

When Recorded, Mail To:
Mr. James Hardy
3586 West 900 South
Salt Lake City, Utah 84104

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08/18/2004 02:07 PM \$36.00
Book - 9027 Pg - 1254-1267
GARY W. OTT
RECORDER, SALT LAKE COUNTY, UTAH
MR JAMES HARDY
3586 W 900 S
SLC UT 84104
BY: SBM, DEPUTY - WI 14 P.

ACCESS EASEMENT AGREEMENT

THIS ACCESS EASEMENT AGREEMENT (the "Agreement") is made and entered into as of the 3rd day of August, 2004, by and among **DDR FAMILY CENTERS, LP, a Delaware limited partnership** ("DDRFC"), having an address at 3300 Enterprise Parkway, Beachwood, Ohio 44122, and **HARDY REDWOOD CENTER, LLC., a Utah limited liability company, dba SHOPS ON REDWOOD** ("SOR"), having an address at 3586 West 900 South, Salt Lake City, Utah 84104.. DDRFC and SOR shall sometimes be referred to herein individually as a "Party" and collectively as the "Parties."

WITNESSETH:

WHEREAS, DDRFC is the fee owner of certain tracts of land located in the City of Taylorsville, County of Salt Lake, and State of Utah, more particularly described in and depicted on Exhibit "A" attached hereto and made a part hereof and are part of a retail development more commonly known as the MidValley Family Center shopping center (the "DDRFC Parcel");

WHEREAS, SOR is the fee owner of a tract of land located in the City of Taylorsville, County of Salt Lake and State of Utah, more particularly described in and depicted on Exhibit "B" attached hereto and made a part hereof (the "SOR Parcel"). The SOR Parcel is contiguous with the DDRFC Parcel along the Southern boundary of the SOR Parcel;

WHEREAS, the DDRFC Parcel and the SOR Parcel shall sometimes be referred to herein individually as a "Tract," and collectively as the "Tracts;" and

WHEREAS, SOR and DDRFC desire to provide for certain reciprocal access to and across the SOR Parcel and the DDRFC Parcel for the mutual benefit of SOR and DDRFC and other parties that have access rights to the DDRFC Parcel, as set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual promises, covenants and agreements herein contained, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties hereby agree as follows:

1. DDRFC Easement. DDRFC hereby grants to SOR, for the benefit of an appurtenance to the SOR Parcel, and its successors, assigns, employees, customers, licensees, tenants, invitees, and members of the general public having business on the SOR Parcel, a perpetual non-exclusive easement for pedestrian and vehicular passage and for pedestrian and vehicular ingress to and egress from, to, on, over, upon, across, through and around the DDRFC Parcel and to, from, and across all public streets accessing the DDRFC Parcel.

2. SOR Easement. SOR hereby grants to DDRFC, for the benefit of an appurtenance to the DDRFC Parcel, and its successors, assigns, employees, customers, licensees, tenants, invitees, those parties with access rights to the DDRFC Parcel, and members of the general public having business on the DDRFC Parcel, a perpetual non-exclusive easement for pedestrian and vehicular passage and for pedestrian and vehicular ingress to and egress from, to, on, over, upon, across, through and around the SOR Parcel (but only from the southern boundary of the SOR Parcel in the access lanes constructed from time to time by SOR) and to, from, and across all public streets accessing the SOR Parcel.

