



W3094219

E# 3094219 PG 1 OF 11
Leann H. Kilts, WEBER COUNTY RECORDER
19-Oct-20 0350 PM FEE \$40.00 DEP PC
REC FOR: MOUNTAIN VIEW TITLE - OGDEN
ELECTRONICALLY RECORDED

WHEN RECORDED RETURN TO:

Paul Hastings LLP
2050 M Street NW
Washington, DC 20036
Attention: Michele Williams

Parcel Nos.: 19-016-0167; 19-016-0168

(space above for Recorder's use)

RAILWAY ACCESS EASEMENT AGREEMENT

THIS RAILWAY ACCESS EASEMENT AGREEMENT (this “**Agreement**”) is entered into effective as of the 23rd day of September, 2020 (the “**Effective Date**”), by and between JLET HOLDINGS LLC, a Utah limited liability company (“**Grantor**”), AGNL PASTRY, L.L.C., a Delaware limited liability company, doing business in Utah as AGNL PASTRY OF DELAWARE, L.L.C., a Delaware limited liability company (“**Grantee**”) and BRILL, INC., a Delaware corporation (“**Brill**”). Grantor and Grantee may be referred to herein collectively as the “**Parties**” or each individually as a “**Party**.”

RECITALS

A. Grantor owns certain real property located in the City of Pleasant View, County of Weber, State of Utah, commonly known as tax parcel number 19-016-0167, as more particularly described on Exhibit A attached hereto and incorporated herein by this reference (the “**Grantor Property**”).

B. Grantee owns certain real property located adjacent and to the southeast of the Grantor Property, commonly known as tax parcel number 19-016-0168, as more particularly described on Exhibit B attached hereto and incorporated herein by this reference (the “**Grantee Property**”).

C. A portion of an existing railroad spur (the “**Railroad Spur**”) is located along the eastern boundary line of the Grantor Property. The Railroad Spur provides rail access to and from the Grantee Property and the main railroad line located east of the Grantor Property and the Grantee Property. The Railroad Spur is not currently in use.

D. Grantee desires to obtain from Grantor, and Grantor is willing to grant to Grantee, a non-exclusive, permanent easement on, over, and across a portion of the Grantor Property, more particularly described on Exhibit C, attached hereto and incorporated herein by this reference (the “**Easement Area**”), for the purposes set forth in this Agreement.

TERMS AND CONDITIONS

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and based upon the mutual promises and subject to the terms and conditions set forth below, the Parties agree as follows:

I. **Grant of Easement.** Grantor hereby grants and conveys to Grantee, and its successors and assigns, a non-exclusive easement (the “**Easement**”) on, over, and across the Easement Area for the sole purposes of: (i) providing railway ingress and egress upon the existing railroad spur located within the

Easement Area, and (ii) constructing, maintaining, repairing, and replacing the rail line and related appurtenances located within the Easement Area and the Fence (as defined in Section 5 below).

2. **Access.** Grantee, its invitees, licensees, guests, tenants, agents, employees, consultants, contractors and subcontractors (collectively, "**Agents**") shall have the right to enter upon the Easement Area for the purposes permitted by this Agreement. Grantee and its Agents will enter upon the Easement Area from existing roads (or from the Grantee Property) at their sole risk and hazard, and Grantee, its successors and assigns, and its Agents, hereby release Grantor from any claims relating to the condition of the Easement Area and the entry upon the Easement Area by Grantee and its Agents.

3. **Reservation.** Notwithstanding anything herein to the contrary, Grantor reserves the right to use the Easement Area for any use not inconsistent with Grantee's permitted use provided for herein. Grantor agrees not to construct or erect any other improvements, buildings or structures on the Easement Area without obtaining Grantee's written consent, which shall not be unreasonably withheld, conditioned or delayed. Grantor also reserves the right to grant additional rights, easements or encumbrances to other third parties to use or occupy the Easement Area provided the same does not materially interfere with Grantee's rights granted herein.

4. **Condition of the Easement Area.** Grantee accepts the Easement Area and all aspects thereof in "AS IS," "WHERE IS" condition, without warranties, either express or implied, "WITH ALL FAULTS," including but not limited to both latent and patent defects, and the existence of hazardous materials, if any. Grantee hereby waives all warranties, express or implied, regarding the title, condition, and use of the Easement Area, including, but not limited to, any warranty of merchantability, fitness for a particular purpose, or the right of Grantee to use any tracks, railways, or other railroad improvements not owned by Grantor as a means to access the Easement Area. Grantee shall obtain any and all consents, approvals, permissions, and agreements to cross, encumber, or encroach upon any other easements or rights of others related to its use of the Easement Area.

