

2015

**Red Bridge Capital, LLC, a Utah Limited Liability Company, Plaintiff and Appellee, vs. Don Lagos, LLC, a Utah Limited Liability Company, Mellon Valley, LLC, a Utah Limited Liability Company, and Roland N. Walker, an Individual, and Sally Walker, an Individual, Defendants and Appellants : Addendum**

Utah Court of Appeals

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IN THE COURT OF APPEALS, STATE OF UTAH

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RED BRIDGE CAPITAL, LLC, a Utah  
limited liability company,

Plaintiff and Appellee,

vs.

DOS LAGOS, LLC a Utah limited  
liability company, MELLON  
VALLEY, LLC, a Utah limited liability  
company, and ROLAND N. WALKER,  
an individual, and SALLY WALKER,  
an individual.

Defendants and Appellants.

**ADDENDUM**

Appellate Case No.: 20141123

District Court Case No. 120902931

---

ON APPEAL FROM THE DECISION OF THE THIRD DISTRICT COURT, SALT  
LAKE COUNTY, JUDGE KENNEDY, DISTRICT JUDGE

---

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FILED  
UTAH APPELLATE COURTS

JUL 27 2015

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IN THE COURT OF APPEALS, STATE OF UTAH

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RED BRIDGE CAPITAL, LLC, a Utah  
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**ADDENDUM  
TABLE OF CONTENTS**

<b><u>Exh</u></b>	<b><u>Title</u></b>	
A	Settlement Agreement .....	Page 001
B	A map depicting the Properties and the Strip Parcels (shown on the map as Parcels A and B) .....	Page 045
C	August 8, 2013 Letter from C. Dunn to D. Leta and attached Amended and Restated Access and Utility Easement.....	Page 051
D	July 31, 2013 Letter from C. Dunn.....	Page 076
E	June 26, 2013 Letter from C. Dunn.....	Page 136
F	November 14, 2013 Letter from C. Dunn.....	Page 139
G	November 15, 2013 Email from D. Leta .....	Page 154
H	August 27, 2013 Email from D. Leta.....	Page 167
I	October 30, 2013 Letter from A. Dunn.....	Page 192
J	Email from D. Leta dated October 31, 2013.....	Page 199
K	November 18, 2013 Letter from D. Leta.....	Page 208
L	November 19, 2013 Letter from D. Leta.....	Page 212
M	Order Denying Defendants' Motion for Satisfaction of Judgment.....	Page 215
N	Order Granting Plaintiff's Motion for Award of Attorney's Fees and Costs and Augmenting Judgment.....	Page 218
O	Transcript of Proceedings of the July 3, 2014 Hearing.....	Page 223



# EXHIBIT A

EXHIBIT A

## SETTLEMENT AGREEMENT

This Settlement Agreement (the "Agreement") is entered into this 15<sup>th</sup> day of May, 2013, by and between Red Bridge Capital, LLC, a Utah Limited Liability Company ("Red Bridge") Dos Lagos, L.L.C., a Utah Limited Liability Company ("Dos Lagos"), Mellon Valley, LLC, a Utah Limited Liability Company ("Mellon"), Roland N. Walker, an individual residing in Idaho ("Roland"), and Sally Walker, an individual residing in Idaho ("Sally" and, collectively with Dos Lagos, Mellon, and Roland ("Defendants"). Red Bridge and the Defendants are hereinafter referred to as the "Parties" and individually as a "Party".

## RECITALS

A. Pursuant to § 57-1-32, UCA, Red Bridge has asserted deficiency judgment claims in excess of \$8,000,000 against Defendants in that certain lawsuit now pending in the Third Judicial District Court in and for Salt Lake County, State of Utah (the "Court"), Civil No. 120902931, entitled *Red Bridge Capital, LLC v Dos Lagos, L.L.C., et al* (the "Lawsuit").

B. In the Lawsuit, Defendants contest the right of Red Bridge to a deficiency judgment.

C. The Lawsuit involves two parcels of vacant, developable real property, each consisting of approximately 15 acres, that are located in Washington County, Utah, near the City of Hurricane, and certain residential lots located near Rigby, Idaho, all of which is now owned by Red Bridge. The Washington County, Utah parcels are commonly referred to by the Parties as Parcels A and B, and are more particularly described on Exhibit "A" attached hereto (the "Properties").

D. The Properties are each separated by certain strip parcels (the "Strip Parcels") that are owned by Mellon and that are parallel to Sand Hollow Road, which bisects the Strip Parcels. The legal descriptions of the Strip Parcels are attached hereto as Exhibit "B.", which Defendant represents and warrants to Red Bridge constitutes all of the property that Mellon owns between the Properties and Sand Hollow Road.

E. Currently, the Properties are encumbered by a certain Master Communications Easement for Elim Valley (the "Communications Easement"), recorded as Doc. No. 20070008386 in favor of EVD Communications Infrastructure, LLC ("EVD").

F. Currently there is inadequate or nonexistent vehicular access from the Properties to Sand Hollow Road that would permit reasonable commercial and/or residential development of the Properties.

G. The most cost effective and logical access from the Properties to Sand Hollow Road would be across the Strip Parcels.

H. Defendants believe that the Strip Parcels can be developed for commercial and/or residential uses.

I. The Parties have agreed to resolve and compromise the claims and disputes in the Lawsuit, pursuant to the terms and conditions more fully set forth below.

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# AGREEMENT

NOW THEREFORE, in consideration of the mutual promises, covenants and agreements set forth in this Agreement, and based upon the foregoing recitals and for other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. **Settlement Payment.** Upon execution of this Agreement, the Defendants shall cause the sum of One Hundred Fifty Thousand Dollars cash (\$150,000.00 US) to be remitted to Red Bridge, care of its counsel, Snell & Wilmer L.L.P. by wire transfer as follows:

JP Morgan Chase NA  
201 N. Central Ave.  
Phoenix, AZ 85004  
ABA# 021000021  
International Wires – Use SWIFT code CHASUS33  
Account No. 411-9025  
Account Name: Snell & Wilmer Trust Account  
Reference: Red Bridge CM # 59166.00013

2. **Deficiency Judgment.** Upon execution of this Agreement, the Defendants consent to entry by the Court of a deficiency judgment (the "**Judgment**") in the amount of Two Million Dollars (\$2,000,000.00) in the form shown as **Exhibit "C"** attached hereto. The Judgment shall bear interest at the rate of 15% per annum from entry until paid.

3. **Perfection / Enforcement of Judgment.** Upon entry of the Judgment, Red Bridge may perfect the judgment as a lien against Defendants' real and personal property, in the same manner that any Utah judgment creditor could perfect a judgment against a judgment debtor's property, and Defendants shall not interfere with or inhibit any such perfection efforts by Red Bridge, *provided, however*, that, so long as Defendants are not in default of their other obligations to Red Bridge under this Agreement, Red Bridge shall not take any actions to enforce or collect the Judgment.

4. **Activities Affecting the Properties.** Within the time periods set forth below, Defendants shall do, or cause to be done, all of the following:

- a. **Termination of Communications Easement.** Upon execution of this Agreement, EVD, and any of its successors and assigns as may be necessary, shall eliminate and terminate the Communications Easement with regard to the Properties by executing an easement termination (the "**Easement Termination**") in the form attached hereto as **Exhibit "D"**, and delivering the same to Red Bridge's counsel. Execution and delivery of the Easement Termination shall not require Red Bridge to offer or pay any additional consideration to EVD, to any successor or assignee of EVD, to the Defendants or to Defendants' affiliates. Termination of the Communications Easement shall be free and clear of any and all liens or encumbrances, and Defendants shall have one-hundred eighty (180) days

after entry of the Judgment to remove any such liens and encumbrances affecting the Communications Easement. EVD, any successor or assign of EVD, Defendants and Defendants' affiliates shall not interfere with or inhibit the recording of the Easement Termination by Red Bridge.

- b. Blanket Access and Utility Easement. Upon execution of this Agreement, Mellon, and any of its successors and assigns as may be necessary or appropriate, shall execute and deliver a general blanket access and utility easement ("Access and Utility Easement") to Red Bridge burdening the land that the Strip Parcels are part of, and permitting each of the Properties to have access to Sand Hollow Road for general vehicular access from at least two separate locations for each of the Properties (a total of four (4) locations), with the specific location and description of the access to be determined at the sole discretion of Red Bridge and at a future date, *provided however*, that the locations selected by Red Bridge must be reasonable for typical commercial and/or residential development of the Properties and provided that the utility easement shall be located in the same location as the access easement. The Access and Utility Easement will allow Red Bridge to install such underground and above-ground utility lines and facilities as may be necessary or appropriate to permit typical commercial and/or residential development of the Properties, *provided, however*, that the installation of all such utilities shall comply with applicable zoning and development rules, regulations, statutes and covenants. The Access and Utility Easement shall be in the form attached as Exhibit "E", and shall be of customary size and scope to permit typical commercial and/or residential development of the Properties. Execution and delivery of the Access and Utility Easement shall not require Red Bridge to offer or pay any additional consideration to Mellon, to any successor or assignee of EVD, to the Defendants or to Defendants' affiliates. Within one-hundred eighty (180) days after entry of the Judgment, Defendants also shall cause all liens and encumbrances to be removed from the Strip Parcels. Mellon, any successor or assign of Mellon, Defendants and Defendants' affiliates shall not interfere with or inhibit the recording of the Access and Utility Easement by Red Bridge.
- c. Mutual Development Agreement. Within one-hundred and eighty (180) days after entry of the Judgment, Mellon, or its successor or assign, and Red Bridge, or its successor or assigns, shall negotiate in good faith to enter into a mutually acceptable development agreement (the "Development Agreement") regarding the Strip Parcels and the Properties that provides for the mutual future development of the Strip Parcels and the Properties in a manner that is satisfactory to both Red Bridge and Mellon. In the event such a mutually acceptable development agreement cannot be entered into within one-hundred and eighty (180) days after entry of the Judgment, Mellon shall transfer good and marketable fee simple title to the Strip Parcels to Red Bridge, free and clear of any and all liens and encumbrances, and without the payment of any additional consideration by Red Bridge, by executing and delivering



the Special Warranty Deed ("Deed") in the form attached as Exhibit "F." Either the entering into of a mutual development agreement or the deeding of the Strip Parcels to Red Bridge shall satisfy the requirements of this paragraph 4(c). Prior to the transfer of the Strip Parcels to Red Bridge, Red Bridge shall have the right to obtain all appropriate governmental approvals to create a separate lot of record for each Strip Parcel and Mellon shall assist and cooperate with Red Bridge in such approvals at no material cost to Mellon and shall execute any applications, consents, boundary line agreements, and other documents which may be necessary or convenient to obtain the approvals.

- d. Absence of Bankruptcy Petition or Related Action. Within one-hundred and eighty (180) days after entry of the Judgment, no petition in bankruptcy, initiation of any receivership proceeding or the filing of any other judicial proceeding that could prohibit the implementation or performance of this Agreement shall be filed by or against any of the Defendants, EVD, any transferor of consideration under this Agreement Debtor or any of their respective successors and assigns.

5. Release of Judgment. If each of the events in paragraphs 1 and 4(a) – (c) occurs, and none of the events identified in paragraph 4(d) occur, then promptly upon expiration of the 180 day period Red Bridge shall file a satisfaction of the Judgment and shall release any liens that it had previously perfected regarding the Judgment, without the offer or payment of any additional consideration by Defendants.

6. Payment of Judgment. If any of the events in paragraphs 1 and 4(a) – (c) do not occur, or if any of the events identified in paragraph 4(d) do occur, within the time periods indicated, then Red Bridge shall retain all of the consideration and performance it has received from Defendants under this Agreement up to that point in time, and, in addition, Red Bridge's sole additional recourse for Defendants' failure to complete performance shall be collection of the Judgment, which Defendants shall pay as follows:

- a. Initial Payment: On or before the date that is twelve (12) months after entry of the Judgment, the Defendants shall remit One Million Dollars (\$1,000,000.00) to Red Bridge, in care of Red Bridge's counsel, by wire transfer, in the same manner specified in paragraph 1 above; and
- b. Final Payment: On or before the date that is twenty-four (24) months after entry of the Judgment, the Defendants shall remit the balance of principal and interest due on the Judgment to Red Bridge, in care of Red Bridge's counsel, by wire transfer, in the same manner specified in paragraph 1 above.
- c. Collection of Judgment: If Defendants do not pay the Judgment in the manner provided by paragraphs 6(a) & (b) above, Red Bridge may enforce and collect the Judgment by all applicable means available to it under law, regardless of whether Defendants have performed, in part, some of the activities identified in Paragraphs 1 and 4 above.

- d. Release of Judgment. If Defendants timely pay the Judgment in the manner provided in paragraphs 6(a) & (b) above, then Red Bridge shall file a satisfaction of the Judgment and shall release any liens that it had previously perfected regarding the Judgment, without the offer or payment of any additional consideration by Defendants.
- e. Stay of Enforcement of Judgment. So long as Defendants are timely in paying the Judgment in accordance with paragraphs 6(a) & (b) above, Red Bridge shall not take any actions to enforce or collect the Judgment.

7. Release of Claims by Red Bridge Against the Defendants: Effective upon entry of the Judgment, Red Bridge releases and forever discharges Defendants, and their respective managers, subsidiaries, parents, officers, directors, partners, attorneys, agents and the employees, agents, attorneys, representatives, predecessors, successors and assigns thereof (collectively, the "Defendants' Release Parties") from any and all causes of action in law or in equity, suits, debts, liens, contracts, liabilities, claims, demands, damages, losses, fees, costs, or expenses, set offs, or claims for recoupment, of any nature whatsoever, known or unknown, fixed or contingent that Red Bridge may have against the Defendants' Release Parties based upon any claims, acts or omissions that are the subject of the Lawsuit and that arose prior to the date of this Agreement, *provided however*, the release provided under this paragraph is not a release of any obligations, claims or causes of action arising or resulting from this Agreement, from the Judgment entered in connection herewith, or from a default under or breach of this Agreement.

8. Release of Claims by Defendants Against Red Bridge. Effective upon entry of the Judgment, Defendants, and each of them, release and forever discharge Red Bridge, and its their respective managers, subsidiaries, parents, officers, directors, partners, attorneys, agents and the employees, agents, attorneys, representatives, predecessors, successors and assigns thereof (collectively, the "Red Bridge Release Parties") from any and all causes of action in law or in equity, suits, debts, liens, contracts, liabilities, claims, demands, damages, losses, fees, costs, or expenses, set offs, or claims for recoupment, of any nature whatsoever, known or unknown, fixed or contingent that Defendants may have against the Red Bridge Release Parties based upon any claims, acts or omissions that are the subject of the Lawsuit and that arose prior to the date of this Agreement, *provided however*, the release provided under this paragraph is not a release of any obligations, claims or causes of action arising or resulting from this Agreement, from the Judgment entered in connection herewith, or from a default under or breach of this Agreement.

9. Representations and Warranties Regarding Authority. The Parties represent and warrant to each other that they have full power and authority to enter into this Agreement, that there has been no assignment or other transfer of a claim, cause of action, liability or asset which might affect or impair the performance which is the subject of this Agreement, that they are not now a debtor in, or the subject of, any voluntary or involuntary bankruptcy or receivership proceeding, and that executing and performing this Agreement does not violate the terms of any other agreement to which they are a party.

10. Attorneys' Fees and Costs. Each of the Parties shall bear its own respective attorneys' fees and costs incurred in connection with the preparation and implementation of this Agreement, *provided, however*, that if any legal action is taken to enforce any term or provision of this Agreement, the Parties agree that the prevailing party in such action shall be entitled to

payment of its attorneys' fees, expenses and costs incurred to enforce the terms of this Agreement, including enforcing the same in any bankruptcy case, receivership proceeding or appeal.

11. Effectuation of Agreement. The Parties agree to perform any other or further acts, and execute and deliver any other or further documents, as may be necessary or appropriate to implement this Agreement.

12. Binding Effect. This Agreement shall be binding upon each of the Parties, and their respective successors-in-interest, heirs and/or assigns. All representations and warranties made herein shall survive execution of this Agreement and shall at all times subsequent to the execution of this Agreement remain binding and fully enforceable.

13. Court Jurisdiction. Any claims or causes of action, whether legal or equitable, arising out of or based upon this Agreement or related documents, including but not limited to interpretation and/or enforcement of this Agreement, shall be commenced in the Court. The Parties hereby consent to the jurisdiction, venue and process of the Court.

14. Governing Law. This Agreement is made pursuant to and shall be governed by laws of the State of Utah and, where applicable, federal bankruptcy law.

15. Construction of Agreement. This Agreement shall be construed as a whole in accordance with its fair meaning and in accordance with governing law. This Agreement has been negotiated by each of the Parties (or their respective counsel) and the language of the Agreement shall not be construed for or against any particular party.

16. Voluntary Agreement. This Agreement has been carefully read by the Parties and has been reviewed by the Parties' respective legal counsel; the contents hereof are known and understood by the Parties; and each of the Parties acknowledges that such party is under no duress or undue influence and that each of the Parties executes this Agreement as its own free and voluntary act.

17. Integration and Amendments. This Agreement, and all documents identified as exhibits to this Agreement, shall constitute the entire agreement and understanding of and between the Parties in relation to matters described herein, and no statements, representations, inducements or promises other than as expressly set forth herein have been given or received by any of the Parties (nor by their respective agents, employees, attorneys or representatives) in return for same. All negotiations, oral conversations, statements, representations and/or agreements leading up to the execution of this Agreement are merged herewith and shall not be the basis for any legal rights, claims or defenses in relation to any litigation or otherwise. No parole or extrinsic evidence may be used to contradict any of the terms of this Agreement. Any amendment to this Agreement must be in writing, signed by duly authorized representatives of the Parties hereto, and specifically state the intent of the Parties to amend this Agreement.

18. Condemnation. If, prior to the execution, delivery and recording of the Access and Utility Easement, the Strip Parcels, or any portion thereof, are either condemned by a governmental agency or municipality, or if any condemnation proceeding regarding the Strip Parcels is initiated by any such governmental agency or municipality, then Defendants shall

provide written notice to Red Bridge of any such proceeding and shall consent to the participation and intervention by Red Bridge in any such proceeding as a party in interest.

19. Counterparts. This Agreement may be executed by the Parties hereto in any number of identical counterparts, each of which, once executed and delivered in accordance with the terms of this Agreement, will be deemed an original with all such counterparts taken together constituting one and the same instrument. Delivery by facsimile, encrypted e-mail or e-mail file attachment of any such executed counterpart to this Agreement will be deemed the equivalent of the delivery of the original executed agreement or instrument.

20. Third-Party Beneficiaries. Nothing in this Agreement, express or implied, is intended to confer upon any person, other than the Parties, any rights, remedies, obligations or liabilities of any nature whatsoever.

21. Waiver. Acceptance by any of the Parties of any performance less than required hereby shall not be deemed to be a waiver of the rights of such party to enforce all of the terms and conditions hereof. Except as otherwise expressly provided herein, no waiver of any such right hereunder shall be binding unless reduced to writing and signed by the party to be charged therewith.

22. No Inducement. The Parties represent, warrant, and agree that upon executing and entering into this Agreement, they, and each of them, are not relying upon and have not relied upon any representation, promise, or statement made by anyone which is not recited, contained, or embodied in this Agreement.

23. Memorandum of Agreement. The Parties agree that either of them may record a memorandum of this Agreement against the Strip Parcels in the official records of Washington County, Utah to provide notice to the general public regarding Red Bridge's right and interest in the Strip Parcels. Such memorandum shall be sufficient to provide record notice of the Agreement, but shall not disclose the terms and conditions of the Agreement, and will be released once the conditions in paragraph 4(c) above are satisfied.

24. Notices. All notices and other communications hereunder shall be in writing and shall be deemed to have been duly given if delivered personally (including delivery by courier service), transmitted by facsimile or other electronic transmission, or mailed by registered or certified mail, postage prepaid, return receipt requested, as follows:

If to Red Bridge:

Red Bridge Capital, LLC  
c/o Cherokee & Walker Management  
Attn: Paul Erickson  
6440 So. Wasatch Boulevard  
Suite 200  
Salt Lake City, UT 84121  
Facsimile: 801-278-7818  
Email: paul@cherokeeandwalker.com

If to Defendants:

Mellon Valley, LLC  
1300 South Sand Hollow Rd.  
Hurricane, UT 84737



With copy to:

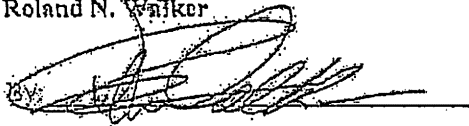
David E. Leta  
 Snell & Wilmer L.L.P.  
 15 West South Temple, Ste 1200  
 Salt Lake City, UT 84101  
 Facsimile: 801-257-1800  
 Email: dleta@swlaw.com

With copy to:

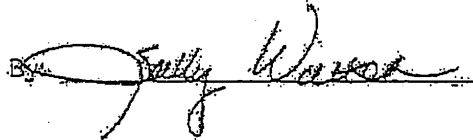
Clifford V. Dunn, Esq.  
 Dunn Law Firm  
 P.O. Box 2318  
 110 West Tabernacle  
 St. George, UT 84771-2318  
 Facsimile: (435) 628-4145  
 Email: cvdunn@dunnfirm.com

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date and year first above written.

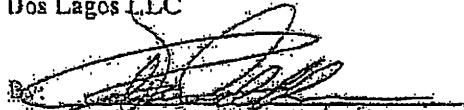
Roland N. Walker

By: 

Sally Walker

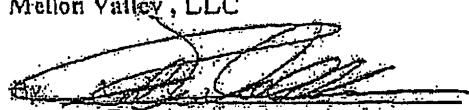
By: 

Dos Lagos LLC

By: 

Name: Roland N. Walker  
 Its: MANAGER

Mellon Valley, LLC

By: 

Name: Roland N. Walker  
 Its: MANAGER

Red Bridge Capital, LLC

By: Cherokee & Walker Management, LLC.  
 Its manager

by: \_\_\_\_\_

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

Its: Manager

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

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

Its: Manager

With copy to:

David E. Leta  
 Snell & Wilmer L.L.P.  
 15 West South Temple, Ste 1200  
 Salt Lake City, UT 84101  
 Facsimile: 801-257-1800  
 Email: dleta@swlaw.com

With copy to:

Clifford V. Dunn, Esq.  
 Dunn Law Firm  
 P.O. Box 2318  
 110 West Tabernacle  
 St George, UT 84771-2318  
 Facsimile: (435) 628-4145  
 Email: cvdunn@dunnfirm.com

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date and year first above written.

Roland N. Walker

Sally Walker

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

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

Dos Lagos LLC

Mellon Valley, LLC

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

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

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

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

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

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

Red Bridge Capital, LLC

By: Cherokee & Walker Management, LLC,  
 its manager

by: *S. R. P.*Name: *Shane R. P.*

Its: Manager

By: *Paul K. Erickson*Name: *Paul K. Erickson*

Its: Manager

**EXHIBIT A**  
**Description of Parcels A & B**

Parcel A	100.00
Parcel B	100.00
Parcel C	100.00
Parcel D	100.00
Parcel E	100.00
Parcel F	100.00
Parcel G	100.00
Parcel H	100.00
Parcel I	100.00
Parcel J	100.00
Parcel K	100.00
Parcel L	100.00
Parcel M	100.00
Parcel N	100.00
Parcel O	100.00
Parcel P	100.00
Parcel Q	100.00
Parcel R	100.00
Parcel S	100.00
Parcel T	100.00
Parcel U	100.00
Parcel V	100.00
Parcel W	100.00
Parcel X	100.00
Parcel Y	100.00
Parcel Z	100.00

17162061.3

## PARCELS A AND B

## PARCEL A:

Lender SR-9 Parcel A

Beginning at point on the Southerly line of Highway SR-9, said point being South 00°15'22" West 878.00 feet along the section line and West 2061.87 feet from the Northeast Corner of Section 1, Township 42 South, Range 14 West, Salt Lake Base and Meridian, and running thence South 16°20'36" East 892.79 feet thence South 76°45'10" West 864.99 feet; thence North 00°10'33" East 955.76 feet to point on the Southerly line of said SR-9; thence South 89°50'12" East 254.45 feet along said Southerly line; thence North 73°19'03" East 348.01 feet along said Southerly line to the Point of Beginning.

## PARCEL B:

Lender SR-9 Parcel B

Beginning at point on the Southerly line of Highway SR-9, said point being South 00°15'22" West 666.57 feet along the section line and West 1344.61 feet from the Northeast Corner of Section 1, Township 42 South, Range 14 West, Salt Lake Base and Meridian, and running thence South 16°20'36" East 1306.80 Feet; thence South 73°39'24" West 500.00 feet; thence North 16°20'36" West 1306.80 feet to point on the Southerly line of said SR-9, thence North 73°39'24" East 500.00 feet along said Southerly line to the Point of Beginning.



**EXHIBIT B**  
**Strip Parcels Legal Description**

17162062.8

## PARCEL A

Beginning at a point on the east side of Sand Hollow Road where it intersects with State Road 9, said point being North 89°46'47" West 1,887.49 feet along the center section line and North 1,820.64 feet from the East Quarter Corner of Section 1, Township 42 South, Range 14 West, Salt Lake Base & Meridian, and running;

thence easterly 25.27 feet along an arc of a 22,763.31 foot radius curve to the right (center bears South 16°24'24" East, long chord bears North 73°37'31" East 25.27 feet with a central angle of 00°03'49") along the southerly line of State Road 9;

thence North 73°39'24" East 48.49 feet along the southerly line of said State Road 9;

thence South 16°20'36" East 1,306.80 feet;

thence South 73°39'35" West 338.52 feet to the easterly line of Sand Hollow Road;

thence northerly the following (5) courses along the easterly line of said Sand Hollow Road;

thence North 16°56'45" East 51.31 feet;

thence northerly 172.48 feet along an arc of a 684.00 foot radius curve to the left (center bears North 69°44'51" West, long chord bears North 13°01'44" East 172.02 feet with a central angle of 14°26'51");

thence northerly 30.04 feet along an arc of a 931.00 foot radius curve to the right (center bears South 84°11'42" East, long chord bears North 06°43'46" East 30.04 feet with a central angle of 01°50'55");

thence North 07°39'13" East 177.80 feet;

thence northerly 256.71 feet along an arc of a 642.00 foot radius curve to the left (center bears North 82°20'47" West, long chord bears North 03°48'06" West 255.00 feet with a central angle of 22°54'37");

thence North 15°15'24" West 675.11 feet to the Point of Beginning.

Less and Excepting the following Questar Gas Parcel:

Beginning at a point being South 00°15'22" East 2,347.23 feet along the section line and North 89°35'08" West 2,572.33 feet from the Northeast corner of Section 1, Township 42 South, Range 14 West, Salt Lake Base & Meridian, and running;

thence North 89°35'08" West 75.00 feet;

thence North 00°10'33" East 100.00 feet;

thence South 89°35'08" East 75.00 feet;

thence South 00°10'33" West 100.00 feet to the Point of Beginning.

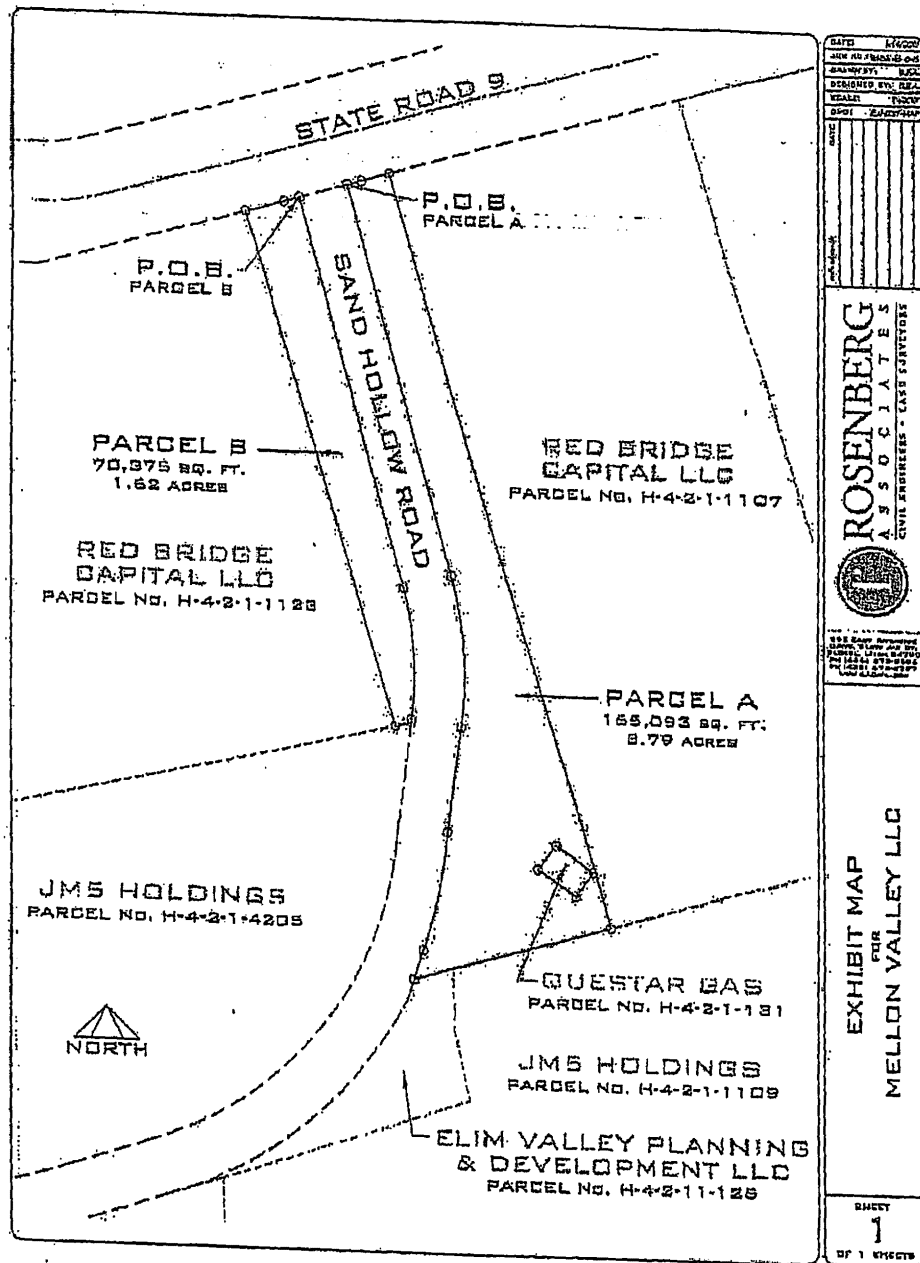
Containing 165,093 square feet or 3.79 acres.

## PARCEL B

Beginning at a point on the west side of Sand Hollow Road where it intersects with State Road 9, said point being North  $89^{\circ}46'47''$  West 1,968.05 feet along the center section line and North 1,796.45 feet from the East Quarter Corner of Section 1, Township 42 South, Range 14 West, Salt Lake Base & Meridian, and running;

thence southerly the following (3) courses along the westerly line of Sand Hollow Road;  
thence South  $15^{\circ}15'24''$  East 673.27 feet;  
thence southerly 223.12 feet along an arc of a 558.00 foot radius curve to the right (center bears South  $74^{\circ}44'36''$  West, long chord bears South  $03^{\circ}48'06''$  East 221.64 feet with a central angle of  $22^{\circ}54'37''$ );  
thence South  $07^{\circ}39'13''$  West 5.82 feet;  
thence South  $76^{\circ}45'10''$  West 27.71 feet;  
thence North  $16^{\circ}20'36''$  West 892.79 feet to the southerly line of State Road 9;  
thence North  $73^{\circ}19'03''$  East 65.46 feet along said southerly line;  
thence easterly 25.49 feet along an arc of a 22,763.31 foot radius curve to the right (center bears South  $16^{\circ}40'57''$  East, long chord bears North  $73^{\circ}20'59''$  East 25.49 feet with a central angle of  $00^{\circ}03'51''$ ) along said southerly line to the Point of Beginning.

Containing 70,374 square feet or 1.62 acres.



17162062.3



**EXHIBIT C**  
**Form of Judgment**

17162062.8

David E. Leta (1937)  
 Timothy J. Dance (11553)  
 SNEEL & WILMER LLP.  
 15 West South Temple, Ste 1200  
 Salt Lake City, UT 84101  
 Telephone: (801) 257-1900  
 Facsimile: (801) 257-1800  
 dleta@swlaw.com  
 tdance@swlaw.com

*Attorneys for Plaintiff*

IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR  
 SALT LAKE COUNTY, STATE OF UTAH

RED BRIDGE CAPITAL, LLC, a Utah  
 limited liability company,

Plaintiff,

vs.

DOS LAGOS, LLC, a Utah limited liability  
 company, MELLON VALLEY, LLC, a Utah  
 limited liability company, and ROLAND N.  
 WALKER, an individual and SALLY  
 WALKER, an individual,

Defendants.

STIPULATED FINAL JUDGMENT  
 AGAINST DEFENDANTS

Case No. 120902931

Judge John Paul Kennedy

Upon stipulation of the parties, and good cause appearing, it is hereby

ORDERED, ADJUDGED AND DECREED that:

- Judgment is hereby entered in favor of Plaintiff, Red Bridge Capital, LLC, a Utah Limited Liability Company ("Red Bridge"), and against Dos Lagos, L.L.C., a Utah Limited Liability Company, Mellon Valley, LLC, a Utah Limited Liability Company, Roland

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N. Walker, an individual residing in Idaho, and Sally Walker, an individual residing in Idaho (collectively, the "Defendants"), jointly and severally, in the amount of \$2,000,000.00 for all claims asserted by Plaintiff against Defendants in this action.

2. Interest shall accrue on the unpaid portion of this Judgment at the rate of 15% per annum from date of entry until paid in full.

3. This Judgment may be augmented by the reasonable costs, expenses and attorneys' fees, incurred by Red Bridge in collecting or enforcing this Judgment, with the same being established pursuant to Utah Rule of Civil Procedure 73.

\*\*\*\*\* end of judgment\*\*\*\*\*

APPROVED AS TO FORM

/s/ Clifford V. Dunn  
Clifford V. Dunn  
Adam C. Dunn  
The Dunn Law Firm  
Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on the \_\_\_\_ day of May, 2012, I caused a true and correct copy of the foregoing to be served by email on Defendants' counsel at the email addresses below, and by first class U.S. Mail, postage prepaid, to the Defendants' counsel at the following address:

DUNN LAW FIRM  
Clifford V. Dunn (933)  
Adam C. Dunn (10926)  
Michael C. Dunn (10927)  
P. O. Box 2318  
110 West Tabernacle  
St. George, Utah 84771-2318  
[cvdunn@dunnfirm.com](mailto:cvdunn@dunnfirm.com)  
[acdunn@dunnfirm.com](mailto:acdunn@dunnfirm.com)  
[mdunn@dunnfirm.com](mailto:mdunn@dunnfirm.com)

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**EXHIBIT D**  
Form of Easement Termination

17163061.8

When recorded, return to:

David E. Ieta, Esq.  
Snell & Wilmer L.L.P.  
15 West South Temple, Suite 1200  
Salt Lake City, Utah 84101

PARTIAL TERMINATION OF MASTER COMMUNICATIONS EASEMENT FOR  
ELIM VALLEY

THIS PARTIAL TERMINATION OF MASTER COMMUNICATIONS EASEMENT FOR ELIM VALLEY ("Termination") is entered into as of May 15, 2013, by and between EVD COMMUNICATIONS INFRASTRUCTURE, LLC, a Utah limited liability company ("EVD"), whose address is 1300 South Sand Hollow Road, Hurricane, UT 84737, and RED BRIDGE CAPITAL, LLC, a Utah limited liability company ("Red Bridge"), whose address is c/o Cherokee and Walker Management, 6440 South Wasatch Boulevard, Suite 200, Salt Lake City, Utah 84121.

WITNESSETH:

WHEREAS, Red Bridge is the owner of fee simple title to that certain real property located in Washington County, Utah and more particularly described in Exhibit A attached hereto and incorporated herein by this reference (the "Red Bridge Property"); and

WHEREAS, EVD and Roland Nell Family Limited Partnership, a Utah limited partnership ("Original Grantor"), entered into that certain Master Communications Easement for Elim Valley dated February 14, 2007 and recorded February 16, 2007, as Entry No. 20070008386, in the official records of Washington County, Utah (the "Easement Agreement") encumbering certain real property described in the Easement Agreement (the "Easement Property"); and

WHEREAS, Red Bridge is the successor-in-interest to the Original Grantor as the owner of the Red Bridge Property, which is part of the Easement Property; and

WHEREAS, EVD and Red Bridge have agreed to partially terminate the Easement Agreement with regard to the Red Bridge Property, all as more particularly described hereinbelow.

NOW, THEREFORE, for Ten Dollars and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto do hereby covenant, stipulate and agree as follows:

1. Recitals. The foregoing recitals are true and correct and are incorporated herein by reference.

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2. Termination and Release. EVD and Red Bridge hereby release and terminate the Easement Agreement as to the Red Bridge Property and declare that any and all easements, sub-easements, licenses, covenants, conditions, restrictions and other rights and obligations granted or created or imposed under the Easement Agreement with respect to the Red Bridge Property are hereby released, relinquished, surrendered and abandoned and are of no further force or effect and shall not be an encumbrance on the Red Bridge Property. EVD hereby relinquishes to Red Bridge any and all right, title, and interest in the Red Bridge Property. The remaining Easement Property still covered by the Easement Agreement is not affected in any way and all rights and obligations pursuant to the Easement Agreement with respect to such remaining property shall continue in full force and effect.

3. EVD's Representations. EVD represents to Red Bridge that it has not previously assigned any of its rights or interests as "Grantee" in and to the Easement Agreement with respect to the Red Bridge Property to any third party, and EVD is the sole holder of all such rights.

4. Authority. Each of the parties hereto represents and warrants to the others that it has the full capacity, right, power and authority to execute, deliver and perform this Termination, and all required actions, consents and approvals therefore have been duly taken and obtained.

5. Binding Effect. This Termination shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

6. Counterparts. This Termination may be executed in two or more counterparts, all of which together shall constitute one and the same instrument. There may be duplicate originals of this Termination, only one of which need be produced as evidence of the terms hereof.

[SIGNATURES FOLLOW ON NEXT PAGE]



IN WITNESS WHEREOF, EVD and Red Bridge have executed this Termination as of the day and year first above written.

EVD:

EVD COMMUNICATIONS  
INFRASTRUCTURE, LLC,  
a Utah limited liability company

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

RED BRIDGE:

RED BRIDGE CAPITAL, LLC, a Utah limited  
liability company  
By: Cherokee & Walker Management, LLC, its  
manager

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: Manager

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: Manager

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STATE OF \_\_\_\_\_ )  
 ) ss.  
 COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2013, by  
 EVD COMMUNICATIONS INFRASTRUCTURE, LLC, a Utah limited liability company,  
 on behalf of the company.

\_\_\_\_\_  
 NOTARY PUBLIC  
 Residing at: \_\_\_\_\_

My Commission Expires:

\_\_\_\_\_

STATE OF \_\_\_\_\_ )  
 ) ss.  
 COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2013, by \_\_\_\_\_ and \_\_\_\_\_  
 managers of Cherokee & Walker Management, LLC, manager of RED BRIDGE CAPITAL,  
 LLC, a Utah limited liability company, on behalf of the company.

\_\_\_\_\_  
 NOTARY PUBLIC  
 Residing at: \_\_\_\_\_

My Commission Expires:

\_\_\_\_\_

EXHIBIT A  
LEGAL DESCRIPTION OF RED BRIDGE PROPERTY

PARCEL A:

Lender SR-9 Parcel A

Beginning at point on the Southerly line of Highway SR-9, said point being South 00°15'22" West 878.00 feet along the section line and West 2061.87 feet from the Northeast Corner of Section 1, Township 42 South, Range 14 West, Salt Lake Base and Meridian, and running thence South 16°20'36" East 892.79 feet thence South 76°45'10" West 864.99 feet; thence North 00°10'33" East 955.76 feet to point on the Southerly line of said SR-9; thence South 89°50'12" East 254.45 feet along said Southerly line; thence North 73°19'03" East 348.01 feet along said Southerly line to the Point of Beginning.

PARCEL B:

Lender SR-9 Parcel B

Beginning at point on the Southerly line of Highway SR-9, said point being South 00°15'22" West 666.57 feet along the section line and West 1344.61 feet from the Northeast Corner of Section 1, Township 42 South, Range 14 West, Salt Lake Base and Meridian, and running thence South 16°20'36" East 1306.80 feet; thence South 73°39'24" West 500.00 feet; thence North 16°20'36" West 1306.80 feet to point on the Southerly line of said SR-9; thence North 73°39'24" East 500.00 feet along said Southerly line to the Point of Beginning.

Tax Id. Nos: H-4-2-1-1123 and H-4-2-1-1107

**EXHIBIT E**  
**Form of Access and Utility Easement**

17162062.8

When recorded, return to:

David E. Leta, Esq.  
Snell & Wilmer L.L.P.  
15 West South Temple, Suite 1200  
Salt Lake City, Utah 84101

#### ACCESS AND UTILITY EASEMENT

THIS ACCESS AND UTILITY EASEMENT ("Agreement") is made and entered into as of May 15, 2013 ("Effective Date"), by and between MELION VALLEY, LLC, a Utah limited liability company ("Grantor"), and RED BRIDGE CAPITAL, LLC, a Utah limited liability company ("Grantee"). Grantor and Grantee are sometimes hereinafter referred to individually as a "Party" and collectively as the "Parties."

#### RECTALS

A. Grantee is the owner of two parcels of vacant, developable real property, each consisting of approximately 15 acres, that are located in Washington County, Utah, near the City of Hurricane, more particularly described on Exhibit A attached hereto and incorporated by this reference (the "Properties").

B. The Properties are each separated by certain strip parcels that are owned by Grantor (the "Strip Parcels") and that are parallel to Sand Hollow Road, which bisects the Strip Parcels. As of the Effective Date, the Strip Parcels are vacant. The Strip Parcels are described on Exhibit B which is attached hereto.

C. Currently there is inadequate or nonexistent vehicular access from the Properties to Sand Hollow Road that would permit reasonable commercial and/or residential development of the Properties without further agreement between Grantor and Grantee. The most cost effective and logical access from the Properties to Sand Hollow Road would be across the Strip Parcels.

D. Pursuant to a Settlement Agreement among Grantor, Grantee and certain other parties dated as of the Effective Date ("Settlement Agreement"), Grantor agreed to grant to Grantee (i) an easement burdening the Strip Parcels and permitting each of the Properties to have access to Sand Hollow Road and (ii) an easement over the Strip Parcels for certain underground and above-ground utility lines and related facilities and improvements, subject to the terms set forth in this Agreement. Capitalized terms used in this Agreement and not defined in this Agreement shall have the meanings given to such terms in the Settlement Agreement.

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# AGREEMENT

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

1. Incorporation of Recitals. The recitals set forth above are incorporated in this Agreement as if fully set forth in the body of this Agreement.

2. Grant of Easements.

(a) Access Easement. Grantor hereby grants to Grantee and its Permittees (defined later) a perpetual, exclusive easement over, upon and across the Strip Parcels for the purpose of vehicular, pedestrian, and other ingress, egress and access to and from Sand Hollow Road in at least two (2) separate locations for each of the Properties (a total of four (4) locations) ("Access Easement"), with the specific location, width, and description of the Access Easement ("Access Easement Area") to be determined at the sole discretion of Grantee and at a future date, *provided however*, that the specific location and width of the Access Easements shall be reasonable for typical commercial and/or residential development of the Properties. The term "Permittees" shall mean Grantee's contractors, employees, consultants, agents, representatives, invitees, licensees, utility providers, successors and assigns. Grantor and its Permittees shall have the right to construct, install, lay, maintain, operate, repair, inspect, protect, remove and replace within the Access Easement Area any roadway and related improvements (collectively, "Roadway Improvements") as may be necessary or appropriate, as determined by Grantee in its sole and absolute discretion, to permit typical commercial and/or residential development of the Properties, including, without limitation, the paving, curbing, striping, directional signs, a drive aisle, artificial lighting facilities, and other related road improvements (including landscaping) constructed by Grantee from time to time (including any reconfiguration thereof) on any portion of the Access Easement Area.

(b) Utility Easement. Grantor hereby grants a perpetual, exclusive easement to Grantee and its Permittees in, over, under, across, and through the Strip Parcels to construct, install, lay, maintain, operate, repair, inspect, protect, remove and replace underground and above-ground utility lines and facilities (collectively, "Utility Improvements") as may be necessary or appropriate, as determined by Grantee in its sole and absolute discretion, to permit typical commercial and/or residential development of the Properties, together with a right of access to the Strip Parcels to exercise its rights granted under this subsection (b) ("Utility Easement"), *provided, however*, the installation of all such utilities shall comply with applicable zoning and development rules, regulations, statutes and covenants. The specific location and description of the Utility Easement ("Utility Easement Area") shall be within the same location as the Access Easement. The Access Easement and the Utility Easement are sometimes hereinafter referred to individually as the "Easements."

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3. Construction, Maintenance, and Repairs. The construction, maintenance, and repairs of all Roadway Improvements and Utility Improvements (collectively, "Improvements") shall be at no cost to the Grantor, except to the extent that any such maintenance and repairs are necessitated by the active or passive negligent or willful act of Grantor or its contractors, employees, consultants, agents, representatives, invitees, licensees ("Grantor Permittees"), in which case Grantor shall be responsible for the costs of such maintenance and repairs and shall reimburse Grantee for the cost of such maintenance and repairs, together with interest thereon at the rate of 12% per annum from the date such costs are incurred until paid.

4. Use and Improvements by Grantor. Neither Grantor nor Grantor Permittees shall make any use of the Access Easement Area, the Utility Easement Area, and the Improvements that interferes with the rights granted to Grantee and its Permittees under this Agreement. Grantor shall have no right erect any wall, fence or other barrier on the Access Easement Area and the Utility Easement Area (collectively, "Easement Area"). Grantor shall not construct or cause the construction of any buildings or permanent structures on the Easement Area. To the extent that any Grantor desires to make any improvements to the Easement Area, or any portion thereof, Grantor shall first obtain the written consent of Grantee (which consent may be not be unreasonably withheld) to the proposed improvements, including the plans and specifications therefor. Grantor shall be responsible for paying any and all ad valorem taxes and assessments levied against the entire Grantor Property, including the Strip Parcels and the Easement Area, and shall not suffer or permit such taxes and assessments to become delinquent.

5. Grantor's Representations and Warranties, Priority of Grantee's Estate. Grantor warrants and represents to Grantee that as of the Effective Date, Grantor has good and indefeasible fee simple title to the Strip Parcels and has full right, power and authority to grant the Easements to Grantee. Grantor further represents and warrants that, on and after the Effective Date, it will not enter into any encumbrances, agreements, covenants or restrictions against the Strip Parcels. Grantor will indemnify and hold Grantee harmless if any of the foregoing representations and warranties proves to be untrue. Grantor further warrants that, within the one-hundred eighty (180) days after entry of the Judgment, there shall be no mortgages, deeds of trust, other instruments of security, or other liens and encumbrances (other than the lien for real estate taxes not yet due and payable) affecting the Strip Parcels, including the Access Easement Area and the Utility Easement Area, which are superior to this Agreement or which could result in the termination of this Agreement, or which could limit Grantee's rights hereunder.

6. Notices. All notices and other communications hereunder shall be in writing and shall be deemed to have been duly given if delivered personally (including delivery by courier service), transmitted by facsimile or other electronic transmission, or mailed by registered or certified mail, postage prepaid, return receipt requested, as follows:

To Grantor:	Mellon Valley, LLC 1300 South Sand Hollow Rd Hurricane, UT 84737
-------------	--

With a copy to: Clifford V. Dunn, Esq.  
 Dunn Law Firm  
 P.O. Box 2318  
 110 West Tabernacle  
 St. George, UT 84771-2318  
 Facsimile: (435) 628-4145  
 Email: cvdunn@dunnfirm.com

To: Red Bridge Capital, LLC  
 c/o Cherokee and Walker Management  
 Attn: Paul Erickson  
 6440 South Wasatch Boulevard, Suite 200  
 Salt Lake City, Utah 84121  
 Facsimile: 801-278-7818  
 Email: paul@cherokeeandwalker.com

With copy to: David E. Leta, Esq.  
 Snell & Wilmer L.L.P.  
 15 West South Temple, Suite 1200  
 Salt Lake City, Utah 84101  
 Facsimile: 801-257-1800  
 Email: dleta@swlaw.com

or to such other address as either Party may from time to time designate by notice in writing to the other Party. Rejection, refusal to accept delivery or inability to deliver due to changed address of which no notice has been given shall be deemed receipt by the addressee.

7. Headings. Headings in this Agreement are for convenience only and shall not be used to interpret or construe its provisions.

8. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Utah, without giving effect to its choice of law principles.

9. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed as an original but all of which together shall constitute one and the same instrument.

10. Entire Agreement. This Agreement, together with the Settlement Agreement and any agreements executed in accordance with the Settlement Agreement, supersedes all prior understandings, representations and agreements between the Parties with regard to the subject matter hereof and there are no other understandings, representations, warranties or agreements between them.



