprocal Grant of Cross Parking Rights. Subject to the terms and conditions specified in this Agreement, City, West Point, and AC hereby convey and grant to each other perpetual, reciprocal, nonexclusive easements for vehicle parking in spaces designated for parking as they may exist from time to time, appurtenant to each of the Parcels over, along, and across the Parcels.
- Section 3. <u>Nature of Easements</u>. The Easements shall exist for the purpose of allowing free and unimpeded parking of vehicles (in areas designated for parking) and free and unimpeded passage, ingress, and egress of vehicles (including delivery vehicles) and pedestrians among and between the Parcels and any aspect of and/or access to or from the Access accessible from anyone or more of the Parcels.
- Section 4. **No Interference.** Except to the extent necessary (on a temporary basis) for construction, for repair and maintenance, or to prevent a public dedication thereof or the accrual of any rights to the public therein, no fence, wall, barricade, or other obstruction, whether temporary or permanent in nature, which materially limits or impairs the free and unimpeded use of the Easements by the owners or occupants of any of the Parcels, or their respective employees, agents, customers, licensees, invitees, and heirs, successors, or assigns, shall be constructed or erected on any of the Parcels, nor shall any party in any other manner obstruct or interfere with the free flow of vehicular or pedestrian traffic on any portion of the Easements.
- Section 5. <u>Maintenance</u>. Each party shall, at its sole cost and expense, continue to maintain those portions of the Area Roadways located on that party's respective Parcel, keeping such area(s) free from snow, ice, rubbish, and other debris; and each party shall take such other actions in connection therewith as are commercially reasonable under the circumstances.
 - Section 6. **Duration**. The Easements granted herein shall be perpetual in duration.
- Section 7. <u>Not a Public Dedication</u>. Nothing contained in this Agreement shall be deemed to be a gift or dedication of any portion of any of the Parcels or the Easements to or for the general public or for any public purposes whatsoever, it being the parties' intention that this Agreement be strictly limited to and for the purposes expressed herein.

- Section 8. <u>Appurtenance to Parcels</u>. The Easements created hereby are appurtenant to each of the Parcels and may not be transferred, assigned, or encumbered, except as an appurtenance to such realty.
- Section 9. <u>Covenants Run With Land</u>. The Easements shall (a) create an equitable servitude on each of the Parcels in favor of each of the other Parcels; (b) constitute a covenant running with the land; (c) bind every person having any fee, leasehold, or other interest in any portion of any Parcel at any time or from time to time; and (d) inure to the benefit of and be binding upon City, West Point, and AC, and their respective successors and assigns as to their respective Parcels, as well as their respective guests, tenants, subtenants, licensees, etc.
- Section 10. <u>Relocation or Modification of Easements</u>. The Easements shall be relocated or modified to accommodate the needs of the Parties. Needs of the Parties means any valid business purpose, including, but not limited to, financing, refinancing, building improvements, relocations, reconfiguration, etc. Relocation or modification of the Easements shall not be unreasonably withheld and shall be given without consideration.
- Section 11. **No Partnership.** The parties do not by this Agreement in any way or for any purposes become partners or joint ventures with each other.
- Section 12. <u>Taxes</u>. The Easements do not release each party of its obligations to timely pay property taxes on their respective Parcels.
- Section 13. General Provisions. The following provisions are also an integral part of this Agreement:
- (a) <u>Binding Agreement</u>. This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the respective parties hereto.
- (b) <u>Captions</u>. The headings used in this Agreement are inserted for reference purposes only and shall not be deemed to define, limit, extend, describe, or affect in any way the meaning, scope, or interpretation of any of the terms or provisions of this Agreement or the intent hereof.
- (c) <u>Counterparts</u>. This Agreement may be signed in any number of counterparts with the same effect as if the signatures upon any counterpart were upon the same instrument. All signed counterparts shall be deemed to be one original.
- (d) <u>Severability</u>. The provisions of this Agreement are severable; and should any provision hereof be void, voidable, unenforceable, or invalid, such void, voidable, unenforceable, or invalid provision shall not affect the other provisions of this Agreement.
- (e) <u>Waiver of Breach</u>. Any waiver by either party of any breach of any kind or character whatsoever by the other, whether such be direct or implied, shall not be construed as a continuing waiver of, or consent to, any subsequent breach of this Agreement.

