



ROAD DEDICATION AGREEMENT

650 South, Kanab City

THIS AGREEMENT entered into this 5th day of August, 2017, by and between KANAB CITY, a Utah municipal corporation (hereinafter referred to as the "City"), Dos Pollos L.L.C., a Utah limited liability company, and Michael and Shauna Crosby. Dos Pollos L.L.C. and the Crosbys are referred to in this Agreement collectively as the "Dedicator."

This Agreement relates to the dedication of parcel portions particularly described in the attached **Exhibit A** and **Exhibit B** ("Dedicated Portions").

RECITALS

- A. Dedicator represents that Dedicator is the record owner of the respective Dedicated Portions.
- B. Dedicator hereby represents, covenants and warrants that Dedicator is seized and fully vested with all right, title and interest in and to the Dedicated Portions. Except as specifically provided below in Paragraph 2.2, Dedicator further represents that the Dedicated Portions are not encumbered for financial obligations or otherwise by or through any record or non-record agreements.
- C. The City wishes to widen the road at 650 South Street (hereinafter the "Street") by extending the road onto the Dedication Portions as shown in **Exhibit B**.
- D. Dedicator wishes to dedicate to the City the Dedicated Portions in return for certain developmental benefits as provided in this Agreement.
- E. The City is willing to accept the Dedicated Portions from the Dedicators under the terms of this Agreement.

AGREEMENT

NOW THEREFORE, in consideration of the mutual covenants contained herein, the parties hereby agree as follows:

ARTICLE I
Incorporation of Recitals

1.1 Incorporation. The foregoing Recitals are hereby incorporated by this reference into this Agreement.

ARTICLE II
Rights and Responsibilities of Dedicator

2.1 Dedication. Within 45 days following the execution of this Agreement, Dedicator shall complete the dedication in accordance with Paragraph 4.1.

2.2 Mortgagee Consent and Representation Regarding Encumbrances. Dedicator discloses and acknowledges that the Dos Pollos, L.L.C. parcel (Parcel No. K-17-8A-ANNEX), see **Exhibit B**, is encumbered by certain trust deeds dated May 7, 2009 and recorded at the Kane County Recorder's Office as Entry Numbers 00144260, 00144261, 00144262, 00144264, 00144265. Dos Pollos, L.L.C. represents that the lender on said trust deeds has consented to the dedication affecting the Dos Pollos, L.L.C. parcel. Other than as specifically acknowledged in this Paragraph 2.2, Dedicator represents that the Dedicated Portions are not encumbered with any other financial obligations or otherwise by or through any record or non-record agreements.

ARTICLE III
Rights and Responsibilities of the City

3.1 Sewer Hookup. In consideration of the voluntary dedication of the Dedicated Parcels, the City agrees to install a sewer hookup from the City's sewer main under the Street to the Dos Pollos, L.L.C. parcel (Parcel No. K-17-8A-ANNEX) and to the Crosby Parcel (K-17-8-ANNEX). This sewer hookup will be completed at the same time that the City installs a new water main under the Street. This cost will be covered by the City.

3.2 Water Connection Line. In consideration of the voluntary dedication of the Dedicated Parcels, the City agrees to install a water connection line from the City's water main under the Street to the Dos Pollos, L.L.C. parcel (Parcel No. K-17-8A-ANNEX) line and a water connection line from the City's water main under the Street to the Crosby Parcel (K-17-8-ANNEX). These water line connections and meter sets will be installed at the time that the City installs a new water main under the Street. This cost will be covered by the City.

3.3 Costs Not Assessed When East Property Is Developed. The parties acknowledge that at some future date the parcels to the east of the Street (Parcel Nos. K-7-10-ANNEX, K-17-34-ANNEX, and K-17-35-ANNEX, referred to hereinafter as the "East Parcels") will be developed and that the costs for necessary improvements will be assessed to the owners adjacent to the Street. In consideration of the voluntary dedication of the Dedicated Parcels, the City agrees that no improvement cost arising from the development of the East Parcels may be assessed to the Dos Pollos, L.L.C. parcel (Parcel No. K-17-8A-ANNEX) or the Crosby parcel (K-17-8-ANNEX). The improvements referred to in this Paragraph 3.3 refer only to curb, gutter, and asphalt improvements.

