

Subordination Agreement Page 1 of 27  
 Russell Shirts Washington County Recorder  
 01/16/2019 02:02:31 PM Fee \$69.00 By  
 SNELL & WILMER LLP

Recorded at the Request of,  
 and After Recording Return to:

David E. Leta, Esq.  
 SNELL & WILMER L.L.P.  
 95 West South Temple, Suite 1200  
 Salt Lake City, Utah 84101

Part of Parcel No. H-4-2-1-1103

**AGREEMENT TO SUBORDINATE AND OPTION TO REQUIRE TERMINATION**

THIS AGREEMENT TO SUBORDINATE AND OPTION TO REQUIRE TERMINATION (the "Agreement") is made as of the 31st day of December, 2018 by and among: **290-470, LLC**, an Idaho limited liability company of 290 Westmoreland Dr., Idaho Falls, ID 83402 ("290-470"), **MELLON VALLEY, LLC**, a Utah limited liability company ("Mellon Valley"), **ELIM VALLEY PLANNING AND DEVELOPMENT, LLC**, a Utah limited liability company ("EVDP"), **ROLAND NEIL FAMILY LIMITED PARTNERSHIP**, a Utah limited partnership ("RNFLP"), **EVD COMMUNICATIONS INFRASTRUCTURE, LLC**, a Utah limited liability company ("EVD"), **ROLAND L. WALKER IRREVOCABLE TRUST /U/A/D DECEMBER 23, 1985** (the "Trust"), and **R&S FARMS UTAH LIMITED PARTNERSHIP**, a Utah limited partnership ("R&S Farms") and collectively with Mellon Valley, EVDP, RNFLP, EVD, and the Trust, "Debtor Parties", and **RED BRIDGE CAPITAL, LLC**, a Utah limited liability company ("Red Bridge"), whose address is c/o Cherokee and Walker Management, 6440 South Wasatch Boulevard, Suite 200, Salt Lake City, Utah 84122.

**RECITALS:**

A. Pursuant to a Settlement Agreement (the "Settlement Agreement") between, among others, certain of the Debtor Parties, Red Bridge and others dated as of May 15, 2013, the Debtor Parties granted to Red Bridge (i) an access and utility easement burdening the real property described in **Exhibit A** attached hereto (the "Strip Parcels") and permitting each of Red Bridge's properties adjacent to the Strip Parcels to have access to Sand Hollow Road, and (ii) easements over the Strip Parcels for certain underground and above-ground utility lines and related facilities and improvements.

B. Mellon Valley and EVDP entered into that certain Master Communications Easement for Elim Valley dated February 14, 2007 and recorded February 16, 2007, as Entry No. 20070008384, in the official records of Washington County, Utah (the "First Easement Agreement") encumbering certain real property described in the Easement Agreement (the "Easement Property").

C. EVDP and RNFLP entered into that certain Master Communications Easement for Elim Valley dated February 14, 2007 and recorded February 16, 2007, as Entry No. 20070008385, in the official records of Washington County, Utah (the "Second Easement Agreement") encumbering the Easement Property.

D. RNFLP and EVD entered into that certain Master Communications Easement for Elim Valley dated February 14, 2007 and recorded February 16, 2007, as Entry No. 20070008386, in the official records of Washington County, Utah (the "Third Easement Agreement") encumbering the Easement Property.

E. EVD executed that certain Grant Deed dated May 16, 2011 and recorded May 26, 2011, as Entry No. 20110016187, in the official records of Washington County, Utah (the "Grant Deed") conveying

EVD's right and interest in the Third Easement Agreement to the Trust and particularly describing the Easement Property.

F. The Trust and R&S Farms entered into that certain Option to Purchase Easement dated May 16, 2011 and recorded May 26, 2011, as Entry No. 20110016212, in the official records of Washington County, Utah (the "Option") purporting to grant R&S Farms an option to purchase the rights and interest conveyed to the Trust by the Grant Deed and particularly describing the Easement Property;

G. The Trust executed that certain Grant Deed dated May 4, 2017, and recorded June 20, 2017, as Entry No. 20170025395 in the official records of Washington County, Utah (the "Second Grant Deed") conveying all of the Trust's right and interest in the Master Communications Easements (defined below) to 290-470 and particularly describing the Easement Property.

H. The rights and interests conveyed, granted, sold, or otherwise given by the First Easement, the Second Easement, the Third Easement, the Grant Deed, the Option and the Second Grand Deed are collectively referred to in this Agreement as the "Master Communications Easements."

I. EVPD and Mellon Valley granted Red Bridge an easement over, upon, across, and through the Property according to the terms of that certain Amended and Restated Access and Utility Easement (the "Red Bridge Easement") dated June 18, 2013, executed by EVPD and Mellon Valley, as Grantor, in favor of Red Bridge, as Grantee, recorded in the office of the Washington County Recorder as Entry No. 20130032488. A copy of the Red Bridge Easement is attached as **Exhibit B**.

J. The Strip Parcels are part of the Easement Property and, therefore, the Master Communications Easements encumber the Strip Parcels and are prior to the Red Bridge Easement.

K. Debtor Parties, 290-470 and Red Bridge have agreed to subordinate the Master Communications Easements to the Red Bridge Easement with regard to the Strip Parcels, and further have agreed to terminate the Master Communications Easements with regard to the Strip Parcels, on the terms and conditions hereinafter set forth.