- (f) <u>Cumulative Remedies</u>. The rights and remedies of the parties hereto shall be construed cumulatively, and none of the rights and remedies shall be exclusive of, or in lieu or limitation of, any other right, remedy, or priority allowed by law.
- (g) <u>Amendment</u>. This Agreement may not be modified except by an instrument in writing signed by the parties hereto.
- (h) <u>Interpretation</u>. This Agreement shall be interpreted, construed, and enforced according to the substantive laws of the state of Utah.
- (i) <u>Attorneys' Fees</u>. In the event any action or proceeding is brought by any of the parties hereto regarding this Agreement, the prevailing party shall be entitled to recover its costs and reasonable attorneys' fees, whether such sums are expended with or without suit, at trial, on appeal, or in any bankruptcy or insolvency proceeding.
- (j) <u>Notice</u>. Any notice or other communication required or permitted to be given hereunder shall be deemed to have been received (a) upon personal delivery or actual receipt thereof or (b) within two (2) days after such notice is deposited in the United States mail, postage prepaid, and certified and addressed to the respective addresses set forth above or to such other address(es) as may be supplied by a party to the other from time to time in writing.
 - (k) <u>Time of Essence</u>. Time is the essence of this Agreement.
- (l) <u>Assignment</u>. Any party may assign or otherwise convey its rights or delegate its duties under this Agreement only in connection with the conveyance of fee title to its respective Parcel.
- Section 14. <u>Exception to Easements</u>. Notwithstanding any provision of this Agreement, the easements and other rights provided herein are for the limited uses of right-of-way, access and parking, as described herein, and shall in no event be interpreted as providing additional rights for any other use not expressly provided for herein.

By

DATED effective the date first above written.

CITY OF TAYLORSVILLE

ATTEST:

Cheryl Peacock Cottle, City Recorder

APPROVED:

. Brems, City Attorney

STATE OF UTAH

) SS:

COUNTY OF SALT LAKE

The foregoing instrument was acknowledged before me this #6 day of April 2014, by Jerry Rechtenbach and Cheryl Peacock Cottle, the Mayor and City Recorder of the City of Taylorsville, respectively.

FPA WEST POINT LLC

A Delaware Limited Liability Company

STATE OF CALIFORNIA **COUNTY OF SAN FRANCISCO**

On this 10th day of April, 2014 before me, Patti Harrison, notary public, personally appeared Michael B. Earl who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

Witness my hand and official seal.

Notary Public

PATTI HARRISON COMM. #1900664 Notary Public - California San Francisco County Comm. Expires Aug. 21

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A C PROPERTIES LC

A Utah Limited Liability Company

By: <u>Seorge D. Magan</u> George D. Morgan, General Manager

STATE OF UTAH

) ss:

COUNTY OF SALT LAKE)

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The foregoing instrument was acknowledged before me this 4 day of 2014 by George D. Morgan, as a manager of AC PROPERTIES LC, a Utah limited liability company.



Notary Public

Notary Public Residing at: 411 w. 72∞ So. #2∞ midrale UT 84047

Exhibit "A" to Reciprocal Easement Agreement

(Attach Legal Description and Property Tax Number of City Parcels)

Taylorsville 1

21-17-101-089

A parcel of land in fee situated in the Northwest Quarter of the Northwest Quarter of Section 17, Township 2 South, Range 1 West, Salt Lake Base and Meridian. The boundaries of said parcel of land are described as follows:

Beginning at the intersection of the southerly right of way line of 5400 South Street and the grantors westerly property line which is 690.00 feet North 89°56'30" East along the section line and 99.07 feet South 00°03'30" East from the Northwest corner of said Section 17; and running thence North 89°57'32" East 35.00 feet along said southerly right of way line of 5400 South Street; thence South 00°03'30" East 183.92 feet; thence South 89°56'30" West 35.00 feet; thence North 00°03'30" West 183.93 feet line to the point of beginning.

