

Ent 243931 Bk 450 Pg 376  
Date: 19-NOV-2010 3:31PM  
Fee: \$34.00 ACH  
Filed By: CP  
BRUCE BROWN, Recorder  
BEAVER COUNTY CORPORATION  
For: FOUNDERS TITLE COMPANY - SYR  
Recorded Electronically by Simplifile

Return after recording to:  
Mary W. James, Real Estate Paralegal  
Real Estate Legal Department  
Family Dollar Stores, Inc.  
P. O. Box 1017  
Charlotte, NC 28201-1017

FD-43316

### ACCESS EASEMENT AND RESTRICTIVE COVENANT AGREEMENT

THIS ACCESS EASEMENT AND RESRICTIVE COVENANT AGREEMENT (the "Agreement") is made this 19 day of NOVEMBER 2010, by FAMILY DOLLAR, INC., a North Carolina corporation (hereinafter referred to as "Lot 1 Owner"), whose address is P. O. Box 1017, Charlotte, NC 28201-1017 and T & N PROPERTIES, LLC, a Utah limited liability company (hereinafter referred to as "Lot 2 Owner"), whose address is 444 North 7200 West, Petersboro, UT 84325.

#### RECITALS

(A) Lot 1 Owner is the owner of fee simple title to a parcel of real estate in Beaver County, Utah located at the northeast corner of the intersection of Main Street (Utah State Highway 89) and 800 North Street in Beaver, Utah, hereinafter referred to as "Lot 1" and legally described on Exhibit "A" attached hereto and made a part hereof.

(B) Lot 2 Owner is the owner of fee simple title to a parcel of real estate in Beaver County, Utah, lying contiguous to and north of Lot 1, hereinafter referred as "Lot 2" and legally described on Exhibit "B" attached hereto and made a part hereof.

(C) Each of Lot 1 and Lot 2 is sometimes referred to as a "Parcel" and together, as the "Parcels."

(D) Lot 1 and Lot 2 were previously a part of the same parent parcel, which was subsequently divided by that certain plat recorded in Plat Book 444 at Page 20 of the Beaver County Public Registry, said parent parcel being divided as shown on said plat into Lot 1 and Lot 2, as depicted on Exhibit "D" attached hereto and made a part hereof, said Exhibit "D" being a copy of a portion of said recorded plat.

(E) Lot 1 Owner and Lot 2 Owner (sometimes individually referred to as an "Owner" and together as "Owners") desire to provide for certain joint uses of portions of Lot 1 and Lot 2 by granting a perpetual non-exclusive easement for the purpose of providing cross access over certain portions of the Parcels.

NOW, THEREFORE, for and in consideration of the sum of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt whereof is hereby acknowledged, it is agreed by and between the parties as follows:

1. **Recitals.** The above recitals are true and correct and are incorporated herein by reference.
2. **Grant of Easement.** Subject to the conditions and restrictions set forth in this Agreement, the Owners do hereby establish, grant and create the following nonexclusive and perpetual easement, right,

license and privilege of ingress, egress, passage and use (the "Easement"), for pedestrian and vehicular traffic, including 18-wheel tractor-trailer vehicles, to enter and exit the Parcels from Main Street (Utah State Highway 89) over the approximately 42.80' X 185.59' area as described in Exhibit "C" attached hereto and made a part hereof and as shown hatched on the sketch of the Parcels attached hereto and made a part hereof as "Exhibit E") (the "Access Easement Area").

3. **Easement Limitations.** Notwithstanding the rights and Easement granted herein, the following limitations and restrictions shall apply to the Easement so granted:

a. **No Nuisance.** The use of the Easement granted in this Agreement is limited to the purposes stated herein. No Owner, lessee, licensee, and no occupant or any officer, employee, agent, independent contractor, customer, visitor, business guest, invitee, supplier, sublessee or sublicensee of any Owner, lessee or licensee is permitted to use the Easement granted herein in any way which may create a dangerous condition or create any interference with the current or future use of any other Parcel.

b. **No Barriers.** No walls, fences or barriers of any kind shall be constructed on the Access Easement Area or any other portion of the Parcels which prevent or impair the use or exercise of the Easement granted herein for the free access and movement of pedestrian and vehicular traffic across the Access Easement Area.