11. Attorneys' Fees. If either Party brings or commences any legal action or proceeding to enforce any of the terms of this Agreement, the prevailing Party, if any, in such action shall be entitled to recover from the non-prevailing Party all reasonable attorneys' fees that may have been incurred, including any and all costs and expenses incurred in enforcing, perfecting and executing such judgment, and including all costs of appeal.

12. Amendment. Neither this Agreement nor any provision hereof may be changed, amended, modified, waived or discharged orally or by any course of dealing, but only by an instrument in writing signed by the Party against which enforcement of the change, amendment, modification, waiver or discharge is sought.

13. Authority. Each party hereto hereby represents, warrants and covenants unto the other that this Agreement has been duly authorized, executed and delivered by such party and constitutes the valid, legal and binding agreements and obligations of such party enforceable against such party in accordance with the terms hereof.

14. Severability. If any provision of this Agreement, or portion thereof, or the application thereof to any person or circumstances, shall, to any extent be held invalid, inoperative or unenforceable, the remainder of this Agreement, or the application of such provision or portion thereof to any other persons or circumstances, shall not be affected thereby; it shall not be deemed that any such invalid provision affects the consideration for this Agreement; and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

15. No Joint Venture. Nothing in this Agreement shall be construed to make the Parties partners or joint venturers or render any of the Parties liable for the debts or obligations of the other.

16. Legal and Equitable Relief. In the event of any breach, or attempted or threatened breach, by any Party to this Agreement, of any of the terms, covenants or conditions hereof, the other Party shall be entitled to full and adequate relief by injunction and/or such other available legal or equitable remedies from the consequences of such breach. The remedies herein provided shall be cumulative as to all other remedies permitted by law or in equity.

17. Waiver. The waiver of, or failure to enforce, any breach of or violation of any of the foregoing obligations or covenants shall not be deemed to be a waiver of the right to enforce, or be deemed an abandonment of, the particular obligation violated or any of the obligations; nor shall it be deemed to be a waiver of the right to enforce any subsequent breach or violation of this Agreement or any of the provisions set forth herein. The foregoing shall apply regardless of whether or not any party has knowledge of the breach of the violation.

18. No Public Dedication. The provisions of this Agreement are not intended to and do not constitute a dedication for public use of the Grantor Property, or any portion thereof, and the rights herein created are private and for the benefit only of the Parties, their successors and assigns.

19. Running With the Land; Successors and Assigns. All provisions of this Agreement, including the benefits and burdens, are expressly declared to touch and concern and

## EXHIBIT A

## LEGAL DESCRIPTION OF PROPERTIES

## PARCEL A:

Lender SR-9 Parcel A

Beginning at point on the Southerly line of Highway SR-9, said point being South  $00^{\circ}15'22''$  West 878.00 feet along the section line and West 2061.87 feet from the Northeast Corner of Section 1, Township 42 South, Range 14 West, Salt Lake Base and Meridian, and running thence South  $16^{\circ}20'36''$  East 892.79 feet; thence South  $76^{\circ}45'10''$  West 864.99 feet; thence North  $00^{\circ}10'33''$  East 955.76 feet to point on the Southerly line of said SR-9; thence South  $89^{\circ}50'12''$  East 254.45 feet along said Southerly line; thence North  $73^{\circ}19'03''$  East 348.01 feet along said Southerly line to the Point of Beginning.

## PARCEL B:

Lender SR-9 Parcel B

Beginning at point on the Southerly line of Highway SR-9, said point being South  $00^{\circ}15'22''$  West 666.57 feet along the section line and West 1344.61 feet from the Northeast Corner of Section 1, Township 42 South, Range 14 West, Salt Lake Base and Meridian, and running thence South  $16^{\circ}20'36''$  East 1306.80 feet; thence South  $73^{\circ}39'24''$  West 500.00 feet; thence North  $16^{\circ}20'36''$  West 1306.80 feet to point on the Southerly line of said SR-9, thence North  $73^{\circ}39'24''$  East 500.00 feet along said Southerly line to the Point of Beginning.

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**EXHIBIT B**  
**Strip Parcels Legal Description**

17142042.B

## PARCEL A

Beginning at a point on the east side of Sand Hollow Road where it intersects with State Road 9, said point being North  $89^{\circ}46'47''$  West 1,827.49 feet along the center section line and North 1,820.64 feet from the East Quarter Corner of Section 1, Township 42 South, Range 14 West, Salt Lake Base & Meridian, and running;

thence easterly 25.27 feet along an arc of a 22,763.31 foot radius curve to the right (center bears South  $16^{\circ}24'24''$  East, long chord bears North  $73^{\circ}37'31''$  East 25.27 feet with a central angle of  $00^{\circ}03'49''$ ) along the southerly line of State Road 9;  
 thence North  $73^{\circ}39'24''$  East 48.49 feet along the southerly line of said State Road 9;  
 thence South  $16^{\circ}20'36''$  East 1,306.80 feet;  
 thence South  $73^{\circ}39'35''$  West 338.52 feet to the easterly line of Sand Hollow Road;  
 thence northerly the following (5) courses along the easterly line of said Sand Hollow Road;  
 thence North  $16^{\circ}56'45''$  East 51.31 feet;  
 thence northerly 172.48 feet along an arc of a 684.00 foot radius curve to the left (center bears North  $69^{\circ}44'51''$  West, long chord bears North  $13^{\circ}01'44''$  East 172.02 feet with a central angle of  $14^{\circ}26'51''$ );  
 thence northerly 30.04 feet along an arc of a 931.00 foot radius curve to the right (center bears South  $84^{\circ}11'42''$  East, long chord bears North  $06^{\circ}43'46''$  East 30.04 feet with a central angle of  $01^{\circ}50'55''$ );  
 thence North  $07^{\circ}39'13''$  East 177.80 feet;  
 thence northerly 256.71 feet along an arc of a 642.00 foot radius curve to the left (center bears North  $82^{\circ}20'47''$  West, long chord bears North  $03^{\circ}48'06''$  West 255.00 feet with a central angle of  $22^{\circ}54'37''$ );  
 thence North  $15^{\circ}15'24''$  West 675.11 feet to the Point of Beginning.

Less and Excepting the following Questar Gas Parcel:

Beginning at a point being South  $00^{\circ}15'22''$  East 2,347.23 feet along the section line and North  $89^{\circ}35'08''$  West 2,572.33 feet from the Northeast corner of Section 1, Township 42 South, Range 14 West, Salt Lake Base & Meridian, and running;

thence North  $89^{\circ}35'08''$  West 75.00 feet;  
 thence North  $00^{\circ}10'33''$  East 100.00 feet;  
 thence South  $89^{\circ}35'08''$  East 75.00 feet;  
 thence South  $00^{\circ}10'33''$  West 100.00 feet to the Point of Beginning.

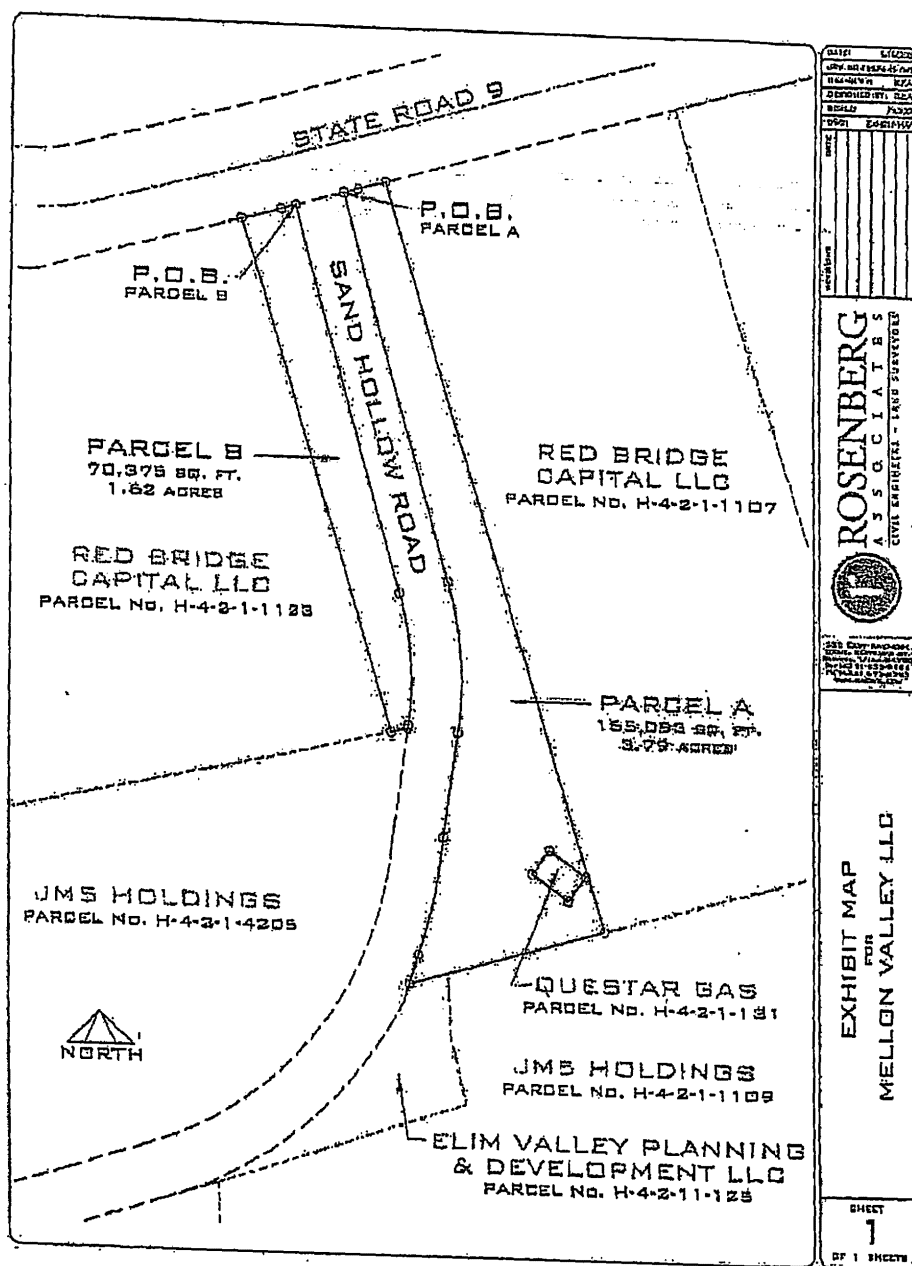
Containing 165,093 square feet or 3.79 acres.

## PARCEL B

Beginning at a point on the west side of Sand Hollow Road where it intersects with State Road 9, said point being North  $89^{\circ}46'47''$  West 1,968.05 feet along the center section line and North 1,796.45 feet from the East Quarter Corner of Section 1, Township 42 South, Range 14 West, Salt Lake Base & Meridian, and running;

thence southerly the following (3) courses along the westerly line of Sand Hollow Road;  
 thence South  $15^{\circ}15'24''$  East 673.27 feet;  
 thence southerly 223.12 feet along an arc of a 558.00 foot radius curve to the right (center bears South  $74^{\circ}44'36''$  West, long chord bears South  $03^{\circ}48'06''$  East 221.64 feet with a central angle of  $22^{\circ}54'37''$ );  
 thence South  $07^{\circ}39'13''$  West 5.82 feet;  
 thence South  $76^{\circ}45'10''$  West 27.71 feet;  
 thence North  $16^{\circ}20'36''$  West 892.79 feet to the southerly line of State Road 9;  
 thence North  $73^{\circ}19'03''$  East 65.46 feet along said southerly line;  
 thence easterly 25.49 feet along an arc of a 22,763.31 foot radius curve to the right (center bears South  $16^{\circ}40'57''$  East, long chord bears North  $73^{\circ}20'59''$  East 25.49 feet with a central angle of  $00^{\circ}03'51''$ ) along said southerly line to the Point of Beginning.

Containing 70,374 square feet or 1.62 acres.



17163062.8

**EXHIBIT F**  
Form of Special Warranty Deed

17163062.8

When recorded, return to:

David E. Leta, Esq.  
15 West South Temple, Suite 1200  
Gateway Tower West  
Salt Lake City, Utah 84101

**SPECIAL WARRANTY DEED**

For the consideration of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged: MELLON VALLEY, LLC, a Utah limited liability company ("Grantor"), hereby grants, conveys and warrants to RED BRIDGE CAPITAL, LLC, a Utah limited liability company (the "Grantee"), whose address is c/o Cherokee and Walker Management, 6440 South Wasatch Boulevard, Suite 200, Salt Lake City, Utah 84121, the following described real property situated in Washington County, Utah, together with all improvements and fixtures thereon and all rights and privileges appurtenant thereto:

**SEE EXHIBIT "A" ATTACHED HERETO.**

Grantor hereby binds itself to warrant and defend the title to the Property, as against all acts of Grantor herein and none other, subject only to real estate taxes for the year 2013, not yet due and payable.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2013.

**GRANTOR:**

MELLON VALLEY, LLC,  
a Utah limited liability company

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

1715237

17162062.8



STATE OF UTAH )

County of \_\_\_\_\_ ) ss.

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2013, by \_\_\_\_\_ the \_\_\_\_\_ of MILLION VALLEY, LLC, a Utah limited liability company, on behalf of the company.

My Commission Expires: \_\_\_\_\_

NOTARY PUBLIC

17125367

17163062.8

EXHIBIT A  
PROPERTY DESCRIPTION OF STRIP PARCELS

17192567

17162002.5

## PARCEL A

Beginning at a point on the east side of Sand Hollow Road where it intersects with State Road 9, said point being North  $89^{\circ}46'47''$  West 1,887.49 feet along the center section line and North 1,820.64 feet from the East Quarter Corner of Section 1, Township 42 South, Range 14 West, Salt Lake Base & Meridian, and running;

thence easterly 25.27 feet along an arc of a 22,763.31 foot radius curve to the right (center bears South  $16^{\circ}24'24''$  East, long chord bears North  $73^{\circ}37'31''$  East 25.27 feet with a central angle of  $00^{\circ}03'49''$ ) along the southerly line of State Road 9;

thence North  $73^{\circ}39'24''$  East 48.49 feet along the southerly line of said State Road 9;

thence South  $16^{\circ}20'36''$  East 1,306.80 feet;

thence South  $73^{\circ}39'35''$  West 338.52 feet to the easterly line of Sand Hollow Road;

thence northerly the following (5) courses along the easterly line of said Sand Hollow Road;

thence North  $16^{\circ}56'45''$  East 51.31 feet;

thence northerly 172.48 feet along an arc of a 684.00 foot radius curve to the left (center bears North  $69^{\circ}44'51''$  West, long chord bears North  $13^{\circ}01'44''$  East 172.02 feet with a central angle of  $14^{\circ}26'51''$ );

thence northerly 30.04 feet along an arc of a 931.00-foot radius curve to the right (center bears South  $84^{\circ}11'42''$  East, long chord bears North  $06^{\circ}43'46''$  East 30.04 feet with a central angle of  $01^{\circ}50'55''$ );

thence North  $07^{\circ}39'13''$  East 177.80 feet;

thence northerly 256.71 feet along an arc of a 642.00 foot radius curve to the left (center bears North  $82^{\circ}20'47''$  West, long chord bears North  $03^{\circ}48'06''$  West 255.00 feet with a central angle of  $22^{\circ}54'37''$ );

thence North  $15^{\circ}15'24''$  West 675.11 feet to the Point of Beginning.

Less and Excepting the following Questar Gas Parcel:

Beginning at a point being South  $00^{\circ}15'22''$  East 2,347.23 feet along the section line and North  $89^{\circ}35'08''$  West 2,572.33 feet from the Northeast corner of Section 1, Township 42 South, Range 14 West, Salt Lake Base & Meridian, and running;

thence North  $89^{\circ}35'08''$  West 75.00 feet;

thence North  $00^{\circ}10'33''$  East 100.00 feet;

thence South  $89^{\circ}35'08''$  East 75.00 feet;

thence South  $00^{\circ}10'33''$  West 100.00 feet to the Point of Beginning.

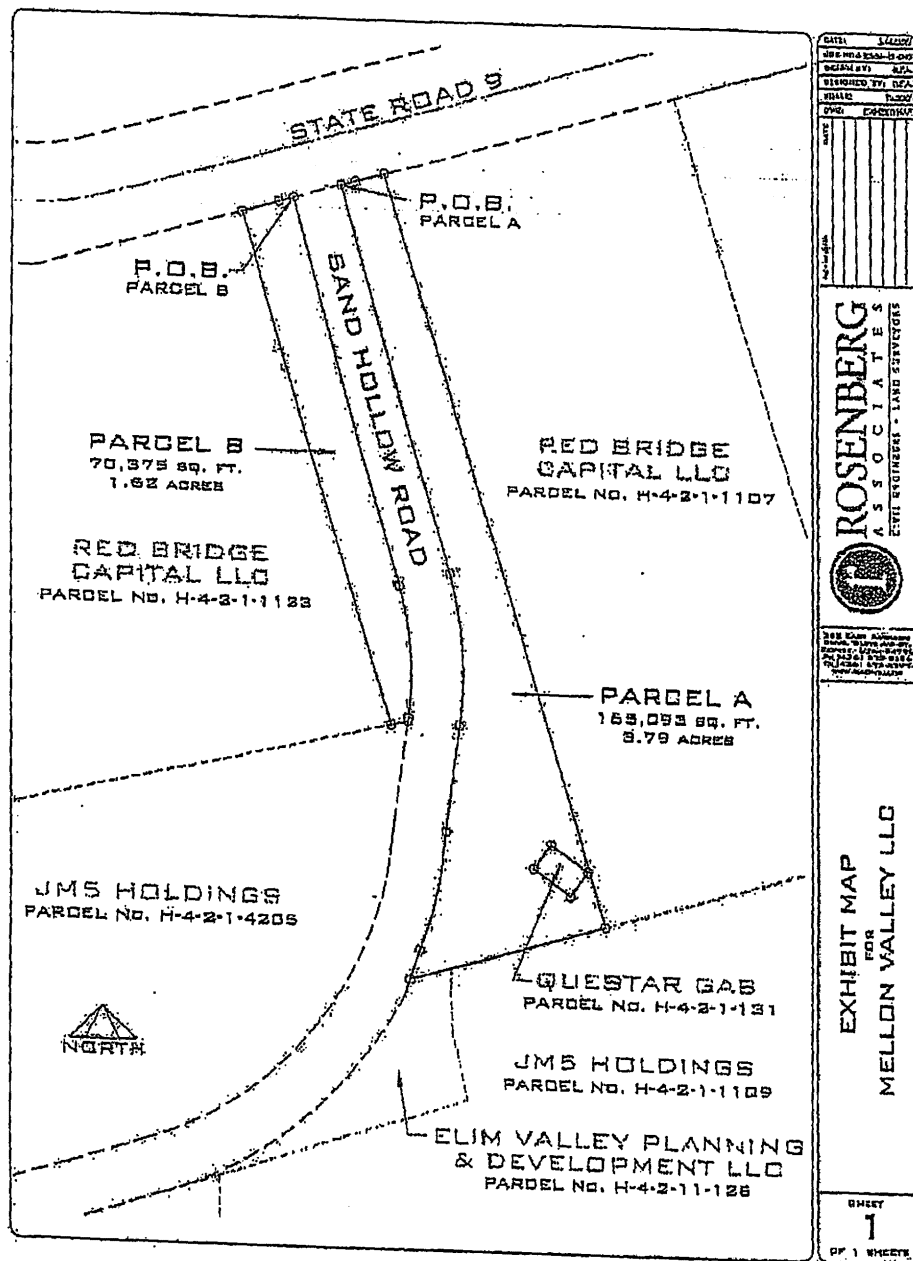
Containing 165,093 square feet or 3.79 acres.

## PARCEL B

Beginning at a point on the west side of Sand Hollow Road where it intersects with State Road 9, said point being North  $89^{\circ}46'47''$  West 1,968.05 feet along the center section line and North 1,796.45 feet from the East Quarter Corner of Section 1, Township 42 South, Range 14 West, Salt Lake Base & Meridian, and running;

thence southerly the following (3) courses along the westerly line of Sand Hollow Road;  
 thence South  $15^{\circ}15'24''$  East 673.27 feet;  
 thence southerly 223.12 feet along an arc of a 558.00 foot radius curve to the right (center bears South  $74^{\circ}44'36''$  West, long chord bears South  $03^{\circ}48'06''$  East 221.64 feet with a central angle of  $22^{\circ}54'37''$ );  
 thence South  $07^{\circ}39'13''$  West 5.82 feet;  
 thence South  $76^{\circ}45'10''$  West 27.71 feet;  
 thence North  $16^{\circ}20'36''$  West 892.79 feet to the southerly line of State Road 9;  
 thence North  $73^{\circ}19'03''$  East 65.46 feet along said southerly line;  
 thence easterly 25.49 feet along an arc of a 22,763.31 foot radius curve to the right (center bears South  $16^{\circ}40'57''$  East, long chord bears North  $73^{\circ}20'59''$  East 25.49 feet with a central angle of  $00^{\circ}03'51''$ ) along said southerly line to the Point of Beginning.

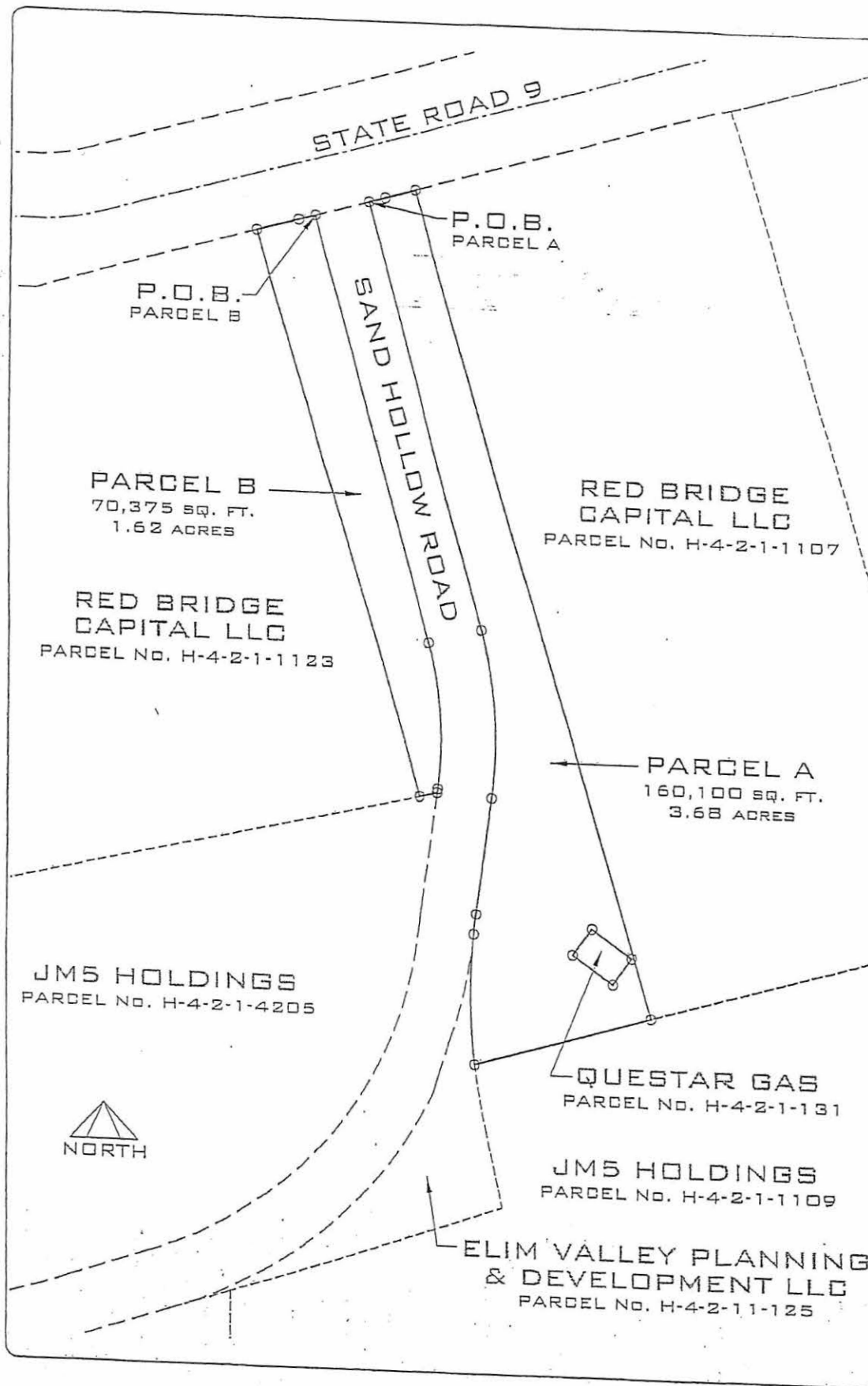
Containing 70,374 square feet or 1.62 acres.



17142062.8

# EXHIBIT B

EXHIBIT B



DATE:	5/14/2013
JOB NO.:	3556-13-045
DRAWN BY:	D.A.
DESIGNED BY:	D.A.
SCALE:	1"=200'
DWG:	EXHIBIT-MAP
DATE	
REVISIONS	

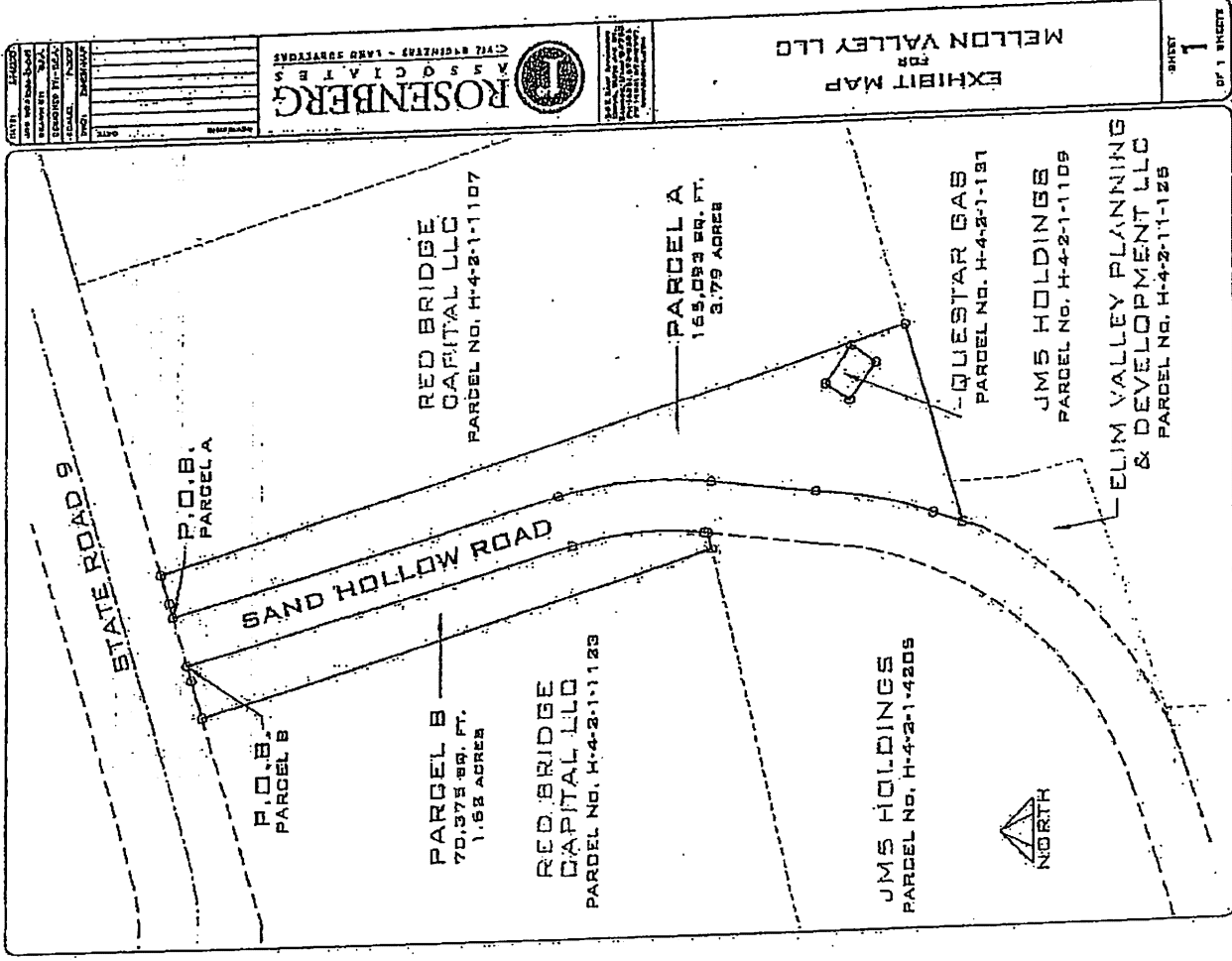
**ROSENBERG ASSOCIATES**  
CIVIL ENGINEERS • LAND SURVEYORS



350 EAST RIVERBEND  
DRIVE, SUITE 400  
GEORGE, UTAH 84700  
PH (435) 573-8888  
FX (435) 573-8899  
WWW.RACIVIL.COM

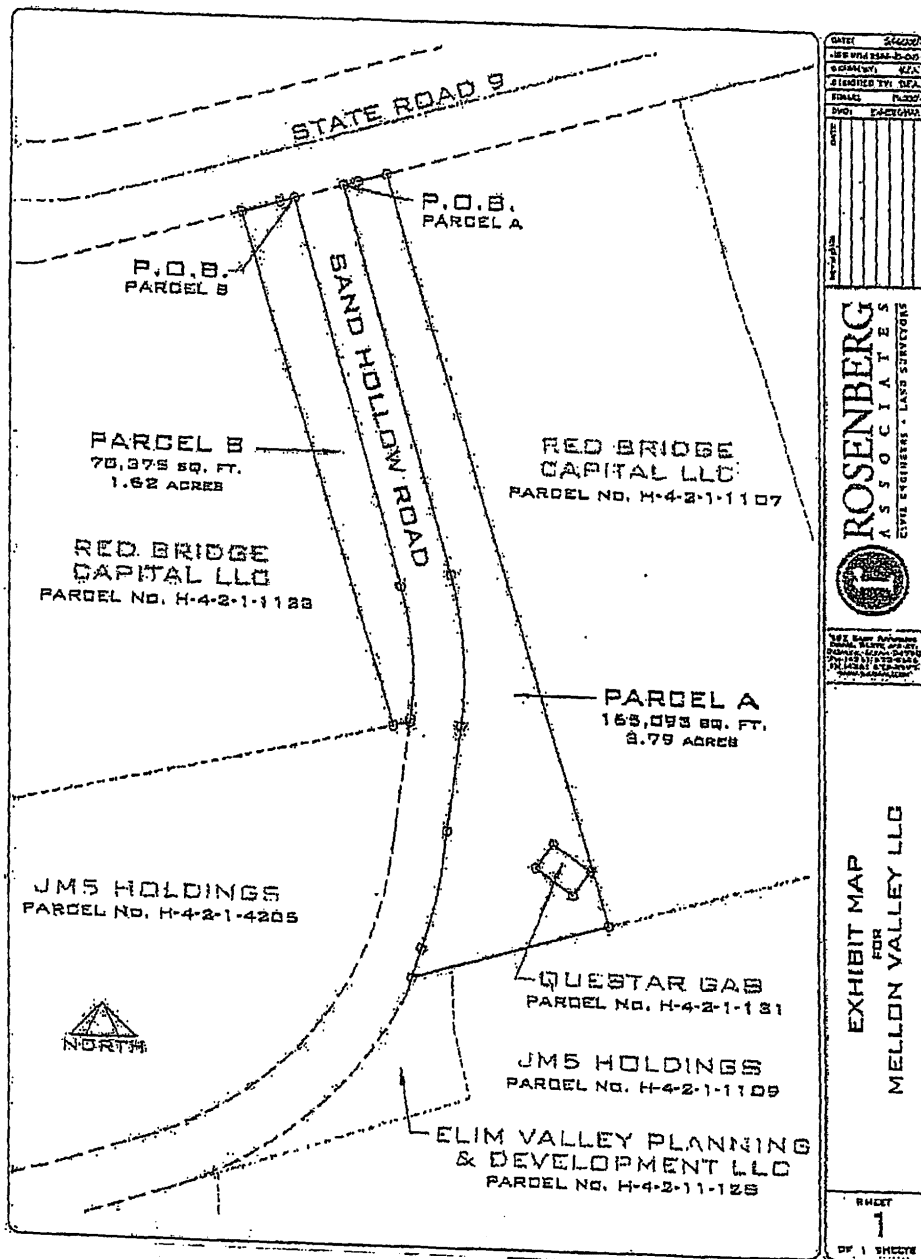
EXHIBIT MAP  
FOR  
MELLON VALLEY LLC

SHEET  
**1**  
OF 1 SHEETS



171631062.8





## PARCEL A

Beginning at a point on the east side of Sand Hollow Road where it intersects with State Road 9, said point being North  $89^{\circ}46'47''$  West 1,887.49 feet along the center section line and North 1,820.64 feet from the East Quarter Corner of Section 1, Township 42 South, Range 14 West, Salt Lake Base & Meridian, and running;

thence easterly 25.27 feet along an arc of a 22,763.31 foot radius curve to the right (center bears South  $16^{\circ}24'24''$  East, long chord bears North  $73^{\circ}37'31''$  East 25.27 feet with a central angle of  $00^{\circ}03'49''$ ) along the southerly line of State Road 9;

thence North  $73^{\circ}39'24''$  East 48.49 feet along the southerly line of said State Road 9;

thence South  $16^{\circ}20'36''$  East 1,306.80 feet;

thence South  $73^{\circ}39'35''$  West 281.15 feet;

thence northerly 230.97 feet along an arc of a 931.00 foot radius curve to the right (center bears North  $83^{\circ}26'28''$  East, long chord bears North  $00^{\circ}32'54''$  East 230.37 feet with a central angle of  $14^{\circ}12'51''$ ) to and along the easterly line of Sand Hollow Road;

thence northerly the following (3) courses along the easterly line of said Sand Hollow Road;

thence North  $07^{\circ}39'13''$  East 177.80 feet;

thence northerly 256.71 feet along an arc of a 642.00 foot radius curve to the left (center bears North  $82^{\circ}20'47''$  West, long chord bears North  $03^{\circ}48'06''$  West 255.00 feet with a central angle of  $22^{\circ}54'37''$ );

thence North  $15^{\circ}15'24''$  West 675.11 feet to the Point of Beginning.

Less and Excepting the following Questar Gas Parcel:

Beginning at a point being South  $00^{\circ}15'22''$  East 2,347.23 feet along the section line and North  $89^{\circ}35'08''$  West 2,572.33 feet from the Northeast corner of Section 1, Township 42 South, Range 14 West, Salt Lake Base & Meridian, and running;

thence North  $89^{\circ}35'08''$  West 75.00 feet;

thence North  $00^{\circ}10'33''$  East 100.00 feet;

thence South  $89^{\circ}35'08''$  East 75.00 feet;

thence South  $00^{\circ}10'33''$  West 100.00 feet to the Point of Beginning.

Containing 165,093 square feet or 3.79 acres.

## PARCEL B

Beginning at a point on the west side of Sand Hollow Road where it intersects with State Road 9, said point being North  $89^{\circ}46'47''$  West 1,968.05 feet along the center section line and North 1,796.45 feet from the East Quarter Corner of Section 1, Township 42 South, Range 14 West, Salt Lake Base & Meridian, and running;

thence southerly the following (3) courses along the westerly line of Sand Hollow Road;  
thence South  $15^{\circ}15'24''$  East 673.27 feet;  
thence southerly 223.12 feet along an arc of a 558.00 foot radius curve to the right (center bears South  $74^{\circ}44'36''$  West, long chord bears South  $03^{\circ}48'06''$  East 221.64 feet with a central angle of  $22^{\circ}54'37''$ );  
thence South  $07^{\circ}39'13''$  West 5.82 feet;  
thence South  $76^{\circ}45'10''$  West 27.71 feet;  
thence North  $16^{\circ}20'36''$  West 892.79 feet to the southerly line of State Road 9;  
thence North  $73^{\circ}19'03''$  East 65.46 feet along said southerly line;  
thence easterly 25.49 feet along an arc of a 22,763.31 foot radius curve to the right (center bears South  $16^{\circ}40'57''$  East, long chord bears North  $73^{\circ}20'59''$  East 25.49 feet with a central angle of  $00^{\circ}03'51''$ ) along said southerly line to the Point of Beginning.

Containing 70,374 square feet or 1.62 acres.

# EXHIBIT C

EXHIBIT C



**DUNN**  
LAW FIRM

ATTORNEYS & COUNSELORS AT LAW

CLIFFORD DUNN\*  
MICHAEL C. DUNN\*\*  
ADAM C. DUNN\*\*  
MARY C. D. Gonzalez \*

\* A PROFESSIONAL CORPORATION

\*\* LICENSED IN UTAH

† LICENSED IN NEVADA

‡ LICENSED IN GEORGIA

§ OF COURAGE

P.O. Box 2318  
110 W. TABERNACLE  
ST. GEORGE, UT 84771-2318  
PH: (435) 628-5405  
FAX: (435) 628-4145

WWW.DUNNFIRM.COM  
WWW.DUNNFIRM.COM



August 8, 2013

Sent Via Email to: [dleta@swlaw.com](mailto:dleta@swlaw.com)  
Original Sent Via Fedex

David E. Leta  
SNELL & WILMER, LLP  
15 West South Temple, Suite 1200  
Salt Lake City, UT 84101

Re: Red Bridge v. Dos Lagos

Dear David:

Enclosed is the Amended and Restated Access and Utility Easement with the original signatures of my clients, together with the Partial Termination of Master Communications Easement for Elim Valley with the original signatures of my clients, as appropriate.

Please send me a copy of the recorded documents.

I presume that the Subordination Agreements provided by America First Federal Credit Union have been recorded. If you could get me copy of those recorded documents, I would appreciate it.

Also, I have not heard your response regarding the other items identified in my July 31, 2013 letter to you. Would you get that to me at your earliest convenience.

Sincerely,

*Clifford V. Dunn*  
Clifford V. Dunn  
Attorney at Law

CVD:dl  
Enc.

When recorded, return to:

David E. Leta, Esq.  
 Snell & Wilmer L.L.P.  
 15 West South Temple, Suite 1200  
 Salt Lake City, Utah 84101

### AMENDED AND RESTATED ACCESS AND UTILITY EASEMENT

THIS AMENDED AND RESTATED ACCESS AND UTILITY EASEMENT ("Agreement") is made and entered into as of June 18, 2013 ("Effective Date"), by and between MELLON VALLEY, LLC, a Utah limited liability company ("Mellon Valley"), ELIM VALLEY PLANNING AND DEVELOPMENT, LLC, a Utah limited liability company ("EVPD" and collectively with Mellon Valley, "Grantor"), and RED BRIDGE CAPITAL, LLC, a Utah limited liability company ("Grantee"). Grantor and Grantee are sometimes hereinafter referred to individually as a "Party" and collectively as the "Parties."

### RECITALS

A. Grantee is the owner of two parcels of vacant, developable real property, each consisting of approximately 15 acres, that are located in Washington County, Utah, near the City of Hurricane, more particularly described on Exhibit A attached hereto and incorporated by this reference (the "Properties").

B. The Properties are each separated by certain strip parcels that are owned by Grantor (the "Strip Parcels") and that are parallel to Sand Hollow Road, which bisects the Strip Parcels. As of the Effective Date, the Strip Parcels are vacant. The Strip Parcels are described on Exhibit B which is attached hereto.

C. Currently there is inadequate or nonexistent vehicular access from the Properties to Sand Hollow Road that would permit reasonable commercial and/or residential development of the Properties without further agreement between Grantor and Grantee. The most cost effective and logical access from the Properties to Sand Hollow Road would be across the Strip Parcels.

D. Pursuant to a Settlement Agreement among Mellon Valley, Grantee and certain other parties dated as of May 15, 2013 ("Settlement Agreement"), Mellon Valley agreed to grant to Grantee (i) an easement burdening the Strip Parcels and permitting each of the Properties to have access to Sand Hollow Road and (ii) an easement over the Strip Parcels for certain underground and above-ground utility lines and related facilities and improvements, subject to the terms set forth in this Agreement.

E. On May 15, 2013, Mellon Valley and Grantee entered into that certain Access and Utility Easement, recorded on May 22, 2013 as Entry No. 20130019724 in the Official Records of Washington County, State of Utah (the "Existing Easement"), pursuant to the Settlement Agreement, wherein Mellon Valley granted certain easement interests in the Strip Parcels to Grantee.

F. Upon further investigation and a title commitment issued concerning the Strip Parcels, title to the Strip Parcels is currently vested in Mellon Valley and EVPD, as their respective interests may appear of record. EVPD is an entity associated with Mellon Valley and the other Parties to the Settlement Agreement.

G. Grantor and Grantee desire to enter into this Agreement to amend and restate their agreement concerning the Existing Easement, to correct the Existing Easement and ensure the easements contemplated by the Settlement Agreement are fully enforceable against the Strip Parcels and in compliance with the Settlement Agreement. Capitalized terms used in this Agreement and not defined in this Agreement shall have the meanings given to such terms in the Settlement Agreement.

#### AGREEMENT

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

1. Incorporation of Recitals. The recitals set forth above are incorporated in this Agreement as if fully set forth in the body of this Agreement.

2. Grant of Easements.

(a) Access Easement. Grantor hereby grants to Grantee and its Permittees (defined later) a perpetual, exclusive easement over, upon and across the Strip Parcels for the purpose of vehicular, pedestrian, and other ingress, egress and access to and from Sand Hollow Road in at least two (2) separate locations for each of the Properties (a total of four (4) locations) ("Access Easement"), with the specific location, width, and description of the Access Easement ("Access Easement Area") to be determined at the sole discretion of Grantee and at a future date, *provided however*, that the specific location and width of the Access Easements shall be reasonable for typical commercial and/or residential development of the Properties. The term "Permittees" shall mean Grantee's contractors, employees, consultants, agents, representatives, invitees, licensees, utility providers, successors and assigns. Grantor and its Permittees shall have the right to construct, install, lay, maintain, operate, repair, inspect, protect, remove and replace within the Access Easement Area any roadway and related improvements (collectively, "Roadway Improvements") as may be necessary or appropriate, as determined by Grantee in its sole and absolute discretion, to permit typical commercial and/or residential development of the Properties, including, without limitation, the paving, curbing, striping, directional signs, a drive aisle, artificial lighting facilities, and other related road improvements (including landscaping) constructed by Grantee from time to time (including any reconfiguration thereof) on any portion of the Access Easement Area.

(b) Utility Easement. Grantor hereby grants a perpetual, exclusive easement to Grantee and its Permittees in, over, under, across, and through the Strip Parcels to construct, install, lay, maintain, operate, repair, inspect, protect, remove and replace underground and above-ground utility lines and facilities (collectively, "Utility Improvements") as may be necessary or appropriate, as determined by Grantee in its sole and absolute discretion, to permit typical commercial and/or residential development of the Properties, together with a right of access to the Strip Parcels to exercise its rights granted under this subsection (b) ("Utility Easement"), *provided, however*, the installation of all such utilities shall comply with applicable zoning and development rules, regulations, statutes and covenants. The specific location and description of the Utility Easement ("Utility Easement Area") shall be within the same location as the Access Easement. The Access Easement and the Utility Easement are sometimes hereinafter referred to individually as the "Easements."

3. Construction; Maintenance; and Repairs. The construction, maintenance, and repairs of all Roadway Improvements and Utility Improvements (collectively, "Improvements") shall be at no cost to the Grantor, except to the extent that any such maintenance and repairs are necessitated by the active or passive negligent or willful act of Grantor or its contractors, employees, consultants, agents, representatives, invitees, licensees ("Grantor Permittees"), in which case Grantor shall be responsible for the costs of such maintenance and repairs and shall reimburse Grantee for the cost of such maintenance and repairs, together with interest thereon at the rate of 12% per annum from the date such costs are incurred until paid.

4. Use and Improvements by Grantor. Neither Grantor nor Grantor Permittees shall make any use of the Access Easement Area, the Utility Easement Area, and the Improvements that interferes with the rights granted to Grantee and its Permittees under this Agreement. Grantor shall have no right erect any wall, fence or other barrier on the Access Easement Area and the Utility Easement Area (collectively, "Easement Area"). Grantor shall not construct or cause the construction of any buildings or permanent structures on the Easement Area. To the extent that any Grantor desires to make any improvements to the Easement Area, or any portion thereof, Grantor shall first obtain the written consent of Grantee (which consent may be not be unreasonably withheld) to the proposed improvements, including the plans and specifications therefor. Grantor shall be responsible for paying any and all ad valorem taxes and assessments levied against the entire Grantor Property, including the Strip Parcels and the Easement Area, and shall not suffer or permit such taxes and assessments to become delinquent.

5. Grantor's Representations and Warranties: Priority of Grantee's Estate. Grantor warrants and represents to Grantee that as of the Effective Date, Grantor has good and indefeasible fee simple title to the Strip Parcels and has full right, power and authority to grant the Easements to Grantee. Grantor further represents and warrants that, on and after the Effective Date, it will not enter into any encumbrances, agreements, covenants or restrictions against the Strip Parcels. Grantor will indemnify and hold Grantee harmless if any of the foregoing representations and warranties proves to be untrue. Grantor further warrants that, within the one-hundred eighty (180) days after entry of the Judgment, there shall be no mortgages, deeds of trust, other instruments of security, or other liens and encumbrances (other than the lien for real estate taxes not yet due and payable) affecting the Strip Parcels, including the Access Easement Area and the Utility Easement Area, which are superior to this Agreement



or which could result in the termination of this Agreement, or which could limit Grantee's rights hereunder,

6. Notices. All notices and other communications hereunder shall be in writing and shall be deemed to have been duly given if delivered personally (including delivery by courier service), transmitted by facsimile or other electronic transmission, or mailed by registered or certified mail, postage prepaid, return receipt requested, as follows:

To Grantor:	<p>Mellon Valley, LLC 1300 South Sand Hollow Rd Hurricane, UT 84737</p> <p>Elim Valley Planning and Development, LLC 1300 South Sand Hollow Rd Hurricane, UT 84737</p>
With a copy to:	<p>Clifford V. Dunn, Esq. Dunn Law Firm P.O. Box 2318 110 West Tabernacle St. George, UT 84771-2318 Facsimile: (435) 628-4145 Email: cvdunn@dunnfirm.com</p>
To Grantee:	<p>Red Bridge Capital, LLC c/o Cherokee and Walker Management Attn: Paul Erickson 6440 South Wasatch Boulevard, Suite 200 Salt Lake City, Utah 84121 Facsimile: 801-278-7818 Email: paul@cherokeeandwalker.com</p>
With copy to:	<p>David E. Leta, Esq. Snell &amp; Wilmer L.L.P. 15 West South Temple, Suite 1200 Salt Lake City, Utah 84101 Facsimile: 801-257-1800 Email: dleta@swlaw.com</p>

or to such other address as either Party may from time to time designate by notice in writing to the other Party. Rejection, refusal to accept delivery or inability to deliver due to changed address of which no notice has been given shall be deemed receipt by the addressee.

7. Headings. Headings in this Agreement are for convenience only and shall not be used to interpret or construe its provisions.

8. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Utah, without giving effect to its choice of law principles.

9. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed as an original but all of which together shall constitute one and the same instrument.

10. Entire Agreement. This Agreement, together with the Settlement Agreement and any agreements executed in accordance with the Settlement Agreement, supersedes all prior understandings, representations and agreements between the Parties with regard to the subject matter hereof and there are no other understandings, representations, warranties or agreements between them.

11. Attorneys' Fees. If either Party brings or commences any legal action or proceeding to enforce any of the terms of this Agreement, the prevailing Party, if any, in such action shall be entitled to recover from the non-prevailing Party all reasonable attorneys' fees that may have been incurred, including any and all costs and expenses incurred in enforcing, perfecting and executing such judgment, and including all costs of appeal.

12. Amendment. Neither this Agreement nor any provision hereof may be changed, amended, modified, waived or discharged orally or by any course of dealing, but only by an instrument in writing signed by the Party against which enforcement of the change, amendment, modification, waiver or discharge is sought.

13. Authority. Each party hereto hereby represents, warrants and covenants unto the other that this Agreement has been duly authorized, executed and delivered by such party and constitutes the valid, legal and binding agreements and obligations of such party enforceable against such party in accordance with the terms hereof.

14. Severability. If any provision of this Agreement, or portion thereof, or the application thereof to any person or circumstances, shall, to any extent be held invalid, inoperative or unenforceable, the remainder of this Agreement, or the application of such provision or portion thereof to any other persons or circumstances, shall not be affected thereby; it shall not be deemed that any such invalid provision affects the consideration for this Agreement; and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

15. No Joint Venture. Nothing in this Agreement shall be construed to make the Parties partners or joint venturers or render any of the Parties liable for the debts or obligations of the other.

16. Legal and Equitable Relief. In the event of any breach, or attempted or threatened breach, by any Party to this Agreement, of any of the terms, covenants or conditions hereof, the other Party shall be entitled to full and adequate relief by injunction and/or such other available

legal or equitable remedies from the consequences of such breach. The remedies herein provided shall be cumulative as to all other remedies permitted by law or in equity.

