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Gary W. Ott  
Recorder, Salt Lake County, UT  
INTEGRATED TITLE INS. SERVICES  
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Kenneth A. Eisner, Esquire  
Springer Bush & Perry P.C.  
500 Cherrington Parkway, Suite 420  
Coraopolis, PA 15108

## MEMORANDUM OF AGREEMENTS AND ENCUMBRANCE

Executed on this 11th day of December, 2007, this document shall memorialize certain terms of the Purchase and Sale Agreement dated October 26, 2007 for approximately one hundred five (105) acres of undeveloped land (more particularly described on the attached Exhibit "A") and the Purchase and Sale Agreement dated October 26, 2007 for approximately forty-five (45) acres of undeveloped land (more particularly described on the attached Exhibit "B") (the "Agreements"), both Purchase and Sale Agreements by and between WASATCH SOUTH HILLS DEVELOPMENT CO., LLC, a Utah limited liability company ("Seller") and KEY BANK, NA, AS TRUSTEE OF THE IRREVOCABLE JACK W. KUNKLER TRUST A, SHARE B ("Buyer"). The real property described on the attached Exhibit "A" and on the attached Exhibit "B" shall be referred to hereafter as the "Buyer's Property."

1. **Benefited Party.** The terms of the Agreements are to the benefit of KEY BANK, NA, AS TRUSTEE OF THE IRREVOCABLE JACK W. KUNKLER TRUST A, SHARE B ("Buyer"), or any successor trustees.
2. **Burdened Party.** The terms of the Agreements are to the burden of WASATCH SOUTH HILLS DEVELOPMENT CO., LLC, a Utah limited liability company ("Seller"), and any transferee or purchaser of the encumbered real property referenced below.
3. **Encumbered Property.** The Encumbered Property is the real property located in Salt Lake County and known as Tax Parcel Identification No. 33-17-300-002 and as more fully described on Exhibit "C" attached hereto and incorporated herein by this reference.
4. **Term of Encumbrance.** This Encumbrance shall run with the Encumbered Property and be binding upon all current and future owners of the Encumbered Property until the earlier of (a) seven (7) years from the date hereof; or (b) the date that the Buyer transfers or conveys any portion of the Buyer's Property; and on such date, this Memorandum shall expire, upon its own terms, without the need to record any document to terminate this Memorandum. Therefore, this Encumbrance is only for the benefit of the Buyer and not any subsequent purchaser or transferee of the Buyer's Property.

5. **Terms of Agreements.** The certain terms in the Agreements that shall act as an encumbrance on the Encumbered Property are as follows:

17. **Master Plan Approval.** Seller agrees to include the Property in the Master Plan that Seller has presented, or intends to present, to Herriman City, Utah (the "City").

(a) **Density.** Seller represents that the overall density on the current draft of the Master Plan is approximately 3.2 units per acre.

(b) **Best Efforts.** Seller shall use its reasonable best efforts to obtain approval of the Master Plan (the "Master Plan Approval") including the density for the Property at approximately 3.2 units per acre. Seller further agrees not to take any action that would (i) impede or otherwise hurt the possibility of the Property having a density of approximately 3.2 units per acre; (ii) significantly diminish the value of the Property by, *inter alia*, increasing the amount of property designated as "Open Space" and/or public roadways; (iii) substantially change or modify the Master Plan from the current Master Plan attached hereto as Exhibit "F"; or (iv) include any public facility on the Property. Notwithstanding the foregoing, Seller may take such steps (including those set forth above) as are required by the City to obtain the Master Plan Approval.

(c) **No Guaranty of Approval.** Buyer recognizes and agrees that the Master Plan Approval is subject to the requirements of the City and is beyond the control of the Seller. Therefore Seller does not guaranty the Master Plan Approval nor the density sought for the Property.

(d) **Cooperation.** Buyer consents to Seller's application for the Master Plan Approval, and agrees to cooperate with the Seller in connection with the seeking of the Master Plan Approval. In addition, Buyer agrees to execute any and all applications, agreements and documents reasonably requested by Seller in connection with the Master Plan Approval process, so long as they are consistent with this Section 17.

(e) **Information.** Seller shall provide Buyer with copies of all applications, filings, materials, contracts or other communications or documents provided to or received from the City (or any of its governmental bodies) during the Master Plan Approval process. Seller shall also provide Buyer with as much advance written notice as reasonably practicable of the date, time and place of all meetings and hearings with City officials, representatives, agencies and entities relating to the Master Plan Approval process. It is agreed that Buyer, its employees, representatives, agents and contractors shall have the right to attend and participate in such meetings and hearings. Buyer shall have the

right to contact any City official, agency or entity regarding the Master Plan Approval process. Buyer shall also have the right to submit information, material or a position paper to any City official, agency or entity regarding such Master Plan Approval, so long as Buyer's submission is submitted in good faith for the preservation or protection of the value of the Property and provided that Buyer simultaneously provides a copy of such information to Seller.

