

RECORDING REQUESTED BY  
AND WHEN RECORDED, RETURN TO:

Riverton Center, LC  
Attn: Ralph Johnson  
4393 S. Riverboat Road, Suite 330  
Taylorsville, Utah 84123

9632280  
2/8/2006 12:10:00 PM \$48.00  
Book - 9253 Pg - 1343-1360  
Gary W. Ott  
Recorder, Salt Lake County, UT  
FOUNDERS TITLE  
BY: eCASH, DEPUTY - EF 18 P.

F67710

(Space above for recorder's use only)

**CROSS-EASEMENT AND NON-COMPETITION AGREEMENT**

This CROSS-EASEMENT AND NON-COMPETITION AGREEMENT ("**Agreement**") is made this ~~2~~ day of February, 2006, by and between RIVERTON CENTER, LC, a Utah limited liability company ("**Riverton**") and FAUTIN ENTERPRISES, L.L.C., a Utah limited liability company ("**Behunin**"). Riverton and Behunin are sometimes referred to herein individually as an "**Owner**," and collectively as the "**Owners**."

**RECITALS:**

- A. Riverton is the owner of certain real property situated in the City of Riverton, County of Salt Lake, State of Utah, more particularly described in Exhibit "A", attached hereto and incorporated herein (the "**Riverton Property**").
- B. Behunin is the owner of certain real property situated in the City of Riverton, County of Salt Lake, State of Utah, more particularly described in Exhibit "B", attached hereto and incorporated herein (the "**Behunin Property**"), having purchased the same from Riverton concurrently with the execution of this Agreement. The Riverton Property and the Behunin Property are each individually referred to herein as an "**Owner's Property**" as the case may be, and collectively as the "**Owners' Property**."
- C. The southern boundary of the Riverton Property abuts a portion of the northern boundary of the Behunin Property.
- D. The Owners desire to grant to one another reciprocal non-exclusive easements over portions of their respective property that will be improved from time to time with driveways, drive aisles or roads.
- E. The Owners further desire to memorialize by this recorded instrument, Riverton's covenant restricting the commercial uses of the Riverton Property.

NOW, THEREFORE, in consideration of the mutual covenants and obligations expressed herein, and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Owners make the following grants, agreements and covenants:

1. **Grant of Easements.**

1.1 **Access Drive.** Subject to the terms and conditions set forth herein, each Owner, as grantor, hereby grants and conveys to the other Owner, as grantee, and to their successors and assigns, a private, nonexclusive easement over, across, through and under that portion of the Owners' Property to be improved by a common access drive as depicted on Exhibit C-1 (the "**Access Drive**") for (a) the construction, installation and placement of a private road, that may consist of curbs, gutters, and asphalt pavement (collectively, the "**Road Improvements**") and underground utilities, (b) the maintenance, repair, restoration, and replacement of the Road Improvements and underground utilities, and (c) ingress to and egress from the Owners' Property over and across the Access Drive to the publicly dedicated street commonly known as Park Avenue (2080 West). The legal description of the Access Drive is set forth on Exhibit C-2.

1.2 **Easement.** The grant of the easements described above is subject to all zoning regulations, restrictions, rules and ordinances, building restrictions and other laws and regulations now in effect or hereafter adopted by any governmental authority having jurisdiction.

2. **Design of the Road Improvements.** It is the expectation of the Owners that Behunin shall develop and construct the Road Improvements on the Access Drive. Nevertheless, the Owner that develops its respective property first ("**Constructing Owner**") will construct the Road Improvements on the Access Drive. The Owners will inform each other of their plans to develop their respective properties and coordinate the construction and development of their respective properties and the Access Drive. The Constructing Owner will cause the Road Improvements to be designed in a professional manner by a licensed professional engineer and in accordance with all applicable laws to accommodate and support its intended use, including the weight of trucks and equipment that may use the Access Drive. The Road Improvements shall include grading of the Access Drive, proper compaction of the soil, installation of curb and gutter on both sides of the Access Drive, including any curb cuts to access the Owners' Property in locations elected by the Owners, and installation of asphalt/cement. If required by municipal authorities or otherwise agreed upon by the Owners, the Road Improvements shall also include storm drainage, main utility lines or pipes, utility stubs to the Owners' Property (to the extent applicable), sidewalks, landscaping, and street lighting. The preliminary plans and specifications for the Road Improvements will be approved by both Owners, which approval shall not be unreasonably withheld, conditioned or delayed. If any Owner has any comments to the preliminary plans and specifications, the Owners agree to use good faith efforts to amicably resolve such comments. Upon approval of the preliminary plans and specifications for the Road Improvements and resolution of any comments, the Constructing Owner will complete final plans of the Road Improvements in accordance therewith (the "**Final Plans**"). The Owners will review and mutually approve the Final Plans, which approval shall not be unreasonably withheld, conditioned or delayed. Notwithstanding the foregoing, the Final Plans and the Road Improvements shall not prevent the Owners from developing their respective properties in the manner each Owner desires subject to governmental approvals.