The above described parcel of land contains 6437 square feet or 0.148 acres.

Taylorsville 2

21-17-101-090

A parcel of land in fee, being part of an entire tract of land, situated in the Northwest Quarter of the Northwest Quarter of Section 17, Township 2 South, Range 1 West, Salt Lake Base and Meridian. The boundaries of said parcel of land are described as follows:

Beginning at a point on the grantors easterly property line which is 823.90 feet North 89°56'30" East along the section line and 247.73 feet South 00°03'30" East from the Northwest corner of said Section 17; and running thence South 00°03'30" East 35.27 feet along said easterly property line to the grantors southerly property line; thence South 89°56'30" West 98.90 feet along said southerly property line to the grantors westerly property line; thence North 00°03'30" West 183.93 feet along said westerly property line to the southerly right of way line of 5400 South street; thence North 89°57'32" East 4.91 feet along said southerly right of way line of 5400 South Street to a non-tangent point on a curve; thence southwesterly along the arc of a 44.00 foot radius curve to the left 5.85 feet (central angle equals 7°36'59" and long chord bears South 3°45'00" West 5.84 feet); thence South 00°03'30" East 74.41 feet to a point of curvature; thence southeasterly along the arc of a 68.50 foot radius curve to the left 107.82 feet (central angle equals 90°11'04" and long chord bears South 45°09'02" East 97.03 feet); thence North 89°45'26" East 25.66 feet to the point of beginning.

The above described part of an entire tract of land contains 5161 square feet or 0.119 acres.

A parcel of land in fee, being part of an entire tract of land, situated in the Northwest Quarter of the Northwest Quarter of Section 17, Township 2 South, Range 1 West, Salt Lake Base and Meridian. The boundaries of said parcel of land are described as follows:

Beginning at a point on the southerly right of way line of 5400 South Street which is 823.90 feet North 89°56'30" East along the section line and 64.10 feet South 00°03'30" East from the Northwest corner of said Section 17; and running thence South 00°03'30" East 183.63 fee; thence South 89°45'26" West 25.66 feet to a point of curvature; thence northwesterly along the arc of a 68.50 foot radius curve to the right 107.82 feet (central angle equals 90°11'04" and long chord bears North 45°09'02" West 97.03 feet); thence North 00°03'30" West 74.41 feet to a point of curvature; thence northeasterly along the arc of a 44.00 foot radius curve to the right 5.85 feet (central angle equals 7°36'59" and long chord bears North 3°45'00" East 5.84 feet) to said southerly right of way line of 5400 South Street; thence along said southerly right of way line of 5400 South Street three (3) courses as follows: (1) North 89°57'32" East 15.05 feet; (2) North 44°57'32" East 49.50 feet; (3) North 89°57'32" East 43.93 feet to the point of beginning.

The above described part of an entire tract of land contains 15178 square feet or 0.348 acres.

Exhibit "A-1"