(f) No Authority to Bind. Seller shall have no authority to bind Buyer, and any documents which are so executed, without Buyer's prior written approval shall be null and void and of no effect unless ratified by Buyer in writing. Buyer shall have no authority to bind Seller, and any documents which are so executed, without Seller's prior written approval shall be null and void and of no effect unless ratified by Seller in writing.

(g) Recording of Memorandum. The obligations of this Section 17 shall survive Closing until the earlier of (i) the date that the final Master Plan is approved by the City; or (ii) the date that is seven (7) years after Closing. This limitation on survival of the obligations contained in this Section 17 is not in any way an adjustment to the applicable statute of limitations. Such obligations shall be to the detriment of Seller and any transferee or purchaser of Parcel No. 33-17-300-002, which property is adjacent to the Property (the "Encumbered Property"). Such obligations shall be for the benefit of Buyer only and not any subsequent purchaser or transferee of the Property. A memorandum of this Agreement setting forth this encumbrance on the Encumbered Property shall be properly recorded at Closing, which encumbrance shall expire, by its own terms, seven (7) years after Closing.

18. Special Improvement District. The Property may be included in a Special Improvement District ("SID") created by the City. The SID may place utilities and roads and other infrastructure through the Property in the event it is required for surrounding phases.

(a) Exclusion from Phases I and II. Upon the creation of any potential SID, the Seller agrees to exercise its reasonable efforts to ensure that the Property is not included in Phases I or II of the potential SID. Seller, as the owner of other properties in the immediate area of the Property, agrees to keep Buyer consistently apprised of the status of the SID.

(b) No Inclusion Within Seven Years. Upon Buyer's request, the Seller shall utilize its veto rights (if any) on Buyer's behalf in the event that the City attempts to form an SID Phase III or other SID phase that will include the Property at any time prior to seven (7) years from the date

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of Closing. In the event that an SID is formed prior to seven (7) years from the date of Closing, which results in SID related assessments on the Property, Seller agrees to indemnify and hold Buyer harmless against those charges. This indemnification obligation shall survive Closing for a period of seven (7) years, but does not run with the land, and is only for the benefit of Buyer and not any subsequent purchaser or transferee of the Property.

(c) SID Assessments. In the event that the Property becomes a part of an SID, the Parties reasonably anticipate that the costs allocated to Buyer as part of the SID shall be its proportionate share (based on the size of the Property as compared with the other property in the SID) as may be allocated in the SID if and when an SID is formed. The Parties agree, however, that the exact terms and conditions of the SID may be beyond the control of the Seller and Buyer, and that terms contrary to those set forth herein may be included in any eventual SID.

(d) Recording of Memorandum. The obligations of this Section 18 shall survive Closing for a period of seven (7) years, and shall be to the detriment of Seller and any transferee or purchaser of the Encumbered Property. This limitation on survival of the obligations contained in this Section 18 is not in any way an adjustment to the applicable statute of limitations. Such obligations shall be for the benefit of Buyer only and not any subsequent purchaser or transferee of the Property. A memorandum of this Agreement setting forth this encumbrance on the Encumbered Property shall be properly recorded at Closing, which encumbrance shall expire, by its own terms, seven (7) years after Closing.

[Signature Page Follows]

IN WITNESS WHEREOF, intending to be legally bound, the parties acknowledge and agree that the above facts are true and correct and have executed this Memorandum as of the day and year set forth above.

BURDENED PARTY:

WASATCH SOUTH HILLS  
DEVELOPMENT CO., LLC

By: Dave Millheim  
Dave Millheim, Manager

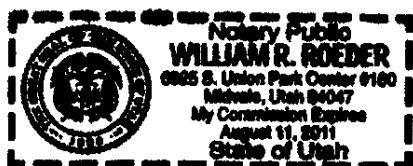
BENEFITTED PARTY:

KEY BANK, NA, AS TRUSTEE OF THE  
IRREVOCABLE JACK W. KUNKLER TRUST A,  
SHARE B

By: Robert Moreno  
Robert Moreno, Trust Real Estate Manager

STATE OF UTAH )  
: ss.  
County of Salt Lake )

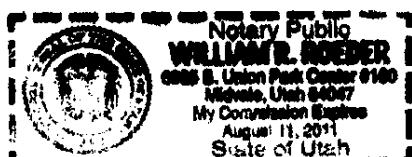
On the 11 day of December, 2007, personally appeared before me Dave Millheim, who, being by me duly sworn, did say that he is the Manager of WASATCH SOUTH HILLS DEVELOPMENT CO., LLC, and that the said instrument was signed on behalf of said Limited Liability Company by authority of a resolution of the Members or its Operating Agreement, and the aforesaid Manager acknowledged to me that said Limited Liability Company executed the same.



