

When recorded, return to:

Bennett Tueller Johnson & Deere  
3165 East Millrock Drive, Suite 500  
Salt Lake City, Utah 84121-5027  
Attn: Paul M. Johnson, Esq.

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10/30/2014 3:29:00 PM \$40.00  
Book - 10271 Pg - 3825-3840  
Gary W. Ott  
Recorder, Salt Lake County, UT  
FIRST AMERICAN TITLE  
BY: eCASH, DEPUTY - EF 16 P.

## *NCG 679191- SA1* PARKING LICENSE AGREEMENT

This **PARKING LICENSE AGREEMENT** (the "**License**") is made this 30<sup>th</sup> day of October 2014 by and between EOS AT MILLROCK PARK, LLC, a Delaware limited liability company ("**Owner**") and MILLROCK DEVELOPMENT, LLC, a Utah limited liability company ("**Licensee**").

### RECITALS:

A. Owner is the owner of certain premises described on **Exhibit A** attached hereto (the "**Property**"), and Licensee is the owner of certain premises described on **Exhibit B** attached hereto ("**Hotel Parcel**"); and

B. Licensee has requested the right to use fifty (50) parking spaces situated in the Licensed Area (as defined below) on the third floor (collectively, the "**Parking Spaces**") of the parking garage (the "**Parking Garage**") located on the Property; and

C. Owner has agreed to grant Licensee the right to use the Parking Spaces upon and subject to the terms and conditions set forth herein.

NOW, **THEREFORE**, it is agreed between Owner and Licensee as follows:

#### 1. LICENSED AREA/USE/GATES:

1.1 Owner hereby grants to Licensee the non-exclusive right to use the Parking Spaces located in the area on the third floor of the Parking Garage that is shown on **Exhibit C** attached hereto (the "**Licensed Area**"), as the same may be modified from time to time as provided herein. In the event that Owner is temporarily unable to furnish Licensee with any of the Parking Spaces designated in this License for any reason whatsoever (including, without limitation, closure of portions of the third floor of the Parking Garage for maintenance or construction), Owner will provide, during the period of such closure, an equivalent number of substitute parking spaces during such period in the Parking Garage in an area to be determined by the Owner in its reasonable discretion. Owner acknowledges that any such temporary relocation of the Licensed Area will be a hardship on Licensee Users (as defined below) and agrees to use commercially reasonable efforts to reinstate Licensee's access to the original Licensed Area as soon as practicable. This License also includes a non-exclusive right (i) to use such portion or portions of the Property along and adjacent to the Licensed Area as may be reasonably necessary to facilitate use of the Parking Spaces, and (ii) of ingress to and egress from the Licensed Area along existing or future driveways, roads or paths on the Property.

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1.2 Owner hereby reserves the right to provide, at Owner's sole cost and expense, a replacement location (the "**Replacement Location**") for the Parking Spaces at any time, and from time to time, during the term of this License (including any Renewal Term, as such term is defined below) in the Parking Garage. Upon request by the Owner, Licensee shall execute an amendment to this License replacing the description and location of the Licensed Area shown on **Exhibit C** attached hereto with the description and location of the Replacement Location, which location will be on the 2<sup>nd</sup> floor in the easternmost part of the Parking Garage. In the event Owner elects to provide for the Replacement Location in accordance with the terms and provisions of this Section 1.2, Owner will be responsible to install new pathways, railings and access to and from the Replacement Location and the Hotel Parcel access area. Owner further reserves the right to use all or any portions of the Licensed Area for any lawful purpose not inconsistent with the terms of this License Agreement

