

PREPARED BY AND WHEN RECORDED
RETURN TO:

12228901
2/25/2016 4:42:00 PM \$24.00
Book - 10405 Pg - 8666-8672
Gary W. Ott
Recorder, Salt Lake County, UT
MERIDIAN TITLE
BY: eCASH, DEPUTY - EF 7 P.

1010 STERLING, LLC
1010 Sterling, LLC
1528 Evergreen Lane
Salt Lake City, UT 84106

Attn: Scott Turville

**Re-executed Febuary 25, 2016 for the purpose of
Re-recording to correct the legal descriptions on that
Agreement Recorded 2/12/2016 as Entry #12221774**

(Space Above For Recorder's Use)

ACCESS AND USE AGREEMENT

****corrective****

This Access and Use Agreement (the "Agreement") in entered into this 11th day of February, 2016 by and between 1010 STERLING, LLC, a Utah limited liability company ("Sterling"), and The UTAH DEPARTMENT OF TRANSPORTATION ("UDOT"). Sterling and UDOT may be referred to together in this Agreement as the "Parties."

RECITALS

WHEREAS, Sterling has purchased from UDOT certain real property located in Salt Lake County, State of Utah (the "Property"), more particularly described in Exhibit A, attached hereto and incorporated herein; and

WHEREAS, UDOT owns certain real estate adjacent to the Property ("Adjacent Property"), more particular described in Exhibit B, attached hereto and incorporated herein, upon which UDOT operates and maintains certain fiber optic facilities (the "Fiber Optic Facilities"); and

WHEREAS, the Parties have agreed that Sterling shall grant to UDOT access over and across the Property for the purpose of operating and maintaining the Fiber Optic Facilities; and

WHEREAS, UDOT owns and operates an underground electrical power distribution line (the "Power Line"), which is located on, across or under the Property; and

WHEREAS, Sterling has agreed to grant UDOT permission to continue use and maintenance of the Power Line on, across or under, subject to the provisions of this Agreement; and

WHEREAS, Sterling has agreed to grant UDOT access over and across the Property for the purpose of operation and maintenance of the Power Line; and

WHEREAS, The Parties wish to set forth the terms and conditions of UDOT's access to the Fiber Optic Facilities and access to, and use of the Power Line.

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **Access to the Fiber Optic Facilities.**

- a. Sterling hereby grants to UDOT a non-exclusive right of ingress and egress on, over and across the Property from Wasatch Boulevard (the "Right of Access") for the purpose of accessing the Fiber Optic Facilities. The Right of Access shall be a minimum of twenty five feet (25') in width and shall include a turnaround with a minimum radius of forty feet (40').
- b. The initial location of the Right of Access shall be along and contiguous with the northerly boundary line of the Property. In order to accommodate development of the Property, Sterling may designate a reasonable and practical alternative location for the Right of Access. Sterling shall bear all costs of relocating the Right of Access to facilitate development of the Property.

2. **Access to, and Use of the Power Line.**

- a. Sterling hereby grants to UDOT permission to operate and maintain the Power Line across or under the Property. Provided, however that the Power Line must be used for the same purpose and be in substantially the same form as it is at the time of the execution of this Agreement.
- b. The initial location of the Power Line shall be where it is located at the time of the execution of this Agreement. In order to accommodate development of the Property, Sterling may designate a reasonable and practical alternative location for the Power Line. Sterling shall bear all costs of relocating the Power Line to facilitate development of the Property
- c. Sterling hereby grants to UDOT a non-exclusive right of ingress and egress on, over and across the Property from Wasatch Boulevard for the maintenance and operation of the Power Line (the "Power Line Access"). The Power Line Access shall be a minimum of twenty five feet (25') in width and shall include a turnaround with a minimum radius of forty feet (40').
- d. Sterling shall designate a reasonable and practical location for the Power Line Access. In order to accommodate development of the Property, Sterling may designate a reasonable and practical alternative location for the Power Line Access. Sterling shall bear all costs of relocating the Power Line Access to facilitate development of the Property.

3. **Adjacent Property.** Sterling and UDOT have entered into that certain Option Agreement, wherein UDOT has granted an option to Sterling to purchase any or all of the Adjacent Property. Upon Sterling's purchase or other acquisition of the Adjacent

Property, UDOT hereby acknowledges and agrees that the same rights, interests, duties and obligations with respect to Sterling's right to designate a reasonable and practical alternative location for the Right of Access, the Power Line and the Power Line Access, shall also be applicable to the Adjacent Property. Sterling shall bear all costs of relocating the Right of Access, the Power Line and the Power Line Access to facilitate development of the Adjacent Property.