c. **No Cross Parking.** Each of the Parcels shall have sufficient parking spaces to comply with all applicable ordinances and to serve the businesses located thereon, and no Owner, lessee, licensee, occupant, officer, employee, agent, independent contractor, customer, visitor, business guest, invitee, supplier, sublessee or sublicensee of any Owner, lessee or licensee is permitted to park on the Parcel owned by the other Owner.

d. **Compliance.** All construction, installation, maintenance, upkeep, and repair associated with any rights or privileges created hereby with respect to the Easement shall be conducted in compliance with all laws, orders, rules and regulations of all applicable governmental and environmental authorities having jurisdiction over same, including the requirements of any utility companies.

4. **Maintenance.** The Lot 1 Owner shall maintain, repair and replace the pavement and curbing in the Access Easement Area pursuant to all applicable permits and ordinances; provided, however, that prior to performing any such work the Lot 1 Owner shall obtain the prior written approval of the Lot 2 Owner for such work, not to be unreasonably withheld, conditioned or delayed; provided further, however, that in the event of an emergency the Lot 1 Owner shall proceed with the necessary work without obtaining the prior written approval of the Lot 2 Owner and shall notify the Lot 2 Owner of such work as soon thereafter as reasonably practicable. Until construction of improvements commences on Lot 2, the Lot 1 Owner shall bear all costs of maintenance, repair and replacements costs associated with the Access Easement Area. Upon commencement of construction of improvements upon Lot 2, and at all times thereafter, the Lot 1 Owner shall receive compensation for fifty percent (50%) of said maintenance, repair and replacement costs. Lot 2 Owner shall pay its prorata share within thirty (30) days after it receives an invoice from the Lot 1 Owner (or its assignee, as provided in the subsection below), accompanied by sufficient documentation to reasonably support the amount shown on its invoice. Sums not paid when due shall accrue interest at the highest rate allowed by Utah law, and the Lot 1 Owner shall have a lien on Lot 2 to secure the obligations of the Lot 2 Owner in accordance with applicable law, provided, however, any such lien, unless previously recorded, shall be subordinate to the lien of any institutional mortgage hereinafter encumbering Lot 2 but it shall not be extinguished or otherwise affected by the foreclosure of any such lien of any institution or mortgage.

a. **Maintenance by Lot 2 Owner.** If, after written notice to the Lot 1 Owner from the Lot 2 Owner describing a condition requiring maintenance, repair or replacement, and the Lot 1 Owner fails or refuses to conduct such maintenance, repair or replacement within thirty (30) days after the date that the Lot 1 Owner receives such notice (or within five days in the event of an emergency), the Lot 2 Owner has the right, privilege or license to undertake such maintenance, repair or replacement, and

thereafter demand reimbursement of Lot 1's prorata share (as described above). The Lot 2 Owner shall have the lien rights described above if Lot 1's prorata share is not paid within thirty (30) days as aforesaid.

b. **Appointment.** The Lot 1 Owner may assign to the tenant of Lot 1 the maintenance obligations described above, and in such event, the Lot 1 Owner shall give written notice of such assignment to the Lot 2 Owner (and its tenant), including the name and contact information of the tenant to whom maintenance obligations have been assigned and to whom reimbursements of and demands for maintenance shall be made.

c. **Routine Maintenance.** Notwithstanding the foregoing maintenance, repair and replacement obligations of the Lot 1 Owner (or its tenant), each Owner and tenant shall keep its respective Parcel free and clear of debris, filth and refuse and shall keep its Parcel in a clean and orderly condition and shall maintain the building or improvement on its Parcel in a manner so as to prevent it from becoming unsightly because of disrepair or unattractive growth or accumulation of rubbish or debris thereon. Each Owner shall also be responsible, at its sole cost and expense, to maintain and ensure that all landscaping on its Parcel is properly irrigated, fertilized and kept free of pests.

d. **Damage to Easement Areas.** An Owner shall, at its expense, repair and restore the Parcel of the other Owner and any improvements thereon (including without limitation paved surfaces, curbs, landscaping, utility lines, drainage facilities and buildings) damaged by the offending Owner or its lessee, licensee, or occupant or any officer, employee, agent, independent contractor, customer, visitor, business guest, invitee, supplier, sublessee or sublicensee of said Owner, lessee, licensee or occupant while exercising the easement rights granted herein. The damaged item shall be repaired or restored to the condition existing prior to such damage.