1.3 Licensee agrees to use the Licensed Area only for the purpose of parking vehicles and further agrees to use the Licensed Area in accordance with all laws, statutes, ordinances and rules and regulations now or hereafter applicable to the Property, and all covenants, conditions and restrictions of record applicable to the Property. Use of the Licensed Area by Licensee may include use by its officers, employees, representatives, agents, contractors, customers or visitors (collectively, "**Licensee Users**"). Owner shall have the right, from time to time, to establish reasonable rules and regulations, consistent with Licensee's rights under this Agreement, governing the use of the Licensed Area, provided that such rules and regulations are not discriminatory and shall be implemented and enforced without discrimination. No portion of the Licensed Area may be used for any unlawful purpose or any activity that may create a nuisance, and Licensee shall use commercially reasonable efforts to control its Licensee Users in such manner as not to create any nuisance, or interfere with, annoy or disturb Owner's use of the Property and/or the Parking Garage. Licensee agrees to reimburse Owner for any expenses incurred by Owner as a result of any violation of this Section 1.3 by Licensee or Licensee Users, including, without limitation, any towing expenses for those vehicles parked by Licensee or Licensee Users in violation of this Agreement or which obstruct the vehicles of other parkers.

1.4 At Owner's election after a determination is made by Owner, in its reasonable discretion, that Licensee or Licensee Users are utilizing the Parking Spaces on a frequent basis (based upon reasonable observable evidence), Owner shall have the right to restrict access to the Licensed Area and Parking Garage by installing security access gates, automated access systems or any other mechanism (collectively, "**Access Systems**"), the costs of which shall be reimbursed by Licensee to Owner within thirty (30) days after the delivery of a written invoice(s) by Owner to Licensee, together with reasonably acceptable evidence of the actual costs incurred. Licensee shall reasonably cooperate and coordinate with Owner in connection with the implementation of the Access Systems. Owner shall also have the right to issue parking tags for the use of the Parking Spaces in the Licensed Area and to hire security or other personnel to ensure compliance with the terms and provisions of this License.

1.5 In the event Owner incurs any cost as a result of the City of Holladay or other governmental agency requiring the installation of signage, lighting, crosswalks, safety mechanisms or other improvements, the hiring of a flagman, or the undertaking of any other protective measures, due to or arising from the use of the Licensed Area by Licensee or Licensee

Users, then Licensee agrees to reimburse Owner for any such costs incurred within thirty (30) days after the delivery of a written invoice(s) by Owner to Licensee, together with reasonably acceptable evidence of the actual costs incurred.

**2. TERM:** The term of this License will commence on a date (the "**Commencement Date**") designated in a written notice from Licensee to Owner, which written notice shall be given at least thirty (30) days in advance of such Commencement Date, and will terminate twenty-five (25) years from the Commencement Date (the "**Initial Term**"). Upon expiration of the Initial Term, this License shall automatically renew for additional periods of twenty-five (25) years each (each, a "**Renewal Term**") upon the same terms as the Initial Term up to a total of three (3) Renewal Terms, which renewal shall become effective upon the expiration of the Initial Term or the expiration of any preceding Renewal Term, as applicable. Notwithstanding the foregoing or anything stated to the contrary herein, this License may be cancelled by Licensee, without further liability or obligation, for any reason upon ten (10) days' prior written notice to Owner, and shall automatically terminate following the expiration of the 3rd Renewal Term.

**3. FEE:** Beginning upon the Commencement Date, Licensee agrees to pay Owner One Thousand Dollars (\$1,000.00) per month for use of the Licensed Area (the "**License Fee**"), which shall be increased every five (5) years by the same percentage of increase that the Consumer Price Index (All Urban Consumers (CPI-U), all Items, applicable to the metropolitan Salt Lake City area (1982-84=100)) has increased during the previous five (5) year period. Upon the written request of either party, the parties hereto agree to execute a written document evidencing the new amount of the License Fee as increased pursuant to the previous sentence. If the Commencement Date occurs on a date other than the first day of a month, or if the Initial Term or Renewal Term, as applicable, ends on a date other than the last day of a month, the License Fee shall be prorated for such partial month. In addition to the License Fee, Licensee shall pay to Owner, if and when due, any sales, use or other taxes or assessments which are assessed or due by reason of this License or Licensee's use of the Licensed Area as provided hereunder. In the event any installment of the License Fee is not received within ten (10) days after the date on which such amount is due, Owner shall have the right to: (i) charge interest at ten percent (10%) per annum on the unpaid balance from the date such payment became due and payable, and (ii) at its option, after a thirty (30) day notice and cure period, revoke Licensee's parking privileges and to terminate this License without waiving or limiting any of its legal remedies (including, without limitation, the right to recover reasonable attorneys' fees and any other expenses incurred by Owner). Notwithstanding anything stated to the contrary in this Section 3, in the event Owner determines through verifiable means (e.g. through Access Systems or other methods) that Licensee is using more than eighty percent (80%) of the Parking Spaces for any particular month (based on average daily use during such month) (the "**Heavy Use Threshold**"), the License Fee shall be automatically increased by an additional One Thousand Dollars (\$1,000.00) for such month (to be increased every five (5) years by the same percentage of increase that the Consumer Price Index (All Urban Consumers (CPI-U), all Items, applicable to the metropolitan Salt Lake City area (1982-84=100)) has increased during the previous five (5) year period), which additional amount shall be delivered by Licensee to Owner within fifteen (15) days after its receipt of Owner's written request for such additional amount, which request shall also be accompanied by supporting evidence of Licensee's use of the Parking Spaces in excess of