17. Waiver. The waiver of, or failure to enforce, any breach of or violation of any of the foregoing obligations or easements shall not be deemed to be a waiver of the right to enforce, or be deemed an abandonment of, the particular obligation violated or any of the obligations; nor shall it be deemed to be a waiver of the right to enforce any subsequent breach or violation of this Agreement or any of the provisions set forth herein. The foregoing shall apply regardless of whether or not any party has knowledge of the breach of the violation.

18. No Public Dedication. The provisions of this Agreement are not intended to and do not constitute a dedication for public use of the Grantor Property, or any portion thereof, and the rights herein created are private and for the benefit only of the Parties, their successors and assigns.

19. Running With the Land: Successors and Assigns. All provisions of this Agreement, including the benefits and burdens, are expressly declared to touch and concern and run with the land, with the Properties being the dominant estate and the Strip Parcels being the servient estate, and are binding upon and shall inure to the benefit of each of Grantor and Grantee and their respective successors and assigns. All easements granted in this Agreement are appurtenant and not in gross. All easements granted in this Agreement are irrevocable, *provided, however*, that the Access and Utility Easements may be dedicated to the City of Hurricane upon the future mutual agreement of Grantor and Grantee. All easements granted hereunder shall exist by virtue of this Agreement without the necessity of confirmation by any other document.

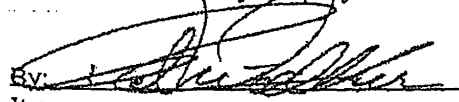
IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives effective as of the date first set forth above.

GRANTOR:

MELLON VALLEY, LLC,  
a Utah limited liability company

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

ELIM VALLEY PLANNING AND  
DEVELOPMENT, LLC,  
a Utah limited liability company

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

GRANTEE:

RED BRIDGE CAPITAL, LLC,  
a Utah limited liability company  
By: Cherokee & Walker Management, LLC , its  
manager

by: \_\_\_\_\_

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

Its: Manager

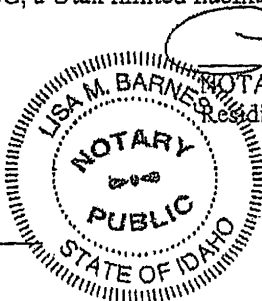
By: \_\_\_\_\_

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

Its: Manager

STATE OF Idaho )  
COUNTY OF Jefferson : ss.

The foregoing instrument was acknowledged before me this 1<sup>st</sup> day of August, 2013, by Roland Walker, of MELTON VALLEY, LLC, a Utah limited liability company, on behalf of the company.

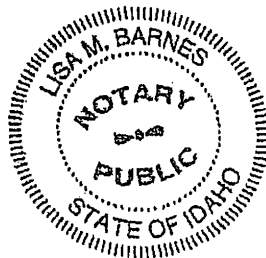


My Commission Expires:

06-16-17

STATE OF Idaho )  
COUNTY OF Jefferson : ss.

The foregoing instrument was acknowledged before me this 1<sup>st</sup> day of August, 2013, by Roland Walker, of ELIM VALLEY PLANNING AND DEVELOPMENT, LLC, a Utah limited liability company, on behalf of the company.



My Commission Expires:

06-16-17

STATE OF \_\_\_\_\_ )  
 : ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2013, by \_\_\_\_\_, and \_\_\_\_\_, managers of Cherokee & Walker Management, LLC, manager of RED BRIDGE CAPITAL, LLC, a Utah limited liability company, on behalf of the company.

\_\_\_\_\_  
NOTARY PUBLIC

Residing at: \_\_\_\_\_

My Commission Expires:  
\_\_\_\_\_

EXHIBIT A  
LEGAL DESCRIPTION OF PROPERTIES

## PARCEL A:

Lender SR-9 Parcel A

Beginning at point on the Southerly line of Highway SR-9, said point being South  $00^{\circ}15'22''$  West 878.00 feet along the section line and West 2061.87 feet from the Northeast Corner of Section 1, Township 42 South, Range 14 West, Salt Lake Base and Meridian, and running thence South  $16^{\circ}20'36''$  East 892.79 feet thence South  $76^{\circ}45'10''$  West 864.99 feet; thence North  $00^{\circ}10'33''$  East 955.76 feet to point on the Southerly line of said SR-9; thence South  $89^{\circ}50'12''$  East 254.45 feet along said Southerly line; thence North  $73^{\circ}19'03''$  East 348.01 feet along said Southerly line to the Point of Beginning.

## PARCEL B:

Lender SR-9 Parcel B

Beginning at point on the Southerly line of Highway SR-9, said point being South  $00^{\circ}15'22''$  West 666.57 feet along the section line and West 1344.61 feet from the Northeast Corner of Section 1, Township 42 South, Range 14 West, Salt Lake Base and Meridian, and running thence South  $16^{\circ}20'36''$  East 1306.80 Feet; thence South  $73^{\circ}39'24''$  West 500.00 feet; thence North  $16^{\circ}20'36''$  West 1306.80 feet to point on the Southerly line of said SR-9, thence North  $73^{\circ}39'24''$  East 500.00 feet along said Southerly line to the Point of Beginning.

**EXHIBIT B**  
**Strip Parcels Legal Description**



## PARCEL B

Beginning at a point on the west side of Sand Hollow Road where it intersects with State Road 9, said point being North  $89^{\circ}46'47''$  West 1,968.05 feet along the center section line and North 1,796.45 feet from the East Quarter Corner of Section 1, Township 42 South, Range 14 West, Salt Lake Base & Meridian, and running;

thence southerly the following (3) courses along the westerly line of Sand Hollow Road;  
thence South  $15^{\circ}15'24''$  East 673.27 feet;  
thence southerly 223.12 feet along an arc of a 558.00 foot radius curve to the right (center bears South  $74^{\circ}44'36''$  West, long chord bears South  $03^{\circ}48'06''$  East 221.64 feet with a central angle of  $22^{\circ}54'37''$ );  
thence South  $07^{\circ}39'13''$  West 5.82 feet;  
thence South  $76^{\circ}45'10''$  West 27.71 feet;  
thence North  $16^{\circ}20'36''$  West 892.79 feet to the southerly line of State Road 9;  
thence North  $73^{\circ}19'03''$  East 65.46 feet along said southerly line;  
thence easterly 25.49 feet along an arc of a 22,763.31 foot radius curve to the right (center bears South  $16^{\circ}40'57''$  East, long chord bears North  $73^{\circ}20'59''$  East 25.49 feet with a central angle of  $00^{\circ}03'51''$ ) along said southerly line to the Point of Beginning.

When recorded, return to:

David E. Leta, Esq.  
 Snell & Wilmer L.L.P.  
 15 West South Temple, Suite 1200  
 Salt Lake City, Utah 84101

**PARTIAL TERMINATION OF MASTER COMMUNICATIONS EASEMENT FOR  
 ELIM VALLEY**

THIS PARTIAL TERMINATION OF MASTER COMMUNICATIONS EASEMENT FOR ELIM VALLEY ("Termination") is entered into as of June 18, 2013, by and between MELLON VALLEY, LLC, a Utah limited liability company ("Mellon Valley"), ELIM VALLEY PLANNING AND DEVELOPMENT, LLC, a Utah limited liability company ("EVPD"), ROLAND NEIL FAMILY LIMITED PARTNERSHIP, a Utah limited partnership ("RNFLP"), EVD COMMUNICATIONS INFRASTRUCTURE, LLC, a Utah limited liability company ("EVD"), ROLAND L. WALKER IRREVOCABLE TRUST /U/A/D DECEMBER 23, 1985 (the "Trust"), and R&S FARMS UTAH LIMITED PARTNERSHIP, a Utah limited partnership ("R&S Farms" and collectively with Mellon Valley, EVPD, RNFLP, EVD, and the Trust, "Grantor"), each of whose address is 1300 South Sand Hollow Road, Hurricane, UT 84737, and RED BRIDGE CAPITAL, LLC, a Utah limited liability company ("Red Bridge"), whose address is c/o Cherokee and Walker Management, 6440 South Wasatch Boulevard, Suite 200, Salt Lake City, Utah 84121.

**WITNESSETH:**

WHEREAS, Red Bridge is the owner of fee simple title to that certain real property located in Washington County, Utah and more particularly described in Exhibit A attached hereto and incorporated herein by this reference (the "Red Bridge Property"); and

WHEREAS, Mellon Valley and EVPD entered into that certain Master Communications Easement for Elim Valley dated February 14, 2007 and recorded February 16, 2007, as Entry No. 20070008384, in the official records of Washington County, Utah (the "First Easement Agreement") encumbering certain real property described in the Easement Agreement (the "Easement Property");

WHEREAS, EVPD and RNFLP entered into that certain Master Communications Easement for Elim Valley dated February 14, 2007 and recorded February 16, 2007, as Entry No. 20070008385, in the official records of Washington County, Utah (the "Second Easement Agreement") encumbering the Easement Property;

WHEREAS, RNFLP and EVD entered into that certain Master Communications Easement for Elim Valley dated February 14, 2007 and recorded February 16, 2007, as Entry No. 20070008386, in the official records of Washington County, Utah (the "Third Easement Agreement") encumbering the Easement Property;

WHEREAS, EVD executed that certain Grant Deed dated May 16, 2011 and recorded May 26, 2011, as Entry No. 20110016187, in the official records of Washington County, Utah (the "Grant Deed") conveying EVD's right and interest in the Third Easement Agreement to the Trust and particularly describing the Easement Property;

WHEREAS, the Trust and R&S Farms entered into that certain Option to Purchase Easement dated May 16, 2011 and recorded May 26, 2011, as Entry No. 20110016212, in the official records of Washington County, Utah (the "Option") purporting to grant R&S Farms an option to purchase the rights and interest conveyed to the Trust by the Grant Deed and particularly describing the Easement Property;

WHEREAS, Red Bridge is the successor-in-interest to Mellon Valley as the owner of the Red Bridge Property, which is part of the Easement Property; and

WHEREAS, the rights and interests conveyed, granted, sold, or otherwise given by the First Easement, the Second Easement, the Third Easement, the Grant Deed, and the Option are collectively referred to in this Termination as the "Easement." Grantor and Red Bridge have agreed to partially terminate the Easement with regard to the Red Bridge Property, all as more particularly described hereinbelow.

NOW, THEREFORE, for Ten Dollars and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto do hereby covenant, stipulate and agree as follows:

1. Recitals. The foregoing recitals are true and correct and are incorporated herein by reference.
2. Termination and Release. Grantor and Red Bridge hereby release and terminate the Easement as to the Red Bridge Property and declare that any and all easements, sub-easements, licenses, covenants, conditions, restrictions and other rights and obligations granted or created or imposed under the First Easement, the Second Easement, the Third Easement, the Grant Deed, and the Option with respect to the Red Bridge Property are hereby released, relinquished, surrendered and abandoned and are of no further force or effect and shall not be an encumbrance on the Red Bridge Property. Grantor hereby quitclaims to Red Bridge any and all right, title, and interest in the Red Bridge Property. The remaining Easement Property still covered by the Easement is not affected in any way and all rights and obligations pursuant to the First Easement, the Second Easement, the Third Easement, the Grant Deed, and the Option with respect to such remaining property shall continue in full force and effect.
3. Grantor's Representations. Grantor represents to Red Bridge that it has not previously assigned any of its rights or interests as "Grantee" in and to the Easement with respect to the Red Bridge Property to any third party, and Grantor is the sole holder of all such rights.
4. Authority. Each of the parties hereto represents and warrants to the others that it has the full capacity, right, power and authority to execute, deliver and perform this Termination, and all required actions, consents and approvals therefore have been duly taken and obtained.
5. Binding Effect. This Termination shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

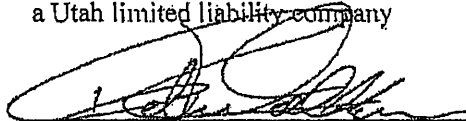
6. Counterparts. This Termination may be executed in two or more counterparts, all of which together shall constitute one and the same instrument. There may be duplicate originals of this Termination, only one of which need be produced as evidence of the terms hereof.

[SIGNATURES FOLLOW ON NEXT PAGE]

IN WITNESS WHEREOF, Grantor and Red Bridge have executed this Termination as of the day and year first above written:

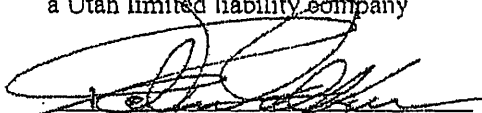
**GRANTOR:**

**MELLON VALLEY, LLC,**  
a Utah limited liability company



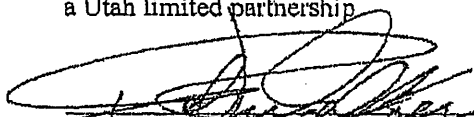
By: Roland N. Walker  
Its: Manager

**ELIM VALLEY PLANNING AND  
DEVELOPMENT, LLC,**  
a Utah limited liability company



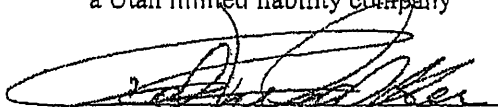
By: Roland N. Walker  
Its: Manager

**ROLAND NEIL FAMILY LIMITED  
PARTNERSHIP,**  
a Utah limited partnership



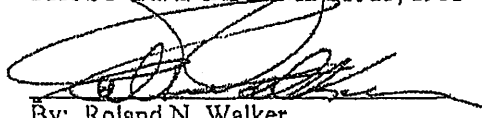
By: Roland N. Walker, Co-Trustee of the  
R. Family Trust u/a/d April 4, 2006  
Its: General Partner

**EVD COMMUNICATIONS  
INFRASTRUCTURE, LLC,**  
a Utah limited liability company



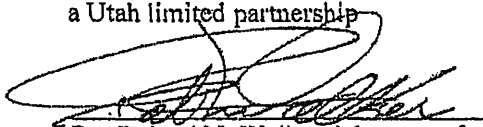
By: Roland N. Walker  
Its: Manager

ROLAND L. WALKER IRREVOCABLE  
TRUST u/a/d/ DECEMBER 23, 1985



By: Roland N. Walker  
Its: Trustee

R&S FARMS UTAH LIMITED  
PARTNERSHIP,  
a Utah limited partnership



By: Roland N. Walker, Manager of  
RSW Management, LLC,  
Its: General Partner

**RED BRIDGE:**

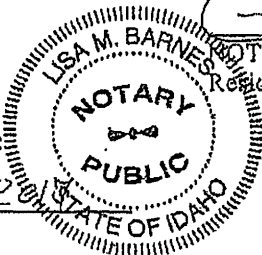
RED BRIDGE CAPITAL, LLC, a Utah limited  
Liability company  
By: Cherokee & Walker Management, LLC, its  
Manager

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: Manager

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: Manager

STATE OF Idaho )  
 ) ss.  
 COUNTY OF Jefferson )

The foregoing instrument was acknowledged before me this 1<sup>st</sup> day of August, 2013, by Roland Walker, of MELTON VALLEY, LLC, a Utah limited liability company, on behalf of the company.



My Commission Expires:

06.16.2017

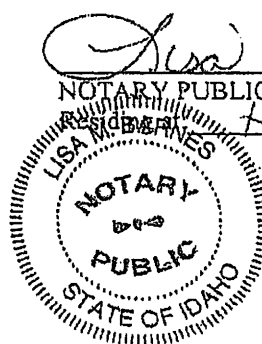
NOTARY PUBLIC

Residing at:

06.16.2017  
Hammer, Idaho

STATE OF Idaho )  
 ) ss.  
 COUNTY OF Jefferson )

The foregoing instrument was acknowledged before me this 1<sup>st</sup> day of August, 2013, by Roland Walker, of ELIM VALLEY PLANNING AND DEVELOPMENT, LLC, a Utah limited liability company, on behalf of the company.



My Commission Expires:

06.16.2017

NOTARY PUBLIC

Residing at:

Hammer, Idaho

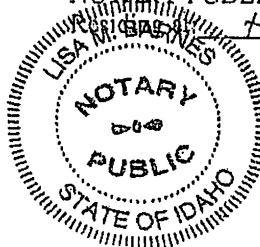
STATE OF Idaho )  
COUNTY OF Jefferson ) ss.

The foregoing instrument was acknowledged before me this 1<sup>st</sup> day of August, 2013, by Roland Walker, of ROLAND NEIL FAMILY LIMITED PARTNERSHIP, a Utah limited partnership, on behalf of the company.

Lisa M. Barnes  
NOTARY PUBLIC  
Residing at: Hammer, Idaho

My Commission Expires:

06-16-2017



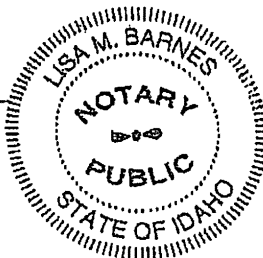
STATE OF Idaho )  
COUNTY OF Jefferson ) ss.

The foregoing instrument was acknowledged before me this 1<sup>st</sup> day of August, 2013, by Roland Walker, of EVD COMMUNICATIONS INFRASTRUCTURE, LLC, a Utah limited liability company, on behalf of the company.

Lisa M. Barnes  
NOTARY PUBLIC  
Residing at: Hammer, Idaho

My Commission Expires:

06-16-2017





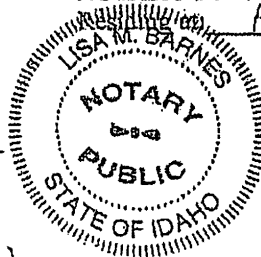
STATE OF Idaho )  
COUNTY OF Jefferson ) ss.

The foregoing instrument was acknowledged before me this 1<sup>st</sup> day of August, 2013, by Roland Walker, of ROLAND L. WALKER IRREVOCABLE TRUST /U/A/D DECEMBER 23, 1985, on behalf of the company.

Lisa M. Barnes  
NOTARY PUBLIC  
Residing in Hamer, Idaho

My Commission Expires:

06-16-2017



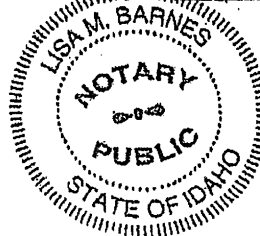
STATE OF Idaho )  
COUNTY OF Jefferson ) ss.

The foregoing instrument was acknowledged before me this 1<sup>st</sup> day of August, 2013, by Roland Walker, of R&S FARMS UTAH LIMITED PARTNERSHIP, a Utah limited partnership, on behalf of the company.

Lisa M. Barnes  
NOTARY PUBLIC  
Residing in Hamer, Idaho

My Commission Expires:

06-16-2017



STATE OF \_\_\_\_\_ )  
; ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2013, by \_\_\_\_\_, and \_\_\_\_\_, managers of Cherokee & Walker Management, LLC, manager of RED BRIDGE CAPITAL, LLC, a Utah limited liability company, on behalf of the company.

\_\_\_\_\_  
NOTARY PUBLIC  
Residing at: \_\_\_\_\_

My Commission Expires:  
\_\_\_\_\_

EXHIBIT A  
LEGAL DESCRIPTION OF RED BRIDGE PROPERTY

## PARCEL A:

Lender SR-9 Parcel A

Beginning at point on the Southerly line of Highway SR-9, said point being South 00°15'22" West 878.00 feet along the section line and West 2061.87 feet from the Northeast Corner of Section 1, Township 42 South, Range 14 West, Salt Lake Base and Meridian, and running thence South 16°20'36" East 892.79 feet thence South 76°45'10" West 864.99 feet; thence North 00°10'33" East 955.76 feet to point on the Southerly line of said SR-9; thence South 89°50'12" East 254.45 feet along said Southerly line; thence North 73°19'03" East 348.01 feet along said Southerly line to the Point of Beginning.

## PARCEL B:

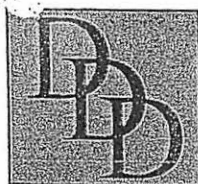
Lender SR-9 Parcel B

Beginning at point on the Southerly line of Highway SR-9, said point being South 00°15'22" West 666.57 feet along the section line and West 1344.61 feet from the Northeast Corner of Section 1, Township 42 South, Range 14 West, Salt Lake Base and Meridian, and running thence South 16°20'36" East 1306.80 Feet; thence South 73°39'24" West 500.00 feet; thence North 16°20'36" West 1306.80 feet to point on the Southerly line of said SR-9, thence North 73°39'24" East 500.00 feet along said Southerly line to the Point of Beginning.

Tax Id. Nos: H-4-2-1-1123 and H-4-2-1-1107

# EXHIBIT D

EXHIBIT D



**DUNN**  
LAW FIRM

ATTORNEYS & COUNSELORS AT LAW

CLIFFORD DUNN\*\*  
MICHAEL C. DUNN\*\*‡  
ADAM C. DUNN\*\*○  
MARY C. D. Gonzalez\*○

\* A PROFESSIONAL CORPORATION  
\* LICENSED IN UTAH  
‡ LICENSED IN NEVADA  
○ LICENSED IN GEORGIA  
○ OF COUNSEL

P.O. Box 2318  
110 W. TABERNACLE  
ST. GEORGE, UT 84771-2318  
PH: (435) 628-5405  
FAX: (435) 628-4145

WWW.DUNNFIRM.COM  
LAW@DUNNFIRM.COM

July 31, 2013

Sent Via Email To: [dleta@swlaw.com](mailto:dleta@swlaw.com)  
Original Sent Via US Regular Mail

David E. Leta  
SNELL & WILMER, LLP  
15 West South Temple, Suite 1200  
Salt Lake City, UT 84101



Re: Red Bridge v. Dos Lagos

Dear David:

Sorry it has taken so long to get back to you, but we have been dealing with America First Credit Union in order to obtain the appropriate Subordination Agreement according to the Settlement Agreement between Red Bridge Capital, LLC and Dos Lagos, LLC.

You sent a letter dated June 26, 2013 with an Amended and Restated Access and Utility Easement, and a Partial Termination of Master Communications Easement for Elim Valley. I have reviewed those and have sent them on to my clients to get their signature. As soon as I receive the originals of those documents, we will forward them to you for recording.

Enclosed with this letter is the original Subordination Agreement with America First Federal Credit Union relating to the strip parcels as anticipated by the Settlement Agreement. May we ask that you record the Subordination Agreement. Once it has been recorded, we would like to receive a copy of the recorded Agreement for our files.

I am grateful for your delivery of the Commitment for Title Insurance dated June 7, 2013. I have enclosed a copy of it for ease of reference.

Based on the requirements of the Settlement Agreement, specifically paragraph 4, my clients will in the next two weeks pay all of the delinquent real property taxes from 2009 up through 2012. That relates to the Schedule B-Section 2 Exceptions 8, 9, 10, and 11 of the Commitment for Title Insurance. As soon as we receive notice of the assessments for 2013 real property taxes, those taxes will be segregated and paid appropriately.

I do not believe that the Exceptions listed in paragraph 13, 14, 15, 16, or 17 are of the nature that requires removal from the property as anticipated by paragraph 4b. of the Settlement Agreement.

The enclosed original Subordination Agreement subordinates any and all claims by America First Federal Credit Union to the Access and Utility Easement, and therefore, removes the encumbrance described in paragraph 18 of the Schedule B Exceptions.

Exception 19 relates to the Development Agreement for Elim Valley. As you recall, paragraph 4c. of the Settlement Agreement anticipates discussions toward entering into a new development agreement between the parties. Please contact me at your earliest convenience to identify which individuals of your clients will be meeting with my clients so that I can facilitate an appropriate meeting to discuss and negotiate a development agreement that will comply with the intent of paragraph 4c. of the Settlement Agreement.

Exceptions 20 and 21 of Schedule B appear to have been resolved by your modified Termination of Master Communications Easement for Elim Valley, and the Amended and Restated Access and Utility Easement that we have sent off for signature.

At this point in time, we do not believe that Exception 22, the Community Charter for Elim Valley Neighborhoods, is an encumbrance that should be removed. Please let us know your clients' position on that particular matter.

It appears that Exception 23 has been resolved by the Release of Notice of Interest recorded August 17, 2009.

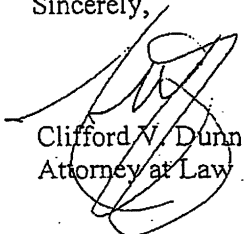
It is our position that Exceptions 24 and 25 were not expected to be removed from the property, and therefore, our clients will not in any way be working to remove them.

My clients are presently working to resolve the Exception identified in Exception 26.

We believe that Exceptions 27, 28, 29, and 30 do not require any action on the part of our clients to comply with the Settlement Agreement.

Please review this letter at your earliest convenience so that we can make sure that we have fulfilled and are fulfilling the terms, conditions, and intent of the Settlement Agreement. Please identify any dispute you have with my conclusions relating to the Exceptions on the Commitment for Title Insurance.

Sincerely,



Clifford V. Dunn  
Attorney at Law

CVD:dl  
Enc.

**COMMITMENT FOR TITLE INSURANCE****ISSUED BY**

**First American Title Insurance Company National Commercial Services**  
560 South 300 East, Salt Lake City, UT 84111  
Phone: (801)536-3100 | Fax: (866)344-5051

First American Title Insurance Company National Commercial  
Services  
560 South 300 East  
Salt Lake City, UT 84111

June 07, 2013

Order Number: NCS-608602-SLC1

Attn: - Toni Foster

Additional copies, if any, have been sent to the following parties:

Brian Cheney, Snell &amp; Wilmer LLP, 15 West South Temple Street,, Suite 1200, Salt Lake, UT 84111

Brian Cheney, Snell &amp; Wilmer LLP, 15 West South Temple Street, Suite 1200, Salt Lake, UT 84111

\*\*\*

RE: Proposed Owner/Applicant: Red Bridge Capital, LLC

We agree to issue a policy to you according to the terms of this Commitment. When we show the policy amount and your name as the proposed insured in Schedule A, this Commitment becomes effective as of the Commitment Date shown in Schedule A.

If the Requirements shown in this Commitment have not been met within six months after the Commitment Date, our obligation under this Commitment will end. Also, our obligation under this Commitment will end when the Policy is issued and then our obligation to you will be under the Policy.

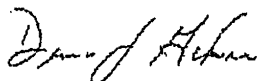
Our obligation under this commitment is limited by the following:

The Provisions in Schedule A.  
The Requirements in Schedule B-1.  
The Exceptions in Schedule B-2.  
The Conditions on the Inside cover page.

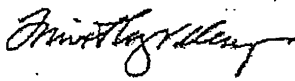
The Commitment is not valid without SCHEDULE A and Sections 1 and 2 of SCHEDULE B.

Underwritten by:

First American Title Insurance Company



Dennis J. Gilmore  
President



Timothy Kemp  
Secretary



## SCHEDULE A

**ESCROW/CLOSING INQUIRIES** should be directed to your Escrow Officer: at (801)536-3100 located at 560 South 300 East, Salt Lake City, UT 84111.

Effective Date: May 17, 2013 at 7:30 a.m.

1. Policy or (Policies) to be issued:

ALTA 2006 Standard Owner's for \$TBD

PREMIUM \$TBD

Proposed Insured:

**Red Bridge Capital, LLC, a Utah limited liability company**

Endorsements

PREMIUM \$

2. The estate or interest in the land described or referred to in this commitment and covered herein is fee simple and title thereto is at the effective date hereof vested in:

**Mellon Valley, LLC and Elim Valley Planning and Development, LLC as their interest may appear of record**

3. The land referred to in this Commitment is located in Washington County, UT and is described as:

**PARCEL A:**

BEGINNING AT A POINT ON THE EAST SIDE OF SAND HOLLOW ROAD WHERE IT INTERSECTS WITH STATE ROAD 9, SAID POINT BEING NORTH 89°46'47" WEST 1,887.49 FEET ALONG THE CENTER SECTION LINE AND NORTH 1,820.64 FEET FROM THE EAST QUARTER CORNER OF SECTION 1, TOWNSHIP 42 SOUTH, RANGE 14 WEST, SALT LAKE BASE & MERIDIAN, AND RUNNING; THENCE EASTERLY 25.27 FEET ALONG AN ARC OF A 22,763.31 FOOT RADIUS CURVE TO THE RIGHT (CENTER BEARS SOUTH 16°24'24" EAST, LONG CHORD BEARS NORTH 73°37'31" EAST 25.27 FEET WITH A CENTRAL ANGLE OF 00°03'49") ALONG THE SOUTHERLY LINE OF STATE ROAD 9; THENCE NORTH 73°39'24" EAST 48.49 FEET ALONG THE SOUTHERLY LINE OF SAID STATE ROAD 9; THENCE SOUTH 16°20'36" EAST 1,306.80 FEET; THENCE SOUTH 73°39'35" WEST 338.52 FEET TO THE EASTERLY LINE OF SAND HOLLOW ROAD; THENCE NORTHERLY THE FOLLOWING (5) COURSES ALONG THE EASTERLY LINE OF SAID SAND HOLLOW ROAD; THENCE NORTH 16°56'45" EAST 51.31 FEET; THENCE NORTHERLY 172.48 FEET ALONG AN ARC OF A 684.00 FOOT RADIUS CURVE TO THE LEFT (CENTER BEARS NORTH 69°44'51" WEST, LONG CHORD BEARS NORTH 13°01'44" EAST 172.02 FEET WITH A CENTRAL ANGLE OF 14°26'51"); THENCE NORTHERLY 30.04 FEET ALONG AN ARC OF A 931.00 FOOT RADIUS CURVE TO THE RIGHT (CENTER BEARS SOUTH 84°11'42" EAST, LONG CHORD BEARS NORTH 06°43'46" EAST 30.04 FEET WITH A CENTRAL ANGLE OF 01°50'55"); THENCE NORTH 07°39'13" EAST 177.80 FEET; THENCE NORTHERLY 256.71 FEET ALONG AN ARC OF A 642.00 FOOT RADIUS CURVE TO THE LEFT (CENTER BEARS NORTH 82°20'47" WEST, LONG CHORD BEARS NORTH 03°48'06" WEST 255.00 FEET WITH A CENTRAL ANGLE OF 22°54'37"); THENCE NORTH 15°15'24" WEST 675.11 FEET TO THE POINT OF BEGINNING.



LESS AND EXCEPTING THAT PARCEL CONVEYED TO QUESTAR GAS COMPANY BY THAT CERTAIN WARRANTY DEED RECORDED AUGUST 17, 2009 AS ENTRY NO. 20090031873 AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

ELIM VALLEY REGULATION STATION

BEGINNING AT A POINT BEING SOUTH 00°15'22" WEST, 2011.10 FEET ALONG THE SECTION LINE AND WEST 1509.90 FEET FROM THE NORTHEAST CORNER OF SECTION 1, TOWNSHIP 42 SOUTH, RANGE 14 WEST, SALT LAKE BASE AND MERIDIAN AND RUNNING THENCE NORTH 54°33'12" WEST, 75.00 FEET; THENCE NORTH 35°26'48" EAST, 50.00 FEET; THENCE SOUTH 54°33'12" EAST, 75.00 FEET; THENCE SOUTH 35°26'48" WEST, 50.00 FEET TO THE POINT OF BEGINNING.

PARCEL B:

BEGINNING AT A POINT ON THE WEST SIDE OF SAND HOLLOW ROAD WHERE IT INTERSECTS WITH STATE ROAD 9, SAID POINT BEING NORTH 89°46'47" WEST 1,968.05 FEET ALONG THE CENTER SECTION LINE AND NORTH 1,796.45 FEET FROM THE EAST QUARTER CORNER OF SECTION 1, TOWNSHIP 42 SOUTH, RANGE 14 WEST, SALT LAKE BASE & MERIDIAN, AND RUNNING; THENCE SOUTHERLY THE FOLLOWING (3) COURSES ALONG THE WESTERLY LINE OF SAND HOLLOW ROAD; THENCE SOUTH 15°15'24" EAST 673.27 FEET; THENCE SOUTHERLY 223.12 FEET ALONG AN ARC OF A 558.00 FOOT RADIUS CURVE TO THE RIGHT (CENTER BEARS SOUTH 74°44'36" WEST, LONG CHORD BEARS SOUTH 03°48'06" EAST 221.64 FEET WITH A CENTRAL ANGLE OF 22°54'37"); THENCE SOUTH 07°39'13" WEST 5.82 FEET; THENCE SOUTH 76°45'10" WEST 27.71 FEET; THENCE NORTH 16°20'36" WEST 892.79 FEET TO THE SOUTHERLY LINE OF STATE ROAD 9; THENCE NORTH 73°19'03" EAST 65.46 FEET ALONG SAID SOUTHERLY LINE; THENCE EASTERLY 25.49 FEET ALONG AN ARC OF A 22,763.31 FOOT RADIUS CURVE TO THE RIGHT (CENTER BEARS SOUTH 16°40'57" EAST, LONG CHORD BEARS NORTH 73°20'59" EAST 25.49 FEET WITH A CENTRAL ANGLE OF 00°03'51") ALONG SAID SOUTHERLY LINE TO THE POINT OF BEGINNING.

**SCHEDULE B - Section 1  
Requirements**

The following are the requirements to be complied with:

1. Pay the agreed amounts for interest in the land and/or the mortgage or deed of trust to be insured.
2. Pay us the premiums, fees and charges for the policy. In the event the transaction for which this commitment is furnished cancels, a cancellation fee will be imposed.
3. Provide us with releases, reconveyances or other instruments, acceptable to us, including payment of any amounts due, removing the encumbrances shown in Schedule B-2 that are objectionable to the proposed insured.
4. Provide us with copies of appropriate agreements, resolutions, certificates, or other evidence needed to identify the parties authorized to execute the documents creating the interest to be insured.
5. The documents creating the interest to be insured must be signed, delivered and recorded.
6. You must tell us, in writing, the name of anyone not referred to in this Commitment who will receive an interest in, or who will make a loan secured by a deed of trust or mortgage secured by, the land described in this Commitment.
7. After we have received the information requested in these requirements, together with any other information about the transaction, we will have the right to add requirements to this Schedule B-1 or special exceptions to Schedule B-2.

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**SCHEDULE B - Section 2**  
**Exceptions**

Any policy we issue will have the following exceptions unless they are taken care of to our satisfaction.

1. Taxes or assessments which are not shown as existing liens by the records of any taxing authority that levies taxes or assessments on real property or by the public records.
2. Any facts, rights, interest or claims which are not shown by the public records but which could be ascertained by an inspection of said land or by making inquiry of persons in possession thereof.
3. Easements, claims of easements or encumbrances which are not shown by the public records.
4. Discrepancies, conflicts in boundary lines, shortage in area, encroachments and any other facts which a correct survey would disclose, and which are not shown by public records.
5. Unpatented mining claims; reservations or exceptions in patents or in Acts authorizing the issuance thereof, water rights, claims or title to water.
6. Any lien, or right to a lien, for services, labor or material heretofore or hereafter furnished, imposed by law and not shown by the public records.
7. Defects, liens, encumbrances, adverse claims or other matters, if any, created, first appearing in the public records or attaching subsequent to the effective date hereof but prior to the date the proposed insured acquires of record for value the estate or interest or mortgage thereon covered by this commitment.

(The following affects a portion of Parcel A and all of Parcel B together with other land not included herein)

8. Taxes for the year 2013 now a lien, not yet due. Tax Parcel No. H-4-2-1-1103, Account No. 751043.

(The following affects a portion of Parcel A and all of Parcel B together with other land not included herein)

9. General property taxes for the year(s) 2009 are **delinquent** in the principal amount of \$23.02, plus interest, penalty and costs. Tax Parcel No. H-4-2-1-1103, Account No. 751043.  
  
Subsequent delinquency for the year 2010 in the principal amount of \$19.00, plus interest, penalty and costs.

Subsequent delinquency for the year 2011 in the principal amount of \$14.67, plus interest, penalty and costs.

Subsequent delinquency for the year 2012 in the principal amount of \$13.51, plus interest, penalty and costs.

(The following affects a portion of Parcel A together with other land not included herein)

10. Taxes for the year 2013 now a lien, not yet due. Tax Parcel No. H-4-2-11-125, Account No. 844735.

(The following affects a portion of Parcel A together with other land not included herein)

11. General property taxes for the year(s) 2009 are **delinquent** in the principal amount of \$8.97, plus interest, penalty and costs. Tax Parcel No. H-4-2-11-125, Account No. 844735.

Subsequent delinquency for the year 2010 in the principal amount of \$10.71, plus interest, penalty and costs.

Subsequent delinquency for the year 2011 in the principal amount of \$11.28, plus interest, penalty and costs.

Subsequent delinquency for the year 2012 in the principal amount of \$11.20, plus interest, penalty and costs.

12. The land is included within the boundaries of Hurricane City, and is subject to charges and assessments made thereby.

(The following affects a portion of Parcel A and all of Parcel B together with other land not included herein)

13. The effect of the 1969 Farmland Assessment Act, wherein there is a five (5) year roll-back provision with regard to assessment and taxation, by reason of that certain Application for Assessment and Taxation of Agricultural Land, recorded November 03, 2011 as Entry No. 20110033580 of Official Records.

A Notice of Withdrawal filed by the Washington County Assessor recorded March 28, 2012 as Entry No. 20120009838 of Official Records.

(The following affects the Northerly boundary of the subject property)

14. An easement over, across or through the land for electric distribution lines and/or communication systems and incidental purposes, as granted to Utah Associated Municipal Power Systems by Instrument recorded January 13, 1995 as Entry No. 489474 in Book 879 at Page 430 of Official Records.
15. United States Department of the Interior Bureau of Land Management Right of Way Grant/Temporary Use Permit in favor of Mountain Fuel Supply Company for a natural gas pipeline and incidental purposes recorded May 27, 1997 as Entry No. 566876 in Book 1103 at Page 186 of Official Records.

NOTE: The above easement purports to affect the subject property, but the exact location cannot be determined because of an incomplete legal description.

(The following affects a portion of the subject property)

16. An Easement Agreement by and between Winding River Associates, LLC, a Utah Limited Liability Company and Washington County Water Conservancy District for water pipelines and incidental purposes recorded September 11, 2000 as Entry No. 696150 in Book 1379 at Page 2063 of Official Records.

A Vacation and Regrant of Right-of-Way Easement recorded March 01, 2005 as Entry No. 929680 in Book 1717 at Page 2676 of Official Records.

An Amended Right-of-Way Easement recorded March 01, 2005 as Entry No. 929681 in Book 1717 at Page 2678 of Official Records.

Second Amended Right-of-Way Easement recorded August 21, 2008 as Entry No. 20080033056 of Official Records.

Second Amended Right-of-Way Easement recorded August 21, 2008 as Entry No. 20080033057 of Official Records.

Second Vacation and Regrant of Right-of-Way Easement recorded August 21, 2008 as Entry No. 20080033058 of Official Records.

17. Terms and conditions as contained within that certain Quit Claim Deed recorded February 13, 2004 as Entry No. 864979 in Book 1615 at Page 1060 of Official Records.

(The following affects the subject property together with other land not included herein)

18. A Land Loan Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing dated November 17, 2005 by and between Dos Lagos, L.L.C., a Utah limited liability company as Trustor in favor of Southern Utah Title Company as Trustee and America First Federal Credit Union as Beneficiary, to secure a revolving line of credit in the original amount of \$26,500,000.00 and any other amounts or obligations secured thereby recorded November 22, 2005 as Entry No. 986722 in Book 1816 at Page 2368 of Official Records.

Note: The herein-above mentioned deed of trust secures a revolving line of credit. The Company requires signed authorization from Trustor(s) closing said line of credit.

Cross-Collateralization and Cross-Default Agreement by and between America First Federal Credit Union and Dos Lagos, L.L.C., a Utah limited liability company, and Roland N. Walker and Sally Walker, husband and wife recorded May 04, 2006 as Entry No. 20060018045 of Official Records.

Amendment to Cross-Collateralization and Cross-Default Agreement recorded July 06, 2006 as Entry No. 20060029529 of Official Records.

Modification to Land Loan Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing recorded July 06, 2006 as Entry No. 20060029530 of Official Records.

Second Modification to Land Loan Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing recorded July 27, 2006 as Entry No. 20060033444 of Official Records.

Second Amendment to Cross-Collateralization and Cross-Default Agreement recorded August 17, 2006 as Entry No. 20060037436 of Official Records.

Third Modification to Land Loan Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing recorded March 27, 2009 as Entry No. 20090011139 of Official Records.

A Subordination Agreement, wherein the lien of the Deed of Trust and Cross Collateralization and Cross-Default Agreement shown herein-above was subordinated to the Right-of-Way and Easement Grant recorded August 17, 2009 as Entry No. 20090031874 of Official Records. Said Subordination Agreement recorded August 17, 2009 as Entry No. 20090031878 of Official Records.

A Substitution of Trustee recorded November 25, 2009 as Entry No. 20090044922 of Official Records, wherein Mark B. Durrant, Esq., a member of the Utah State Bar was substituted as Trustee under said Deed of Trust.

A Notice of Default under said Deed of Trust was recorded November 25, 2009 as Entry No. 20090044923 of Official Records.

A Substitution of Trustee recorded March 29, 2012 as Entry No. 20120010051 of Official Records, wherein Steven J. Newman, Esq., a member of the Utah State Bar was substituted as Trustee under said Deed of Trust.

A Notice of Default under said Deed of Trust was recorded March 29, 2012 as Entry No. 20120010054 of Official Records.

19. Development Agreement for Elim Valley recorded January 05, 2007 as Entry No. 20070000768 of Official Records.
20. Master Communications Easement for Elim Valley by and between Mellon Valley, LLC, a Utah limited liability company, Elim Valley Planning and Development, LLC, a Utah limited liability company, Roland Neil Family Limited Partnership, a Utah limited partnership, and EVD Communications Infrastructure, LLC, a Utah limited liability company, recorded February 16, 2007, as Entry No.'s 20070008384, 20070008385 and 20070008386 of Official Records.

First Amendment to Master Communications Easement for Elim Valley by and between Roland Neil Family Limited Partnership, a Utah limited partnership, EVD Communications Infrastructure, LLC, a Utah limited liability company, and Elim Valley Planning and Development, LLC recorded August 06, 2007 as Entry No. 20070039830 of Official Records.

First Amendment to Master Communications Easement for Elim Valley by and between Mellon Valley, LLC, a Utah limited liability company, Elim Valley Planning and Development, a Utah limited liability company, Roland Neil Family Limited Partnership, a Utah limited partnership, and EVD Communications Infrastructure, LLC, a Utah limited liability company recorded May 20, 2008 as Entry No. 20080020598 of Official Records.

A Grant Deed wherein EVD Communications Infrastructure, LLC, a Utah limited liability company, grants unto Roland L. Walker Irrevocable Trust u/a/d December 23, 1985 all of its right, title and interest in and to the Master Communications Easement for Elim Valley shown herein above recorded May 26, 2011 as Entry No. 20110016187 of Official Records.

An Option to Purchase Easement wherein Roland L. Walker Irrevocable Trust u/a/d December 23, 1985 grants to R&S Farms Utah Limited Partnership the option to purchase the ownership interest in the above easement under the terms and conditions contained therein recorded May 26, 2011 as Entry No. 20110016212 of Official Records.

21. An unrecorded Option Agreement to purchase real property dated May 1, 2005 by and between Elim Valley Planning and Development, LLC as Optionee and Mellon Valley, LLC as Optionor as evidenced by that certain Subordination Agreement recorded December 14, 2007 as Entry No. 20070058972 of Official Records.
22. A Community Charter for Elim Valley Neighborhoods recorded August 27, 2008 as Entry No. 20080033769 of Official Records.
23. Notice of Interest recorded March 30, 2009 as Entry No. 20090011606 of Official Records, wherein it states the following, to-wit: CGS Engineering Inc. claims an interest in the subject property by virtue of a Personal Service Agreement, between Elim Valley Development and CGS Engineering Inc.

(The following affects a portion of Parcel A)

A Release of Notice of Interest recorded August 17, 2009 as Entry No. 20090031877 of Official Records.

(The following affects a portion of Parcel A)

24. An easement over, across or through the land for gas transmission and distribution facilities and incidental purposes, as granted to Questar Gas Company, a corporation of the State of Utah by Instrument recorded August 17, 2009 as Entry No. 20090031874 of Official Records.

(The following affects a portion of Parcel A)

25. A Temporary Non-Exclusive Access Easement for non-exclusive access in favor of Questar Gas Company recorded August 17, 2009 as Entry No. 20090031875 of Official Records.
26. A Judgment against Elim Valley Planning & Development, LLC, a Utah limited liability company as Debtor in favor of T & R Lumber Company, a California corporation as Creditor, as Case No. 090500424 in the principal amount of \$39,901.45 and any other amounts due thereunder, recorded September 10, 2009 as Entry No. 20090035226 of Official Records.

(The following affects Parcels A and B)

27. An Access and Utility Easement for ingress, egress and access in favor of Red Bridge Capital, LLC, a Utah limited liability company recorded May 22, 2013 as Entry No. 20130019724 of Official Records.
28. A Judgment against Dos Lagos, LLC, a Utah limited liability company, Mellon Valley, LLC, a Utah limited liability company, and Roland N. Walker, an individual and Sally Walker, an individual as Debtor in favor of Red Bridge Capital, LLC, a Utah limited liability company as Creditor, as Case No. 120902931 in the principal amount of \$2,000,000.00 and any other amounts due thereunder, recorded May 30, 2013 as Entry No. 20130020837 of Official Records.
29. Vehicular access is limited to openings permitted by the Utah State Department of Transportation in accordance with Section 41-6a-714, Utah Code Annotated, as amended 2005.
30. Any prior reservations and/or any minerals in or under said land including, but not limited to metals, oil, gas, coal, stone and mineral rights, mining rights, lease rights and easement rights or other matters relating thereto, whether expressed or implied.

\*\*\*

The name(s) Mellon Valley, LLC, Elim Valley Planning and Development, LLC and Red Bridge Capital, LLC, has/have been checked for judgments, State and Federal tax liens, and bankruptcies and if any were found, are disclosed herein .

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Title inquiries should be directed to Greg Holbrook @ (801)578-8869.

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**NOTE:** The policy(ies) to be issued as a result of this Commitment contain an Arbitration Clause set forth in the Conditions/Conditions and Stipulations Section. The following is included for the information of the proposed Insured(s):

Any matter in dispute between you and the company may be subject to arbitration as an alternative to court action pursuant to the rules of the American Arbitration Association or other recognized arbitrator, a copy of which is available on request from the company. Any decision reached by arbitration shall be binding upon both you and the company. The arbitration award may include attorney's fees if allowed by state law and may be entered as a judgment in any court of proper jurisdiction.

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In the event the transaction for which this commitment was ordered "cancels", please refer to Paragraph B under Schedule B, Section 1 for required cancellation fee.

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**CONDITIONS****1. DEFINITIONS**

- (a) "Mortgage" means mortgage, deed of trust or other security instrument.
- (b) "Public Records" means title records that give constructive notice of matters affecting the title according to the state law where the land is located.

**2. LATER DEFECTS**

The Exceptions in Schedule B may be amended to show any defects, liens or encumbrances that appear for the first time in the public records or are created or attached between the Commitment Date and the date on which all of the Requirements are met. We shall have no liability to you because of this amendment.

**3. EXISTING DEFECTS**

If any defects, liens or encumbrances existing at Commitment Date are not shown in Schedule B, we may amend Schedule B to show them. If we do amend Schedule B to show these defects, liens or encumbrances, we shall be liable to you according to Paragraph 4 below unless you knew of this information and did not tell us about it in writing.

**4. LIMITATION OF OUR LIABILITY**

Our only obligation is to issue to you the Policy referred to in this Commitment, when you have met its Requirements. If we have any liability to you for any loss you incur because of an error in this Commitment, our liability will be limited to your actual loss caused by your relying on this Commitment when you acted in good faith to:

comply with the Requirements

or

eliminate with our written consent any Exceptions shown in Schedule B

We shall not be liable for more than the Amount shown in Schedule A of this Commitment and our liability is subject to the terms of the Policy form to be issued to you.

**5. CLAIMS MUST BE BASED ON THIS COMMITMENT**

Any claims, whether or not based on negligence, which you may have against us concerning the title to the land must be based on this Commitment and is subject to its terms



## PRIVACY POLICY

### We Are Committed to Safeguarding Customer Information

In order to better serve your needs now and in the future, we may ask you to provide us with certain information. We understand that you may be concerned about what we will do with such information - particularly any personal or financial information. We agree that you have a right to know how we will utilize the personal information you provide to us. Therefore, together with our parent company, The First American Corporation, we have adopted this Privacy Policy to govern the use and handling of your personal information.

### Applicability

This Privacy Policy governs our use of the information which you provide to us. It does not govern the manner in which we may use information we have obtained from any other source, such as information obtained from public records or from another person or entity. First American has also adopted broader guidelines that govern our use of personal information regardless of its source. First American calls these guidelines its *Fair Information Values*, a copy of which can be found on our web site at [www.firstam.com](http://www.firstam.com).

### Types of Information

Depending upon which of our services you are utilizing, the types of nonpublic personal information that we may collect include:

- Information we receive from you on applications, forms and in other communications to us, whether in writing, in person, by telephone or any other means;
- Information about your transactions with us, our affiliated companies, or others; and
- Information we receive from a consumer reporting agency.