Attach Map of City Parcels

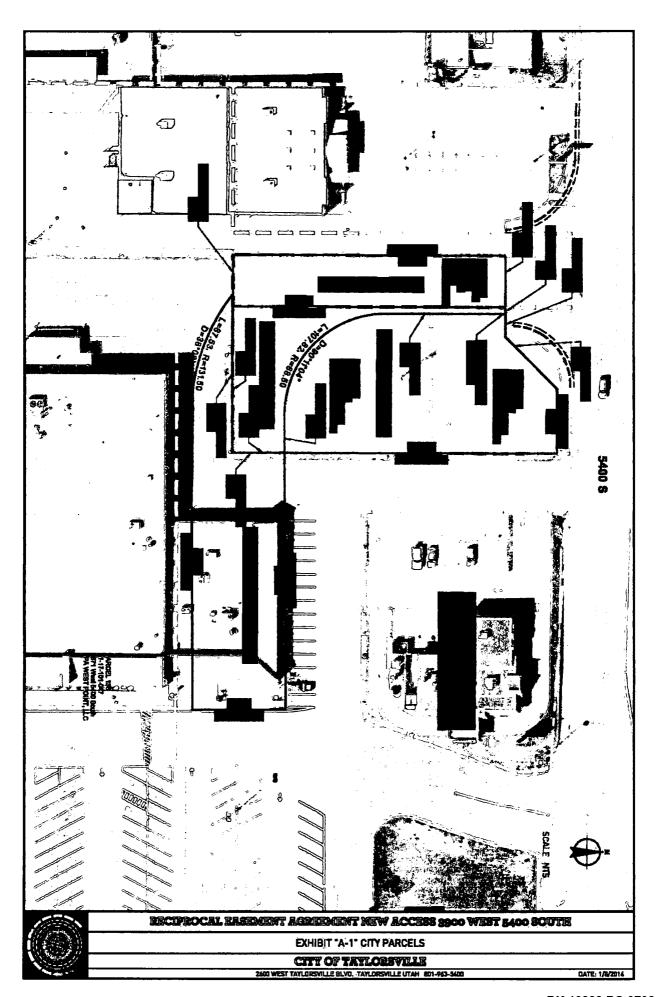


Exhibit "B" to Reciprocal Easement Agreement

(Attach Legal Description and Property Tax Number of West Point Parcel)

FPA West Point, LLC

21-17-101-074

A parcel of land in fee, being part of an entire tract of land, situated in the Northwest Quarter of the Northwest Quarter of Section 17, Township 2 South, Range 1 West, Salt Lake Base and Meridian. The boundaries of said parcel of land are described as follows:

Beginning at a point on the grantors westerly property line which is 823.90 feet North 89°56'30" East along the section line and 247.73 feet South 00°03'30" East from the Northwest corner of said Section 17; and running thence North 89°45'26" East 173.25 feet; thence South 00°14'38" East 63.00 feet; thence South 89°45'26" West 198.91 feet to a point of curvature; thence northwesterly along the arc of a 131.50 foot radius curve to the right 87.53 feet (central angle equals 38°08'16" and the long chord bears North 71°10'26" West 85.92 feet) to the grantors southerly property line; thence along said grantors property line two (2) courses as follows: (1) North 89°56'30" East 106.76 feet; (2) North 00°03'30" West 35.27 feet to the point of beginning.

The above described part of an entire tract of land contains 13174 square feet or 0.302 acres.

Exhibit "B-1"