5. **Construction of the Fence.**

5.1. **Construction.** Prior to Grantee or any tenant or occupant of the Grantee Property ("**Tenant**") using the Railroad Spur, either Grantee or Tenant shall, at its sole cost and expense, construct, install, and maintain a fence along the western boundary line of the Easement Area (the "**Fence**") for the purpose of deterring unwarranted access to the Easement Area from the Grantor Property. The Fence shall be constructed and installed in a good and workmanlike manner and in accordance with the requirements, approvals, regulations, ordinances, specifications, standards, and other rules established by applicable governing authorities. The dimensions, location, appearance, and materials used in connection with the construction of the Fence shall be subject to the final approval of Grantor, which approval shall not be unreasonably withheld, conditioned, or delayed. Notwithstanding the foregoing, or anything herein to the contrary, Grantor shall have the right to construct the Fence at its sole cost and expense at any time.

5.2. **Temporary Construction License.** Grantor hereby grants to Grantee and its Agents, a temporary, non-exclusive license over and across portions of the Grantor Property as is reasonably necessary to construct the Fence. Upon the completion of the Fence, such temporary license shall automatically terminate.

5.3. **Liens.** Grantee shall keep the Grantor Property free from any liens arising of any work performed, materials furnished, or obligations incurred by, through, for, or under Grantee, and shall indemnify, hold harmless, and agree to defend Grantor from any liens that may be placed on the Grantor Property pertaining to any work performed, materials furnished, or obligations incurred by, through, for, or

under Grantee or any of its Agents. Any such liens shall be released of record within thirty (30) days of recordation.

5.4. **Completion.** Once Grantee begins construction of the Fence, Grantee agrees to complete the same within three (3) months after commencement of construction (the "**Completion Date**"). In the event Grantee fails to complete construction of the Fence by the Completion Date, Grantor may, upon not less than twenty (20) days written notice to Grantee, undertake to complete construction of the Fence. Should Grantor exercise its self-help rights herein, Grantee shall reimburse Grantor for the cost incurred in constructing the Fence. The costs incurred by Grantor in constructing the Fence pursuant to this Section shall be increased by five percent (5%) in order to cover Grantor's administrative expenses in exercising its self-help rights. Any payment not made within thirty (30) days shall be deemed delinquent and shall accrue interest at the rate of twelve percent (12%) per annum.

6. **Maintenance.** Grantee shall, at its sole cost and expense, maintain the Easement Area, including without limitation, the Fence, in good order and repair. Grantee shall promptly repair any damage to the Grantor Property, Easement Area, and any improvements located thereon caused by Grantee or its Agents, and shall restore the Grantor Property, Easement Area, and any improvements located thereon to the same or better condition as they existed prior to any entry onto or work performed on the Grantor Property or Easement Area by Grantee or and of its Agents. If at any time maintenance or repairs to the Fence will result in portions of the Fence being removed or replaced (such that gaps or holes leave portions of the Fence exposed), Grantee agrees to immediately place barriers across the exposed portions of the Fence to prevent trespass or other passage.

7. **Insurance.** Grantee shall obtain and maintain a policy of general liability insurance sufficient to insure its interests against claims for personal injury, bodily injury, death, and property damage occurring on, in or about the Easement Area. Grantor shall be named as an additional insured on each such policy. Grantee shall provide Grantor with proof of such insurance prior to exercising its rights under this Agreement.