3.4 Documents. The city will provide copies of all documents involved in this transaction to all parties involved.

ARTICLE IV
Miscellaneous

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4.1 Completion of Dedication. The dedication of the Dedicated Portions shall be deemed complete after each of the following has occurred: (1) the execution of this Agreement by all parties, (2) the Dedicator properly executes the "650 South Extended Roadway Dedication Plat" prepared by Alpha Engineering, and (3) the City records the fully executed Dedication Plat and Mortgage Dedications with the Kane County Recorder.

4.2 Transfer of Rights under this Agreement. The rights of Dedicator under this Agreement shall remain with the land so that if there is a subsequent conveyance of the Dos Pollos, L.L.C. parcel or the Crosby parcel, the successor in interest shall benefit from the City's obligations arising under Article III.

4.3 Non-liability. Nothing in this Agreement shall be construed as creating any personal liability on the part of any officer or agent of any public body that may be a party to this Agreement. Except as specifically provided in Paragraph 4.2, this Agreement shall not be construed as giving any rights or benefits under this Agreement to anyone other than the parties to this Agreement.

4.4 Non-Waiver.

4.4.1 Dedicator acknowledges and agrees that unless expressly stated otherwise in Article III, nothing in this Agreement shall be deemed to relieve Dedicator, or a future developer, from the obligation to comply with the City's ordinances, resolutions, and regulations necessary for development of property located within the City.

4.4.2 Failure of any party hereto to exercise any right hereunder shall not be deemed a waiver of such right and shall not affect the right of such party to exercise at some future date any such right or any other right it may have.

4.5 Dedication Plat Signatures Necessary. The City's obligations under Article III are conditioned on the full completion of the dedication as provided in Paragraph 4.1.

4.6 Indemnity and Liability. Dedicator agrees to defend and hold the City and its respective officers, employees and agents harmless for any and all loss, liability, damage, claim, cost, charge, demand, or expense, including any direct, indirect or consequential loss, liability, damage, claim, cost, charge, demand, or expense, including attorney's fees, arising out of any competing claims, demands or encumbrances to the Dedicated Portions arising before the completion of the dedication of the Dedicated Portions to the City.

4.7 No Waiver of Governmental Immunity. Nothing in this Agreement is intended to or may be interpreted or construed as a waiver of the City's governmental immunity as set forth in applicable statutory and case law.

4.8 Successor Parties. This Agreement shall be binding upon the heirs, assigns, receivers, or successors in interest of the parties.

4.9 Entire Agreement. This Agreement constitutes the entire agreement of the parties with respect to the subject matter contained herein and supersedes any prior such agreements. There

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are no other agreements, written or oral, except as specifically provided herein. Any modifications to this Agreement must be in writing and signed by both parties.

4.10 Mutual Drafting. Each party has participated in negotiating and drafting this Agreement and therefor no provision of this Agreement shall be construed for or against either party based on which party drafted any particular portion of this Agreement.

4.11 Authority of Parties. The parties to this Agreement each warrant that they have all of the necessary authority to execute this Agreement.

4.12 No Joint Venture / No Third Party Beneficiaries. This Agreement does not create a joint venture relationship, partnership or agency relationship between the City and Dedicator. The parties do not intend this Agreement to create any third-party beneficiary rights.

4.13 Attorney's Fees. In addition to any other relief, the prevailing party in any action, whether at law or in equity, to enforce any provision of this Agreement shall be entitled to its costs of action, including reasonable attorney's fees.

4.14 Captions. The Article and Section captions used in this Agreement are for convenience only and are not intended to be substantive provisions or evidence of intent.

4.15 Represented by Counsel. Dedicator expressly acknowledges that the law firm of Snow Jensen & Reece, inclusive of any and all of its attorneys, has heretofore represented, and will hereafter continue to represent, only the City in all aspects of this dedication, including the negotiation, drafting and enforcement of this Agreement. Dedicator further expressly acknowledges that Dedicator has not relied upon any representation, counsel or legal advice from Snow Jensen & Reece or any of its attorneys in deciding whether to enter into this Agreement, and that Dedicator has relied, and will continue to rely, solely upon the representations, counsel and legal advice of Dedicator's own attorneys as deemed necessary by Dedicator.


