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 Book - 9125 Pg - 2892-2897  
 GARY W. OTT  
 RECORDER, SALT LAKE COUNTY, UTAH  
 RAY QUINNEY & NEBEKER  
 PO BOX 45385  
 SLC UT 84145-0385  
 BY: ZJM, DEPUTY - WI & P.

RETURN RECORDED DOCUMENT TO:

Ray Quinney & Nebeker  
 36 South State Street, #1400  
 Salt Lake City, Utah 84111  
 Attn: Michael D. Creer

## CROSS ACCESS EASEMENT AGREEMENT

THIS CROSS ACCESS EASEMENT AGREEMENT (the "Agreement") is executed this 2<sup>ND</sup> day of May, 2005, by GARFF ENTERPRISES, INC., a Utah corporation ("GEI").

A. GEI is the owner or certain real property located on 900 South in Salt Lake City, which is commonly referred to as the "Honda Property" and is more particularly described on Exhibit A, which is attached hereto and incorporated herein by this reference.

B. GEI is also the owner or certain real property located on 900 South in Salt Lake City, which is commonly referred to as the "Body Shop Property" and is more particularly described on Exhibit B, which is attached hereto and incorporated herein by this reference. The Honda Property and the Body Shop Property will be collectively referred to as the "Properties" and individually as a "Property."

C. GEI desires to establish certain non-exclusive cross access easements over, across and upon the Properties for the express purpose of access, ingress and egress for both the benefit and burden of each of the Properties and the present and future owners, tenants, occupants and invitees thereof.

NOW, THEREFORE, in consideration of the above premises and of the covenants herein contained, the parties covenant and agree that the Properties and all present and future owners, tenants, occupants and invitees thereof shall be and hereby are subject to the terms, easements, covenants, conditions and restrictions as follows:

1. **DEFINITIONS.** For purposes hereof:

1.1 The term "Owner" or "Owners" shall mean GEI and any and all successors or assigns of such persons as the owner or owners of fee simple title to all or any portion of the Properties, whether by sale, assignment, inheritance, operation of law, trustee's sale, foreclosure, or otherwise, but not including the holder of any lien or encumbrance on such Properties or any portion thereof.

1.2 The term "Permittees" shall mean the tenant(s) or occupant(s) of the Properties, and the respective employees, agents, contractors, customers, invitees and licensees of (a) the Owners of such Properties, and/or (b) such tenant(s) or occupant(s).

2. **EASEMENTS.**

2.1 **Grant of Easement.** Subject to any express conditions, limitations or reservations contained herein, GEI hereby grants, establishes, covenants and agrees that each of the Properties, and all Owners and Permittees of such Properties, shall be benefited by the following nonexclusive, perpetual and reciprocal easement which are hereby imposed upon each of the Properties and all present and future Owners and Permittees of such Properties:

(a) An easement for reasonable access, ingress and egress to from, upon, over and across all of the roads and vehicular passageways, driveways, and driving lanes (collectively, the "Access Ways") now and from time to time existing on the Properties for the purpose of vehicular and pedestrian access, ingress and egress between all portions of the Properties, and to and from all abutting streets or rights of way furnishing access to the Properties. This access easement shall not prohibit the right of the Owners to reconfigure or construct roads and vehicular passageways, driveways, and driving lanes, or to construct and maintain, within the area affected by this easement, traffic and parking control islands and other such facilities, on the respective Properties, so long as any such action does not unreasonably prevent the passage by motor vehicles and service and delivery vehicles between each of the Properties, and to the public roads, as appropriate.

2.2 Indemnification. Each Owner having rights with respect to an easements granted in this Agreement shall indemnify and hold the Owner whose particular Property is subject to the easements and each of such Owner's Permittees harmless from and against all claims, liabilities, damages, penalties, costs, demands and expenses (including reasonable attorneys' fees and legal costs) relating to accidents, injuries, loss, or damage of or to any person or property arising from the negligent, intentional or willful acts or omissions of such Owner, its contractors, employees, agents, or others acting on behalf of such Owner.

2.3 Reasonable Use of Easements.

(a) The easements granted herein shall be used and enjoyed by each Owner and its Permittees in such a manner so as not to unreasonably interfere with, obstruct or delay the conduct and operations of the business of any other Owner or its Permittees at any time conducted on its Property.

(b) Each Owner shall have the right to alter, modify and reconfigure its Property so long as the Access Ways shall not be so altered, modified, relocated, blocked and/or removed without the express written consent of all Owners and then-existing tenants, if any.

3. MAINTENANCE AND REPAIR. Each Owner shall at all times be responsible, at its own cost, for the regular maintenance, repair and replacement of all of the easements areas located on its own Property including, without limitation, all of the physical improvements associated with such easements.

4. REMEDIES AND ENFORCEMENT.

4.1 All Legal and Equitable Remedies Available. In the event of a default or threatened default by any Owner or its Permittees of any of the terms, easements, covenants, conditions or restrictions hereof, the other Owner(s) shall be entitled forthwith to full and adequate relief by injunction and/or all such other available legal and equitable remedies from the consequences of such breach, including payment of any amounts due and/or specific performance.

