

When Recorded, Mail To:  
ICO MF Holdings  
978 East Woodoak Lane  
Salt Lake City, UT 84117

With A Copy To:  
Downtown Village II, LLC

Tax ID. No. 14-055-0182  
14-055-0187

(Space above for Recorder's use only)

### ACCESS AND UTILITY EASEMENT

THIS ACCESS AND UTILITY EASEMENT (this "Agreement") is entered into this 18 day of July, 2013, by and between DOWNTOWN VILLAGE II, LLC, a Utah limited liability company ("Grantor"), and ICO MF HOLDINGS, LLC, a Utah limited liability company ("Grantee").

### RECITALS

- A. Grantee owns certain real property (the "Grantee's Parcel") located in Utah County Utah.
- B. Grantor owns certain real property adjacent to Grantee's Parcel (the "Grantor's Parcel") located in Utah County, Utah.
- C. Grantee desires to obtain a perpetual, exclusive easement on, over, and across a portion of the Grantor's Parcel (the "Easement Area") for the purposes more particularly described herein, and Grantor is willing to grant the easement to Grantee for such purposes subject to the terms and conditions set forth herein. The Easement Area is more particularly described in the legal description on Exhibit A and is depicted on the drawing on Exhibit B, both attached hereto and incorporated by this reference. Should there be any discrepancy between the legal description and the drawing, the legal description shall control.

### TERMS AND CONDITIONS

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and based upon the mutual promises and subject to the conditions set forth below, the parties agree as follows:

1. Grant of Easement. Grantor hereby grants and conveys, without warranty whatsoever, to Grantee an exclusive easement for a public right-of-way on, over, and across the Easement Area for access to Grantee's Parcel, including construction and maintenance of roads and sidewalks as well as installation and maintenance of utilities.

2. Access. Grantees shall have the right to enter upon the Easement Area for the purposes permitted by this Agreement. Grantee shall enter upon the Easement Area at its sole risk and hazard, and Grantee and its successors and assigns, hereby release Grantor from any claims relating to the condition of the Easement Area and the entry upon the Easement Area by Grantee, its agents, employees, servants, contractors and other such parties.

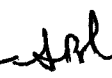
3. Condition of the Easement Area. Grantee accepts the Easement Area and all aspects thereof in "as is", "where is" condition, without warranties, either express or implied, "with all faults", including but not limited to both latent and patent defects, and the existence of hazardous materials, if any. Grantee hereby waives all warranties, express or implied, regarding the title, condition and use of the Easement Area, including, but not limited to any warranty of merchantability or fitness for a particular purpose.

4. Maintenance and Restoration. Grantor will maintain the Easement Area and Improvements, as required by then applicable law or regulations governing the maintenance of the same. Except as provided for in the previous sentence, Grantee, at its sole cost and expense, shall maintain and repair the Improvements and the Easement Area. Additionally, during and immediately after construction work on the Easement Area conducted by Grantee, Grantee shall promptly repair any damage to the Grantor's Parcel and Grantor's improvements located thereon caused by Grantee and/or Grantee's Agents, and shall restore the Grantor's Parcel and the improvements thereon to the same or better condition as they existed prior to any entry onto or work performed on the Grantor's Parcel by Grantee and Grantee's Agents.

5. Compliance with Laws. Grantee will comply with all present or future laws, statutes, codes, acts, ordinances, rules, regulations, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions and requirements of and agreements with all governments, departments, commissions, boards, courts, authorities, agencies, officials and officers, foreseen or unforeseen, ordinary or extraordinary, including, without limitation, any building, zoning and land use laws.

6. Insurance. Each of the parties to this Agreement, and any of Grantee's Agents that enter Easement Area for the purpose of installing, using, operating, maintaining, repairing and replacing the Improvements, shall obtain and maintain a policy of general commercial liability insurance sufficient to insure their respective interests against claims for personal injury, bodily injury, death, and property damage occurring on, in or about the Easement Area. This requirement may be satisfied by self-insurance, so long as the party maintains actuarially sound reserves.

7. Indemnification. Grantee and its successors and assigns hereby agree to indemnify, defend (with counsel acceptable to Grantor) and hold harmless Grantor, and any

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entity controlling, controlled by or under control with Grantor ("Affiliates"), and its and their Affiliates' officers, directors, employees, managers, members, agents, servants, successors, and assigns from and against any and all liens, encumbrances, costs, demands, claims, judgments, and/or damage caused by or arising out of (i) the acts and omissions of Grantee and its agents, servants, employees, and/or contractors; (ii) the use of the Grantor's Parcel and/or the Improvements by Grantee, its agents, servants, employees, or contractors; and (iii) any work performed on the Grantor's Parcel by Grantee or its successors or assigns, and their agents, servants, employees, consultants and/or contractors. The terms and conditions of this provision shall remain effective after the expiration or termination of this Agreement, so long as the event for which the indemnification is needed occurred prior to such expiration or termination.

