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1/19/2017 3:29:00 PM \$27.00  
Book - 10522 Pg - 1196-1204  
Gary W. Ott  
Recorder, Salt Lake County, UT  
FIRST AMERICAN NCS  
BY: eCASH, DEPUTY - EF 9 P.

When recorded return to:

Lotus Habits, L.L.C.  
338 E. South Temple  
Suite B  
Salt Lake City, Utah 84111

Tax Parcel 16-32-376-053-0000

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**RIGHT OF WAY DEDICATION AGREEMENT**

**ACCOMMODATION RECORDING ONLY.  
FIRST AMERICAN TITLE MAKES NO  
REPRESENTATION AS TO CONDITION  
OF TITLE, NOR DOES IT ASSUME ANY  
RESPONSIBILITY FOR VALIDITY,  
SUFFICIENCY OR AFFECT OF DOCUMENT.**

## RIGHT OF WAY DEDICATION AGREEMENT

THIS RIGHT OF WAY DEDICATION AGREEMENT ("Agreement") is made this 5<sup>th</sup> day of April, 2016, by and between Lotus Habits, L.L.C., a Utah limited liability company ("Lotus Habits") and Salt Lake County, a body corporate and politic of the State of Utah ("County"). Lotus Habits and the County are, sometimes, referred to herein as a "Party" or, collectively, the "Parties".

### RECITALS

**Whereas**, Lotus Habits owns and is developing a project known as "Tapestry", which is a 42-unit apartment project ("Project") located at approximately 832 East on 3900 South, more particularly described in Exhibit "A" attached hereto.

**Whereas**, the Project received preliminary conditional use approval from the Millcreek Township Planning Commission on January 13, 2016, subject to technical review;

**Whereas**, the preliminary approval of the conditional use application required Lotus Habits to comply with subsequent technical review;

**Whereas**, during a part of the technical review of the Project by the County, an issue was raised about the potential future widening of 3900 South and a provision in the County's Code of Ordinances, Sections 15.28.010 and .060, that purports to require a landowner to dedicate to the County portions of land for future road widening as a condition of approval;

**Whereas**, Lotus Habits disputes the constitutional validity of the above dedication requirement to the extent that such dedication constitutes an exaction and if applied to the Project without satisfying the requirements of Section 17-27a-507(1) of the Utah Code, including a rough proportionality analysis, or without payment of just compensation, may amount to an unconstitutional taking of private property; and,

**Whereas**, the Parties desire to resolve this dispute in a mutually acceptable manner.

**Now, therefore**, in consideration of the foregoing Recitals, the following mutual promises set forth herein, \$10.00 and other good and valuable consideration, the receipt and sufficiency of which are hereby conclusively acknowledged by the Parties, the Parties agree to the following:

### TERMS

1. **Consent to Dedicate.** Lotus Habits consents to dedicate to the County, or any successor-in-interest to the operation and maintenance of 3900 South ("Successor"), a portion of property, up to thirteen (13) feet in width, along the existing boundary with the 3900 South right-of-way, with the maximum area of its property to be affected by this dedication depicted on

Exhibit "B" ("ROW") at such time as the County or its Successor provides to Lotus Habits, or its successors or assigns, a request to dedicate accompanied by a notice from the County or its Successor that a public improvement project has been funded by the County Council or the Successor's legislative body and that the process for retaining a contractor to construct the portion of 3900 South that requires the ROW has been commenced.

2. **Approval of the Project.** Execution of this Agreement resolves the issues identified by the Salt Lake County Traffic Engineer regarding the Project. When all of the conditions and requirements of the preliminary approval have been resolved, the Planning and Development Services Director shall issue final approval of the conditional use permit for the Project.

3. **Legal Conforming Status.** The County covenants that if or when the dedication of the ROW occurs, the Project will not be labeled by the County in any way as "non-conforming" by such dedication.

4. **Reservation of Right to Challenge Exaction.** The County acknowledges that by entering into this Agreement Lotus Habits, including its successors or assigns, does not in any manner waive any claim that a request by the County or its Successor for Lotus Habits to dedicate the ROW to the County or its Successor pursuant to this Agreement is not roughly proportionate, in accordance with Section 17-27a-507(1), and constitutes an unconstitutional taking of private property for public purposes without just compensation. If dedication of the ROW is ever required, then the date that the dedication is required shall be deemed the date for the starting of any statute of limitations regarding any action for just compensation and shall also be the date on which the compensation valuation, if any, shall be determined.

5. **Notice of Interest.** The County may record a Notice of Interest in the chain of title of the Project referencing this Agreement.

6. **No Waiver.** The Terms of this Agreement shall not be amended or waived except in writing signed by all the Parties.