4. **No interference.** Sterling shall not develop the Property or locate the Right of Access, the Power Line or the Power Line Access in such a way as to prevent or unreasonably interfere with UDOT's use and enjoyment of the rights granted by this Agreement. Likewise, UDOT shall not use the Right of Access, the Power Line or the Power Line Access in any way that unreasonably or interferes with the development or use of the Property by Sterling.
5. **Termination.** The Right of Access, the Power Line and the Power Line Access, together with the applicable easements which they serve, shall terminate automatically following their abandonment or upon UDOT's determination that they are no longer necessary or upon mutual agreement of the Parties. The Parties agree that, upon reasonable notice, they shall execute all other documents, if any, necessary to effect the provisions of this Agreement, including without limitation documents necessary to effect the termination of the Right of Access, the Power Line and the Power Line Access, together with the applicable easements which they serve, consistent with the provisions of this paragraph 5 and this Agreement.
6. **General Provisions.**
 - a. **Counterparts.** This Agreement may be executed in counterparts, each of which shall be considered an original.
 - b. **Entire Agreement.** This Agreement comprises the entire agreement between the Parties and supersedes any prior agreements or understandings. No representation, statement or condition not contained in this Agreement, has any force or effect.
 - c. **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the successors and assigns of the Parties.

[Signatures to follow on next page]

IN WITNESS WHEREOF, said the undersigned have caused this Agreement to be executed this 10th day of February, 2016.

UTAH DEPARTMENT OF TRANSPORTATION

By: [Signature]
Director of Right of Way

Re-executed February 25th 2016 for the purpose of Re-recording to correct the legal descriptions:

UTAH DEPARTMENT OF TRANSPORTATION

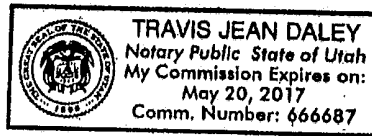
By: [Signature]
Director of Right of Way
(see acknowledgment on following page)

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

On the date first above written personally appeared before me, LYNNE McMICHAEL, who, being by me duly sworn, did say that he is the Director of Right of Way, and he further acknowledged to me that said instrument was signed by him in behalf of said UTAH DEPARTMENT OF TRANSPORTATION.

WITNESS my hand and official stamp the date in this certificate first above written

[Signature]
Notary Public



1010 STERLING, LLC

Re-executed February 25, 2016 for the purpose of Re-recording to correct the legal descriptions:

By: [Signature]
Manager

1010 STERLING, LLC

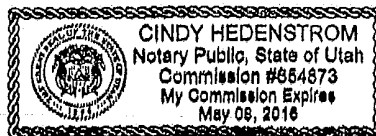
By: [Signature]
Scott Turville, Manager
(see acknowledgment on following page)

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

On the date first above written personally appeared before me, 114h, who, being by me duly sworn, did say that he is a Manager of 1010 Sterling, LLC, a Utah limited liability company, and he further acknowledged to me that said instrument was signed by him on behalf of said limited liability company.

WITNESS my hand and official stamp the date in this certificate first above written.

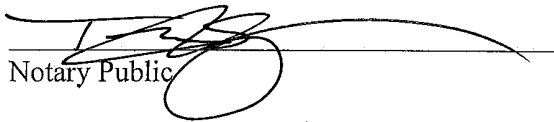
[Signature]
Notary Public

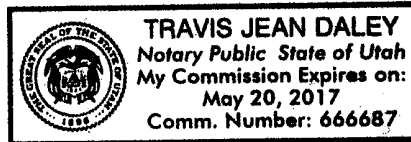


STATE OF UTAH)
 :SS
COUNTY OF SALT LAKE)

On the 25th day of February, 2016 personally appeared before me LYLE McMILLAN, who, being by me duly sworn, did say that he is the Director of Right of Way, and he further acknowledged to me that said instrument was signed by him in behalf of said UTAH DEPARTMENT OF TRANSPORTATION for the purpose of re-recording to correct the legal descriptions.

WITNESS my hand and official stamp this 25th day of February, 2016.

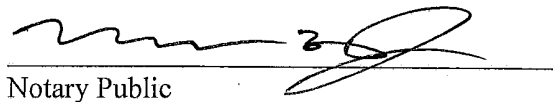

Notary Public



STATE OF UTAH)
 :SS
COUNTY OF SALT LAKE)

On the 25 day of February, 2016 personally appeared before me Scott Turville, who, being by me duly sworn, did say that he is a Manager of 1010 Sterling, LLC, a Utah limited liability company, and he further acknowledged to me that said instrument was signed by him on behalf of said limited liability company for the purpose of re-recording to correct the legal descriptions.

WITNESS my hand and official stamp this 25 day of February, 2016.


