

When Recorded Return to:

BryceWood Development, LLC
101 North Scenic Hills Circle
North Salt Lake, UT 84054

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RICHARD T. MAUGHAN
DAVIS COUNTY, UTAH RECORDER
4/20/2012 9:10:00 AM
FEE \$39.00 Pgs: 14
DEP eCASH REC'D FOR NELSON CHRISTENSEN HO

APN: 01-047-0301 and 01-047-0180

COMMON ACCESSWAY EASEMENT AGREEMENT

THIS COMMON ACCESSWAY EASEMENT AGREEMENT (“**Agreement**”) is entered into this 18th day of April, 2012, by and between BryceWood Development, LLC, a Utah limited liability company (“**BryceWood**”); and Dennis R. Strong, as to an undivided 30% interest, Collins V. Maxfield, as trustee of The Collins V. Maxfield Revocable Living Trust dated December 7, 1999, or successor in trust, as to an undivided 35% interest, and Karen J. Maxfield, as trustee of The Karen J. Maxfield Revocable Living Trust dated December 7, 1999, or successor in trust, as to an undivided 35% interest (collectively, “**Maxfield**”) (BryceWood and Maxfield are sometimes collectively referred to hereinafter as the “**Parties**”; and each individually as a “**Party**”).

RECITALS:

WHEREAS, BryceWood owns certain real property located in Davis County, State of Utah and more particularly described on attached **Exhibit “A”** (the “**BryceWood Property**”); and

WHEREAS, Maxfield owns certain real property adjacent to the BryceWood Property and more particularly described on attached **Exhibit “B”** (the “**Maxfield Property**”) (the BryceWood Property and the Maxfield Property are sometimes referred to collectively hereinafter as the “**Properties**”; each individually as a “**Property**”);

WHEREAS, The **Properties** are located adjacent to one another and share a common point of access to the public right-of-way known as Highway 89; and

WHEREAS, the Parties desire to grant certain temporary and perpetual reciprocal easements over and across their respective Properties in order to provide for shared ingress from and egress to Highway 89 and for the installation and maintenance of improvements related thereto; and

WHEREAS, the parties desire to set forth their respective duties and responsibilities relating to the easements granted herein;

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Reciprocal Grant of Perpetual Easement.** Each Party hereby grant to the other and to the respective successors and assigns of such Party, together with such Party's tenants, customers, employees, invitees and licensees, a non-exclusive, perpetual easement (the "**Perpetual Easement**") for vehicular and pedestrian traffic over and across such portion of the area depicted on **Exhibit "C"** and legally described on "**Exhibit D**" as is located on the respective Property of the granting Party, for the purpose of providing a common access and driveway to and from the Parties' respective Properties (the "**Common Accessway**").

2. **Construction of Common Accessway.** It is intended that improvements to the Common Accessway will consist of grading, engineered fill for support as needed, asphalt surfacing (or such reasonable equivalent as may be mutually agreed upon by the Parties) and striping, all of which shall be located within the Common Accessway (the "**Improvements**"). Either Party may pursue installation of the Improvements in connection with the development of its respective Property (such Party being referred to herein as the "**Constructing Party**," with the other Party being referred to as the "**Reimbursing Party**"). The Reimbursing Party grants to the Constructing Party a temporary construction easement to enter upon such portion of the Reimbursing Party's Property and for such duration (not to exceed twelve (12) months) as may be reasonably necessary for the purpose of constructing the Improvements. Prior to the commencement of construction, the Constructing Party shall prepare plans and specifications for the Improvements (including the finished grade thereof) (the "**Plans**") and shall provide to the Reimbursing Party a copy of the Plans for its review and approval, together with a budget of the expected costs, inclusive of design costs ("**Budget**"). The Reimbursing Party shall have fifteen (15) days from its receipt of the Plans and Budget for review and comment, and all Parties shall strive to achieve mutual approval of the Plans and Budget so as not to unreasonably delay the Constructing Party from commencing work; and in any event, the Reimbursing Party shall not unreasonably withhold, condition or delay its approval. In the event the Reimbursing Party fails to provide such comments within such 15-day period, the submitted Plans and Budget shall be deemed approved by the Reimbursing Party. Upon approval (whether actual or deemed), the Constructing Party shall begin its construction of the Improvements within a reasonable time and once begun, shall complete the same expeditiously and without substantial interruption. The Constructing Party shall construct the Improvements in a good and workmanlike manner, and in accordance with all applicable covenants, restrictions, laws, codes and other regulations, including the approved Plans and Budget. If the Constructing Party fails to so complete the Improvements, then the Reimbursing Party shall have the right, but not the obligation, to complete the Improvements as if the Reimbursing Party were the Constructing Party and vice versa, and all requirements of this Section 2 shall apply accordingly.