3. Construction of Curb Cuts. SOR shall construct and install two (2) curb cuts on the southern boundary line of the SOR Parcel in the locations depicted on Exhibit "C", attached hereto and incorporated herein, and SOR shall do so at its sole cost and simultaneously with the construction of the parking lot improvements to be constructed on the SOR Parcel. DDRFC shall have a period of fifteen (15) days after receipt of the plans for the curb cuts (the "Plans") from SOR to review such plans and to either approve or disapprove of the same by giving SOR written notice thereof, but DDRFC shall not unreasonably withhold, delay, or condition such approval. Such rights are intended to permit DDRFC to review the location of such curb cuts. Such notice shall specify the reasons for any disapproval and state those actions which if taken would result in an approval of such Plans. SOR shall not construct and install the curb cuts without first obtaining the written consent and approval of DDRFC to such plans. SOR shall complete the installation and construction of such curb cuts by the earlier of: (a) the date on which SOR has completed construction of the Shops of Redwood on the SOR Parcel and such shops open for business to the public; and (b) January 31, 2005. Notwithstanding any other provision contained herein, the number and location of such curb cuts along the southern boundary of the SOR Parcel shall be subject to approval by the agencies that govern such decisions. SOR shall not permit any liens to attach to the Tracts for work performed or materials purchased for the curb cuts. In the event a lien shall be filed against either Tract as a result of the work performed by or on behalf of SOR pursuant to this Agreement, SOR shall cause such lien to be discharged within thirty (30) days from receipt of DDRFC's notice. If SOR shall fail to discharge said lien within such thirty (30) day period, DDRFC shall have the right, but not the obligation, to cause such lien to be discharged and SOR shall, within fifteen (15) days following demand by DDRFC, reimburse DDRFC all costs and expenses incurred by DDRFC to discharge said lien including, without limitation, reasonable attorneys' fees.

4. Insurance.

(a) SOR Coverage. SOR shall carry in full force and effect during the term of this Agreement comprehensive public liability insurance and property damage insurance against claims for personal injury, death or property damage occurring upon, in or about the SOR Parcel with respect to the easement granted hereunder by SOR over the SOR Parcel and resulting from the activities of SOR, its agents, customers, invitees, licensees, tenants, employees, or members of the public having business on the SOR Parcel. Such insurance shall have limits of not less than One Million Dollars (\$1,000,000.00) for personal injury to or death of any one person, Three Million Dollars (\$3,000,000.00) for personal injury to or death of any number of persons in any one accident and One Million Dollars (\$1,000,000.00) for property damage. All policies carried hereunder shall be carried with financially responsible insurance companies rated at least

A+ X in Best Rating Guide. SOR shall provide DDRFC with certificates of such insurance from time to time to evidence that such insurance is in force and shall name DDRFC as additional insureds. Such insurance may be written by an additional premises endorsement on any master policy of insurance carried by SOR which may cover other property in addition to the property covered by this Agreement. Such insurance shall provide that the same may not be cancelled or reduced in amount or coverage without at least thirty (30) days' prior written notice being given by the insurer to DDRFC.

(b) DDRFC Coverage. DDRFC shall carry in full force and effect during the term of this Agreement comprehensive public liability insurance and property damage insurance against claims for personal injury, death or property damage occurring upon, in or about the DDRFC Parcel with respect to the easement granted hereunder by DDRFC over the DDRFC Parcel and resulting from the activities of DDRFC, its agents, customers, invitees, licensees, tenants, employees, or members of the public having business on the DDRFC Parcel. Such insurance shall have limits of not less than One Million Dollars (\$1,000,000.00) for personal injury to or death of any one person, Three Million Dollars (\$3,000,000.00) for personal injury to or death of any number of persons in any one accident and One Million Dollars (\$1,000,000.00) for property damage. All policies carried hereunder shall be carried with financially responsible insurance companies rated at least A+ X in Best Rating Guide. DDRFC shall provide SOR with certificates of such insurance from time to time to evidence that such insurance is in force and shall name SOR as additional insureds. Such insurance may be written by an additional premises endorsement on any master policy of insurance carried by DDRFC which may cover other property in addition to the property covered by this Agreement. Such insurance shall provide that the same may not be cancelled or reduced in amount or coverage without at least thirty (30) days' prior written notice being given by the insurer to SOR.