3. **Construction of Road Improvements.** Upon approval of the Final Plans, the Constructing Owner shall use good faith and diligent efforts to obtain any and all necessary

governmental permits and approvals for the construction of the Road Improvements. If any changes or modifications to the Final Plans are requested or required by any governmental entity as a condition to a grading or excavation permit or other required permit or approval, any such changes or modifications shall be subject to the prior review and approval by the other Owner, which approval shall not be unreasonably withheld, conditioned or delayed. Upon receipt of all necessary and required permits for the construction of the Road Improvements, the Constructing Owner shall commence to construct, and thereafter use good faith and diligent efforts to complete in a timely manner, the Road Improvements in a professional manner using good workmanship and new, quality materials in accordance with the Final Plans and in accordance with any applicable laws. The contractor constructing the Road Improvements shall be licensed in the State of Utah and maintain adequate insurance, and shall perform its obligations pursuant to a written construction contract, which will provide indemnification, insurance coverage, and warranties. Each Owner will be entitled to the benefits afforded the Constructing Owner (i.e., insurance, indemnification, releases, warranties, etc.) under the construction contract for the Road Improvements on the Access Drive

4. **Maintenance of Road Improvements.** The Maintaining Owner (defined below) shall cause the Road Improvements to be properly maintained and repaired in a good, clean, safe, orderly and working condition free and clear of dirt and debris; provided that each Owner, at its sole cost and expense, will maintain any sidewalks, street lighting, and other improvements located on its property. Notwithstanding the above, if any Owner damages the Road Improvements, such Owner, at its sole cost and expense, shall be responsible to repair such damage; provided, however, that this provision does not apply to normal wear and tear that may result from the anticipated use of the Road Improvements. If the Road Improvements need to be repaired due to the improper design or construction of the Road Improvements by the Constructing Owner, the Constructing Owner, at its sole cost and expense, shall repair the Road Improvements. The initial "Maintaining Owner" shall be the Constructing Owner of the Road Improvements. The Maintaining Owner may resign as the Maintaining Owner at any time. If the Owner who is not the Maintaining Owner is not satisfied with the maintenance and service provided by the Maintaining Owner, the Owners agree to discuss the issues in good faith and attempt to reach an amicable resolution, including the possibility of having the Owner who is not the Maintaining Owner becoming the Maintaining Owner. If no Owner is willing to be the Maintaining Owner, the Owners shall collectively maintain the applicable Access Drive or retain a third party to do so.

5. **Contribution Toward Construction and Maintenance Costs.** The Owner who is not the Constructing Owner shall pay one-half of the out-of-pocket cost incurred by the Constructing Owner to design and construct the Road Improvements, including any fee for permits (the "Construction Costs"). In addition, if any improvements other than the Road Improvements are made at the request of the Owner who is not the Constructing Owner (such as utility lines and extensions from main lines that service only the Owner who is not the Constructing Owner's property) (the "Extra Improvements"), the Owner who is not the Constructing Owner shall pay the entire cost to design and construct the Extra Improvements. The Owner who is not the Constructing Owner will pay its share of the Construction Costs and the entire cost of the Extra Improvements within thirty (30) days after (i) the Road Improvements and Extra Improvements have been completed pursuant to the Final Plans, (ii) any and all governmental approvals for the

completed Road Improvements and Extra Improvements, if any, have been obtained, and (iii) receipt of a detailed statement itemizing the costs incurred by the Constructing Owner to construct the Road Improvements and Extra Improvements. After receipt by the Constructing Owner of the other Owner's share of the Construction Costs and costs of the Extra Improvements, and upon request by either Owner, the Owners will execute in recordable form an Acknowledgment of Receipt wherein the Constructing Owner acknowledges receipt of the contribution by the other Owner. Failure of the Owners to execute and record such instrument shall not be deemed or inferred to be evidence of non-compliance with the terms and conditions of this Section. In addition, the Owner who is not the Maintaining Owner shall pay to the Maintaining Owner one-half (1/2) of the out-of-pocket costs incurred by the Maintaining Owner to maintain, repair and replace the Road Improvements within thirty (30) days after receipt of a detailed statement itemizing the costs incurred by the Maintaining Owner to maintain, repair and replace the Road Improvements.

**6. Use of Access Road and Drive Aisles.**

6.1 *Utilities.* Each Owner shall have the right to grant easements to governmental entities or utility providers to use the portions of the Access Drive located on such Owner's Property, for the purpose of providing underground utility services to such Owner's Property. The right to use the Access Drive for underground utilities is and shall be subordinate and inferior to the right of use thereof for vehicle access. Any easement or license granted for utilities on, through or across the Access Drive shall be conditioned upon the following: (a) the Access Drive shall remain continuously open and accessible to vehicular traffic, (b) the utility provider or the Owner who granted rights to such utility provider shall repair any damage to the Road Improvements and restore the same to the condition as existed immediately prior to such damage, (c) the utility provider shall properly construct, install, and maintain any utilities placed within the Access Drive, and (d) the utility provider or the Owner who granted rights to such utility provider will indemnify each of the Owners from any claims arising from the activities of the utility provider and its agents, servants, contractors, and consultants.

6.2 *No Interference.* Except to the extent necessary (on a temporary basis) for reasonable construction, for repair and maintenance, for traffic regulation and control or to prevent a public dedication or the accrual of any rights to the public, no fence, gate, wall, barricade or other obstruction, whether temporary or permanent in nature, which limits or impairs the free and unimpeded use of the Access Drive for the purpose described herein, shall be constructed or erected on or within the Access Drive, nor shall any Owner in any other manner obstruct or interfere with the use of the Access Drive for the purposes described herein. Under no circumstances shall access be denied to or from any lands whatsoever over and across the Access Drive for emergency vehicles, road maintenance equipment, and governmental officials while on official business.

6.3 *Use.* The Access Drive may be used solely for the limited purposes set forth herein by the Owners and their guests, invitees (business or social), employees, agents, servants, tenants, and contractors, for access by pedestrians, bicycles (and other forms of self-propelled motion), and motor vehicles to and from the Owners' Property. Any use not specifically permitted herein is prohibited. The Owners reserve the right to establish, modify, promulgate,

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and post, from time to time, reasonable rules and regulations concerning the use of the Access Drive consistent with the terms and conditions of this Agreement, including regulations and restrictions.