4.2 Remedies Cumulative. The remedies specified herein shall be cumulative and in addition to all other remedies permitted at law or in equity.

4.3 No Termination for Default. Notwithstanding the foregoing to the contrary, no default hereunder shall entitle any Owner to cancel, rescind, or otherwise terminate this Agreement. No breach hereunder shall defeat or render invalid the lien of any mortgage or deed of trust upon any Property made in good faith for value, but the easements, covenants, conditions and restrictions

hereof shall be binding upon and effective against any Owner of such Property covered hereby whose title thereto is acquired by foreclosure, trustee's sale, or otherwise.

5. MISCELLANEOUS.

5.1 Attorneys' Fees. In the event a party institutes any legal action or proceeding for the enforcement of any right or obligation herein contained, the prevailing party after a final adjudication shall be entitled to recover its costs and reasonable attorneys' fees incurred in the preparation and prosecution of such action or proceeding.

5.2 Amendment. The parties agree that the provisions of this Agreement may be modified or amended, in whole or in part, or terminated, only by the written consent of all record Owners of the Properties, evidenced by a document that has been fully executed and acknowledged by all such record Owners and recorded in the official records of the Salt Lake County Recorder in the State of Utah.

5.3 No Waiver. No waiver of any default of any obligation by any party shall be implied from any omission by the other party to take any action with respect to such default.

5.4 No Agency. Nothing in this Agreement shall be deemed or construed by any person to create the relationship of principal and agent or of limited or general partners or of joint venturers or of any other association between any persons.

5.5 Covenants to Run with Land. It is intended that each of the easements, covenants, conditions, restrictions, rights and obligations set forth herein shall run with the Properties and create equitable servitudes in favor of the Properties benefited thereby, shall bind every person having any fee, leasehold or other interest therein and shall inure to the benefit of the parties and their respective successors, assigns, heirs, and personal representatives.

5.6 Grantee's Acceptance. The grantee of any of the Properties, or any portion thereof, by acceptance of a deed conveying title thereto or the execution of a contract for the purchase thereof, whether from Owner or from any subsequent Owner of such Properties, or any portion thereof, shall accept such deed or contract upon and subject to each and all of the easements, covenants, conditions, restrictions, duties and obligations contained herein. By such acceptance, any such grantee shall for itself and its successors, assigns, heirs, and personal representatives, covenant, consent, and agree to and with the other affected persons, to keep, observe, comply with, and perform the obligations and agreements set forth herein with respect to the portion of the Properties so acquired by such grantee.

5.7 Severability. Each provision of this Agreement and the application thereof to the Properties are hereby declared to be independent of and severable from the remainder of this Agreement. If any provision contained herein shall be held to be invalid or to be unenforceable or not to run with the land, such holding shall not affect the validity or enforceability of the remainder of this Agreement. In the event the validity or enforceability of any provision of this Agreement is held to be dependent upon the existence of a specific legal description, the parties agree to promptly cause such legal description to be prepared. Ownership of all of the Properties by the same person or entity shall not terminate this Agreement nor in any manner affect or impair the validity or enforceability of this Agreement.

5.8 Time of Essence. Time is of the essence of this Agreement.



**EXHIBIT "A"**

Beginning at a point being in the intersection of the South line of 900 South Street with the West line of State Street as now located, and which said point is 33.00 feet West of the Northeast Corner of Lot 12, Block 22, Five Acre Plat "A", Big Field Survey and running thence South  $0^{\circ}01'57''$  East along said West line of State Street 416.90 feet; thence South  $89^{\circ}56'37''$  West 355.00 feet; thence North  $0^{\circ}01'57''$  West 12.50 feet; thence South  $89^{\circ}56'37''$  West 65.00 feet; thence North  $0^{\circ}01'57''$  West 404.40 feet to the South line of 900 South Street; thence North  $89^{\circ}56'37''$  East along said South line 420.00 feet to the point of beginning.

Contains 4.001 acres

EXHIBIT # B

Order Number: 04040123

PARCEL 1:

Commencing at a point 158 feet East of the Northwest corner of Lot 12, Block 22, Five Acre Plat "A", Big Field Survey, and running thence East along the South line of Ninth South Street 148 feet to the West line of the property in the name of Crager Wire & Iron Works, a Utah corporation; thence South 404.4 feet, more or less; thence West 240 feet to the East line of Main Street; thence North on said Main Street 321.9 feet; thence East 92 feet; thence North 82.5 feet to the place of beginning.

PARCEL 1A:

Together with a right of way as disclosed by that certain Quit-Claim Deed, recorded December 31, 1947, as Entry No. 1106364, in Book 581 at Page 498: Beginning at the Southwest corner of the above described tract of land, thence East 240 feet; thence South 25 feet; thence West 240 feet to the East line of Main Street; thence North along said Main Street 25 feet to the place of beginning.

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