5. Indemnity. SOR agrees to defend, indemnify and save DDRFC, and its successors and assigns, officers, directors, and owners harmless from any and all liabilities, losses, damages, demands, claims, suits, causes of action, judgments, costs and expenses incurred by DDRFC, and its successors and assigns, relating to any injury to person, loss of life or damage to property occurring in connection with SOR's breach of this Agreement, except if caused by the negligent or willful act or omission of DDRFC. DDRFC agrees to defend, indemnify and save SOR and its successors and assigns, officers, directors, and owners harmless from any and all liabilities, losses, damages, demands, claims, suits, causes of action, judgments, costs and expenses incurred by SOR and its successors and assigns, relating to any injury to person, loss of life or damage to property occurring in connection with DDRFC's breach of this Agreement, except if caused by the negligent or willful act or omission of SOR. In addition, DDRFC hereby agrees to defend, indemnify and save SOR and its successors and assigns, officers, directors, and owners harmless from any and all liabilities, losses, damages, demands, claims, suits, causes of action, judgments, costs and expenses incurred by SOR relating, arising in connection with, or suffered in connection with any dispute between DDRFC and any party or parties having access and/or other rights over, in, and/or to the DDRFC Parcel. If, like DDRFC's contractual arrangement with Hermes, SOR at some point enters into a reciprocal access arrangement, SOR shall at that time agree to defend, indemnify and save DDRFC and its successors and assigns, officers, directors, and owners harmless from any and all liabilities, losses, damages, demands, claims, suits, causes of action, judgments, costs and expenses

incurred by DDRFC relating, arising in connection with, or suffered in connection with any dispute between SOR and any party or parties having access and/or other rights over, in, and/or to the SOR Parcel.

6. Unimpeded Easement. With respect to the curb cuts located on the southern boundary of the SOR Parcel, as described in and required hereunder, SOR and DDRFC agree not to construct or install any improvements or barriers along the common boundaries that will impede or interfere with the free and uninterrupted access easements granted hereunder.

7. Maintenance. DDRFC shall operate, maintain in good condition, repair, replace, light, and keep free of snow and ice all parking areas, sidewalks, walkways, and roadways located on the DDRFC Parcel to permit free use of the easements referred to herein. SOR shall operate, maintain in good condition, repair, replace, light and keep free of snow and ice all parking areas, sidewalks, walkways, roadways located on the SOR Parcel, along with the curb cuts referred to herein, to permit free use of the easements referred to herein.

8. Covenants Running With the Land/Governing Law. This Agreement, the easements granted hereunder, and all of the provisions contained herein: (a) are made for the direct, mutual and reciprocal benefit of the Tracts and those who have a right to use them; (b) shall create mutual equitable servitudes upon the DDRFC Parcel for the benefit of the SOR Parcel and upon the SOR Parcel for the benefit of the DDRFC Parcel; and (c) shall constitute covenants that run with the land, and the covenants shall bind and benefit the Parties to this Agreement, any other party which at anytime acquires any interest in, or occupies any portion of, the DDRFC Parcel and/or the SOR Parcel, and their respective grantees, transferees, heirs, devisees, personal representatives, successors and assigns. This Agreement and all of the provisions contained herein shall also bind and benefit the DDRFC Parcel and the SOR Parcel, and all interests in all or any portion of both such properties shall be subject to the terms of this Agreement. By acquiring any interest in, or by occupying the DDRFC Parcel and/or the SOR Parcel, the party so acquiring or occupying hereby agrees to be bound by the terms of this Agreement. This Agreement shall be construed and governed in accordance with the laws of the State of Utah.

9. No Termination for Breach. No breach or violation of any provision of this Agreement will entitle any person or entity to cancel, rescind or otherwise terminate this Agreement, but this limitation will not affect, in any manner, any other rights or remedies to which the Parties, and their respective successors and assigns may be entitled by reason of a breach of this Agreement.

10. Priority of Agreement. The rights of any holder of a lien on all or any part of the Tracts and any assignee or successor in interest of such lien holder, created from and after the date hereof shall at all times be subject and subordinate to the terms and conditions of this Agreement.

11. Modification. This Agreement and any easement, covenant, restriction or undertaking contained herein may only be terminated, extended, modified or amended as to all or

any portion of the DDRFC Parcel or the SOR Parcel with the unanimous consent of the parties hereto.

12. Not A Public Dedication. Nothing contained in this Agreement will be deemed to be a gift or dedication of any portion of either the DDRFC Parcel or the SOR Parcel to the general public or for the general public or for any public purpose whatsoever, it being the intention of the Parties hereto that this Agreement will be strictly limited to and for the purpose expressed here.

