

RECORDING REQUESTED BY
AND WHEN RECORDED, MAIL TO:

Timothy A. Johnson and Tess Johnson
490 E 13800 South
Draper, UT 84020

11435745
7/25/2012 8:24:00 AM \$30.00
Book - 10038 Pg - 5723-5730
Gary W. Ott
Recorder, Salt Lake County, UT
MONUMENT TITLE INS. CO.
BY: eCASH, DEPUTY - EF 8 P.

(Above Space for Recorder's Use Only)

EASEMENT MAINTENANCE AGREEMENT

This Easement Maintenance Agreement ("Agreement") is entered into and made effective as of June 21, 2012, by and among:

TIMOTHY A. JOHNSON AND TESS JOHNSON, husband and wife ("Parcel 1 Owner");

SHELLY MARIE O'MEARA, an unmarried woman ("Parcel 2 Owner");

PAUL W. WICKS, TRUSTEE OF THE PAUL W. WICKS TRUST AGREEMENT, dated February 5, 1992, AND BARBARA PURCELL WICKS, TRUSTEE OF THE BARBARA PURCELL WICKS TRUST AGREEMENT, dated February 5, 1992, as tenants in common ("Parcel 3 Owner" and "Parcel 4 Owner").

Parcel 1 Owner, Parcel 2 Owner, Parcel 3 Owner, and Parcel 4 Owner are sometimes referred to herein individually as a "Party" and collectively as the "Parties".

RECITALS:

- A. Parcel 1 Owner is the owner of that certain real property described as "Parcel 1" on Exhibit A attached hereto and incorporated herein by this reference ("Parcel 1") and identified as "Parcel 1" on the map attached hereto as Exhibit B ("Map").
- B. Parcel 2 Owner is the owner of that certain real property described as Parcel 2 on Exhibit A attached hereto and incorporated herein by this reference ("Parcel 2") and identified as "Parcel 2" on the Map.
- C. Parcel 3 Owner is the owner of that certain real property described as "Parcel 3" on Exhibit A attached hereto and incorporated herein by this reference ("Parcel 3") and identified as "Parcel 3" on the Map.
- D. Parcel 4 Owner is the owner of that certain real property described as "Parcel 4" on Exhibit A attached hereto and incorporated herein by this reference ("Parcel 4") and identified as "Parcel 4" on the Map. Parcel 1, Parcel 2, Parcel 3 and Parcel 4 shall sometimes hereinafter be referred to collectively as the "Parcels" and individually as a "Parcel"

34-06-426-055
 34-06-426-004
 34-06-426-049
 34-06-426-022
 34-06-426-048
 34-06-426-001

1

Easement Maintenance Agreement v02a

- E. Pursuant to that certain Warranty Deed from Douglas C. Rattan and Myra B. Rattan to Chad W. Larsen and Barbara T. Larsen dated March 18, 1978 and recorded in the Official Records of Salt Lake County, Utah (“Official Records”) on March 30, 1978, as Entry No. 3085282, in Book 4647, at Page 201, the owner of Parcel 1 was granted an appurtenant right of way easement over and across Parcel 2, Parcel 3 and Parcel 4 within the area described in Exhibit C attached hereto (“Easement Area”).
- F. Pursuant to that certain Warranty Deed dated January 5, 2005 and recorded in the Official Records on January 10, 2005, as Entry No. 9271202, in Book 9082, at Pages 6255–6256, the owner of Parcel 2 was granted an appurtenant right of way easement over and across Parcel 3 and Parcel 4 within the Easement Area.
- G. Pursuant to that certain Quit-Claim Deed dated December 4, 1998 and recorded in the Official Records on April 9, 1999, as Entry No. 7317734, in Book 8267, at Page 210, the owner of Parcel 3 was granted an appurtenant right of way easement over and across Parcel 4 within a portion of the Easement Area.
- H. Parcel 1 Owner, Parcel 2 Owner and Parcel 3 Owner (collectively, the “Easement Holders”), having the benefit and use of the Easement Area, desire to provide for, among other things, the maintenance of the Easement Area and the allocation of the cost thereof, all as more specifically set forth herein. Parcel 4 Owner joins in this Agreement to acknowledge the location of the Easement Area and to provide for the use of the Easement Area by the Easement Holders, all as more specifically set forth herein.