Attach Map of West Point Parcels

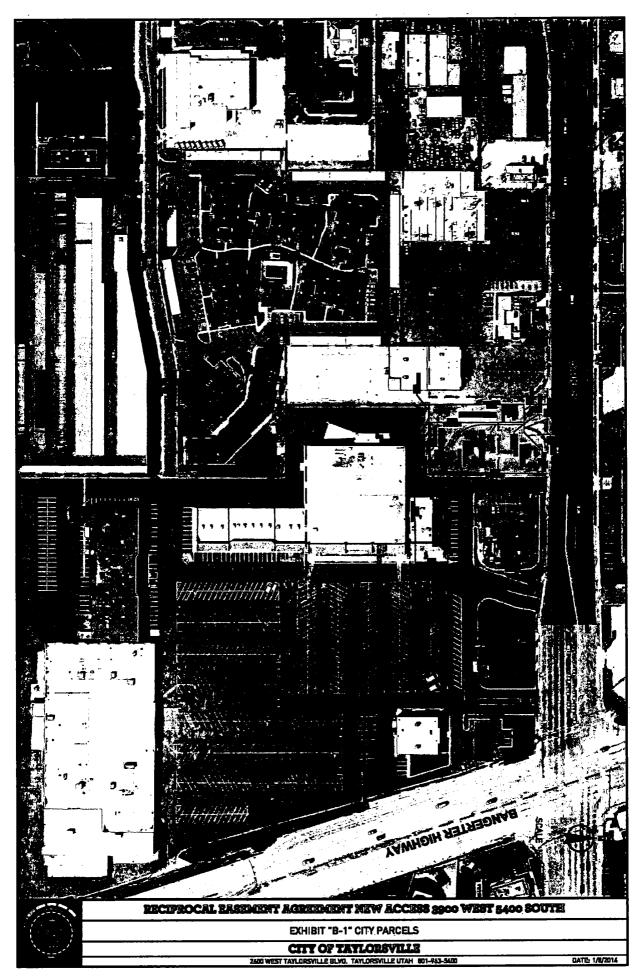


Exhibit "C" to Reciprocal Easement Agreement

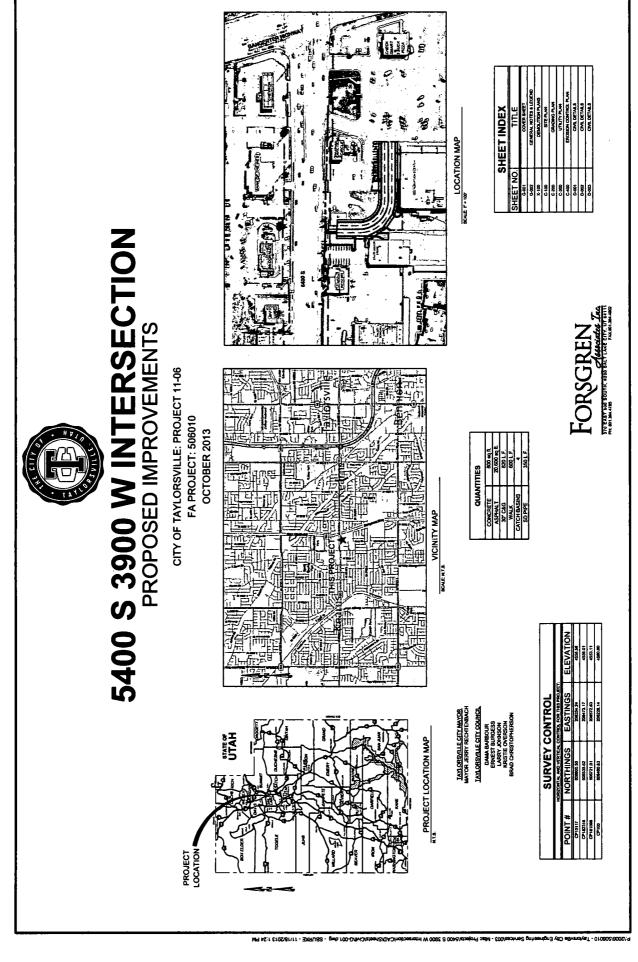
(Attach Legal Description and Property Tax Number of AC Parcel)