8. Notices. Any notice required or desired to be given under this Agreement shall be considered given either: (i) when delivered in person to the recipient named below, (ii) three (3) days after deposit in the United States mail in a sealed envelope or container, either registered or certified mail, return receipt requested, postage prepaid, addressed by name to the person and party intended. All notices shall be given at the following addresses:

If to Grantor:

Downtown Village II  
Attn:

If to Grantee:


ICO MF Holdings  
Attn: Darin Haskell  
978 East Woodoak Lane  
Salt Lake City, UT 84117

Either party may designate a different individual or address for notices, by giving written notice thereof in the manner described above.

9. Miscellaneous.

9.1 Interpretation. Section titles and captions to this Agreement are for convenience only and shall not be deemed part of this Agreement and in no way define, limit, augment, extend, or describe the scope, content, or intent of any part of this Agreement. This Agreement has been arrived at through negotiation between Grantor and Grantee. As a result, the normal rule of contract construction that any ambiguities are to be resolved against the drafting party shall not apply in the construction or interpretation of this Agreement.

9.2 Run with the Land/Successors. Subject to the terms and conditions of this Agreement, the easement granted herein shall run with the land, and the terms and conditions of this Agreement shall inure to the benefit of and be binding upon the parties, their successors and assigns.

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9.3 Rights and Remedies. The rights and remedies of any of the parties stated herein are not intended to be exclusive, and the exercise of one or more of the provisions of this Agreement shall not preclude the exercise of any other provisions. Each of the parties confirms that damages at law may be an inadequate remedy for a breach or threatened breach of any provision hereof. The respective rights and obligations hereunder shall be enforceable by specific performance, injunction, or other equitable remedy, but nothing herein contained is intended to or shall limit or affect any rights at law or by statute or otherwise of any party aggrieved as against the other party for a breach or threatened breach of any provision hereof, it being the intent of this paragraph to make clear the agreement of the parties that the respective rights and obligations of the parties hereunder shall be enforceable in equity as well as at law or otherwise.

9.4 Enforceability and Litigation Expenses. If any action, suit, or proceeding is brought by a party hereto with respect to a matter or matters covered by this Agreement or if a party finds it necessary to retain an attorney to enforce its rights under this Agreement, all costs and expenses of the prevailing party incident to such proceeding or retention, including reasonable attorneys' fees, shall be paid by the non-prevailing party.

9.5 Authorization. Each individual executing this Agreement represents and warrants that he or she has been duly authorized by appropriate action of the governing body of the party for which he/she signs to execute and deliver this Agreement in the capacity and for the entity set forth where he/she signs and that as a result of his/her signature, this Agreement shall be binding upon the party for which he/she signs.

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

Grantor: DOWNTOWN VILLAGE II, LLC, a Utah limited liability company

By: *Stanley Brent Smith*  
Name (Print): ~~Stanley Brent Smith~~  
Its: Authorized Agent ~~Stanley Brent Smith~~  
General partner s

Grantee: ICO MF HOLDINGS, LLC, a Utah limited liability company


By: *James G. Skelby*  
Name (Print): James G. Skelby  
Its: Manager

*[acknowledgements on following page]*

STATE OF UTAH )  
 :SS  
COUNTY OF SALT LAKE )

On this 18 day of July, 2013, personally appeared before me Stanley Brent Smith and Mary Kaye Smith, known or satisfactorily proved to me to be the General Partners of DOWNTOWN VILLAGE II, LLC, a Utah limited liability company, who acknowledged to me that he/she signed the foregoing instrument as General Partners for said entity.

WITNESS my hand and official seal.

  
\_\_\_\_\_  
Notary Public for the  
State of Utah

My commission expires:


5/3/15



STATE OF UTAH )  
 :SS  
COUNTY OF SALT LAKE )

On this 16 day of July, 2013, personally appeared before me James Seaberg, known or satisfactorily proved to me to be the Manager of ICO MF DEVELOPMENT, LLC, a Utah limited liability company, who acknowledged to me that he/she signed the foregoing instrument as Manager for said entity.


WITNESS my hand and official seal.

  
\_\_\_\_\_  
Notary Public for the  
State of Utah

My commission expires:

3/15/16



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## EXHIBIT A

## (Legal Description of Easement Area)

## PARCEL 1:

Beginning at a point being South 00°20'54" East 316.67 feet along the section line and East 941.67 feet from the Northwest corner of Section 30, Township 5 South, Range 2 East, Salt Lake Base and Meridian and running thence East 110.67 feet; thence Southerly 34.56 feet along the arc of a 6,056.00 feet radius curve to the left (center bears North 83°24'23" East and the chord bears South 06°45'25" East 34.56 feet with a central angle of 00°19'37"); thence South 83°21'48" West 110.00 feet; thence North 06°38'12" West 47.35 feet to the point of beginning.