#### **AGREEMENT:**

For good and valuable consideration, the Debtor Parties, 290-470 and Red Bridge agree as follows:

1. RECITALS. The foregoing recitals are true and correct and are incorporated herein by reference.

2. SUBORDINATION. Debtor Parties, 290-470, and each of them, declare and agree that their respective interests and rights in and to the Master Communications Easements are hereby subordinated in all respects and for all purposes to the Red Bridge Easement. As such, all rights of Debtor Parties and 290-470 are and shall at all times be subject, subsequent, junior, and subordinate in all respects to the Red Bridge Easement in favor of Red Bridge as it pertains to the Strip Parcels described herein.

3. WARRANTY OF OWNERSHIP. The Debtor Parties and 290-470 represent and warrant to Red Bridge that they are the only owners of any right, title or interest in the Master Communications Easements, that they have not transferred, assigned, pledged or encumbered their respective interests in the Master Communications Easements, except as stated above, that the persons signing this Agreement have full capacity, authority and power to execute the same and that, when signed, this Agreement shall constitute a binding obligation on their behalf.

4. TERMINATION OPTION. If Red Bridge, or any successor, assign or designee of Red Bridge, acquires the Strip Parcels, or any portion thereof, then, at the election of Red Bridge, its successor,

assign or designee, and upon written notice to the Debtor Parties and to 290-470, the Debtor Parties, 290-470 and their respective successors and assigns, if any, shall terminate the Master Communications Easement with respect to any such portion of the Strip Parcels owned by Red Bridge, or by its successor, assign or designee. The right of Red Bridge, or any successor, assign or designee of Red Bridge, to require the termination of the Master Communications Easements under this Section shall continue, may be exercised from time to time, and be in effect for any portion of the Strip Parcels acquired by Red Bridge, or any successor, assign or designee of Red Bridge, from time to time. Except for a breach of this Agreement or any direct or indirect action by 290-470 to interfere with Red Bridge's rights under this agreement, Red Bridge agrees to not initiate any litigation against 290-470 with regard to the Red Bridge Easement.

5. **LIMITED POWER OF ATTORNEY TO EFFECT TERMINATION.** The Debtor Parties and 290-470 irrevocably constitute and appoint Red Bridge and any officer or agent thereof, with full power of substitution, as its true and lawful attorneys-in-fact with full irrevocable power and authority in the place and stead of each of the Debtor Parties and 290-470 or in Red Bridge's own name, for the purpose of carrying out the terms of Section 4 of this Agreement if such termination is not effected as and when required, in a written, recordable document, that is delivered to Red Bridge within 30 days after Red Bridge, or its successor, assign or designee, requests the same in accordance with Section 4 above, and to take any and all appropriate action and to execute any and all documents and instruments that may be necessary or useful to accomplish the purposes of the Section 4 and, without limiting the generality of the foregoing, hereby gives said attorneys the power and right, on behalf of each of Debtor Parties and 290-470, without notice to or assent by Debtor Parties or 290-470, to execute, acknowledge, and deliver all such documents reasonably required to terminate the Master Communications Easements, and to submit such documents for recording in the public records. To the extent permitted by law, Debtor Parties and 290-470 hereby ratify all that said attorneys shall lawfully do or cause to be done by virtue hereof. This power of attorney is a power coupled with an interest and is irrevocable. The powers conferred on Red Bridge hereunder are solely to protect its interests in the Strip Parcels and shall not impose any duty upon it to exercise any such powers. Neither Red Bridge nor any of its officers, directors, employees or agents shall be responsible to Debtor Parties or 290-470 for any act or failure to act.

6. **NOTICES.** All notices or other written communications hereunder shall be deemed to have been properly given (i) upon delivery, if delivered in person with receipt acknowledged by the recipient thereof, (ii) one (1) Business Day (hereinafter defined) after having been deposited for overnight delivery with any reputable overnight courier service, or (iii) three (3) Business Days after having been deposited in any post office or mail depository regularly maintained by the U.S. Postal Service and sent by registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

If to Debtor Parties: c/o Roland Walker  
1070 Riverwalk Dr., Suite 200  
Idaho Falls, ID 83402

With a copy to: Douglas Thayer or Andrew Wright  
Durham Jones & Pinegar, P.C.  
3301 N. Thanksgiving Way, Suite 400  
Lehi, UT 84043

If to 290-470: c/o Lorin Walker  
335 Ranch Drive  
Idaho Falls, ID 83404  
Telephone: 208-589-4696

With copy to Peter Christopherson  
Holden Kidwell Haun Crapo, P.L.L.C.

1000 Riverwalk Dr.  
Suite 200  
Idaho Falls, ID 83405  
Telephone: 208-523-0620  
Fax: 208-523-9518

If to Red Bridge: Red Bridge Capital, LLC  
c/o Cherokee & Walker Management  
6440 S. Wasatch Boulevard, Suite 200  
Salt Lake City, Utah 84121  
Attn: Paul Erickson

With a copy to: Snell & Wilmer L.L.P.  
15 West South Temple, Suite 1200  
Salt Lake City, Utah 84101  
Attention: David E. Leta, and Doug Farr

or addressed as such party may from time to time designate by written notice to the other parties. For purposes of this Section 6, the term "Business Day" shall mean a day on which commercial banks are not authorized or required by law to close in the state where the Property is located. Either party by notice to the other may designate additional or different addresses for subsequent notices or communications.