4.16 Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The signature pages from one or more counterparts may be removed from such counterparts and such signature pages all attached to a single instrument so that the signature of all parties may be physically attached to a single document.

4.17 Severability. If any provision of this Agreement is declared invalid by a court of competent jurisdiction, the parties consider and intend that this Agreement shall be deemed amended to the extent necessary to make it consistent with such decision and the remaining provisions shall not to be affected and shall remain in full force and effect.

4.18 Governing Law and Venue. This Agreement shall be construed according to the laws of the State of Utah. The parties agree that venue for all legal actions, unless they involve a cause of action with mandatory federal jurisdiction, shall be the Sixth District Court in and for Kane County, Utah. The parties further agree that the Federal District Court for the District of Utah shall be the venue for any cause of action with mandatory federal jurisdiction.

(signature page follows)

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RECEIVED CANON COUNTY RECORDER
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KANAB CITY

Robert D. Houston
Robert D. Houston, Mayor

DEDICATOR

Michael Crosby
Michael Crosby

DEDICATOR

[Signature]
Dos Pollos, L.L.C.
By:
Its: **MANAGING MEMBER**

DEDICATOR

Shauna Crosby
Shauna Crosby

Kanab City Attest:

[Signature]
Joe Decker, City Recorder

Approved as to form:

[Signature]
City Attorney

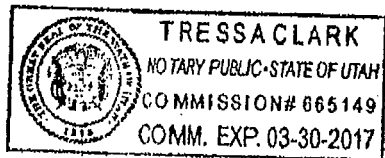
STATE OF UTAH)
 : ss.
County of Kane)

On the 5 day of August, 2014, personally appeared before me Milo P. McCowan, who being by me duly sworn did say that he is the manager of Dos Pollos, L.L.C., and that he executed the foregoing Road Dedication Agreement on behalf of said limited liability company being authorized and empowered to do so by the operating agreement of Dos Pollos, L.L.C. and he did duly acknowledge before me that such limited liability company executed the same for the uses and purposes stated therein.

Tressa Clark
Notary Public

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STATE OF UTAH)
 : ss
COUNTY OF KANE)

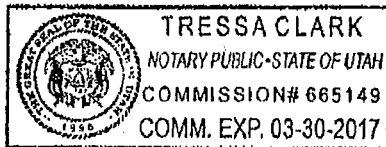
On the 8 day of August, 2014, Michael Crosby personally appeared before me, who being duly sworn, did say that he signed this Warranty Deed freely and voluntarily.



Tressa Clark
Notary Public

STATE OF UTAH)
 : ss
COUNTY OF KANE)

On the 8 day of August, 2014, Shauna Crosby personally appeared before me, who being duly sworn, did say that she signed this Warranty Deed freely and voluntarily.



Tressa Clark
Notary Public

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43 South 100 East, Suite 100 T 435.628.6500
St George, Utah 84770 F 435.628.6553

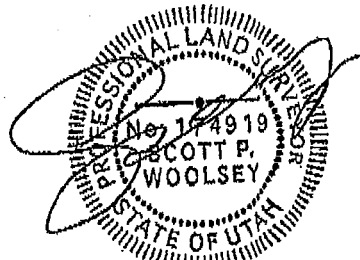
alphaengineering.com

EXHIBIT "A"

DOS POLLOS LLC. 650 SOUTH STREET EXTENDED ROADWAY PARCEL (June 25, 2014)

Commencing at the Southeast Corner of Section 28, Township 43 South, Range 6 West, Salt Lake Base and Meridian; Thence North $00^{\circ}49'03''$ East, along the Section line, a distance of 300.12 feet, to the Point of Beginning; Thence North $89^{\circ}07'50''$ West, a distance of 2.02 feet to the beginning of a curve to the left having a radius of 1,470.00 feet and a central angle of $05^{\circ}47'34''$, thence westerly along the arc of said curve, a distance of 148.62 feet to the beginning of a reverse curve to the right having a radius of 1,144.41 feet and a central angle of $09^{\circ}00'13''$, thence westerly along the arc of said curve, a distance of 179.83 feet; Thence North $00^{\circ}49'03''$ East, a distance of 17.15 feet; Thence South $89^{\circ}07'05''$ East, a distance of 330.00 feet; Thence South $00^{\circ}49'03''$ West, a distance of 5.53 feet to the Point of Beginning.