### Use of Information

We request information from you for our own legitimate business purposes and not for the benefit of any nonaffiliated party. Therefore, we will not release your information to nonaffiliated parties except: (1) as necessary for us to provide the product or service you have requested of us; or (2) as permitted by law. We may, however, store such information indefinitely, including the period after which any customer relationship has ceased. Such information may be used for any internal purpose, such as quality control efforts or customer analysis. We may also provide all of the types of nonpublic personal information listed above to one or more of our affiliated companies. Such affiliated companies include financial services providers, such as title insurers, property and casualty insurers, and trust and investment advisory companies, or companies involved in real estate services, such as appraisal companies, home warranty companies, and escrow companies. Furthermore, we may also provide all information we collect, as described above, to companies that perform marketing services on our behalf, on behalf of our affiliated companies, or to other financial institutions with whom we or our affiliated companies have joint marketing agreements.

### Former Customers

Even if you are no longer our customer, our Privacy Policy will continue to apply.

### Confidentiality and Security

We will use our best efforts to ensure that no unauthorized parties have access to any of your information. We restrict access to nonpublic personal information about you to those individuals and entities who need to know that information to provide products and services to you. We will use our best efforts to train and oversee our employees and agents to ensure that your information will be handled responsibly and in accordance with this Privacy Policy and First American's *Fair Information Values*. We currently maintain physical, electronic, and procedural safeguards that comply with federal regulations to guard your nonpublic personal information.

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## SETTLEMENT AGREEMENT

This Settlement Agreement (the "Agreement") is entered into this 15<sup>th</sup> day of May, 2013, by and between Red Bridge Capital, LLC, a Utah Limited Liability Company ("Red Bridge") Dos Lagos, L.L.C., a Utah Limited Liability Company ("Dos Lagos"), Mellon Valley, LLC, a Utah Limited Liability Company ("Mellon"), Roland N. Walker, an individual residing in Idaho ("Roland"), and Sally Walker, an individual residing in Idaho ("Sally" and, collectively with Dos Lagos, Mellon, and Roland ("Defendants"). Red Bridge and the Defendants are hereinafter referred to as the "Parties" and individually as a "Party".

## RECITALS

A. Pursuant to § 57-1-32, UCA, Red Bridge has asserted deficiency judgment claims in excess of \$8,000,000 against Defendants in that certain lawsuit now pending in the Third Judicial District Court in and for Salt Lake County, State of Utah (the "Court"), Civil No. 120902931, entitled *Red Bridge Capital, LLC v Dos Lagos, L.L.C., et al* (the "Lawsuit")

B. In the Lawsuit, Defendants contest the right of Red Bridge to a deficiency judgment.

C. The Lawsuit involves two parcels of vacant, developable real property, each consisting of approximately 15 acres, that are located in Washington County, Utah, near the City of Hurricane, and certain residential lots located near Rigby, Idaho, all of which is now owned by Red Bridge. The Washington County, Utah parcels are commonly referred to by the Parties as Parcels A and B, and are more particularly described on Exhibit "A" attached hereto (the "Properties").

D. The Properties are each separated by certain strip parcels (the "Strip Parcels") that are owned by Mellon and that are parallel to Sand Hollow Road, which bisects the Strip Parcels. The legal descriptions of the Strip Parcels are attached hereto as Exhibit "B.", which Defendant represents and warrants to Red Bridge constitutes all of the property that Mellon owns between the Properties and Sand Hollow Road.

E. Currently, the Properties are encumbered by a certain Master Communications Easement for Elim Valley (the "Communications Easement"), recorded as Doc. No. 20070008386 in favor of EVD Communications Infrastructure, LLC ("EVD").

F. Currently there is inadequate or nonexistent vehicular access from the Properties to Sand Hollow Road that would permit reasonable commercial and/or residential development of the Properties.

G. The most cost effective and logical access from the Properties to Sand Hollow Road would be across the Strip Parcels.

H. Defendants believe that the Strip Parcels can be developed for commercial and/or residential uses.

I. The Parties have agreed to resolve and compromise the claims and disputes in the Lawsuit, pursuant to the terms and conditions more fully set forth below.

# AGREEMENT

NOW THEREFORE, in consideration of the mutual promises, covenants and agreements set forth in this Agreement, and based upon the foregoing recitals and for other good and valuable consideration the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

1. Settlement Payment. Upon execution of this Agreement, the Defendants shall cause the sum of One Hundred Fifty Thousand Dollars cash (\$150,000.00 US) to be remitted to Red Bridge, care of its counsel, Snell & Wilmer L.L.P. by wire transfer as follows:

JP Morgan Chase NA  
201 N. Central Ave.  
Phoenix, AZ 85004  
ABA# 021000021  
International Wires – Use SWIFT code CHASUS33  
Account No. 411-9025  
Account Name: Snell & Wilmer Trust Account  
Reference: Red Bridge CM # 59166.00013

2. Deficiency Judgment. Upon execution of this Agreement, the Defendants consent to entry by the Court of a deficiency judgment (the "Judgment") in the amount of Two Million Dollars (\$2,000,000.00) in the form shown as Exhibit "C" attached hereto. The Judgment shall bear interest at the rate of 15% per annum from entry until paid.

3. Perfection / Enforcement of Judgment. Upon entry of the Judgment, Red Bridge may perfect the judgment as a lien against Defendants' real and personal property, in the same manner that any Utah judgment creditor could perfect a judgment against a judgment debtor's property, and Defendants shall not interfere with or inhibit any such perfection efforts by Red Bridge, *provided, however*, that, so long as Defendants are not in default of their other obligations to Red Bridge under this Agreement, Red Bridge shall not take any actions to enforce or collect the Judgment.

4. Activities Affecting the Properties. Within the time periods set forth below, Defendants shall do, or cause to be done, all of the following:

a. Termination of Communications Easement. Upon execution of this Agreement, EVD, and any of its successors and assigns as may be necessary, shall eliminate and terminate the Communications Easement with regard to the Properties by executing an easement termination (the "Easement Termination") in the form attached hereto as Exhibit "D", and delivering the same to Red Bridge's counsel. Execution and delivery of the Easement Termination shall not require Red Bridge to offer or pay any additional consideration to EVD, to any successor or assignee of EVD, to the Defendants or to Defendants' affiliates. Termination of the Communications Easement shall be free and clear of any and all liens or encumbrances, and Defendants shall have one-hundred eighty (180) days

after entry of the Judgment to remove any such liens and encumbrances affecting the Communications Easement. EVD, any successor or assign of EVD, Defendants and Defendants' affiliates shall not interfere with or inhibit the recording of the Easement Termination by Red Bridge.

- b. Blanket Access and Utility Easement. Upon execution of this Agreement, Mellon, and any of its successors and assigns as may be necessary or appropriate, shall execute and deliver a general blanket access and utility easement ("Access and Utility Easement") to Red Bridge burdening the land that the Strip Parcels are part of, and permitting each of the Properties to have access to Sand Hollow Road for general vehicular access from at least two separate locations for each of the Properties (a total of four (4) locations), with the specific location and description of the access to be determined at the sole discretion of Red Bridge and at a future date, *provided however*, that the locations selected by Red Bridge must be reasonable for typical commercial and/or residential development of the Properties and provided that the utility easement shall be located in the same location as the access easement. The Access and Utility Easement will allow Red Bridge to install such underground and above-ground utility lines and facilities as may be necessary or appropriate to permit typical commercial and/or residential development of the Properties, *provided, however*, that the installation of all such utilities shall comply with applicable zoning and development rules, regulations, statutes and covenants. The Access and Utility Easement shall be in the form attached as Exhibit "E", and shall be of customary size and scope to permit typical commercial and/or residential development of the Properties. Execution and delivery of the Access and Utility Easement shall not require Red Bridge to offer or pay any additional consideration to Mellon, to any successor or assignee of EVD, to the Defendants or to Defendants' affiliates. Within one-hundred eighty (180) days after entry of the Judgment, Defendants also shall cause all liens and encumbrances to be removed from the Strip Parcels. Mellon, any successor or assign of Mellon, Defendants and Defendants' affiliates shall not interfere with or inhibit the recording of the Access and Utility Easement by Red Bridge.
- c. Mutual Development Agreement. Within one-hundred and eighty (180) days after entry of the Judgment, Mellon, or its successor or assign, and Red Bridge, or its successor or assigns, shall negotiate in good faith to enter into a mutually acceptable development agreement (the "Development Agreement") regarding the Strip Parcels and the Properties that provides for the mutual future development of the Strip Parcels and the Properties in a manner that is satisfactory to both Red Bridge and Mellon. In the event such a mutually acceptable development agreement cannot be entered into within one-hundred and eighty (180) days after entry of the Judgment, Mellon shall transfer good and marketable fee simple title to the Strip Parcels to Red Bridge, free and clear of any and all liens and encumbrances, and without the payment of any additional consideration by Red Bridge, by executing and delivering

the Special Warranty Deed ("Deed") in the form attached as Exhibit "F." Either the entering into of a mutual development agreement or the deeding of the Strip Parcels to Red Bridge shall satisfy the requirements of this paragraph 4(c). Prior to the transfer of the Strip Parcels to Red Bridge, Red Bridge shall have the right to obtain all appropriate governmental approvals to create a separate lot of record for each Strip Parcel and Mellon shall assist and cooperate with Red Bridge in such approvals at no material cost to Mellon and shall execute any applications, consents, boundary line agreements, and other documents which may be necessary or convenient to obtain the approvals.

- d. Absence of Bankruptcy Petition or Related Action. Within one-hundred and eighty (180) days after entry of the Judgment, no petition in bankruptcy, initiation of any receivership proceeding or the filing of any other judicial proceeding that could prohibit the implementation or performance of this Agreement shall be filed by or against any of the Defendants, EVD, any transferor of consideration under this Agreement Debtor or any of their respective successors and assigns.

5. Release of Judgment. If each of the events in paragraphs 1 and 4(a) – (c) occurs, and none of the events identified in paragraph 4(d) occur, then promptly upon expiration of the 180 day period Red Bridge shall file a satisfaction of the Judgment and shall release any liens that it had previously perfected regarding the Judgment, without the offer or payment of any additional consideration by Defendants.

6. Payment of Judgment. If any of the events in paragraphs 1 and 4(a) – (c) do not occur, or if any of the events identified in paragraph 4(d) do occur, within the time periods indicated, then Red Bridge shall retain all of the consideration and performance it has received from Defendants under this Agreement up to that point in time, and, in addition, Red Bridge's sole additional recourse for Defendants' failure to complete performance shall be collection of the Judgment, which Defendants shall pay as follows:

- a. Initial Payment: On or before the date that is twelve (12) months after entry of the Judgment, the Defendants shall remit One Million Dollars (\$1,000,000.00) to Red Bridge, in care of Red Bridge's counsel, by wire transfer, in the same manner specified in paragraph 1 above; and
- b. Final Payment: On or before the date that is twenty-four (24) months after entry of the Judgment, the Defendants shall remit the balance of principal and interest due on the Judgment to Red Bridge, in care of Red Bridge's counsel, by wire transfer, in the same manner specified in paragraph 1 above.
- c. Collection of Judgment: If Defendants do not pay the Judgment in the manner provided by paragraphs 6(a) & (b) above, Red Bridge may enforce and collect the Judgment by all applicable means available to it under law, regardless of whether Defendants have performed, in part, some of the activities identified in Paragraphs 1 and 4 above.

d. Release of Judgment. If Defendants timely pay the Judgment in the manner provided in paragraphs 6(a) & (b) above, then Red Bridge shall file a satisfaction of the Judgment and shall release any liens that it had previously perfected regarding the Judgment, without the offer or payment of any additional consideration by Defendants.

e. Stay of Enforcement of Judgment. So long as Defendants are timely in paying the Judgment in accordance with paragraphs 6(a) & (b) above, Red Bridge shall not take any actions to enforce or collect the Judgment.

7. Release of Claims by Red Bridge Against the Defendants: Effective upon entry of the Judgment, Red Bridge releases and forever discharges Defendants, and their respective managers, subsidiaries, parents, officers, directors, partners, attorneys, agents and the employees, agents, attorneys, representatives, predecessors, successors and assigns thereof (collectively, the "Defendants' Release Parties") from any and all causes of action in law or in equity, suits, debts, liens, contracts, liabilities, claims, demands, damages, losses, fees, costs, or expenses, set offs, or claims for recoupment, of any nature whatsoever, known or unknown, fixed or contingent that Red Bridge may have against the Defendants' Release Parties based upon any claims, acts or omissions that are the subject of the Lawsuit and that arose prior to the date of this Agreement, *provided however*, the release provided under this paragraph is not a release of any obligations, claims or causes of action arising or resulting from this Agreement, from the Judgment entered in connection herewith, or from a default under or breach of this Agreement.

8. Release of Claims by Defendants Against Red Bridge. Effective upon entry of the Judgment, Defendants, and each of them, release and forever discharge Red Bridge, and its their respective managers, subsidiaries, parents, officers, directors, partners, attorneys, agents and the employees, agents, attorneys, representatives, predecessors, successors and assigns thereof (collectively, the "Red Bridge Release Parties") from any and all causes of action in law or in equity, suits, debts, liens, contracts, liabilities, claims, demands, damages, losses, fees, costs, or expenses, set offs, or claims for recoupment, of any nature whatsoever, known or unknown, fixed or contingent that Defendants may have against the Red Bridge Release Parties based upon any claims, acts or omissions that are the subject of the Lawsuit and that arose prior to the date of this Agreement, *provided however*, the release provided under this paragraph is not a release of any obligations, claims or causes of action arising or resulting from this Agreement, from the Judgment entered in connection herewith, or from a default under or breach of this Agreement.

9. Representations and Warranties Regarding Authority. The Parties represent and warrant to each other that they have full power and authority to enter into this Agreement, that there has been no assignment or other transfer of a claim, cause of action, liability or asset which might affect or impair the performance which is the subject of this Agreement, that they are not now a debtor in, or the subject of, any voluntary or involuntary bankruptcy or receivership proceeding, and that executing and performing this Agreement does not violate the terms of any other agreement to which they are a party.

10. Attorneys' Fees and Costs. Each of the Parties shall bear its own respective attorneys' fees and costs incurred in connection with the preparation and implementation of this Agreement, *provided, however*, that if any legal action is taken to enforce any term or provision of this Agreement, the Parties agree that the prevailing party in such action shall be entitled to

payment of its attorneys' fees, expenses and costs incurred to enforce the terms of this Agreement, including enforcing the same in any bankruptcy case, receivership proceeding or appeal.

11. Effectuation of Agreement. The Parties agree to perform any other or further acts, and execute and deliver any other or further documents, as may be necessary or appropriate to implement this Agreement.

12. Binding Effect. This Agreement shall be binding upon each of the Parties, and their respective successors-in-interest, heirs and/or assigns. All representations and warranties made herein shall survive execution of this Agreement and shall at all times subsequent to the execution of this Agreement remain binding and fully enforceable.

13. Court Jurisdiction. Any claims or causes of action, whether legal or equitable, arising out of or based upon this Agreement or related documents, including but not limited to interpretation and/or enforcement of this Agreement, shall be commenced in the Court. The Parties hereby consent to the jurisdiction, venue and process of the Court.

14. Governing Law. This Agreement is made pursuant to and shall be governed by laws of the State of Utah and, where applicable, federal bankruptcy law.

15. Construction of Agreement. This Agreement shall be construed as a whole in accordance with its fair meaning and in accordance with governing law. This Agreement has been negotiated by each of the Parties (or their respective counsel) and the language of the Agreement shall not be construed for or against any particular party.

16. Voluntary Agreement. This Agreement has been carefully read by the Parties and has been reviewed by the Parties' respective legal counsel; the contents hereof are known and understood by the Parties; and each of the Parties acknowledges that such party is under no duress or undue influence and that each of the Parties executes this Agreement as its own free and voluntary act.

17. Integration and Amendments. This Agreement, and all documents identified as exhibits to this Agreement, shall constitute the entire agreement and understanding of and between the Parties in relation to matters described herein, and no statements, representations, inducements or promises other than as expressly set forth herein have been given or received by any of the Parties (nor by their respective agents, employees, attorneys or representatives) in return for same. All negotiations, oral conversations, statements, representations and/or agreements leading up to the execution of this Agreement are merged herewith and shall not be the basis for any legal rights, claims or defenses in relation to any litigation or otherwise. No parole or extrinsic evidence may be used to contradict any of the terms of this Agreement. Any amendment to this Agreement must be in writing, signed by duly authorized representatives of the Parties hereto, and specifically state the intent of the Parties to amend this Agreement.

18. Condemnation. If, prior to the execution, delivery and recording of the Access and Utility Easement, the Strip Parcels, or any portion thereof, are either condemned by a governmental agency or municipality, or if any condemnation proceeding regarding the Strip Parcels is initiated by any such governmental agency or municipality, then Defendants shall



provide written notice to Red Bridge of any such proceeding and shall consent to the participation and intervention by Red Bridge in any such proceeding as a party in interest.

19. Counterparts. This Agreement may be executed by the Parties hereto in any number of identical counterparts, each of which, once executed and delivered in accordance with the terms of this Agreement, will be deemed an original with all such counterparts taken together constituting one and the same instrument. Delivery by facsimile, encrypted e-mail or e-mail file attachment of any such executed counterpart to this Agreement will be deemed the equivalent of the delivery of the original executed agreement or instrument.

20. Third-Party Beneficiaries. Nothing in this Agreement, express or implied, is intended to confer upon any person, other than the Parties, any rights, remedies, obligations or liabilities of any nature whatsoever.

21. Waiver. Acceptance by any of the Parties of any performance less than required hereby shall not be deemed to be a waiver of the rights of such party to enforce all of the terms and conditions hereof. Except as otherwise expressly provided herein, no waiver of any such right hereunder shall be binding unless reduced to writing and signed by the party to be charged therewith.

22. No Inducement. The Parties represent, warrant, and agree that upon executing and entering into this Agreement, they, and each of them, are not relying upon and have not relied upon any representation, promise, or statement made by anyone which is not recited, contained, or embodied in this Agreement.

23. Memorandum of Agreement. The Parties agree that either of them may record a memorandum of this Agreement against the Strip Parcels in the official records of Washington County, Utah to provide notice to the general public regarding Red Bridge's right and interest in the Strip Parcels. Such memorandum shall be sufficient to provide record notice of the Agreement, but shall not disclose the terms and conditions of the Agreement, and will be released once the conditions in paragraph 4(c) above are satisfied.

24. Notices. All notices and other communications hereunder shall be in writing and shall be deemed to have been duly given if delivered personally (including delivery by courier service), transmitted by facsimile or other electronic transmission, or mailed by registered or certified mail, postage prepaid, return receipt requested, as follows:

If to Red Bridge:

Red Bridge Capital, LLC  
c/o Cherokee & Walker Management  
Attn: Paul Erickson  
6440 So. Wasatch Boulevard  
Suite 200  
Salt Lake City, UT 84121  
Facsimile: 801-278-7818  
Email: paul@cherokeeandwalker.com

If to Defendants:

Mellon Valley, LLC  
1300 South Sand Hollow Rd.  
Hurricane, UT 84737

With copy to:


David E. Leta  
 Snell & Wilmer L.L.P.  
 15 West South Temple, Ste 1200  
 Salt Lake City, UT 84101  
 Facsimile: 801-257-1800  
 Email: dleta@swlaw.com

With copy to:

Clifford V. Dunn, Esq.  
 Dunn Law Firm  
 P.O. Box 2318  
 110 West Tabernacle  
 St. George, UT 84771-2318  
 Facsimile: (435) 628-4145  
 Email: cvdunn@dunnfirm.com

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date and year first above written.


Roland N. Walker

By: 

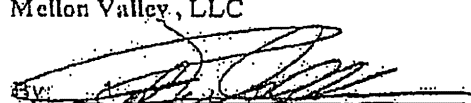
Sully Walker

By: 

Dos Lagos LLC

By:   
 Name: Roland N. Walker  
 Its: MANAGER

Mellon Valley, LLC

By:   
 Name: Roland N. Walker  
 Its: MANAGER

Red Bridge Capital, LLC

By: Cherokee & Walker Management, LLC,  
 its manager

by: \_\_\_\_\_

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

Its: Manager

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

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

Its: Manager

With copy to:

David E. Leta  
Snell & Wilmer L.L.P.  
15 West South Temple, Ste 1200  
Salt Lake City, UT 84101  
Facsimile: 801-257-1800  
Email: dleta@swlaw.com

With copy to:

Clifford V. Dunn, Esq.  
Dunn Law Firm  
P.O. Box 2318  
110 West Tabernacle  
St George, UT 84771-2318  
Facsimile: (435) 628-4145  
Email: cvdunn@dunnfirm.com

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the date and year first above written.

Roland N. Walker

Sally Walker

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

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

Dos Lagos LLC

Mellon Valley, LLC

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

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

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

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

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

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

Red Bridge Capital, LLC

By: Cherokee & Walker Management, LLC,  
its manager

by: [Signature]

Name: Shirley R. [Signature]

Its: Manager

By: [Signature]

Name: John A. Erickson

Its: Manager

**EXHIBIT A**  
Description of Parcels A & B

17162051.3

## PARCELS A AND B

## PARCEL A:

Lender SR-9 Parcel A

Beginning at point on the Southerly line of Highway SR-9, said point being South 00°15'22" West 878.00 feet along the section line and West 2061.87 feet from the Northeast Corner of Section 1, Township 42 South, Range 14 West, Salt Lake Base and Meridian, and running thence South 16°20'36" East 892.79 feet thence South 76°45'10" West 864.99 feet; thence North 00°10'33" East 955.76 feet to point on the Southerly line of said SR-9; thence South 89°50'12" East 254.45 feet along said Southerly line; thence North 73°19'03" East 348.01 feet along said Southerly line to the Point of Beginning.

## PARCEL B:

Lender SR-9 Parcel B

Beginning at point on the Southerly line of Highway SR-9, said point being South 00°15'22" West 666.57 feet along the section line and West 1344.61 feet from the Northeast Corner of Section 1, Township 42 South, Range 14 West, Salt Lake Base and Meridian, and running thence South 16°20'36" East 1306.80 Feet; thence South 73°39'24" West 500.00 feet; thence North 16°20'36" West 1306.80 feet to point on the Southerly line of said SR-9, thence North 73°39'24" East 500.00 feet along said Southerly line to the Point of Beginning.

**EXHIBIT B**  
Strip Parcels Legal Description

17162062.8

## PARCEL A

Beginning at a point on the east side of Sand Hollow Road where it intersects with State Road 9, said point being North 89°46'47" West 1,887.49 feet along the center section line and North 1,820.64 feet from the East Quarter Corner of Section 1, Township 42 South, Range 14 West, Salt Lake Base & Meridian, and running;

thence easterly 25.27 feet along an arc of a 22,763.31 foot radius curve to the right (center bears South 16°24'24" East, long chord bears North 73°37'31" East 25.27 feet with a central angle of 00°03'49") along the southerly line of State Road 9;

thence North 73°39'24" East 48.49 feet along the southerly line of said State Road 9;

thence South 16°20'36" East 1,306.80 feet;

thence South 73°39'35" West 338.52 feet to the easterly line of Sand Hollow Road;

thence northerly the following (5) courses along the easterly line of said Sand Hollow Road;

thence North 16°56'45" East 51.31 feet;

thence northerly 172.48 feet along an arc of a 684.00 foot radius curve to the left (center bears North 69°44'51" West, long chord bears North 13°01'44" East 172.02 feet with a central angle of 14°26'51");

thence northerly 30.04 feet along an arc of a 931.00 foot radius curve to the right (center bears South 84°11'42" East, long chord bears North 06°43'46" East 30.04 feet with a central angle of 01°50'55");

thence North 07°39'13" East 177.80 feet;

thence northerly 256.71 feet along an arc of a 642.00 foot radius curve to the left (center bears North 82°20'47" West, long chord bears North 03°48'06" West 255.00 feet with a central angle of 22°54'37");

thence North 15°15'24" West 675.11 feet to the Point of Beginning.

Less and Excepting the following Questar Gas Parcel;

Beginning at a point being South 00°15'22" East 2,347.23 feet along the section line and North 89°35'08" West 2,572.33 feet from the Northeast corner of Section 1, Township 42 South, Range 14 West, Salt Lake Base & Meridian, and running;

thence North 89°35'08" West 75.00 feet;

thence North 00°10'33" East 100.00 feet;

thence South 89°35'08" East 75.00 feet;

thence South 00°10'33" West 100.00 feet to the Point of Beginning.

Containing 165,093 square feet or 3.79 acres.

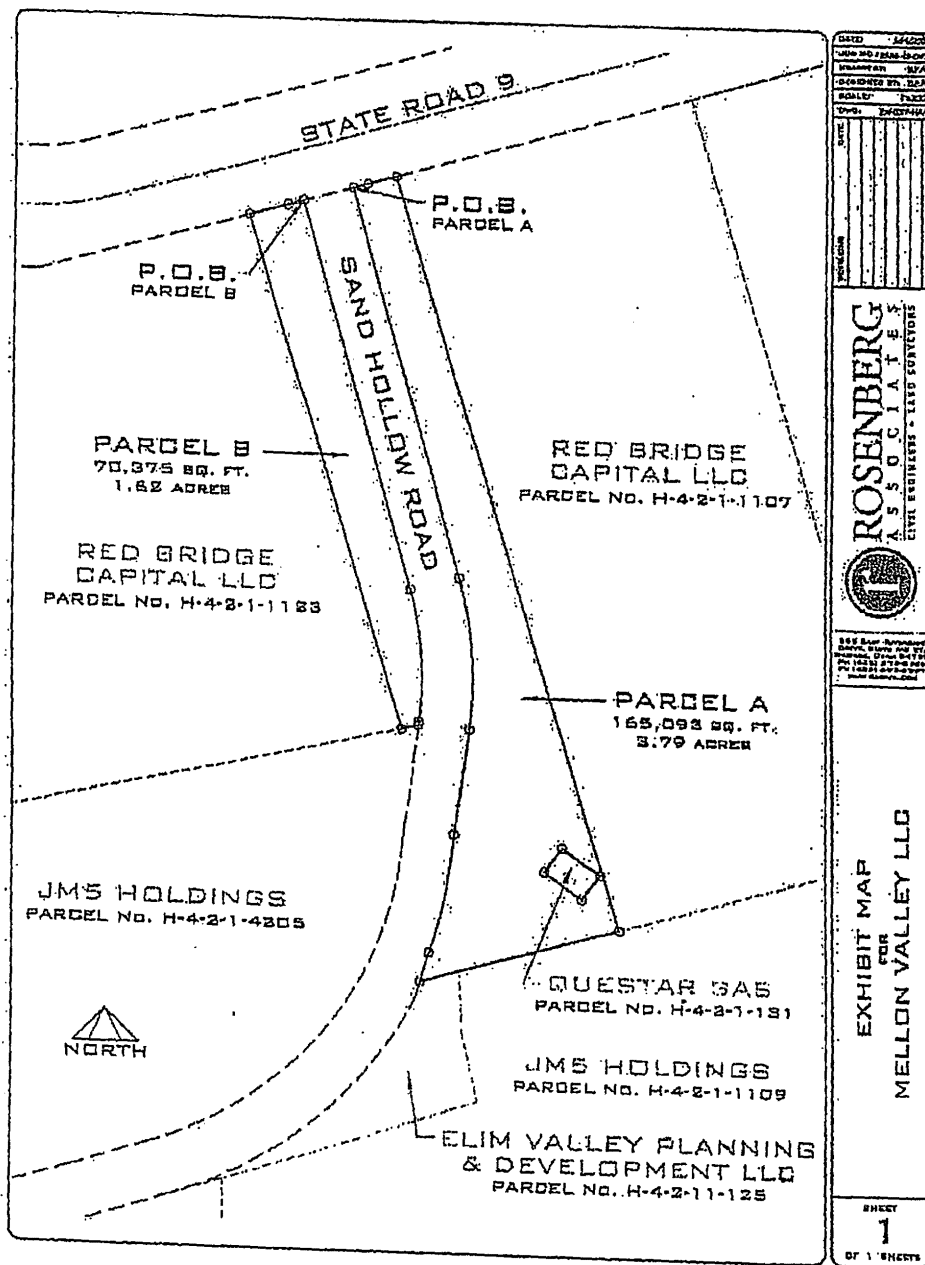
## PARCEL B

Beginning at a point on the west side of Sand Hollow Road where it intersects with State Road 9, said point being North  $89^{\circ}46'47''$  West 1,968.05 feet along the center section line and North 1,796.45 feet from the East Quarter Corner of Section 1, Township 42 South, Range 14 West, Salt Lake Base & Meridian, and running;

thence southerly the following (3) courses along the westerly line of Sand Hollow Road;  
thence South  $15^{\circ}15'24''$  East 673.27 feet;  
thence southerly 223.12 feet along an arc of a 558.00 foot radius curve to the right (center bears South  $74^{\circ}44'36''$  West, long chord bears South  $03^{\circ}48'06''$  East 221.64 feet with a central angle of  $22^{\circ}54'37''$ );  
thence South  $07^{\circ}39'13''$  West 5.82 feet;  
thence South  $76^{\circ}45'10''$  West 27.71 feet;  
thence North  $16^{\circ}20'36''$  West 892.79 feet to the southerly line of State Road 9;  
thence North  $73^{\circ}19'03''$  East 65.46 feet along said southerly line;  
thence easterly 25.49 feet along an arc of a 22,763.31 foot radius curve to the right (center bears South  $16^{\circ}40'57''$  East, long chord bears North  $73^{\circ}20'59''$  East 25.49 feet with a central angle of  $00^{\circ}03'51''$ ) along said southerly line to the Point of Beginning.

Containing 70,374 square feet or 1.62 acres.





17162002.8

**EXHIBIT C**  
Form of Judgment

17162002.8

David E. Leta (1937)  
 Timothy J. Dance (11553)  
 SNELL & WILMER LLP.  
 15 West South Temple, Ste 1200  
 Salt Lake City, UT 84101  
 Telephone: (801) 257-1900  
 Facsimile: (801) 257-1800  
 dleta@swlaw.com  
 tdance@swlaw.com

*Attorneys for Plaintiff*

IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR  
 SALT LAKE COUNTY, STATE OF UTAH

RED BRIDGE CAPITAL, LLC, a Utah  
 limited liability company,

Plaintiff,

vs.

DOS LAGOS, LLC, a Utah limited liability  
 company, MELLON VALLEY, LLC, a Utah  
 limited liability company, and ROLAND N.  
 WALKER, an individual and SALLY  
 WALKER, an individual,

Defendants.

STIPULATED FINAL JUDGMENT  
 AGAINST DEFENDANTS

Case No. 120902931

Judge John Paul Kennedy

Upon stipulation of the parties, and good cause appearing, it is hereby

ORDERED, ADJUDGED AND DECREED that:

- Judgment is hereby entered in favor of Plaintiff, Red Bridge Capital, LLC, a Utah Limited Liability Company ("Red Bridge"), and against Dos Lagos, L.L.C., a Utah Limited Liability Company, Mellon Valley, LLC, a Utah Limited Liability Company, Roland

1714492.2

17163042.3

N. Walker, an individual residing in Idaho, and Sally Walker, an individual residing in Idaho (collectively, the "Defendants"), jointly and severally, in the amount of \$2,000,000.00 for all claims asserted by Plaintiff against Defendants in this action.

2. Interest shall accrue on the unpaid portion of this Judgment at the rate of 15% per annum from date of entry until paid in full.

3. This Judgment may be augmented by the reasonable costs, expenses and attorneys' fees, incurred by Red Bridge in collecting or enforcing this Judgment, with the same being established pursuant to Utah Rule of Civil Procedure 73.

\*\*\*\*\* end of judgment\*\*\*\*\*

APPROVED AS TO FORM

/s/ Clifford V. Dunn  
 Clifford V. Dunn  
 Adam C. Dunn  
 The Dunn Law Firm  
 Attorneys for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on the \_\_\_\_ day of May, 2013, I caused a true and correct copy of the foregoing to be served by email on Defendants' counsel at the email addresses below, and by first class U.S. Mail, postage prepaid, to the Defendants' counsel at the following address:

DUNN LAW FIRM  
Clifford V. Dunn (933)  
Adam C. Dunn (10926)  
Michael C. Dunn (10927)  
P. O. Box 2318  
110 West Tabernacle  
St George, Utah 84771-2318  
[cvdunn@dunnfirm.com](mailto:cvdunn@dunnfirm.com)  
[acdunn@dunnfirm.com](mailto:acdunn@dunnfirm.com)  
[mdunn@dunnfirm.com](mailto:mdunn@dunnfirm.com)

---

**EXHIBIT D**  
**Form of Easement Termination**

17163002.5

When recorded, return to:

David E. Leta, Esq.  
 Snell & Wilmer L.L.P.  
 15 West South Temple, Suite 1200  
 Salt Lake City, Utah 84101

PARTIAL TERMINATION OF MASTER COMMUNICATIONS EASEMENT FOR  
 ELIM VALLEY

THIS PARTIAL TERMINATION OF MASTER COMMUNICATIONS EASEMENT FOR ELIM VALLEY ("Termination") is entered into as of May 15, 2013, by and between EVD COMMUNICATIONS INFRASTRUCTURE, LLC, a Utah limited liability company ("EVD"), whose address is 1300 South Sand Hollow Road, Hurricane, UT 84737, and RED BRIDGE CAPITAL, LLC, a Utah limited liability company ("Red Bridge"), whose address is c/o Cherokee and Walker Management, 6440 South Wasatch Boulevard, Suite 200, Salt Lake City, Utah 84121.

WITNESSETH:

WHEREAS, Red Bridge is the owner of fee simple title to that certain real property located in Washington County, Utah and more particularly described in Exhibit A attached hereto and incorporated herein by this reference (the "Red Bridge Property"); and

WHEREAS, EVD and Roland Neil Family Limited Partnership, a Utah limited partnership ("Original Grantor"), entered into that certain Master Communications Easement for Elim Valley dated February 14, 2007 and recorded February 16, 2007, as Entry No. 20070008386, in the official records of Washington County, Utah (the "Easement Agreement") encumbering certain real property described in the Easement Agreement (the "Easement Property"); and

WHEREAS, Red Bridge is the successor-in-interest to the Original Grantor as the owner of the Red Bridge Property, which is part of the Easement Property; and

WHEREAS, EVD and Red Bridge have agreed to partially terminate the Easement Agreement with regard to the Red Bridge Property, all as more particularly described hereinbelow.

NOW, THEREFORE, for Ten Dollars and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto do hereby covenant, stipulate and agree as follows:

1. Recitals. The foregoing recitals are true and correct and are incorporated herein by reference.

2. Termination and Release. EVD and Red Bridge hereby release and terminate the Easement Agreement as to the Red Bridge Property and declare that any and all easements, sub-easements, licenses, covenants, conditions, restrictions and other rights and obligations granted or created or imposed under the Easement Agreement with respect to the Red Bridge Property are hereby released, relinquished, surrendered and abandoned and are of no further force or effect and shall not be an encumbrance on the Red Bridge Property. EVD hereby relinquishes to Red Bridge any and all right, title, and interest in the Red Bridge Property. The remaining Easement Property still covered by the Easement Agreement is not affected in any way and all rights and obligations pursuant to the Easement Agreement with respect to such remaining property shall continue in full force and effect.

3. EVD's Representations. EVD represents to Red Bridge that it has not previously assigned any of its rights or interests as "Grantee" in and to the Easement Agreement with respect to the Red Bridge Property to any third party, and EVD is the sole holder of all such rights.

4. Authority. Each of the parties hereto represents and warrants to the others that it has the full capacity, right, power and authority to execute, deliver and perform this Termination, and all required actions, consents and approvals therefore have been duly taken and obtained.

5. Binding Effect. This Termination shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

6. Counterparts. This Termination may be executed in two or more counterparts, all of which together shall constitute one and the same instrument. There may be duplicate originals of this Termination, only one of which need be produced as evidence of the terms hereof.

[SIGNATURES FOLLOW ON NEXT PAGE]



IN WITNESS WHEREOF, EVD and Red Bridge have executed this Termination as of the day and year first above written.

EVD:

EVD COMMUNICATIONS  
INFRASTRUCTURE, LLC,  
a Utah limited liability company

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

RED BRIDGE:

RED BRIDGE CAPITAL, LLC, a Utah limited  
liability company  
By: Cherokee & Walker Management, LLC, its  
manager

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: Manager

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: Manager

STATE OF \_\_\_\_\_ )  
 ) ss.  
 COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2013, by \_\_\_\_\_ of EVD COMMUNICATIONS INFRASTRUCTURE, LLC, a Utah limited liability company, on behalf of the company.

\_\_\_\_\_  
 NOTARY PUBLIC  
 Residing at: \_\_\_\_\_

My Commission Expires:  
 \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
 ) ss.  
 COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2013, by \_\_\_\_\_ and \_\_\_\_\_ managers of Cherokee & Walker Management, LLC, manager of RED BRIDGE CAPITAL, LLC, a Utah limited liability company, on behalf of the company.

\_\_\_\_\_  
 NOTARY PUBLIC  
 Residing at: \_\_\_\_\_

My Commission Expires:  
 \_\_\_\_\_

EXHIBIT A  
LEGAL DESCRIPTION OF RED BRIDGE PROPERTY

PARCEL A:

Lender SR-9 Parcel A

Beginning at point on the Southerly line of Highway SR-9, said point being South  $00^{\circ}15'22''$  West 878.00 feet along the section line and West 2061.87 feet from the Northeast Corner of Section 1, Township 42 South, Range 14 West, Salt Lake Base and Meridian, and running thence South  $16^{\circ}20'36''$  East 892.79 feet thence South  $76^{\circ}45'10''$  West 864.99 feet; thence North  $00^{\circ}10'33''$  East 955.76 feet to point on the Southerly line of said SR-9; thence South  $89^{\circ}50'12''$  East 254.45 feet along said Southerly line; thence North  $73^{\circ}19'03''$  East 348.01 feet along said Southerly line to the Point of Beginning.

PARCEL B:

Lender SR-9 Parcel B

Beginning at point on the Southerly line of Highway SR-9, said point being South  $00^{\circ}15'22''$  West 666.57 feet along the section line and West 1344.61 feet from the Northeast Corner of Section 1, Township 42 South, Range 14 West, Salt Lake Base and Meridian, and running thence South  $16^{\circ}20'36''$  East 1306.80 feet; thence South  $73^{\circ}39'24''$  West 500.00 feet; thence North  $16^{\circ}20'36''$  West 1306.80 feet to point on the Southerly line of said SR-9; thence North  $73^{\circ}39'24''$  East 500.00 feet along said Southerly line to the Point of Beginning.

Tax Id. Nos: H-4-2-1-1123 and H-4-2-1-1107

**EXHIBIT E**  
Form of Access and Utility Easement

17162062.8

When recorded, return to:

David E. Lata, Esq.  
Snell & Wilmer L.L.P.  
15 West South Temple, Suite 1200  
Salt Lake City, Utah 84101

#### ACCESS AND UTILITY EASEMENT

THIS ACCESS AND UTILITY EASEMENT ("Agreement") is made and entered into as of May 15, 2013 ("Effective Date"), by and between MELLON VALLEY, LLC, a Utah limited liability company ("Grantor"), and RED BRIDGE CAPITAL, LLC, a Utah limited liability company ("Grantee"). Grantor and Grantee are sometimes hereinafter referred to individually as a "Party" and collectively as the "Parties."

#### RECITALS

A. Grantee is the owner of two parcels of vacant, developable real property, each consisting of approximately 15 acres, that are located in Washington County, Utah, near the City of Hurricane, more particularly described on Exhibit A attached hereto and incorporated by this reference (the "Properties").

B. The Properties are each separated by certain strip parcels that are owned by Grantor (the "Strip Parcels") and that are parallel to Sand Hollow Road, which bisects the Strip Parcels. As of the Effective Date, the Strip Parcels are vacant. The Strip Parcels are described on Exhibit B which is attached hereto.

C. Currently there is inadequate or nonexistent vehicular access from the Properties to Sand Hollow Road that would permit reasonable commercial and/or residential development of the Properties without further agreement between Grantor and Grantee. The most cost effective and logical access from the Properties to Sand Hollow Road would be across the Strip Parcels.

D. Pursuant to a Settlement Agreement among Grantor, Grantee and certain other parties dated as of the Effective Date ("Settlement Agreement"), Grantor agreed to grant to Grantee (i) an easement burdening the Strip Parcels and permitting each of the Properties to have access to Sand Hollow Road and (ii) an easement over the Strip Parcels for certain underground and above-ground utility lines and related facilities and improvements, subject to the terms set forth in this Agreement. Capitalized terms used in this Agreement and not defined in this Agreement shall have the meanings given to such terms in the Settlement Agreement.

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# AGREEMENT

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

1. Incorporation of Recitals. The recitals set forth above are incorporated in this Agreement as if fully set forth in the body of this Agreement.

## 2. Grant of Easements.

(a) Access Easement. Grantor hereby grants to Grantee and its Permittees (defined later) a perpetual, exclusive easement over, upon and across the Strip Parcels for the purpose of vehicular, pedestrian, and other ingress, egress and access to and from Sand Hollow Road in at least two (2) separate locations for each of the Properties (a total of four (4) locations) ("Access Easement"), with the specific location, width, and description of the Access Easement ("Access Easement Area") to be determined at the sole discretion of Grantee and at a future date, *provided however*, that the specific location and width of the Access Easements shall be reasonable for typical commercial and/or residential development of the Properties. The term "Permittees" shall mean Grantee's contractors, employees, consultants, agents, representatives, invitees, licensees, utility providers, successors and assigns. Grantor and its Permittees shall have the right to construct, install, lay, maintain, operate, repair, inspect, protect, remove and replace within the Access Easement Area any roadway and related improvements (collectively, "Roadway Improvements") as may be necessary or appropriate, as determined by Grantee in its sole and absolute discretion, to permit typical commercial and/or residential development of the Properties, including, without limitation, the paving, curbing, striping, directional signs, a drive aisle, artificial lighting facilities, and other related road improvements (including landscaping) constructed by Grantee from time to time (including any reconfiguration thereof) on any portion of the Access Easement Area.

(b) Utility Easement. Grantor hereby grants a perpetual, exclusive easement to Grantee and its Permittees in, over, under, across, and through the Strip Parcels to construct, install, lay, maintain, operate, repair, inspect, protect, remove and replace underground and above-ground utility lines and facilities (collectively, "Utility Improvements") as may be necessary or appropriate, as determined by Grantee in its sole and absolute discretion, to permit typical commercial and/or residential development of the Properties, together with a right of access to the Strip Parcels to exercise its rights granted under this subsection (b) ("Utility Easement"), *provided however*, the installation of all such utilities shall comply with applicable zoning and development rules, regulations, statutes and covenants. The specific location and description of the Utility Easement ("Utility Easement Area") shall be within the same location as the Access Easement. The Access Easement and the Utility Easement are sometimes hereinafter referred to individually as the "Easements."

3. Construction, Maintenance, and Repairs. The construction, maintenance, and repairs of all Roadway Improvements and Utility Improvements (collectively, "Improvements") shall be at no cost to the Grantor, except to the extent that any such maintenance and repairs are necessitated by the active or passive negligent or willful act of Grantor or its contractors, employees, consultants, agents, representatives, invitees, licensees ("Grantor Permittees"), in which case Grantor shall be responsible for the costs of such maintenance and repairs and shall reimburse Grantee for the cost of such maintenance and repairs, together with interest thereon at the rate of 12% per annum from the date such costs are incurred until paid.

4. Use and Improvements by Grantor. Neither Grantor nor Grantor Permittees shall make any use of the Access Easement Area, the Utility Easement Area, and the Improvements that interferes with the rights granted to Grantee and its Permittees under this Agreement. Grantor shall have no right erect any wall, fence or other barrier on the Access Easement Area and the Utility Easement Area (collectively, "Easement Area"). Grantor shall not construct or cause the construction of any buildings or permanent structures on the Easement Area. To the extent that any Grantor desires to make any improvements to the Easement Area, or any portion thereof, Grantor shall first obtain the written consent of Grantee (which consent may be not be unreasonably withheld) to the proposed improvements, including the plans and specifications therefor. Grantor shall be responsible for paying any and all ad valorem taxes and assessments levied against the entire Grantor Property, including the Strip Parcels and the Easement Area, and shall not suffer or permit such taxes and assessments to become delinquent.

5. Grantor's Representations and Warranties; Priority of Grantee's Being. Grantor warrants and represents to Grantee that as of the Effective Date, Grantor has good and indefeasible fee simple title to the Strip Parcels and has full right, power and authority to grant the Easements to Grantee. Grantor further represents and warrants that, on and after the Effective Date, it will not enter into any encumbrances, agreements, covenants or restrictions against the Strip Parcels. Grantor will indemnify and hold Grantee harmless if any of the foregoing representations and warranties proves to be untrue. Grantor further warrants that, within the one-hundred eighty (180) days after entry of the Judgment, there shall be no mortgages, deeds of trust, other instruments of security, or other liens and encumbrances (other than the lien for real estate taxes not yet due and payable) affecting the Strip Parcels, including the Access Easement Area and the Utility Easement Area, which are superior to this Agreement or which could result in the termination of this Agreement, or which could limit Grantee's rights hereunder.

6. Notices. All notices and other communications hereunder shall be in writing, and shall be deemed to have been duly given if delivered personally (including delivery by courier service), transmitted by facsimile or other electronic transmission, or mailed by registered or certified mail, postage prepaid, return receipt requested, as follows:

To Grantor:	Mellon Valley, LLC 1300 South Sand Hollow Rd Hurricane, UT 84737
-------------	--

With a copy to: Clifford V. Dunn, Esq.  
Dunn Law Firm  
P.O. Box 2318  
110 West Tabernacle  
St. George, UT 84771-2318  
Facsimile: (435) 628-4145  
Email: ovdunn@dunnfirm.com

To Grantee: Red Bridge Capital, LLC  
c/o Cherokee and Walker Management  
Attn: Paul Erickson  
6440 South Wasatch Boulevard, Suite 200  
Salt Lake City, Utah 84121  
Facsimile: 801-278-7818  
Email: paul@cherokeeandwalker.com

With copy to: David E. Leta, Esq.  
Snell & Wilmer L.L.P.  
15 West South Temple, Suite 1200  
Salt Lake City, Utah 84101  
Facsimile: 801-237-1800  
Email: dleta@swlaw.com

or to such other address as either Party may from time to time designate by notice in writing to the other Party. Rejection, refusal to accept delivery or inability to deliver due to changed address of which no notice has been given shall be deemed receipt by the addressee.

7. Headings. Headings in this Agreement are for convenience only and shall not be used to interpret or construe its provisions.

8. Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Utah, without giving effect to its choice of law principles.

9. Counterparts. This Agreement may be executed in one or more counterparts, each of which shall be deemed as an original but all of which together shall constitute one and the same instrument.

10. Entire Agreement. This Agreement, together with the Settlement Agreement and any agreements executed in accordance with the Settlement Agreement, supersedes all prior understandings, representations and agreements between the Parties with regard to the subject matter hereof and there are no other understandings, representations, warranties or agreements between them.



11. Attorneys' Fees. If either Party brings or commences any legal action or proceeding to enforce any of the terms of this Agreement, the prevailing Party, if any, in such action shall be entitled to recover from the non-prevailing Party all reasonable attorneys' fees that may have been incurred, including any and all costs and expenses incurred in enforcing, perfecting and executing such judgment, and including all costs of appeal.

12. Amendment. Neither this Agreement nor any provision hereof may be changed, amended, modified, waived or discharged orally or by any course of dealing, but only by an instrument in writing signed by the Party against which enforcement of the change, amendment, modification, waiver or discharge is sought.

13. Authority. Each party hereto hereby represents, warrants and covenants unto the other that this Agreement has been duly authorized, executed and delivered by such party and constitutes the valid, legal and binding agreements and obligations of such party enforceable against such party in accordance with the terms hereof.

14. Severability. If any provision of this Agreement, or portion thereof, or the application thereof to any person or circumstances, shall, to any extent be held invalid, inoperative or unenforceable, the remainder of this Agreement, or the application of such provision or portion thereof to any other persons or circumstances, shall not be affected thereby; it shall not be deemed that any such invalid provision affects the consideration for this Agreement; and each provision of this Agreement shall be valid and enforceable to the fullest extent permitted by law.

15. No Joint Venture. Nothing in this Agreement shall be construed to make the Parties partners or joint venturers or render any of the Parties liable for the debts or obligations of the other.

16. Legal and Equitable Relief. In the event of any breach, or attempted or threatened breach, by any Party to this Agreement, of any of the terms, covenants or conditions hereof, the other Party shall be entitled to full and adequate relief by injunction and/or such other available legal or equitable remedies from the consequences of such breach. The remedies herein provided shall be cumulative as to all other remedies permitted by law or in equity.

17. Waiver. The waiver of, or failure to enforce, any breach of or violation of any of the foregoing obligations or covenants shall not be deemed to be a waiver of the right to enforce, or be deemed an abandonment of, the particular obligation violated or any of the obligations; nor shall it be deemed to be a waiver of the right to enforce any subsequent breach or violation of this Agreement or any of the provisions set forth herein. The foregoing shall apply regardless of whether or not any party has knowledge of the breach or the violation.

18. No Public Dedication. The provisions of this Agreement are not intended to and do not constitute a dedication for public use of the Grantor Property, or any portion thereof, and the rights herein created are private and for the benefit only of the Parties, their successors and assigns.