7. SUCCESSORS AND ASSIGNS. This Agreement shall be binding upon and inure to the benefit of each Debtor Party, 290-470, Red Bridge and their respective successors and assigns.

8. RECORDING. This Agreement may be recorded in the Washington County Recorder's Office against the Strip Parcels.

9. GOVERNING LAW. This Agreement shall be deemed to be a contract entered into pursuant to the laws of Utah and shall in all respects be governed, construed, applied and enforced in accordance with the laws of the State of Utah.

10. MISCELLANEOUS. This Agreement may not be modified in any manner or terminated except by an instrument in writing executed by the parties hereto. If any term, covenant or condition of this Agreement is held to be invalid, illegal or unenforceable in any respect, this Agreement shall be construed without such provision. This Agreement may be executed in any number of duplicate originals and each duplicate original shall be deemed to be an original. This Agreement may be executed in several counterparts, each of which counterparts shall be deemed an original instrument and all of which together shall constitute a single Agreement. The failure of any party hereto to execute this Agreement, or any counterpart hereof, shall not relieve the other signatories from their obligations hereunder. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, Debtor Parties, 2019-470 and Red Bridge have duly executed this Agreement as of the date first above written.

DEBTOR PARTIES:

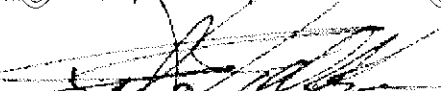
MELLON VALLEY LLC,  
a Utah limited liability company

By:   
Its: manager

ELIM VALLEY PLANNING AND DEVELOPMENT,  
LLC,  
a Utah limited liability company

By:   
Its: Manager

ROLAND NEIL FAMILY LIMITED PARTNERSHIP,  
a Utah limited partnership

By:   
Its: By: R. Family Trust, a/d April 4, 2006, Co-Trustee  
Its: General Partner

EVD COMMUNICATIONS INFRASTRUCTURE,  
LLC,  
a Utah limited liability company

By:   
Its: Manager

ROLAND L. WALKER REVOCABLE TRUST  
/U/A/D DECEMBER 25, 1985

By:   
Its: Trustee

R&G FARMS UTAH LIMITED PARTNERSHIP,  
a Utah limited partnership

By:   
Its: By: RSM Management, LLC, Manager  
Its: General Partner

**290-470:**

**290-470, LLC, an Idaho limited liability company**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: Manager \_\_\_\_\_

**RED BRIDGE:**

**RED BRIDGE CAPITAL, LLC, a Utah limited liability company**

By: Cherokee & Walker Management, LLC, its manager

by: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: Manager \_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: Manager \_\_\_\_\_

290-470

290-470, LLC, an Idaho limited liability company

By:

Name:

Its: Manager

*Laura Walker*  
*Laura Walker*

**RED BRIDGE:**

**RED BRIDGE CAPITAL, LLC**, a Utah limited liability company

By: Cherokee & Walker Management, LLC, its manager

by:

Name:

Its: Manager

By:

Name:

Its: Manager

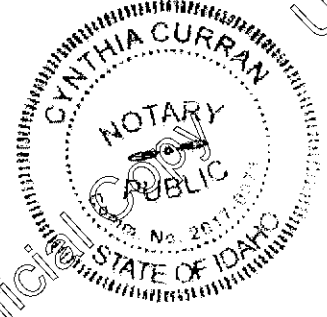
STATE OF Idaho  
COUNTY OF Bonneville

The foregoing instrument was acknowledged before me this 4 day of Jan 2019  
2019, by Roland Walker of MELLON  
VALLEY, LLC, a Utah limited liability company, on behalf of the company.

Cynthia Curran  
NOTARY PUBLIC  
Residing at Bonneville

My Commission Expires:

July 12, 2023



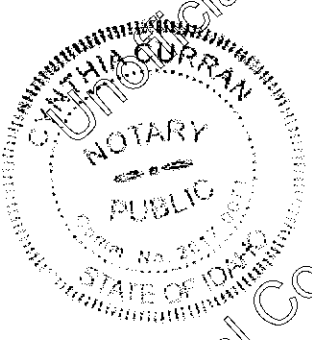
STATE OF Idaho  
COUNTY OF Bonneville ss.

The foregoing instrument was acknowledged before me this 4 day of Jan 2019  
2019, by Roland Walker of ELIM  
VALLEY PLANNING AND DEVELOPMENT, LLC, a Utah limited liability company, on behalf of the company.

Cynthia Curran  
NOTARY PUBLIC  
Residing at Bonneville

My Commission Expires:

July 12, 2023





STATE OF Idaho  
COUNTY OF Bonneville : ss.

The foregoing instrument was acknowledged before me this 4 day of Jan 2019  
2019, by Roland Walker of **ROLAND**  
**WALKER FAMILY LIMITED PARTNERSHIP**, a Utah limited partnership, on behalf of the company.

Cynthia Curran  
NOTARY PUBLIC  
Residing in Bonneville

My Commission Expires:

July 12, 2023

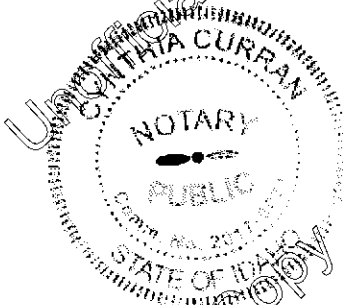
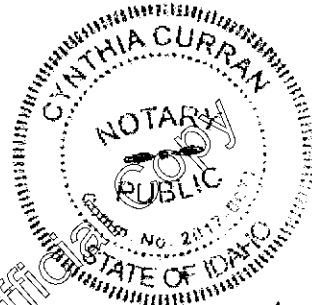
STATE OF Idaho  
COUNTY OF Bonneville : ss.