5. **Public Liability Insurance.** Each of the Owners shall at all times maintain comprehensive public liability insurance with respect to its respective Parcel, insuring against the risks of bodily injury, death and property damage with respect to the Easement created in this Agreement, with a minimum single limit of not less than \$1,000,000.00 per occurrence, coverage to be in a comprehensive general liability form. The policy shall provide that such policy may not be canceled or modified without at least thirty (30) days' prior written notice to the other party. Each Owner shall provide the other Owner, on or before the effective date of the policy, a duplicate policy or certificate evidencing the insurance required hereunder and stating that such insurance is in full force and effect, that the premiums therefore have been paid and that each party and any mortgagee on the respective Parcels and the other party has been named as an insured party where required.

6. **Indemnity.** The parties hereto hereby agree to defend, indemnify and hold harmless each other against any and all loss, cost, damage, claim and expense, including reasonable attorney's fees and court costs, threatened against or arising out of the use and enjoyment by the relevant party or its tenants, invitees, licensees, representatives, employees, contractors and agents of the easement rights, privileges and benefits granted herein.

7. **Exclusive Use.** So long as Lot 1 is being used for the operation of a Family Dollar store, Lot 2 shall not be used for the operation of a variety store, variety discount store, discount department store, dollar store, liquidation or close-out store, thrift store, any store selling used clothing, or any store similar to Family Dollar in operation or merchandising. This Paragraph is not intended to prohibit the use of Lot 2 for a drugstore, toy store, hobby store, sporting goods store, card and gift store, hardware store, home improvement store, auto supply store, electronics store, office supply store or any other store selling a single category of merchandise even though the category may be a broad one such as toys or hardware.

8. **Consent of Lender.** Soderby, Ltd., hereby joins in the execution of this Agreement to evidence its consent and approval of the terms and provisions hereof and its consent and approval of the plat of the Family Dollar Subdivision recorded in Book 444 at Page 20 of the Beaver County Public Registry, and to subordinate the lien of that certain Trust Deed recorded in Book 429 at Page 577 of the Beaver County Public Registry, to the terms and provisions of this Agreement and to said Plat.

9. Miscellaneous Provisions.

a. Successors and Assigns. The terms, covenants, restrictions, Easement, rights and benefits herein contained shall bind and inure to the benefit of the parties named herein and their respective heirs, representatives, successors and assigns, and the enumerations and definitions of any party to this instrument shall be construed to include the heirs, representatives, successors and assigns of such party.

b. Running Covenants. The Easement, restrictions, benefits and obligations hereunder shall run with the land and be perpetual. This Agreement shall create privity of contract and/or estate with and among all present and future Owners and grantees of the Parcels, their heirs, executors, administrators, successors or assigns.

c. Not a Public Dedication. Nothing herein contained shall be deemed to be a gift or dedication of any portion of the real property described herein to the general public or for general public purposes whatsoever, it being the intention of the parties that this Agreement shall be strictly limited to and for the purposes herein expressed.

d. Default. In the event of a breach, or attempted or threatened breach, of any other terms, covenants or conditions hereof, the non-breaching party shall be entitled forthwith to full and adequate relief by injunction, specific performance, damages and all other such available legal and equitable remedies pursued or proceedings instituted as a result of such breach. All costs and expenses of any such suit or proceedings (including reasonable attorney's fees) shall be assessed against the non-prevailing party, including interest at the maximum legal rate for any money advanced by the prevailing party to remedy the default of the other party. The remedies specified herein shall be cumulative as to each and to all other remedies permitted by law or in equity.

e. Notice. All notices to be given pursuant to this Agreement shall be sent by United States certified or registered mail, postage prepaid, return receipt requested, or overnight courier delivery service maintaining receipt and delivery records, to the addresses set forth in this Agreement and shall be deemed given when placed in the mail or deposited with such overnight courier service. Upon any change of ownership of either Parcel, all notices to the new Owner of said Parcel shall be sent to the addresses set forth in the Deed to such new Owner, the tax records and any other address which such new Owner may provide to the Owner of the other Parcel.


f. Governing Law. This Agreement shall be construed and enforced in accordance with the laws of the State of Utah. Venue for any action arising hereunder shall lie in the appropriate court having jurisdiction in Beaver County, Utah.