the Heavy Use Threshold. Licensee and the Licensee Users shall not be charged any fee for the use of the Parking Spaces in excess of the License Fee.

**4. HOURS:** Licensee and each Licensee User shall have the right to use the Licensed Area during all hours that the Licensee is open for business, or is otherwise engaged in any business or activity requiring use of the Licensed Area.

**5. REPAIR/MAINTENANCE:**

**5.1** Subject to the terms and provisions of this License, Owner will keep the Licensed Area open and available for use during the entire term of this License, and will maintain the Licensed Area and Parking Garage in good order and repair, including, but not limited to, paving, striping and trash removal. Notwithstanding the foregoing, Owner shall not be liable or responsible to Licensee or any Licensee User for (i) any damage or inconvenience which may arise through the maintenance, repair or alteration of any part of the Parking Garage, or the failure to make any such repairs, or (ii) any loss or damage to any property or person occasioned by theft, fire, act of God, public enemy, injunction, riot, strike, insurrection, war, court order, or requisition or other order of governmental body or authority.

**5.2** Within fifteen (15) days after the delivery of an annual statement by Owner to Licensee, together with reasonably acceptable evidence of the actual costs incurred, Licensee shall reimburse Owner an amount equal to five percent (5%) of the total costs incurred by Owner in maintaining and operating the Parking Garage for any given year (each, a “**Maintenance Reimbursement**”). In the event any installment of a Maintenance Reimbursement is not received within ten (10) days after the date on which such amount is due, Owner shall have the right to: (i) charge interest at ten percent (10%) per annum on the unpaid balance from the date such payment became due and payable, and (ii) at its option, after a thirty (30) day notice and cure period, revoke Licensee’s parking privileges and to terminate this License without waiving or limiting any of its legal remedies (including, without limitation, the right to recover reasonable attorneys’ fees and any other expenses incurred by Owner). Notwithstanding anything stated to the contrary in this Section 5.2, in the event Owner determines that Licensee’s use of the Parking Spaces exceeds the Heavy Use Threshold for any month during the applicable annual maintenance period, the amount of the Maintenance Reimbursement for the applicable annual maintenance period provided for under this Section 5.2 shall be automatically increased from five percent (5%) to a percentage that is equal to the sum of (a) five percent (5%) plus (b) the product of (i) the number of months during such annual maintenance period during which the Heavy Use Threshold was exceeded multiplied by (ii) 0.4167% .

**6. INSURANCE/INDEMNITY:**

**6.1** Licensee shall procure and maintain in full force and effect at all times during the term of this License (including any Renewal Term), at Licensee’s sole cost and expense, commercial general liability insurance, with limits of liability of not less than One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) aggregate for bodily injury, personal injury and death, and One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) aggregate for property damage. Such insurance shall name Owner and any lender holding a deed of trust on the Property (as designated in writing by

Owner to Licensee from time to time) as additional insureds thereunder. Such insurance shall also include an express waiver of any right of subrogation by the insurance company against Owner and its respective agents, employees representatives or contractors which arises or might arise by reason of any payment under such policy or by reason of any act or omission of Owner or its respective agents, employees representatives or contractors, and an agreement by the insurance company that any such policy will not be invalidated should the insured waive in writing prior to a loss any or all right of recovery against any party for losses covered by such policy. The amount of such insurance shall not be construed to limit any liability or obligation of Licensee under this License. Licensee agrees that (i) each such policy shall contain a provision that it may not be canceled or amended without thirty (30) days prior written notice to Owner, and (ii) Owner will be furnished a Certificate of Insurance of each such policy prior to the Commencement Date or the beginning of any Renewal Term.

