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H-3-1-36-3000

DOC # 20070010495

Easements Page 1 of 6  
Russell Shirts Washington County Recorder  
03/01/2007 10:52:04 AM Fee \$ 20.00 by ROSENBRUCH JIM



WHEN RECORDED, MAIL TO:

Jim Rosenbruch  
~~P.O. Box~~ 1835 Convention Center Dr.  
St. George UT 84790

**NON-EXCLUSIVE RIGHT-OF-WAY EASEMENT**

THIS RIGHT-OF-WAY EASEMENT AGREEMENT ("Agreement") is made effective this 29<sup>th</sup> day of February 2007, by and between **Stratton Brothers**, a Utah general partnership ("Grantor"), and **Southern Star Homes, LLC**, a Utah limited liability company ("Grantee").

WHEREAS, Grantor and Grantee own adjoining real property in Hurricane City, Washington County, Utah; and

WHEREAS, Grantee's predecessor-in-interest, Winding River Associates, LLC ("Winding River"), previously sold a portion of its real property to Grantor, for which Grantor agreed to grant access to Winding River's remaining property ("Grantee's Property") across Grantor's property; and

WHEREAS, Grantee now desires to obtain that access to Grantee's Property, and Grantee has requested Grantor grant a right-of-way easement ("Easement") therefor on real property owned by Grantor that is more particularly described on Exhibit A ("Easement Property") attached hereto and incorporated herein; and

WHEREAS, Grantor is willing to grant Grantee's request for the Easement consistent with the provisions of this Agreement;

NOW, THEREFORE, in consideration of the mutual agreements herein contained, the parties covenant and agree for themselves and their heirs, successors and assigns as follows:

1. Easement to Grantee. For good and valuable consideration and subject to the provisions of this Agreement, Grantor does hereby grant to Grantee a non-exclusive right-of-way easement for (1) ingress and egress of vehicular and pedestrian traffic to and from Grantee's Property. The Easement is located on a strip of land located in Washington County, Utah, and described on Exhibit A, which is attached hereto and incorporated herein.

2. Installation and Maintenance of Improvements. To the extent any improvements are made by Grantee in the future, Grantee shall install all improvements on the Easement Property, and any replacements or repairs of said improvements, in a workmanlike manner and in accordance with applicable laws and standard construction practices. Upon completion of initial installation of improvements (or later replacements or repairs), Grantee shall restore any other of Grantor's real property affected, to the condition immediately preceding such installation, replacement or repair.

3. Use of Easement. Grantor reserves and retains the right for its agents, representatives, or any others designated by Grantor, to cross the Easement Property for any purposes it deems necessary, excepting it shall not cause permanent buildings or other structures to be installed upon the Easement without written consent from Grantee. Grantor reserves and retains the right to grant other easements or rights of way upon, over or under the Easement Property for utility or other purposes. Grantor reserves the right and may relocate the easement or shall provide a replacement easement acceptable to Grantee.

Such replacement easement may be in the form of roadway improvements made by Grantor, or its successor in interest, in conjunction with subdivision or other development of other real property owned in the vicinity. Upon relocation or replacement, Grantee shall appropriately convey its interest in the easement granted herein to Grantor or its successor and Grantor will grant to Grantee an easement equivalent to the easement granted herein granted on the property where the easement is relocated and under the same conditions as stated in this Agreement. For purposes of this Agreement, dedication of a completed roadway to the public pursuant to the recording of a subdivision plat or other development by Grantor, which provides access to Grantee's Property, shall be considered "granting an equivalent easement" under this Paragraph 3. Grantee shall not use the Easement Property in any manner that will unreasonably interfere with, or disrupt the use of, Grantor's real property located in the vicinity of the Easement Property.

4. Indemnification. Each Party hereto shall hold the other Party harmless from and against liability, loss or costs incurred, including without limitation reasonable attorney's fees, arising out of, related to or caused by the indemnifying Party's acts or omissions to act, use of, installation of improvements on, or occupancy of the Easement Property, including, but not limited to, any mechanic's liens, environmental claims, personal injury or negligence claims, or other claims associated with the installation of improvements or use of the Easement Property.

5. Covenants Run With Land. Each right and obligation in this Agreement (whether affirmative or negative in nature) (a) shall constitute a covenant running with the land; (b) shall benefit and bind every person having any fee, leasehold or other interest in any portion of the Easement Property or Grantee's Property to the extent that such portion is affected or bound by the easement, covenant or restriction in question, or to the extent that such easement, covenant or restriction is to be performed on such portion; and (c) shall benefit and be binding upon any person whose title is acquired by judicial foreclosure, trustee's sale, deed in lieu of foreclosure or otherwise.

6. Limit on Benefit. Nothing contained in this Agreement shall be deemed a gift or dedication of any portion of the Easement Property to the general public.

7. Miscellaneous.

a. Should any party default in any of the covenants or agreements herein contained, that defaulting party shall pay all costs and expenses, including a reasonable attorney's fee, which may arise or accrue from enforcing this Agreement or in pursuing any remedy provided hereunder or by applicable law, whether such remedy is pursued by filing suit or otherwise. This obligation of the defaulting party to pay costs and expenses includes, without limitation, all costs and expenses, including a reasonable attorney's fee, incurred on appeal and in bankruptcy proceedings.

b. It is expressly agreed that the terms, covenants and conditions of this Agreement shall survive any legal act or conveyance required under this Agreement.

c. The section and other headings contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement.

IN WITNESS WHEREOF, the parties have executed this Agreement the day and year first above written.