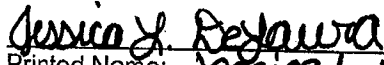
g. Modifications. This Agreement may not be modified in any respect whatsoever or rescinded, in whole or in part, except by the consent of each of the parties hereto, or their respective successors or assigns, and then only by written instrument duly executed and acknowledged by all of said Owners, and recorded in the public records of Beaver County, Utah.

**IN WITNESS WHEREOF**, the Owners caused this Ingress and Egress Easement Agreement to be executed as of the day and year first above written.

[Signature pages follow]

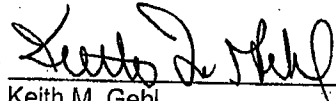
WITNESSES:

  
Printed Name: Christine R. Brearley

  
Printed Name: Jessica L. Delaura

LOT 1 OWNER:

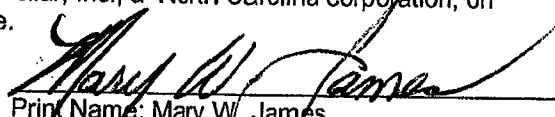
FAMILY DOLLAR, INC.,  
a North Carolina corporation

By:   
Keith M. Gehl  
Senior Vice President - Real Estate Facilities



STATE NORTH CAROLINA  
COUNTY OF MECKLENBURG

The foregoing Agreement was executed this 18th day of November, 2010, by KEITH M. GEHL, as Senior Vice President - Real Estate Facilities of Family Dollar, Inc., a North Carolina corporation, on behalf of said corporation. He is personally known to me.

  
Print Name: Mary W. James  
NOTARY PUBLIC - State of North Carolina  
My commission expires June 18, 2011



**LOT 2 OWNER:**

**T & N PROPERTIES, LLC, a Utah limited liability company**


By:   
Kurtis Lund, Manager

Printed Name: \_\_\_\_\_

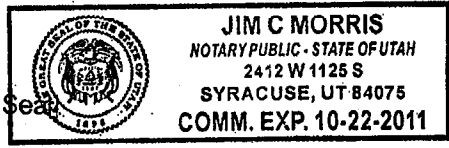
Printed Name: \_\_\_\_\_

STATE OF UTAH  
COUNTY OF BEAVER- *Davis*

The foregoing Agreement was acknowledged before me this 19 day of NOVEMBER, 2010, by Kurtis Lund, as authorized Manager of T&N Properties LLC, a Utah limited liability company, on behalf of said company. He (*check one*) [] is personally known to me or [ ] has furnished \_\_\_\_\_ as identification.

  
Notary Public - State of Utah  
Printed Name: Jim C Morris  
My Commission Expires: 10-22-11

[Notary Seal



MORTGAGEE CONSENT

Soderby, Ltd., being the Beneficiary under that certain Trust Deed from T&N Properties, LLC, to Founders Title Company, Trustee, conveying the property or portions thereof described in Exhibit B attached to this Agreement and made a part hereof, and recorded in Book 429 at Page 577 in the Beaver County Public Registry (the "Trust Deed") does hereby consent to the recordation of this Agreement and the imposing of the provisions hereof to said real property described therein, and does also hereby consent to the plat of the Family Dollar Subdivision recorded in Book 444 at Page 20 of the Beaver County Public Registry, and said Beneficiary does hereby consent and agree that from and after this date, the provisions of this Agreement, including all exhibits, attachments, supplements and amendments hereto, and that said plat, shall be superior to the lien of said Trust Deed on said property. The execution of this Mortgagee Consent by the Beneficiary shall not be deemed or construed to have the effect of creating between said Beneficiary and T&N Properties, LLC, the relationship of partnership or of joint venture, nor shall said Beneficiary be deemed to have accepted in any way nor shall anything contained hereunder be deemed to impose upon said Beneficiary any of the liabilities, duties or obligations of T&N Properties, LLC under the foregoing Agreement. Said Beneficiary executes this Mortgagee Consent solely for the purposes set forth herein. The said Trustee also joins in and executes this Consent as Trustee of said Deed of Trust for the said purposes hereinabove set forth.