The foregoing instrument was acknowledged before me this 4 day of Jan 2019  
2019, by Cynthia Walker of **EVD**  
**COMMUNICATIONS INFRASTRUCTURE, LLC**, a Utah limited liability company, on behalf of the  
company.

Cynthia Curran  
NOTARY PUBLIC  
Residing at: Bonneville

My Commission Expires:

July 12, 2023



Unofficial Copy

STATE OF Idaho  
COUNTY OF Bonneville

The foregoing instrument was acknowledged before me this 4 day of Jan 2019, 2019, by Roland Walker of ROLAND L. WALKER IRREVOCABLE TRUST D/A/D DECEMBER 23, 1992 on behalf of the company.

Cynthia Curran  
NOTARY PUBLIC  
Residing at Bonneville

My Commission Expires:

July 12, 2023

STATE OF Idaho  
COUNTY OF Bonneville

The foregoing instrument was acknowledged before me this 4 day of Jan 2019, 2019, by Roland Walker of RAS FARMS UTAR LIMITED PARTNERSHIP, a Utah limited partnership, on behalf of the company.

Cynthia Curran  
NOTARY PUBLIC  
Residing at Bonneville

My Commission Expires:

July 12, 2023

STATE OF Idaho  
COUNTY OF Bonneville

The foregoing instrument was acknowledged before me this 4 day of Jan 2019, 2019, by Roland Walker of 2900 LLC, an Idaho limited partnership, on behalf of the company.

Cynthia Curran  
NOTARY PUBLIC  
Residing at Bonneville

My Commission Expires:

July 12, 2023

Unofficial Copy

STATE OF Utah  
COUNTY OF Salt Lake

The foregoing instrument was acknowledged before me this 4 day of JANUARY, 2019, 2019, by Paul R. Erickson and Shane R. Peery, managers of Cherokee & Walker Management, LLC, manager of RED BRIDGE CAPITAL, LLC, a Utah limited liability company, on behalf of the company.

Jaycie Baird  
NOTARY PUBLIC  
Residing at Salt Lake

My Commission Expires:

8/01/20



**EXHIBIT A**

**STRIP PARCELS DESCRIPTION**

**PARCEL A**

Beginning at a point on the east side of Sand Hollow Road where it intersects with State Road 9, said point being North 89°46'47" West 1,887.49 feet along the center section line and North 1,820.64 feet from the East Quarter Corner of Section 1, Township 42 South, Range 14 West, Salt Lake Base & Meridian, and running;

thence easterly 25.27 feet along an arc of a 22,763.31 foot radius curve to the right (center bears South 16°24'24" East, long chord bears North 73°37'31" East 25.27 feet with a central angle of 00°03'49") along the southerly line of State Road 9;

thence North 73°39'24" East 48.49 feet along the southerly line of said State Road 9;

thence South 16°20'36" East 1,306.80 feet;

thence South 73°39'35" West 338.52 feet to the easterly line of Sand Hollow Road;

thence northerly the following (5) courses along the easterly line of said Sand Hollow Road;

thence North 16°56'45" East 51.31 feet;

thence northerly 172.48 feet along an arc of a 684.00 foot radius curve to the left (center bears North 69°44'51" West, long chord bears North 13°01'44" East 172.02 feet with a central angle of 14°26'51");

thence northerly 30.04 feet along an arc of a 931.00 foot radius curve to the right (center bears South 84°11'42" East, long chord bears North 06°43'46" East 30.04 feet with a central angle of 01°50'55");

thence North 07°39'13" East 177.80 feet;

thence northerly 256.71 feet along an arc of a 642.00 foot radius curve to the left (center bears North 82°20'47" West, long chord bears North 03°48'06" West 255.00 feet with a central angle of 22°54'37");

thence North 15°15'24" West 675.11 feet to the Point of Beginning.

Less and excepting that parcel conveyed to Questar Gas Company by that certain Warranty Deed recorded August 17, 2009 as Entry No. 20090031873 and more particularly described as follows:

**Elim Valley Regulation Station**

Beginning at a point being South 00°15'22" West, 2011.10 feet along the section line and West 1,509.90 feet from the Northeast corner of Section 1, Township 42 South, Range 14 West, Salt Lake Base and Meridian and running thence North 54°33'12" West, 75.00 feet; thence North 35°26'48" East, 50.00 feet; thence South 54°33'12" East, 75.00 feet; thence South 35°26'48" West, 50.00 feet to the Point of Beginning;

PARCEL B

Beginning at a point on the west side of Sand Hollow Road where it intersects with State Road 9, said point being North 89°46'47" West 1,968.05 feet along the center section line and North 1,796.45 feet from the East Quarter Corner of Section 1, Township 42 South, Range 14 West, Salt Lake Base & Meridian, and running;

thence southerly the following (3) courses along the westerly line of Sand Hollow Road;  
thence South 15°15'24" East 673.27 feet;  
thence southerly 223.12 feet along an arc of a 558.00 foot radius curve to the right (center bears South 74°44'36" West, long chord bears South 03°48'06" East 221.64 feet with a central angle of 22°54'37");  
thence South 07°39'13" West 5.82 feet;  
thence South 76°45'10" West 27.71 feet;  
thence North 16°20'36" West 892.79 feet to the southerly line of State Road 9;  
thence North 73°19'03" East 65.46 feet along said southerly line;  
thence easterly 25.49 feet along an arc of a 22,763.31 foot radius curve to the right (center bears South 16°40'57" East, long chord bears North 73°20'59" East 25.49 feet with a central angle of 00°03'51") along said southerly line to the Point of Beginning.