7. **Complete Agreement.** This Agreement, along with the attached and incorporated Exhibit, is the complete, final and fully integrated agreement between the Parties regarding the subject matter of this Agreement and supersedes all prior discussions regarding such matters.

[Signatures on Next Page]

EXECUTED by Lotus Habits on this 27<sup>th</sup> day of April, 2016

Lotus Habits, L.L.C.  
By: ~~Lotus City Homes, LLC~~, its Manager

By: [Signature]  
Bryan Wrigley, Manager

STATE OF UTAH )  
 ) :SS  
COUNTY OF SALT LAKE )

On this 27<sup>th</sup> day of April, 2016, personally appeared before me Bryan Wrigley, who by me being duly sworn, did say that he is the Manager of Lotus City Homes, LLC, the Manager of Lotus Habits, L.L.C., and that the foregoing instrument was signed in behalf of said Limited Liability Company.



[Signature]  
NOTARY PUBLIC  
Residing at OBDEN, UTAH

EXECUTED by Salt Lake County on this \_\_\_\_\_ day of April, 2016.



SALT LAKE COUNTY  
[Signature]  
Mayor or Designee

STATE OF UTAH )  
 ) :SS  
County of Salt Lake )

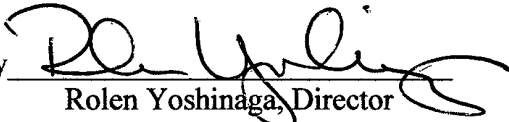
On this 5 day of April, 2016, personally appeared before me Lori Bays, who being duly sworn, did say that (s)he is the Deputy Mayor of Salt Lake County, Office of Mayor, and that the foregoing instrument was signed on behalf of Salt Lake County, by authority of law.

[SEAL]

[Signature]  
NOTARY PUBLIC

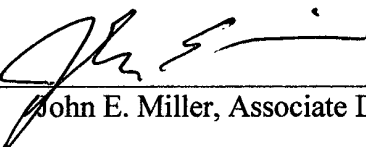
Residing in Salt Lake County, Utah

APPROVED BY:  
Salt Lake County Planning and Development Services

By   
Rolen Yoshinaga, Director

Date: April 29, 2016

Salt Lake County Engineering & Flood Control

By   
John E. Miller, Associate Director, Township Engineer

Date: MAY 2, 2016

APPROVED AS TO FORM:

  
R. Christopher Preston  
Deputy District Attorney

Date: 4/27/2016

**EXHIBIT "A"**

(LEGAL DESCRIPTION OF PROPERTY)

*Exhibit A*

*Lotus Tapestry  
Corrected Descriptions*

April 11, 2016

*Beginning on the South Line of 3900 South Street at a point which is South 89°57'10" East 59.3 feet (record = East 59.9 feet) and South 0°09'39" West 7.00 feet (record = South 7.00 feet) from the Northwest Corner of Lot 10, Block 5, Ten Acre Plat "A", Big Field Survey, Salt Lake County, Utah, said point of beginning also being North 89°57'10" West along the monument Line 738.50 feet and South 0°09'39" West 40.00 feet from the monument at the intersection of 3900 South Street and 900 East Street; thence South 89°57'10" East along said South Line of 3900 South Street 295.33 feet (record = East 295.2 feet); thence South 0°08'01" West 118.03 feet (record = South 118.0 feet); thence South 89°57'20" East 185.09 feet (record = East 185.00 feet); thence South 0°06'58" West 196.18 feet (record = 196.18 feet); thence North 89°57'51" West 480.54 feet (record = West 480.2 feet); thence North 0°08'39" East 314.30 feet (record = North 314.18 feet) to the point of beginning.*