19. Running With the Land, Successors and Assigns. All provisions of this Agreement, including the benefits and burdens, are expressly declared to touch and concern and

run with the land, with the Properties being the dominant estate and the Strip Parcels being the servient estate, and are binding upon and shall inure to the benefit of each of Grantor and Grantee and their respective successors and assigns. All easements granted in this Agreement are appurtenant and not in gross. All easements granted in this Agreement are irrevocable, *provided, however*, that the Access and Utility Easements may be dedicated to the City of Hurricane upon the future mutual agreement of Grantor and Grantee. All easements granted hereunder shall exist by virtue of this Agreement without the necessity of confirmation by any other document.

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed by their duly authorized representatives effective as of the date first set forth above.

GRANTOR:

MELLEN VALLEY, LLC,  
a Utah limited liability company

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

GRANTEE:

RED BRIDGE CAPITAL, LLC,  
a Utah limited liability company  
By: Cherokee & Walker Management, LLC, its  
manager

by: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: Manager

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Its: Manager

STATE OF \_\_\_\_\_ )  
 : ss.  
 COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2013, by \_\_\_\_\_ of MELLON VALLEY, LLC, a Utah limited liability company, on behalf of the company.

\_\_\_\_\_  
 NOTARY PUBLIC  
 Residing at: \_\_\_\_\_

My Commission Expires:  
 \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
 : ss.  
 COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2013, by \_\_\_\_\_, and \_\_\_\_\_, managers of Cherokee & Walker Management, LLC, manager of RED BRIDGE CAPITAL, LLC, a Utah limited liability company, on behalf of the company.

\_\_\_\_\_  
 NOTARY PUBLIC  
 Residing at: \_\_\_\_\_

My Commission Expires:  
 \_\_\_\_\_

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EXHIBIT A  
LEGAL DESCRIPTION OF PROPERTIES

PARCEL A:

Lender SR-9 Parcel A

Beginning at point on the Southerly line of Highway SR-9, said point being South  $00^{\circ}15'22''$  West 878.00 feet along the section line and West 2061.87 feet from the Northeast Corner of Section 1, Township 42 South, Range 14 West, Salt Lake Base and Meridian, and running thence South  $16^{\circ}20'36''$  East 892.79 feet thence South  $76^{\circ}45'10''$  West 864.99 feet; thence North  $00^{\circ}10'33''$  East 955.76 feet to point on the Southerly line of said SR-9; thence South  $89^{\circ}50'12''$  East 254.45 feet along said Southerly line; thence North  $73^{\circ}19'03''$  East 348.01 feet along said Southerly line to the Point of Beginning.

PARCEL B:

Lender SR-9 Parcel B

Beginning at point on the Southerly line of Highway SR-9, said point being South  $00^{\circ}15'22''$  West 666.57 feet along the section line and West 1344.61 feet from the Northeast Corner of Section 1, Township 42 South, Range 14 West, Salt Lake Base and Meridian, and running thence South  $16^{\circ}20'36''$  East 1306.80 feet; thence South  $73^{\circ}39'24''$  West 500.00 feet; thence North  $16^{\circ}20'36''$  West 1306.80 feet to point on the Southerly line of said SR-9, thence North  $73^{\circ}39'24''$  East 500.00 feet along said Southerly line to the Point of Beginning.

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EXHIBIT B  
Strip Parcels Legal Description

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## PARCEL A

Beginning at a point on the east side of Sand Hollow Road where it intersects with State Road 9, said point being North 89°46'47" West 1,887.49 feet along the center section line and North 1,820.64 feet from the East Quarter Corner of Section 1, Township 42 South, Range 14 West, Salt Lake Base & Meridian, and running;

thence easterly 23.27 feet along an arc of a 22,763.31-foot radius curve to the right (center bears South 16°24'24" East, long chord bears North 73°37'31" East 23.27 feet with a central angle of 00°03'49") along the southerly line of State Road 9;  
 thence North 73°39'24" East 48.49 feet along the southerly line of said State Road 9;  
 thence South 16°20'36" East 1,306.80 feet;  
 thence South 73°39'35" West 338.52 feet to the easterly line of Sand Hollow Road;  
 thence northerly the following (5) courses along the easterly line of said Sand Hollow Road;  
 thence North 16°56'45" East 51.31 feet;  
 thence northerly 172.48 feet along an arc of a 684.00 foot radius curve to the left (center bears North 69°44'51" West, long chord bears North 13°07'44" East 172.02 feet with a central angle of 14°26'51");  
 thence northerly 30.04 feet along an arc of a 931.00 foot radius curve to the right (center bears South 84°11'42" East, long chord bears North 06°43'46" East 30.04 feet with a central angle of 01°50'55");  
 thence North 07°39'13" East 177.80 feet;  
 thence northerly 256.71 feet along an arc of a 642.00 foot radius curve to the left (center bears North 82°20'47" West, long chord bears North 03°48'06" West 255.00 feet with a central angle of 22°54'37");  
 thence North 15°15'24" West 675.11 feet to the Point of Beginning.

Less and Excepting the following Questar Gas Parcel:

Beginning at a point being South 00°15'22" East 2,347.23 feet along the section line and North 89°35'08" West 2,572.33 feet from the Northeast corner of Section 1, Township 42 South, Range 14 West, Salt Lake Base & Meridian, and running;

thence North 89°35'08" West 75.00 feet;  
 thence North 00°10'33" East 100.00 feet;  
 thence South 89°35'08" East 75.00 feet;  
 thence South 00°10'33" West 100.00 feet to the Point of Beginning.

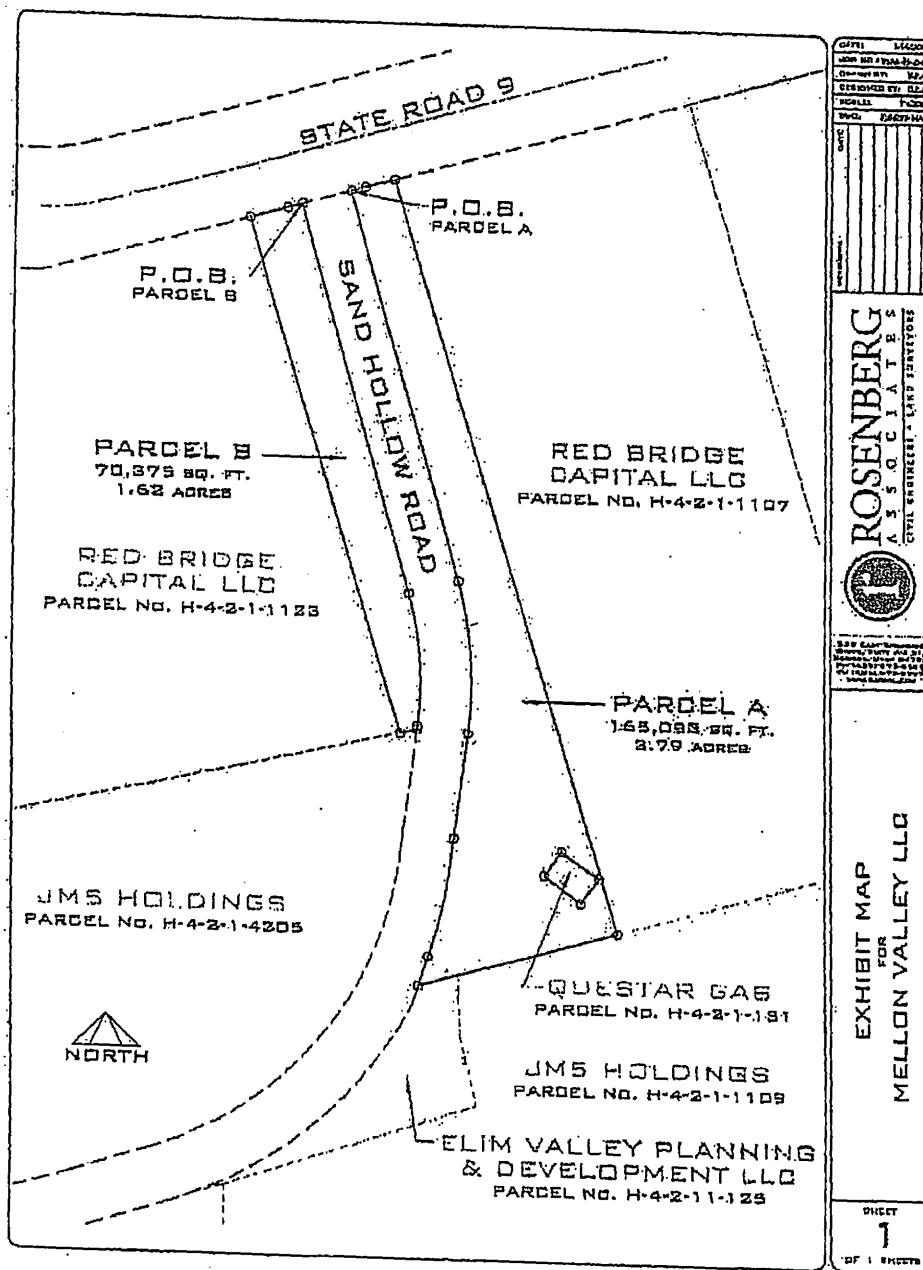
Containing 165,093 square feet or 3.79 acres.

## PARCEL B

Beginning at a point on the west side of Sand Hollow Road where it intersects with State Road 9, said point being North  $89^{\circ}46'47''$  West 1,968.05 feet along the center section line and North 1,796.45 feet from the East Quarter Corner of Section 1, Township 42 South, Range 14 West, Salt Lake Base & Meridian, and running;

thence southerly the following (3) courses along the westerly line of Sand Hollow Road;  
 thence South  $15^{\circ}15'24''$  East 673.27 feet;  
 thence southerly 223.12 feet along an arc of a 558.00 foot radius curve to the right (center bears South  $74^{\circ}44'36''$  West, long chord bears South  $03^{\circ}48'06''$  East 221.64 feet with a central angle of  $22^{\circ}54'37''$ );  
 thence South  $07^{\circ}39'13''$  West 5.82 feet;  
 thence South  $76^{\circ}45'10''$  West 27.71 feet;  
 thence North  $16^{\circ}20'36''$  West 892.79 feet to the southerly line of State Road 9;  
 thence North  $73^{\circ}19'03''$  East 65.46 feet along said southerly line;  
 thence easterly 25.49 feet along an arc of a 22,763.31 foot radius curve to the right (center bears South  $16^{\circ}40'57''$  East, long chord bears North  $73^{\circ}20'59''$  East 25.49 feet with a central angle of  $00^{\circ}03'51''$ ) along said southerly line to the Point of Beginning.

Containing 70,374 square feet or 1.62 acres.





**EXHIBIT F**  
Form of Special Warranty Deed

17162082.3

When recorded, return to:

David E. Lota, Esq.  
15 West South Temple, Suite 1200  
Gateway Tower West  
Salt Lake City, Utah 84101

#### SPECIAL WARRANTY DEED

For the consideration of Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, MELLON VALLEY, LLC, a Utah limited liability company ("Grantor"), hereby grants, conveys and warrants to RED BRIDGE CAPITAL, LLC, a Utah limited liability company (the "Grantee"), whose address is c/o Cherokee and Walker Management, 6440 South Wasatch Boulevard, Suite 200, Salt Lake City, Utah 84121, the following described real property situated in Washington County, Utah, together with all improvements and fixtures thereon and all rights and privileges appurtenant thereto:

SEE EXHIBIT "A" ATTACHED HERETO.

Grantor hereby binds itself to warrant and defend the title to the Property, as against all acts of Grantor herein and none other, subject only to real estate taxes for the year 2013, not yet due and payable.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2013.

GRANTOR:

MELLON VALLEY, LLC,  
a Utah limited liability company

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

17112597

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STATE OF UTAH

**Chinnally'uf**

)  
 ) ss.  
 )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2013, by \_\_\_\_\_, the \_\_\_\_\_ of MILLON VALLEY, LLC, a Utah limited liability company, on behalf of the company.

**My Commission Expires:**

**NOTARY PUBLIC**

121 18367

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EXHIBIT A  
PROPERTY DESCRIPTION OF STRIP PARCELS

17162062.5

17162062.5

## PARCEL A

Beginning at a point on the east side of Sand Hollow Road where it intersects with State Road 9, said point being North  $89^{\circ}46'47''$  West 1,887.49 feet along the center section line and North 1,820.64 feet from the East Quarter Corner of Section 1, Township 42 South, Range 14 West, Salt Lake Base & Meridian, and running;

thence easterly 25.27 feet along an arc of a 22,763.31 foot radius curve to the right (center bears South  $16^{\circ}24'24''$  East, long chord bears North  $73^{\circ}37'31''$  East 25.27 feet with a central angle of  $00^{\circ}03'49''$ ) along the southerly line of State Road 9;  
 thence North  $73^{\circ}39'24''$  East 48.49 feet along the southerly line of said State Road 9;  
 thence South  $16^{\circ}20'36''$  East 1,306.80 feet;  
 thence South  $73^{\circ}39'35''$  West 338.52 feet to the easterly line of Sand Hollow Road;  
 thence northerly the following (5) courses along the easterly line of said Sand Hollow Road;  
 thence North  $16^{\circ}56'45''$  East 51.31 feet;  
 thence northerly 172.48 feet along an arc of a 664.00 foot radius curve to the left (center bears North  $69^{\circ}44'51''$  West, long chord bears North  $13^{\circ}01'44''$  East 172.02 feet with a central angle of  $14^{\circ}26'51''$ );  
 thence northerly 30.04 feet along an arc of a 931.00 foot radius curve to the right (center bears South  $84^{\circ}11'42''$  East, long chord bears North  $06^{\circ}43'46''$  East 30.04 feet with a central angle of  $01^{\circ}50'55''$ );  
 thence North  $07^{\circ}39'13''$  East 177.80 feet;  
 thence northerly 256.71 feet along an arc of a 642.00 foot radius curve to the left (center bears North  $82^{\circ}20'47''$  West, long chord bears North  $03^{\circ}48'06''$  West 255.00 feet with a central angle of  $22^{\circ}54'37''$ );  
 thence North  $15^{\circ}15'24''$  West 675.11 feet to the Point of Beginning.

Less and Excepting the following Questar Gas Parcel:

Beginning at a point being South  $00^{\circ}15'22''$  East 2,347.23 feet along the section line and North  $89^{\circ}35'08''$  West 2,572.33 feet from the Northeast corner of Section 1, Township 42 South, Range 14 West, Salt Lake Base & Meridian, and running;

thence North  $89^{\circ}35'08''$  West 75.00 feet;  
 thence North  $00^{\circ}10'33''$  East 100.00 feet;  
 thence South  $89^{\circ}35'08''$  East 75.00 feet;  
 thence South  $00^{\circ}10'33''$  West 100.00 feet to the Point of Beginning.

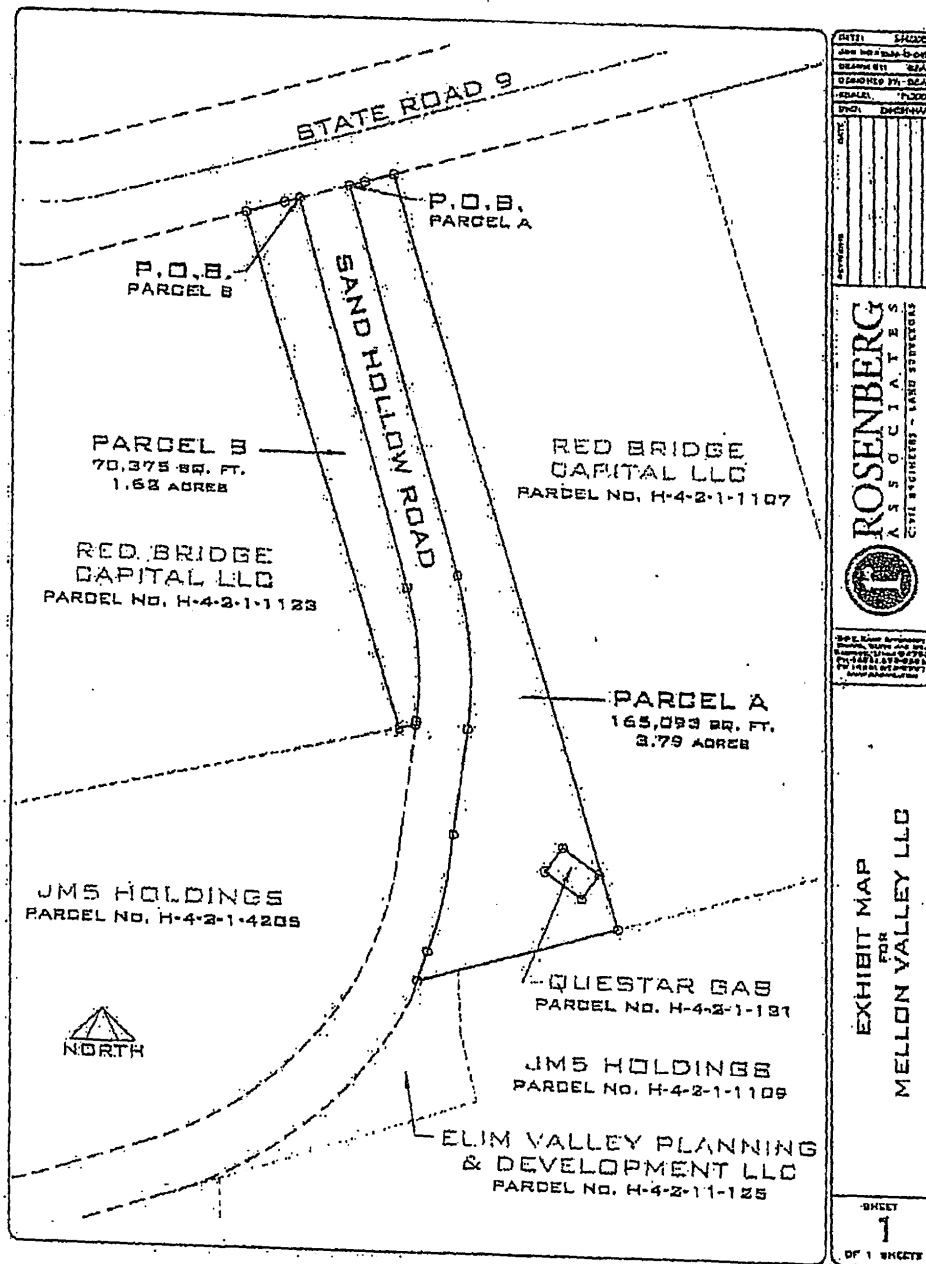
Containing 165,093 square feet or 3.79 acres.

**PARCEL B**

Beginning at a point on the west side of Sand Hollow Road where it intersects with State Road 9, said point being North  $89^{\circ}46'47''$  West 1,968.05 feet along the center section line and North 1,796.45 feet from the East Quarter Corner of Section 1, Township 42 South, Range 14 West, Salt Lake Base & Meridian, and running;

thence southerly the following (3) courses along the westerly line of Sand Hollow Road;  
 thence South  $15^{\circ}15'24''$  East 673.27 feet;  
 thence southerly 223.12 feet along an arc of a 558.00 foot radius curve to the right (center bears South  $74^{\circ}44'36''$  West, long chord bears South  $03^{\circ}48'06''$  East 221.64 feet with a central angle of  $22^{\circ}54'37''$ );  
 thence South  $07^{\circ}39'13''$  West 5.82 feet;  
 thence South  $76^{\circ}45'10''$  West 27.71 feet;  
 thence North  $16^{\circ}20'36''$  West 892.79 feet to the southerly line of State Road 9;  
 thence North  $73^{\circ}19'03''$  East 65.46 feet along said southerly line;  
 thence easterly 25.49 feet along an arc of a 22,763.31 foot radius curve to the right (center bears South  $16^{\circ}40'57''$  East, long chord bears North  $73^{\circ}20'59''$  East 25.49 feet with a central angle of  $00^{\circ}03'51''$ ) along said southerly line to the Point of Beginning.

Containing 70,374 square feet or 1.62 acres.



17163002.8

# EXHIBIT E

EXHIBIT E



**Snell & Wilmer**  
L.L.P.  
LAW OFFICES

Gateway Tower West  
15 West South Temple  
Suite 1200  
Salt Lake City, Utah 84101-1531  
801.257.1900  
801.257.1800 (Fax)  
www.swlaw.com

David E. Leta  
Partner  
(801) 257-1928  
dleta@swlaw.com

**RECEIVED**  
JUL 01 2013

BY: \_\_\_\_\_

P. 137

DENVER  
LAS VEGAS  
LOS ANGELES  
LOS CABOS  
ORANGE COUNTY  
PHOENIX  
RENO  
SALT LAKE CITY  
TUCSON

June 26, 2013

**VIA E-MAIL AND U.S. POST**

Clifford V. Dunn, Esq.  
Adam Dunn, Esq.  
Dunn Law Firm  
P.O. Box 2318  
110 West Tabernacle  
St. George, UT 84771-2318

Re: Red Bridge Capital, LLC v. Dos Lagos, LLC, et al.

Dear Cliff and Adam:

In connection with our clients' settlement of the above-referenced matter, your clients were required to execute an Access and Utility Easement ("Access Easement") with respect to the certain "Strip Parcels" owned by your clients, and a Partial Termination of Master Communications Easement for Elim Valley ("Termination") with respect to those parcels owned by my client, Red Bridge Capital, LLC ("Red Bridge"). After the documents were executed and filed, we ordered a title commitment from First American Title Company on June 7, 2013 regarding the Strip Parcels (the "Title Commitment"). After a review of the Title Commitment, a copy of which was previously sent to you in a separate email, it has come to our attention that additional action will be required in regards to the Access Easement and the Termination in order to realize the intent of the parties' Settlement Agreement dated May 15, 2013. As you know, section 11 of the Settlement Agreement contemplates that the parties will execute such other and further agreements as may be necessary.

Mellon Valley, LLC originally executed the Access Easement as the *sole Grantor*. The Title Commitment, however, reflects that Elim Valley Planning and Development, LLC is a vested owner of the Strip Parcels *together with* Mellon Valley, LLC. As such, in order to correct the Access Easement and ensure that the easements contemplated by the Settlement Agreement are fully enforceable against the Strip Parcels, our office has prepared the enclosed Amended and Restated Access and Utility Easement for signature by Mellon Valley, LLC and Elim Valley Planning and Development, LLC. Both clean and redlined versions are attached for your convenience.

**Snell & Wilmer**  
LLP

Clifford V. Dunn, Esq.

June 26, 2013

Page 2

In addition, the Title Commitment reflected a different legal description for the Questar Gas regulation station carve-out in Strip Parcel A, which corrected legal description is contained in the Amended and Restated Access and Utility Easement.

EVD Communications Infrastructure, LLC ("EVD") originally executed the Termination as the sole releasing party. The Title Commitment, however, reflects that several other entities in addition to EVD may have an interest in the Master Communications Easement(s) originally contemplated for Elim Valley. EVD previously acknowledged that other entities had an interest in the Communications Easement when it executed and delivered a First Amendment to Master Communications Easement for Elim Valley on August 2, 2007, in order to release the Master Communications Easement(s) as to portions of the property to be conveyed or dedicated to the City of Hurricane. As such, our office has prepared the enclosed Partial Termination of Master Communications Easement for Elim Valley for signature by your clients and by their other related entities which are identified as potentially retaining interests in the Master Communications Easement(s) by virtue of the documents listed in the Title Commitment. Again, clean and redlined copies of these documents are enclosed for your convenience.

Please have your clients and their other related entities execute the enclosed documents at their earliest convenience, and return the executed originals to me. I will then obtain Red Bridge's signatures, were required, and return fully executed copies to you. Please note that the signatures must be notarized.

Thank you in advance for your prompt attention to these important matters. Please feel free to contact me to discuss this if you have any questions.

Sincerely,

Snell & Wilmer

David B. Leta

DEL/ws

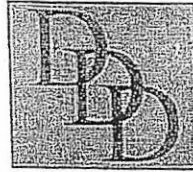
Enclosures

cc: Red Bridge Capital, LLC

17369953

# EXHIBIT F

EXHIBIT F



DUNN  
LAW FIRM

ATTORNEYS & COUNSELORS AT LAW

CLIFFORD DUNN  
MICHAEL C. DUNN  
ADAM C. DUNN  
MARY C. D. GONZALEZ

MEMORANDUM FOR THE  
COUNSEL  
RE: SNELL & WILMER  
LAW FIRM  
COUNSEL

P.O. Box 2318  
110 W. TABERNACLE  
St. George, UT 84771-2318  
Ph: (435) 628-5405  
Fax: (435) 628-4145

WWW.DUNNFIRM.COM  
LAW@DUNNFIRM.COM

November 14, 2013

Sent Via Email To: [dlata@swlaw.com](mailto:dlata@swlaw.com)

Original via Federal Express to:

David E. Leta  
SNELL & WILMER, LLP  
15 West South Temple, Suite 1200  
Salt Lake City, UT 84101

Re: Red Bridge v. Des Lagos

Dear David:

In this letter, I will address each of the items from your Friday, November 8, 2013 email. I will reference the items based on the exception listed in the Title Commitment previously provided by your office as well as the Item number from your August 27, 2013 Memorandum to Clifford Dunn ("8/27 Memo"), if there is one.

In your latest email, you required verification that rollback taxes have been satisfied. We have confirmed with the Washington County Assessor that the two Strip Parcels are still in Greenbelt. In fact, all of the current Parcel Number H-4-2-1-1103 (of which the County records show as being 177.88 acres) is still in Greenbelt. The document that was reflected in Exception No. 13 of the Title Report is attached to this letter. As you can see, that recording only affects 16.79 acres of the former Parcel H-4-2-1-1103. The Washington County recorder has confirmed that the only parcels that have been removed from Greenbelt are Parcels H-4-2-1-1123 and H-4-2-1-1107, both of which are the parcels that Red Bridge foreclosed on.

As such, there is no present lien or encumbrance for rollback taxes because the parcels at issue are still classified by the Washington County Assessor as Greenbelt. For this reason, nothing more will be done regarding this exception listed in the Title Commitment that you previously sent, which you also refer to in the 8/27 Memo as Item B. The property taxes are paid and currently there is no other tax related lien or encumbrance which must be removed according to the Settlement Agreement.

With regard Exception No. 15 (Memo Item C), the actual recordings show that the gas right-of-way does not impact the Strip Parcels. As confirmed by Alpha Engineering and from the recorded documents, the right-of-way is in SR-9 and does not create a lien or encumbrance on

the Strip Parcels. As such, there is no lien or encumbrance involving the gas line which must be removed according to the Settlement Agreement.

Your email addressed Exception No. 16 (Memo Item D), and you requested verification that the First Right of Refusal in that Exception is no longer applicable. I have attached the Right of First Refusal legal description from the relevant recording. It is at Bk 1379, Pg 2081 in that recording. As you can see from that page, the property that is the subject of the Right of First Refusal is in Section 19, Township 42 South, Range 13 West. The Strip Parcels are both in Section 1, Township 42 South, Range 14 West. I have attached a Section Map from the Washington County Recorder, which shows the section in which the Strip Parcels are located. As you can see, the two Sections (Section 1 and Section 19) are not even adjacent and as such the Right of First Refusal does not create a lien or encumbrance on the Strip Parcels. As such, there is no lien or encumbrance involving the first right which must be removed according to the Settlement Agreement.

You have expressed disagreement with our understanding of Section 5.2 the Development Agreement. An easement, by its very nature is not a conveyance, assignment, or disposal of the real property. An easement, on the other hand is a "servitude upon, and differs from an interest in, or a lien upon, the land." *Hayes v. Gibbs*, 110 Utah 54, 64 (Utah 1946). A servitude is defined by Black's Law Dictionary Seventh Ed. as "[a]n encumbrance in a right to the limited use of a piece of land without the possession of it; a charge or burden on an estate for another's benefit ...".

Section 5.2 of the Development Agreement states in relevant part that the "...Developer shall not convey, assign, or dispose of ("Transfer") the Project or any portion thereof to another developer except as provided in this Paragraph 5.2." The Development Agreement defines the "Project" in Section 1.24 as "... the improvement and development of the Project pursuant to this Agreement, the Development Guidelines, and City's Ordinances as generally depicted on the Preliminary Site Plan" and then attaches the legal description of the "Project", which legal description included all of the real property in Elim Valley.

The intent of the language of Section 5.2 is to address "transfers" of the real property and not servitudes. As I pointed out previously, Section 5.2 further clarifies what the City of Hurricane contemplated as a "transfer" by further stating in Section 5.2 that "[i]n such an event, the transferee of the property so transferred shall be fully substituted as Developer under this Agreement and Developer executing this Agreement shall be released from any further obligations under this Agreement as to the property so transferred." (emphasis added). The Development Agreement does not contemplate the creation of a servitude as a "Transfer", nor is such an interpretation consistent with general principles of real estate law.

As such, the requirement in the Development Agreement for approval of a "transfer" is not applicable here. There is no lien or encumbrance involving the need for approval from Hurricane for the creation of a servitude which must be removed according to the Settlement Agreement.

The first time that you have requested a subordination with regard to the Master Communications easement as to the Strip Parcels was in your November 8, 2013 email even though it was referenced in the title commitment as Exception No. 20 that you sent months ago. While we do not believe that that easement is a lien or encumbrance that was intended to be

removed under the Settlement Agreement, we will agree to subordinate this interest as to the specific locations of the Utility Easement when they are determined. Please modify the subordination agreement to include limiting language such that the Master Communications Easement will be subordinated to only the portions of the Strip Parcels where the utility easement will ultimately be located and we will get such a subordination signed for your recording.

We are still working through Exception No. 26 (Memo Item J) regarding T&R Lumber. However, we have discovered an error in the legal description of the Strip Parcels. This error is what triggered the T&R Lumber issue and we just discovered it in discussing Greenbelt with the County Assessor's office. If you will recall, the Settlement Agreement contemplated an Access and Utility Easement from Mellon Valley, LLC. Elim Valley Planning & Development, LLC was not a party to the Settlement Agreement or the Access and Utility Easement.

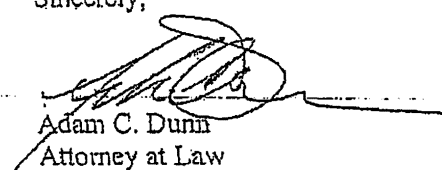
I have attached a map of the Strip Parcels. As you will see on the map, Parcel No. H-4-2-11-125 is reflected as being owned by Elim Valley Planning & Development, LLC. I have also attached a printout from the Washington County website reflecting the Parcel No. H-4-2-11-125 as Account 0844735. You will see from the map at the bottom of that printout that the Parcel owned by Elim Valley Planning & Development extends into the bottom right corner of the Strip Parcel A as described in the Access and Utility Easement. Interestingly, the portion owned by Elim Valley Planning & Development appears to mirror the 50' wide easement from the Water Conservancy District. For your convenience, I have attached the Alpha Engineering drawing of that easement.

The judgment lien that is Exception No. 26 is only recorded as against Elim Valley Planning & Development, LLC and not Mellon Valley, LLC. The intent of the Access and Utility Easement was to grant an easement in the Strip Parcels as owned by Mellon Valley, and unfortunately, the legal description included a portion of property that was not owned by Mellon Valley, LLC. We will work on an Amendment to the Settlement Agreement acknowledging the mistake in the legal description and correcting the legal description to include a less and excepting portion for the land that is owned by Elim Valley Planning & Development. Therefore, the T&R Lumber Judgment does not affect the Mellon Valley (Strip) property.

The requirements of Section 4b of the Settlement Agreement have thus all been met. Thank you for your professionalism in this matter.

Please let me know if you have any questions.

Sincerely,



Adam C. Dunn  
Attorney at Law

ACD/me  
Encl.

# Withdrawal of Application

Washington County Utah Assessor  
Utah State Tax Commission

Farmland Assessment Act  
UCA 59-2-501 to 516  
Form TO-501

It is requested that the application for taxation under the  
Farmland Assessment Act of 1989 be withdrawn.

DOC # 20120009838

Page 1 of 3  
Russell Shind Washington County Recorder  
03/29/2012 11:57:42 AM Fee \$ 9.00  
By WASHINGTON COUNTY ASSESSOR



## Owner Information

Name(s) Filed Under MELLON VALLEY LLC		
Mailing Address 1165 S UTAH AVE		Telephone Number
City IDAHO FALLS	State ID	Zip 83402

## Property Information

Property Identification numbers and complete legal description (additional pages if necessary)

Account Number: 0751043

Parcel Number: 14-2-1-1103

S: 1/2; 425.4' 14W (18.79 AC OF THE FOLLOWING LEGAL DESC): BEG SW COR SEC 1 T42S R14W TH N0°12'57" E 2543.92 FT TO  
WY COR SEC 1; TH N0°25'33" E 317.49 FT ALG SEC/L TO PT SLY RAWL SR-9 FT BEING 3775 FT RAD CUR RGT RAD PT BEARS  
S35°33'27" E; TH NELY ALG ARC CUR 884.11 FT TO PT TNGY; TH N73°20'56" E 493.02 FT TO PT E LN SEC/L LOT 5 SEC 1; TH SLY  
HWY RAWL & S0°20'44" W 898.15 FT TO SE COR SEC/L LOT 5; TH S89°34'39" E 432.03 FT TO C/S COR SEC 1; TH N0°12'57" E  
1249.91 FT; TH N73°55'59" E 359.85 FT; TH N73°43'59" E 844.39 FT TO RAW MARKER; TH N73°41'15" E 1122.76 FT; TH S0°19'07" W 200  
FT; TH N73°41'15" E 435.80 FT; TH S0°15'07" W ALG SEC/L 1843.21 FT TO E LN COR SEC 1; TH S0°12'46" W 2834.85 FT; TH  
N89°39'47" W 2551.15 FT; TH N89°41'13" W 2651.73 FT TO POB. LESS: BEG NW COR LOT 12 FT BEING 380.35 FT N88°58'57" W  
FM NW COR SE1/4 SEC 2; TH N88°58'57" W 286.82 FT ALG NLY LN LOT 12 TO EXIST SWLY RAWL SR-9 FT BEING 155.92 FT RAD  
DIST SWLY FM C/L ENG STA 182+97.78; TH SELY 240.36 FT ALG ARC 808.51 FT RAD CUR LFT CHD BEARS S48°23'07" E 239.66  
FT; TH N34°55'57" E 187.82 FT TO POB LESS: LAND FOR HWY 0.80 AC 20070009003 LESS: BEG AT PT N00°01'19" W 4248.58 FT  
ALG & BEYOND SEC/L & E 3038.04 FT FM W1/4 COR SEC 12 T42S R14W; TH NELY 799.52 FT ALG ARC OF 730.00 FT RAD CUR  
LFT CTR BEARS N18°00'13" W LNG CHD BEARS N49°37'13" E 780.15 FT WITH CTL ANG OF 82°45'08"; TH SLY 172.87 FT ALG ARC  
OF 322.63 FT RAD CUR TO LFT CTR BEARS S32°47'30" E LNG CHD BEARS S02°21'57" W 172.66 FT WITH CTL ANG OF 09°41'07"  
TH SWLY 414.12 FT ALG ARC OF 770.00 FT RAD CUR RGT CTR BEARS N57°53'35" W LNG CHD BEARS S37°30'51" W 409.18 FT  
WITH CTL ANG OF 30°48'53"; THE NELY 251.85 FT ALG ARC OF 13,901.02 FT RAD CUR RGT CTR BEARS N18°02'28" W LNG CHD  
BEARS S71°28'39" W 251.65 FT WITH CTL ANG OF 01°02'14" TO POB. LESS: 4.80 AC OF 15 AC BEG AT PT ON SLY LN HWY SR-9, SD  
PT BEING S00°15'22" W 244.46 FT ALG SEC/L & E 92.90 FT FM NE COR SEC 1 T42S R14W; TH S16°20'38" E 1446.59 FT; TH  
S73°39'24" W 500.00 FT; TH S16°20'38" W 1226.30 FT; TH N73°53'22" E 236.59 FT; TH N00°15'22" E 200.00 FT; TH S73°53'22" W  
383.72 FT; TH N16°20'36" W 29.75 FT TO PT ON SLY LN OF SD SR-9; TH N73°36'24" E 500.00 FT ALG SD SLY LN TO POB. LESS:  
BEG AT PT ON SLY LN HWY SR-9, SD PT BEING S00°15'22" W 525.87 FT ALG SEC/L & W 865.44 FT FM NE COR SEC 1 T42S  
R14W; TH S16°20'38" E 1306.80 FT; TH S73°36'24" W 500.00 FT; TH N18°20'36" W 1306.80 FT TO PT ON SLY LN SR-9; TH  
N73°39'24" E 306.00 FT ALG SD SLY LN TO POB. LESS: BEG AT PT ON SLY LN HWY SR-9, SD PT BEING S00°15'22" W, 385.18  
FT ALG SEC/L & W 386.27 FT FM NE COR SEC 1, T42S R14W, TH S16°20'38" E, 29.76 FT; TH S73°53'22" W, 41.88 FT; TH

S00°15'22" W, 200.00 FT; TH N73°39'24" E, 89.01 FT; TH S16°20'35" E, 411.20 FT; TH S73°39'24" W 500.00 FT; TH S16°20'38" W 1333.84 FT TO PT ON SLY LN OF SD SR-9; TH N73°39'24" E 500.00 FT ALG SD SLY LN TO POB. LESS: BEG AT PT N00°12'17" E 2054.14 FT ALG SEC/L & S89°38'24" E 682.88 FT FM SE 1/4 COR SEC 2 T42S R14W; TH E 674.23 FT; TH S38°32'21" E 100.00 FT TO NELLY LN OF PROP SAND HOLLOW RD; TH S51°27'39" W 544.67 FT ALG SD NELLY LN OF PROP SAND HOLLOW RD; TH N00°12'14" E 686.80 FT TO POB. LESS: BEG AT PT N00°12'17" E, 2054.14 FT ALG SEC/L & S89°38'24" EAST, 682.88 FT FM SE COR SEC 2 T42S R14W; TH N00°12'14" E, 589.03 FT; TH S89°35'08" E 692.74 FT; TH N00°10'33" E 395.14 FT; TH N78°45'10" E, 884.99 FT; TH N78°14'45" E 27.45 FT TO NELLY LN OF PROP SAND HOLLOW RD; TH S07°39'13" W 171.22 FT; TH SLY 36.40 FT ALG ARC OF 1015.00 FT RAD CUR LFT CTR BEARS S81°48'25" E ALG CHD BEARS S07°09'57" W 35.40 FT CTL ANG OF 02°03'17"; TH SWLY 589.92 FT ALG ARC OF 600.00 FT RAD CUR LFT CTR BEARS N83°51'42" W LNG CHD BEARS S38°33'15" W 643.27 FT WITH CTL ANG OF 64°49'55"; TH S70°58'15" W 126.42 FT; TH WLY 430.68 FT ALG ARC OF 322.00 FT RAD CUR RGT CTR BEARS N83°14'45" W LNG CHD BEARS S78°32'57" W 431.41 FT CTL ANG OF 15°09'24"; TH S85°17'30" W 435.86 FT; TH WLY 487.35 FT ALG ARC OF 622.00 FT RAD CUR LFT CTR BEARS S03°52'21" E LNG CHD BEARS S88°41'38" W 489.80 FT CTL ANG OF 34°40'05"; TH S51°27'39" W 332.20 FT; TH N83°32'21" W 100.00 FT; TH W 674.23 FT TO POB. LESS: H-4-2-1-11031 BEG AT PT S89°40'14" E 571.81 FT ALG SEC/L & N 47°57'9" FT FM SE 1/4 COR SEC 1 T42S R14W; TH N 1899.08 FT TO SLY LN OF SAND HOLLOW RD; TH N70°58'15" E 432.51 FT ALG SLY LN OF SD SAND HOLLOW RD; TH N12°19'24" W 118.70 FT ALG SLY LN OF SD SAND HOLLOW RD; TH N02°03'54" W 104.67 FT; TH N73°39'24" E 770.45 FT; TH N73°38'24" E 600.00 FT; TH S16°20'35" E 27.04 FT; TH N73°39'24" E 500.00 FT; TH S16°20'38" E 113.11 FT; TH S16°20'38" E 589.03 FT; TH S1°53'35" W 593.74 FT; TH S16°12'05" W 477.92 FT; TH S55°21'45" E 526.79 FT; TH S57°45'43" E 275.55 FT; TH S43°18'12" E 103.03 FT; TH S48°24'21" W 103.77 FT; TH N89°58'37" W 614.44 FT TO POB. LESS: BEG AT PT S00°15'22" W 2011.10 FT ALG SEC/L & W 1508.80 FT FM NE COR SEC 1 T42S R14W; TH N55°12'12" W 75.00 FT; TH N35°28'48" E 68.07 FT; TH S64°33'12" E 75.00 FT; TH S35°26'23" W 60.00 FT TO POB. LESS: PARCEL D FOR REF PURPOSES BEG AT PT ON SEC/L SD PT BEING N00°12'17" E 2642.80 FT FM SW COR SEC 1 T42S R14W; TH N00°12'17" E 318.30 FT ALG SEC/L & SLY RAWL OF STATE RTE 9; TH ALG SEC/L NELY 956.18 FT ALG ARC OF 2775.00 FT RAD CUR RGT CTR BEARS S38°32'21" E LNG CHD BEARS N63°21'54" E 850.00 FT W/CTL ANG OF 19°58'56"; TH N73°39'24" E 494.48 FT ALG SD S LN; TH S00°12'05" W 888.65 FT; TH N89°35'08" W 1068.39 FT TO POB. ALSO LESS: PARCEL E FOR REF PURPOSES BEG AT PT ON SEC/L SD PT BEING N00°12'17" E 1321.90 FT ALG SEC/L FM SW COR SEC 1 T42S R14W; TH N00°12'17" E 1321.90 FT; TH S89°35'08" E 682.87 FT; TH S00°12'14" W 1321.27 FT; TH N89°38'24" W 682.88 FT TO POB. ALSO LESS: PARCEL D FOR REF PURPOSES BEG AT SW COR SEC 1 T42S R14W; TH N00°12'17" E 1321.90 FT ALG W SEC/L; TH S89°38'24" E 682.88 FT; TH S00°12'14" W 1321.27 FT TO SEC/L; TH N88°41'40" W 682.90 FT ALG SEC/L TO POB. LESS: BEG AT PT ON SLY LN OF HWY SR-9, SD PT BEING S00°15'22" W 678.00 FT ALG SEC/L & W 2081.2 FT FM NE COR SEC 1 T42S R14W; TH S16°20'38" E 892.79 FT; TH S78°45'10" W 884.99 FT; TH N00°10'33" E 955.76 FT TO PT ON SLY LN OF SD SR-9; TH S89°35'12" E 254.45 FT ALG SD SLY LN; TH N12°19'03" E 348.01 FT ALG SD SLY LN TO POB. LESS: BEG AT PT ON SLY LN OF HWY SR-9, SD PT BEING S00°15'22" W 678.00 FT ALG SEC/L & W 1344.81 FT FM NE COR SEC 1 T42S R14W; TH S16°20'38" E 892.80 FT; TH S73°39'24" W 500.00 FT; TH N16°20'35" W 1306.80 FT TO PT ON SLY LN OF SD SR-9; TH N73°39'24" E 500.00 FT ALG SD SLY LN TO POB.

Explanation  
REQUEST - SOUTHERN UTAH TITLE CO

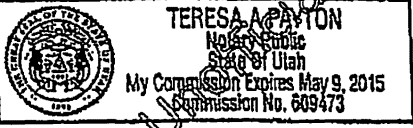
Certification (Sign below)

Owner Signature (MELLON VALLEY L C)

X

Date



County Assessor's Signature X <i>[Signature]</i>	Date 3/27/12
Notary Signature <i>[Signature]</i>	Date 3/27/12
Notary Stamp 	

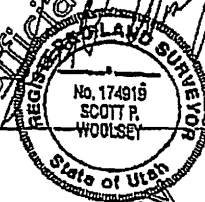
# ALPHA ENGINEERING COMPANY

148 East Tabernacle, St. George, UT 84770 • (435) 628-6553 Fax: (435) 628-6553

## LEGAL DESCRIPTION FOR RIGHT OF FIRST REFUSAL PARCEL IN SECTION 19, T. 42 S. R. 13 W. SLB&M.

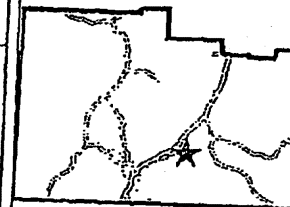
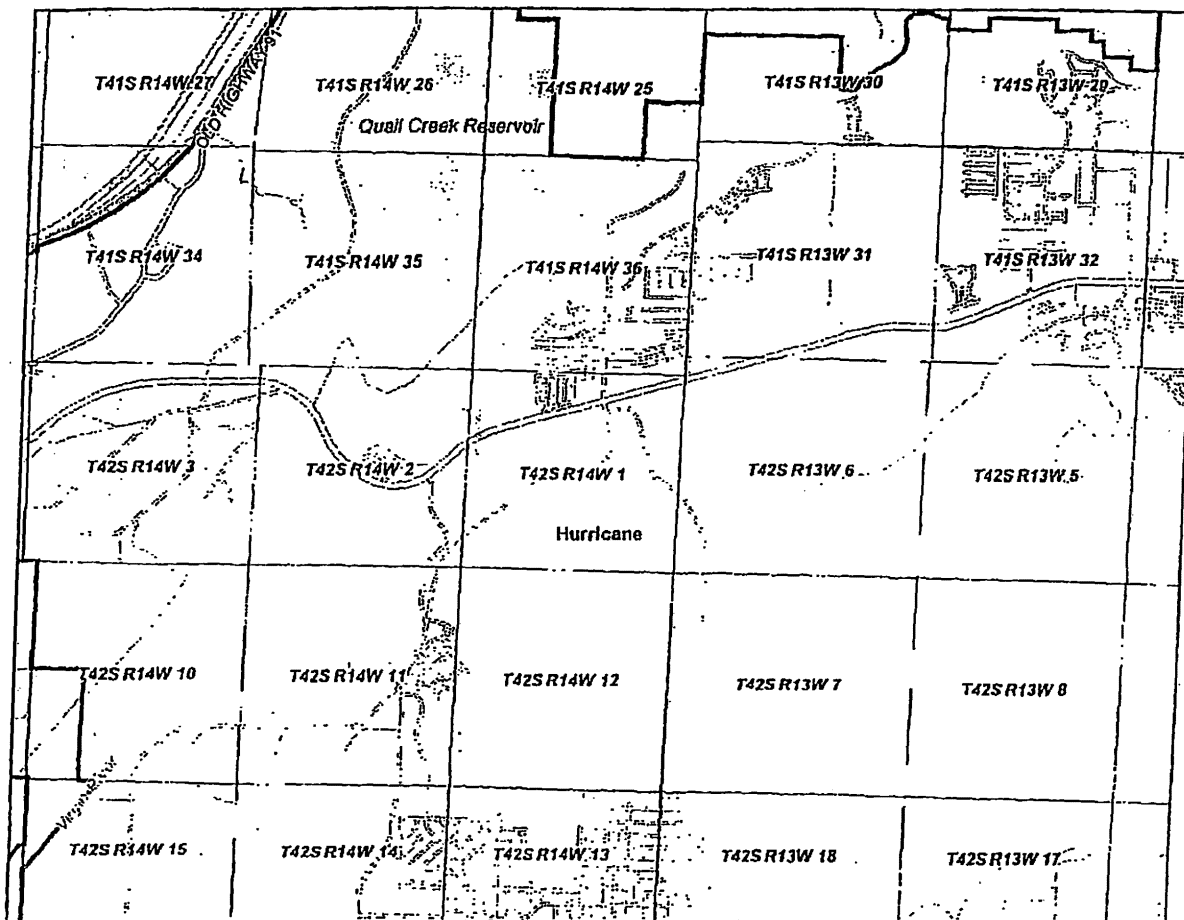
(August 9, 2000) -

All of the Northwest ¼ and the Southwest ¼ of Section 19, Township 42 South, Range 13 West, Salt Lake Base and Meridian, lying above elevation 3270.00. With the basis of elevation being the top of brass cap for the Northwest Corner of section 19, T. 42 S. R. 13 W. SLB&M, (Elevation being 3014.31).





# Washington County Recorder



## Legend

- Towns
- Municipalities
- Sections
- Streets
- Major
- Minor
- Primary Route
- Secondary Route
- Trail
- Other Roads
- Waterbodies
- Water Courses
- MAJOR PIPELINE CANAL
- Other
- Parcel Ownership
- U.S. Forest Service
- Bureau of Land Management
- State of Utah
- Wilderness Area
- Shivwits Reservation
- National Park Service
- State Park
- Washington County
- Utah Division of Transportation
- Municipally Owned
- Water Conservancy District
- School District
- Utah Division of Wildlife Resources

0 4500 9000 13500 ft.