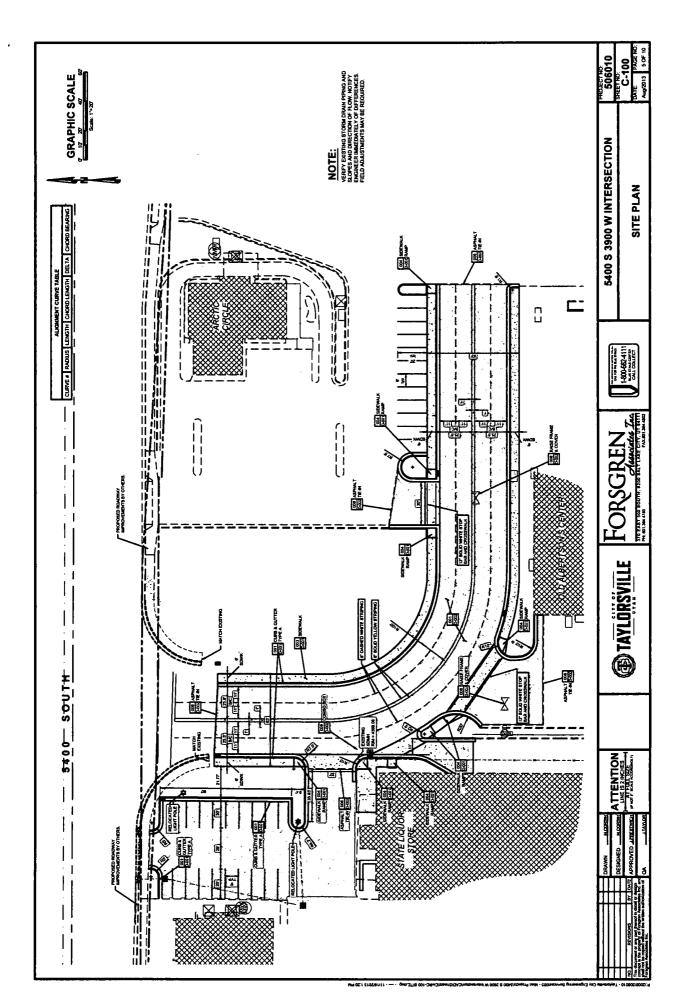
21-17-101-085

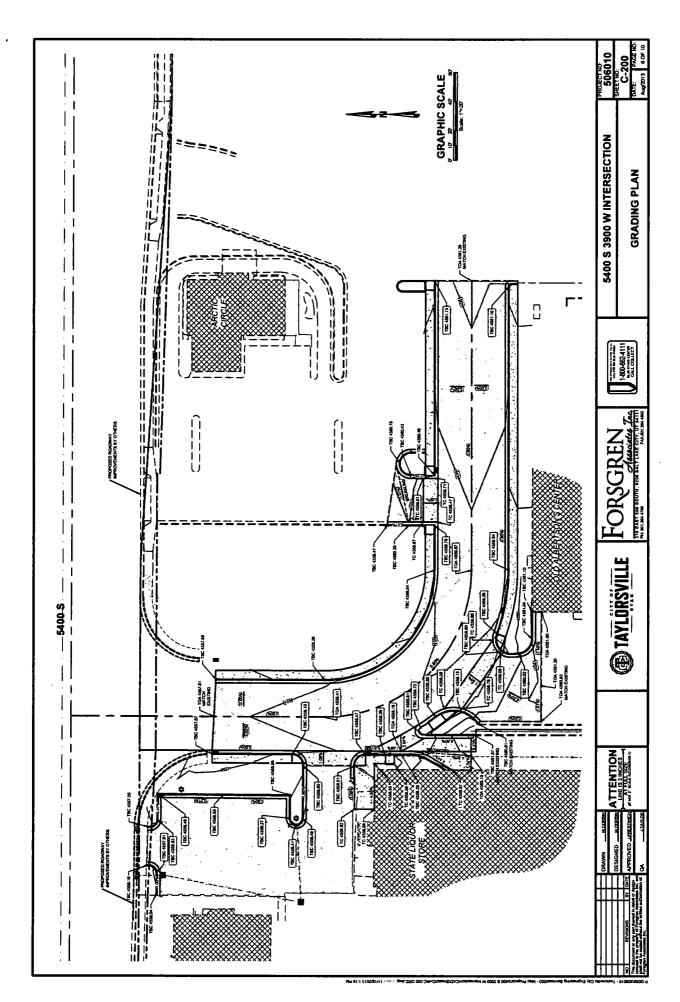
BEG N 89°56'30" E 863.9 FT & S 0°03'30" E 56.86 FT & S 86°25'15" E 116.15 FT FR NW COR SEC 17, T 2S, R 1W, SLM; S 86°25'52" E 55.11 FT M OR L; SE'LY ALG CURVE TO R 29.63 FT; S 19°08'16" W 102.02 FT; S 89°56'3 " W 138.72 FT; N 0°03'30"W 128.81 FT M OR L; N 89°57'32" E 115.91 FT TO BEG. 0.47 AC M OR L. 5427-1849 5608-1433 5608-1434 5687-1428 5859-0771 5885-478 6325-1546 6484-0489