IN WITNESS WHEREOF, the undersigned have caused this Consent to be duly executed and sealed as of the 19 day of NOVEMBER, 2010.

TRUSTEE:

FOUNDERS TITLE COMPANY

By: [Signature]  
Name: JIM C MOERIS  
Title: President

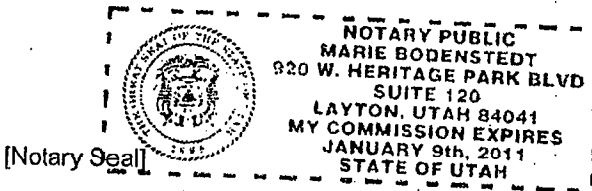
BENEFICIARY:


SODERBY, LTD.

By: [Signature]  
Name: Bruce A. Johnson  
Title: President

STATE OF UTAH  
COUNTY OF BEAVER DAVIS

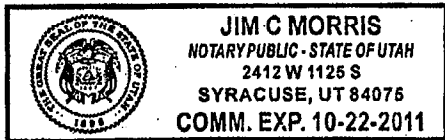
The foregoing Agreement was acknowledged before me this 19 day of NOVEMBER, 2010, by JIM C. MORRIS, as authorized POB. of Founders Title Company, on behalf of said company. He (check one)  is personally known to me or  has furnished \_\_\_\_\_ as identification.

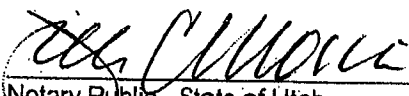


  
Notary Public - State of Utah  
Printed Name: MARIE BODENSTEDT  
My Commission Expires: 1-9-11

STATE OF UTAH  
COUNTY OF BEAVER DAVIS

The foregoing Agreement was acknowledged before me this 19 day of NOVEMBER, 2010, by Duane D. Johnson, as authorized General Partner of Soderby, Ltd., on behalf of said company. He (check one)  is personally known to me or  has furnished \_\_\_\_\_ as identification.



  
Notary Public - State of Utah  
Printed Name: JIM C MORRIS  
My Commission Expires: 10-22-11



**EXHIBIT "A"**

**(Legal Description of Lot 1)**

**All of Lot 1, FAMILY DOLLAR SUBDIVISION, Beaver County, Utah, according to the official record thereof in Book 444, Page 20 of the Beaver County Public Registry, also being described as:**

**BEGINNING N 00-10-30 E 9.10 feet and W 365.88 feet from the east quarter corner of Section 16, Township 29 South, Range 7 West, Salt Lake Meridian: thence W 173.12 feet; thence N 0-31-55 W 210.00 feet; thence E 95.41 feet; thence S 24.22 feet; thence E 90.00 feet; thence S 170.00 feet; thence S 33-15-53 W 18.86 feet to the point of beginning, containing 0.84 acres.**

**EXHIBIT "B"**

**(Legal Description of Lot 2)**

**All of Lot 2, FAMILY DOLLAR SUBDIVISION, Beaver County, Utah, according to the official record thereof in Book 444, Page 20 of the Beaver County Public Registry.**