**EXHIBIT B**

**RED BRIDGE EASEMENT**

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**DOC # 20130032488**

Easements Page 1 of 13  
Russell Shirts Washington County Recorder  
08/26/2013 10:23:22 AM Fee \$ 38.00  
By SNELL & WILMER



When recorded, return to:

David E. Leta, Esq.  
Snell & Wilmer L.L.P.  
15 West South Temple, Suite 1200  
Salt Lake City, Utah 84101

Parcel Nos. H-4-2-1-1123  
H-4-2-1-1107  
Part of Parcel No. H-4-2-1-11

### AMENDED AND RESTATED ACCESS AND UTILITY EASEMENT

THIS AMENDED AND RESTATED ACCESS AND UTILITY EASEMENT ("Agreement") is made and entered into as of June 18, 2013 ("Effective Date"), by and between MELLON VALLEY, LLC, a Utah limited liability company ("Mellon Valley"), ELIM VALLEY PLANNING AND DEVELOPMENT, LLC, a Utah limited liability company ("EVPD" and collectively with Mellon Valley, "Grantor"), and RED BRIDGE CAPITAL, LLC, a Utah limited liability company ("Grantee"). Grantor and Grantee are sometimes hereinafter referred to individually as a "Party" and collectively as the "Parties."

### RECITALS

A. Grantee is the owner of two parcels of vacant, developable real property, each consisting of approximately 15 acres, that are located in Washington County, Utah, near the City of Hurricane, more particularly described on Exhibit A attached hereto and incorporated by this reference (the "Properties").

B. The Properties are each separated by certain strip parcels that are owned by Grantor (the "Strip Parcels") and that are parallel to Sand Hollow Road, which bisects the Strip Parcels. As of the Effective Date, the Strip Parcels are vacant. The Strip Parcels are described on Exhibit B which is attached hereto.

C. Currently there is inadequate or nonexistent vehicular access from the Properties to Sand Hollow Road that would permit reasonable commercial and/or residential development of the Properties without further agreement between Grantor and Grantee. The most cost effective and logical access from the Properties to Sand Hollow Road would be across the Strip Parcels.

D. Pursuant to a Settlement Agreement among Mellon Valley, Grantee and certain other parties dated as of May 15, 2013 ("Settlement Agreement"), Mellon Valley agreed to grant to Grantee (i) an easement burdening the Strip Parcels and permitting each of the Properties to have access to Sand Hollow Road and (ii) an easement over the Strip Parcels for certain underground and above-ground utility lines and related facilities and improvements, subject to the terms set forth in this Agreement:

E. On May 15, 2013, Mellon Valley and Grantee entered into that certain Access and Utility Easement, recorded on May 22, 2013 as Entry No. 20130019724 in the Official Records of Washington County, State of Utah (the "Existing Easement"), pursuant to the Settlement Agreement, wherein Mellon Valley granted certain easement interests in the Strip Parcels to Grantee.

F. Upon further investigation and a title commitment issued concerning the Strip Parcels, title to the Strip Parcels is currently vested in Mellon Valley and EVPD, as their respective interests may appear of record. EVPD is an entity associated with Mellon Valley and the other Parties to the Settlement Agreement.

G. Grantor and Grantee desire to enter into this Agreement to amend and restate their agreement concerning the Existing Easement, to correct the Existing Easement and ensure the easements contemplated by the Settlement Agreement are fully enforceable against the Strip Parcels and in compliance with the Settlement Agreement. Capitalized terms used in this Agreement and not defined in this Agreement shall have the meanings given to such terms in the Settlement Agreement.

#### AGREEMENT

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

1. Incorporation of Recitals. The recitals set forth above are incorporated in this Agreement as if fully set forth in the body of this Agreement.

2. Grant of Easements.

(a) Access Easement. Grantor hereby grants to Grantee and its Permittees (defined later) a perpetual, exclusive easement over, upon and across the Strip Parcels for the purpose of vehicular, pedestrian, and other ingress, egress and access to and from Sand Hollow Road in at least two (2) separate locations for each of the Properties (a total of four (4) locations) ("Access Easement"), with the specific location, width, and description of the Access Easement ("Access Easement Area") to be determined at the sole discretion of Grantee and at a future date, *provided however*, that the specific location and width of the Access Easements shall be reasonable for typical commercial and/or residential development of the Properties. The term "Permittees" shall mean Grantee's contractors, employees, consultants, agents, representatives, invitees, licensees, utility providers, successors and assigns. Grantor and its Permittees shall have the right to construct, install, lay, maintain, operate, repair, inspect, protect, remove and replace within the Access Easement Area any roadway and related improvements (collectively, "Roadway Improvements") as may be necessary or appropriate, as determined by Grantee in its sole and absolute discretion, to permit typical commercial and/or residential development of the Properties, including, without limitation, the paving, curbing, striping, directional signs, a drive aisle, artificial lighting facilities, and other related road improvements (including landscaping) constructed by Grantee from time to time (including any reconfiguration thereof) on any portion of the Access Easement Area.