13. Property Tax. Nothing contained in this Agreement is intended to relieve the fee owner of the DDRFC Parcel or the SOR Parcel, or any portion thereof, from timely satisfying all property and other taxes assessed against all or any portion of the DDRFC Parcel or the SOR Parcel.

14. Miscellaneous Provisions.

(a) The Parties do not by this Agreement, in any way or for any purposes, become partners or joint venturers of each other in the conduct of their respective businesses or otherwise;

(b) Failure of any Party hereto to insist upon the strict performance of any provision of this Agreement shall not be construed as a waiver for the future of any such provision;

(c) If any provision of this Agreement or the application thereof to any person or circumstances shall to any extent be invalid, the remainder of this Agreement or the application of such provision to persons or circumstances other than those as to which it is held invalid shall not be affected thereby, and each provision of this Agreement shall be valid and enforced to the fullest extent permitted by law;

(d) All provisions herein shall be binding upon and shall inure to the benefit of the parties, their legal representatives, heirs, successors and assigns;

(e) Each person executing this Agreement individually and personally represents and warrants that he is duly authorized to execute and deliver the same on behalf of the entity for which he is signing, and that this Agreement is binding upon said entity in accordance with its terms;

(f) If any action is brought to enforce or interpret any of the provisions, covenants or requirements of this Agreement, the party prevailing in such action, whether in suit or otherwise, shall be entitled to recover from the unsuccessful party reasonable attorney's fees, including appeals and costs.

STATE OF OHIO)
)SS:
COUNTY OF CUYAHOGA)

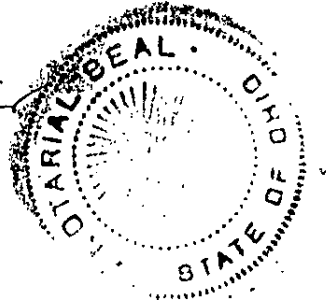
BEFORE ME, a Notary Public, in and for said County and State, personally appeared Joan U. Allgood, Senior Vice President of Developers Diversified Realty Corporation, Managing Member of DDR DownREIT LLC, General Partner of DDR Family Centers LP, the limited partnership which executed the foregoing instrument, who acknowledged that she did execute the foregoing instrument on behalf of said limited partnership and the same is her free and voluntary act and deed as Senior Vice President and is the free act and deed of said limited partnership for the uses and purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal at Beachwood, Ohio, this 3rd day of August, 2004.

Barbara A. Tillinghast

Notary Public

BARBARA A. TILLINGHAST
Notary Public, State of Ohio
County of Cuyahoga
My Commission Expires 11-5-2005



STATE OF Utah

COUNTY OF Salt Lake) SS:

The foregoing instrument was acknowledged before me this 12 day of JULY, 2004, by James I Hardy, of Hardy Reduced CTR, a Utah limited liability company.