**EXHIBIT "C"**

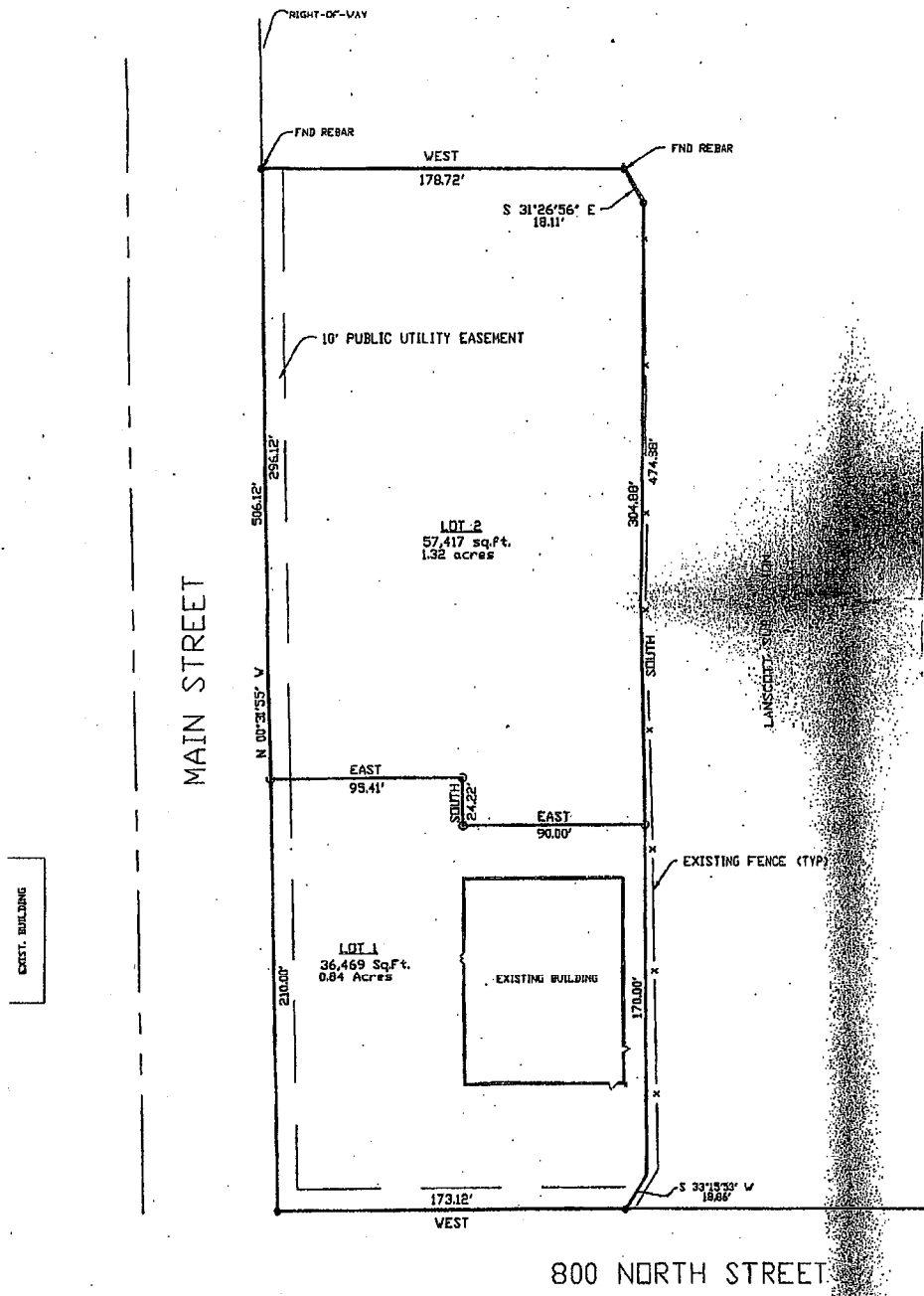
**(Legal Description of Access Easement Area)**

**Part of Lot 1 and Lot 2, FAMILY DOLLAR SUBDIVISION, Beaver County, Utah, according to the official record thereof in Book 444, Page 20, being described as:**

**BEGINNING at the northwest corner of said Lot 1 and running thence N 0-31-55 W 18.70 feet, thence E 185.59 feet; thence S 42.80 feet; thence W 185.19 feet; thence N 0-31-55 W 24.10 feet to the point of beginning, containing 7,934 square feet.**