(b) Utility Easement. Grantor hereby grants a perpetual, exclusive easement to Grantee and its Permittees in, over, under, across, and through the Strip Parcels to construct, install, lay, maintain, operate, repair, inspect, protect, remove and replace underground and above-ground utility lines and facilities (collectively, "**Utility Improvements**") as may be necessary or appropriate, as determined by Grantee in its sole and absolute discretion, to permit typical commercial and/or residential development of the Properties, together with a right of access to the Strip Parcels to exercise its rights granted under this subsection (b) ("**Utility Easement**"), provided, however, the installation of all such utilities shall comply with applicable zoning and development rules, regulations, statutes and covenants. The specific location and description of the Utility Easement ("**Utility Easement Area**") shall be within the same location as the Access Easement. The Access Easement and the Utility Easement are sometimes hereinafter referred to individually as the "**Easements**."

3. Construction; Maintenance; and Repairs. The construction, maintenance, and repairs of all Roadway Improvements and Utility Improvements (collectively, "**Improvements**") shall be at no cost to the Grantor, except to the extent that any such maintenance and repairs are necessitated by the active or passive negligent or willful act of Grantor or its contractors, employees, consultants, agents, representatives, invitees, licensees ("**Grantor Permittees**"), in which case Grantor shall be responsible for the costs of such maintenance and repairs and shall reimburse Grantee for the cost of such maintenance and repairs, together with interest thereon at the rate of 12% per annum from the date such costs are incurred until paid.

4. Use and Improvements by Grantor. Neither Grantor nor Grantor Permittees shall make any use of the Access Easement Area, the Utility Easement Area, and the Improvements that interferes with the rights granted to Grantee and its Permittees under this Agreement. Grantor shall have no right erect any wall, fence or other barrier on the Access Easement Area and the Utility Easement Area (collectively, "**Easement Area**"). Grantor shall not construct or cause the construction of any buildings or permanent structures on the Easement Area. To the extent that any Grantor desires to make any improvements to the Easement Area, or any portion thereof, Grantor shall first obtain the written consent of Grantee (which consent may be not be unreasonably withheld) to the proposed improvements, including the plans and specifications therefor. Grantor shall be responsible for paying any and all ad valorem taxes and assessments levied against the entire Grantor Property, including the Strip Parcels and the Easement Area, and shall not suffer or permit such taxes and assessments to become delinquent.

5. Grantor's Representations and Warranties: Priority of Grantee's Estate. Grantor warrants and represents to Grantee that as of the Effective Date, Grantor has good and indefeasible fee simple title to the Strip Parcels and has full right, power and authority to grant the Easements to Grantee. Grantor further represents and warrants that, on and after the Effective Date, it will not enter into any encumbrances, agreements, covenants or restrictions against the Strip Parcels. Grantor will indemnify and hold Grantee harmless if any of the foregoing representations and warranties proves to be untrue. Grantor further warrants that, within the one-hundred eighty (180) days after entry of the Judgment, there shall be no mortgages, deeds of trust, other instruments of security, or other liens and encumbrances (other than the lien for real estate taxes not yet due and payable) affecting the Strip Parcels, including the Access Easement Area and the Utility Easement Area, which are superior to this Agreement.

or which could result in the termination of this Agreement, or which could limit Grantee's rights hereunder.

6. Notices. All notices and other communications hereunder shall be in writing and shall be deemed to have been duly given if delivered personally (including delivery by courier service), transmitted by facsimile or other electronic transmission, or mailed by registered or certified mail, postage prepaid, return receipt requested, as follows:

To Grantor:

Mellon Valley, LLC  
1300 South Sand Hollow Rd  
Hurricane, UT 84737

Elim Valley Planning and Development, LLC  
1300 South Sand Hollow Rd  
Hurricane, UT 84737

With a copy to:

Clifford V. Dunn, Esq.  
Dunn Law Firm  
P.O. Box 2318  
110 West Tabernacle  
St. George, UT 84771-2318  
Facsimile: (435) 628-4145  
Email: cvdunn@dunnfirm.com

To Grantee:

Red Bridge Capital, LLC  
c/o Cherokee and Walker Management  
Attn: Paul Erickson  
6440 South Wasatch Boulevard, Suite 200  
Salt Lake City, Utah 84121  
Facsimile: 801-278-7818  
Email: paul@cherokeeandwalker.com

With copy to:

David E. Leta, Esq.  
Snell & Wilmer L.L.P.  
15 West South Temple, Suite 1200  
Salt Lake City, Utah 84101  
Facsimile: 801-257-1800  
Email: dleta@swlaw.com

or to such other address as either Party may from time to time designate by notice in writing to the other Party. Rejection, refusal to accept delivery or inability to deliver due to changed address of which no notice has been given shall be deemed receipt by the addressee.

7. Headings. Headings in this Agreement are for convenience only and shall not be used to interpret or construe its provisions.

8. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Utah, without giving effect to its choice of law principles.

9. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed as an original but all of which together shall constitute one and the same instrument.

10. Entire Agreement. This Agreement, together with the Settlement Agreement and any agreements executed in accordance with the Settlement Agreement, supersedes all prior understandings, representations and agreements between the Parties with regard to the subject matter hereof and there are no other understandings, representations, warranties or agreements between them.

11. Attorneys' Fees. If either Party brings or commences any legal action or proceeding to enforce any of the terms of this Agreement, the prevailing Party, if any, in such action shall be entitled to recover from the non-prevailing Party all reasonable attorneys' fees that may have been incurred, including any and all costs and expenses incurred in enforcing, perfecting and executing such judgment, and including all costs of appeal.

