

11652065  
05/30/2013 11:02 AM \$38.00  
Book - 10143 Pg - 5908-5921  
GARY W. OTT  
RECORDER, SALT LAKE COUNTY, UTAH  
JUSTIN J ATWATER  
500 N MARKETPLACE DR STE 250  
CENTERVILLE UT 84104  
BY: TMW, DEPUTY - WI 14 P.

WHEN RECORDED, MAIL TO:

Justin J. Atwater  
500 N. Marketplace, Dr., Suite 250  
Centerville, Utah 84014

**DECLARATION AND GRANT  
OF  
CROSS ACCESS, UTILITY AND MAINTENANCE  
EASEMENT**

THIS DECLARATION AND GRANT OF CROSS ACCESS, UTILITY AND MAINTENANCE EASEMENT (this "Declaration") is made and entered into as of May 29, 2013, by and between SCP 500 South, LLC, a Utah limited liability company ("SCP"), and [McCutchan Properties], LLC, a Utah limited liability company ("McCutchan").

RECITALS

A. SCP desires to grant and McCutchan desires to receive a six foot wide (6') easement upon, over and across that certain real property owned by SCP and located in Salt Lake County, State of Utah, as more particularly described in Exhibit "A" attached hereto and incorporated herein (the "SCP Property").

B. That six foot (6') wide portion of the SCP Property on which the easement from SCP to McCutchan shall be located (the "SCP Easement Property") is described in Exhibit "B" attached hereto and incorporated herein.

C. The SCP Easement Property is to be used for the shared, non-exclusive access and egress and public utilities to both the SCP Property and that certain real property of McCutchan adjacent to the SCP Property located in Salt Lake County, State of Utah, as more particularly described in Exhibit "C" attached hereto and incorporated herein (the "McCutchan Property").

D. Likewise, McCutchan desires to grant and SCP desires to receive a six foot (6') wide easement upon, over and across the McCutchan Property.

E. That six foot (6') wide portion of the McCutchan Property on which the easement from McCutchan to SCP shall be located (the "McCutchan Easement Property") is described in Exhibit "D" attached hereto and incorporated herein.

F. The McCutchan Easement Property is to be used for the shared, non-exclusive access and egress and public utilities to both the SCP Property and the McCutchan

Property.

NOW, THEREFORE, to these ends and in consideration of the terms and conditions of this agreement, as well as the mutual benefits to be derived herefrom and other good and valuable consideration acknowledged and received by each of the parties hereto, SCP and McCutchan hereby agree as follows:

### TERMS

1. Grant of Access Easements. SCP grants and conveys to McCutchan for the benefit of the McCutchan Property a six foot (6') wide nonexclusive easement and right of way (the "SCP Easement") upon, over and across the SCP Easement Property to utilize solely for the uses described herein. McCutchan grants and conveys to SCP for the benefit of the SCP Property a six foot (6') wide nonexclusive easement and right of way (the "McCutchan Easement") upon, over and across the McCutchan Easement Property to build an private access and entry way there on and to utilize solely for the uses described herein.

2. Grant of Utilities Easement. Each of SCP and McCutchan hereby grants and sets aside the SCP Easement Property and the McCutchan Easement Property, respectively, in favor of the appropriate governmental body, entity or person, a non-exclusive public utility easement for a right of way, for the construction, reconstruction, operation, maintenance, repair, replacement, enlargement, and removal of utility transmission systems, distribution and communication lines and all necessary or desirable accessories and appurtenances thereto.

3. Shared, Nonexclusive Use. Exclusive use of the SCP Easement Property and the McCutchan Easement Property is not hereby granted by either party. Instead, each of SCP and McCutchan expressly reserves for the SCP Property and the McCutchan Property, respectively, the right and easement for ingress and egress in common with the other party. SCP reserves the right to make any use of the SCP Easement Property and to grant others the right to use the SCP Easement Property including, without limitation, the dedication of the SCP Easement Property for the public use, so long as any such use does not permit any person to unreasonably interfere with the non-exclusive right and easement for use and related ingress and egress which is herein granted to McCutchan. Similarly, McCutchan reserves the right to make any use of the McCutchan Easement Property and to grant others the right to use the McCutchan Easement Property including, without limitation, the dedication of the McCutchan Easement Property for the public use, so long as any such use does not permit any person to unreasonably interfere with the non-exclusive right and easement for use and related ingress and egress which is herein granted to SCP.