6.4 **No Public Rights.** Nothing contained in this Agreement will be deemed a gift or dedication of any portion of the Access Drive to the general public or for a public purpose whatsoever, it being the intent of the Owners that this Agreement be strictly limited for the purposes expressed herein. As such, this Agreement does not convey, gift, grant or transfer any rights, title or interest in the Access Drive to the public, and the Access Drive shall remain the private property of the Owners. The Maintaining Owner shall take reasonable steps to guard against the public or any third-party acquiring any right in the Access Drive.

7. **Compliance with Laws/Approvals and Permits.** Each Owner shall comply with any and all applicable ordinances, orders, rules, regulations, codes (including building and safety codes), permits, conditions, and requirements of any governmental entity (collectively, "Laws") related to its use of the Access Drive.

8. **Liens.** Each Owner ("Performing Owner") shall keep the Access Drive and the other Owner's Property free from any liens arising out of any work performed, materials furnished, or obligations incurred by or for the Performing Owner other than any liens arising out of the failure to timely pay obligations established under Section 5 above. Each Performing Owner hereby indemnifies, holds harmless and agrees to defend the other Owner from and against any and all liability, loss, damage, costs, attorneys' fees and all other expenses on account of claims of lien of laborers or materialmen or others for work performed or materials or supplies furnished to or for the Performing Owner or persons claiming under the Performing Owner other than any liens arising out of the failure to timely pay obligations established under Section 5 above. Where liens have been filed against an Owner's Property, the Performing Owner and/or its bonding company, which has issued bonds relative to the improvements or the work performed, will obtain lien releases and record them in the appropriate county and/or local jurisdiction. In the event that the Performing Owner and its bonding company are unable to obtain a lien release, the affected Owner in its absolute discretion may require the Performing Owner to provide a bond around the lien or a bond to discharge the lien at the Performing Owner's sole expense. Nothing herein shall preclude the Performing Owner from contesting the validity and/or amount of any lien claimed on the Access Drive or any Owner's Property, provided that the Performing Owner has taken the actions described above. If the Performing Owner shall fail to perform as described above, then such Owner may, but shall not be obligated to, pay the claim. Any such payment by such Owner as well as other costs and attorneys' fees incurred by the affected Owner in connection therewith (including without limitation copy costs, consultant and expert fees) shall be immediately due and owing from the Performing Owner.

9. **Notice and Timing.** The Constructing Owner shall provide the other Owner with written notice at least seven (7) days before the Constructing Owner commences to perform the initial construction of the Road Improvements. The Constructing Owner will provide the other Owner with a schedule of its construction activities. Likewise, the Maintaining Owner shall provide the other Owner with written notice at least seven (7) days before the Maintaining Owner does any work on the Access Drive that will require the closure of the Access Drive. The Maintaining

Owner agrees to coordinate the closure of the Access Drive with the other Owner to minimize any interference with the other Owner's use of its property.

**10. Covenant Not to Compete.**

10.1 Restriction of Use. For as long as Behunin or Behunin's successors operate any type of garden nursery or botanical enterprise (business where plants are grown for transplanting, for use as stocks for budding and grafting, or for sale) of any kind or nature as a predominant part of the business conducted on the Behunin Property, Riverton and its successors and assigns, as owners, possessors or tenants of the Riverton Property, shall not operate, manage or allow to exist upon the Riverton Property any commercial or business enterprises (profit or non-profit) which is directly competitive with a garden nursery or botanical enterprise, as defined above. An enterprise will be deemed directly competitive if it sells plants intended to be transplanted, soil, soil amendments, bark, herbicides, etc. Notwithstanding the above, the Riverton Property may be used for the marketing and sale of produce, cut flowers, potted plants that are not intended to be transplanted, and other items as an incidental use of any other commercial enterprise. The parties agree that the restriction set forth herein is to prevent the operation of a garden nursery on the Riverton Property that may compete with the nursery operations on the Behunin Property and not to prevent the operation of convenience stores, neighborhood grocery, or gift shops, in which space dedicated to the sale of plants, flowers or garden tools constitutes no more than 10% of the total retail store space (not to exceed a total of 500 square feet). This covenant and prohibition shall run with the land as a benefit to the Behunin Property and a burden on or limitation to the use of the Riverton Property.

10.2 Remedies. Riverton agrees that damages at law for violation of the restrictive covenants contained herein would not be an adequate or proper remedy to Behunin, and that should Riverton or its successors or assigns violate or threaten to violate any of the provisions of Section 10, Behunin, its successors or assigns, shall be entitled to obtain a temporary or permanent injunction against Riverton or its successors or assigns in any court having jurisdiction over the person and the subject matter, prohibiting any further violation of any such covenants. In addition, if the entity violating the restrictive covenants fails to cease the violation within one (1) business day after receipt of a written demand from Behunin that such entity cease the restricted activities, Behunin shall be entitled to receive from such violating entity the actual damages incurred by Behunin, which damages shall represent the decrease in net profit after such notice is received by the violating entity resulting from the prohibited sales by the violating entity. So long as Riverton, or the successor owner of the Riverton Property, makes a demand on the tenant or occupant of the Riverton Property that is violating the restrictive covenant, Riverton shall not be subject to any damages hereunder. .

10.3 Enforceability. Furthermore, Riverton acknowledges that this Section 10 has been negotiated at arms length by the parties, with none of the parties being under any compulsion to enter into this Agreement, and that the restrictive covenants contained herein do not in any respect inhibit Riverton's ability to profitably use the Riverton Property or earn a livelihood in its chosen market without violating the restrictive covenants contained herein. Behunin by these presents has attempted to limit Riverton's rights to compete only to the extent necessary to protect Behunin from unfair competition. The parties agree that, if the scope or enforceability of the restrictive covenants contained herein is in any way disputed at any time, it

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is the intent of the parties that a court or other trier of fact shall modify and enforce the covenants to the extent required to render the same enforceable.