**6.2** Licensee agrees to indemnify, defend and hold harmless Owner and its officers, employees, representatives, agents, contractors, customers or visitors from any and all claims, damages, expenses, suits, loss or liability for any death, injury or damage caused by or arising from the use of the Licensed Area by Licensee or Licensee Users, provided that such indemnification obligation shall not apply to any claims, damages, expenses, suits, loss or liability caused by or arising out of the negligence or misconduct of Owner or its representatives, agents, contractors, tenants, visitors, or other invitees.

**7. CONDEMNATION AND CASUALTY:** If all or any portion of the Parking Garage shall be taken or condemned, or if any casualty occurs, that causes the Licensee to be unable to utilize the Licensed Area for the purposes contemplated by this License, this License shall, at the option of either party, forthwith cease and terminate. If Owner elects to reconstruct or repair the Parking Garage, then this License shall again be in force in all aspects, and the Parking Spaces shall again be made available for use by the Licensee and Licensee Users. All proceeds from any casualty, taking or condemnation of the Parking Garage shall, as between the parties, belong to and be paid to Owner.

**8. NO BAILMENT:** No bailment is created by this License. Owner shall not be responsible for any damage to, or loss of, Licensee's or Licensee User's vehicles or any component parts thereof or personal property in such vehicles, other than damage or loss directly caused by Owner. **VEHICLES OF LICENSEE OR LICENSEE USERS SHALL BE LOCKED AND OWNER SHALL NOT BE RESPONSIBLE FOR ANY THEFT OF THE VEHICLE OR ITS CONTENTS OR ANY LOSS OR DAMAGE RESULTING FROM LEAVING KEYS IN THE VEHICLE.**

**9. ATTORNEYS' FEES:** If there is any legal or arbitration action or proceeding between the parties to enforce any provision of this License or to protect or establish any right or remedy of either party hereunder, the unsuccessful party to such action or proceeding will pay to the prevailing party all costs and expenses, including reasonable attorneys' fees incurred by such prevailing party in such action or proceeding and in any appearance in connection therewith, and if such prevailing party recovers a judgment in any such action, proceeding or appeal, such costs, expenses and reasonable attorneys' fees will be determined by the court or arbitration panel handling the proceeding and will be included in and as a part of such judgment. Any such attorneys' fees and other expenses incurred by either party in enforcing a judgment in its favor

incurred under this License shall be recoverable separately from and in addition to any other amount included in such judgment, and such attorneys' fees obligation is intended to be severable from the other provisions of this License and to survive and not be merged into any such judgment.

**10. WAIVER:** The waiver by a party of any breach by the other party of any term, covenant or condition herein contained or a party's failure or delay to exercise any right, power or privilege hereunder shall not be deemed to be a waiver thereof or any subsequent breach, failure or delay. Any consent or approval given by either party in any one instance shall not be deemed to relieve the other party from the obligation to obtain consent or approval in any other or future instance.

**11. ASSIGNMENT/SUBLETTING:** Except in connection with the transfer of the Hotel Parcel, Licensee may not assign nor sublicense this License without the written consent of Owner, which consent may be withheld in Owner's sole and absolute discretion. In the event Owner consents to an assignment or sublicense by Licensee that is not in connection with the transfer of the Hotel Parcel as provided in this Section 11, Licensee shall not be released or relieved of its obligations hereunder. Notwithstanding the foregoing, if Licensee transfers all of its interest in the Hotel Parcel, the transferee shall have all of the rights of Licensee hereunder, provided that such transferee has agreed in writing to assume and be bound by the terms hereof as "Licensee" hereunder. Upon such transfer and assumption, the transferring Licensee shall have no liability for any obligation under this Agreement that accrues after the date of such transfer and assumption. Owner shall have the right to freely transfer and assign all of its rights and obligations hereunder in connection with the transfer of the Property, and no further liability or obligation shall thereafter accrue against Owner hereunder after the date of such transfer or assignment, provided that Owner's successor in interest to the Property assumes and agrees to be bound by the terms hereof as "Owner" hereunder.