3. **Payment for Improvements.** The Constructing Party, in the first instance, shall be responsible to pay for all costs of installing the Improvements, and in that regard shall not permit or cause any liens to attach to the Reimbursing Party's Property from any third party. If, despite the foregoing, the Constructing Party permits or causes any such liens to attach to the Reimbursing Party's Property, the Constructing Party shall, at its sole cost

and expense, cause such lien or liens to be discharged or bonded over to the reasonable satisfaction of the Reimbursing Party within ten (10) business days following the Constructing Party's receipt of written notice thereof. If the Constructing Party fails to so discharge or bond over all such liens, the Reimbursing Party shall have the right to discharge such liens (without any inquiry as to the validity or merits thereof), and any amount paid by such Reimbursing Party in connection with such action, and all reasonable costs and expenses (including, without limitation, reasonable attorneys' fees, disbursements and court costs) incurred by the Reimbursing Party in connection therewith shall be paid by the Constructing Party to the Reimbursing Party within five (5) days of the Constructing Party's receipt of written demand therefor. The provisions of this Section 3 shall remain in force until written notice of completion of the Improvements (as certified by the Constructing Party's engineer or architect) is delivered to the Reimbursing Party.

4. **Maintenance of Common Accessway.** Until the Reimbursing Party develops its Property, the Constructing Party shall maintain the Common Accessway in a reasonably good and clean condition and state of repair as set forth below. After the Reimbursing Party has developed its Property, each Party shall maintain the portion of the Improvements located on its Property at all times in a good and clean condition and state of repair as set forth below, failing which (and after five (5) days' written notice describing the conditions and/or state of repair requiring immediate attention) the other Party may do so. So long as a Party is maintaining the Common Accessway, the other Party shall reimburse the Party who is performing such maintenance in the amount of fifty percent (50%) of the actual expenses thereof. In any event, the Common Accessway shall be maintained in a good and clean condition and state of repair to include: (i) keeping the Common Accessway at all times in a clean, uncluttered, orderly and sanitary condition by, among other things, removing all papers, debris, filth and refuse, and washing or thoroughly sweeping the Common Accessway on a regular basis; (ii) promptly and adequately clearing ice and snow; and (iii) repaving or resurfacing the Common Accessway as needed, and generally maintaining the same in a smooth and evenly covered condition.

5. **Retaining Wall.** BryceWood, at its sole cost and expense, shall cause a common retaining wall (the "**Retaining Wall**") to be constructed between the Properties. The general location and construction of the common retaining wall is illustrated in **Exhibits "C" and "E"** attached hereto, subject to any reasonable changes necessary to accommodate actual site conditions. To facilitate such construction, Maxfield hereby grants to BryceWood a temporary construction easement over such portion of the Maxfield Property and for such duration (not to exceed twelve (12) months) as may be reasonably necessary to complete the Retaining Wall. The Parties shall maintain the Retaining Wall in good condition and repair. After the Retaining Wall is completed, each Party shall maintain the portion of the Retaining Wall located on its Property at all times in a good and clean condition and state of repair, failing which (and after five (5) days' written notice describing the conditions and/or state of repair requiring immediate attention) the other Party may do so. So long as a Party is maintaining the Retaining

Wall, the other Party shall reimburse the Party who is performing such maintenance in the amount of fifty percent (50%) of the actual expenses thereof.

6. **Remedies upon Failure to Pay; Default Generally.** If either Party (the “**Defaulting Party**”) fails to pay any of its obligations hereunder to the other Party (the “**Entitled Party**”) within ten (10) days of the Defaulting Party’s receipt of written notice from the Entitled Party that the same is due, the Entitled Party shall have a lien against the Defaulting Party’s Property for all such reasonable costs and amounts, which lien will be superior to all liens recorded after the date hereof, and which may be enforced and/or foreclosed in the manner permitted under Utah law for the foreclosure of mechanics liens under Title 38, Utah Code Annotated. Further, the prevailing party in any enforcement action arising out of a default of the obligations hereunder shall be entitled to recover its costs and reasonable attorneys’ fees.