8. **Indemnification.** Grantee shall indemnify and hold Grantor and its and their employees, officers, divisions, subsidiaries, partners, members, and affiliated companies and entities and its and their employees, officers, shareholders, members, directors, agents, representatives, and professional consultants and its and their respective successors and assigns (collectively, the "**Indemnitees**") harmless from and against any loss, damage, injury, accident, fire or other casualty, liability, claim, cost, or expense (including, but not limited to, reasonable attorneys' fees) of any kind or character to any person or property, including the property of the Indemnitees, (collectively, the "**Claims**" or a "**Claim**") from or by any unaffiliated third party, arising from or relating to (i) any use of the Easement Area by Grantee or its Agents, (ii) any act or omission of Grantee or its Agents, (iii) any bodily injury, property damage, accident, fire or other casualty to or involving Grantee or its Agents and its or their property on the Easement Area, (iv) any violation or alleged violation by Grantee or its Agents of any law or regulation now or hereafter enacted, (v) any loss or theft whatsoever of any property or anything placed or stored by Grantee or its Agents on or about the Easement Area, (vi) any breach by Grantee of its obligations under this Agreement, and (vii) any enforcement of a Party of any provision of this Agreement and any cost of removing Grantee from the Easement Area or restoring the same as provided herein; provided, however, that the foregoing indemnity shall not apply to the extent any such Claim is ultimately established by a court of competent jurisdiction to have been caused solely by gross negligence or willful misconduct of the Indemnitees. Grantee, as a material part of the consideration of this Agreement, waives all claims or demands against the Indemnitees for any such loss, damage or injury of Grantee or Grantee's property. The indemnity provided by Grantee in favor of the Indemnitees in this Agreement shall not require payment as a condition precedent. The terms and conditions of this provision shall remain effective, notwithstanding the expiration or termination of this Agreement.

9. **Notices.** Any notice required or desired to be given under this Agreement shall be considered given either: (i) when delivered in person to the intended Party, or (ii) three (3) days after deposit in the United States mail, either registered or certified mail, return receipt requested, postage prepaid, addressed by name to the intended Party. All notices shall be given to such Party at the address on file in the County Assessor's Office for tax notices. Either Party may designate a different individual or address for notices, by giving written notice thereof in the manner described above.

10. **Termination.** This Agreement and the Easement set forth herein shall automatically terminate upon the written consent of all Parties. If this Agreement and the Easement set forth herein is terminated by the written consent of all Parties, the Parties will execute and record an instrument terminating this Agreement and the Easement.

11. **Authorization.** Each individual executing this Agreement represents and warrants that he or she has been duly authorized by appropriate action of the governing body of the Party for which he/she signs to execute and deliver this Agreement in the capacity and for the entity set forth where he/she signs and that as a result of his/her signature, this Agreement shall be binding upon the Party for which he/she signs.

12. **No Public Use/Dedication.** The Easement Area is and shall at all times remain the private property of Grantor. The use of the Easement Area is permissive and shall be limited to the express purposes contained herein. Neither Grantee, nor its successors or assigns, nor the public shall acquire nor be entitled to claim or assert any rights to the Easement Area beyond the express terms and conditions of this Agreement.

13. **Entire Agreement.** This Agreement (including all attached Exhibits) constitutes the entire agreement between the Parties hereto pertaining to the subject matter hereof and all prior and contemporaneous agreements, representations and understandings of the Parties hereto, oral or written, are hereby superseded and merged herein.

14. **Miscellaneous.** No supplement, modification or amendment of this Agreement shall be binding unless in writing and executed by the Parties. This Agreement shall be binding on and inure to the benefit of the respective successors, assigns, and personal representatives of the Parties hereto. This Agreement shall be construed in accordance with and governed by the laws of the State of Utah. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provisions, whether or not similar, nor shall any waiver be a continuing waiver. No waiver shall be binding unless executed in writing by the Party making the waiver. If any action, suit, or proceeding is brought by a Party with respect to a matter or matters covered by this Agreement, or if a Party finds it necessary to retain an attorney to enforce its rights under this Agreement, all costs and expenses of the prevailing Party incident to such proceeding or retention, including reasonable attorneys' fees, will be paid by the non-prevailing Party. The headings of this Agreement are for purposes of reference only and shall not limit or define the meaning of the provisions hereof. The Recitals set forth above are incorporated into this Agreement by reference. If any provision of this Agreement or the application thereof to any person, place, or circumstance, shall be held by a court of competent jurisdiction to be invalid, unenforceable, or void, the remainder of this Agreement and such provisions as applied to other persons, places, and circumstances shall remain in full force and effect; provided, however, the invalid provision does not have a materially adverse effect on either Party. This Agreement is the result of negotiations among the Parties, none of whom has acted under any duress or compulsion, whether legal, economic or otherwise. Accordingly, the terms and provisions hereof shall be construed in accordance with their usual and customary meanings. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute but one and the same instrument