4. Permitted Use. The use by the holders of the dominant tenements of the easement granted herein shall be limited to such uses as are described herein, which uses shall be made in such a manner as will least interfere with the use of the servient tenements by the owners and lessees thereof. The SCP Easement shall be used by the dominant tenement for the purpose of providing access and egress to the McCutchan Property to any and all employees, customers,

couriers, invitees, guests, licensees and permittees of McCutchan (or any assignee, successor or tenant of McCutchan). The McCutchan Easement shall be used by the dominant tenement for the purpose of providing access and egress to the SCP Property to any and all employees, customers, couriers, invitees, guests, licensees and permittees of SCP (or any assignee, successor or tenant of SCP). The easement for public utilities granted hereunder shall be used as described in Section 2.

5. Amendment and Termination. This Declaration may not be amended or modified except with the consent of SCP and McCutchan and, then, only by written instrument duly executed and acknowledged and recorded in the office of the County Recorder of Salt Lake County, Utah. McCutchan may elect to terminate its use of the SCP Easement Property at any time. In connection with any such termination, McCutchan shall execute and deliver to SCP, suitable for recording, a termination of this Declaration, to evidence such termination and to remove any encumbrance therefor on the SCP Property. SCP may elect to terminate its use of the McCutchan Easement Property at any time. In connection with any such termination, SCP shall execute and deliver to McCutchan, suitable for recording, a termination of this Declaration, to evidence such termination and to remove any encumbrance therefor on the McCutchan Property.

6. Default. No person shall be deemed to be in default of any provision of this Declaration except upon the expiration of ten (10) days from receipt of written notice specifying the particulars in which such person has failed to perform the obligations of this Declaration, unless such person, prior to the expiration of said ten (10) days, has rectified the particulars specified in said notice. Failure to cure any such default shall entitle the nonbreaching party to any remedies at law or equity including, without limitation, specific performance, reasonable expenses, attorney fees and costs.

7. Construction and Maintenance of Entryway. SCP shall design and construct the entryway and access on and over the SCP Easement Property and McCutchan Easement Property (the "Entryway"). In addition, after SCP has completed its design and construction of the Entryway over the SCP Easement Property and the McCutchan Easement Property, SCP shall be responsible to maintain, repair, remove snow from and keep the Entryway in good condition; provided, that, SCP shall engage the snow removal company selected by McCutchan for snow removal from the Entryway pursuant to SCP's standard contract. SCP shall pay all costs associated with the initial construction and improvement of the Entryway, including paving and asphalt in connection with SCP's development of the SCP Property. At all times after completion of the Entryway, each of SCP and McCutchan shall be irrevocably responsible to pay fifty percent (50%) of all costs and expenses incurred by SCP from the date of initial completion of the Entryway going forward to maintain, repair, and remove snow from and keep the Entryway in good condition. If for any reason SCP and McCutchan jointly dedicate their easement properties and the Entryway for a public street or road, then the joint repair and maintenance responsibilities described herein shall terminate.

8. Indemnification. McCutchan shall indemnify and agrees to defend and hold SCP harmless from any claims, causes of action, damages or litigation arising from the use of the Easement by McCutchan or any employees, permittees, invitees, representatives or agents of McCutchan (excluding ordinary wear and tear and maintenance therefor as described in Paragraph 6 above). Similarly, any successor or assign of McCutchan shall indemnify and agrees to defend and hold SCP harmless from any claims, causes of action, damages or litigation arising from the use of the Easement by such successor or assign or any employees, permittees, invitees, representatives or agents of such successor or assign of McCutchan (excluding ordinary wear and tear and maintenance therefor as described in Paragraph 6 above). SCP shall indemnify and agrees to defend and hold McCutchan harmless from any claims, causes of action, damages or litigation arising from the use of the Easement by SCP or any employees, permittees, invitees, representatives or agents of SCP (excluding ordinary wear and tear and maintenance therefor as described in Paragraph 6 above). Similarly, any successor or assign of SCP shall indemnify and agrees to defend and hold McCutchan harmless from any claims, causes of action, damages or litigation arising from the use of the Easement by such successor or assign or any employees, permittees, invitees, representatives or agents of such successor or assign of SCP (excluding ordinary wear and tear and maintenance therefor as described in Paragraph 6 above).