**11. Notices.** All notices, demands, consents, approvals and other communications which are required or desired to be given by either Owner to the other Owner hereunder shall be in writing and shall be hand delivered or sent by United States registered or certified mail, postage prepaid, return receipt requested, addressed to the appropriate party at its address set forth below, or at such other address as such Owner shall have last designated by notice to the other Owner. Notices, demands, consents, approvals, and other communications shall be deemed given when delivered or three (3) days after mailing: provided, however, that if any such notice or other communications shall also be sent by telecopy or fax machine, such notice shall be deemed given at the time and on the date of machine transmittal if the sending Owner receives a written send verification on its machines and forwards a copy thereof with its mailed or courier delivered notice or communications.

To Riverton: Riverton Center, LC  
Attn: Ralph Johnson  
4393 S. Riverboat Road, Suite 330  
Taylorsville, Utah 84123

To Behunin: Fautin Enterprises, L.L.C.  
Attn: Ben Behunin  
2247 West 6200 South  
Taylorsville, Utah 84118  
Phone: (801) 671-6200  
Fax: (801) 969-8381

**12. Miscellaneous.**

12.1. *Entire Agreement.* This Agreement constitutes the entire contract and understanding between the Owners related to the subject matter herein and supersedes all prior agreements, arrangements and understandings relating to the subject matter of this Agreement. Any modifications to this Agreement must be in writing and signed by all Owners.

12.2. *Successors and Assigns.* The terms and conditions of this Agreement shall run with the land. The mutual easements granted herein shall be appurtenant to the lands of each Owner, and may not be transferred, assigned, or conveyed apart or separately from such lands. The rights, conditions and provisions of this Agreement shall inure to the benefit of, and will be binding upon, the Owners hereto and their respective successors and assigns.

12.3. *Termination of Covenant Liability.* Whenever a transfer of fee simple ownership of any portion of the Access Drive shall occur, then from and after the transfer date, the transferor shall be released and discharged from any and all further obligations and responsibilities under this Agreement, and shall have no liability for any breach of any covenant arising or accruing after the date of such transfer with respect to the real property transferred.

12.4. Legal Rights. This Agreement, and the interpretation, validity, effect and performance hereof, shall be governed by the laws of the State of Utah. Venue and jurisdiction for any legal proceedings shall be in Salt Lake County, Utah. If any action at law or in equity, or any legal proceeding, be instituted by any Owner against the other Owner to enforce this Agreement or any rights arising hereunder, or in connection with the subject matter hereof, the prevailing Owner shall be entitled to recover all costs of suit and reasonable attorneys' and paralegal fees. For purposes of this Section, the term "prevailing Owner" shall, in the case of a claimant, be the Owner who is successful in obtaining substantially all of the relief sought, and in the case of the defendant or respondent, the Owner who is successful in denying substantially all of the relief sought by the claimant, regardless of whether such action proceeds to final judgment.

12.5. Remedies. If any Owner fails according to the terms of this Agreement to substantially commence to perform and/or complete performance as required by this Agreement, as the circumstances may require, the other Owner may perform such obligations after providing the non-performing Owner ten (10) days' prior written notice to perform in accordance with the terms hereof. In the event a ten (10) day notice is given, such notice will identify the area of non-performance. In the event that an Owner performs the non-performing Owner's obligations under this Agreement, the non-performing Owner shall pay the performing Owner the non-performing Owner's share of the costs to perform such obligations within thirty (30) days after written demand. Except as expressly provided otherwise in this Agreement, any sum owing to any Owner under the terms and provisions of this Agreement that shall not be paid within ten (10) days after it is due shall bear interest at twelve percent (12%) (or the maximum interest permitted by law, whichever is less) per annum from the date the same becomes due and payable by the terms and provisions of this Agreement until paid.

12.6. Remedies Not Exclusive: No Waiver. The various rights and remedies herein contained and reserved to each of the Owners, except as otherwise expressly provided herein, shall not be considered as exclusive of any other right or remedy of such Owner but shall be construed as cumulative and shall be in addition to every other remedy now or hereafter existing at law, in equity or by statute. No delay or omission of the right to exercise any power or remedy by any Owner shall impair any such right, power or remedy or be construed as a waiver of any default or non-performance or as acquiescence therein. Any waiver of any breach of this Agreement, or the breach of any covenant, representation or warranty contained herein (a "Breach"), in any one instance, shall not operate as or be deemed to be a further or continuing waiver of such Breach or any other Breach, nor shall any failure at any time or times to enforce or require performance of any provision hereof operate as a waiver of or affect in any manner such Owner's right at a later time to enforce or require performance of any such provision. No Owner shall not be deemed to have waived any term, covenant or condition unless such Owner gives the other Owner written notice of such waiver.

12.7. Condemnation. In the event of any taking through condemnation or eminent domain authority (or sale under threat of the exercise of such authority) of any portion of the Access Drive, the award or compensation in such proceeding related to the value of the Access Drive, or portion thereof, shall be distributed to the Owners based upon the portion of such Owner's property taken. The award or consideration shall be determined without regard to this



Agreement and the easements granted herein to the extent that this Agreement or the easement is used to decrease the amount of any award or consideration. Each Owner may file separate claims for severance damages and to compensate such Owner for any diminution of value of its property and for any business losses.

12.8. Interpretation. This Agreement shall be interpreted and construed only by the contents hereof and there shall be no presumption or standard of construction in favor of or against any Owner.

12.9. Captions. The captions in this Agreement are for convenience only and do not constitute a part of the provisions hereof.