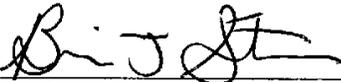
[Signature pages follow]

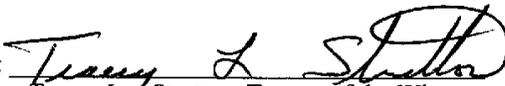
"GRANTOR":

DATED this 28 day of February, 2007

**STRATTON BROTHERS**, a Utah general partnership

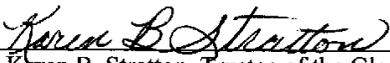
By: Winston G. Stratton, LTD, General Partner

By:   
Brian James Stratton, Trustee of the Winston  
G. Stratton and Dorothy Coe Stratton Family  
Trust Agreement, General Partner

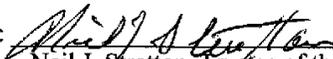
By:   
Tracey Lee Stratton, Trustee of the Winston  
G. Stratton and Dorothy Coe Stratton Family  
Trust Agreement, General Partner

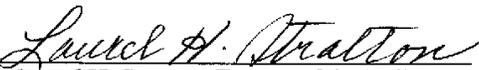
By: Glenn E. Stratton, LTD, General Partner

By:   
Glenn E. Stratton, Trustee of the Glenn E.  
Stratton and Karen B. Stratton Family  
Trust Agreement, General Partner

By:   
Karen B. Stratton, Trustee of the Glenn E.  
Stratton and Karen B. Stratton Family  
Trust Agreement, General Partner

By: Neil J. Stratton, LTD, General Partner

By:   
Neil J. Stratton, Trustee of the Neil J.  
Stratton and Laurel H. Stratton Family  
Trust Agreement, General Partner

By:   
Laurel H. Stratton, Trustee of the Neil J.  
Stratton and Laurel H. Stratton Family  
Trust Agreement, General Partner

"GRANTEE"

DATED this 1<sup>ST</sup> day of MARCH, 2007

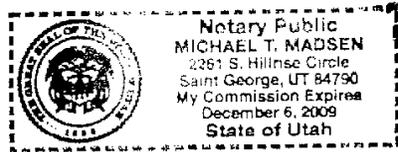
**SOUTHERN STAR HOMES, L.L.C.**, a Utah limited liability company

By: *[Signature]*  
Its: MANAGING MEMBER

STATE OF UTAH )  
 ) ss.  
COUNTY OF WASHINGTON )

The foregoing instrument was acknowledged before me this 28<sup>th</sup> day of February, 2007, by Brian James Stratton, Trustee, and Tracey Lee Stratton, Trustee.

*[Signature]*  
NOTARY PUBLIC  
Address: 2261 So. Hillrise Cir. St. George, UT  
My Commission Expires: 12-6-2009



STATE OF UTAH )  
 ) ss.  
COUNTY OF WASHINGTON )

The foregoing instrument was acknowledged before me this 28<sup>th</sup> day of February, 2007, by Glenn E. Stratton, Trustee, and Karen B. Stratton, Trustee.

*[Signature]*  
NOTARY PUBLIC  
Address: 2261 So. Hillrise Cir. St. George, UT  
My Commission Expires: 12-6-2009



STATE OF UTAH )  
 ) ss.  
COUNTY OF WASHINGTON )

The foregoing instrument was acknowledged before me this 28<sup>th</sup> day of February, 2007, by Neil J. Stratton, Trustee, and Laurel H. Stratton, Trustee.

Michael T. Madsen  
NOTARY PUBLIC  
Address: 2261 So Hillrise Cir St. George, UT  
My Commission Expires: 12-6-2009



STATE OF UTAH )  
 ) ss.  
COUNTY OF WASHINGTON )

The foregoing instrument was acknowledged before me this 28<sup>th</sup> day of February, 2007, by Kendrick Rogers.

Bret Bowler  
NOTARY PUBLIC  
Address: Enterprise, Utah  
My Commission Expires: 5/29/07





# ALPHA ENGINEERING COMPANY

148 East Tabernacle, St. George, UT 84770 • (435) 628-6500 • Fax: (435) 628-6553

## EXHIBIT "A"

A 58.00 foot wide temporary access roadway, 29.00 feet each side of the following described centerline:

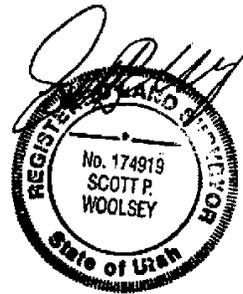
Commencing at the South  $\frac{1}{4}$  Corner of Section 31, Township 41 South, Range 13 West, Salt Lake Base and Meridian;

Thence North  $00^{\circ}06'36''$  West along the Center Section line 945.77 feet to the Point of Beginning;

Thence South  $89^{\circ}29'55''$  West, 262.93 Feet; to the point of curvature to the left having a radius of 300.00 Feet, and a central angle of  $28^{\circ}46'04''$ , thence westerly, along the arc of said curve a distance of 150.63 Feet;

Thence South  $60^{\circ}43'51''$  West, 293.78 Feet; to the point of curvature to the left having a radius of 300.00 Feet, and a central angle of  $21^{\circ}22'31''$ , thence southwesterly, along the arc of said curve a distance of 111.92 Feet;

Thence South  $39^{\circ}21'20''$  West, 332.41 Feet; to the point of curvature to the left having a radius of 200.00 Feet, and a central angle of  $16^{\circ}04'06''$ , thence southwesterly, along the arc of said curve a distance of 56.09 Feet, to the Point of Terminus, said point being on the Northerly right-of-way line of Highway SR-9.



3/30/09