9. Payment of Property Taxes. SCP shall bear all costs and liabilities associated with all real estate taxes or other assessments levied by competent authorities upon the SCP Easement Property. McCutchan shall bear all costs and liabilities associated with all real estate taxes or other assessments levied by competent authorities upon the McCutchan Easement Property.

10. Waiver. The failure of a person to insist upon strict performance of any of the terms, covenants, conditions or agreements contained herein shall not be deemed a waiver of any rights or remedies that said person may have, and shall not be deemed a waiver of any subsequent breach or default in any of the terms, covenants, conditions or agreements contained herein by the same or any other person.

11. No Joint Venture; Merger. The provisions of this Declaration are not intended to create, nor shall they be in any way interpreted or construed to create, a joint venture, partnership or any similar relationship between the parties. This Declaration contains the entire agreement between the parties and supersedes all prior agreements, oral or written, with respect to the subject matter hereof. The provisions of this Declaration shall be construed as a whole and not strictly for or against any party.

12. Choice of Law; Recordation. This Declaration shall be governed by and construed in accordance with the laws of the State of Utah. This Declaration shall be recorded in the records of the County Recorder of Salt Lake County, Utah.

13. Successors and Assigns; Run with the Land. All of the provisions in this Declaration, including the benefits and burdens, shall be and are binding upon and inure to the benefit of the successors and assigns of the parties hereto. All obligations of SCP under this

Declaration, if more than one person or entity is the successor or assign of SCP, shall be jointly and severally binding on each such person or entity. Likewise, all obligations of McCutchan under this Declaration, if more than one person or entity is the successor or assign of McCutchan, shall be jointly and severally binding on each such person or entity. The covenants agreed to and the restrictions imposed herein shall continue as a servitude running in perpetuity with the SCP Property and the McCutchan Property and shall survive any death or termination of SCP or McCutchan's existence. The easements, agreements, duties, responsibilities and covenants herein contained shall be easements and covenants running with the land.

14. No Third Party Beneficiaries. Nothing in this Declaration is intended to create an enforceable right, claim or cause of action by any third party against any party to this Declaration.

15. Authority of Signatory. Each person executing this Declaration certifies that he or she is duly authorized to execute this Declaration on behalf of the party for which he or she is signing, and that the person has the authority to bind said party to the terms of this Declaration.

16. Independent Provisions. If any provision herein is held invalid or unenforceable, such a finding shall not affect the validity of the remainder of the Declaration, the parties hereto hereby stipulate that all provisions are deemed severable and independent.

17. Counterparts. This Declaration and any originals of exhibits referred to herein may be executed in any number of duplicate originals or counterparts, each of which (when the original signatures are affixed together with the applicable acknowledgment) shall be an original but all of which shall constitute one and the same instrument.

18. Miscellaneous. The paragraph and other headings contained in this Declaration are for purposes of reference only and shall not limit, expand, or otherwise affect the construction of any of the provisions of this Declaration. Whenever the context reasonably permits, the singular shall include the plural, the plural shall include the singular, and the whole shall include any part thereof. Further, the masculine gender shall include the female gender and neuter, and vice versa. The recital paragraphs set forth above are expressly incorporated in this Declaration by this reference. This Declaration represents the wording selected by the parties to define their agreement and no rule of strict construction shall apply against either party. Each party represents that it has had or has been advised to have the representation of its legal counsel in connection with the preparation of this Declaration. The words "hereof," "hereto," "herein" and "hereunder" and words of similar import, when used in this Declaration, shall refer to this Declaration as a whole and not to any particular provision of this Declaration. References herein to Paragraphs and Exhibits shall be construed as references to Paragraphs and Exhibits of this Declaration unless the context otherwise requires. Any terms defined in this Declaration in the singular shall have a comparable meaning when used in the plural, and vice versa.

[Signature Page Follows]



EXHIBIT "A"

LEGAL DESCRIPTION OF SCP PROPERTY

Property located in Salt Lake County, Utah, more particularly described as follows:

SUBJECT TO all restrictions, reservations and other conditions of record as may be disclosed by a record examination of the title.