7. **Not a Public Dedication.** Nothing contained herein shall be deemed to be a gift or dedication of any portion of the Common Accessway to the general public or for the general public or for any public purposes whatsoever. The right of the public or any person to make any use whatsoever of the Common Accessway, or any portion thereof (other than any use expressly allowed by a written or recorded map, agreement, deed or dedication), is by permission and subject to the control of the Parties. Notwithstanding any other provision herein to the contrary, the Parties may periodically restrict ingress to and egress from the Common Accessway in order to prevent a prescriptive easement from arising by reason of continued public use. Any restriction on ingress and egress shall be limited to the minimum period necessary to prevent the creation of a prescriptive easement and shall occur at such time as to have a minimum effect on the parties.

8. **Insurance.** Each of the Parties covenants and agrees to maintain in full force and effect at all times a policy of commercial general liability insurance (including coverage for contractual liability) with a liability limit in an amount reasonably agreed upon by the Parties, but at least One Million Dollars (\$1,000,000) per occurrence and Two Million Dollars (\$2,000,000) aggregate and not less than an amount which is customary and reasonable for the activities of the type conducted by the Parties on their respective Properties. Upon request by a Party, the other Party shall deliver a certificate of insurance evidencing the coverage required to be maintained hereunder, and each such certificate shall provide that the policy coverage shall not be modified or terminated without providing at least thirty (30) days prior written notice to the other Party.

9. **Indemnification.** Each Party shall indemnify, defend and hold harmless the other Party from and against any claims, liability, damages or costs (“**Claims**”) arising out of or relating to the use of the Common Accessway by the other Party and its respective invitees, guests or customers unless and to the extent that such Claims are the result of the negligence of Party on whose Property the basis for the Claim gave rise.

10. **Miscellaneous.**

(a) **Covenants Running with the Land.** This Agreement and all of the terms and conditions contained herein shall inure to the benefit of and be binding upon the parties hereto and their respective successors and assigns, and shall constitute "covenants running with the land."

(b) **Duration.** The easements, rights and privileges created hereby shall continue for a period of fifty (50) years, except that if any restrictive covenant set forth herein would expire by operation of law if not renewed, then it shall be automatically renewed for successive periods of ten (10) years each unless the parties shall execute and record a statement terminating such restrictive covenant within sixty (60) days of the expiration of such statutory period or any 10-year renewal thereof.

(c) **No Waiver.** A delay in enforcing or a failure to enforce any breach or violation of any restriction contained herein shall not be deemed to constitute a waiver or abandonment of any such restriction, or a waiver of the right to enforce any subsequent breach or violation of such restriction. The foregoing shall apply regardless of whether any person affected hereby (or having the right to enforce these restrictions) had knowledge of the breach or violation.

(d) **Severability.** If any one or more of the provisions of this Agreement or the applicability of any such provision to a specific situation shall be held invalid or unenforceable by a court of competent jurisdiction, the validity and enforceability of all the provisions of this Agreement and all other applications of such provisions shall not be affected thereby.

(e) **Governing Law.** This Agreement shall be construed and enforced in accordance with the laws of the State of Utah, and all claims or disputes arising hereunder shall be subject to the jurisdiction of the state and federal courts in Utah.

(f) **Successors.** This Agreement shall be binding upon the heirs, successors and assigns of the Parties hereto.

(g) **Attorneys' Fees.** If any legal action or other proceeding is brought for the enforcement of this Agreement, or because of an alleged dispute, breach, default, or misrepresentation in connection with any of the provisions of this Agreement, the successful or prevailing party shall be entitled to recover its reasonable attorneys' fees and other costs incurred in that action or proceeding, in addition to any other relief to which it may be entitled.