**12. BINDING ON SUCCESSORS:** The covenants and conditions herein contained shall apply to and bind the heirs, successors, executors, administrators and assigns of all the parties hereto, subject, however, to the provisions of Section 11 above.

**13. NOTICES AND APPROVALS:** All notices, approvals or other communications (collectively, "Notices") required or permitted under this License shall be in writing, and shall be sent by one or more of the following: (i) personally delivered, (ii) sent by overnight mail (Federal Express or the like), (iii) sent by registered or certified mail, postage prepaid, return receipt requested, or (iv) sent by facsimile (provided that a follow-up hard copy of the facsimile is sent the same day by one of the other above methods within two (2) business days of the transmission). Notices shall be deemed received upon the earlier of (i) if personally delivered, the day of delivery, to the address of the person to receive such Notice, (ii) if sent by overnight mail, the business day following its deposit in such overnight facility, (iii) if mailed, two (2) business days after the date of posting by the United State Post Office, or (iv) if by facsimile, the date of transmission. If multiple methods of providing notice have been used, the earlier date of deemed notice shall govern. Counsel for a party may give notice or demand on behalf of such party, and such notice or demand shall be treated as being sent by such party. In order to be effective, all Notices must be directed to the appropriate parties as follows.

To Owner: c/o KBS Realty Advisors, LLC  
620 Newport Center Drive, Suite 1300  
Newport Beach, California 92660  
Attention: Tim Helgeson  
Telephone: (949) 797-0356  
Facsimile: (949) 417-6518

With copies to: James Chiboucas, Esq.  
620 Newport Center Drive, Suite 1300  
Newport Beach, California 92660  
Telephone: (949) 417-6555  
Facsimile: (949) 417-6523

And Greenberg Traurig LLP  
3161 Michelson Drive, Suite 1000  
Irvine, California 92612  
Attention: L. Bruce Fischer, Esq.  
Telephone: (949) 732-6670  
Facsimile: (949) 732-6501

To Licensee: c/o MTC Partners, LTD  
P.O. Box 71405  
Salt Lake City, Utah 84171  
Attention: Steven Peterson  
Telephone: (801) 550-5120  
Facsimile: (801) 993-1702

With copies to: Nathan Ricks  
3400 N. Ashton Blvd., Suite 100  
Lehi, UT 84043  
Telephone: (801) 231-0066  
Facsimile: (801) 768-0503

And Bennett Tueller Johnson & Deere  
3165 East Millrock Drive, Suite 500  
Salt Lake City, Utah 84121-4704  
Attention: Paul Johnson, Esq.  
Telephone: (801) 438-2000  
Facsimile: (801) 438-2050

**14. ESTOPPEL CERTIFICATES:** Within fifteen (15) calendar days after requested by either party, the other party shall execute and deliver to the requesting party a written certificate as to the status of this License, any existing defaults, the status of the payments and performance of the parties required hereunder, and such other information as may be reasonably requested.

**15. HOTEL PARCEL:** In the event the Hotel Parcel is not intended to be developed by Licensee as a hotel, or is not developed by Licensee as a hotel within ten (10) years after the date of this License, or at any point in time thereafter is not used as a hotel, then this License shall automatically terminate and be of no further force or effect. If the Hotel Parcel is developed by Licensee for use as a hotel, then Licensee hereby agrees to include a minimum of fifty (50) parking spaces on the Hotel Parcel.

**16. TIME:** Time is of the essence in the performance of this License.

**17. ENTIRE AGREEMENT:** This License contains the entire agreement between the parties with respect to any matter mentioned herein and all prior offers, negotiations and agreements are superseded hereby. This License may only be altered or amended in the future by written agreement of the parties.