Kimberly Robins
Notary Public
Residing at: Salt Lake

My commission expires:
NOV 4, 2005

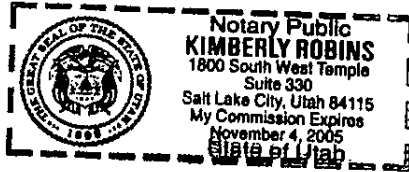


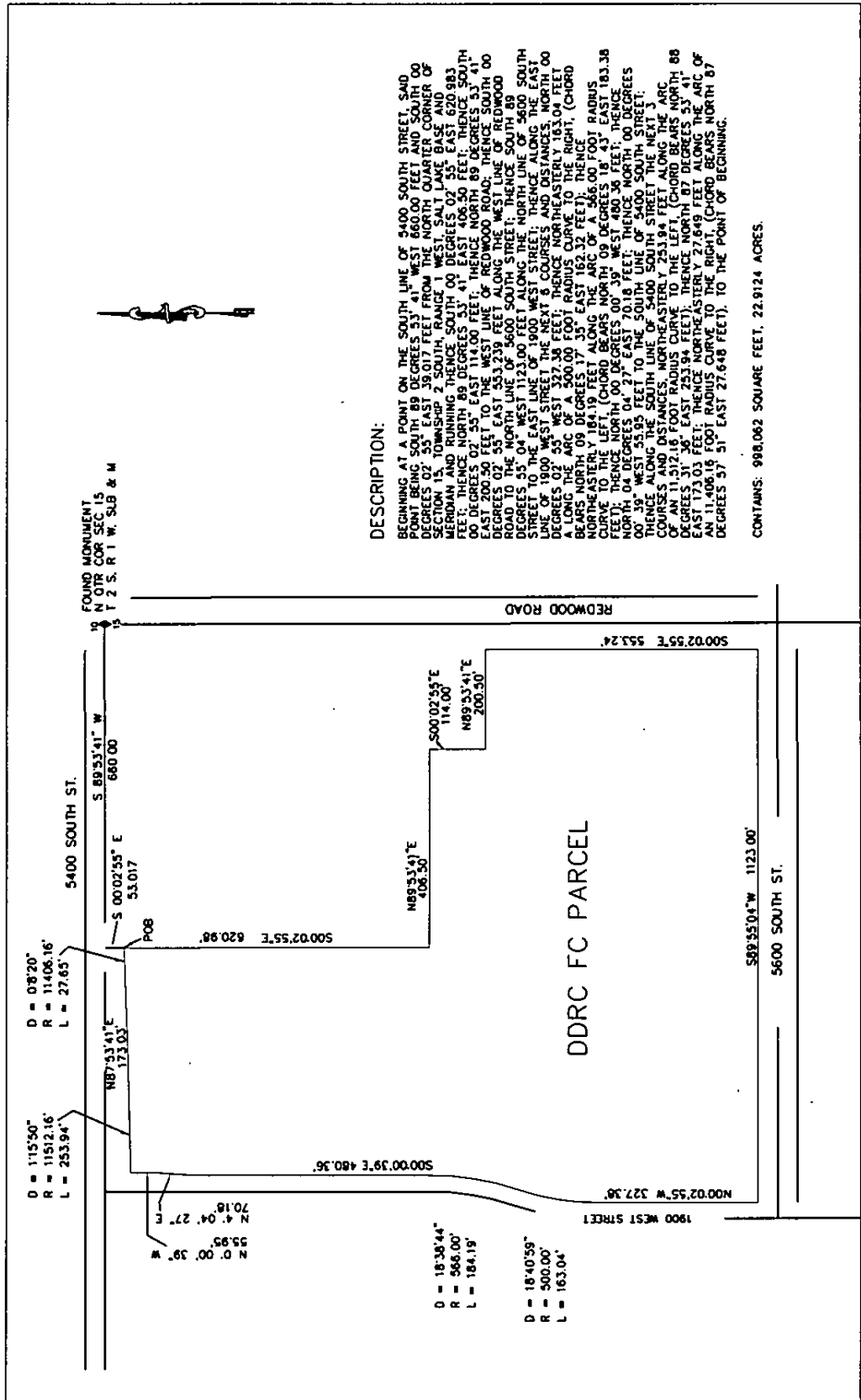
EXHIBIT A

Legal Description of the DDRFC Parcel [INCLUDE A MAP OR SITE PLAN]



EXHIBIT A.pdf

EXHIBIT A



DESCRIPTION:

BEGINNING AT A POINT ON THE SOUTH LINE OF 5400 SOUTH STREET, SAID POINT BEING 53.017 FEET WEST AND 114.00 FEET NORTH OF THE CORNER OF SECTION 15, TOWNSHIP 2 SOUTH RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN AND RUNNING THENCE SOUTH 00 DEGREES 02' 55" EAST 620.983 FEET; THENCE NORTH 89 DEGREES 53' 41" EAST 406.50 FEET; THENCE SOUTH 00 DEGREES 02' 55" EAST 114.00 FEET; THENCE NORTH 89 DEGREES 53' 41" EAST 200.30 FEET TO THE WEST LINE OF REDWOOD ROAD; THENCE SOUTH 00 DEGREES 02' 55" EAST 533.239 FEET ALONG THE WEST LINE OF REDWOOD ROAD TO THE NORTH LINE OF 5400 SOUTH STREET; THENCE SOUTH 89 DEGREES 53' 41" EAST 114.00 FEET TO THE WEST LINE OF 1900 WEST STREET; THENCE ALONG THE WEST LINE OF 1900 WEST STREET THE NEXT 6 COURSES AND DISTANCES, NORTH 00 DEGREES 02' 55" WEST 377.38 FEET; THENCE NORTHEASTERLY 183.04 FEET A LONG THE ARC OF A 500.00 FOOT RADIUS CURVE TO THE RIGHT, (CHORD BEARS NORTH 09 DEGREES 17' 35" EAST 162.32 FEET); THENCE NORTHEASTERLY 184.19 FEET ALONG THE ARC OF A 566.00 FOOT RADIUS CURVE TO THE LEFT, (CHORD BEARS NORTH 09 DEGREES 18' 43" EAST 183.38 FEET); THENCE NORTHEASTERLY 108.36 FEET; THENCE NORTH 00 DEGREES 02' 55" WEST 114.00 FEET; THENCE SOUTH 00 DEGREES 02' 55" WEST 253.94 FEET TO THE SOUTH LINE OF 5400 SOUTH STREET; THENCE ALONG THE SOUTH LINE OF 5400 SOUTH STREET THE NEXT 3 COURSES AND DISTANCES, NORTHEASTERLY 253.94 FEET ALONG THE ARC OF AN 11,512.16 FOOT RADIUS CURVE TO THE LEFT, (CHORD BEARS NORTH 88 DEGREES 31' 36" EAST 253.94 FEET); THENCE NORTH 87 DEGREES 53' 41" EAST 173.03 FEET; THENCE NORTHEASTERLY 27.649 FEET ALONG THE ARC OF A 11,512.16 FOOT RADIUS CURVE TO THE RIGHT, (CHORD BEARS NORTH 87 DEGREES 57' 51" EAST 27.648 FEET); TO THE POINT OF BEGINNING.

CONTAINS: 988,062 SQUARE FEET, 22.9124 ACRES.

EXHIBIT B

Legal Description of the SOR [INCLUDE A MAP OR SITE PLAN]