12.10. Time is of the Essence. Time is expressly made of the essence of each and every provision of this Agreement.

12.11. Authority. If any Owner is a corporation or a limited liability company, the Owner hereby covenants and warrants as of the date of execution by such Owner that the Owner is a duly constituted corporation or limited liability company, qualified to do business in the state of Utah. The individuals executing this Agreement represent and warrant that they have the power and authority to do so and to bind the entities for which they are executing this Agreement, that all corporate and/or legislative approvals, as the case may be, have been secured and obtained, and that this Agreement is a binding obligation of the entity for which they are executing this Agreement.

12.12. Relationship. The Owners hereto expressly disclaim and disavow any partnership, joint venture, fiduciary, agency or employment status or relationship between them and expressly affirm that they have entered into this Agreement as part of an "arms-length" transaction. No Owner hereto has the authority to make any representation or warranty or incur any obligation or liability on behalf of the other Owner hereto, nor shall any Owner make any representation to any third party inconsistent with this provision. Each Owner to this Agreement is a separate and independent entity. No Owner will have the right to act as agent for the other Owner.

12.13. No Third Party Beneficiaries. There is no intent by any Owner to create or establish third party beneficiary status or rights in any third party and no such third party shall have any right to enforce any right or enjoy any benefit created or established under this Agreement. The mutual easements granted herein may be utilized only to service the Grantee's Property. No lands outside the perimeter of the Owners' Property, whether or not owned or controlled by one or more of the Owners, shall be serviced by or from the Private Drive. The Owners' Property may be expanded only upon the unanimous written consent of the Owners, which consent may be granted or withheld in the sole and absolute discretion of each Owner, and which consent shall not be effective until an amendment to this Agreement is duly recorded.

12.14. Counterparts. This Agreement may be executed in any number of duplicate counterparts, each of which shall be deemed an original, and when taken together shall constitute

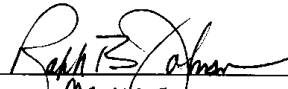
one and the same original Agreement, which shall be fully binding upon each Owner who executes the same.

12.15. *Miscellaneous*. The Owners, and each of them, acknowledge, declare, and agree, that: (i) they have consulted legal counsel about this Agreement, including the meaning and effect of waiving any legal rights, or have had the opportunity to do so and have voluntarily chosen not to do so; (ii) they have had adequate time and opportunity to review the terms of this Agreement and have carefully read it; (iii) they are sophisticated parties that have negotiated this Agreement at arm's length, and accordingly, expressly waive any rule of law or any legal decision that would require interpretation of any ambiguities in this Agreement against the Owner that has drafted it; and (iv) they intend to be legally bound to the provisions of this Agreement, which shall be interpreted in a reasonable manner to effect the purposes of this Agreement and intent of the Owners as outlined herein.

IN WITNESS WHEREOF, the Owners have executed this Agreement as of the date first above written.

Riverton:

**RIVERTON CENTER, LC,**  
a Utah limited liability company

By:   
Its: Manager

Behunin:

**FAUTIN ENTERPRISES, L.L.C.,**  
a Utah limited liability company

By: \_\_\_\_\_  
Its: \_\_\_\_\_

one and the same original Agreement, which shall be fully binding upon each Owner who executes the same.

12.15. *Miscellaneous.* The Owners, and each of them, acknowledge, declare, and agree, that: (i) they have consulted legal counsel about this Agreement, including the meaning and effect of waiving any legal rights, or have had the opportunity to do so and have voluntarily chosen not to do so; (ii) they have had adequate time and opportunity to review the terms of this Agreement and have carefully read it; (iii) they are sophisticated parties that have negotiated this Agreement at arm's length, and accordingly, expressly waive any rule of law or any legal decision that would require interpretation of any ambiguities in this Agreement against the Owner that has drafted it; and (iv) they intend to be legally bound to the provisions of this Agreement, which shall be interpreted in a reasonable manner to effect the purposes of this Agreement and intent of the Owners as outlined herein.

IN WITNESS WHEREOF, the Owners have executed this Agreement as of the date first above written.

Riverton:

**RIVERTON CENTER, LC,**  
a Utah limited liability company

By: \_\_\_\_\_  
Its: \_\_\_\_\_

Behunin:

**FAUTIN ENTERPRISES, L.L.C.,**  
a Utah limited liability company

By: *Benjamin O. Behunin*  
Its: *Manager*

STATE OF UTAH )  
 :SS  
COUNTY OF SALT LAKE )

On this 6<sup>th</sup> day of February, 2006, personally appeared before me Ralph Johnson, personally known to me to be the Manager of Riverton Center, LC, a Utah limited liability company, who acknowledged to me that he signed the foregoing instrument as Manager for said entity, and the said Ralph Johnson acknowledged to me that the said entity executed the same.



Robin J. Blanke  
Notary Public for Utah

STATE OF UTAH )  
 :SS  
COUNTY OF SALT LAKE )

On this \_\_\_\_ day of \_\_\_\_\_, 2006, personally appeared before me Benjamin Behunin, personally known to me to be the Manager of Fautin Enterprises, L.L.C., who acknowledged to me that he signed the foregoing instrument as the Manager for said entity, and the said Benjamin Behunin acknowledged to me that Fautin Enterprises, L.L.C. executed the same.

STATE OF UTAH )  
 :ss  
COUNTY OF SALT LAKE )

On this \_\_\_\_ day of \_\_\_\_\_, 2006, personally appeared before me \_\_\_\_\_, personally known to me to be the \_\_\_\_\_ of Riverton Center, LC, a Utah limited liability company, who acknowledged to me that he signed the foregoing instrument as \_\_\_\_\_ for said entity, and the said \_\_\_\_\_ acknowledged to me that the said entity executed the same.