**18. NOTICES OR DEMANDS:** Each and every notice or demand provided for under this License or for any other purpose shall be given in writing and delivered in person or by certified or registered mail at the address set forth below the signature for each party, or such other change of address as given in writing by one party to the other.

**19. BROKERS:** Owner and Licensee each represent to the other that they have not had any contract or dealings with or communications in connection with this transaction, through any real estate broker or other person who can claim a right to a commission or finder's fee as a procuring cause of the transaction contemplated herein. In the event that any broker or other person makes a claim based upon any contract, dealings or communication, the party through whom the broker or finder makes its claim agrees to defend, hold harmless and indemnify the other from and against such claim, and all liabilities, costs and expenses arising therefrom. The provisions of this paragraph shall survive the termination of this License.

**20. INVALIDITY:** The invalidity of any provision of this License as determined by a court of competent jurisdiction shall in no way affect the validity of any other provision hereof.

**21. GOVERNING LAW:** This License shall be governed by Utah law.

[Signatures on Following Page]



IN WITNESS WHEREOF, Owner and Licensee have executed this License as of the date and year first above written.

**“OWNER”**

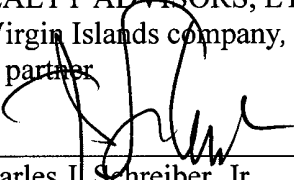
EOS AT MILLROCK PARK, LLC,  
a Delaware limited liability company

By: EOS PROPERTIES, LLC,  
a Delaware limited liability company,  
its sole member and manager

By: EOS INVESTMENT FUND, L.P.,  
a Delaware limited partnership,  
its sole member

By: POLIS REALTY ADVISORS, LTD.,  
a British Virgin Islands company,  
its general partner

By:

  
\_\_\_\_\_  
Charles J. Schreiber, Jr.,  
Chief Executive Officer

**ACKNOWLEDGMENT**

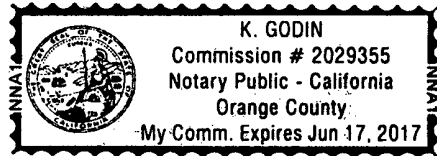
State of California  
County of Orange )

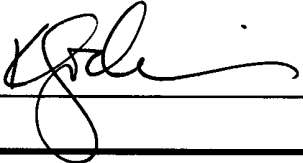
On October 22, 2014 before me, K. Godin, Notary Public  
(insert name and title of the officer)

personally appeared Charles J. Schreiber, Jr.  
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are  
subscribed to the within instrument and acknowledged to me that he/she/they executed the same in  
his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the  
person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing  
paragraph is true and correct.

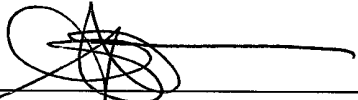
WITNESS my hand and official seal.



Signature  (Seal)

**“LICENSEE”**

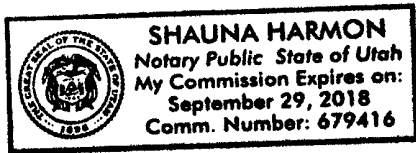
MILLROCK DEVELOPMENT, LLC  
a Utah limited liability company

By:   
\_\_\_\_\_  
Steven Peterson, Manager

[SIGNATURE PAGE TO  
PARKING LICENSE AGREEMENT]

STATE OF UTAH                    )  
  )ss  
COUNTY OF SALT LAKE    )

On October 23<sup>rd</sup>, 2014, before me, a Notary Public in the State of Utah, personally appeared Steven Peterson, a Manager of Millrock Development, LLC, a Utah limited liability company, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.



Shauna Harmon  
Notary Public

**EXHIBIT A**

**Description of Property**

3165 E. Lion Lane, Holladay, Utah 84121, and otherwise known as Lot 4, Millrock Park Subdivision, according to the Official Plat thereof on file and of record in the Salt Lake County Recorder's Office.