*William R. Roeder*  
NOTARY PUBLIC

STATE OF UTAH )  
: ss.  
County of Salt Lake )

The foregoing instrument was acknowledged before me this 11 day of December, 2007, by Robert Moreno, the authorized representative of Key Bank, NA, as Trustee of the Irrevocable Jack W. Kunkler Trust A, Share B.



*William R. Roeder*  
NOTARY PUBLIC

**EXHIBIT "A"**

**105 Acre Parcel**

A PARCEL OF LAND LOCATED IN SECTIONS 20 AND 21, TOWNSHIP 4 SOUTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN, SAID PARCEL BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

COMMENCING AT THE NORTH QUARTER CORNER OF SAID SECTION 21 AND RUNNING THENCE SOUTH  $0^{\circ} 36' 59''$  EAST, ALONG THE LINE COMMON TO GOVERNMENT LOTS 2 AND 3 OF SAID SECTION 21, A DISTANCE OF 1344.12 FEET, TO THE SOUTHERLY CORNER THEREOF; THENCE NORTH  $89^{\circ} 33' 30''$  WEST, ALONG THE SOUTHERLY LINE OF SAID GOVERNMENT LOT 3, A DISTANCE OF 1334.92 FEET, TO THE SOUTHERLY CORNER COMMON TO GOVERNMENT LOTS 3 AND 4 OF SAID SECTION 21 AND THE POINT OF BEGINNING FOR THIS DESCRIPTION AND RUNNING THENCE NORTH  $89^{\circ} 33' 30''$  WEST, ALONG THE SOUTH LINE OF SAID GOVERNMENT LOT 4, A DISTANCE OF 541.12 FEET; THENCE NORTH  $0^{\circ} 06' 53''$  EAST, A DISTANCE OF 339.36 FEET; THENCE NORTH  $89^{\circ} 27' 18''$  WEST, A DISTANCE OF 792.00 FEET, TO THE SECTION LINE; THENCE SOUTH  $0^{\circ} 25' 12''$  WEST, ALONG THE SECTION LINE, A DISTANCE OF 340.78 FEET, TO THE EAST-WEST 40 ACRE LINE OF THE NORTHEAST QUARTER OF SAID SECTION 21; THENCE SOUTH  $89^{\circ} 13' 13''$  WEST, ALONG SAID 40 ACRE LINE, A DISTANCE OF 2593.54 FEET, MORE OR LESS TO THE NORTH SIXTEENTH CORNER OF SAID SECTION 20; THENCE NORTH  $0^{\circ} 40' 49''$  WEST, ALONG THE NORTH-SOUTH CENTER QUARTER LINE, A DISTANCE OF 1308.95 FEET, TO THE NORTH QUARTER CORNER OF SAID SECTION 20; THENCE NORTH  $88^{\circ} 02' 32''$  EAST, ALONG THE SECTION LINE, A DISTANCE OF 2620.36 FEET, TO THE SECTION CORNER COMMON TO SECTIONS 16,21,20 AND 17; THENCE SOUTH  $0^{\circ} 36' 16''$  WEST, ALONG THE SECTION LINE, A DISTANCE OF 439.48 FEET; THENCE SOUTH  $89^{\circ} 23' 44''$  EAST, A DISTANCE OF 991.41 FEET; THENCE NORTH  $00^{\circ} 36' 08''$  EAST, A DISTANCE OF 435.09 FEET, TO THE SECTION LINE; THENCE SOUTH  $89^{\circ} 08' 29''$  EAST, ALONG SAID SECTION LINE, A DISTANCE OF 331.42 FEET, TO THE NORTHERLY CORNER COMMON TO GOVERNMENT LOTS 3 AND 4; THENCE SOUTH  $0^{\circ} 05' 40''$  EAST, A DISTANCE OF 1353.56 FEET, TO THE POINT OF BEGINNING.

BEING PART OF

Parcel Identification No. 33-20-200-004  
Parcel Identification No. 33-20-200-005  
Parcel Identification No. 33-21-100-009  
Parcel Identification No. 33-21-100-012  
Parcel Identification No. 33-21-100-017

CONTAINS 105.225 ACRES MORE OR LESS.