NOW, THEREFORE, in consideration of the foregoing and for other good and valuable consideration, the receipt, sufficiency and validity of which are hereby acknowledged, the Parties, on behalf of themselves and their respective successors and assigns, covenant and agree as follows:

1. MAINTENANCE.

- 1.1 Maintenance. Each Easement Holder covenants and agrees that it shall maintain and keep in good repair that portion of the Easement Area that encumbers any Parcel owned by such Easement Holder. Parcel 1 Owner covenants and agrees that it shall maintain and keep in good repair the portion of the Easement Area located on Parcel 4.

As used herein, the obligation to “maintain and keep in good repair” shall mean maintaining the road located in the Easement Area (“Road”) clear of snow and debris and in substantially the same condition as of the date hereof, which is a dirt and gravel road passable by a typical passenger motor vehicle without obstruction by tree limbs, vegetation, fencing, improvements or gates and in a substantially level condition. The obligation to maintain and repair shall specifically exclude paving the Road, unless agreed upon by the Easement Holders in writing.

- 1.2 Cost of Maintenance. All maintenance required hereunder shall be at the sole expense of the Easement Holder performing such work.

- 1.3 **Failure to Maintain.** In the event an Easement Holder ("Defaulting Party") fails to maintain their portion of the Easement Area as required hereunder and such breach is not cured within thirty (30) days of written notice from any other Easement Holder, then such maintenance may be performed by any other Easement Holder and the reasonable, actual out-of-pocket costs thereof shall be reimbursed by the Defaulting Party within thirty (30) days of Defaulting Party's receipt of demand therefor together with documentation showing the costs incurred.

Notwithstanding the foregoing, in the event of an emergency that makes the Road impassable by a typical passenger vehicle, the thirty (30) day notice provided in the preceding paragraph shall be inapplicable and the Easement Holders shall only be obligated to give such notice as is reasonable under the circumstances, which notice may be telephonic, and any Easement Holder may, after giving such notice, perform such work ("**Emergency Work**") as is reasonably necessary to keep the Road passable until the emergency situation passes and normal maintenance or repair work can be performed by the Easement Holder responsible for such portion. The reasonable, actual out-of-pocket costs incurred by any Easement Holder in performing Emergency Work shall be shared equally by all of the Easement Holders.

- 1.4 **Improvements.** Any improvements or upgrades to the Easement Area to a condition better than existing as of the date hereof, such as paving the Road, shall be done at the sole expense of the Easement Holder doing such work, unless other Easement Holders agree in writing to contribute. Only those Easement Holders who have agreed in writing to contribute to such work shall be liable for cost thereof.
2. **PARCEL 3 OWNER PROVISIONS.** Notwithstanding any other provision hereof, the Parties agree that so long as Parcel 3 and Parcel 4 are owned in fee by the same Party, Parcel 3 Owner shall have no maintenance obligations hereunder and all such maintenance obligations shall be performed by the Parcel 1 Owner, at Parcel 1 Owner's sole cost and expense. At such time as Parcel 3 and Parcel 4 are owned by different individuals or parties, Parcel 3 Owner shall assume all responsibility for the obligations of Parcel 3 Owner hereunder.
3. **PARCEL 4 OWNER PROVISIONS.** The Parties acknowledge and agree that Parcel 4 Owner: (i) does not use the Road for ingress or egress to Parcel 4; (ii) is not an Easement Holder hereunder; and (iii) is not obligated to maintain the portion of the Easement Area located on Parcel 4 or participate in the cost thereof.
4. **ESTOPPEL.** Each of the Parties hereby acknowledge and agree that the Easement Area located on such Party's Parcel is a valid and existing easement encumbering such Party's Parcel and that such Party, as of the date hereof, has no claim that would invalidate or impair such easement.