15. **Tenant Obligations.** Reference is made to that certain Lease Agreement dated as of August 19, 2014 (the "**Original Lease**"), between Grantee, as landlord, and Brill, as tenant, as amended by that certain First Amendment to Lease Agreement, dated as of February 11, 2015 (the "**First Amendment**"), as amended by that certain Confirmatory Amendment to Lease Agreement dated as of September 22, 2020 (the "**Confirmatory Lease**"; together with the Original Lease and the First Amendment as the same may be amended from time to time, the "**Lease**"). Brill, Grantee and Grantor each hereby acknowledge and agree that for so long as the Lease remains in effect, all covenants, obligations and indemnifications of Grantee hereunder shall be assumed and performed by Brill. In the event Brill fails to satisfy any obligations of Grantee hereunder, Grantor shall provide written notice of such failure to Brill and Grantee and Grantee shall thereafter be provided such additional period of time as may be reasonably necessary to satisfy such obligations, provided, the same does not exceed sixty (60) days. In the event Grantee is obligated to satisfy any such obligations after Brill's failure to satisfy the same, Grantee shall be entitled to any remedies and/or recourse available to it under the terms and provisions of the Lease. Notwithstanding the foregoing, upon the expiration or earlier termination of the Lease, Brill shall simultaneously therewith be released from its obligations hereunder. These provisions shall run to any of Brill's permitted successors and assigns under the Lease.

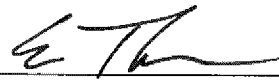
IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

[Signatures and Acknowledgements Follow]

SIGNATURE PAGE
TO
RAILWAY ACCESS EASEMENT AGREEMENT


GRANTOR:

JLET HOLDINGS LLC,
a Utah limited liability company

By: 

Name: Eric Thomas

Its: Member/Manager

By: 

Name: Jeffrey Lund

Its: Member/Manager

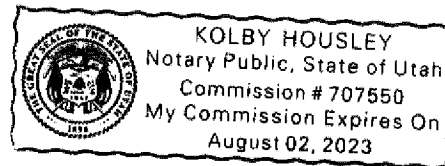
STATE OF UTAH)
) :ss
COUNTY OF WEBER)

On this 11 day of September, 2020, personally appeared before me Eric Thomas, personally known to me to be a Member/Manager of JLET HOLDINGS LLC, a Utah limited liability company, who acknowledged before me that he signed the foregoing instrument for said corporation.

WITNESS my hand and official seal.


Notary Public

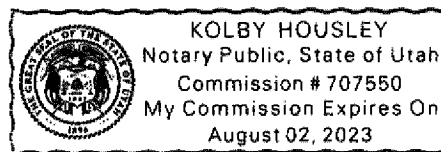
STATE OF UTAH)
) :ss
COUNTY OF WEBER)



On this 11 day of September, 2020, personally appeared before me Jeffrey Lund, personally known to me to be a Member/Manager of JLET HOLDINGS LLC, a Utah limited liability company, who acknowledged before me that he signed the foregoing instrument for said corporation.

WITNESS my hand and official seal.


Notary Public



BRILL, INC.,
a Delaware corporation

By: Michael J Delaney
Michael Delaney
Senior Vice President / Chief Administrative
Officer

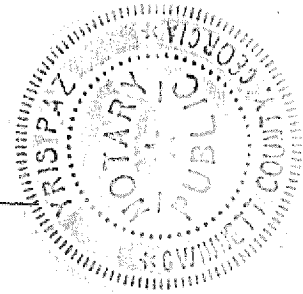
State of Georgia
County of DeKalb

This instrument was acknowledged before me this 14th day of September, 2020, by Michael Delaney, Senior Vice President – Chief Administrative Officer of Brill, Inc., a Delaware corporation, on behalf of the corporation.

Personally Known
 Produced Identification
Type and # of ID: _____

(Seal)

Yris Paz
(Signature Notary)



(Name of Notary Typed, Stamped or Printed)
Notary Public, State of Georgia

YRIS PAZ
NOTARY PUBLIC
Gwinnett County
State of Georgia
My Comm. Expires Feb 4, 2022

EXHIBIT A

(Description of the Grantor Property)

A PART OF THE SOUTH HALF OF SECTION 25, TOWNSHIP 7 NORTH, RANGE 2 WEST OF THE SALT LAKE BASE AND MERIDIAN.