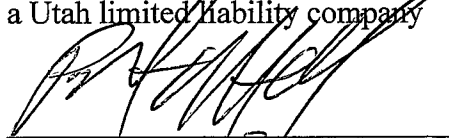
(h) **Entire Agreement.** It is expressly understood that this Agreement and the documents referred to herein constitute the entire agreement of the parties hereto with respect to the subject matter hereof. Any and all prior understandings or commitments of any kind, oral or written, pertaining thereto are hereby canceled.


IN WITNESS WHEREOF the parties have executed this Agreement as of the date set forth above.

[Signature Pages Follow]

BRYCEWOOD:

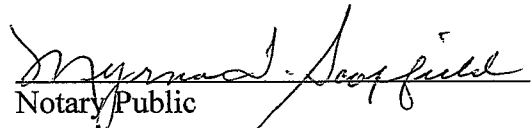
BryceWood Development, LLC
a Utah limited liability company

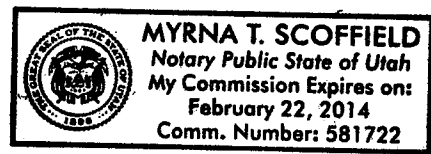

Print Name: PRESTON ELLIOTT WOOD
Title: Manager


BRYCE D JOHNSON

STATE OF UTAH
COUNTY OF DAVIS

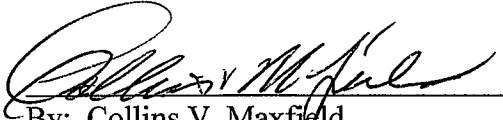
The foregoing instrument was acknowledged before me this 18th day of APRIL, 2012, by _____ as Manager of BryceWood Development, LLC, a Utah limited liability company.


Notary Public



MAXFIELD:

The Collins V. Maxfield Revocable Living Trust dated December 7, 1999



By: Collins V. Maxfield
Its: Trustee

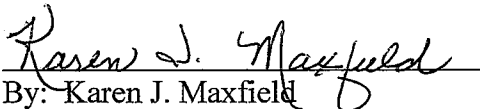
STATE OF UTAH
COUNTY OF Washington

The foregoing instrument was acknowledged before me this 10 day of April, 2012, by Collins V. Maxfield as Trustee of The Collins V. Maxfield Revocable Living Trust dated December 7, 1999.



Carly Martinez
Notary Public

The Karen J. Maxfield Revocable Living Trust dated December 7, 1999



By: Karen J. Maxfield
Its: Trustee

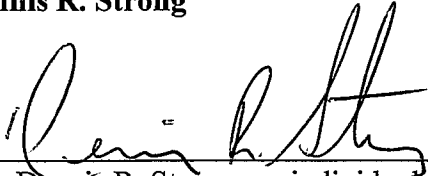
STATE OF UTAH
COUNTY OF Washington

The foregoing instrument was acknowledged before me this 10 day of April, 2012, by Karen J. Maxfield as Trustee of The Karen J. Maxfield Revocable Living Trust dated December 7, 1999.



Carly Martinez
Notary Public

Dennis R. Strong


By: Dennis R. Strong, an individual 4/18/12

STATE OF UTAH
COUNTY OF DAVIS

The foregoing instrument was acknowledged before me this 18th day of April, 2012, by Dennis R. Strong.


Notary Public

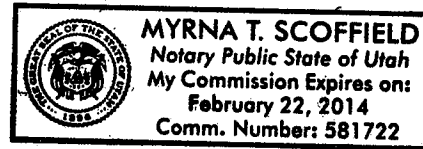


EXHIBIT "A"

Description of the BryceWood Property

Beginning at a point East 71.16 feet and North 557.80 feet from the Southwest corner of Section 1, Township 1 North, Range 1 West, Salt Lake Base and Meridian; running thence North $21^{\circ}47'33''$ East, a distance of 153.87 feet; thence South $67^{\circ}58'20''$ East, a distance of 156.90 feet; thence South $22^{\circ}00'53''$ West, a distance of 153.76 feet; thence North $68^{\circ}00'49''$ West, a distance of 156.30 feet to the point of beginning.

Together with a right of way as described below:

Beginning at a point 128.29 feet and North 700.68 feet from the Southwest corner of Section 1, Township 1 North, Range 1 West, Salt Lake Base and Meridian; running thence North $21^{\circ}47'33''$ East, a distance of 43.64 feet; thence North a distance of 16.42 feet; thence South $67^{\circ}58'20''$ East, a distance of 163.22 feet; thence South $22^{\circ}00'53''$ West, a distance of 58.86 feet; thence North $67^{\circ}58'20''$ West, a distance of 156.90 feet to the point of beginning.

