

## INGRESS AND EGRESS EASEMENT AND MAINTENANCE AGREEMENT

**THIS INGRESS AND EGRESS EASEMENT AND MAINTENANCE AGREEMENT** is entered into and made this 20 day of July, 2015, by and between L.H. Perry Investments, LLC, a Utah limited liability company (Grantor or Perry); and CMC Enterprises LLC, a Utah limited liability company (Grantee or Miller) (collectively, Parties) (Agreement).

### RECITALS

**WHEREAS** Grantor owns real property located in the City of Riverton, Salt Lake County, Utah, with a legal description of:

Lot 2,  
Fleming Subdivision Amended,  
City of Riverton,  
Salt Lake County,  
State of Utah  
*Tax Parcel 27-31-101-012*

as further described on attached Exhibit A and incorporated by reference (Perry Property); and

**WHEREAS** Grantee owns real property located in the City of Riverton, Salt Lake County, Utah, with a legal description of:

Lot 1,  
Fleming Subdivision Amended,  
City of Riverton,  
Salt Lake County,  
State of Utah  
*Tax Parcel 27-31-101-011*

as further described on attached Exhibit A and incorporated by reference (Miller Property); and

**WHEREAS**, in connection with Miller's purchase of the Miller Property, Perry has agreed to construct and convey to Miller, and its successors and assigns, for the benefit of the Miller Property, two non-exclusive permanent easements across the Perry Property as depicted on the approved Fleming Subdivision Amended development plat for the Miller and Perry Properties, recorded on August 4<sup>th</sup>, 2015 at Reception No. 1210529 with the Clerk and Recorder for Salt Lake County, Utah, attached as Exhibit A and incorporated by reference (Plat); and

**WHEREAS** the easements are more specifically identified on Exhibit A as the

- (i) Cross Access Easement in Favor of Lots 1 and 2 providing for pedestrian and vehicle ingress and egress to the Miller Property which will be utilized for general commercial and retail purposes (Driveway Easement); and

- (ii) 20' Ingress/Egress Easement in Favor of Lot 1 providing for pedestrian and vehicle ingress and egress to the Miller Property from 4570 West Street across the Perry Property to the Miller Property (Road Easement)

(collectively, Easements); and

**WHEREAS** Miller and Perry desire to set forth their agreement with respect to the construction and maintenance of the Easements;

**NOW, THEREFORE**, in consideration of the premises, mutual promises, and obligations set forth in this Agreement, and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, the Parties agree as follows:

1. **Easements.** Grantor grants and conveys to Grantee, its heirs, successors, and assigns, two (2) perpetual, non-exclusive ingress and egress access easements for pedestrian and vehicular traffic over those portions of the Perry Property described and designated as the Driveway Easement and Road Easement on the Plat attached as Exhibit A.

2. **Construction.** Grantor hereby agrees to construct, at its cost without contribution from the Grantee, the Driveway Easement and Road Easement in accordance with all applicable city, county, and state regulations and construction codes, including, without limitation, related curb, gutters, sidewalks, lighting, and landscaping, if any. The Easements shall be completed no later than the date of the issuance of a temporary or permanent certificate of occupancy for the building to be constructed by Grantee on the Miller Property. With respect to the Road Easement, Grantor reserves the right to initially construct a temporary roadway that will be subsequently improved to meet all applicable city, county, and state regulations and construction codes and made permanent on the further development of the Perry Property.

3. **Maintenance.** From time to time, maintenance on the Easements will be necessary, including, without limitation, snow and ice removal, and repair and replacement of surface, roadway markings, striping, curb, gutters, sidewalks, lighting, and landscaping, if any (Maintenance). Grantee agrees to pay Grantor an annual fee of One Thousand, Three Hundred Dollars (U.S. \$1,300) per year on September 1, 2016 and September 1, 2017 as Grantee's total obligation under this Section 3 for the initial three (3) year period of this Agreement.

Thereafter, Grantor, Grantee, and all other entities to whom Grantor subsequently grants rights of use of the Easements (Benefited Parties) shall share on a *pro rata* basis in all Maintenance costs based on an estimated percentage of each of the Benefited Parties' use of the Easements as determined in the reasonable discretion of the Grantor and Grantee. Grantor shall perform, or cause to be performed, the required Maintenance and invoice the Benefited Parties for their *pro rata* share of all Maintenance costs, which invoice shall be payable within fifteen (15) calendar days. In the event of disagreement amongst the Benefited Parties under this Section 3, such disagreement shall be submitted to binding arbitration before a single arbitrator in Riverton, Utah, all expenses of which shall be borne equally by the Benefited Parties.