\_\_\_\_\_  
Notary Public for Utah

STATE OF UTAH )  
 :ss  
COUNTY OF SALT LAKE )

On this 7<sup>th</sup> day of February, 2006, personally appeared before me Benjamin Behunin, personally known to me to be the Manager of Fautin Enterprises, L.L.C., who acknowledged to me that he signed the foregoing instrument as the Manager for said entity, and the said Benjamin Behunin acknowledged to me that Fautin Enterprises, L.L.C. executed the same.

Wende Harris



**Exhibit A**

**PROPOSED LOT 1**

*BEGINNING AT A POINT WHICH LIES EAST 670.72 FEET ALONG THE NORTH LINE OF THE NORTHWEST QUARTER OF SECTION 34, TOWNSHIP 3 SOUTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN, AND SOUTH 69.65 FEET, SAID POINT ALSO BEING ON THE EAST RIGHT-OF-WAY LINE OF PARK AVENUE ROAD FROM THE NORTHWEST CORNER OF SAID SECTION AND RUNNING:*

*THENCE NORTH 44°47'34" EAST 25.27 FEET ALONG SAID LINE TO THE SOUTH RIGHT-OF-WAY OF 12600 SOUTH STREET, SAID POINT ALSO BEING ON THE ARC OF A 8,157.00 FOOT RADIUS CURVE: THENCE THE FOLLOWING TWO (2) COURSES ALONG SAID RIGHT-OF-WAY LINE: 1) EASTERLY 63.83 FEET ALONG SAID CURVE TO THE RIGHT (CENTER BEARS SOUTH 00°14'02" EAST) THROUGH A CENTRAL ANGLE OF 0°26'54" TO A POINT OF TANGENCY; 2) SOUTH 89°47'08" EAST 567.26 FEET; THENCE SOUTH 289.08 FEET; THENCE WEST 647.75 TO SAID EAST RIGHT-OF-WAY LINE; THENCE NORTH 00°14'26" WEST 273.26 FEET ALONG SAID LINE TO THE POINT OF BEGINNING.*

*CONTAINS APPROXIMATELY 188,042.98 SQ. FT. 4.32 ACRES*

*SAID LOT 1 IS LOT 1 OF A PROPOSED, BUT NOT YET RECORDED, SUBDIVISION.*

*Note: Tax ID No.'s: Part of 27-34-102-001 and part of 27-34-102-003*

## **Exhibit B**

### **PROPOSED LOT 2**

BEGINNING AT A POINT WHICH LIES EAST 670.72 FEET ALONG THE NORTH LINE OF THE NORTHWEST QUARTER OF SECTION 34, TOWNSHIP 3 SOUTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN, AND SOUTH 69.65 FEET, SAID POINT ALSO BEING ON THE EAST RIGHT-OF-WAY LINE OF PARK AVENUE ROAD, AND SOUTH 00°14'26" EAST 273.26 FEET ALONG SAID LINE FROM THE NORTHWEST CORNER OF SAID SECTION AND RUNNING:

THENCE EAST 647.75 FEET; THENCE SOUTH 634.44 FEET TO THE NORTH RIGHT-OF-WAY LINE OF SAID PARK AVENUE ROAD; THENCE THE FOLLOWING SIX (6) COURSES ALONG SAID LINE: 1) SOUTH 85°56'48" WEST 35.41 FEET; 2) SOUTH 89°45'34" WEST 567.29 FEET TO THE POINT OF CURVATURE OF A 25-FOOT RADIUS CURVE; 3) NORTHWESTERLY 22.58 FEET ALONG THE ARCE OF SAID CURVE TO THE RIGHT (CENTER BEARS NORTH 00°14'26" WEST) THROUGH A CENTRAL ANGLE OF 51°45'12" TO A POINT OF COMPOUND CURVATURE OF A 80-FOOT RADIUS CURVE; 4) NORTHWESTERLY 18.86 FEET ALONG THE ARC OF SAID CURVE TO THE LEFT (CENTER BEARS SOUTH 51°30'46" WEST) THROUGH A CENTRAL ANGLE OF 13°30'24" TO A POINT OF COMPOUND CURVATURE OF A 25-FOOT RADIUS CURVE; 5) NORTHWESTERLY 22.58 FEET ALONG THE ARC OF SAID CURVE TO THE RIGHT (CENTER BEARS NORTH 38°00'22" EAST) THROUGH A CENTRAL ANGLE OF 51°45'12" TO A POINT OF TANGENCY; 6) NORTH 00°14'26" WEST 597.04 FEET TO THE POINT OF BEGINNING.

CONTAINS APPROXIMATELY 411,911.83 SQ. FT. 9.46 ACRES.

SAID LOT 2 IS LOT 2 OF A PROPOSED, BUT NOT YET RECORDED, SUBDIVISION.

*Note: Tax ID No.'s: 27-34-102-002, Part of 27-34-102-001 and part of 27-34-102-003*

### **PROPOSED LOT 3**

BEGINNING AT A POINT WHICH LIES EAST 670.72 FEET ALONG THE NORTH LINE OF THE NORTHWEST QUARTER OF SECTION 34, TOWNSHIP 3 SOUTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN, AND SOUTH 69.65 FEET, SAID POINT ALSO BEING ON THE EAST RIGHT-OF-WAY LINE OF PARK AVENUE ROAD, AND SOUTH 00°14'26" EAST 273.26 FEET ALONG SAID LINE AND EAST 647.75 FEET FROM THE NORTHWEST CORNER OF SAID SECTION AND RUNNING:

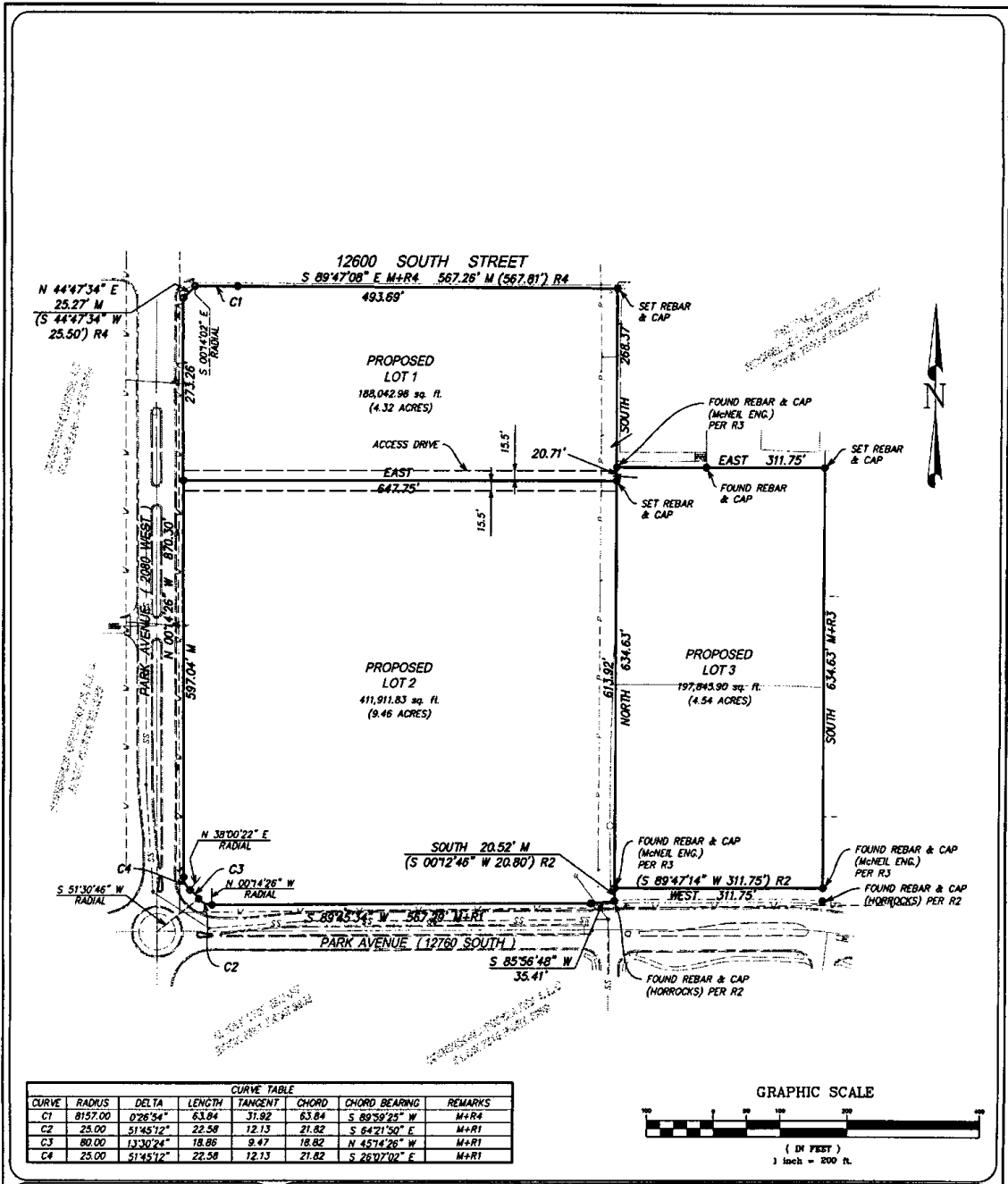
THENCE COURSE: NORTH 20.71 FEET; THENCE EAST 311.75 FEET; THENCE SOUTH 634.63 FEET; THENCE WEST 311.75 FEET; THENCE NORTH 613.92 FEET TO THE POINT OF BEGINNING.

CONTAINS APPROXIMATELY 197,845.90 SQ. FT. 4.54 ACRES

SAID LOT 3 IS LOT 3 OF A PROPOSED, BUT NOT YET RECORDED, SUBDIVISION.

*Note: Tax ID No.: 27-34-126-021*

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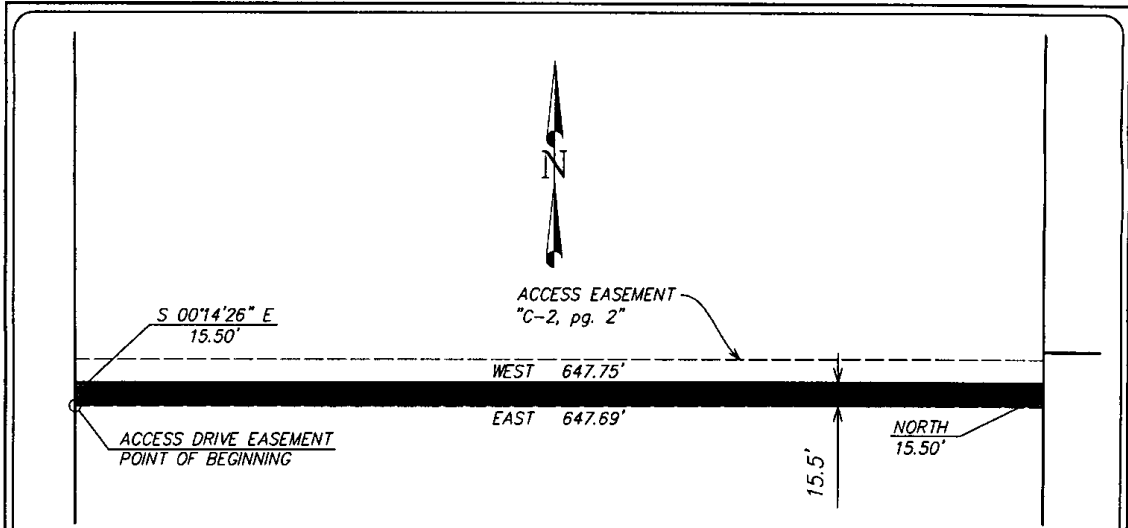