**EXHIBIT "B"**

**45 Acre Parcel**

A PARCEL OF LAND LOCATED IN SECTIONS 16, 20 AND 17, TOWNSHIP 4 SOUTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN, SAID PARCEL BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT THE SECTION CORNER COMMON TO SECTIONS 16, 17, 20 AND 21 AND RUNNING THENCE SOUTH  $88^{\circ} 02'32''$  WEST, ALONG THE SECTION LINE, A DISTANCE OF 2620.36 FEET, TO THE QUARTER CORNER COMMON TO SECTIONS 17 AND 20; THENCE SOUTH  $89^{\circ} 28' 20''$  WEST, ALONG THE SECTION LINE, A DISTANCE OF 140.22 FEET; THENCE NORTHEASTERLY ALONG THE ARC OF A NON-TANGENT CURVE TO THE RIGHT, HAVING A RADIUS OF 200.00 FEET, THE CENTER OF WHICH BEARS SOUTH  $19^{\circ} 21' 20''$  EAST, THROUGH A CENTRAL ANGLE OF  $09^{\circ} 35' 15''$ , A DISTANCE OF 33.47 FEET; THENCE NORTHEASTERLY ALONG THE ARC OF A 500.00 FOOT RADIUS CURVE TO THE LEFT, THE CENTER OF WHICH BEARS NORTH  $9^{\circ} 44' 51''$  WEST, THROUGH A CENTRAL ANGLE OF  $44^{\circ} 07' 09''$ , A DISTANCE OF 385.01 FEET; THENCE NORTH  $36^{\circ} 07' 53''$  EAST, A DISTANCE OF 286.80 FEET; THENCE SOUTHEASTERLY ALONG THE ARC OF A NON-TANGENT CURVE TO THE LEFT, HAVING A RADIUS OF 300.00 FEET, THE CENTER OF WHICH BEARS NORTH  $36^{\circ} 07' 53''$  EAST, THROUGH A CENTRAL ANGLE OF  $31^{\circ} 30' 18''$ , A DISTANCE OF 164.96 FEET; THENCE SOUTH  $85^{\circ} 22' 21''$  EAST, A DISTANCE OF 409.26 FEET; THENCE SOUTHEASTERLY ALONG THE ARC OF A 500.00 FOOT RADIUS CURVE TO THE RIGHT, THROUGH A CENTRAL ANGLE OF  $37^{\circ} 47' 00''$ , A DISTANCE OF 329.72 FEET; THENCE SOUTH  $47^{\circ} 46' 30''$  EAST, A DISTANCE OF 92.37 FEET; THENCE NORTH  $61^{\circ} 43' 40''$  EAST, A DISTANCE OF 1907.23 FEET; THENCE SOUTHEASTERLY ALONG THE ARC OF A NON-TANGENT CURVE TO THE LEFT, HAVING A RADIUS OF 400.00 FEET, THE CENTER OF WHICH BEARS NORTH  $57^{\circ} 21' 58''$  EAST, THROUGH A CENTRAL ANGLE OF  $52^{\circ} 25' 22''$ , A DISTANCE OF 365.98 FEET, TO THE NORTH-SOUTH 10 ACRE LINE OF THE SOUTHWEST QUARTER OF THE SOUTHWEST QUARTER OF SAID SECTION 16; THENCE SOUTH  $0^{\circ} 35' 35''$  WEST, ALONG SAID NORTH-SOUTH 10 ACRE LINE, A DISTANCE OF 796.68 FEET, TO THE NORTH LINE OF GOVERNMENT LOT 4; THENCE SOUTH  $89^{\circ} 08' 29''$  EAST, ALONG SAID NORTH LINE, A DISTANCE OF 329.98 FEET, TO THE NORTHEAST CORNER THEREOF; THENCE SOUTH  $00^{\circ} 36' 08''$  WEST, ALONG THE NORTH-SOUTH LINE COMMON TO GOVERNMENT LOTS 3 AND 4, A DISTANCE OF 435.09 FEET; THENCE NORTH  $89^{\circ} 23' 44''$  WEST, A DISTANCE OF 991.41 FEET, TO THE SECTION LINE; THENCE NORTH  $00^{\circ} 36' 16''$  EAST, ALONG SAID SECTION LINE, A DISTANCE OF 439.48 FEET, TO THE POINT OF BEGINNING.

BEING PART OF

Parcel Identification No. 33-16-300-009

Parcel Identification No. 33-16-300-010

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Parcel Identification No. 33-17-300-002

Parcel Identification No. 33-17-400-003

Parcel Identification No. 33-17-400-004

Parcel Identification No. 33-21-100-016

**CONTAINS 44.775 ACRES MORE OR LESS.**

**EXHIBIT "C"**

**Encumbered Property**

Parcel # 33-17-300-002

The South half of the Southwest quarter of Section 17,  
Township 4 South, Range 1 West of the Salt Lake Base and  
Meridian.

Containing 80 acres.