12. Amendment. Neither this Agreement nor any provision hereof may be changed, amended, modified, waived or discharged orally or by any course of dealing, but only by an instrument in writing signed by the Party against which enforcement of the change, amendment, modification, waiver or discharge is sought.

13. Authority. Each party hereto hereby represents, warrants and covenants unto the other that this Agreement has been duly authorized, executed and delivered by such party and constitutes the valid, legal and binding agreements and obligations of such party enforceable against such party in accordance with the terms hereof.

14. Severability. If any provision of this Agreement, or portion thereof, or the application thereof to any person or circumstances, shall, to any extent be held invalid, inoperative or unenforceable, the remainder of this Agreement, or the application of such provision or portion thereof to any other persons or circumstances, shall not be affected thereby; it shall not be deemed that any such invalid provision affects the consideration for this Agreement; and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

15. No Joint Venture. Nothing in this Agreement shall be construed to make the Parties partners or joint venturers or render any of the Parties liable for the debts or obligations of the other.

16. Legal and Equitable Relief. In the event of any breach, or attempted or threatened breach, by any Party to this Agreement, of any of the terms, covenants or conditions hereof, the other Party shall be entitled to full and adequate relief by injunction and/or such other available

legal or equitable remedies from the consequences of such breach. The remedies herein provided shall be cumulative as to all other remedies permitted by law or in equity.

17. Waiver. The waiver of, or failure to enforce, any breach of or violation of any of the foregoing obligations or easements shall not be deemed to be a waiver of the right to enforce, or be deemed an abandonment of, the particular obligation violated or any of the obligations; nor shall it be deemed to be a waiver of the right to enforce any subsequent breach or violation of this Agreement or any of the provisions set forth herein. The foregoing shall apply regardless of whether or not any party has knowledge of the breach of the violation.

18. No Public Dedication. The provisions of this Agreement are not intended to and do not constitute a dedication for public use of the Grantor Property, or any portion thereof, and the rights herein created are private and for the benefit only of the Parties, their successors and assigns.

19. Running With the Land, Successors and Assigns. All provisions of this Agreement, including the benefits and burdens, are expressly declared to touch and concern and run with the land, with the Properties being the dominant estate and the Strip Parcels being the servient estate, and are binding upon and shall inure to the benefit of each of Grantor and Grantee and their respective successors and assigns. All easements granted in this Agreement are appurtenant and not in gross. All easements granted in this Agreement are irrevocable, *provided, however,* that the Access and Utility Easements may be dedicated to the City of Hurricane upon the future mutual agreement of Grantor and Grantee. All easements granted hereunder shall exist by virtue of this Agreement without the necessity of confirmation by any other document.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives effective as of the date first set forth above.

**GRANTOR:**

**MELLON VALLEY, LLC,**  
a Utah limited liability company

By: 

Its: \_\_\_\_\_

**ELIM VALLEY PLANNING AND  
DEVELOPMENT, LLC,**  
a Utah limited liability company

By: 

Its: \_\_\_\_\_

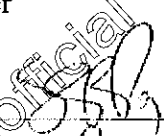
GRANTEE:

**RED BRIDGE CAPITAL, LLC,**  
a Utah limited liability company

By: Cherokee & Walker Management, LLC, its  
manager

by:

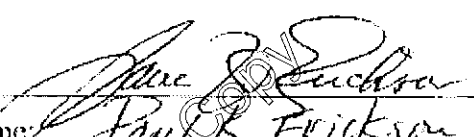
Name:

  
Shawn R. Lee

Its: Manager

By:

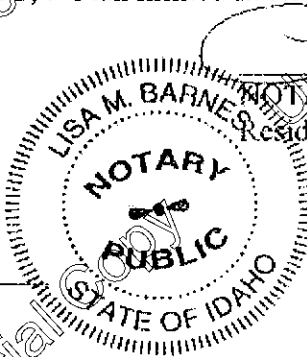
Name:

  
Paul H. Erickson

Its: Manager

STATE OF Idaho )  
COUNTY OF Jefferson : ss.

The foregoing instrument was acknowledged before me this 1st day of August, 2013, by Roland Walker of MELBON VALLEY, LLC, a Utah limited liability company, on behalf of the company.

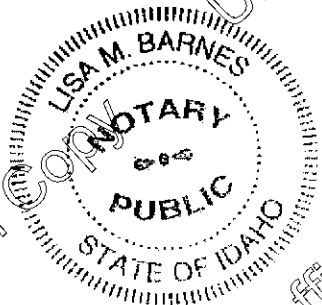


Lisa M Barnes  
NOTARY PUBLIC  
Residing at: Hamer Idaho

My Commission Expires:  
06-16-17

STATE OF Idaho )  
COUNTY OF Jefferson : ss.

The foregoing instrument was acknowledged before me this 1st day of August, 2013, by Roland Walker of ELIM VALLEY PLANNING AND DEVELOPMENT, LLC, a Utah limited liability company, on behalf of the company.



Lisa M Barnes  
NOTARY PUBLIC  
Residing at: Hamer, Idaho

My Commission Expires:  
06-16-17

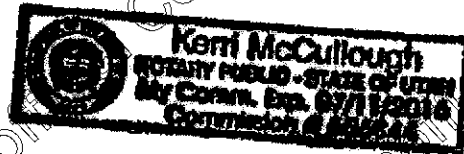
STATE OF Utah  
COUNTY OF Salt Lake SS.