CURVE TABLE						
CURVE	RADIUS	DELTA	LENGTH	TANGENT	CHORD	REMARKS
C1	8157.00	0°26'34"	63.84	31.92	63.84	S 89°29'25" W M+R4
C2	25.00	51°45'12"	22.58	12.13	21.82	S 64°21'50" E M+R1
C3	80.00	1°30'24"	18.86	9.47	18.82	N 45°14'26" W M+R1
C4	25.00	51°45'12"	22.58	12.13	21.82	S 26°17'02" E M+R1

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EXHIBIT "C-1"  
Sheet 1 of 3

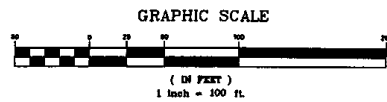




**ACCESS EASEMENT "B" DESCRIPTION :**

COMMENCING AT A POINT WHICH LIES EAST 670.72 FEET ALONG THE NORTH LINE OF THE NORTHWEST QUARTER OF SECTION 34, TOWNSHIP 3 SOUTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN, AND SOUTH 69.87 FEET, SAID POINT ALSO BEING AT THE INTERSECTION OF THE EAST RIGHT-OF-WAY LINE OF PARK AVENUE AND THE SOUTH LINE OF 12600 SOUTH STREET; THENCE ALONG THE EAST RIGHT-OF-WAY LINE OF PARK AVENUE SOUTH 00°14'26" EAST 288.76 FEET TO THE TRUE POINT OF BEGINNING; THENCE EAST 647.69 FEET; THENCE NORTH 15.50 FEET; THENCE WEST 647.75 FEET TO A POINT ON THE EAST RIGHT-OF-WAY LINE OF PARK AVENUE; THENCE SOUTH 00°14'26" EAST 15.50 FEET TO THE POINT OF BEGINNING.

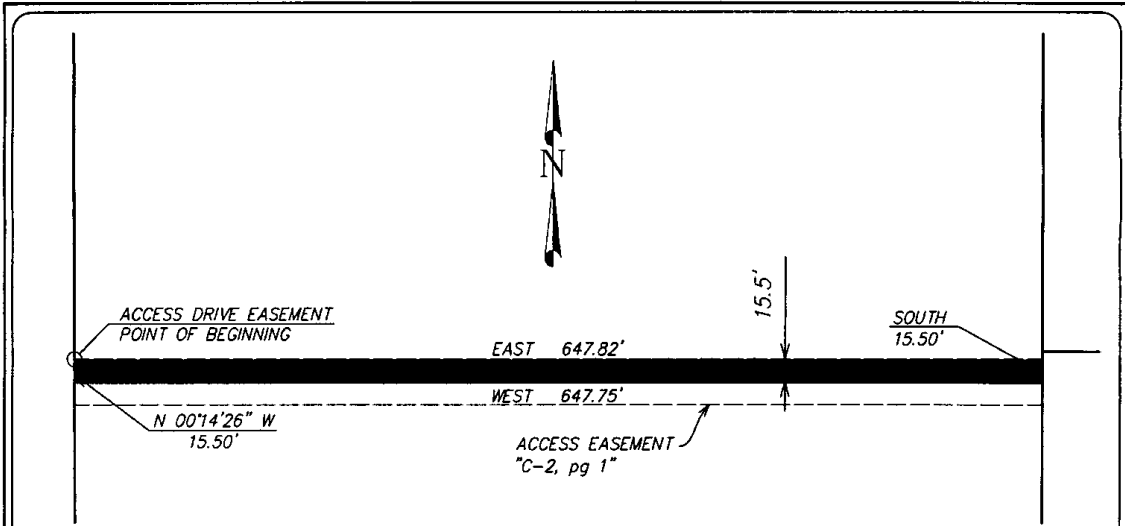
CONTAINS 10,039.68 SQ. FT. (0.23 ACRES)



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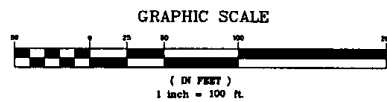
BEN BEHUNIN  
**BEHUNIN HORTICULTURE CENTER**  
ACCESS EASEMENT  
EXHIBIT "C-2, pg. 1" Sheet 2 of 3



**ACCESS EASEMENT "B" DESCRIPTION :**

COMMENCING AT A POINT WHICH LIES EAST 670.72 FEET ALONG THE NORTH LINE OF THE NORTHWEST QUARTER OF SECTION 34, TOWNSHIP 3 SOUTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN, AND SOUTH 69.87 FEET, SAID POINT ALSO BEING AT THE INTERSECTION OF THE EAST RIGHT-OF-WAY LINE OF PARK AVENUE AND THE SOUTH LINE OF 12600 SOUTH STREET; THENCE ALONG THE EAST RIGHT-OF-WAY LINE OF PARK AVENUE SOUTH 00°14'26" EAST 257.76 FEET TO THE TRUE POINT OF BEGINNING; THENCE EAST 647.82 FEET; THENCE SOUTH 15.50 FEET; THENCE WEST 647.75 FEET TO A POINT ON THE EAST RIGHT-OF-WAY LINE OF PARK AVENUE; THENCE NORTH 00°14'26" WEST 15.50 FEET TO THE POINT OF BEGINNING.

CONTAINS 10,040.69 SQ. FT. (0.23 ACRES)



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