Grantor reserves the right to close off the Easements for such reasonable periods of time as may be required in connection with any necessary repairs to the Easements. Grantor shall give written notice to Grantee before any such temporary closing of the Easements and

shall coordinate the closing so that there is no unreasonable interference with the flow of traffic across the Easements to the Miller Property.

4. **Damage to Easements.** Grantor and Grantee shall each be responsible for any damage they or their invitees or guests may cause to the Easements, normal wear and deterioration excluded. The party responsible for such damage shall promptly make all needed repairs, restoring the Easements to their condition prior to the damage and shall indemnify the other party from such claims and damages.

5. **Obstruction to Easements.** Neither the Grantor nor the Grantee nor any person permitted to use the Easements under the terms of this Agreement may utilize the Easements in a way that interferes with its use by any other person permitted to use it. Any obstructions or impediments to the use of the Easements shall be removed, without notice, by the Grantee or Grantor, and the cost of such removal shall be borne by the party responsible for causing such obstruction.

6. **Enforcement of the Agreement.** The Grantor and Grantee shall have the right to legally enforce this Agreement and the covenants, conditions, and restrictions set forth in this Agreement by whatever actions are available at law or in equity, including, without limitation, enjoining any violation or threatened violation of this Agreement.

7. **Easements Appurtenant.** The covenants, easements and restrictions granted in this Agreement are perpetual, appurtenant to the Miller Property, and run with the land and are binding upon and inure to the benefit of Grantee and Grantor, and their respective successors and assigns.

8. **Reservation of Rights.**

a. Grantor reserves the right to use the Perry Property for any purpose not inconsistent with the rights granted in this Agreement, including, without limitation, granting other rights and easements in the Easements, provided that the additional use of the Easements will not interfere with Grantee's right to unrestricted ingress and egress to the Miller Property for its commercial and retail business operations.

b. Grantor reserves the right, at no cost to Grantee, to realign or otherwise modify the location of the Easements (Modification) provided any change to the existing configurations and locations of the Easements does not materially affect the quality of the access to the Miller Property and Grantee's right to unrestricted ingress and egress to the Miller Property for its commercial and retail business operations.

9. **Miscellaneous.**

a. **Time of the Essence.** Time is of the essence under this Agreement.

b. **Governing Law.** This Agreement shall be construed under and governed by the laws of the State of Utah.

c. **Severability.** In case any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision

and this Agreement shall be construed as if such invalid, illegal, or unenforceable provisions had never been contained within the Agreement.

d. **Further Acts.** Each of the parties covenants and agrees with the other, upon reasonable request from the other, from time to time, to execute and deliver such additional documents and instruments and to take such other actions as may be reasonably necessary to give effect to the provisions of this Agreement.

e. **Attorneys' Fees.** Anything to the contrary herein notwithstanding, in the event of any litigation or agreed upon arbitration or mediation proceedings between the parties concerning the subject matter of this Agreement, the prevailing party in the litigation or other proceedings shall be entitled to receive from the defaulting party, in addition to the amount of any judgment or other award entered, all reasonable costs and expenses, including reasonable attorneys' fees, incurred by the prevailing party in the litigation or other proceedings.

f. **Compliance.** The performance by the parties of their respective obligations provided for in this Agreement shall be in strict compliance with all applicable laws and the rules and regulations of all governmental agencies, municipal, county, state and federal, having jurisdiction in the premises.

g. **Authority.** Each of the parties represents to the other that each such party has full power and authority to execute, deliver, and perform this Agreement, that the individuals executing this Agreement on behalf of said party are fully empowered and authorized to do so, that this Agreement constitutes a valid and legally binding obligation of such party enforceable against such party in accordance with its terms, that such execution, delivery, and performance will not contravene any legal or contractual restriction binding upon such party or any of its assets and that there is no legal action, proceeding, or investigation of any kind now pending or to the knowledge of such parties threatened against or affecting such party or the execution, delivery, or performance of this Agreement.

h. **Notices.** Any and all notices or demands provided for herein shall be in writing and shall be deemed effectively given or made on the date served upon the party to be notified personally; or three days after being deposited in the United States mail registered or certified mail, return receipt requested, postage prepaid; or one day after deposit or delivery to a reputable overnight courier, prepaid, receipt acknowledged, to the address of such party set forth herein or to such other address as such party may last have designated by notice. Rejection or refusal to accept delivery or the inability to deliver because of changed address of which no notice was given shall be deemed to be receipt of notice as of the date such notice was deposited in the mail or delivered to the courier.