The foregoing instrument was acknowledged before me this 14<sup>th</sup> day of August 2013, by Paul K. Emery and Shane E. Aulet, managers of Cherokee & Walker Management, LLC, manager of RED BRIDGE CAPITAL, LLC, a Utah limited liability company, on behalf of the company.

Kent McCullough  
NOTARY PUBLIC  
Residing at: Salt Lake

My Commission Expires:

7/11/16



**EXHIBIT A**

**LEGAL DESCRIPTION OF PROPERTIES**

**PARCEL A:**

**Lender SR-9 Parcel A**

Beginning at point on the Southerly line of Highway SR-9, said point being South 00°15'22" West 878.00 feet along the section line and West 2061.87 feet from the Northeast Corner of Section 1, Township 42 South, Range 14 West, Salt Lake Base and Meridian, and running thence South 16°20'36" East 892.79 feet thence South 76°45'10" West 864.99 feet; thence North 00°10'33" East 955.76 feet to point on the Southerly line of said SR-9; thence South 89°50'12" East 254.45 feet along said Southerly line; thence North 73°19'03" East 348.01 feet along said Southerly line to the Point of Beginning.

**PARCEL B:**

**Lender SR-9 Parcel B**

Beginning at point on the Southerly line of Highway SR-9, said point being South 00°15'22" West 666.57 feet along the section line and West 1344.61 feet from the Northeast Corner of Section 1, Township 42 South, Range 14 West, Salt Lake Base and Meridian, and running thence South 16°20'36" East 1306.80 Feet; thence South 73°39'24" West 500.00 feet; thence North 16°20'36" West 1306.80 feet to point on the Southerly line of said SR-9, thence North 73°39'24" East 500.00 feet along said Southerly line to the Point of Beginning.



**EXHIBIT B**  
**Strip Parcels Legal Description**

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PARCEL A

Beginning at a point on the east side of Sand Hollow Road where it intersects with State Road 9, said point being North 89°46'47" West 1,887.49 feet along the center section line and North 1,820.64 feet from the East Quarter Corner of Section 1, Township 42 South, Range 14 West, Salt Lake Base & Meridian, and running;

thence easterly 25.27 feet along an arc of a 22,763.31 foot radius curve to the right (center bears South 16°24'24" East, long chord bears North 73°37'31" East 25.27 feet with a central angle of 00°03'49") along the southerly line of State Road 9;  
thence North 73°39'24" East 48.49 feet along the southerly line of said State Road 9;  
thence South 16°20'36" East 1,306.80 feet;  
thence South 73°39'35" West 338.52 feet to the easterly line of Sand Hollow Road;  
thence northerly the following (5) courses along the easterly line of said Sand Hollow Road;  
thence North 16°56'45" East 51.31 feet;  
thence northerly 172.48 feet along an arc of a 684.00 foot radius curve to the left (center bears North 69°44'51" West, long chord bears North 13°01'44" East 172.02 feet with a central angle of 14°26'51");  
thence northerly 30.04 feet along an arc of a 931.00 foot radius curve to the right (center bears South 84°11'42" East, long chord bears North 06°43'46" East 30.04 feet with a central angle of 01°50'55");  
thence North 07°39'13" East 177.80 feet;  
thence northerly 256.71 feet along an arc of a 642.00 foot radius curve to the left (center bears North 82°20'47" West, long chord bears North 03°48'06" West 256.00 feet with a central angle of 22°54'37");  
thence North 15°15'24" West 675.11 feet to the Point of Beginning.

Less and excepting that parcel conveyed to Questar Gas Company by that certain Warranty Deed recorded August 17, 2009 as Entry No. 20090031873 and more particularly described as follows:

Elim Valley Regulation Station

Beginning at a point being South 00°15'22" West, 2011.10 feet along the section line and West 1509.90 feet from the Northeast corner of Section 1, Township 42 South, Range 14 West, Salt Lake Base and Meridian and running thence North 54°33'12" West, 75.00 feet; thence North 35°26'48" East, 50.00 feet; thence South 54°33'12" East, 75.00 feet; thence South 35°26'48" West, 50.00 feet to the Point of Beginning;

PARCEL B

Beginning at a point on the west side of Sand Hollow Road where it intersects with State Road 9, said point being North 89°46'47" West 1,968.05 feet along the center section line and North 1,796.45 feet from the East Quarter Corner of Section 1, Township 42 South, Range 14 West, Salt Lake Base & Meridian, and running;

thence southerly the following (3) courses along the westerly line of Sand Hollow Road;  
thence South 15°16'24" East 673.27 feet;  
thence southerly 223.12 feet along an arc of a 558.00 foot radius curve to the right (center bears South 74°44'36" West, long chord bears South 03°48'06" East 221.64 feet with a central angle of 22°54'37");  
thence South 07°39'13" West 5.82 feet;  
thence South 76°45'10" West 27.71 feet;  
thence North 16°20'36" West 892.79 feet to the southerly line of State Road 9;  
thence North 73°19'03" East 65.46 feet along said southerly line;  
thence easterly 25.49 feet along an arc of a 22,763.31 foot radius curve to the right (center bears South 16°40'57" East, long chord bears North 73°20'59" East 25.49 feet with a central angle of 00°03'51") along said southerly line to the Point of Beginning.