Location and Legal Description of the Shops on Redwood and the Curb Cut

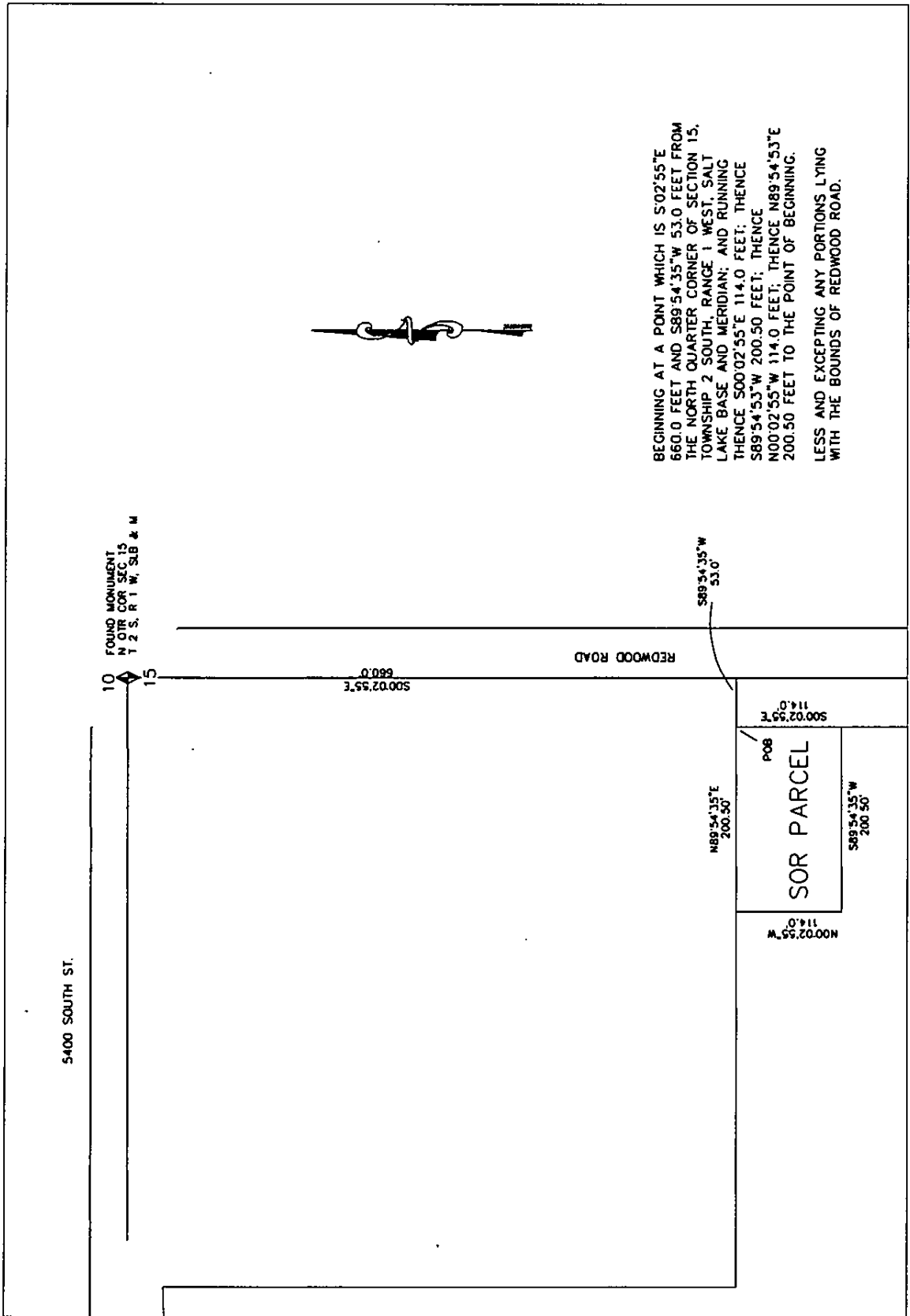
Beginning at a point which is South 0 deg. 02'55" East 660.0 feet and South 89 deg. 54'35" West 53.0 feet from the North quarter corner of Section 15, Township 2 South, Range 1 West, Salt Lake Base and Meridian; and running thence South 0 deg. 02'55" East 114.0 feet; thence South 89 deg. 54'35" West 200.50 feet; thence North 0 deg. 02'55" West 114.0 feet; thence North 89 deg. 54'35" East 200.50 feet to the point of beginning.

Less and excepting any portions lying within the bounds of Redwood Road.



EXHIBIT B.pdf

EXHIBIT B



BEGINNING AT A POINT WHICH IS S'02'55"E
 660.0 FEET AND S89°54'35"W 53.0 FEET FROM
 THE NORTH QUARTER CORNER OF SECTION 15,
 TOWNSHIP 2 SOUTH, RANGE 1 WEST, SALT
 LAKE BASE AND MERIDIAN; AND RUNNING
 THENCE S00°02'55"E 114.0 FEET; THENCE
 S89°54'53"W 200.50 FEET; THENCE
 N00°02'55"W 114.0 FEET; THENCE N89°54'53"E
 200.50 FEET TO THE POINT OF BEGINNING.
 LESS AND EXCEPTING ANY PORTIONS LYING
 WITH THE BOUNDS OF REDWOOD ROAD.