APN: 01-047-0301

EXHIBIT "B"

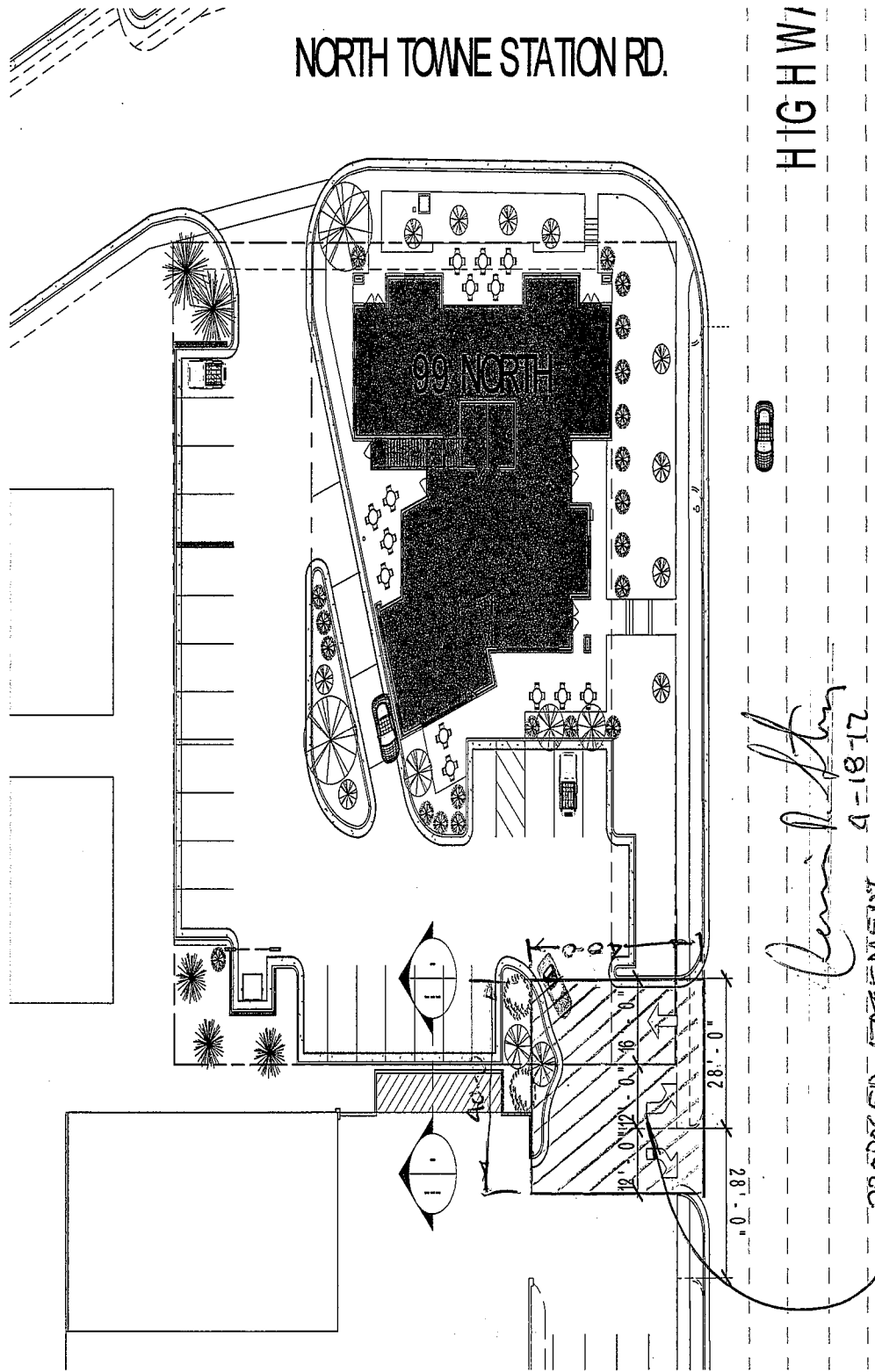
Description of the Maxfield Property

Beginning on the West line of State Highway at a point North $89^{\circ}52'$ West 2542.7 feet and North $78^{\circ}17'$ West 82.7 feet and North $22^{\circ}01'$ East 321 feet from the South quarter corner of Section 1, Township 1 North, Range 1 West, Salt Lake Base and Meridian, and running thence North $67^{\circ}59'$ West 71.45 feet; thence North $22^{\circ}01'$ East 7.13 feet; thence North $67^{\circ}39'50''$ West 309.19 feet, more or less, to the Easterly line of what was the Bamberger Railroad right of Way; thence North $31^{\circ}26'$ East 181.82 feet, more or less, along said Right of Way; thence South $67^{\circ}59'$ East 347.9 feet, more or less, to the West line of said Highway; thence South $22^{\circ}01'$ West 188.4 feet, more or less, to the point of beginning.

APN: 01-047-0180

EXHIBIT "C"

Depiction of Common Accessway