5. **DAMAGE OR DESTRUCTION BY PARTY.** Unless otherwise expressly provided herein, if any Party damages any portion of the Easement Area, such Party shall, in a prompt and workman like manner, repair and restore such damage or disturbance as nearly as practicable to the condition that existed prior to such damage or disturbance.
6. **GRANT OF RIGHT OF ENTRY.** Without limiting or modifying any rights the Parties have with respect to the use of the Easement Area, each of the Parties hereby expressly grant to the other Parties the right to enter onto the Easement Area located on such Party's Parcel to perform the obligations of the Parties as provided herein.
7. **COVENANTS RUN WITH THE LAND.** This Easement Maintenance Agreement is for the benefit of and appurtenant to the Parcels and are burdens on the Parcels. The rights and obligations imposed by this Agreement shall run with the land. The acceptance by any person or entity of any interest in the Parcels, or any portion of any of them, constitutes an agreement by such person or entity to perform all obligations imposed hereby.
8. **ATTORNEY'S FEES.** In the event that any legal or equitable proceeding is brought for the enforcement of any provision of this Agreement, or is a result of any alleged breach thereof or for enforcement of any rights and/or duties hereunder, the successful party or parties of such suit shall be entitled to collect reasonable attorney's fees from the losing party or parties and any judgment or decree rendered shall include an award thereof.
9. **REMEDIES AND ENFORCEMENT.** In the event of a breach of the terms hereof, the other Parties have all remedies available at law or in equity. Notwithstanding the foregoing to the contrary, no breach hereunder shall entitle any Party to cancel, rescind, or otherwise terminate this Agreement.
10. **MISCELLANEOUS.** . If any clause, sentence, or other portion of the terms, covenants and restrictions of this Agreement becomes illegal, null, or void for any reason, or be held by any court of competent jurisdiction to be so, the remaining portions will remain in full force and effect. This Agreement may be changed, modified or amended in whole or in part only by written instrument executed by all Parties herein and duly recorded in the Official Records. Wherever herein the singular number is used, the same shall include the plural, and the masculine gender shall include the feminine and neuter genders, and vice versa, as the context shall require. The section headings used herein are for reference and convenience only, and shall not enter into the interpretation hereof. This Agreement shall be construed in accordance with the laws of the State of Utah. This Agreement may be executed in counterparts, all of which when taken together shall constitute the entire Agreement.

EXHIBIT A

LEGAL DESCRIPTIONS OF PARCELS

Parcel 1:

BEGINNING at a point which is South 860.87 feet (52.17 rods) from the Northwest corner of the Northeast quarter of the Southeast quarter of Section 6, Township 4 South, Range 1 East, Salt Lake Base and Meridian; and running thence South 459.13 feet (27.83 rods); thence East 189.75 feet (11.5 rods); thence North 459.13 feet (27.83 rods); thence West 189.75 feet (11.5 rods) to the point of BEGINNING.

Parcel 2:

BEGINNING at a point 25.0 feet East and 596.47 feet South of the Northwest corner of the Northeast Quarter of the Southeast Quarter of Section 6, Township 4 South, Range 1 East, Salt Lake Base and Meridian; and running thence South 264.41 feet; thence East 164.75 feet; thence North 264.4 feet; thence West 164.75 feet to the point of BEGINNING.

AND

BEGINNING at a point 596.47 feet South from the Northwest corner of the Northeast quarter of the Southeast quarter of Section 6, Township 4 South, Range 1 East, Salt Lake Base and Meridian, and running thence East 25.00 feet; thence South 264.40 feet; thence West 25.00 feet; thence North 264.40 feet to the point of BEGINNING.

Parcel 3:

BEGINNING at a point 25.0 feet East and 332.07 feet South of the Northwest corner of the Northeast quarter of the Southeast quarter of Section 6, Township 4 South, Range 1 East, Salt Lake Base and Meridian, and running thence South 264.4 feet; thence East 164.75 feet; thence North 264.4 feet; thence West 164.75 feet to the point of BEGINNING.

AND

BEGINNING at a point 332.07 feet South from the Northwest corner of the Northeast quarter of the Southeast quarter of Section 6, Township 4 South, Range 1 East, Salt Lake Base and Meridian, and running thence East 25.00 feet; thence South 264.40 feet; thence West 25.00 feet; thence North 264.40 feet to the point of BEGINNING.

Parcel 4:

BEGINNING at the Northwest corner of the Northeast quarter of the Southeast quarter of Section 6, Township 4 South, Range 1 East, Salt Lake Base and Meridian, and running thence South along the quarter section line 332.07 feet; thence East 189.75 feet; thence North 332.07 feet; thence West 189.75 feet to the point of BEGINNING.

LESS AND EXCEPTING that portion lying within 13800 South Street.