**EXHIBIT "B"**

**LEGAL DESCRIPTION OF SCP EASEMENT PROPERTY**

Property located in Salt Lake County, Utah, more particularly described as follows:

**SUBJECT TO all restrictions, reservations and other conditions of record as may be disclosed by a record examination of the title.**

EXHIBIT "C"

LEGAL DESCRIPTION OF McCutchan PROPERTY

Property located in Salt Lake County, Utah, more particularly described as follows:

SUBJECT TO all restrictions, reservations and other conditions of record as may be disclosed by a record examination of the title.

EXHIBIT "D"

LEGAL DESCRIPTION OF McCutchan EASEMENT PROPERTY

Property located in Salt Lake County, Utah, more particularly described as follows:

SUBJECT TO all restrictions, reservations and other conditions of record as may be disclosed by a record examination of the title.

## **Exhibit "A"**

### **SCP Property**

A part of Lots 4, 5 and 6, Block 24, Plat "B", Salt Lake City Survey located in the Southeast Corner of Section 6, Township 1 South, Range 1 East, Salt Lake Base and Meridian, U.S. Survey, within Salt Lake City, Salt Lake County, Utah:

Beginning at the Northeast Corner of said Lot 5 at a point on the South Line of 500 South Street located 398.42 feet North 89°57'40" East along the monument line; and 69.16 feet South 0°01'44" East from the Salt Lake City monument at the intersection of said 500 South Street and 500 East Street; and running thence North 89°59'42" East 75.53 feet along the South Line of said 500 South Street; thence South 0°01'51" East 165.06 feet to the South Line of said lot 6; thence South 89°59'44" West 75.53 feet to the Corner common to Lots 4, 5, 6 and 7; thence South 0°01'44" East 165.06 feet along the East Line of said Lot 4 to the Corner common to Lots 3, 4, 7 and 8; thence South 89°59'45" West 66.04 feet along the South Line of said Lot 4; thence North 0°01'38" West 330.12 feet to the South Line of said 500 South Street; thence North 89°59'42" East 66.03 feet to the point of beginning.

**Contains 34,265 sq. ft.  
Or 0.787 acre**

## **Exhibit "B"**

### **SCP Easement Property**

A 6.0 foot wide access easement being 6.0 feet East of the following described Property Line:

A part of Lots 4 and 5, Block 24, Plat "B", Salt Lake City Survey located in the Southeast Corner of Section 6, Township 1 South, Range 1 East, Salt Lake Base and Meridian, U.S. Survey, within Salt Lake City, Salt Lake County, Utah:

Beginning at a point on the South Line of 500 South Street 66.02 feet South  $89^{\circ}59'42''$  West along said South Line from the Northeast Corner of said Lot 5; and running thence South  $0^{\circ}01'38''$  East 218.00 feet along said Property Line to the end point of this access easement.

## **Exhibit "C"**

### **McCutchan Property**

Beginning at a point which is North  $89^{\circ}59'42''$  East 165.00 feet from the North West Corner of Lot 5, Block 24, Plat B, Salt Lake City Survey; thence South  $00^{\circ}01'52''$  West 165.00 feet; thence North  $89^{\circ}59'42''$  East 46.00 feet; thence South  $00^{\circ}01'52''$  West 115.50 feet; thence North  $89^{\circ}59'42''$  East 53.00 feet; thence North  $00^{\circ}01'52''$  East 280.50 feet; thence South  $89^{\circ}59'42''$  West 99.00 feet to the point of beginning.

## **Exhibit "D"**

### **McCutchan Easement Property**

A 6.0 foot wide access easement being 6.0 feet West of the following described Property Line:

A part of Lots 4 and 5, Block 24, Plat "B", Salt Lake City Survey located in the Southeast Corner of Section 6, Township 1 South, Range 1 East, Salt Lake Base and Meridian, U.S. Survey, within Salt Lake City, Salt Lake County, Utah:

Beginning at a point on the South Line of 500 South Street 66.02 feet South 89°59'42" West along said South Line from the Northeast Corner of said Lot 5; and running thence South 0°01'38" East 218.00 feet along said Property Line to the end point of this access easement.