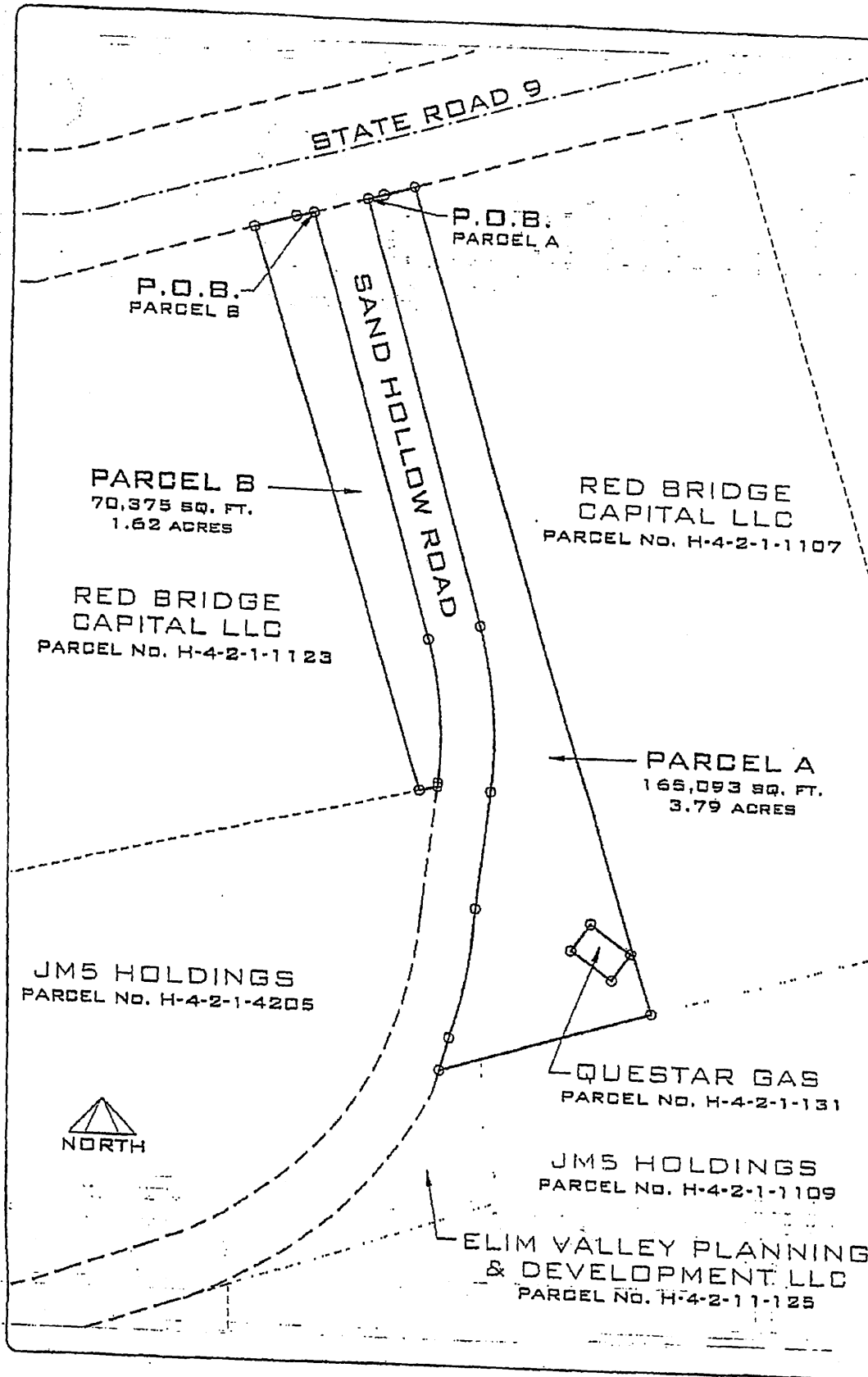
Map center: 1094454, 10028753



Scale: 1:47,837

This plat is furnished for information only. No liability is assumed by Assessor's or Recorder's Office as to correctness of such data.

- Washington County Recorder



DATE: 3/4/2003  
JOB NO.: 354-B-05  
DRAWN BY: BEA  
DESIGNED BY: BEA  
SCALE: 1"=200'  
DWG: EXHIBIT-MAP

DATE	REVISION

**ROSENBERG**  
ASSOCIATES  
CIVIL ENGINEERS - LAND SURVEYORS



352 EAST GARDEN  
DEVELOPMENT, SUITE A-201  
BOONVILLE, UTAH 84705  
PH (435) 672-0800  
FX (435) 672-0800  
WWW.ROSENBERG.COM

**EXHIBIT MAP**  
FOR  
**MELLON VALLEY LLC**

SHEET  
**1**  
OF 1 SHEETS

## Account 0844735

Location

Account Number 0844735

Parcel Number H-4-2-11-125

Tax District 03 - Hurricane City

Situated,

Acres 1.03

Legal S: 11 T: 42S R: 14W S: 2 T: 42S R: 14W S:  
 1 T: 42S R: 14W BEGINNING AT A POINT  
 BEING SOUTH 00°01'19" EAST 777.25 FEET  
 ALONG THE SECTION LINE AND WEST  
 651.51 FEET FROM THE NORTHEAST  
 CORNER OF SECTION 11, TOWNSHIP 42  
 SOUTH, RANGE 14 WEST, SALT LAKE BASE  
 & MERIDIAN, AND RUNNING; THENCE  
 SOUTH 04°42'59" WEST 621.94 FEET;  
 THENCE SOUTHERLY 806.63 FEET ALONG  
 AN ARC OF A 1,664.54 FOOT RADIUS  
 CURVE TO THE RIGHT (CENTER BEARS  
 NORTH 85°17'01" WEST LONG CHORD  
 BEARS SOUTH 18°35'57" WEST 798.76 FEET  
 WITH A CENTRAL ANGLE OF 27°45'55");  
 THENCE SOUTHERLY 616.17 FEET ALONG  
 AN ARC OF A 1,753.00 FOOT RADIUS  
 CURVE TO THE LEFT (CENTER BEARS  
 SOUTH 57°31'06" EAST LONG CHORD  
 BEARS SOUTH 22°24'44" WEST 613.00 FEET  
 WITH A CENTRAL ANGLE OF 20°08'21");  
 THENCE NORTH 77°39'28" WEST 94.00  
 FEET; THENCE NORTHERLY 649.21 FEET  
 ALONG AN ARC OF A 1,847.00 FOOT  
 RADIUS CURVE TO THE RIGHT (CENTER  
 BEARS SOUTH 77°39'28" EAST LONG  
 CHORD BEARS NORTH 22°24'43" EAST  
 645.87 FEET WITH A CENTRAL ANGLE OF  
 20°08'21"); THENCE NORTHERLY 761.08  
 FEET ALONG AN ARC OF A 1,570.54 FOOT  
 RADIUS CURVE TO THE LEFT (CENTER  
 BEARS NORTH 57°31'07" WEST LONG  
 CHORD BEARS NORTH 18°35'56" EAST  
 753.65 FEET WITH A CENTRAL ANGLE OF  
 27°45'55"); THENCE NORTH 04°42'59" EAST  
 621.94 FEET; THENCE NORTHERLY 162.22  
 FEET ALONG AN ARC OF A 2,047.00 FOOT  
 RADIUS CURVE TO THE RIGHT (CENTER  
 BEARS SOUTH 85°17'01" EAST LONG  
 CHORD BEARS NORTH 06°59'12" EAST  
 162.18 FEET WITH A CENTRAL ANGLE OF  
 04°32'26"); THENCE NORTH 09°15'25" EAST  
 629.46 FEET; THENCE NORTHEASTERLY  
 745.72 FEET ALONG AN ARC OF A 1,015.00  
 FOOT RADIUS CURVE TO THE RIGHT

Owner

Name ELIM VALLEY PLANNING & DEV LLC  
 1300 S SAND HOLLOW RD  
 HURRICANE, UT 84737

Value

Market (2013) \$800

Taxable \$800

Tax Area: 03 Tax Rate:  
 0.013152

Type Actual Assessed Acres

Non

Primary \$800 \$800 1.030

Land

(CENTER BEARS SOUTH 80°44'35" EAST  
LONG CHORD BEARS NORTH 30°18'17"  
EAST 729.06 FEET WITH A CENTRAL  
ANGLE OF 42°05'43"); THENCE NORTH  
51°21'08" EAST 2,458.66 FEET; THENCE  
EASTERLY 498.91 FEET ALONG AN ARC OF  
A 822.00 FOOT RADIUS CURVE TO THE  
RIGHT (CENTER BEARS SOUTH 38°38'52"  
EAST LONG CHORD BEARS NORTH  
68°44'24" EAST 491.28 FEET WITH A  
CENTRAL ANGLE OF 34°46'31"); THENCE  
NORTH 86°07'39" EAST 437.04 FEET;  
THENCE EASTERLY 430.66 FEET ALONG  
AN ARC OF A 1,628.00 FOOT RADIUS  
CURVE TO THE LEFT (CENTER BEARS  
NORTH 03°52'21" WEST LONG CHORD  
BEARS NORTH 78°32'57" EAST 429.41 FEET  
WITH A CENTRAL ANGLE OF 15°09'24");  
THENCE NORTH 70°58'15" EAST 135.23  
FEET; THENCE NORTHEASTERLY 678.92  
FEET ALONG AN ARC OF A 600.00 FOOT  
RADIUS CURVE TO THE LEFT (CENTER  
BEARS NORTH 19°01'45" WEST LONG  
CHORD BEARS NORTH 38°33'18" EAST  
643.27 FEET WITH A CENTRAL ANGLE OF  
64°49'55"); THENCE NORTHERLY 36.40  
FEET ALONG AN ARC OF A 1,015.00 FOOT  
RADIUS CURVE TO THE RIGHT (CENTER  
BEARS SOUTH 83°51'40" EAST LONG  
CHORD BEARS NORTH 07°09'59" EAST  
36.40 FEET WITH A CENTRAL ANGLE OF  
02°03'17"); THENCE NORTH 07°39'13" EAST  
177.80 FEET; THENCE NORTHERLY 223.12  
FEET ALONG AN ARC OF A 558.00 FOOT  
RADIUS CURVE TO THE LEFT (CENTER  
BEARS NORTH 82°20'47" WEST LONG  
CHORD BEARS NORTH 03°48'05" WEST  
221.64 FEET WITH A CENTRAL ANGLE OF  
22°54'37"); THENCE NORTH 15°15'24" WEST  
673.27 FEET THE SOUTHERLY LINE OF  
HIGHWAY SR-9; THENCE EASTERLY 84.02  
FEET ALONG AN ARC OF A 22,763.31 FOOT  
RADIUS CURVE TO THE RIGHT (CENTER  
BEARS SOUTH 16°37'06" EAST LONG  
CHORD BEARS NORTH 73°29'15" EAST  
84.02 FEET WITH A CENTRAL ANGLE OF  
00°12'41.33") ALONG THE SOUTHERLY  
LINE OF SAID HIGHWAY SR-9; THENCE  
SOUTH 15°15'24" EAST 675.11 FEET;  
THENCE SOUTHERLY 256.71 FEET ALONG  
AN ARC OF A 642.00 FOOT RADIUS CURVE  
TO THE RIGHT (CENTER BEARS SOUTH  
82°20'47" WEST LONG CHORD BEARS  
SOUTH 03°48'05" EAST 255.00 FEET WITH A  
CENTRAL ANGLE OF 22°54'37"); THENCE  
SOUTH 07°39'18" WEST 178.59 FEET;  
THENCE SOUTHERLY 333.38 FEET ALONG

AN ARC OF A 931.00 FOOT RADIUS CURVE  
TO THE LEFT (CENTER BEARS SOUTH  
81°48'24" EAST LONG CHORD BEARS  
SOUTH 02°03'54" EAST 331.60 FEET WITH A  
CENTRAL ANGLE OF 20°31'00"); THENCE  
SOUTH 12°19'24" EAST 116.70 FEET;  
THENCE SOUTH 70°58'15" WEST 658.65  
FEET; THENCE WESTERLY 455.53 FEET  
ALONG AN ARC OF A 1,722.00 FOOT  
RADIUS CURVE TO THE RIGHT (CENTER  
BEARS NORTH 19°01'45" WEST LONG  
CHORD BEARS SOUTH 78°32'57" WEST  
454.20 FEET WITH A CENTRAL ANGLE OF  
15°09'24"); THENCE SOUTH 86°07'39" WEST  
437.04 FEET; THENCE WESTERLY 441.85  
FEET ALONG AN ARC OF A 728.00 FOOT  
RADIUS CURVE TO THE LEFT (CENTER  
BEARS SOUTH 03°52'21" EAST LONG  
CHORD BEARS SOUTH 68°44'24" WEST  
435.10 FEET WITH A CENTRAL ANGLE OF  
34°46'31"); THENCE SOUTH 51°21'08" WEST  
2,226.52 FEET; THENCE SOUTHWESTERLY  
1,055.06 FEET ALONG AN ARC OF A  
1,485.00 FOOT RADIUS CURVE TO THE  
LEFT (CENTER BEARS SOUTH 38°38'52"  
EAST LONG CHORD BEARS SOUTH  
30°59'55" WEST 1,033.01 FEET WITH A  
CENTRAL ANGLE OF 40°42'27"); THENCE  
SOUTH 10°38'41" WEST 412.42 FEET;  
THENCE SOUTHERLY 202.07 FEET ALONG  
AN ARC OF A 1,953.00 FOOT RADIUS  
CURVE TO THE LEFT (CENTER BEARS  
SOUTH 79°21'19" EAST LONG CHORD  
BEARS SOUTH 07°40'50" WEST 201.98 FEET  
WITH A CENTRAL ANGLE OF 05°55'42") TO  
THE POB. LESS: LAND W/IN ACCT 0835948  
& 0844526.  
LESS: LAND IN SAND HOLLOW ROAD,  
20.52 ACRES

**Child Accounts****Child Parcels**

Parent Accounts 0751472  
0751076

Parent Parcels H-4-2-11-2102  
H-4-2-2-2303

**Transfers****Entry Number**201100161872011000023520100043974201000066482010000664720090048182**Recording Date**05/26/2011 08:07:55 AM01/04/2011 09:18:39 AM12/30/2010 10:52:48 AM03/01/2010 04:23:46 PM03/01/2010 04:23:46 PM12/22/2009 03:58:25 PM

web.washco.utah.gov/8080/recorder/taxweb/account.jsp?accountNum=0844735

"Tax"

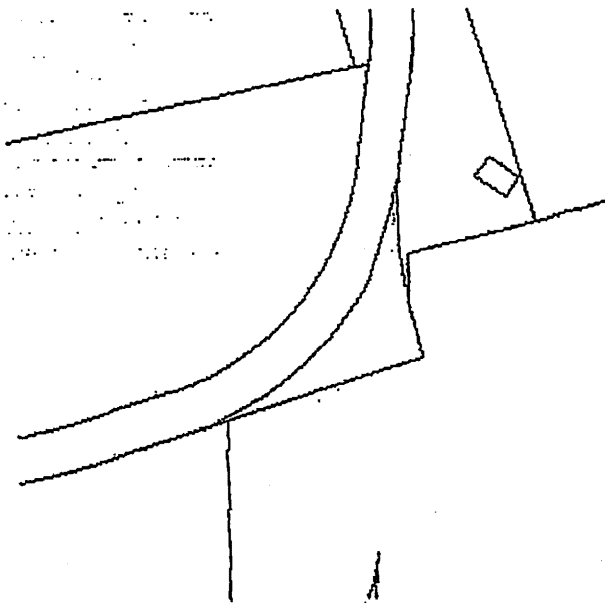
Images

Tax Year

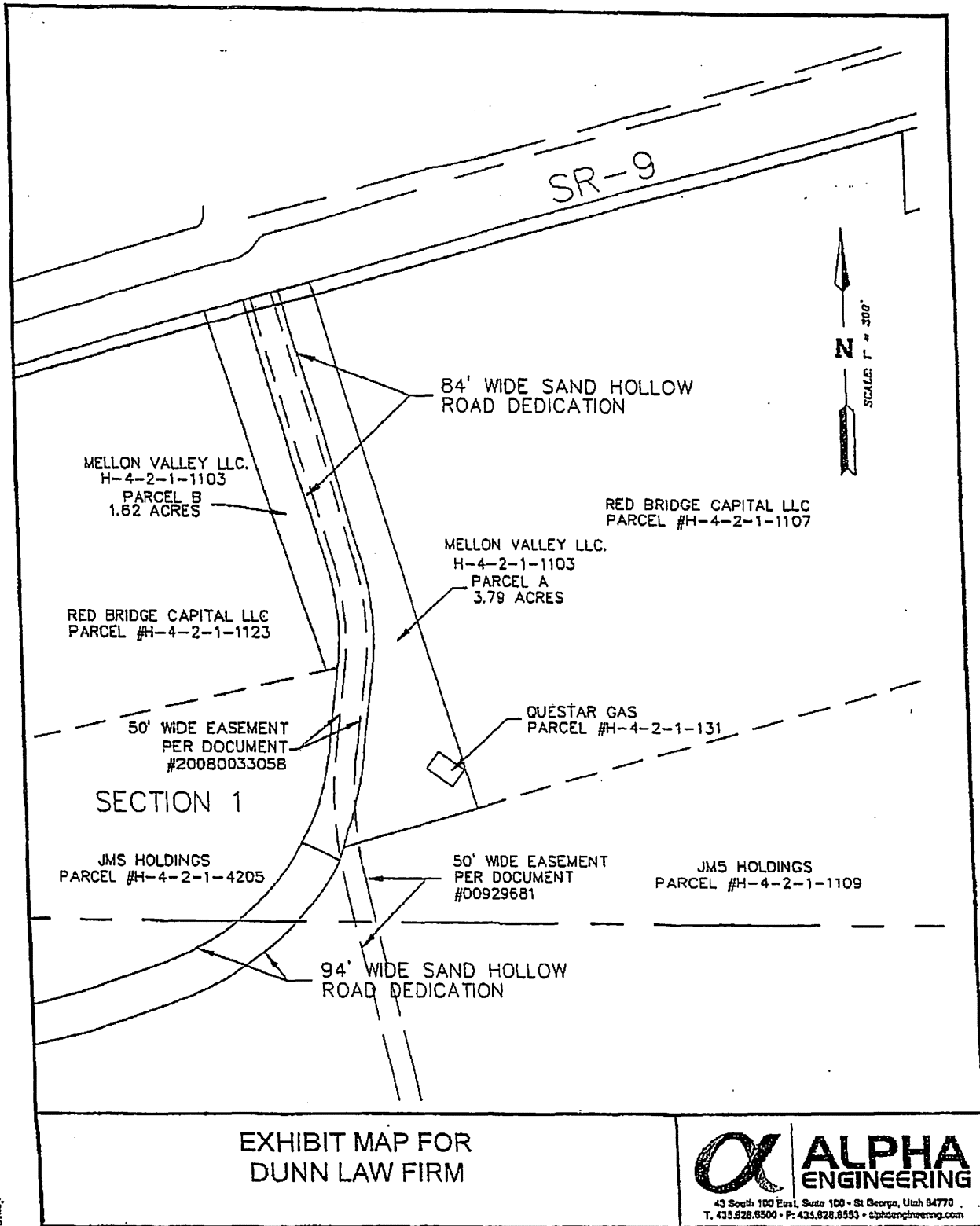
Taxes

GIS

2013	\$10.52
2012	\$11.20







P:\031-04\Drawings\Survey Drawings\031-04SVT.dwg, NORTH EXHIBIT, 10/20/2013 3:27:0.  
mroadacy

# EXHIBIT G

EXHIBIT G

**Kalawaia, Wendy**

---

**From:** Leta, David <dleta@swlaw.com>  
**nt:** Friday, November 15, 2013 2:19 PM  
**To:** Adam Dunn  
**Cc:** Jenson, Craig; Budge, Wade  
**Subject:** Red Bridge v Dos Lagos - subordination; master communications easement (exception No. 20)  
**Attachments:** Subordination Agreement - Master Communications Easement (Exception No. 20).  
 17827378\_1.DOCX

Adam:

The Subordination Agreement needs to be signed as presented in the attached document. Our client cannot accept an arrangement where your clients simply agree to subordinate to "specific locations of the Utility Easement when they are determined." The subordination needs to be effective prior to the deadline of November 19, 2013, regardless of where the easements are ultimately located. The Subordination Agreement is intended to subordinate the Master Communications Easement to the use of the Access Easement, not the area. As such, the form Subordination Agreement, attached, accomplishes that end, as well as what you have requested because it subordinates the Master Communications Easement to the Access Easement entirely, and the Access Easement specifically provides for future determination of the easement areas.

**David E. Leta**


ell & Wilmer

L.L.P.

15 West South Temple, Suite 1200; Gateway Tower West; Salt Lake City, Utah 84101-1547;  
 (801) 257-1928 (direct), x 1900 (main), x1800 (facsimile), 801-560-LETA (5382) (mobile)

[www.swlaw.com](http://www.swlaw.com); [dleta@swlaw.com](mailto:dleta@swlaw.com)

Phoenix / Tucson / Los Angeles / Costa Mesa / Denver / Salt Lake City / Las Vegas / Reno / Los Cabos

 please consider the environment before printing this e-mail

Recorded at the Request of,  
and After Recording Return to:

David E. Leta, Esq.  
SNELL & WILMER L.L.P.  
15 West South Temple, Suite 1200  
Salt Lake City, Utah 84101

Part of Parcel No. H-4-2-1-1103

### SUBORDINATION AGREEMENT

THIS SUBORDINATION AGREEMENT (the "Agreement") is made as of the \_\_\_\_ day of \_\_\_\_\_, 2013 by and among: MELLON VALLEY, LLC, a Utah limited liability company ("Mellon Valley"), ELIM VALLEY PLANNING AND DEVELOPMENT, LLC, a Utah limited liability company ("EVPD"), ROLAND NEIL FAMILY LIMITED PARTNERSHIP, a Utah limited partnership ("RNFLP"), EVD COMMUNICATIONS INFRASTRUCTURE, LLC, a Utah limited liability company ("EVD"), ROLAND L. WALKER IRREVOCABLE TRUST /U/A/D DECEMBER 23, 1985 (the "Trust"), and R&S FARMS UTAH LIMITED PARTNERSHIP, a Utah limited partnership ("R&S Farms" and collectively with Mellon Valley, EVPD, RNFLP, EVD, and the Trust, "Debtor Parties"), each of whose address is 1300 South Sand Hollow Road, Hurricane, UT 84737, and RED BRIDGE CAPITAL, LLC, a Utah limited liability company ("Red Bridge"), whose address is c/o Cherokee and Walker Management, 6440 South Wasatch Boulevard, Suite 200, Salt Lake City, Utah 84121

### RECITALS:

A. Pursuant to a Settlement Agreement (the "Settlement Agreement") between, among others, certain of the Debtor Parties and Red Bridge dated as of May 15, 2013, Debtor Parties agreed to grant to Red Bridge (i) an easement burdening the real property described in Exhibit A attached hereto (the "Strip Parcels") and permitting each of Red Bridge's properties adjacent to the Strip Parcels to have access to Sand Hollow Road, (ii) easements over the Strip Parcels for certain underground and above-ground utility lines and related facilities and improvements, and, (iii) that all liens and encumbrances be removed from the Strip Parcels.

B. Mellon Valley and EVPD entered into that certain Master Communications Easement for Elim Valley dated February 14, 2007 and recorded February 16, 2007, as Entry No. 20070008384, in the official records of Washington County, Utah (the "First Easement Agreement") encumbering certain real property described in the Easement Agreement (the "Easement Property").

C. EVPD and RNFLP entered into that certain Master Communications Easement for Elim Valley dated February 14, 2007 and recorded February 16, 2007, as Entry No. 20070008385, in the official records of Washington County, Utah (the "Second Easement Agreement") encumbering the Easement Property.

D. RNFLP and EVD entered into that certain Master Communications Easement for Elim Valley dated February 14, 2007 and recorded February 16, 2007, as Entry No. 20070008386, in the official records of Washington County, Utah (the "Third Easement Agreement") encumbering the Easement Property.

E. EVD executed that certain Grant Deed dated May 16, 2011 and recorded May 26, 2011, as Entry No. 20110016187, in the official records of Washington County, Utah (the "Grant Deed") conveying

EVD's right and interest in the Third Easement Agreement to the Trust and particularly describing the Easement Property.

F. The Trust and R&S Farms entered into that certain Option to Purchase Easement dated May 16, 2011 and recorded May 26, 2011, as Entry No. 20110016212, in the official records of Washington County, Utah (the "*Option*") purporting to grant R&S Farms an option to purchase the rights and interest conveyed to the Trust by the Grant Deed and particularly describing the Easement Property;

G. The rights and interests conveyed, granted, sold, or otherwise given by the First Easement, the Second Easement, the Third Easement, the Grant Deed, and the Option are collectively referred to in this Agreement as the "*Master Communications Easements*."

H. EVPD and Mellon Valley granted Red Bridge an easement over, upon, across, and through the Property according to the terms of that certain Amended and Restated Access and Utility Easement (the "*Red Bridge Easement*") dated June 18, 2013, executed by EVPD and Mellon Valley, as Grantor, in favor of Red Bridge, as Grantee, recorded in the office of the Washington County Recorder as Entry No. 20130032488.

I. The Strip Parcels are part of the Easement Property and, therefore, Master Communications Easements encumber the Strip Parcels and are prior to the Red Bridge Easement.

J. Debtor Parties and Red Bridge have agreed to subordinate the Master Communications Easements to the Red Bridge Easement with regard to the Strip Parcels, on the terms and conditions hereinafter set forth.

#### AGREEMENT:

For good and valuable consideration, the Debtor Parties and Red Bridge agree as follows:

1. RECITALS. The foregoing recitals are true and correct and are incorporated herein by reference.
2. SUBORDINATION. Debtor Parties, and each of them, declare and agree that the interests and rights of Debtor Parties and each of them, in and to the Master Communications Easements are hereby subordinated in all respects and for all purposes to the Red Bridge Easement. As such, all rights of Debtor Parties are and shall at all times be subject, subsequent, junior, and subordinate in all respects to the Red Bridge Easement in favor of Red Bridge as it pertains to the Strip Parcels described herein.
3. NOTICES. All notices or other written communications hereunder shall be deemed to have been properly given (i) upon delivery, if delivered in person with receipt acknowledged by the recipient thereof, (ii) one (1) Business Day (hereinafter defined) after having been deposited for overnight delivery with any reputable overnight courier service, or (iii) three (3) Business Days after having been deposited in any post office or mail depository regularly maintained by the U.S. Postal Service and sent by registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

If to Debtor Parties: c/o Roland Walker  
1300 S. Sand Hollow Road  
Hurricane, Utah 84737

With a copy to: Dunn Law Firm  
P.O. Box 2318  
St. George, Utah 84771-2318  
Attn: Clifford V. Dunn

If to Red Bridge: Red Bridge Capital, LLC  
 c/o Cherokee & Walker Management  
 6440 S. Wasatch Boulevard, Suite 200  
 Salt Lake City, Utah 84121  
 Attn: Paul Erickson

With a copy to: Snell & Wilmer L.L.P.  
 15 West South Temple, Suite 1200  
 Salt Lake City, Utah 84101  
 Attention: David E. Leta

or addressed as such party may from time to time designate by written notice to the other parties. For purposes of this Section 3, the term "Business Day" shall mean a day on which commercial banks are not authorized or required by law to close in the state where the Property is located. Either party by notice to the other may designate additional or different addresses for subsequent notices or communications.

4. SUCCESSORS AND ASSIGNS. This Agreement shall be binding upon and inure to the benefit of Founder, the Association, and Red Bridge and their respective successors and assigns.

5. GOVERNING LAW. This Agreement shall be deemed to be a contract entered into pursuant to the laws of Utah and shall in all respects be governed, construed, applied and enforced in accordance with the laws of the State of Utah.

6. MISCELLANEOUS. This Agreement may not be modified in any manner or terminated except by an instrument in writing executed by the parties hereto. If any term, covenant or condition of this Agreement is held to be invalid, illegal or unenforceable in any respect, this Agreement shall be construed without such provision. This Agreement may be executed in any number of duplicate originals and each duplicate original shall be deemed to be an original. This Agreement may be executed in several counterparts, each of which counterparts shall be deemed an original instrument and all of which together shall constitute a single Agreement. The failure of any party hereto to execute this Agreement, or any counterpart hereof, shall not relieve the other signatories from their obligations hereunder. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.

[Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, Debtor Parties and Red Bridge have duly executed this Agreement as of the date first above written.

**DEBTOR PARTIES:**

**MELLON VALLEY, LLC,**  
a Utah limited liability company

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

**ELIM VALLEY PLANNING AND DEVELOPMENT, LLC,**  
a Utah limited liability company

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

**ROLAND NEIL FAMILY LIMITED PARTNERSHIP,**  
a Utah limited partnership

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

**EVD COMMUNICATIONS INFRASTRUCTURE, LLC,**  
a Utah limited liability company

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

**ROLAND L. WALKER IRREVOCABLE TRUST**  
/U/A/D DECEMBER 23, 1985

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

**R&S FARMS UTAH LIMITED PARTNERSHIP,**  
a Utah limited partnership

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

**RED BRIDGE:**

**RED BRIDGE CAPITAL, LLC**, a Utah limited liability company

By: Cherokee & Walker Management, LLC, its manager

by: \_\_\_\_\_

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

Its: Manager

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

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

Its: Manager



STATE OF \_\_\_\_\_ )  
: ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2013, by \_\_\_\_\_ of MELLON VALLEY, LLC, a Utah limited liability company, on behalf of the company.

\_\_\_\_\_  
NOTARY PUBLIC  
Residing at: \_\_\_\_\_

My Commission Expires:

\_\_\_\_\_

STATE OF \_\_\_\_\_ )  
: ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2013, by \_\_\_\_\_ of ELIM VALLEY PLANNING AND DEVELOPMENT, LLC, a Utah limited liability company, on behalf of the company.

\_\_\_\_\_  
NOTARY PUBLIC  
Residing at: \_\_\_\_\_

My Commission Expires:

\_\_\_\_\_

STATE OF \_\_\_\_\_ )  
: ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2013, by \_\_\_\_\_ of ROLAND NEIL FAMILY LIMITED PARTNERSHIP, a Utah limited partnership, on behalf of the company.

\_\_\_\_\_  
NOTARY PUBLIC  
Residing at: \_\_\_\_\_

My Commission Expires:  
\_\_\_\_\_

STATE OF \_\_\_\_\_ )  
: ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2013, by \_\_\_\_\_ of EVD COMMUNICATIONS INFRASTRUCTURE, LLC, a Utah limited liability company, on behalf of the company.

\_\_\_\_\_  
NOTARY PUBLIC  
Residing at: \_\_\_\_\_

My Commission Expires:  
\_\_\_\_\_

STATE OF \_\_\_\_\_ )  
: ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2013, by \_\_\_\_\_ of ROLAND L. WALKER IRREVOCABLE TRUST /U/A/D DECEMBER 23, 1985, on behalf of the company.

\_\_\_\_\_  
NOTARY PUBLIC  
Residing at: \_\_\_\_\_

My Commission Expires:  
\_\_\_\_\_

STATE OF \_\_\_\_\_ )  
: ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2013, by \_\_\_\_\_ of R&S FARMS UTAH LIMITED PARTNERSHIP, a Utah limited partnership, on behalf of the company.

\_\_\_\_\_  
NOTARY PUBLIC  
Residing at: \_\_\_\_\_

My Commission Expires:  
\_\_\_\_\_

STATE OF \_\_\_\_\_ )  
: ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2013, by \_\_\_\_\_, and \_\_\_\_\_, managers of Cherokee & Walker Management, LLC, manager of RED BRIDGE CAPITAL, LLC, a Utah limited liability company, on behalf of the company.

\_\_\_\_\_  
NOTARY PUBLIC  
Residing at: \_\_\_\_\_

My Commission Expires:  
\_\_\_\_\_

## EXHIBIT A

## STRIP PARCELS DESCRIPTION

## PARCEL A

Beginning at a point on the east side of Sand Hollow Road where it intersects with State Road 9, said point being North 89°46'47" West 1,887.49 feet along the center section line and North 1,820.64 feet from the East Quarter Corner of Section 1, Township 42 South, Range 14 West, Salt Lake Base & Meridian, and running;

thence easterly 25.27 feet along an arc of a 22,763.31 foot radius curve to the right (center bears South 16°24'24" East, long chord bears North 73°37'31" East 25.27 feet with a central angle of 00°03'49") along the southerly line of State Road 9;

thence North 73°39'24" East 48.49 feet along the southerly line of said State Road 9;

thence South 16°20'36" East 1,306.80 feet;

thence South 73°39'35" West 338.52 feet to the easterly line of Sand Hollow Road;

thence northerly the following (5) courses along the easterly line of said Sand Hollow Road;

thence North 16°56'45" East 51.31 feet;

thence northerly 172.48 feet along an arc of a 684.00 foot radius curve to the left (center bears North 69°44'51" West, long chord bears North 13°01'44" East 172.02 feet with a central angle of 14°26'51");

thence northerly 30.04 feet along an arc of a 931.00 foot radius curve to the right (center bears South 84°11'42" East, long chord bears North 06°43'46" East 30.04 feet with a central angle of 01°50'55");

thence North 07°39'13" East 177.80 feet;

thence northerly 256.71 feet along an arc of a 642.00 foot radius curve to the left (center bears North 82°20'47" West, long chord bears North 03°48'06" West 255.00 feet with a central angle of 22°54'37");

thence North 15°15'24" West 675.11 feet to the Point of Beginning.

Less and excepting that parcel conveyed to Questar Gas Company by that certain Warranty Deed recorded August 17, 2009 as Entry No. 20090031873 and more particularly described as follows:

## Elim Valley Regulation Station

Beginning at a point being South 00°15'22" West, 2011.10 feet along the section line and West 1509.90 feet from the Northeast corner of Section 1, Township 42 South, Range 14 West, Salt Lake Base and Meridian and running thence North 54°33'12" West, 75.00 feet; thence North 35°26'48" East, 50.00 feet; thence South 54°33'12" East, 75.00 feet; thence South 35°26'48" West, 50.00 feet to the Point of Beginning;

## PARCEL B

Beginning at a point on the west side of Sand Hollow Road where it intersects with State Road 9, said point being North  $89^{\circ}46'47''$  West 1,968.05 feet along the center section line and North 1,796.45 feet from the East Quarter Corner of Section 1, Township 42 South, Range 14 West, Salt Lake Base & Meridian, and running;

thence southerly the following (3) courses along the westerly line of Sand Hollow Road;  
thence South  $15^{\circ}15'24''$  East 673.27 feet;  
thence southerly 223.12 feet along an arc of a 558.00 foot radius curve to the right (center bears South  $74^{\circ}44'36''$  West, long chord bears South  $03^{\circ}48'06''$  East 221.64 feet with a central angle of  $22^{\circ}54'37''$ );  
thence South  $07^{\circ}39'13''$  West 5.82 feet;  
thence South  $76^{\circ}45'10''$  West 27.71 feet;  
thence North  $16^{\circ}20'36''$  West 892.79 feet to the southerly line of State Road 9;  
thence North  $73^{\circ}19'03''$  East 65.46 feet along said southerly line;  
thence easterly 25.49 feet along an arc of a 22,763.31 foot radius curve to the right (center bears South  $16^{\circ}40'57''$  East, long chord bears North  $73^{\circ}20'59''$  East 25.49 feet with a central angle of  $00^{\circ}03'51''$ ) along said southerly line to the Point of Beginning.

# EXHIBIT H

EXHIBIT H

**Kalawaia, Wendy**

---

**From:** Leta, David  
**Int:** Tuesday, August 27, 2013 8:03 PM  
**To:** Dunn Adam; Dunn Cliff  
**Cc:** Erickson Paul K.; Peery Shane; Jenson, Craig; Evensen, Leeza  
**Subject:** Red Bridge v. Dos Lagos - Settlement Agreement Compliance - Title Issues  
**Attachments:** Memo - Strip Parcels title (to opp counsel).pdf; Subordination (Charter).pdf; Subordination (AFCU Trust Deed).pdf; Release of Notice of Interest.pdf; Subordination (Option Agreement).pdf

Cliff / Adam:

We have taken a look at the title issues in light of the settlement, and have determined that several corrective actions are required. Attached is a memo that explains the actions that are required, with the documents that need to be executed to correct some of the title defects. Please call or reply if you have any questions.

David E. Leta  
SNELL & WILMER LLP  
15 West South Temple, Suite1200  
Salt Lake City, UT 84101  
801-257-1928 (office)  
801-560-5382 (mobile)  
801-581-0683 (home)  
[leta@swlaw.com](mailto:leta@swlaw.com)  
[www.swlaw.com](http://www.swlaw.com)

Sent from my iPhone

>  
>



# Snell & Wilmer

L.L.P.

## MEMORANDUM

TO: Clifford V. Dunn  
FROM: David E. Leta  
DATE: August 27, 2013  
RE: *Red Bridge Capital Fund v. Dos Lagos*

My office has reviewed the title commitment (No: NCS-608602-SLC1, dated effected as of May 17, 2013 at 7:30 am) ("Commitment") issued by First American Title Company ("FATCO") for the Strip Parcels in the above-referenced matter in order to evaluate the Schedule B exceptions' potential effect on my client's Access and Utility Easement (the "Easement") interest over and through the Strip Parcels. Below is a brief description of each title exception and how it may affect the Easement, and directives for your clients to resolve the title issue in compliance with the parties Settlement Agreement.

- A. Exception Nos. 8 – 11: These exceptions represent delinquent property taxes and assessments. Mr. Dunn has expressed that the defendants are working to pay the outstanding taxes and, therefore, resolve these exceptions.

Directive: Defendants should provide sufficient evidence that the outstanding taxes have been paid in full.

- B. Exception No. 13: This exception states that a portion of Parcel A and all of Parcel B, together with land other than the Strip Parcels, were withdrawn from assessment and taxation under the 1969 Farmland Assessment Act (the "Act"), or greenbelt taxation. The amount of delinquent taxes reflected in Exception Nos. 8 – 11 seems to confirm greenbelt taxation assessed against Strip Parcels in prior years. The Notice of Withdrawal was recorded on March 28, 2012. The Act contains a five (5) year roll-back provision with regard to assessment and taxation.

Directive: Defendants should verify that all taxes during the five-year roll-back period for the Strip Parcels have been paid.

- C. Exception No. 15: This exception is a Right-of-Way Grant/Temporary Use Permit constituting a 50' right-of-way strip for a natural gas pipeline which may interfere with the Easement interest. The Grant is temporary and terminates September 7, 2018. However, it is uncertain whether this exception affects the Strip Parcels, as mentioned in the title commitment, because of an incomplete legal description in the Grant. Mr. Dunn indicates that the defendants are taking no action on this exception. Exhibit D of the Grant notes that the pipeline route is depicted on the USGS quadrangle maps furnished by Mountain Fuel Supply Company.

Clifford V. Dunn  
Page 2

Directive: Defendants should obtain the exact legal description and location of the pipeline to see how the easement area may affect the Strip Parcels.

- D. Exception No. 16: This exception represents an easement for water pipelines related to the Washington County Water Conservancy District's installation and management of improvements related to Sand Hollow Reservoir and water pipelines between Sand Hollow Reservoir and Quail Creek Reservoir. This exception creates a construction and maintenance area for the water pipelines, includes a real estate purchase contract with the Conservancy District as buyer for a pump station, and grants the Conservancy District a Right of First Refusal to purchase certain real property. Additionally, this exception relates that the easement area has been re-granted, amended, and otherwise modified through several subsequent recordings. According to the exhibits attached to the Second Vacation and Regrant of Right-of-Way Easement, the easement area appears to be along Sand Hollow Road affecting at least one of the Strip Parcels but it is difficult to confirm the location without an ALTA survey. Because the easement contemplates future development and is also non-exclusive for construction and maintenance within the easement area, this easement is likely to be compatible with the Easement interest, potentially using the same area as the Easement. Mr. Dunn indicates that the defendants are taking no action on this exception.

Directive: Defendants should provide a survey showing the exact location of the water pipeline easement to see how the easement area may affect the Strip Parcels. In addition, the defendants should clarify whether or not the Right of First Refusal remains in effect.

- E. Exception No. 18: This exception is the America First Trust Deed with several amendments. The Subordination provided by Mr. Dunn is not sufficient because it refers only to the original trust deed but Exception 18 is comprised of 12 recorded documents, including three modifications of the original deed of trust and two notices of default.

Directive: Defendants should provide an executed and recorded Subordination Agreement to expressly reference (i) the three modifications and the default notices and (ii) the amended Access and Utility Easement, in the same form as the attached Subordination Agreement.

- F. Exception No. 19: This exception refers to the Development Agreement for Elim Valley ("DA") between Elim Valley Planning and Development Company, LLC and Hurricane City dated December 21, 2006. This exception may be a concern because the DA contains transfer restrictions, requiring City approval prior to transferring any portion of the Project (as defined in the DA) covered by the DA. It is unclear whether a grant of an easement will require City approval. In the event of transfer without City approval, the DA makes Developer and such transferee (our client) jointly and severally liable for satisfying the obligations under the DA. *See* DA, §5.2.

Directive: Defendants should obtain the City's consent to the Easement or should demonstrate why such consent is not required under the DA. The DA has a termination provision rendering the DA null and void if the initial construction does not begin within

Clifford V. Dunn  
Page 3

five years of the DA's date (*see* DA, §6.12). The defendants should clarify whether or not the initial construction has commenced within such five years.

- G. Exception No. 21: This exception refers to an unrecorded Option Agreement to purchase real property dated May 1, 2005. We do not have a copy of that agreement. Mr. Dunn claims this exception was resolved through the Easement and/or Partial Termination of Master Communications Easement; however, those documents did not address this unrecorded Option Agreement.

Directive: Defendants should provide a copy of the Option Agreement and an executed and recorded Subordination Agreement (similar to the Subordination that brought this Option to light) of this Option to the Easement, in the same form as the attached Subordination Agreement.

- H. Exception No. 22: This exception refers to the Community Charter for Elim Valley Neighborhoods, dated July 10, 2008 and recorded August 27, 2008 for the Elim Valley development. The Charter was executed Elim Valley Development and Planning Company, LLC, a Utah limited liability company ("Founder"). The Founder is not a party to the Settlement Agreement; however, it appears the Founder is a related entity to the debtor-parties in this matter.

The Charter provides for a mixed-use development and establishes a Neighborhood Association and authorizes levies against "Units" (subdivided parcels and condominium units) within the Project in order to finance the Neighborhood Association. The Charter provides for a Base Assessment to finance all expenses the Neighborhood Association incurs for common expenses, including ownership, maintenance, and operation of the common areas. The Charter also provides for special, specific, and emergency assessments in the event of unanticipated Association expenses. The Charter imposes liens for unpaid assessments on Units within the Charter Project area (*see* Section 12). The Charter also provides for initial capitalization of the Neighborhood Association by imposing a fee on the first owner of each Unit other than Founder in the amount of one-sixth of the annual Base Assessment per Unit for that year; however, the Charter is not clear whether this fee may become a lien against a Unit. *See* Section 12.10. The Charter only imposes the obligation to pay assessments as to each Unit commencing the earlier of six (6) months from the issuance of a building permit, or upon issuance of a certificate of occupancy, unless extended by written authorization from Founder. *See* Section 12.6.

The Charter reserves to the Founder the right to unilaterally amend the Charter for any purpose during the Founder Control Period (defined as the period of time during which the Founder is entitled to appoint a majority of the Association Board, commencing with incorporation of the Neighborhood Association and terminating when 75% of the total number of Units have certificates of occupancy issued and have been conveyed to persons other than builders, or when Founder terminates the period by recorded instrument; *see* Section 2.1). *See* Section 20.2.

Clifford V. Dunn  
Page 4

Directive: Since a lien for unpaid assessments under the Charter has priority over any encumbrances recorded after the recordation of the Charter (see U.C.S. Section 57-8a-301(4)), the defendants should provide an executed and recorded Subordination Agreement subordinating the Charter to the Easement, in the same form as the attached Subordination Agreement.

- I. Exception No. 23: This exception is a Notice of Interest recorded by CGS Engineering Inc. on March 30, 2009. Mr. Dunn asserts this Notice of Interest has been resolved by a Release of Notice of Interest recorded on August 17, 2009. It appears, however, that the Release releases only one of the Strip Parcels.

Directive: Defendants should provide an executed and recorded Release of Notice of Interest releasing both Strip Parcels in their entirety, in the same form as the attached Release of Notice of Interest.

- J. Exception No. 26: Mr. Dunn represents that the defendants are working on removing this judgment lien.

Directive: Defendants should provide sufficient evidence that the judgment lien has been released as to the Strip Parcels, including a recorded copy of a release of the judgment lien.

**WHEN RECORDED, RETURN TO:**

David E. Leta  
SNELL & WILMER LLP.  
15 West South Temple, Suite 1200  
Salt Lake City, UT 84101

Part of Parcel No. H-4-2-1-1103

**SUBORDINATION AGREEMENT**

THE UNDERSIGNED, America First Federal Credit Union ("Lender"), for \$10.00 and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, as the BENEFICIARY under the Deeds of Trust and the Notes secured thereby, Cross-Collateralization and Cross-Default Agreements, Amendments, Modifications to Deeds of Trust, Substitutions of Trustee, and Notices of Default (collectively, the "Subordinated Documents"), all of which are more particularly described below and which cover the real property described below (the "Easement Property"), does hereby subordinate and make junior the Subordinated Documents to the Easement (defined below) in favor of Red Bridge Capital, LLC, a Utah limited liability company ("Red Bridge"), described below.

The Subordinated Documents are more particularly described as follows:

A Land Loan Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing dated November 17, 2005 by and between Dos Lagos, L.L.C., a Utah limited liability company, as Trustor, in favor of Southern Utah Title Company, as Trustee, and America First Federal Credit Union, as Beneficiary, to secure a revolving line of credit in the original amount of \$26,500,000.00 and any other amounts or obligations secured thereby recorded November 22, 2005 as Entry No. 986722 in Book 1816 at Page 2368 of the Official Washington County Records ("Official Records").

Cross-Collateralization and Cross-Default Agreement by and between America First Federal Credit Union and Dos Lagos, L.L.C., a Utah limited liability company, and Roland N. Walker and Sally Walker, husband and wife recorded May 04, 2006 as Entry No. 20060018045 of Official Records.

Amendment to Cross-Collateralization and Cross-Default Agreement recorded July 06, 2006 as Entry No. 20060029529 of Official Records.

Modification to Land Loan Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing recorded July 06, 2006 as Entry No. 20060029530 of Official Records.

Second Modification to Land Loan Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing recorded July 27, 2006 as Entry No. 20060033444 of Official Records.

Second Amendment to Cross-Collateralization and Cross-Default Agreement recorded August 17, 2006 as Entry No. 20060037436 of Official Records.

Third Modification to Land Loan Deed of Trust, Assignment of Rents and Leases, Security Agreement and Fixture Filing recorded March 27, 2009 as Entry No. 20090011139 of Official Records.

A Subordination Agreement, wherein the lien of the Deed of Trust and Cross Collateralization and Cross-Default Agreement shown herein-above was subordinated to the Right-of-Way and Easement Grant recorded August 17, 2009 as Entry No. 20090031874 of Official Records. Said Subordination Agreement recorded August 17, 2009 as Entry No. 20090031878 of Official Records.

A Substitution of Trustee recorded November 25, 2009 as Entry No. 20090044922 of Official Records, wherein Mark B. Durrant, Esq., a member of the Utah State Bar was substituted as Trustee under said Deed of Trust.

A Notice of Default under said Deed of Trust recorded November 25, 2009 as Entry No. 20090044923 of Official Records.

A Substitution of Trustee recorded March 29, 2012 as Entry No. 20120010051 of Official Records, wherein Steven J. Newman, Esq., a member of the Utah State Bar was substituted as Trustee under said Deed of Trust.

A Notice of Default under said Deed of Trust recorded March 29, 2012 as Entry No. 20120010054 of Official Records.

Lender hereby declares and agrees that the interest and rights of Lender in and to the Easement Property by virtue of the Subordinated Documents are hereby subordinated, in all respects and for all purposes, to the AMENDED AND RESTATED ACCESS AND UTILITY EASEMENT (the "Easement") dated June 18, 2013, executed by ELIM VALLEY PLANNING AND DEVELOPMENT, LLC, a Utah limited liability company, and MELLON VALLEY, LLC, a Utah limited liability company, as Grantor, in favor of Red Bridge, as Grantee, recorded in the office of the Washington County Recorder as Entry No. 20130032488. As such, all rights of Lender are subject, subsequent, and junior, in all respects, to the Easement in favor of Red Bridge as it pertains to the Easement Property described herein.

The Easement Property, which is only a portion of the real property encumbered by the Subordinated Documents, is more particularly described on the attached Exhibit A, located in Washington County, State of Utah.

Except as described herein, the priority of the liens and encumbrances of the Subordinated Documents remain unaffected and no further subordination in favor of any other party shall be effectuated by this Subordination Agreement.

[Signature and Acknowledgement Follow]

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

Lender:

**AMERICA FIRST FEDERAL CREDIT UNION**

By: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Title: \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
 : ss.  
 COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2013, by \_\_\_\_\_ of  
**AMERICA FIRST FEDERAL CREDIT UNION**, on behalf of the company.