BEGINNING AT THE INTERSECTION OF THE EASTERLY RIGHT-OF-WAY LINE OF RULON WHITE BOULEVARD AND THE NORTH LINE OF PV CSTORE SUBDIVISION, RECORDED AS ENTRY NO. 2948359 IN THE WEBER COUNTY RECORDER'S OFFICE LOCATED 335.94 FEET NORTH 03°34'39" EAST FROM THE SOUTH QUARTER CORNER OF SAID SECTION 25 (BASIS OF BEARING IS THE SOUTH LINE OF THE SOUTHEAST QUARTER OF SAID SECTION WHICH BEARS SOUTH 89°34'13" EAST);

RUNNING THENCE NORTH 89°53'58" WEST 217.23 FEET ALONG THE NORTH LINE OF SAID PV CSTORE SUBDIVISION TO THE SOUTHEAST CORNER OF LOT 24, PARKLAND BUSINESS CENTER SUBDIVISION PHASE 1, RECORDED AS ENTRY NO. 1549557; THENCE NORTH 00°39'40" EAST 1399.39 FEET ALONG THE EAST LINE OF SAID PARKLAND BUSINESS CENTER SUBDIVISION PHASE 1 TO THE SOUTHWEST CORNER OF LOT 6, PARKLAND COMMERCIAL SUBDIVISION PHASE 1 & 2, 3RD AMENDMENT, RECORDED AS ENTRY NO. 2944652; THENCE NORTH 64°05'47" EAST 641.95 FEET ALONG THE SOUTHERLY LINE OF SAID PARKLAND COMMERCIAL SUBDIVISION PHASE 1 & 2, 3RD AMENDMENT TO THE SOUTHEAST CORNER OF LOT 5, PARKLAND COMMERCIAL SUBDIVISION PHASE 2 1ST AMENDMENT, RECORDED AS ENTRY NO. 2788187 ALSO BEING A POINT ON THE WESTERLY RIGHT-OF-WAY LINE OF THE OREGON SHORT LINE RAILROAD; THENCE SOUTH 25°54'13" EAST 920.04 FEET ALONG SAID WESTERLY RIGHT-OF-WAY LINE; THENCE SOUTH 63°53'15" WEST 793.35 FEET; THENCE SOUTH 00°39'48" WEST 190.29 FEET; THENCE SOUTHERLY TO THE RIGHT ALONG THE ARC OF A 803.50 FOOT RADIUS CURVE, A DISTANCE OF 270.60 FEET, CHORD BEARS SOUTH 10°18'41" WEST 269.32 FEET, HAVING A CENTRAL ANGLE OF 19°17'45"; THENCE SOUTHERLY DIRECTION WITH A REVERSE TANGENT CURVE TO THE LEFT OF A 696.50 FOOT RADIUS CURVE, A DISTANCE OF 50.53 FEET, CHORD BEARS SOUTH 17°52'51" WEST 50.52 FEET, HAVING A CENTRAL ANGLE OF 04°09'25" TO THE POINT OF BEGINNING. CONTAINING 21.09 ACRES.

Exhibit A

EXHIBIT B

(Description of the Grantee Property)

A PART OF THE SOUTH HALF OF SECTION 25, TOWNSHIP 7 NORTH, RANGE 2 WEST OF THE SALT LAKE BASE AND MERIDIAN.

BEGINNING AT THE INTERSECTION OF THE EASTERLY RIGHT-OF-WAY LINE OF RULON WHITE BOULEVARD AND THE NORTH LINE OF PV CSTORE SUBDIVISION, RECORDED AS ENTRY NO. 2948359 IN THE WEBER COUNTY RECORDER'S OFFICE LOCATED 335.94 FEET NORTH 03°34'39" EAST FROM THE SOUTH QUARTER CORNER OF SAID SECTION 25 (BASIS OF BEARING IS THE SOUTH LINE OF THE SOUTHEAST QUARTER OF SAID SECTION WHICH BEARS SOUTH 89°34'13" EAST);