Containing: 4,342 square feet or 0.10 acres, more or less.



6/25/14

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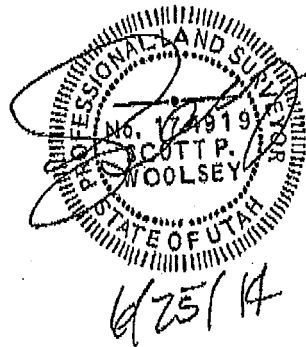
alphaengineering.com

EXHIBIT "A"

MICHAEL & SHAUNA CROSBY 650 SOUTH STREET EXTENDED ROADWAY PARCEL (June 25, 2014)

Commencing at the Southeast Corner of Section 28, Township 43 South, Range 6 West, Salt Lake Base and Meridian; Thence North $00^{\circ}49'03''$ East, along the Section line, a distance of 310.64 feet; Thence North $90^{\circ}00'00''$ West, a distance of 330.03 feet to the Point of Beginning; Thence South $00^{\circ}49'03''$ West, a distance of 17.15 feet to the beginning of a non tangent curve to the right, of which the radius point lies North $04^{\circ}04'49''$ East, a radial distance of 1,144.41 feet, thence westerly along the arc of said curve, through a central angle of $03^{\circ}19'56''$, a distance of 66.56 feet to the beginning of a reverse curve to the left having a radius of 970.00 feet and a central angle of $05^{\circ}59'21''$, thence westerly along the arc of said curve, a distance of 101.39 feet; Thence North $00^{\circ}54'10''$ East, a distance of 5.38 feet; Thence South $89^{\circ}04'34''$ East, a distance of 167.44 feet to the Point of Beginning.

Containing: 1,741 square feet or 0.04 acres, more or less.



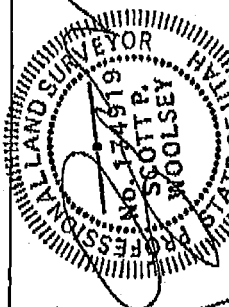
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EAST 1/4 CORNER SECTION 28,
T. 43 S. R. 6 W. S182M
1978 BLA BRASS CAP



BENNETT & HALEY BROOKS
K-17-7-ANNEX

END OF EXISTING
DEDICATION

BROOKS PARCEL
6,994 S.F. OR 0.16 ACRES

S89°07'50"E
2.00

L=154.67, R=1530.00
D=5°47'31"

L=149.85, R=1084.41
D=7°55'03"

N17°55'46"W
18.70

S89°04'34"E
167.44

N00°54'10"E
5.38

P.O.B. CROSBY

L=101.39, R=970.00 / L=66.56, R=1144.41
D=5°59'21" / D=3°19'56"

CROSBY PARCEL
1,741 S.F. OR 0.04 ACRES

S00°49'03"W
17.15

N00°49'03"E
17.15

N00°49'03"E
17.15

KANAB CITY PARCEL

L=148.62, R=1470.00
D=5°47'34"

DOS POLLOS LLC PARCEL
4,342 S.F. OR 0.10 ACRES

S00°49'03"W
5.53

P.O.B. DOS POLLOS

N89°07'50"W
2.02

L=179.89, R=1144.41
D=9°00'13"

DOS POLLOS LLC
K-17-8A-ANNEX

MICHAEL D. & SHAUNA D. CROSBY
K-17-8-ANNEX

320.00' BROOKS P.O.B. BR
310.84' CROSBY P.O.B. BR
300.12' DOS POLLOS P.O.B. BR
N00°49'03"E

SE CORNER SECTION 28,
T. 43 S. R. 6 W. S182M
1978 BLA BRASS CAP

650 SOUTH STREET
OWNERSHIP & ACREAGE
EXHIBIT "B"



ALPHA
ENGINEERING
45 South 100 East, Suite 100 - St. George, Utah 84770
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ENTRY NO. 00166992

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