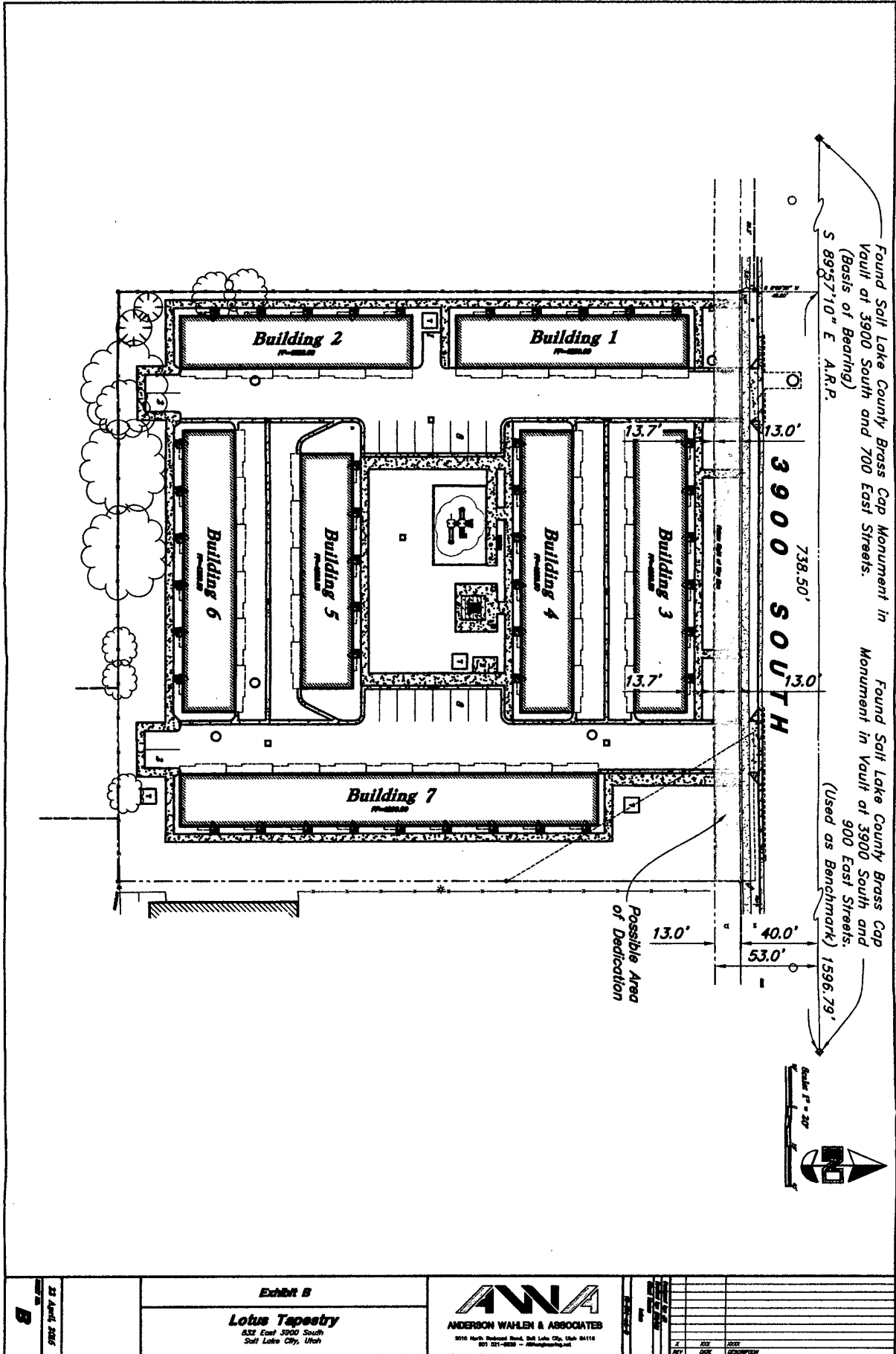
*Less and excepting the following description:*

*Beginning at a point which is North 89°57'10" West along the monument Line 738.50 feet and South 0°09'39" West 40.00 feet from the monument at the intersection of 3900 South Street and 900 East Street, and South 89°57'10" East along said South Line of 3900 South Street 295.33 feet (record = East 295.2 feet) and South 0°08'01" West 118.03 feet (record = 118.0 feet); and running thence South 89°57'20" East 185.09 feet (record = East 185.00 feet); thence South 0°06'58" West 196.18 feet (record = 196.18 feet); thence North 89°57'51" West 185.09 feet; thence North 0°06'58" East 196.21 feet (due North 198.18 feet, more or less, record) to the point of beginning.*

<b>EXHIBIT A</b>	<b>Exhibit A</b>	 <b>ANDERSON WAHLEN &amp; ASSOCIATES</b> 2010 North Redwood Street, Salt Lake City, Utah 84116 801 821-8029 - <a href="mailto:ah@andwh.com">ah@andwh.com</a>	DATE BY CHECKED APPROVED
	<b>Lotus Tapestry</b> 632 East 3900 South Salt Lake City, Utah		

**EXHIBIT "B"**  
**(DEPICTION OF POTENTIAL AREA OF ROW)**





**Exhibit B**

**Lotus Tapestry**  
632 East 3900 South  
Salt Lake City, Utah

**AWA**  
ANDERSON WAHLEN & ASSOCIATES  
2010 North Redwood Road, Salt Lake City, Utah 84114  
801 521-8828 - [www.awa.com](http://www.awa.com)

NO.	DATE	DESCRIPTION
1	2007	CONCEPT
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