10 FOUND MONUMENT
 N QTR COR SEC 15
 T 2 S. R 1 W. SLB & M
 15

5400 SOUTH ST.

REDWOOD ROAD

S00°02'55"E
 114.0
 S00°02'55"E
 114.0

POB
SOR PARCEL

N89°54'35"E
 200.50

S89°54'35"W
 200.50

S00°02'55"E
 660.0

S89°54'35"W
 53.0

EXHIBIT C

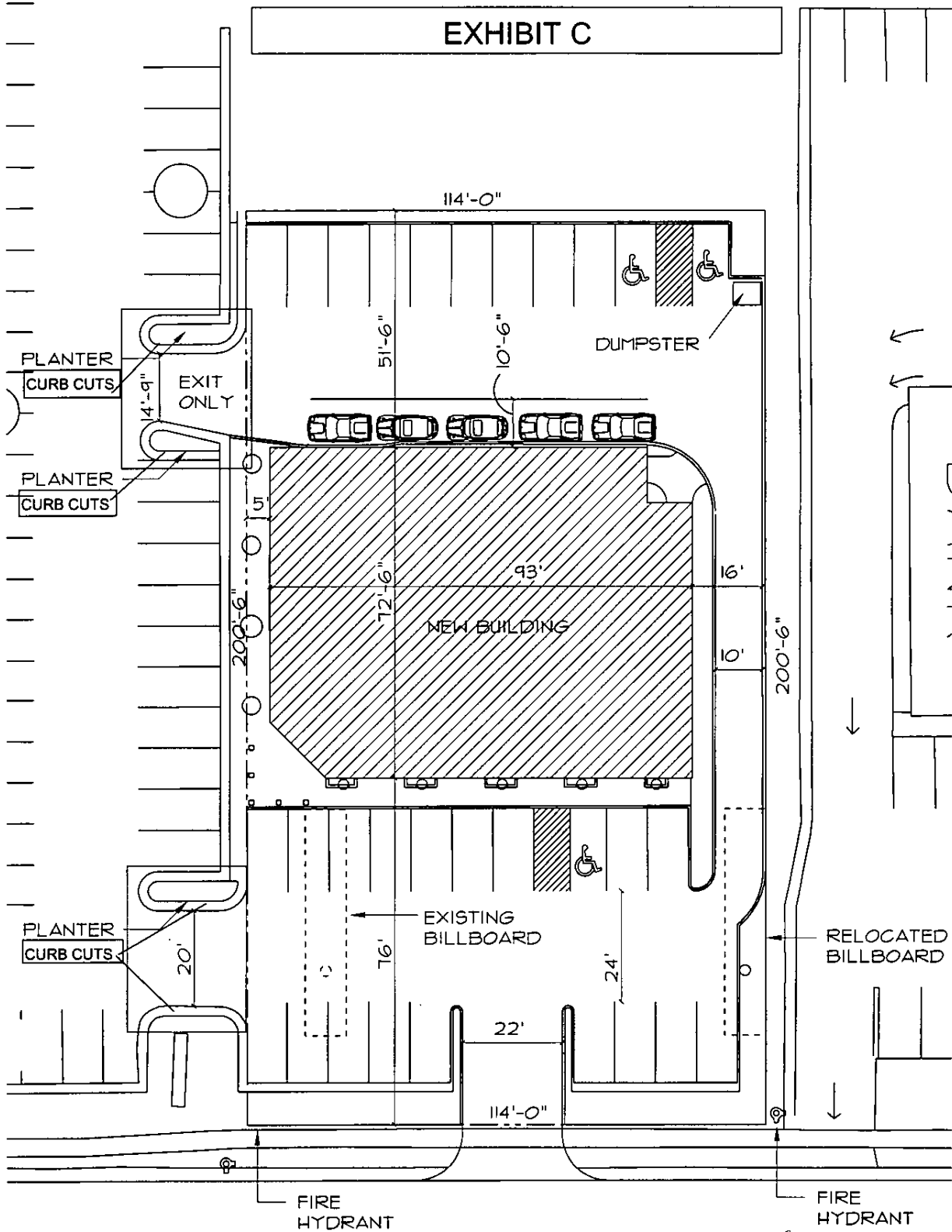
Depiction of location of Curb Cuts

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Acrobat Document

3210888_7.DOC

Curb Cuts 1



REDWOOD ROAD

1 SITE PLAN
SCALE: 1" = 20'-0"

NORTH