03-0031-0041

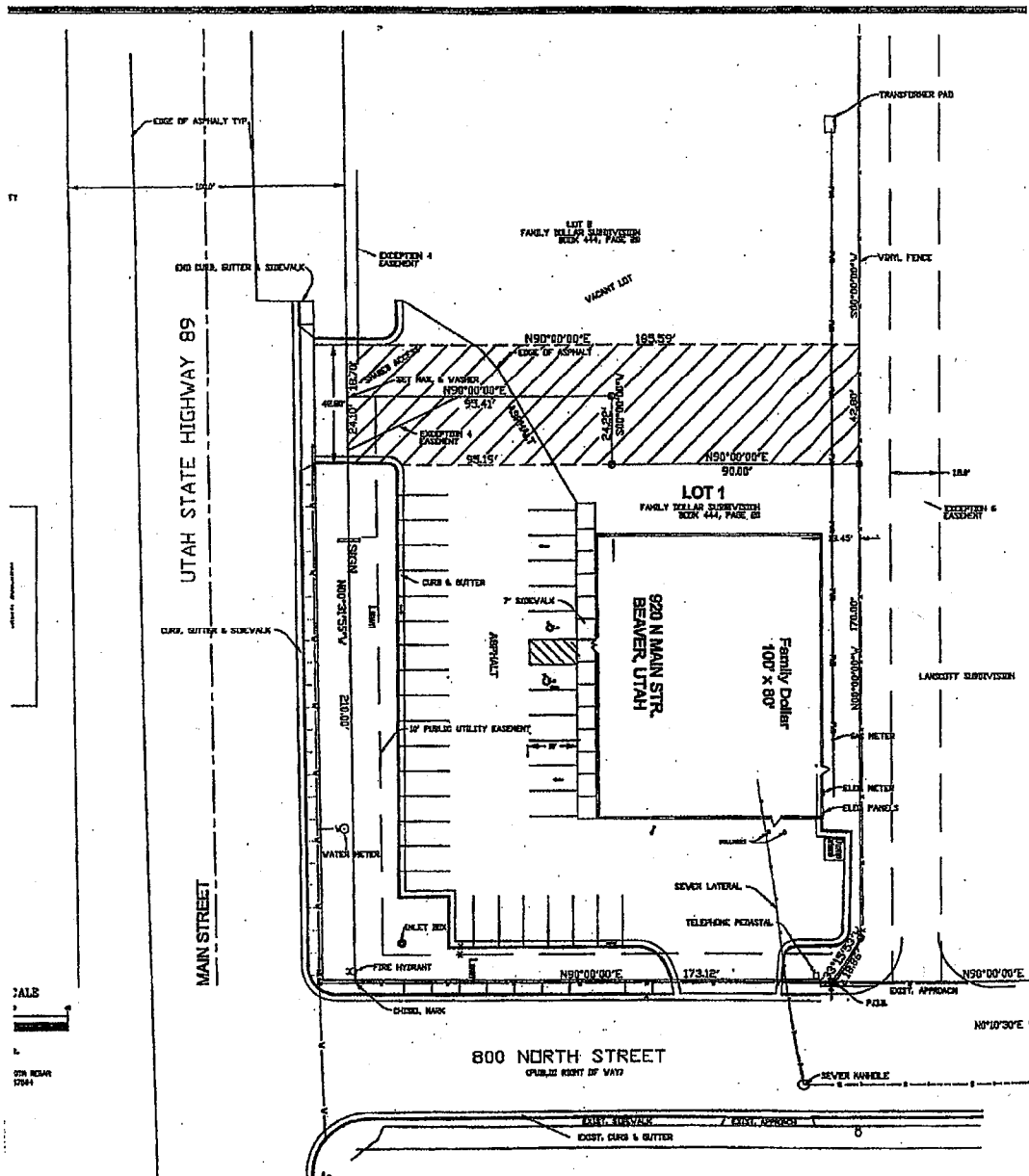
**EXHIBIT "D"**  
**Sketch of Parcels**



EXIST. BUILDING

EXHIBHT "E"

Sketch of Access Easement Area



SCALE  
 1" = 20' HORIZ  
 1" = 4' VERT

DRAWN BY: D.B. DATE: 8-28-2016  
 CHECKED BY: D.B. SCALE: AS SHOWN



LANDMARK SURVEYING, INC.  
 A COMPLETE LAND SURVEYING SERVICE  
 4444 S. 2000 W. 24-1 WEST HANCOCK UTAH, 84004

ALTA SURVEY  
 1000 W. 1000 N. SALT LAKE CITY, UT 84119