\_\_\_\_\_  
 NOTARY PUBLIC  
 Residing at: \_\_\_\_\_

My Commission Expires:

\_\_\_\_\_

EXHIBIT A

## PARCEL A

Beginning at a point on the east side of Sand Hollow Road where it intersects with State Road 9, said point being North 89°46'47" West 1,887.49 feet along the center section line and North 1,820.64 feet from the East Quarter Corner of Section 1, Township 42 South, Range 14 West, Salt Lake Base & Meridian, and running;

thence easterly 25.27 feet along an arc of a 22,763.31 foot radius curve to the right (center bears South 16°24'24" East, long chord bears North 73°37'31" East 25.27 feet with a central angle of 00°03'49") along the southerly line of State Road 9;

thence North 73°39'24" East 48.49 feet along the southerly line of said State Road 9;

thence South 16°20'36" East 1,306.80 feet;

thence South 73°39'35" West 338.52 feet to the easterly line of Sand Hollow Road;

thence northerly the following (5) courses along the easterly line of said Sand Hollow Road;

thence North 16°56'45" East 51.31 feet;

thence northerly 172.48 feet along an arc of a 684.00 foot radius curve to the left (center bears North 69°44'51" West, long chord bears North 13°01'44" East 172.02 feet with a central angle of 14°26'51");

thence northerly 30.04 feet along an arc of a 931.00 foot radius curve to the right (center bears South 84°11'42" East, long chord bears North 06°43'46" East 30.04 feet with a central angle of 01°50'55");

thence North 07°39'13" East 177.80 feet;

thence northerly 256.71 feet along an arc of a 642.00 foot radius curve to the left (center bears North 82°20'47" West, long chord bears North 03°48'06" West 255.00 feet with a central angle of 22°54'37");

thence North 15°15'24" West 675.11 feet to the Point of Beginning.

Less and excepting that parcel conveyed to Questar Gas Company by that certain Warranty Deed recorded August 17, 2009 as Entry No. 20090031873 and more particularly described as follows:

## Elim Valley Regulation Station

Beginning at a point being South 00°15'22" West, 2011.10 feet along the section line and West 1509.90 feet from the Northeast corner of Section 1, Township 42 South, Range 14 West, Salt Lake Base and Meridian and running thence North 54°33'12" West, 75.00 feet; thence North 35°26'48" East, 50.00 feet; thence South 54°33'12" East, 75.00 feet; thence South 35°26'48" West, 50.00 feet to the Point of Beginning;



## PARCEL B

Beginning at a point on the west side of Sand Hollow Road where it intersects with State Road 9, said point being North  $89^{\circ}46'47''$  West 1,968.05 feet along the center section line and North 1,796.45 feet from the East Quarter Corner of Section 1, Township 42 South, Range 14 West, Salt Lake Base & Meridian, and running;

thence southerly the following (3) courses along the westerly line of Sand Hollow Road;  
thence South  $15^{\circ}15'24''$  East 673.27 feet;  
thence southerly 223.12 feet along an arc of a 558.00 foot radius curve to the right (center bears South  $74^{\circ}44'36''$  West, long chord bears South  $03^{\circ}48'06''$  East 221.64 feet with a central angle of  $22^{\circ}54'37''$ );  
thence South  $07^{\circ}39'13''$  West 5.82 feet;  
thence South  $76^{\circ}45'10''$  West 27.71 feet;  
thence North  $16^{\circ}20'36''$  West 892.79 feet to the southerly line of State Road 9;  
thence North  $73^{\circ}19'03''$  East 65.46 feet along said southerly line;  
thence easterly 25.49 feet along an arc of a 22,763.31 foot radius curve to the right (center bears South  $16^{\circ}40'57''$  East, long chord bears North  $73^{\circ}20'59''$  East 25.49 feet with a central angle of  $00^{\circ}03'51''$ ) along said southerly line to the Point of Beginning.

**WHEN RECORDED, RETURN TO:**

David E. Leta  
 SNELL & WILMER LLP.  
 15 West South Temple, Suite 1200  
 Salt Lake City, UT 84101

Part of Parcel No. H-4-2-1-1103

**SUBORDINATION AGREEMENT**

ELIM VALLEY PLANNING AND DEVELOPMENT, LLC, a Utah limited liability company ("EVPD") and MELLON VALLEY, LLC, a Utah limited liability company ("MELLON VALLEY") for \$10.00 and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, hereby agree and declare that the OPTION AGREEMENT between EVPD as OPTIONEE and MELLON VALLEY as OPTIONOR entered into on the 1<sup>st</sup> day of May, 2005 and memorialized in the OPTION AGREEMENT TO PURCHASE REAL PROPERTY executed on the 10<sup>th</sup> day of November, 2006, as amended (the "OPTION AGREEMENT"), which OPTION AGREEMENT is an unrecorded agreement covering, in part, the following described real property located in Washington County, State of Utah (the "Property"):

SEE ATTACHED EXHIBIT "A"

The undersigned hereby declare and agree that the interest and rights of EVPD and MELLON VALLEY in and to the Property by virtue of that OPTION AGREEMENT are hereby subordinated, in all respects and for all purposes, to the AMENDED AND RESTATED ACCESS AND UTILITY EASEMENT (the "EASEMENT") dated June 18, 2013, executed by EVPD and MELLON VALLEY, as Grantor, in favor of RED BRIDGE CAPITAL, LLC, a Utah limited liability company ("RED BRIDGE"), as Grantee, recorded in the office of the Washington County Recorder as Entry No. 20130032488. As such, all rights of EVPD and MELLON VALLEY are subject, subsequent, and junior, in all respects, to the EASEMENT in favor of RED BRIDGE as it pertains to the Property described herein.

DATED this \_\_\_\_ day of \_\_\_\_\_, 2013.

EVPD:

ELIM VALLEY PLANNING AND  
 DEVELOPMENT, LLC,  
 a Utah limited liability company

By: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Title: \_\_\_\_\_

MELLON VALLEY:

**MELLON VALLEY, LLC,**  
a Utah limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
: ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2013, by \_\_\_\_\_ of **ELIM VALLEY PLANNING AND DEVELOPMENT, LLC**, a Utah limited liability company, on behalf of the company.

\_\_\_\_\_  
NOTARY PUBLIC  
Residing at: \_\_\_\_\_

My Commission Expires:

\_\_\_\_\_

STATE OF \_\_\_\_\_ )  
: ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 2013, by \_\_\_\_\_ of **MELLON VALLEY, LLC**, a Utah limited liability company, on behalf of the company.

\_\_\_\_\_  
NOTARY PUBLIC  
Residing at: \_\_\_\_\_

My Commission Expires:

\_\_\_\_\_

EXHIBIT A

## PARCEL A

Beginning at a point on the east side of Sand Hollow Road where it intersects with State Road 9, said point being North 89°46'47" West 1,887.49 feet along the center section line and North 1,820.64 feet from the East Quarter Corner of Section 1, Township 42 South, Range 14 West, Salt Lake Base & Meridian, and running;

thence easterly 25.27 feet along an arc of a 22,763.31 foot radius curve to the right (center bears South 16°24'24" East, long chord bears North 73°37'31" East 25.27 feet with a central angle of 00°03'49") along the southerly line of State Road 9;  
 thence North 73°39'24" East 48.49 feet along the southerly line of said State Road 9;  
 thence South 16°20'36" East 1,306.80 feet;  
 thence South 73°39'35" West 338.52 feet to the easterly line of Sand Hollow Road;  
 thence northerly the following (5) courses along the easterly line of said Sand Hollow Road;  
 thence North 16°56'45" East 51.31 feet;  
 thence northerly 172.48 feet along an arc of a 684.00 foot radius curve to the left (center bears North 69°44'51" West, long chord bears North 13°01'44" East 172.02 feet with a central angle of 14°26'51");  
 thence northerly 30.04 feet along an arc of a 931.00 foot radius curve to the right (center bears South 84°11'42" East, long chord bears North 06°43'46" East 30.04 feet with a central angle of 01°50'55");  
 thence North 07°39'13" East 177.80 feet;  
 thence northerly 256.71 feet along an arc of a 642.00 foot radius curve to the left (center bears North 82°20'47" West, long chord bears North 03°48'06" West 255.00 feet with a central angle of 22°54'37");  
 thence North 15°15'24" West 675.11 feet to the Point of Beginning.

Less and excepting that parcel conveyed to Questar Gas Company by that certain Warranty Deed recorded August 17, 2009 as Entry No. 20090031873 and more particularly described as follows:

## Elim Valley Regulation Station

Beginning at a point being South 00°15'22" West, 2011.10 feet along the section line and West 1509.90 feet from the Northeast corner of Section 1, Township 42 South, Range 14 West, Salt Lake Base and Meridian and running thence North 54°33'12" West, 75.00 feet; thence North 35°26'48" East, 50.00 feet; thence South 54°33'12" East, 75.00 feet; thence South 35°26'48" West, 50.00 feet to the Point of Beginning;

## PARCEL B

Beginning at a point on the west side of Sand Hollow Road where it intersects with State Road 9, said point being North  $89^{\circ}46'47''$  West 1,968.05 feet along the center section line and North 1,796.45 feet from the East Quarter Corner of Section 1, Township 42 South, Range 14 West, Salt Lake Base & Meridian, and running;

thence southerly the following (3) courses along the westerly line of Sand Hollow Road;  
thence South  $15^{\circ}15'24''$  East 673.27 feet;  
thence southerly 223.12 feet along an arc of a 558.00 foot radius curve to the right (center bears South  $74^{\circ}44'36''$  West, long chord bears South  $03^{\circ}48'06''$  East 221.64 feet with a central angle of  $22^{\circ}54'37''$ );  
thence South  $07^{\circ}39'13''$  West 5.82 feet;  
thence South  $76^{\circ}45'10''$  West 27.71 feet;  
thence North  $16^{\circ}20'36''$  West 892.79 feet to the southerly line of State Road 9;  
thence North  $73^{\circ}19'03''$  East 65.46 feet along said southerly line;  
thence easterly 25.49 feet along an arc of a 22,763.31 foot radius curve to the right (center bears South  $16^{\circ}40'57''$  East, long chord bears North  $73^{\circ}20'59''$  East 25.49 feet with a central angle of  $00^{\circ}03'51''$ ) along said southerly line to the Point of Beginning.

Recorded at the Request of,  
and After Recording Return to:

David E. Leta, Esq.  
SNELL & WILMER L.L.P.  
15 West South Temple, Suite 1200  
Salt Lake City, Utah 84101

Part of Parcel No. H-4-2-1-1103

### SUBORDINATION AGREEMENT

THIS SUBORDINATION AGREEMENT (the "*Agreement*") is made as of the \_\_\_\_ day of \_\_\_\_\_, 2013 by and among: ELIM VALLEY PLANNING AND DEVELOPMENT, LLC, a Utah limited liability company ("*Founder*"), ELIM VALLEY NEIGHBORHOOD ASSOCIATION, INC., a Utah non-profit corporation (the "*Association*"), and RED BRIDGE CAPITAL, LLC, a Utah limited liability company ("*Red Bridge*").

#### RECITALS:

A. Founder established and recorded that certain Community Charter for Elim Valley Neighborhoods recorded August 27, 2008 in the official records of Washington County, Utah as Entry No. 20080033769 (the "*CC&Rs*"). Any capitalized terms not otherwise defined herein shall have the meaning provided for such terms in the CC&Rs.

B. The Association is the entity organized to administer and enforce the CC&Rs.

C. The CC&Rs affect certain real property located in Washington County, Utah more particularly described in Exhibit A attached hereto (the "*Property*").

D. Among other things, the CC&Rs authorizes levies against Units within the Neighborhood Community, authorizes liens against real property within the Neighborhood Community to secure assessments and violations of the Charter, and states that the priority of any lien to secure assessments or claim against any parcel included in the Property for unpaid Assessments or charges levied by the Association or pursuant to the CC&Rs shall be prior and superior to all other liens against the Property.

E. Pursuant to a Settlement Agreement (the "*Settlement Agreement*") among MELLON VALLEY, LLC, a Utah limited liability company ("*Mellon Valley*"), certain other debtor parties (collectively, "*Debtors*"), and Red Bridge dated as of May 15, 2013, Debtors agreed to grant to Red Bridge (i) easements burdening the Property and permitting each of Red Bridge's properties adjacent to the Property have access to Sand Hallow Road, and (ii) easements over the Property for certain underground and above-ground utility lines and related facilities and improvements.

F. Founder and Mellon Valley granted Red Bridge an easement over, upon, across, and through the Property according to the terms of that certain Amended and Restated Access and Utility Easement (the "*Easement*") dated June 18, 2013, executed by Founder and Mellon Valley, as Grantor, in favor of Red Bridge, as Grantee, recorded in the office of the Washington County Recorder as Entry No. 20130032488.

G. Founder and the Association are entities associated with Debtors.

H. Founder and the Association have agreed to subordinate any and all assessments and liens encumbering the Property by virtue of the CC&Rs to the Easement in favor of Red Bridge, on the terms and conditions hereinafter set forth.

#### AGREEMENT:

For good and valuable consideration, Founder, the Association, and Red Bridge agree as follows:

1. SUBORDINATION. Any and all assessments, charges, fees, claims, and liens provided for in the CC&Rs, including, without limitation, violations of the CC&Rs, Base Assessments, Service Area Assessments, Special Assessments, Specific Assessments, Emergency Assessments, One-time Contributions to Working Capital, Late Charges, and all rights, remedies, and options thereunder are and shall at all times be subject and subordinate in all respects to the Easement encumbering the Property in favor of Red Bridge.

2. NOTICES. All notices or other written communications hereunder shall be deemed to have been properly given (i) upon delivery, if delivered in person with receipt acknowledged by the recipient thereof, (ii) one (1) Business Day (hereinafter defined) after having been deposited for overnight delivery with any reputable overnight courier service, or (iii) three (3) Business Days after having been deposited in any post office or mail depository regularly maintained by the U.S. Postal Service and sent by registered or certified mail, postage prepaid, return receipt requested, addressed as follows:

If to Founder: Elim Valley Planning and Development, LLC  
1300 S. Sand Hollow Road  
Hurricane, Utah 84737  
Attention: Roland Walker

If to the Association: Elim Valley Neighborhood Association, Inc.  
1300 S. Sand Hollow Road  
Hurricane, Utah 84737  
Attention: Roland Walker

With a copy to: Durm Law Firm  
P.O. Box 2318  
St. George, Utah 84771-2318  
Attn: Clifford V. Dunn

If to Red Bridge: Red Bridge Capital, LLC  
c/o Cherokee & Walker Management  
6440 S. Wasatch Boulevard, Suite 200  
Salt Lake City, Utah 84121  
Attn: Paul Erickson

With a copy to: Snell & Wilmer L.L.P.  
15 West South Temple, Suite 1200  
Salt Lake City, Utah 84101  
Attention: David E. Leta

or addressed as such party may from time to time designate by written notice to the other parties. For purposes of this Section 3, the term "Business Day" shall mean a day on which commercial banks are not authorized or required by law to close in the state where the Property is located. Either party by notice to the other may designate additional or different addresses for subsequent notices or communications.

3. SUCCESSORS AND ASSIGNS. This Agreement shall be binding upon and inure to the benefit of Founder, the Association, and Red Bridge and their respective successors and assigns.

4. GOVERNING LAW. This Agreement shall be deemed to be a contract entered into pursuant to the laws of Utah and shall in all respects be governed, construed, applied and enforced in accordance with the laws of the State of Utah.

5. MISCELLANEOUS. The Recitals contained above are true, correct, and incorporated into this Agreement by this reference. This Agreement may not be modified in any manner or terminated except by an instrument in writing executed by the parties hereto. If any term, covenant or condition of this Agreement is held to be invalid, illegal or unenforceable in any respect, this Agreement shall be construed without such provision. This Agreement may be executed in any number of duplicate originals and each duplicate original shall be deemed to be an original. This Agreement may be executed in several counterparts, each of which counterparts shall be deemed an original instrument and all of which together shall constitute a single Agreement. The failure of any party hereto to execute this Agreement, or any counterpart hereof, shall not relieve the other signatories from their obligations hereunder. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.

[Remainder of Page Intentionally Left Blank]



IN WITNESS WHEREOF, Founder, the Association, and Red Bridge have duly executed this Agreement as of the date first above written.

**FOUNDER:**

**ELIM VALLEY PLANNING AND DEVELOPMENT, LLC**  
a Utah limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**THE ASSOCIATION:**

**ELIM VALLEY NEIGHBORHOOD ASSOCIATION, INC.**  
a Utah non-profit corporation

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**RED BRIDGE:**

**RED BRIDGE CAPITAL, LLC**  
a Utah limited liability company

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
: ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2013, by \_\_\_\_\_ of ELIM VALLEY PLANNING AND DEVELOPMENT, LLC, a Utah limited liability company, on behalf of the company.

\_\_\_\_\_  
NOTARY PUBLIC  
Residing at: \_\_\_\_\_

My Commission Expires:  
\_\_\_\_\_

STATE OF \_\_\_\_\_ )  
: ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2013, by \_\_\_\_\_ of ELIM VALLEY NEIGHBORHOOD ASSOCIATION, INC., a Utah non-profit corporation, on behalf of the company.

\_\_\_\_\_  
NOTARY PUBLIC  
Residing at: \_\_\_\_\_

My Commission Expires:  
\_\_\_\_\_

STATE OF \_\_\_\_\_ )  
: ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2013, by \_\_\_\_\_ of RED BRIDGE CAPITAL, LLC, a Utah limited liability company, on behalf of the company.

\_\_\_\_\_  
NOTARY PUBLIC  
Residing at: \_\_\_\_\_

My Commission Expires:  
\_\_\_\_\_

**EXHIBIT A**  
**PROPERTY DESCRIPTION**

**PARCEL A**

Beginning at a point on the east side of Sand Hollow Road where it intersects with State Road 9, said point being North 89°46'47" West 1,887.49 feet along the center section line and North 1,820.64 feet from the East Quarter Corner of Section 1, Township 42 South, Range 14 West, Salt Lake Base & Meridian, and running;

thence easterly 25.27 feet along an arc of a 22,763.31 foot radius curve to the right (center bears South 16°24'24" East, long chord bears North 73°37'31" East 25.27 feet with a central angle of 00°03'49") along the southerly line of State Road 9;

thence North 73°39'24" East 48.49 feet along the southerly line of said State Road 9;

thence South 16°20'36" East 1,306.80 feet;

thence South 73°39'35" West 338.52 feet to the easterly line of Sand Hollow Road;

thence northerly the following (5) courses along the easterly line of said Sand Hollow Road;

thence North 16°56'45" East 51.31 feet;

thence northerly 172.48 feet along an arc of a 684.00 foot radius curve to the left (center bears North 69°44'51" West, long chord bears North 13°01'44" East 172.02 feet with a central angle of 14°26'51");

thence northerly 30.04 feet along an arc of a 931.00 foot radius curve to the right (center bears South 84°11'42" East, long chord bears North 06°43'46" East 30.04 feet with a central angle of 01°50'55");

thence North 07°39'13" East 177.80 feet;

thence northerly 256.71 feet along an arc of a 642.00 foot radius curve to the left (center bears North 82°20'47" West, long chord bears North 03°48'06" West 255.00 feet with a central angle of 22°54'37");

thence North 15°15'24" West 675.11 feet to the Point of Beginning.

Less and excepting that parcel conveyed to Questar Gas Company by that certain Warranty Deed recorded August 17, 2009 as Entry No. 20090031873 and more particularly described as follows:

**Elim Valley Regulation Station**

Beginning at a point being South 00°15'22" West, 2011.10 feet along the section line and West 1509.90 feet from the Northeast corner of Section 1, Township 42 South, Range 14 West, Salt Lake Base and Meridian and running thence North 54°33'12" West, 75.00 feet; thence North 35°26'48" East, 50.00 feet; thence South 54°33'12" East, 75.00 feet; thence South 35°26'48" West, 50.00 feet to the Point of Beginning;

## PARCEL B

Beginning at a point on the west side of Sand Hollow Road where it intersects with State Road 9, said point being North  $89^{\circ}46'47''$  West 1,968.05 feet along the center section line and North 1,796.45 feet from the East Quarter Corner of Section 1, Township 42 South, Range 14 West, Salt Lake Base & Meridian, and running;

thence southerly the following (3) courses along the westerly line of Sand Hollow Road;  
thence South  $15^{\circ}15'24''$  East 673.27 feet;  
thence southerly 223.12 feet along an arc of a 558.00 foot radius curve to the right (center bears South  $74^{\circ}44'36''$  West, long chord bears South  $03^{\circ}48'06''$  East 221.64 feet with a central angle of  $22^{\circ}54'37''$ );  
thence South  $07^{\circ}39'13''$  West 5.82 feet;  
thence South  $76^{\circ}45'10''$  West 27.71 feet;  
thence North  $16^{\circ}20'36''$  West 892.79 feet to the southerly line of State Road 9;  
thence North  $73^{\circ}19'03''$  East 65.46 feet along said southerly line;  
thence easterly 25.49 feet along an arc of a 22,763.31 foot radius curve to the right (center bears South  $16^{\circ}40'57''$  East, long chord bears North  $73^{\circ}20'59''$  East 25.49 feet with a central angle of  $00^{\circ}03'51''$ ) along said southerly line to the Point of Beginning.

## WHEN RECORDED, RETURN TO:

David E. Leta  
 SNELL & WILMER LLP.  
 15 West South Temple, Suite 1200  
 Salt Lake City, UT 84101

Part of Parcel No. H-4-2-1-1103

RELEASE OF NOTICE OF INTEREST

## TO WHOM IT MAY CONCERN:

Notice is hereby given that the undersigned, CGS Engineering, Inc., hereby releases and discharges that *Notice of Interest in Real Property*, dated March 30, 2009 and recorded with the office of the Washington County Recorder as Entry No. 20090011606 on March 30, 2009, as to the real property described in Exhibit A attached hereto, located in Washington County, State of Utah.

DATED this \_\_\_\_\_ day of \_\_\_\_\_, 2013.

CGS ENGINEERING, INC.,  
 a Utah corporation

By: \_\_\_\_\_  
 Name: \_\_\_\_\_  
 Title: \_\_\_\_\_

STATE OF \_\_\_\_\_ )  
 : ss.  
 COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2013, by \_\_\_\_\_ of CGS ENGINEERING, INC., a Utah corporation, on behalf of the company.

\_\_\_\_\_  
 NOTARY PUBLIC  
 Residing at: \_\_\_\_\_

My Commission Expires: \_\_\_\_\_

EXHIBIT A

## PARCEL A

Beginning at a point on the east side of Sand Hollow Road where it intersects with State Road 9, said point being North  $89^{\circ}46'47''$  West 1,887.49 feet along the center section line and North 1,820.64 feet from the East Quarter Corner of Section 1, Township 42 South, Range 14 West, Salt Lake Base & Meridian, and running;

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thence North  $73^{\circ}39'24''$  East 48.49 feet along the southerly line of said State Road 9;

thence South  $16^{\circ}20'36''$  East 1,306.80 feet;

thence South  $73^{\circ}39'35''$  West 338.52 feet to the easterly line of Sand Hollow Road;

thence northerly the following (5) courses along the easterly line of said Sand Hollow Road;

thence North  $16^{\circ}56'45''$  East 51.31 feet;

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thence northerly 30.04 feet along an arc of a 931.00 foot radius curve to the right (center bears South  $84^{\circ}11'42''$  East, long chord bears North  $06^{\circ}43'46''$  East 30.04 feet with a central angle of  $01^{\circ}50'55''$ );

thence North  $07^{\circ}39'13''$  East 177.80 feet;

thence northerly 256.71 feet along an arc of a 642.00 foot radius curve to the left (center bears North  $82^{\circ}20'47''$  West, long chord bears North  $03^{\circ}48'06''$  West 255.00 feet with a central angle of  $22^{\circ}54'37''$ );

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Less and excepting that parcel conveyed to Questar Gas Company by that certain Warranty Deed recorded August 17, 2009 as Entry No. 20090031873 and more particularly described as follows:

## Elim Valley Regulation Station

Beginning at a point being South  $00^{\circ}15'22''$  West, 2011.10 feet along the section line and West 1509.90 feet from the Northeast corner of Section 1, Township 42 South, Range 14 West, Salt Lake Base and Meridian and running thence North  $54^{\circ}33'12''$  West, 75.00 feet; thence North  $35^{\circ}26'48''$  East, 50.00 feet; thence South  $54^{\circ}33'12''$  East, 75.00 feet; thence South  $35^{\circ}26'48''$  West, 50.00 feet to the Point of Beginning;

## PARCEL B

Beginning at a point on the west side of Sand Hollow Road where it intersects with State Road 9, said point being North  $89^{\circ}46'47''$  West 1,968.05 feet along the center section line and North 1,796.45 feet from the East Quarter Corner of Section 1, Township 42 South, Range 14 West, Salt Lake Base & Meridian, and running;

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thence easterly 25.49 feet along an arc of a 22,763.31 foot radius curve to the right (center bears South  $16^{\circ}40'57''$  East, long chord bears North  $73^{\circ}20'59''$  East 25.49 feet with a central angle of  $00^{\circ}03'51''$ ) along said southerly line to the Point of Beginning.

# EXHIBIT I

EXHIBIT I





**DUNN**  
LAW FIRM

ATTORNEYS & COUNSELORS AT LAW

CLIFFORD DUNN  
MICHAEL C. DUNN  
ADAM L. DUNN  
MARY C. D. GONZALEZ  
INTERNATIONAL COOPERATION  
FOUNDATION  
INTERNATIONAL  
FOUNDATION  
FOUNDATION  
FOUNDATION

P.O. Box 2318  
110 W. TABERNACLE  
ST. GEORGE, UT 84771-2318  
Ph: (435) 628-5405  
Fax: (435) 628-4145

WWW.DUNNLAWFIRM.COM  
LAW@DUNNLAWFIRM.COM

October 30, 2013

Sent Via Email To: [dleta@swlaw.com](mailto:dleta@swlaw.com)

David E. Leta  
SNELL & WILMER, LLP  
15 West South Temple, Suite 1200  
Salt Lake City, UT 84101

Re: Red Bridge v. Dos Lagos

Dear David:

Please provide me with a time when our clients can meet to work out the Development Agreement contemplated by the Settlement Agreement.

We have been working through the items that you list in your August 27, 2013 Memorandum to Clifford V. Dunn (hereinafter "8/27 Memo"). We believe that we have resolved all but two of the items and we are continuing to work on those two remaining items. The first item that remains is the Judgment from T&R Lumber. We are continuing to work through this item and are confident that we will have it resolved prior to the deadline.

The second item that remains is the CGS Notice of Interest. We are continuing to work through this but it is a spurious and improper Notice of Interest. We are hopeful that this too can be resolved but we are also taking steps to deal with this improper notice and we do not believe that it does or will have any actual effect on or priority over your easement.

I will be providing you with additional information and signed documents as I receive them, but wanted to begin providing you information regarding some of the items in the 8/27 Memo with this letter.

Based on the requirements of the Settlement Agreement, my client has now satisfied all outstanding real property taxes from 2009 up through 2013. Enclosed is a copy of the receipt from the Washington County Treasurer for the paid taxes. I will note that this resolves items A and B that are contained in your 8/27 Memo.

While we do not believe that the Exceptions listed in paragraph 16 of the title report you provided (or item D in the 8/27 Memo) are of the nature that requires removal from the property as anticipated by paragraph 4b. of the Settlement Agreement, we have obtained a map of the location of the items in that paragraph 16 as it relates to the Strip Parcels.

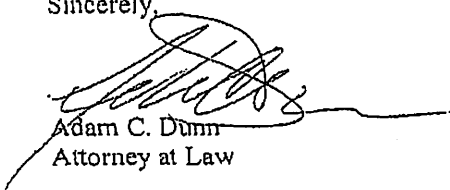
Attached to this letter is an "Exhibit Map for Dunn Law Firm" by Alpha Engineering. It depicts the items that are Exception 16 in the title report and addressed in the 8/27 Memo as item D as they may affect the Strip Parcels. As you can see, the easement only minimally effects the strip parcel at the southern-most corner and will not affect Red Bridge's Easement. We will take no further action on this item or exception in the title report and consider this matter a non-issue for the Settlement between our clients.

We believe that Section 5.2 of the Development Agreement is a non-issue for the Settlement between our clients and we will take no steps to obtain Hurricane's consent to the Easement. Section 5.2 states in relevant part that the "...Developer shall not convey, assign, or dispose of ("Transfer") the Project or any portion thereof to another developer except as provided in this Paragraph 5.2." An easement is not contemplated by this section as is made clear later in Section 5.2 where it states that "[i]n such an event, the transferee of the property so transferred shall be fully substituted as Developer under this Agreement and Developer executing this Agreement shall be released from any further obligations under this Agreement as to the property so transferred." As can be seen by taking these portions of Section 5.2 together, easements are not contemplated as "Transfers" that would require Hurricane approval. If easements were intended to be included in that definition, then Red Bridge would be "substituted" while Elim Valley still was the "Developer", which is not the intent of the easement or the Development Agreement. For these reasons, we will take no further action in acquiring permission for the easement from Hurricane, nor do we believe that such is required under the Settlement Agreement or the Development Agreement.

With regard to your concern about construction beginning at Elim Valley, construction was commenced within the time periods contemplated by the Development Agreement at the MARLA subdivision in Elim Valley. We will take no further action on the item you list as item F in the 8/27 Memo and consider this matter a non-issue for the Settlement between our clients.

I will be sending more information and documents related to the 8/27 Memo as I receive and compile letters to you. Please let me know if you have any questions.

Sincerely,



Adam C. Dunn  
Attorney at Law

ACD/me  
Enc.

Washington County, Utah  
 197 East Tabernacle  
 Saint George, Utah 84770  
 (435) 634-5711

10/24/2013 04:27 PM Cashier 0032  
 T/Ref 0004121811 Reg 0004 Tran No 2209  
 Cash Report: 131024-01 for 10/24/2013

01 - Washington County Treasurer  
 Treasurer David Whitehead

Real Estate Tax  
 751043 2011  
 Validation Number: 289222 \$14.62  
 Real Estate Tax Penalty \$10.00  
 Real Estate Tax Interest \$3.17  
 (Total Paid \$27.79)

Real Estate Tax  
 751043 2012  
 Validation Number: 289225 \$13.51  
 Real Estate Tax Penalty \$10.00  
 Real Estate Tax Interest \$1.36  
 (Total Paid \$24.87)

Real Estate Tax  
 751043 2013  
 Validation Number: 289228 \$12.69  
 Real Estate Tax  
 844735 2012  
 Validation Number: 289229 \$11.20  
 Real Estate Tax Penalty \$10.00  
 Real Estate Tax Interest \$1.23  
 (Total Paid \$22.43)

Real Estate Tax  
 844735 2013  
 Validation Number: 289232 \$10.52  
 =====  
 Total \$98.30  
 Check (\$98.47)  
 Check No. 12447  
 Change \$0.17

Paid By: CLIFFORD DUNN ATTORNEY

Thank you for your payment!

## Washington County Treasurer's Office

### Property Tax Information

At this point, the information below is current. All property tax payments and adjustments have been posted to their respective accounts.

Account Number:

844735

Serial Number:

### Amounts Valid Through: November 7, 2013

Original Tax	Year	Tax Due	Penalty Due	Interest Due	Fees Due	Total Due
	2007	0.00	0.00	0.00	0.00	0.00
	2008	0.00	0.00	0.00	0.00	0.00
\$8.97	2009	0.00	0.00	0.00	0.00	0.00
\$10.71	2010	0.00	0.00	0.00	0.00	0.00
\$11.28	2011	0.00	0.00	0.00	0.00	0.00
\$11.20	2012	0.00	0.00	0.00	0.00	0.00
	2013	0.00	0.00	0.00	0.00	0.00

Primary Owner: ELIM VALLEY PLANNING & DEV LLC

Account Number: 844735

Serial Number: H-4-2-11-125

Mailing Address: 1300 S SAND HOLLOW RD, HURRICANE, UT 84737

### Account Balance Paid

[To search property records for this account, click here.](#)

## Washington County Treasurer's Office

### Property Tax Information

At this point, the information below is current. All property tax payments and adjustments have been posted to their respective accounts.

Account Number:

751043

Serial Number:

### Amounts Valid Through: November 7, 2013

Original Tax	Year	Tax Due	Penalty Due	Interest Due	Fees Due	Total Due
	2006	0.00	0.00	0.00	0.00	0.00
	2007	0.00	0.00	0.00	0.00	0.00
	2008	0.00	0.00	0.00	0.00	0.00
\$23.02	2009	0.00	0.00	0.00	0.00	0.00
\$19.00	2010	0.00	0.00	0.00	0.00	0.00
\$14.67	2011	0.00	0.00	0.00	0.00	0.00
\$13.51	2012	0.00	0.00	0.00	0.00	0.00
	2013	0.00	0.00	0.00	0.00	0.00

Primary Owner: MELLON VALLEY LLC

Account Number: 751043

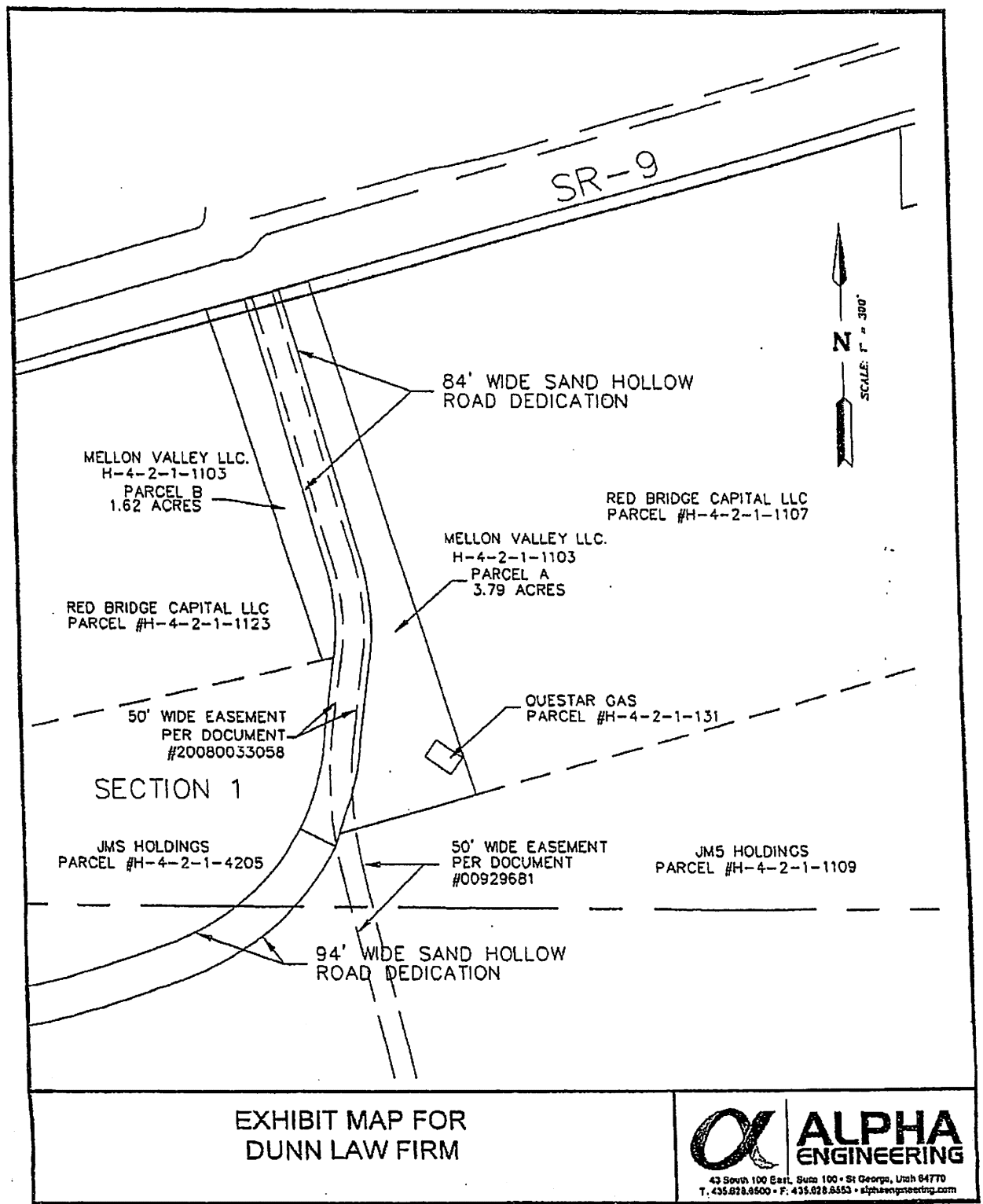
Serial Number: H-4-2-1-1103

Mailing Address: 1300 S SAND HOLLOW RD, HURRICANE, UT 84737

### Account Balance Paid

[To search property records for this account, click here.](#)

\\alpha\Survey Drawings\931-0451.dwg. NORTH EXHIBIT. 10/29/2013 3:27:03 PM.  
P:\031-0451.dwg  
brodney



# EXHIBIT J

EXHIBIT J

Kalawaia, Wendy

---

**From:** Leta, David <dleta@swlaw.com>  
**nt:** Thursday, October 31, 2013 7:21 PM  
**To:** Adam Dunn; Cliff Dunn  
**Cc:** Jenson, Craig  
**Subject:** Red Bridge v. Dos Lagos Settlement  
**Attachments:** 2013 10 30 Ltr to Leta re Memo Items.pdf

Adam / Cliff:

We are looking at this letter and its attachments to see if we agree with your conclusions. I also have asked my clients for dates / times when they might be available for a meeting (in SLC, I presume) and am waiting to hear back from them on their availability. At least 3 business days prior to any such meeting, however, we would like to review your client's proposed written development agreement. The settlement agreement requires the parties to enter into an agreement prior to the deadline, not just begin talking about one. Please provide the same.

David E. Leta  
 Snell & Wilmer  
 L.L.P.

15 West South Temple, Suite 1200; Gateway Tower West; Salt Lake City, Utah 84101-1547;  
 (801) 257-1928 (direct), x 1900 (main), x1800 (facsimile), 801-560-LETA (5382) (mobile)

[www.swlaw.com](http://www.swlaw.com); [dleta@swlaw.com](mailto:dleta@swlaw.com)

Phoenix / Tucson / Los Angeles / Costa Mesa / Denver / Salt Lake City / Las Vegas / Reno / Los Cabos

1 please consider the environment before printing this e-mail

**From:** Leta, David  
**Sent:** Wednesday, October 30, 2013 7:28 PM  
**To:** Erickson Paul K.; Shane Peery  
**Subject:** Fwd: Red Bridge v. Dos Lagos Settlement

This came in late this afternoon. We are looking at it now. Can you also give me some dates/times in the next two weeks when you will be available? I intend to ask Adam for a draft of whatever agreement he intends to propose at least three business days in advance of any meeting.

David E. Leta  
 SNELL & WILMER LLP  
 15 West South Temple, Suite 1200  
 Salt Lake City, UT 84101  
 801-257-1928 (office)  
 801-560-5382 (mobile)  
 801-581-0683 (home)  
[dleta@swlaw.com](mailto:dleta@swlaw.com)  
[www.swlaw.com](http://www.swlaw.com)

it from my iPhone

Begin forwarded message:



From: "Donna Latuda" <[Donna@dunnfirm.com](mailto:Donna@dunnfirm.com)>  
To: "Leta, David" <[dleta@swlaw.com](mailto:dleta@swlaw.com)>  
Cc: "Adam Dunn" <[acdunn@dunnfirm.com](mailto:acdunn@dunnfirm.com)>  
Subject: Red Bridge v. Dos Lagos Settlement

Dear Mr. Leta:

Please see the attached letter from Adam Dunn.

Thank you!  
Donna

Donna Latuda  
Secretary to Clifford V. Dunn  
Secretary to Adam C. Dunn  
Dunn Law Firm  
110 West Tabernacle  
PO Box 2318  
St. George, UT 84771-2318  
(435) 628-5405  
(435) 628-4145 Fax  
[donna@dunnfirm.com](mailto:donna@dunnfirm.com)



**DUNN**  
LAW FIRM

ATTORNEYS & COUNSELORS AT LAW

CLIFFORD DUNN  
MICHAEL C. DUNN  
ADAM C. DUNN  
MARY C. D. GONZALEZ  
J. J. HARRIS  
J. J. HARRIS  
J. J. HARRIS  
J. J. HARRIS  
J. J. HARRIS  
J. J. HARRIS

P.O. Box 2318  
110 W. TABERNASH  
ST. GEORGE, UT 84771-2318  
Ph: (435) 628-5405  
Fax: (435) 628-4145

WWW.DUNNFIRM.COM  
LAW@DUNNFIRM.COM

October 30, 2013

Sent Via Email To: [dleta@swlaw.com](mailto:dleta@swlaw.com)

David E. Leta  
SNELL & WILMER, LLP  
15 West South Temple, Suite 1200  
Salt Lake City, UT 84101

Re: Red Bridge v. Dos Lagos

Dear David:

Please provide me with a time when our clients can meet to work out the Development Agreement contemplated by the Settlement Agreement.

We have been working through the items that you list in your August 27, 2013 Memorandum to Clifford V. Dunn (hereinafter "8/27 Memo"). We believe that we have resolved all but two of the items and we are continuing to work on those two remaining items. The first item that remains is the Judgment from T&R Lumber. We are continuing to work through this item and are confident that we will have it resolved prior to the deadline.

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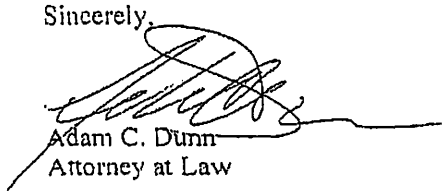
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We believe that Section 5.2 of the Development Agreement is a non-issue for the Settlement between our clients and we will take no steps to obtain Hurricane's consent to the Easement. Section 5.2 states in relevant part that the "...Developer shall not convey, assign, or dispose of ("Transfer") the Project or any portion thereof to another developer except as provided in this Paragraph 5.2." An easement is not contemplated by this section as is made clear later in Section 5.2 where it states that "[i]n such an event, the transferee of the property so transferred shall be fully substituted as Developer under this Agreement and Developer executing this Agreement shall be released from any further obligations under this Agreement as to the property so transferred." As can be seen by taking these portions of Section 5.2 together, easements are not contemplated as "Transfers" that would require Hurricane approval. If easements were intended to be included in that definition, then Red Bridge would be "substituted" while Elim Valley still was the "Developer", which is not the intent of the easement or the Development Agreement. For these reasons, we will take no further action in acquiring permission for the easement from Hurricane, nor do we believe that such is required under the Settlement Agreement or the Development Agreement.

With regard to your concern about construction beginning at Elim Valley, construction was commenced within the time periods contemplated by the Development Agreement at the MARLA subdivision in Elim Valley. We will take no further action on the item you list as item F in the 8/27 Memo and consider this matter a non-issue for the Settlement between our clients.

I will be sending more information and documents related to the 8/27 Memo as I receive and compile letters to you. Please let me know if you have any questions.

Sincerely,



Adam C. Dunn  
Attorney at Law

ACD/me  
Enc.

Washington County, Utah  
 197 East Tabernacle  
 Saint George, Utah 84770  
 (435) 634-5711

10/24/2013 04:27 PM Cashier 0032  
 T/Ref 0004121811 Reg 0004 Tran No 2209  
 Cash Report: 131024-01 for 10/24/2013

01 - Washington County Treasurer  
 Treasurer David Whitehead

Real Estate Tax  
 751043 2011  
 Validation Number: 289222 \$14.62  
 Real Estate Tax Penalty \$10.00  
 Real Estate Tax Interest \$3.17  
 (Total Paid \$27.79)

Real Estate Tax  
 751043 2012  
 Validation Number: 289225 \$13.51  
 Real Estate Tax Penalty \$10.00  
 Real Estate Tax Interest \$1.36  
 (Total Paid \$24.87)

Real Estate Tax  
 751043 2013  
 Validation Number: 289228 \$12.69  
 Real Estate Tax  
 844735 2012  
 Validation Number: 289229 \$11.20  
 Real Estate Tax Penalty \$10.00  
 Real Estate Tax Interest \$1.23  
 (Total Paid \$22.43)

Real Estate Tax  
 844735 2013  
 Validation Number: 289232 \$10.52  
 =====  
 Total \$98.30  
 Check (\$98.47)  
 Check No. 12447  
 Change \$0.17

Paid By: CLIFFORD DUNN ATTORNEY

Thank you for your payment!

## Washington County Treasurer's Office

### Property Tax Information

At this point, the information below is current. All property tax payments and adjustments have been posted to their respective accounts.

Account Number:

844735

Serial Number:

### Amounts Valid Through: November 7, 2013

Original Tax	Year	Tax Due	Penalty Due	Interest Due	Fees Due	Total Due
	2007	0.00	0.00	0.00	0.00	0.00
	2008	0.00	0.00	0.00	0.00	0.00
\$8.97	2009	0.00	0.00	0.00	0.00	0.00
\$10.71	2010	0.00	0.00	0.00	0.00	0.00
\$11.28	2011	0.00	0.00	0.00	0.00	0.00
\$11.20	2012	0.00	0.00	0.00	0.00	0.00
	2013	0.00	0.00	0.00	0.00	0.00

Primary Owner: ELIM VALLEY PLANNING & DEV LLC

Account Number: 844735

Serial Number: H-4-2-11-125

Mailing Address: 1300 S SAND HOLLOW RD, HURRICANE, UT 84737

### Account Balance Paid

[To search property records for this account, click here.](#)

## Washington County Treasurer's Office

### Property Tax Information

At this point, the information below is current. All property tax payments and adjustments have been posted to their respective accounts.

Account Number:

751043

Serial Number:

### Amounts Valid Through: November 7, 2013

Original Tax	Year	Tax Due	Penalty Due	Interest Due	Fees Due	Total Due
	2006	0.00	0.00	0.00	0.00	0.00
	2007	0.00	0.00	0.00	0.00	0.00
	2008	0.00	0.00	0.00	0.00	0.00
\$23.02	2009	0.00	0.00	0.00	0.00	0.00
\$19.00	2010	0.00	0.00	0.00	0.00	0.00
\$14.67	2011	0.00	0.00	0.00	0.00	0.00
\$13.51	2012	0.00	0.00	0.00	0.00	0.00
	2013	0.00	0.00	0.00	0.00	0.00

Primary Owner: MELLON VALLEY LLC

Account Number: 751043

Serial Number: H-4-2-1-1103

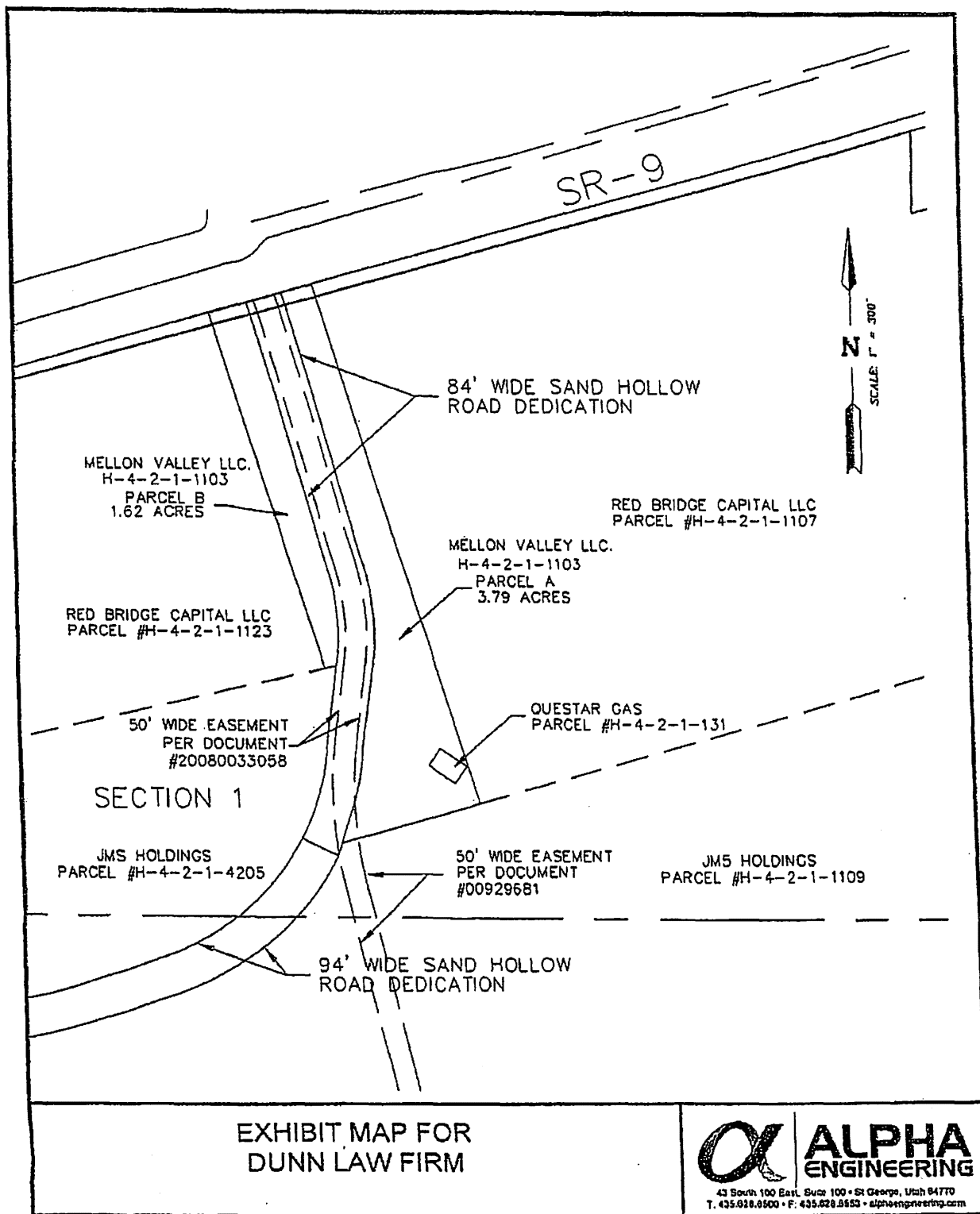
Mailing Address: 1300 S SAND HOLLOW RD, HURRICANE, UT 84737

### Account Balance Paid

[To search property records for this account, click here.](#)

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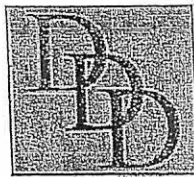
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# EXHIBIT K

EXHIBIT K





DUNN  
LAW FIRM

ATTORNEYS & COUNSELORS AT LAW

CLIFFORD DUNN \*  
MICHAEL C. DUNN \*\*  
ADAM C. DUNN \*\*\*  
MARY C. D. Gonzalez \*0

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\*\* LICENSED IN ILLINOIS

\*\*\* LICENSED IN MINNESOTA

\* LICENSED IN CALIFORNIA

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FAX: (435) 628-4145

WWW.DUNNFIRM.COM  
LAW@DUNNFIRM.COM

November 18, 2013

Sent Via Email To: [dlleta@swlaw.com](mailto:dlleta@swlaw.com)  
Original Via US Regular Mail

David E. Leta  
SNELL & WILMER, LLP  
15 West South Temple, Suite 1200  
Salt Lake City, UT 84101

Re: Red Bridge / Dos Lagos - Development Agreement / Your November 15<sup>th</sup> Letter

Dear David:

Your letter, and some of its assertions, are confusing. My clients and I have quite a different view of the current circumstances relating to the Settlement Agreement between our clients, and paragraph 4(c) of the Settlement Agreement.