## PARCEL 2:

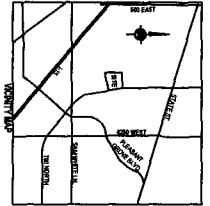
Beginning at a point being South 00°20'54" East 752.24 feet along the section line and East 949.32 feet from the Northwest corner of Section 30, Township 5 South, Range 2 East, Salt Lake Base and Meridian and running thence North 79°14'51" East 143.19 feet; thence South 30°33'29" West 53.25 feet; thence South 79°14'51" West 108.04 feet; thence North 10°45'09" West 40.00 feet to the point of beginning.

**EXHIBIT B**  
**(Drawing of the Easement Area)**



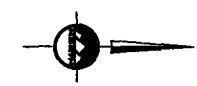
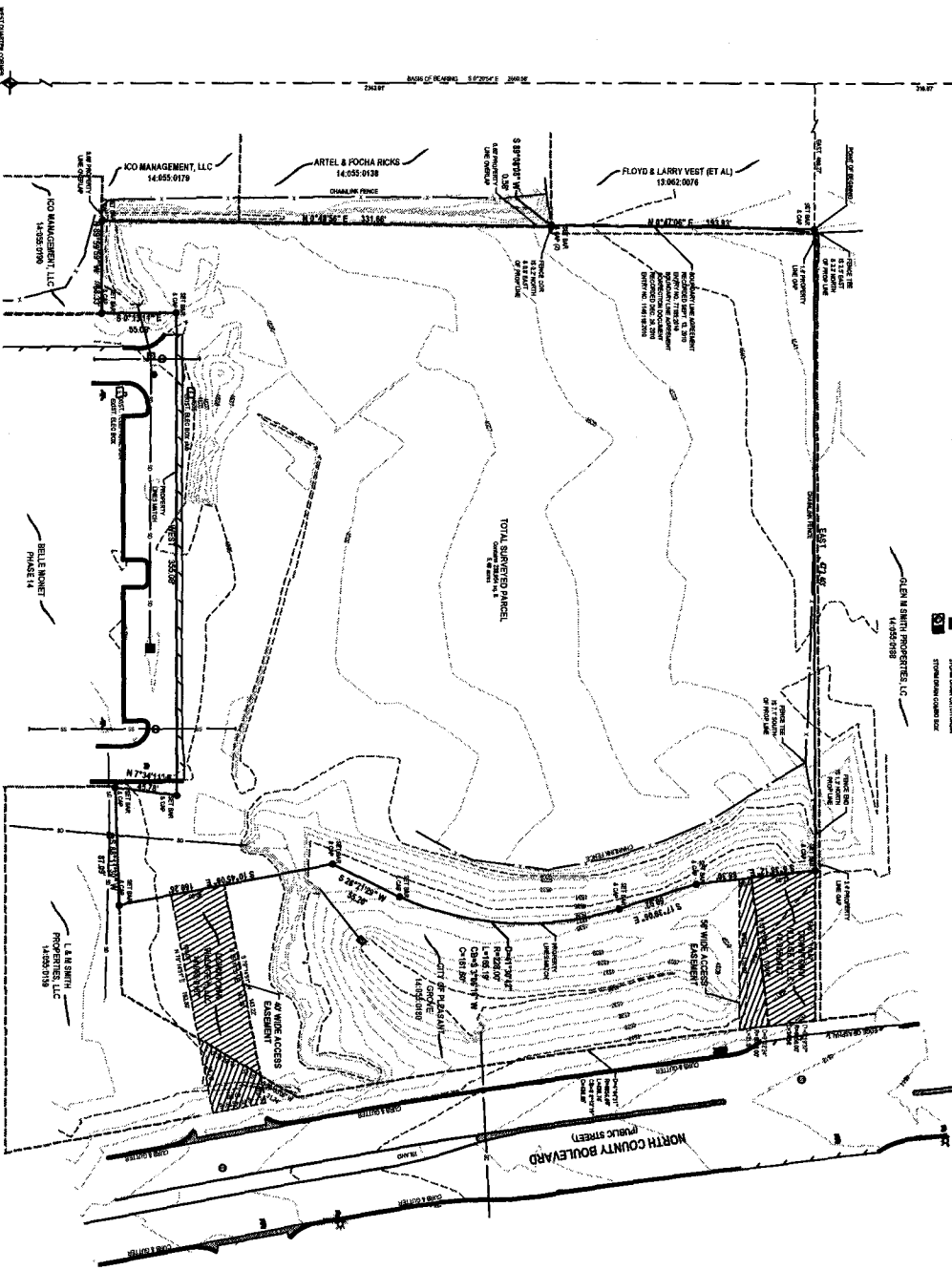