Notary Public

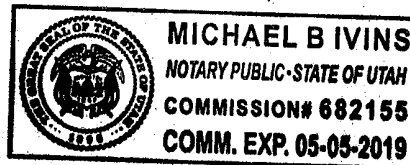


EXHIBIT A

Legal Description

An entire tract of property situate in the NE1/4SE1/4 of Section 35, Township 1 South, Range 1 East, Salt Lake Base and Meridian. The boundary of said tract of land is described as follows: Beginning at the intersection of the westerly right of way line of Wasatch Boulevard and the south line of said NE1/4SE1/4, which point is 50 feet West from the ~~Southeast~~ corner of said NE1/4SE1/4 and running thence West 230.00 feet; thence North 00°13'44" East 80.00 feet along a line which is parallel with and 230.00 feet perpendicularly distant westerly from said westerly right of way line of Wasatch Boulevard to the southerly Non-Access (N/A) Line of the Interstate 215 (I-215) on ramp; thence East 100.16 feet along said N/A Line; thence North 72°53'50" East 136.02 feet along said N/A Line to the said westerly right of way line of Wasatch Boulevard; thence South 00°13'44" West 120.00 feet to the point of beginning.

Tax Parcel No. 16-35-481-001

EXHIBIT B

UDOT "GAP PARCEL"

BEG N 1320 FT M OR L & W 214.5 FT FR SE COR SC 35, T1S, R1E SLM; W 141 FT M OR L TO EAST LINE STATE ROAD; S 613 FT M OR L; S LY ALG A CURVE TO R 470.8 FT; S $34^{\circ}28'44''$ E 85.09 FT; NE LY ALG A CURVE TO R 110 FT M OR L TO A PT S FR PT OF BEG; N TO BEG. LESS & EXCEPT BEG W 356 FT M OR L & S 613 FT M OR L; SW'LY ALG A 3883.72 FT RADIUS CURVE TO R 389.60 FT (CHD S $2^{\circ}52'26''$ W 389.43 FT) FR NE COR OF SE 1/4 OF SE 1/4 OF SEC 35, T1S, R1E, SLM; S'LY ALG A 3883.72 FT RADIUS CURVE TO R 81.20 FT (CHD S $6^{\circ}20'48''$ W 81.20 FT); S $34^{\circ}28'44''$ E 20.04 FT; S $67^{\circ}11'28''$ E 82.50 FT; NE'LY ALG A 229.82 FT RADIUS CURVE TO R 74.19 FT (CHD N $75^{\circ}57'02''$ E 73.86 FT); NE'LY ALG A 229.82 FT RADIUS CURVE TO L 86.87 FT (CHD N $74^{\circ}22'10''$ E 86.35 FT); N'LY ALG A 1859.86 FT RADIUS CURVE TO L 91.70 FT (CHD N $16^{\circ}17'29''$ E 91.69 FT); W 258.95 FT TO BEG. 3.33 AC M (TAX PARCEL 16-35-481-004)

Less and excepting therefrom the following:

A tract of land situate in the SE $\frac{1}{4}$ SE $\frac{1}{4}$ of Section 35, T.1S., R.1E., Salt Lake Base and Meridian. The boundary of said tract of land is described as follows:

Beginning at the intersection of the westerly right of way line of Wasatch Boulevard and the north line of said SE $\frac{1}{4}$ SE $\frac{1}{4}$, which point is 50 feet west from the ~~northeast~~ corner of said SE $\frac{1}{4}$ SE $\frac{1}{4}$; thence West 230.00 feet; thence along a line which is parallel with and 230.00 feet perpendicularly distant westerly from said westerly right of way line of Wasatch Boulevard the following two courses and distances: (1) S. $00^{\circ}13'44''$ W. 575.73 feet to a point of tangency with a 1629.86 foot radius curve to the right; thence (2) southerly 297.50 feet along the arc of said curve (Note: Chord to said curve bears S. $05^{\circ}38'22''$ W. for a distance of 297.08 feet) to the point of a 150.00 foot radius, non-tangent curve to the left; thence easterly 153.45 feet along the arc of said curve (Note: Chord to said curve bears S. $60^{\circ}41'38''$ E. for a distance of 146.84 feet); thence East 92.12 feet, to the said westerly right of way line of Wasatch Boulevard; thence northerly 368.55 feet along said westerly right of way line and the arc of a 1859.86 foot, non-tangent curve to the left (Note: Center of said curve bears N. $78^{\circ}14'09''$ W. and the Chord to said curve bears N. $06^{\circ}05'15''$ E. for a distance of 367.95 feet); thence N. $00^{\circ}13'44''$ E. 577.37 feet to the point of beginning. The above described tract of land contains 214,417 square feet in area or 4.922 acres, more or less.