Exhibit A

Easement Maintenance Agreement v03c.docx

50

EXHIBIT B
MAP OF PARCELS

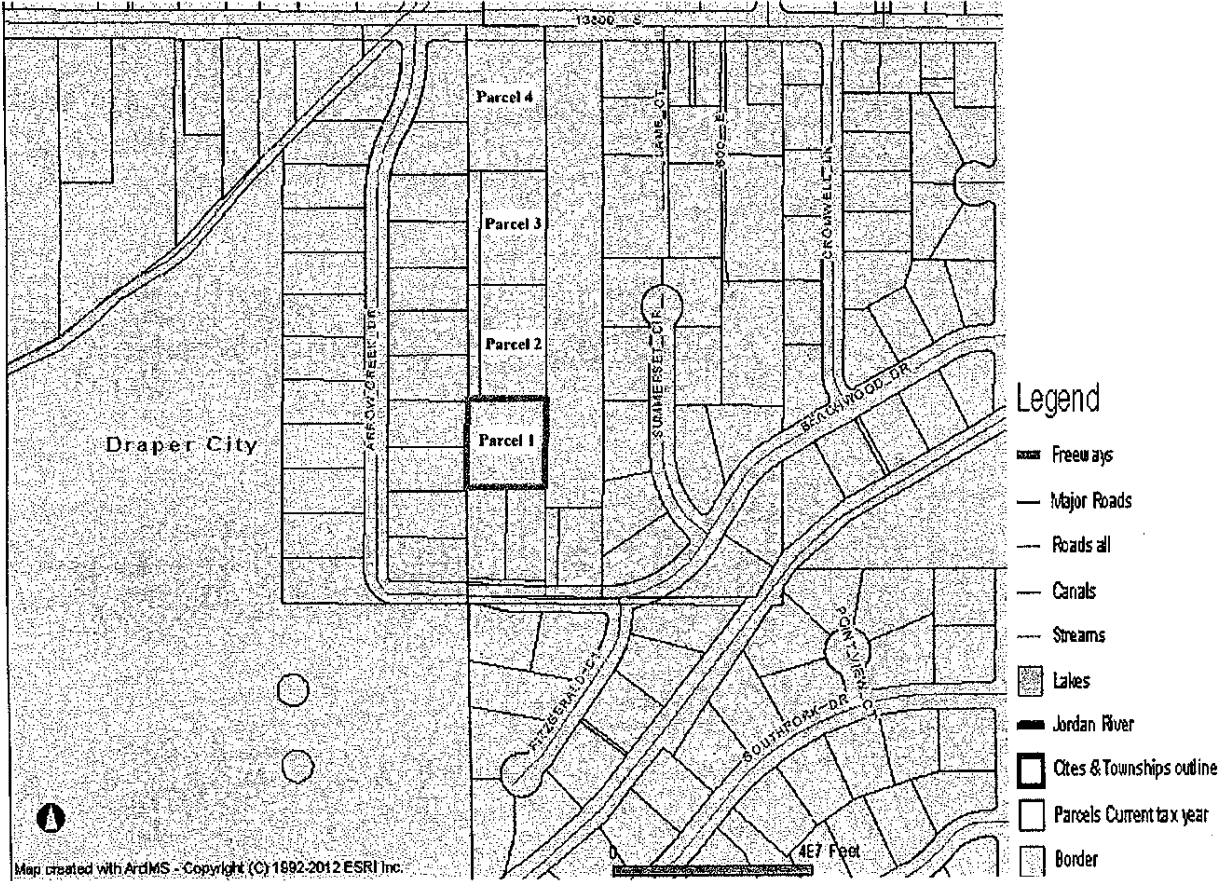


Exhibit B

EXHIBIT C

LEGAL DESCRIPTION OF EASEMENT AREA

That certain real property located in the State of Utah, County of Salt Lake and more particularly described as follows:

BEGINNING at a point at the Northwest corner of the Northeast quarter of the Southeast quarter of Section 6, Township 4 South, Range 1 East, Salt Lake Base & Meridian; and running thence South 860.87 feet (52.17 rods); thence East 25.00 feet (1.52 rods); thence North 860.87 feet (52.17 rods); thence West 25.00 feet (1.52 rods) to the point of BEGINNING.

Exhibit C

Easement Maintenance Agreement v03c.docx

EXHIBIT D
PICTURES OF EASEMENT AREA AT TIME OF EXECUTION