Tax Parcel No. 22-23-251-033-0000

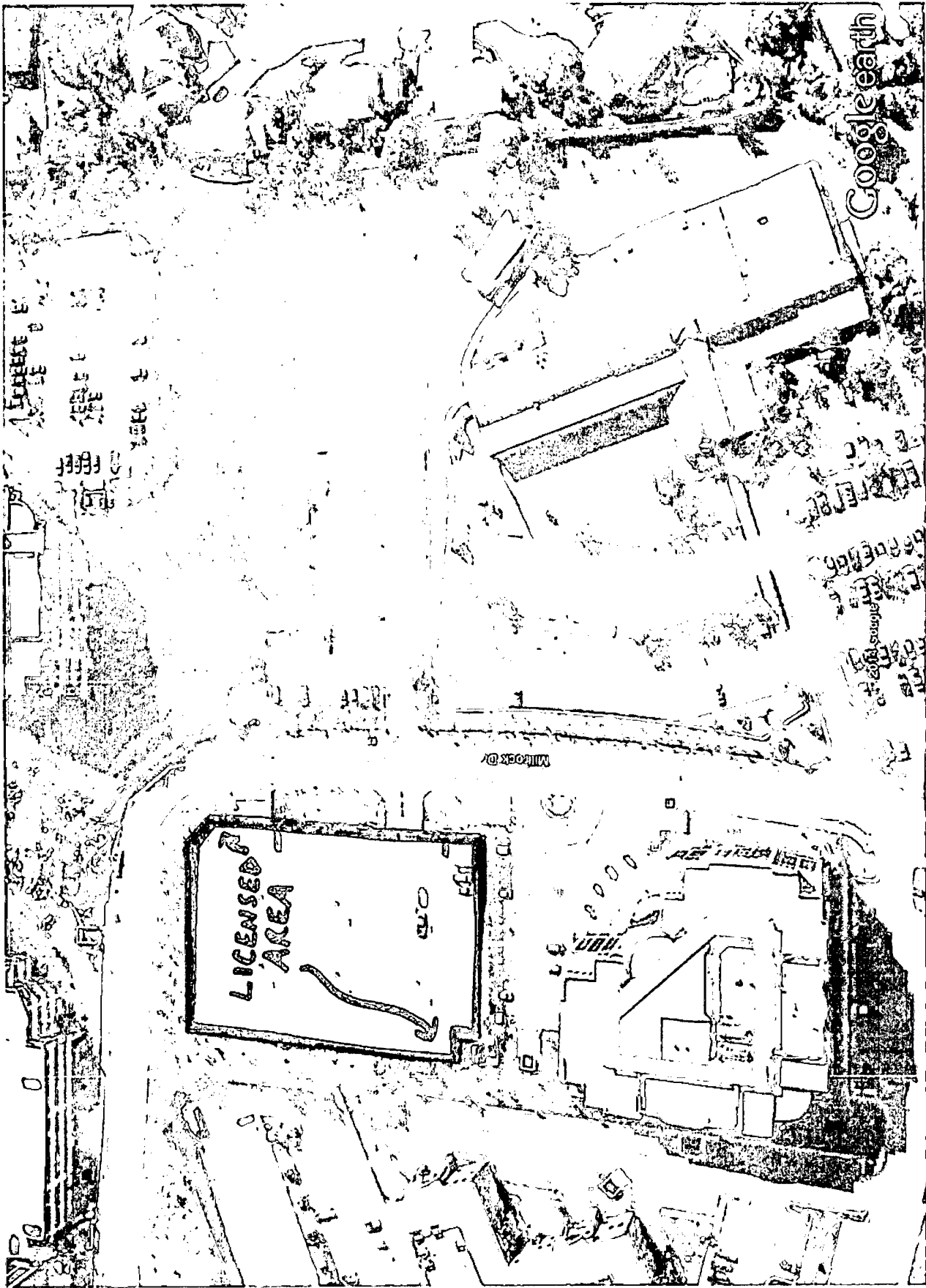
**EXHIBIT B**

**Description of Hotel Parcel**

3210 E. Lion Lane, Holladay, Utah 84121, and otherwise known as Lot 5, Millrock Park Subdivision, according to the Official Plat thereof on file and of record in the Salt Lake County Recorder's Office.

Tax Parcel No. 22-23-251-035-0000

**EXHIBIT C**  
**Licensed Area**  
(Attached)



600

100

feet  
meters

Google earth