i. **Place of Business.** This Agreement arises out of the transaction of business in Salt Lake County, Utah.

j. **Not a Public Dedication.** Nothing contained in this Agreement shall be deemed or construed to be a gift or dedication of any portion of the Perry Property or the Miller Property to the general public or for any public use or purpose whatsoever. Except as herein specifically provided, no right, privileges or immunities of any party

hereto shall inure to the benefit of any third party, nor shall any third party be deemed to be a beneficiary of any of the provisions contained herein.

k. **Insurance.** Grantor and Grantee shall obtain and maintain public liability insurance in an amount not less than \$1,000,000.00 for personal injury and \$50,000.00 for property damage to cover the liability of Grantor and/or Grantee for any damage or injury occurring on the Easements. The Grantor and Grantee shall be named insureds under each other's respective policy and shall waive subrogation against each other for any insured losses or claims.

l. **Amendment.** This agreement may be amended only with the written consent of Grantor and Grantee. Any amendment shall be recorded in the records of the Clerk and Recorder for Salt Lake County, Utah.

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

**GRANTOR:**

**L.H. PERRY INVESTMENTS, LLC**  
a Utah limited liability company

By: [Signature]  
William O. Perry, IV  
Its Manager

**GRANTEE:**

**CMC ENTERPRISES LLC**  
a Utah limited liability company

By: [Signature]  
David L. Critchlow  
Its Manager

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

**SUBSCRIBED, SWORN TO and ACKNOWLEDGED** before me this 30 day of ~~June~~ <sup>July</sup> 2015, by William O. Perry, IV, as the Manager of L.H. Perry Investments, LLC.

Witness my hand and seal.  
My commission expires Feb. 08, 2019

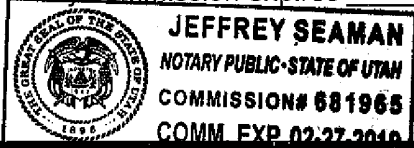
[Signature]  
Notary Public

STATE OF COLORADO ~~UTAH~~ )  
 ) ss.  
COUNTY OF SALT LAKE )



**SUBSCRIBED, SWORN TO and ACKNOWLEDGED** before me this 14 day of June 2015, by David L. Critchlow as the Manager of CMC Enterprises LLC.

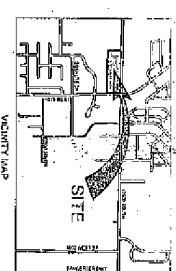
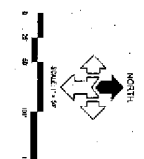
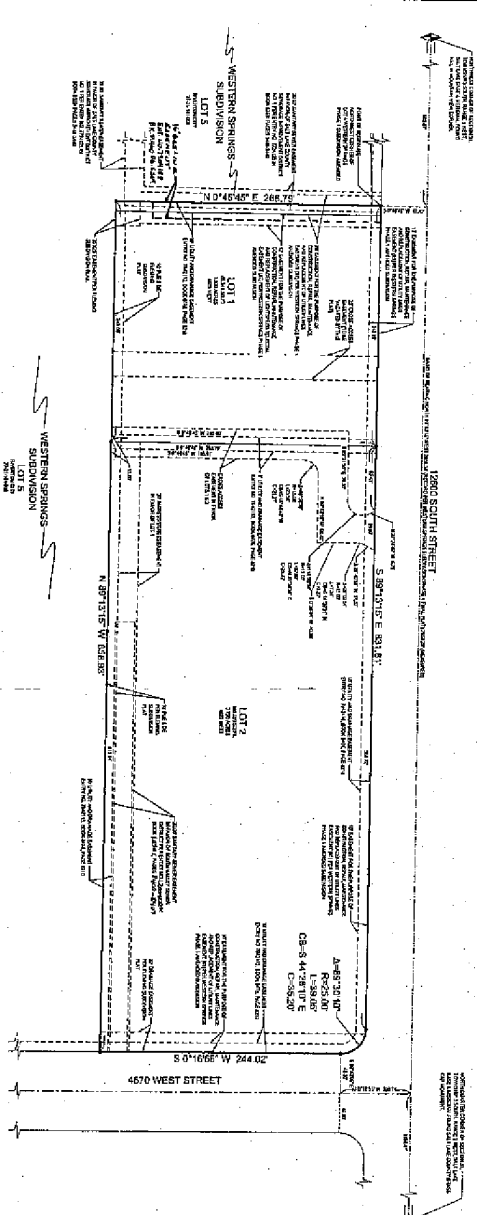
Witness my hand and seal.  
My commission expires 02/21/19