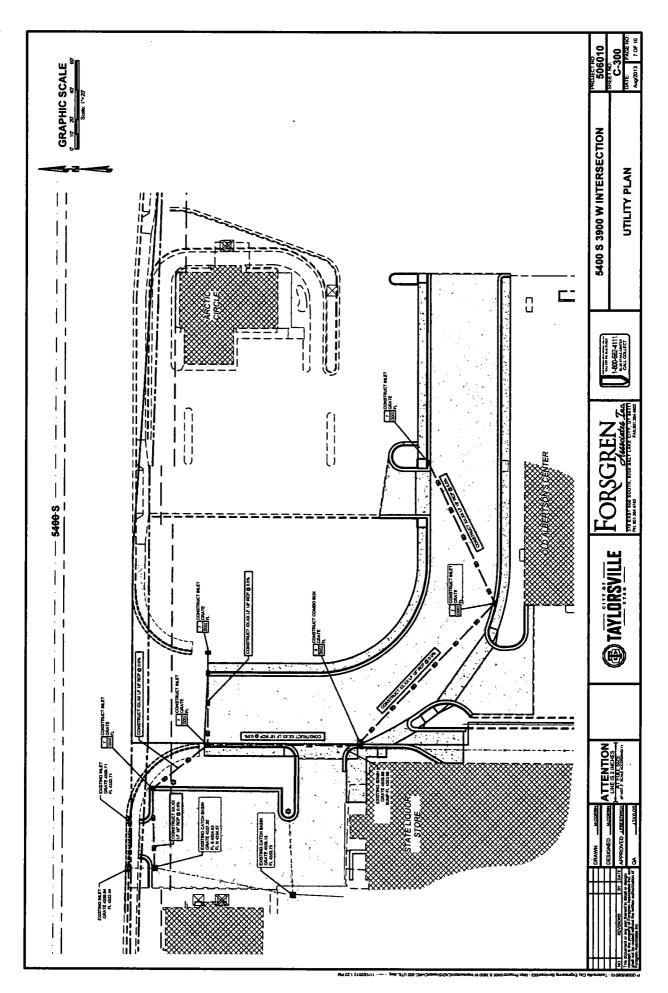
Exhibit "D" to Reciprocal Easement Agreement