Dennis Strong personally appeared before me this 18th Day of April, 2012.

MYRNA T. SCOFFIELD
Notary Public State of Utah
My Commission Expires on:
February 22, 2014
Comm. Number: 581722

Myrna T. Scoffield
NOTARY PUBLIC

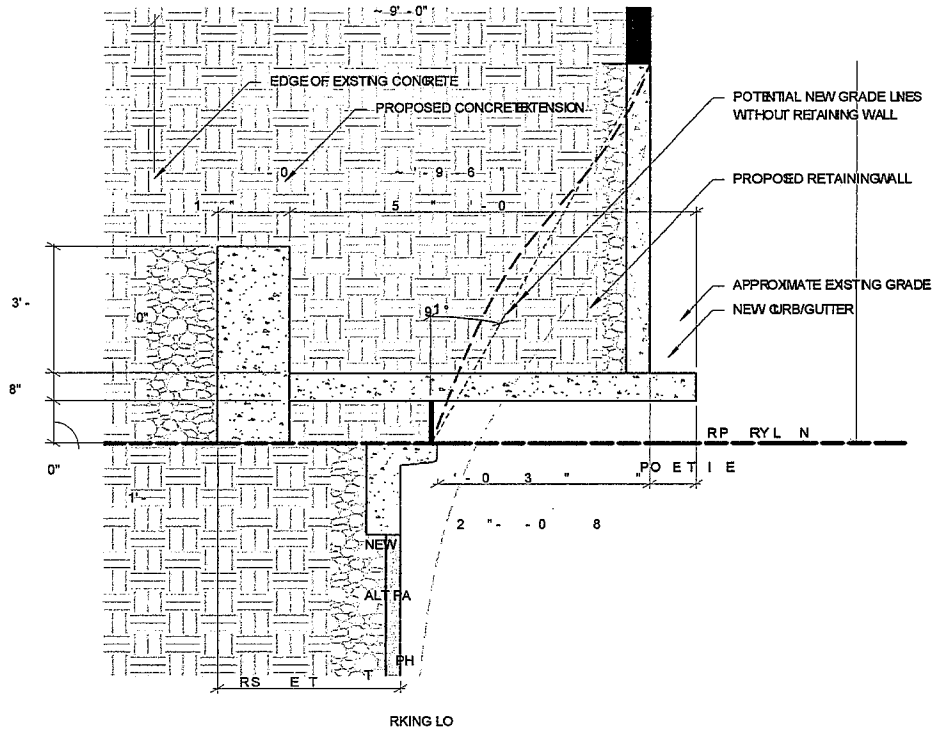
EXHIBIT "D"

Legal Description of Perpetual Easement

Beginning at a point on the Westerly right-of-way line of Highway 89, said point being the common corner between parcels 10-470-0301 and 10-470-0180 as recorded in the Office of the Davis County Recorder, State of Utah, and thence running Northeasterly along said right-of-way line a distance of 16 feet; thence Northwesterly and perpendicular to said right-of-way line a distance of 40 feet; thence Southwesterly and parallel to said right-of-way line 40 feet; thence Southeasterly perpendicular to said right-of-way line 40 feet to said right-of-way line; thence Northeasterly along said right-of-way line 24 feet to the point of beginning.

EXHIBIT "E"

Depiction of Retaining Wall



F O T D P H