[Signature]  
Notary Public

# FLEMING SUBDIVISION AMENDED

OWNER: SOUTHWESTERN PARTNERS OF KENTON, TENNESSEE  
 ENGINEER: MCNEIL ENGINEERING, INC.  
 PROJECT: SOUTHWESTERN PARTNERS SALT LAKE COUNTY, UTAH



**LEGEND**

(Symbol)	EXISTING EASEMENTS
(Symbol)	PROPOSED EASEMENTS
(Symbol)	PROPOSED LOT LINES
(Symbol)	PROPOSED LOT AREAS
(Symbol)	PROPOSED LOT DIMENSIONS
(Symbol)	PROPOSED LOT CORNERS
(Symbol)	PROPOSED LOT PERIMETERS
(Symbol)	PROPOSED LOT INTERIORS
(Symbol)	PROPOSED LOT EXTERIORS
(Symbol)	PROPOSED LOT INTERIORS AND EXTERIORS
(Symbol)	PROPOSED LOT INTERIORS, EXTERIORS AND PERIMETERS
(Symbol)	PROPOSED LOT INTERIORS, EXTERIORS, PERIMETERS AND DIMENSIONS
(Symbol)	PROPOSED LOT INTERIORS, EXTERIORS, PERIMETERS, DIMENSIONS AND CORNERS
(Symbol)	PROPOSED LOT INTERIORS, EXTERIORS, PERIMETERS, DIMENSIONS, CORNERS AND AREAS

**NOTES**

1. THIS PLAN SHOWS THE PROPOSED LOTS AND EASEMENTS FOR THE FLEMING SUBDIVISION AMENDED. THE LOTS ARE TO BE CREATED BY THE DEPARTMENT OF HERITAGE AND ARTS, SALT LAKE COUNTY, UTAH.
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**QUESTIONS NOTE**

ALL INFORMATION ON THIS PLAN IS BASED ON THE RECORDS OF THE DEPARTMENT OF HERITAGE AND ARTS, SALT LAKE COUNTY, UTAH. THE INFORMATION IS NOT TO BE USED FOR ANY OTHER PURPOSES WITHOUT THE WRITTEN CONSENT OF THE ENGINEER.

SHEET 1 OF 1

**COUNTY HEALTH DEPARTMENT**  
 DIVISION: HEALTH SERVICES  
 PROJECT: FLEMING SUBDIVISION AMENDED  
 DATE: 08/15/2017

**INVESTMENT CITY WATER DEPARTMENT**  
 DIVISION: WATER SERVICES  
 PROJECT: FLEMING SUBDIVISION AMENDED  
 DATE: 08/15/2017

**INVESTMENT CITY PLANNING**  
 DIVISION: PLANNING  
 PROJECT: FLEMING SUBDIVISION AMENDED  
 DATE: 08/15/2017

**SOUTH VALLEY SEWER DISTRICT**  
 DIVISION: SEWER SERVICES  
 PROJECT: FLEMING SUBDIVISION AMENDED  
 DATE: 08/15/2017

**INVESTMENT CITY ENGINEER**  
 DIVISION: ENGINEERING  
 PROJECT: FLEMING SUBDIVISION AMENDED  
 DATE: 08/15/2017

**APPROVAL AS TO FORM**  
 PROJECT: FLEMING SUBDIVISION AMENDED  
 DATE: 08/15/2017

**INVESTMENT CITY COUNCIL**  
 DIVISION: COUNCIL  
 PROJECT: FLEMING SUBDIVISION AMENDED  
 DATE: 08/15/2017

**SALT LAKE COUNTY RECORDER**  
 DIVISION: RECORDING  
 PROJECT: FLEMING SUBDIVISION AMENDED  
 DATE: 08/15/2017

**McNEIL ENGINEERING**  
 1000 WEST 1000 SOUTH  
 SALT LAKE CITY, UT 84119  
 TEL: 313.222.1111  
 FAX: 313.222.1112  
 WWW.MCNEIL-ENGINEERING.COM

**McNEIL ENGINEERING**  
 PROJECT: FLEMING SUBDIVISION AMENDED  
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