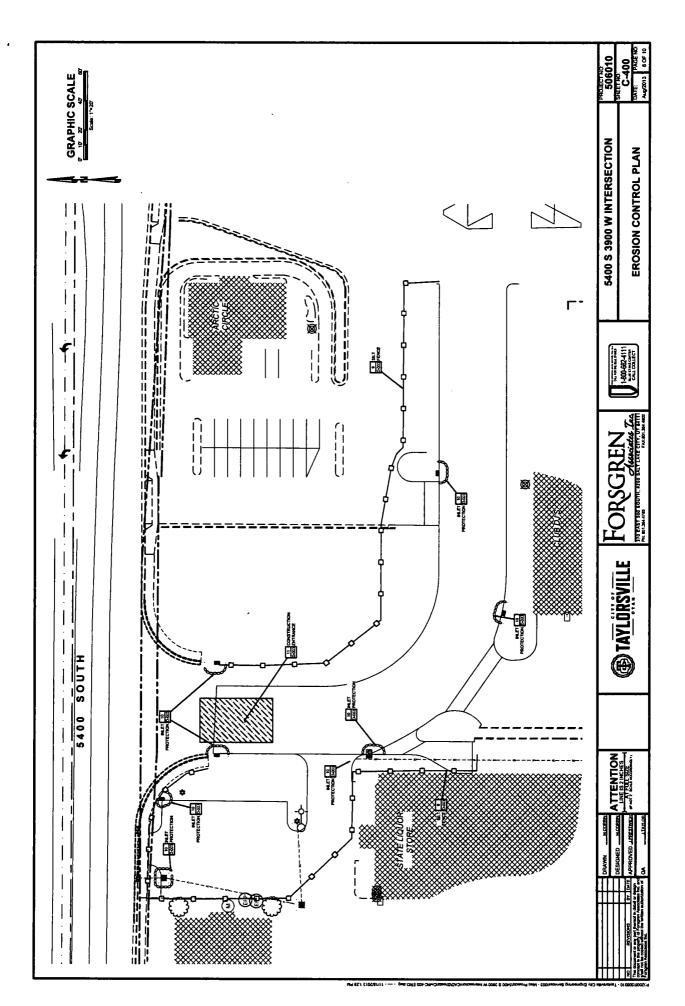
(Attach Drawing and Description of Access)











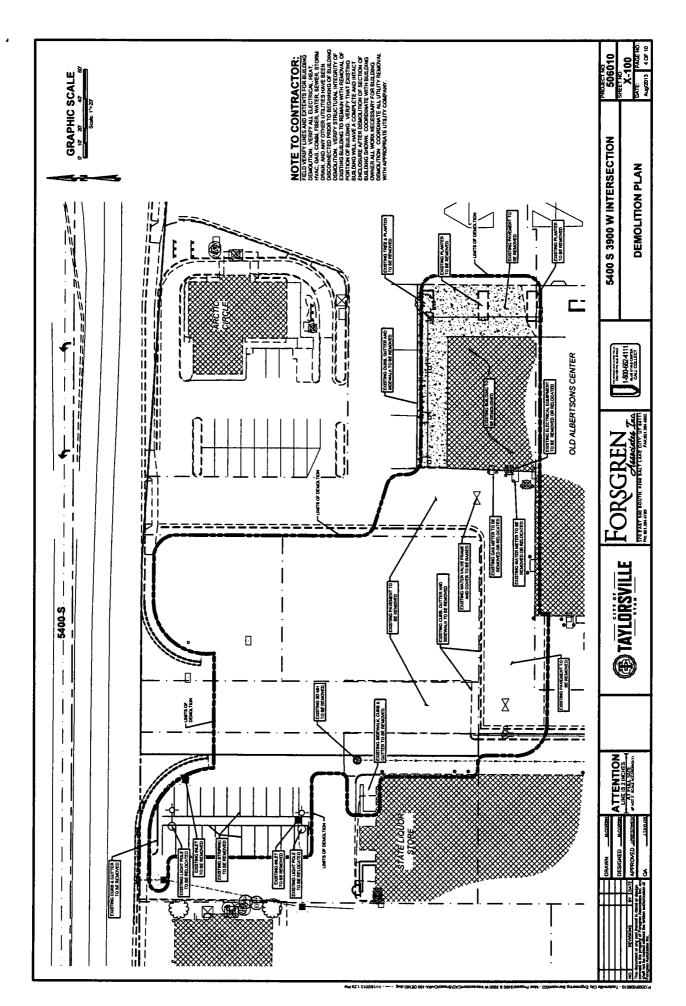


Exhibit "E" to Reciprocal Easement Agreement

(Attach Construction Schedule)

West Point Construction Schedule **Number of Days** Plan Development **Plan Review** 100% Plans **Bid Process** 21 **Bid Award** 7 . **Demolition** 45 Site Preparation 5 **Roadway Installation** 30 **Substantial Completion** 129