**BOUNDARY & TOPOGRAPHIC SURVEY**  
 DATE: 08/14/2013  
 SHEET NO. 14 OF 14  
 PROJECT NO. 1308000000



**LEGEND**

	SECTION CORNER		ADJACENT PROPERTY LINE
	MONUMENT		UTILITY
	ELEVATION CONTOUR		EASEMENT
	RIGHT OF WAY		EASEMENT
	BOUNDARY LINE		EASEMENT
	ADJACENT PROPERTY LINE		EASEMENT



LOCATED IN THE NORTHERLY QUARTER OF SECTION 30, TOWNSHIP 5 SOUTH, RANGE 2 EAST, PLEASANT GROVE, UTAH COUNTY, UTAH

**SURVEYOR'S NARRATIVE**

Refer to the Survey Report for a complete description of the survey. The survey was conducted on August 14, 2013, and the results are shown on this plan. The survey was conducted in accordance with the Utah Surveying Act and the rules and regulations of the Board of Surveying and Mapping. The survey was conducted by the undersigned and the results are shown on this plan. The survey was conducted in accordance with the Utah Surveying Act and the rules and regulations of the Board of Surveying and Mapping. The survey was conducted by the undersigned and the results are shown on this plan.

**DEED DESCRIPTION**

Reference is made to the deed of conveyance recorded in the public records of Utah County, Utah, on August 14, 2013, and the results are shown on this plan. The survey was conducted in accordance with the Utah Surveying Act and the rules and regulations of the Board of Surveying and Mapping. The survey was conducted by the undersigned and the results are shown on this plan.

**STAKEOUT DESCRIPTION**

Reference is made to the stakeout report recorded in the public records of Utah County, Utah, on August 14, 2013, and the results are shown on this plan. The survey was conducted in accordance with the Utah Surveying Act and the rules and regulations of the Board of Surveying and Mapping. The survey was conducted by the undersigned and the results are shown on this plan.

**ACCESS EASEMENT DESCRIPTIONS**

Reference is made to the access easement report recorded in the public records of Utah County, Utah, on August 14, 2013, and the results are shown on this plan. The survey was conducted in accordance with the Utah Surveying Act and the rules and regulations of the Board of Surveying and Mapping. The survey was conducted by the undersigned and the results are shown on this plan.

**ADJACENT PROPERTY DESCRIPTIONS**

Reference is made to the adjacent property report recorded in the public records of Utah County, Utah, on August 14, 2013, and the results are shown on this plan. The survey was conducted in accordance with the Utah Surveying Act and the rules and regulations of the Board of Surveying and Mapping. The survey was conducted by the undersigned and the results are shown on this plan.

**ADJACENT PROPERTY OWNERS**

Reference is made to the adjacent property owners report recorded in the public records of Utah County, Utah, on August 14, 2013, and the results are shown on this plan. The survey was conducted in accordance with the Utah Surveying Act and the rules and regulations of the Board of Surveying and Mapping. The survey was conducted by the undersigned and the results are shown on this plan.

**ADJACENT PROPERTY CONTACTS**

Reference is made to the adjacent property contacts report recorded in the public records of Utah County, Utah, on August 14, 2013, and the results are shown on this plan. The survey was conducted in accordance with the Utah Surveying Act and the rules and regulations of the Board of Surveying and Mapping. The survey was conducted by the undersigned and the results are shown on this plan.

**ADJACENT PROPERTY NOTES**

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**ADJACENT PROPERTY REFERENCES**

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**ADJACENT PROPERTY COMMENTS**

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**ADJACENT PROPERTY SIGNATURES**

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**ADJACENT PROPERTY DATES**

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**ADJACENT PROPERTY NOTES**

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**ADJACENT PROPERTY NOTES**

**SALT LAKE CITY**  
 1000 WEST 1000 SOUTH  
 SUITE 100  
 SALT LAKE CITY, UT 84119  
 PHONE: 801.756.4449  
 FAX: 801.756.4449

**ICO MULTIFAMILY HOLDINGS, LLC**  
**BOUNDARY & TOPOGRAPHIC SURVEY**  
 2050 WEST 700 SOUTH  
 PLEASANT GROVE, UTAH

**BOUNDARY & TOPOGRAPHIC SURVEY**  
 DATE: 08/14/2013  
 SHEET NO. 14 OF 14  
 PROJECT NO. 1308000000