RUNNING THENCE NORTHERLY TO THE NON-TANGENT CURVE TO THE RIGHT ALONG THE ARC OF A 696.50 FOOT RADIUS CURVE, A DISTANCE OF 50.53 FEET, CHORD BEARS NORTH 17°52'51" EAST 50.52 FEET, HAVING A CENTRAL ANGLE OF 04°09'25"; THENCE NORTHERLY DIRECTION WITH A REVERSE TANGENT CURVE TO THE LEFT OF A 803.50 FOOT RADIUS CURVE, A DISTANCE OF 270.60 FEET, CHORD BEARS NORTH 10°18'41" EAST 269.32 FEET, HAVING A CENTRAL ANGLE OF 19°17'45"; THENCE NORTH 00°39'48" EAST 190.29 FEET; THENCE NORTH 63°53'15" EAST 793.35 FEET TO THE WESTERLY RIGHT-OF-WAY LINE OF THE OREGON SHORT LINE RAILROAD; THENCE SOUTH 25°54'13" EAST 1223.46 FEET ALONG SAID WESTERLY RIGHT-OF-WAY LINE TO THE NORTHEAST CORNER OF UDOT PROPERTY, RECORDED AS ENTRY NO. 2078402; THENCE ALONG THE BOUNDARY OF SAID PROPERTY THE FOLLOWING TWO (2) COURSES: (1) SOUTH 64°06'18" WEST 10.00 FEET; AND (2) SOUTH 25°54'13" EAST 42.21 FEET TO THE NORTH RIGHT-OF-WAY LINE OF 2700 NORTH STREET RECORDED AS ENTRY NO. 2078401; THENCE ALONG SAID NORTH RIGHT-OF-WAY LINE THE FOLLOWING NINE (9) COURSES: (1) NORTH 89°34'05" WEST 220.35 FEET; (2) NORTH 52°41'47" WEST 50.00 FEET; (3) NORTH 89°34'05" WEST 40.95 FEET; (4) SOUTH 53°53'50" WEST 50.39 FEET; (5) NORTH 89°34'05" WEST 258.75 FEET; (6) NORTH 48°45'15" WEST 53.34 FEET; (7) NORTH 89°42'31" WEST 40.49 FEET; (8) SOUTH 49°20'28" WEST 52.89 FEET; AND (9) NORTH 89°34'05" WEST 321.45 FEET (321.63 FEET BY RECORD) TO THE EAST LINE OF QUESTAR SUBDIVISION FIRST AMENDMENT, RECORDED AS ENTRY NO. 2532375; THENCE NORTH 00°39'40" EAST 282.01 FEET ALONG SAID EAST LINE TO THE NORTHEAST CORNER OF LOT 2, OF SAID PVCSTORE SUBDIVISION; THENCE NORTH 89°53'58" WEST 282.79 FEET ALONG THE SAID NORTH LINE TO THE POINT OF BEGINNING. CONTAINING 21.64 ACRES.

Exhibit B

EXHIBIT C

(Description of the Easement Area)

A PART OF THE SOUTHEAST QUARTER OF SECTION 25, TOWNSHIP 7 NORTH, RANGE 2 WEST OF THE SALT LAKE BASE AND MERIDIAN.

BEGINNING AT A POINT ON THE WESTERLY RIGHT-OF-WAY LINE OF THE OREGON SHORT LINE RAILROAD LOCATED 799.28 FEET SOUTH 89°34'15" EAST ALONG THE SOUTH LINE OF THE SOUTHEAST QUARTER OF SAID SECTION AND 1193.79 FEET NORTH 00°00'00" EAST FROM THE SOUTH QUARTER CORNER OF SAID SECTION 25;

RUNNING THENCE SOUTH 63°53'15" WEST 60.00 FEET; THENCE NORTH 25°54'13" WEST 406.68 FEET; THENCE NORTH 19°14'24" WEST 517.07 FEET TO THE SOUTHEAST CORNER OF LOT 5, PARKLAND COMMERCIAL SUBDIVISION PHASE 2 1ST AMENDMENT, RECORDED AS ENTRY NO. 2788187 IN THE WEBER COUNTY RECORDER'S OFFICE ALSO BEING A POINT ON SAID WESTERLY RIGHT-OF-WAY LINE; THENCE SOUTH 25°54'13" EAST 920.04 FEET ALONG SAID WESTERLY RIGHT-OF-WAY LINE TO THE POINT OF BEGINNING. CONTAINING 39,802 SQUARE FEET OR 0.914 ACRES.