My recollection of the negotiations of the Settlement Agreement was that the reason for paragraph 4(c) was the concern that your clients had relating to the original Development Agreement recorded against the property in January of 2007. The Development Agreement identified in paragraph 4(c) was anticipated by your clients to be a modification or replacement of the 2007 Development Agreement.

At the November 11<sup>th</sup> meeting, the two gentlemen who appeared to be developers (I do not remember their names) in your presence, and Mr. Wade Budge, together with Mr. Paul Erickson, all stated repeatedly that the 2007 Development Agreement could not be modified. Also at that meeting, you presented a drawing from the Master Plan of the proposed entrance road to the Elim Valley Project, which goes between your parcels and my clients' strip parcels. After the discussion and representation by all Parties in the room that the original Development Agreement could not be modified or amended, the discussion changed to what was your clients' specific desire relating to the Master Plan's anticipated development of the entrance to the Elim Valley project.

I personally asked, at least twice, what was the concern of your clients? In the presence of your clients and the other two individuals, you told us that your clients' only concern was whether or not my clients would have sufficient funds to participate in the proper development and construction of the entrance portion of the roadway into Elim Valley.

Based upon the specific representation and agreement of everyone in the room that the Development Agreement from 2007 was not modifiable or amendable, and then the specific consideration of your clients' only desire was to ensure contribution to the construction of the Master Plan entrance, it was our clear understanding that the Development Agreement of 2007 constituted the appropriate Development Agreement between our clients vis-à-vis paragraph 4(c) since it was already in place and effective against the property.

At the meeting your clients did not indicate that they had any potential user of their property, or any potential buyer at the present time.

As I am sure you are aware, a development agreement by its very nature is an agreement to agree within certain parameters. This was acknowledged by you and your clients originally when the access and utility easement was prepared without a specific location because until there is an end user, and until there is a specification of what kind of development will take upon that particular property, we cannot know exactly where the access and utility easements will go. That is why development agreements are written as they are.

As we discussed at the meeting that day, your clients' only concern was whether or not my clients would have sufficient funds to participate in the installation of the improvements required by the Master Plan for the entrance roadway to the Elim Valley project. The Development Agreement, together with the Master Plan, contains all of the detail and type of details that you reference your letter, all of which appear to be acceptable to your clients. Remember, the only request made by your clients was that there be some sort of proof that when the time came for the construction of that entrance, that my clients would have sufficient financial resources to pay their portion.

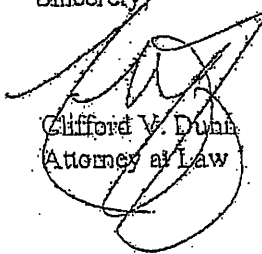
Based on that understanding, my clients directed me to send my letter of November 14<sup>th</sup> indicating my clients' willingness to insure their financial contribution to that entrance; that willingness was a good faith attempt to show my clients' intent to fully cooperate with your clients within the terms of the Development Agreement.

My clients believe that there is now, a mutually acceptable development agreement in place. It is the original 2007 Development Agreement. That particular Development Agreement requires good-faith cooperation on both Parties by its very terms and conditions. Further, there was agreement that there is a Master Plan in place which appeared to be acceptable to your clients by the way that it was presented to us at the meeting. As an act of good faith to evidence my clients to cooperate, my clients have agreed, and are willing to assure their financial contribution for the construction of the entrance by agreeing to deed over the necessary portion of the strip parcels at the time of the initiation of construction for an end user on your clients' property if they cannot contribute to the cost of building the entrance.

Therefore, it is my clients' position that they have completed and complied with the terms of the Settlement Agreement, that they are anticipating working together in good faith to apply the terms and condition of the Development Agreement, and to work together with your clients with the City of Hurricane to implement the Master Plan in a way that is most effective and beneficial for all Parties.

My clients look forward to working with your clients to accomplish everyone's goals, but we must assert complete compliance with the Settlement Agreement.

Sincerely,

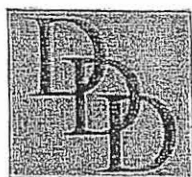


Clifford V. Dunn  
Attorney at Law

CVD:dl

# EXHIBIT L

EXHIBIT L



**DUNN**  
LAW FIRM

ATTORNEYS & COUNSELORS AT LAW

CLIFFORD DUNN \*\*  
MICHAEL C. DUNN \*\*  
ADAM C. DUNN \*\*  
MARY C. D. GONZALEZ \*0

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FAX: (435) 628-4145

WWW.DUNNFIRM.COM  
LAW@DUNNFIRM.COM

November 19, 2013

Sent Via Email To: [dleta@swlaw.com](mailto:dleta@swlaw.com)  
Original Via US Regular Mail

David E. Leta  
SNELL & WILMER, LLP  
15 West South Temple, Suite 1200  
Salt Lake City, UT 84101

Re: Red Bridge / Dos Lagos - Development Agreement / Your November 18<sup>th</sup> Letter

Dear David:

Thank you for your letter that was emailed to my office yesterday evening. My clients also desire to avoid confusion.

My clients believe that they have complied with each and every term of the Settlement Agreement, and therefore, do hereby request a release of judgment in accordance with paragraph 5 of the Settlement Agreement.

My clients believe that all of the issues regarding title and payment of funds have been properly resolved in accordance with the terms and conditions of your Settlement Agreement.

My clients also believe, based upon what has occurred, that there is a binding and enforceable Development Agreement between the Parties because of the following:

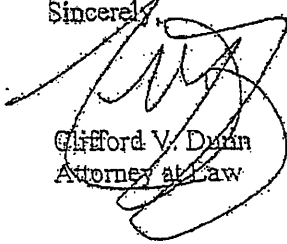
1. Your clients made no effort to contact my clients with regard to coming to a new Development Agreement.
2. My clients, in an effort to comply with the Settlement Agreement, contacted your clients about the Development Agreement. Prior to the meeting about the Development Agreement, your clients requested that a copy of the 2007 Development Agreement be delivered to them.

3. The 2007 Development Agreement was given to your clients ostensibly for them to review in anticipation of the meeting. That proposed Development Agreement was the 2007 Development Agreement.
4. At the meeting and after delivery of the original 2007 Development Agreement, your clients' only response was that the 2007 Development Agreement was binding and enforceable with the clear indication that your clients would accept it. Your clients' only desire was to insure that my clients were capable of performing financially on the construction of their portion of the entrance roadway when such a construction would be required. Your clients requested that the Strip Parcels be deeded to them because of that concern.
5. In an effort to be accommodating, and as an act of good faith, even though it was agreed that there was a binding Development Agreement in place, my clients offered to enter into an agreement to provide that assurance.

Based upon the compliance of my clients with the terms and conditions of the Settlement Agreement, we believe it is only appropriate that the release of judgment be provided by your clients as agreed. Even though the judgment will be released because the Settlement Agreement is completed, my clients are still willing, as an act of good faith and cooperation, to enter into an agreement according to the general terms provided in my November 14, 2013 letter.

Thank you for your consideration in this matter. We look forward to hearing from you.

Sincerely,



Clifford V. Dunn  
Attorney at Law

CVD:dl

# EXHIBIT M

EXHIBIT M

The Order of Court is stated below:

Dated: July 11, 2014  
10:01:13 AM/s/ John Paul Kennedy  
District Court Judge

David E. Leta (1937)  
 Timothy J. Dance (11553)  
**SNELL & WILMER LLP.**  
 15 West South Temple, Suite 1200  
 Salt Lake City, UT 84101  
 Telephone: (801) 257-1900  
 Facsimile: (801) 257-1800  
 Email: dleta@swlaw.com  
 tdance@swlaw.com

*Attorneys for Plaintiff*

**IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR  
 SALT LAKE COUNTY, STATE OF UTAH**

**RED BRIDGE CAPITAL, LLC**, a Utah limited  
 liability company,

Plaintiff,

vs.

**DOS LAGOS, L.L.C.**, a Utah limited liability  
 company, **MELLON VALLEY, LLC**, a Utah  
 limited liability company, and **ROLAND N.  
 WALKER**, an individual, and **SALLY  
 WALKER**, an individual,

Defendants.

**ORDER DENYING DEFENDANTS' MOTION  
 FOR SATISFACTION OF JUDGMENT**

Case No. 120902931

Honorable John Paul Kennedy

This matter came before the Court on Thursday, July 3, 2014, to consider Defendants' Motion for Satisfaction of Judgment and Memorandum in Support Thereof, dated May 27, 2014 (the "Satisfaction Motion"). At the hearing, Plaintiff was represented by David E. Leta and Wade R. Budge of Snell & Wilmer, and Defendants were represented by Adam C. Dunn of the Dunn Law Firm. After considering the Stipulated Facts filed by the parties on June 30, 2014, the Joint List of Exhibits, also filed by the parties on June 30, 2014, and the arguments of counsel,



the Court made its Findings of Fact and Conclusions of Law upon the record, and the same are incorporated by this reference. Accordingly, it is hereby

ORDERED that the Satisfaction Motion is denied, and the Court's Judgment entered in this case on May 23, 2013 is fully enforceable and collectible in accordance with applicable Utah law.

Executed and entered by the Court as indicated by the date and seal at the top of this page.

Approved as to form and content:

DUNN LAW FIRM

/s/ Adam C. Dunn

Adam C. Dunn

*Attorneys for Defendants*

EXHIBIT N

EXHIBIT N

The Order of Court is stated below:

Dated: November 12, 2014  
08:43:05 AM

/s/ John Paul Kennedy  
District Court Judge



P 219

David E. Leta (1937)  
Timothy J. Dance (11553)  
SNELL & WILMER LLP.  
15 West South Temple, Suite 1200  
Salt Lake City, UT 84101  
Telephone: (801) 257-1900  
Facsimile: (801) 257-1800  
Email: dleta@swlaw.com  
tdance@swlaw.com

*Attorneys for Plaintiff*

IN THE THIRD JUDICIAL DISTRICT COURT IN AND FOR  
SALT LAKE COUNTY, STATE OF UTAH

RED BRIDGE CAPITAL, LLC, a Utah limited  
liability company,

Plaintiff,

vs.

DOS LAGOS, L.L.C., a Utah limited liability  
company, MELLON VALLEY, LLC, a Utah  
limited liability company, and ROLAND N.  
WALKER, an individual, and SALLY  
WALKER, an individual,

Defendants.

ORDER GRANTING PLAINTIFF'S MOTION  
FOR AWARD OF ATTORNEY'S FEES AND  
COSTS AND AUGMENTING JUDGMENT

Case No. 120902931

Honorable John Paul Kennedy

This matter came before the Court on November 5, 2014, at a hearing on Plaintiff's Motion, dated July 21, 2014, (the "Motion") for an award of attorneys' fees and costs, and for augmentation of that certain *Stipulated Final Judgment Against Defendants*, entered in this case on May 23, 2013 (the "Judgment"). Plaintiff was represented by David E. Leta of Snell &

Wilmer L.L.P., and Defendants were represented by Adam Dunn of The Dunn Law Firm. After considering the Motion, the Response and the Reply, as well as the arguments of counsel, the Court made its findings of fact and conclusions of law on the record at the hearing, and the same are incorporated herein by this reference. Accordingly, it is hereby

**ORDERED**, that

- 1.The Motion is Granted;
- 2.Defendants' objections to the Motion are overruled and denied;
- 3.Plaintiff is awarded attorneys' fees in the amount of \$56,996.50, and costs in the amount of \$3,653.32, through July 9, 2014, pursuant to paragraph 10 of the underlying Settlement Agreement and paragraph 3 of the Judgment;
- 4.The Judgment is hereby augmented in the amount of \$60,649.82, with such amount to bear interest, at the rate specified in the Judgment, from and after entry of this Order; and
- 5.Nothing in this Order shall bar or preclude Plaintiff from seeking a further augmentation of the Judgment to reflect additional attorneys' fees and costs incurred after July 9, 2014, from subsequent or additional efforts to collect or enforce the Judgment or the Settlement Agreement.

Executed and entered by the Court as indicated by the date and seal at the top of this page.

Approved as to form:

/s/ Adam C. Dunn

Adam C. Dunn  
The Dunn Law Firm  
Attorneys for Defendants

## CLERK'S CERTIFICATE OF SERVICE

I hereby certify that on the \_\_\_\_ day of \_\_\_\_\_, 2014, I caused the foregoing to be filed electronically which effectuated service upon the following:

Dunn Law Firm  
Clifford V. Dunn  
Adam C. Dunn  
P.O. Box 2318  
110 West Tabernacle  
St. George, Utah 84771-2318  
[cvdunn@dunnfirm.com](mailto:cvdunn@dunnfirm.com)  
[acdunn@dunnfirm.com](mailto:acdunn@dunnfirm.com)

David E. Leta  
Snell & Wilmer L.L.P.  
15 West South Temple, Ste. 1200  
Salt Lake City, UT 84101  
dleta@swlaw.com

/S/ Clerk of Court

EXHIBIT O

EXHIBIT O

FILED DISTRICT COURT  
Third Judicial District

SEP 15 2014

SALT LAKE COUNTY

Deputy Clerk

COPY OF TRANSCRIPT

THIRD DISTRICT -- SALT LAKE

SALT LAKE COUNTY, STATE OF UTAH

RED BRIDGE CAPITAL, LLC.,	)	
	)	
Plaintiff,	)	TRANSCRIPT OF
	)	PROCEEDINGS
Vs	)	
	)	Case No. 120902931
DOS LAGOS, LLC.,	)	
	)	
Defendant.	)	

HEARING

THE HONORABLE JUDGE KENNEDY

JULY 3, 2014

Proceedings recorded by electronic sound recording,  
transcript produced by certified transcriber/court  
reporter; Kellie Peterson, RPR  
notary public in and for the State of Utah

UTAH COURT REPORTING & TRANSCRIPTION  
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(385) 202-4432

THIRD DISTRICT COURT  
Third Judicial District

A P P E A R A N C E S

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FOR THE PLAINTIFF:

David E. Leta, Esq.  
Wade R. Budge, Esq.  
SNELL & WILMER  
Gateway Tower West  
15 West South Temple  
Suite No. 1200  
Salt Lake City, UT 84101-1547

FOR THE DEFENDANT:

Adam Dunn, Esq.  
DUNN LAW FIRM  
110 West Tabernacle  
P.O. Box 2318  
St. George, UT 84771-2318



## P R O C E E D I N G S

MR. DUNN: Too many choices.

MR. LETA: Too many options. Too many options.

THE COURT: Plaintiff ready to go.

MR. LETA: Thank you, Your Honor.

THE COURT: You're the defendant, aren't you?

MR. LETA: No, I'm the plaintiff.

THE COURT: Okay. And this is plaintiff's motion?  
Or defendant's motion for satisfaction?

MR. DUNN: Defendant's motion for satisfaction.

THE COURT: Yeah, okay, -- (inaudible) --

MR. LETA: If I may, Your Honor, there's actually  
two matters before the Court. It's our motion, our writ for  
execution and a charging order, injunction, and the motion  
for satisfaction. But I would agree with Mr. Dunn that we  
probably need to address his motion first because it's sort  
of a dispositive issue.

THE COURT: Okay, good. Have you submitted a  
binder with all of your pleadings and that?

MR. LETA: We did.

THE COURT: Okay, and you've submitted yours? --  
(inaudible) -- All right, well, let's begin then with your  
appearances on the matter of Red Bridge vs. Dos Lagos.

MR. LETA: Good morning, Your Honor. Plaintiff Red

1 Bridge Capital LLC represented by David Leta and Wade Budge  
2 of Snell and Wilmer.

3 MR. DUNN: The Defendants named in the caption  
4 represented by Adam Dunn, Your Honor.

5 THE COURT: Okay, thank you. And so, as I  
6 understand what happened, we've got some property down near  
7 Hurricane where the parties, after quite a bit of time,  
8 ended up with a settlement agreement. And plaintiff asserts  
9 that the settlement agreement was, I guess, by way of  
10 agreement even, the stipulation of the parties, all the

11 facts, that the settlement agreement has not been complied  
12 with by the defendant. And therefore, plaintiff is asking  
13 for a court order allowing him to proceed with execution on  
14 the terms of the settlement agreement. And as I understand  
15 it, the defendant thinks it has complied and wants the  
16 Court to declare that indeed the matter has been resolved  
17 and satisfied.

18 And it appears to turn on this little piece of  
19 ground, which I see on this chart in pink, it looks like,  
20 or red, where the parties have some disagreement as to how  
21 that interplays in this matter. So I'll let you proceed  
22 first with your motion for satisfaction and judgment, Mr.  
23 Dunn, and then I'll hear from Mr. Leta, and we'll go from  
24 there.

25 MR. DUNN: Your honor, just for clarity purposes,

1 you'd like some argument at this point prior to putting on  
2 evidence?

3 THE COURT: You can make an opening statement, if  
4 you'd like.

5 MR. DUNN: Great.

6 THE COURT: I'm particularly interested in what  
7 issues of fact remain open. I see both of these motions  
8 basically as cross motions for summary judgment on the  
9 issues.

10 MR. DUNN: I understand, Your Honor. I think  
11 that's a good way to look at it. There's really three  
12 matters that this Court needs to address today, and they're  
13 the three items from the settlement agreement that were to  
14 be completed and were in fact completed by the defendants.  
15 And I'll take them in this order. The first is, the parties  
16 agreed in the settlement agreement that they would come  
17 back at a later date and reach a separate agreement. That's  
18 the development agreement. And I will -- and the evidence  
19 will show that the defendants submitted to the plaintiff a  
20 proposed development agreement, and it's the Elim Valley  
21 development agreement that exists on 2300 acres that  
22 surround the parcels we're talking about today. It's a very  
23 complex development agreement, has complex design  
24 guidelines with it, down to landscaping detail, frontage  
25 road detail, intersection, road section detail and various

1 transects. It's a traditional neighborhood design that has  
2 an urban core. Significant planning. The defendants  
3 proposed this particular development agreement as the  
4 development agreement that they wanted to reach with the  
5 plaintiffs. At the time that that was proposed, Your Honor,  
6 the evidence will show that the defendants said, "Make any  
7 recommendations, make any counter proposal, changes,  
8 additions that you would like to see in this development  
9 agreement, and we will go through those."

10 The plaintiffs did not make any additions or

11 changes or requests to that development agreement and  
12 instead, in the meeting on November 11th of 2013, accepted  
13 that development agreement and said that they would be  
14 bound by it. That forms the basis of the development  
15 agreement that the parties reached. The defendants did  
16 everything that they could to come forward with a  
17 development agreement that would meet to the mutual  
18 satisfaction of both parties, that would provide for the  
19 development of the strip parcels and the Red Bridge parcels

20 --

21 THE COURT: So who presented the development  
22 agreement?

23 MR. DUNN: The defendants, Your Honor.

24 THE COURT: And plaintiffs accepted it as  
25 presented?

1 MR. DUNN: Yes, Your Honor.

2 THE COURT: Okay.

3 MR. DUNN: That's the first issue. The second  
4 issue, which you pointed out, Your Honor, deals with this  
5 little particular triangular piece. Now, the settlement  
6 agreement contemplated that Mellon Valley, which is a  
7 defendant in this action, would provide an access and  
8 utility easement on what were called the strip parcels. The  
9 settlement agreement actually refers to the strip parcels  
10 and says that each -- that the properties, the Red Bridge  
11 properties, are separated by certain strip parcels that are  
12 owned by Mellon. Now it's our position, Your Honor, that  
13 this particular -- the -- (inaudible) -- description that  
14 was attached to the settlement agreement was a mistake and  
15 actually included that little red triangle that was not  
16 owned by Mellon Valley. Now, we believe that this was a  
17 mistake - a mutual mistake -- and we believe this because  
18 of the explicit language of the settlement agreement. That  
19 particular triangular is owned by an entity called Elim  
20 Valley Planning and Development. Elim Valley Planning and  
21 Development is not a party to the settlement agreement. And  
22 it's been stipulated that they're not a party to it.  
23 They're not listed in the settlement agreement. And in  
24 section 20 of the settlement agreement it states: "Nothing  
25 in this agreement, expressed or implied, is intended to

1 confer upon any person other than the parties, parties to  
2 the agreement, any rights, remedies, obligations, or  
3 liabilities of any nature whatsoever." So plain and simple,  
4 that triangle was included as a mistake. Mellon Valley --

5 THE COURT: Plain and simple.

6 MR. DUNN: Plain and simple, it was a mistake. It  
7 was included as a mistake.

8 THE COURT: And you site this language as saying  
9 that?

10 MR. DUNN: The language intends to not have any  
11 third-party allegations.

12 THE COURT: All right, well, so, a hypothetical  
13 issue would be, let's assume you enter into a contract  
14 where you tell the other side of the contract that you're  
15 going to go out and find a brand new or a used Lexus, and  
16 you assure the person that you can find that Lexus. And  
17 it's a say a 2013 Lexus with certain color. And you tell  
18 them, "We can find that." And then that's -- you've --  
19 (inaudible) --- your obligations under the deal. And then  
20 you don't go out and find it. And the other person says,  
21 "Well, Joe here across the street has got a Lexus. They're  
22 on sale at all of these used car lots. You can find them on  
23 car trader or whatever, and you didn't do anything to find  
24 it." Now, because somebody else owns the Lexus or any Lexus  
25 that would meet these requirements, you don't have an

1 obligation to do anything?

2 MR. DUNN: Your honor, if I might, I would point  
3 that that hypothetical is a little off point for this very  
4 reason. What Mellon Valley said it would do is it said it  
5 would provide free and clear access and easement -- and  
6 utility easement -- on its property. The language of the  
7 settlement agreement contemplates that. And the settlement  
8 agreement says there's going to be no obligation on any  
9 third party, no obligation --

10 THE COURT: So, you're saying the development  
11 agreement says that they're going to do something on their  
12 own property, but does it also say that notwithstanding  
13 anything set forth in the settlement agreement, we're going  
14 to do this? Or does it somehow negate what was in the  
15 settlement agreement?

16 MR. DUNN: Well, the settlement agreement is a  
17 separate issue.

18 THE COURT: I understand. I thought you just said  
19 the development agreement provided a basis for you to  
20 interpret back to the settlement agreement. Isn't that what  
21 you just said? Maybe I didn't hear you right.

22 MR. DUNN: Maybe I misspoke, Your Honor. The  
23 development agreement provides for the development of the  
24 properties.

25 THE COURT: Okay, I understand.

1 hands on this deal?

2 MR. DUNN: The defendants paid \$150,000 at the  
3 time of the settlement agreement.

4 THE COURT: The defendants did?

5 MR. DUNN: The defendants did.

6 THE COURT: Leading up to the original deal, --  
7 (inaudible) -- did the defendants sell something to the  
8 plaintiffs?

9 MR. DUNN: Not that I'm aware of, Your Honor.

10 THE COURT: So the defendant's only involvement in  
11 ~~this was to give access, and for that they've got \$150,000~~  
12 ~~and that's it?~~

13 MR. DUNN: So the original lawsuit arose with  
14 plaintiff seeking a deficiency against defendants.  
15 Defendants paid to the plaintiff as part of the settlement  
16 agreement 150,000 and agreed to give access and utility  
17 easement and release telecommunications easement on the Red  
18 Bridge properties and then the items we've been discussing  
19 today.

20 THE COURT: And all they got was 150,000.

21 MR. DUNN: The plaintiffs?

22 THE COURT: Yes.

23 MR. DUNN: All they got was 150,000 and the  
24 release of the telecommunications easement and the access  
25 and utility easement, yes, Your Honor.



1 THE COURT: And, from your perspective, Mr. Leta,  
2 what did your client receive on this? Or pay out on this?

3 MR. LETA: Pay out? We lent over five million  
4 dollars to the defendants, secured by those two parcels of  
5 property that you see on that map. We foreclosed those  
6 liens in 2011 and then sued for a deficiency judgment in  
7 excess of eight million dollars. On the eve of trial before  
8 Your Honor to determine that question, we entered into the  
9 settlement agreement, and we were paid \$150,000. Plus, we  
10 did get -- we did get an access easement. We did get --

11 THE COURT: So you loaned out five million bucks,  
12 and you didn't get paid back?

13 MR. LETA: Correct. Well, we did foreclose on the  
14 properties. We did credit bid. Right? So we did own the  
15 properties. That was part consideration. But we -- but  
16 after you consider interest on the loan and consider the  
17 value of the properties when we foreclosed, our position in  
18 the old lawsuit, which of course has now been subsumed in  
19 the settlement agreement, was that we were still owed eight  
20 million dollars. But we've resolved that in the settlement.  
21 That's what the settlement did. It settled that dispute.  
22 But it settled it based on what the agreement provided that  
23 we would then get, and --

24 THE COURT: I understand.

25 MR. LETA: Okay.

1 THE COURT: Go ahead, Mr. Dunn.

2 MR. DUNN: To respond to some of Mr. Leta's  
3 points, if Your Honor would please turn to exhibit 20.

4 THE COURT: Okay, go ahead.

5 MR. DUNN: Mr. Leta read you the email. And I'd  
6 like to parse a little bit of the language and explain to  
7 Your Honor why I do so. Mr. Leta made a substantial deal of  
8 the word some. And the sentence says "attached is a memo  
9 that explains the actions that are required" -- comma --  
10 "with the documents that need to be executed to correct

11 some of the title defects" -- period. The "some of the  
12 title defects" actually refers to documents. And here's how  
13 I get to that interpretation. Your honor, if you'd turn the  
14 page to the actual memo.

15 THE COURT: In other words, you're saying, what  
16 Mr. Leta meant to say was "some of the documents that need  
17 to be executed to correct title defects"?

18 MR. DUNN: No, with the documents that need to be  
19 executed to correct some of the defects. So there's only  
20 some to documents for some of the defects. Now if you'd  
21 turn over the memo, Your Honor.

22 THE COURT: Okay.

23 MR. DUNN: Look at the first paragraph.

24 THE COURT: On page one?

25 MR. DUNN: On page one of the memo.

1 THE COURT: Yes.

2 MR. DUNN: My office has reviewed the title  
3 commitment, and I'll skip the parenthetical, issued by  
4 First American Title Company, "for the strip parcels in the  
5 above-referenced matter in order to evaluate the schedule B  
6 exception's potential affect on my client's access and  
7 utility easement interest over and through the strip  
8 parcels. Below is a brief description of each title  
9 exception and how it may affect the easement and directives  
10 for your clients to resolve the title issues in compliance  
11 with the parties' settlement agreement." And the title  
12 exception 20, this communications easement, is not  
13 referenced. It's not referenced as one of the title  
14 exceptions. Now, the reason again I come back to the  
15 interpretation of the word *some* in the email is in part,  
16 based on that each word in the memor, but then also the  
17 documents that are attached do not address each and every  
18 one of the exceptions listed in the memo. They address some  
19 of them. So this document I do believe is an express intent  
20 of waiver, and that's corroborated going forward in exhibit  
21 23. Exhibit 23 is an email from Mr. Leta in October. So  
22 this is months later, and he reiterates the August 27th  
23 memo, and he attaches it again to that email.

24 Now if Your Honor would turn to exhibit 28. This  
25 email is dated November 5th, months later. And if you'd

1 turn to the second page, Your Honor, the very last bullet  
2 point "communications easement as encumbrance against  
3 easement." Finally, this is the first time this is  
4 addressed since the title commitment was issued back in  
5 June, the first time it was addressed by plaintiffs.  
6 "Finally, we think the defendant should subordinate the  
7 master communications easement." The first time. Now if  
8 Your Honor would go over to exhibit 33.

9 THE COURT: Thirty-three?

10 MR. DUNN: Yes.

11 THE COURT: Okay.

12 MR. DUNN: On page two, the very last paragraph.  
13 "The first time that you have requested a subordination  
14 with regard to the master" -- are you there, Your Honor?

15 THE COURT: Yes.

16 MR. DUNN: "With regard to the master  
17 communications easement as to the strip parcels was in your  
18 November 8th" -- I think that is a typo -- "email even  
19 though it was referenced in the title commitment as  
20 exception 20 that you sent months ago. While we do not  
21 believe that the easement is a lien or encumbrance that was  
22 intended to be removed under the settlement agreement, we  
23 will agree to subordinate this interest as to the specific  
24 locations of the utility easement when they are determined.  
25 Please modify the subordination agreement" -- Mr. Leta

1 mentioned that they sent a subordination agreement -- this  
2 says "please modify the subordination agreement to include  
3 limiting language such that the master communications  
4 easement will be subordinated to only the portions of the  
5 strip parcels where the utility easement will ultimately be  
6 located, and we will get such a subordination signed for  
7 your recording."

8           Mr. Leta responds in exhibit 35. "The  
9 subordination needs to be signed as presented in the  
10 attached document. Our client cannot accept an arrangement  
11 where your clients simply agree to subordinate to specific  
12 locations of the utility easement when they are determined.  
13 The subordination needs to be effective prior to the  
14 deadline of November 19th, regardless of where the  
15 easements are ultimately located. The subordination  
16 agreement is intended to subordinate the master  
17 communications easement to use the access easement, not the  
18 area. As such, the -- (inaudible) -- subordination  
19 agreement attached accomplishes that end as well as what  
20 you have requested because it subordinates the master  
21 communications easement to the easement entirely, and the  
22 access easement specifically provides for future  
23 determination of the easement areas." Your honor, I would  
24 continue to argue that there was waiver. Mr. Leta, as the  
25 representative of Red Bridge, sent a letter. That letter

1 was electronically signed under Utah statute coming from  
2 his email, and gives rise to a waiver, a written waiver.  
3 The settlement agreement in the waiver language at section  
4 21 --

5 THE COURT: Go ahead.

6 MR. DUNN: The very last sentence says "except as  
7 otherwise expressly provided herein, no waiver of any such  
8 right hereunder shall be binding unless reduced to writing  
9 and signed by the party to be charged therewith." And that  
10 echoes Utah law. The attorney for Red Bridge is an  
11 authorized representative who can sign such a document. And  
12 he did. That August 27<sup>th</sup> memo explicitly says "each," "each  
13 title exception," and that communications easement wasn't  
14 there. Now we still wanted to comply, we still wanted to  
15 work and said, we'll do it. Amend the subordination  
16 agreement to those portions where the easement will be  
17 applicable.

18 Now, going to Mr. Leta's point on the development  
19 agreement, I think perhaps he's abandoned it at least for  
20 this portion of the hearing, there was an explicit offer  
21 made via email of that development agreement to be the  
22 development agreement. That email string is attached as  
23 exhibit 26, Your Honor. And if I may, I will point to an  
24 email from Mr. Leta from October 31st. It says "at least  
25 prior to any such meeting, however, we would like to review

1 your client's proposed written development agreement. The  
2 settlement agreement requires the parties to enter into an  
3 agreement prior to the deadline, not just being talking  
4 about one. Please provide the same." The next response on  
5 November 4th: "As you remember there already was a  
6 development agreement in place that your clients objected  
7 to. That development agreement cost millions of dollars and  
8 years of effort to get in place; therefore, that is the  
9 development agreement that my clients would propose.  
10 Apparently there is something that your clients did not  
11 like about it. Their specific concerns have not been  
12 communicated to us. We need to know what your clients wish  
13 to change for the new development agreement. Because there  
14 are probably many things in the current development  
15 agreement that your clients wish to keep, it is best for  
16 them to identify their concerns and recommended changes. My  
17 clients are willing to meet" -- then it goes on about  
18 meeting times. Then there's some discussion about whether  
19 or not it applies, whether or not it was foreclosed out.  
20 And it says ultimately we'll have the development agreement  
21 sent. Now, the development agreement actually references  
22 design guidelines. Mr. Leta and I have not stipulated that  
23 those would be admissible in this proceeding but that they  
24 are authentic. Those are contained in exhibit 2, and Your  
25 Honor doesn't need to look at them now because of the

1 admissibility, but it's 165 pages of detail regarding  
2 frontage on roads, regarding --

3 THE COURT: We already talked about that.

4 MR. DUNN: Yes. Now, Mr. Leta said he has  
5 abandoned that. If he has, then I understand.

6 THE COURT: I don't know that he said that he's  
7 abandoned it.

8 MR. DUNN: Well, for purposes of argument.

9 THE COURT: I think for the purpose of a non-  
10 evidentiary hearing going forward with the decision he says  
11 that he would stand aside on that point.

12 MR. DUNN: Thank you for the clarity, Your Honor.  
13 Now the last point on what was bargained for. Mr. Leta made  
14 a number of statements that what was bargained for was that  
15 particular property, that that triangle was critical. Well,  
16 we don't need to go into --

17 THE COURT: I don't know that he said that. I  
18 think he said that it could be, depending on what they end  
19 up with as far as a plan. They don't have a plan that's  
20 official as of now, I take it.

21 MR. DUNN: Well there's actually an exhibit, again  
22 has not been authentic-- or it's been authen--it hasn't  
23 been authenticated, has it?

24 MR. LETA: I don't think it's been authenticated  
25 or admitted.



1 MR. DUNN: Yeah, or admitted. But there is a plan  
2 that they submitted to the city of Hurricane that actually  
3 outlines a development preliminary plat for those parcels  
4 and does not include, to my understanding and reading of  
5 the map, any kind of access that would cross that  
6 triangular piece. The other thing is, Your Honor --

7 THE COURT: -- (inaudible) -- Does that mean that  
8 they wouldn't want to do a different plan if they didn't  
9 have to worry about a lawsuit over that issue down the  
10 road?

11 MR. DUNN: It's possible --

12 THE COURT: I don't understand why your client --  
13 maybe they don't have the money -- why they didn't fork  
14 over the 39K and take this off the table or do something to  
15 take it off the table. Why are we still talking about that  
16 at this point when there's two million dollars at stake  
17 from your client's standpoint?

18 MR. DUNN: Your honor, I think there wasn't an  
19 ability to take care of that particular judgment out of  
20 Elim Valley.

21 THE COURT: Was not?

22 MR. DUNN: I don't think there was out of Elim  
23 Valley.

24 THE COURT: So your client didn't have 39,000 that  
25 they can go down and pay that judgment?

1 MR. DUNN: I believe there was an attempt and an  
2 effort to actually pay cash, and the attorney for T&R  
3 Lumber went silent and did not return communications, Your  
4 Honor.

5 THE COURT: Did you tender the money? Is there  
6 some evidence that you did anything?

7 MR. DUNN: I don't believe there was a tender of  
8 money. There is agreements that were exchanged.

9 THE COURT: Well, you know, your client is looking  
10 at two million bucks. That's a pittance compared to the

11 exposure here to remove that issue. I don't -- it baffles  
12 me. But if they don't have it, they don't have it maybe.  
13 And I don't know what all the issues are obviously in terms  
14 of what the lawyer for the lumber company is thinking or  
15 anything like that. But anyway, I don't think the fact that  
16 they've submitted a document that shows an alternative to  
17 this shows that they weren't entitled to it to begin with,  
18 to the elimination of that lien.

19 MR. DUNN: Well, and Your Honor, I do think, and  
20 I'll go back to, I do believe it was a mutual mistake. I  
21 think the intent of the parties was to include only the  
22 property that Mellon Valley had, and that the legal  
23 description, regardless of including that triangle or not  
24 including that triangle, was a mistake because the intent  
25 of the parties was to get that --

1 THE COURT: I know what your theory is.

2 MR. DUNN: Okay. Then --

3 THE COURT: And you've heard what I've already  
4 said --

5 MR. DUNN: I have, Your Honor.

6 THE COURT: About parole evidence. And I mean,  
7 your theory is a theory, but forty-to-one odds. I don't get  
8 that. Fifty-to-one odds, probably. So if you think your  
9 theory is worth fifty-to-one odds, I can see maybe  
10 approaching it that way. But anyway, okay, anything else  
11 you want to tell me.

12 MR. DUNN: I don't think anything to address Mr.  
13 Leta's comments at this time.

14 THE COURT: Okay. Well, as far as the motion to --  
15 motion for satisfaction of judgment, I will deny that  
16 motion. I don't think it's well taken on many fronts but  
17 clearly not sufficient for either substantively and maybe  
18 procedurally. So I'm going to deny that. Now is there  
19 another motion pending at this point? Do we have a motion  
20 for execution?

21 MR. LETA: It's a writ. Yes. Application for a  
22 writ of execution.

23 THE COURT: Application for execution. The only  
24 new issue is what, for the writ of execution? Is there a  
25 new issue? Or is there -- or have we talked about all the

1 issues?

2 MR. LETA: I don't, I don't -- there is a related  
3 issue on the writ.

4 THE COURT: All right.

5 MR. LETA: We filed an application for a writ of  
6 execution, a charging order, and an injunction. And in your  
7 exhibit binder, Your Honor, you'll have copies of this. The  
8 clerk's office actually issued the writ of execution and  
9 it's been served. And if I can direct Your Honor to the  
10 charging order, which is exhibit 48.

11 THE COURT: Okay.

12 MR. LETA: And this is relevant to the writ of  
13 execution as well because what we're seeking to charge are  
14 ownership interests that the defendants -- that we believe  
15 the defendants have in three entities. We believe that the  
16 defendants Roland and Sally Walker have interests in  
17 Interior Solutions of Arizona, which is an Arizona limited  
18 liability company; in National Design and Trade Network  
19 Inc., an Idaho corporation; and in McKay Harris LLC, a Utah  
20 limited liability company. And what we're asking, since,  
21 under Utah law, the only way that you can attach an  
22 ownership interest in an entity is either by taking  
23 physical position of stock, if the stock has been  
24 certificated -- and we don't know and we don't believe that  
25 there is stock certificates here for the corporation which

1 is one of the entities -- or if it's a membership interest  
2 in a limited liability company, the only way you can attach  
3 it is by getting a charging order that directs that entity  
4 basically pay any distributions that would otherwise be  
5 paid to the judgment debtor to the judgment creditor. You  
6 can't -- unless under the Utah limited liability company  
7 act -- and this is also true in Arizona, by the way --  
8 unless it's a sole member LLC, you can't actually take  
9 ownership of the membership interest and control the  
10 underlying entity. The most you can do under the Utah  
11 limited liability company act to enforce your claim against  
12 a member is get a charging order against the entity, and  
13 that's what we're in pursuit of here. Now --

14 THE COURT: Sort of like a garnishment.

15 MR. LETA: It's kind of, it's kind of like a  
16 garnishment, although it's not a garnishment because a  
17 garnishment is where there's a debt owed. I mean, we could  
18 actually garnish these entities as well if in fact they  
19 owed money. But this is -- we don't -- this is a  
20 distribution. This is something that is an ownership  
21 interest of the entity. That's why we're seeking a charging  
22 order. Now, you asked, what's the issue. The issue is that  
23 the defendants claim they don't own these membership  
24 interests or this stock anymore, and what they've submitted  
25 to us are -- and their exhibits show this as well -- they

1 submitted to us documents that were signed by Roland and  
2 his wife after the loan was made and prior to the  
3 settlement agreement -- actually prior to -- yes, prior to  
4 the settlement agreement, saying well, we've assigned our  
5 interests in these to affiliates, to trusts, to family  
6 trusts, et cetera. Now, what we don't have is we have  
7 nothing showing that the entities acknowledged that those  
8 transfer have been affected. We have nothing from any of  
9 these three entities that say, yes, we agree, you no longer  
10 own an interest. So what we want to do is charge those

11 entities. And if in fact they have nothing, if in fact  
12 there's no membership interest there, well then they'll  
13 respond and say, there's nothing to charge. There's no  
14 membership. That's the end of it. If there is something  
15 there, though, then we want that charging order so we can  
16 attach it.

17 Now, I can sign away my house to my, you know,  
18 brother-in-law. I can stick that assignment in a drawer. It  
19 doesn't mean my brother-in-law actually gets title to the  
20 house, and it doesn't mean that a judgment creditor coming  
21 along after my brother-in-law -- or after me can't get my  
22 interest because my brother-in-law hasn't transferred,  
23 recorded that assignment yet. The mere fact that the  
24 defendants have shown us pieces of paper saying I've  
25 assigned my interests away doesn't mean that those are

1 effective as to the entity. That's why we want our charging  
2 order, because there's no evidence that the entities have  
3 acknowledged it. - .

4 THE COURT: Signed and sealed but question of  
5 whether it was delivered.

6 MR. LETA: Right. And there's also a question as  
7 to whether it's a fraudulent transfer, because those  
8 transfers -- we don't see any consideration having been  
9 made for those transfers. So that's another issue we're  
10 concerned about. And then the other thing we want, which  
11 we're entitled to under the statute, is an injunction  
12 basically prohibiting the defendants from transferring any  
13 of their assets. And we want them to tell us what property  
14 they have that's not exempt so that we can exercise our  
15 rights under the judgment. So those are the two additional  
16 remedies we seek in our application.

17 Your honor, we submitted the charging order and  
18 the injunction, Your Honor. I don't think you said  
19 "denied," but you said the orders were not signed. You said  
20 you weren't signing them, and I presume you did that  
21 because these issues were still pending.

22 THE COURT: Mr. Dunn, do you want to talk about  
23 this?

24 MR. DUNN: Yes, Your Honor. In light of the writs  
25 and the charging orders, there are assignments, and they're

1 part of the exhibit binders where the interests were signed  
2 back in 2010 and 2012. And Mr. Walker is here and is  
3 willing to provide testimony that he does not own those  
4 assets, that he has transferred them. Mr. Leta addresses  
5 perhaps a fraudulent conveyance. That's another issue for  
6 another day, if in fact he wants to pursue the entities  
7 that received those transfers. As far as the charging order  
8 --

9 THE COURT: Mr. Leta, have you taken Mr. Walker's  
10 deposition on this at all?

11 MR. LETA: No, Your Honor. Because of a procedural  
12 context, we did not.

13 MR. DUNN: As far as the charging order, the same  
14 position. He does not own those assets. As far as the  
15 injunction, because of the Court's ruling on the motion for  
16 satisfaction, I think the injunction is probably  
17 appropriate and set a time for Mr. Walker to talk about his  
18 assets.

19 THE COURT: All right. Thank you. When do you want  
20 to take this deposition?

21 MR. WALKER: Whenever convenient, Your Honor.  
22 Probably not tomorrow.

23 THE COURT: All right. Well, it seems to me that  
24 that's where we are.

25 MR. LETA: Your honor, may I just say one thing on



1 the charging order? We'd still like the charging order to  
2 see what the entities have to say about the ownership.

3 THE COURT: But you may have to end up having to  
4 take their depositions at some point.

5 MR. LETA: Well, we may. We may. But I do want to  
6 draw your attention to exhibits 45 and 46 in the binder.

7 THE COURT: Yes.

8 MR. LETA: Exhibit 45 is a document that the Court  
9 can take judicial notice of. Exhibit 45 is a Utah business  
10 entity search that was conducted by our offices on May 15  
11 of 2014 -- you can see the date on the lower right-hand  
12 corner. And if you turn the page, you'll see that Mr.  
13 Roland L. Walker is identified --

14 MR. DUNN: Your honor, Mr. Roland L. Walker is Mr.  
15 Roland N. Walker's father who passed away five years ago.

16 MR. LETA: Oh, okay. Well, that may be why we were  
17 confused. We thought it was the same person. And maybe  
18 that's the answer here, if you look at exhibit 46. This one  
19 we don't know. This one -- if you look at exhibit 46, this  
20 is an entity search also conducted the same day on the  
21 Arizon corporation commission, and if you look at page 2 of  
22 3 of that document, you'll see up at the top when it lists  
23 member manager information, it lists Roland Walker.

24 MR. DUNN: I would, Your Honor, point out that it  
25 also says that it was last updated on July 8<sup>th</sup> of 2008,

1 which predates the assignment.

2 MR. LETA: But we don't -- this is what is the  
3 most current record as of May 14th, Your Honor. So we just  
4 don't know. That's why we want the charging order to figure  
5 it out.

6 MR. DUNN: And we would argue that a deposition of  
7 the entities would be in order as opposed to a charging  
8 order. Charging orders are applicable when the actual --  
9 when the individual actually owns an interest. I don't  
10 think it's procedurally appropriate to use a charging order  
11 for discovery purposes.

12 THE COURT: Well, if he doesn't have -- I don't  
13 know that he's using it for discovery purposes. I think  
14 he's seeking it to secure whatever interests they have so  
15 that if these entities decided they wanted to divest  
16 themselves of something, they would have at least arguably  
17 a lien on whatever they're trying to invest. So if they  
18 don't have any claim, then the charging order seems to be  
19 an exercise in futility because --

20 MR. LETA: It won't charge anything.

21 THE COURT: If they don't have anything to charge.

22 MR. LETA: If there's nothing there to be charged,  
23 it won't charge anything. If there is something there to be  
24 charged, we want to have it.

25 THE COURT: So, I don't see that granting a

1 charging order at this time would unduly prejudice either  
2 your client or the entities against whom the charging  
3 orders are submitted. If there's no legitimate claim, then  
4 there's no problem, it seems to me. All right. Well, I'm  
5 going to grant the injunction. Apparently that's without  
6 opposition at this point. I'm also going to grant the  
7 charging orders. -- (inaudible) --

8 MR. DUNN: Your honor, procedurally we did reply  
9 to the writ. The clerk has already issued the writ. We  
10 believe it's premature because --

11 THE COURT: Well, it may be premature when it was  
12 issued, but as of today, I'm not sure that it is. So they  
13 haven't tried to actually execute it, but no one's gone in  
14 and hauled off the Lexus or whatever they're going to take.  
15 So I don't see any damage by what may have been a premature  
16 granting of the writ.

17 MR. DUNN: Well the reason I say premature, Your  
18 Honor, because Mr. Walker doesn't own those assets, a writ  
19 against those assets is inappropriate. Under the civil  
20 rules, once the writ is issued, we have the opportunity to  
21 present --

22 THE COURT: Well, we hear what you're saying, and  
23 it may be true that they don't -- that he doesn't own them.  
24 But if they go after the -- let's say it's a Mercedes in  
25 somebody's garage in St. George, and they go down to get

1 this Mercedes, and the owner says, well, wait a minute,  
2 that's mine. That isn't Mr. Walker's or someone else that  
3 they would have a claim for. So he calls up his lawyer down  
4 there, maybe your office, and says, somebody's trying to  
5 take my Mercedes. And you say, well, we'll file a motion to  
6 object to the execution on this particular piece of  
7 property. And we'll deal with it.

8 MR. DUNN: And we have done that, Your Honor.  
9 Pursuant to the rules, we have filed that reply and  
10 objection, and --

11 THE COURT: On what?

12 MR. DUNN: On the writs.

13 THE COURT: On a specific piece of property?

14 MR. DUNN: Yes, on the three assets that are  
15 claimed in the writs. Specifically the writ against  
16 National Design and Trade Network, the writ against McKay  
17 Harris, and the writ against Interior Solutions of Arizona.  
18 We have filed a reply and a request that the evidentiary  
19 hearing --

20 THE COURT: What do you need, Mr. Leta, if you're  
21 granted the charging order, do you need execution against  
22 those entities.

23 MR. LETA: Not at this time.

24 MR. DUNN: Thank you, Your Honor. Thank you, Mr.  
25 Leta.

1           THE COURT: Voila. Okay, so now Mr. Leta, who was  
2     thinking he was going to have a long weekend, is faced with  
3     the obligation of preparing an appropriate order. And so,  
4     when do you want to do that?

5           MR. LETA: I can do that this afternoon.

6           THE COURT: Okay.

7           MR. LETA: I don't know -- I know --

8           THE COURT: The problem is, he won't be able to  
9     review it because he's got a long weekend plus a trip.

10          MR. LETA: Well, he's also on vacation.

11          THE COURT: That's what I mean.

12          MR. DUNN: Next week is fine.

13          MR. LETA: I'll tell you what I'll do. I'll  
14     prepare it this afternoon and send it to Mr. Dunn for his  
15     review. And he's been very cooperative, so I presume we're  
16     not going to have any problem. I'm simply going to say,  
17     based on the findings on the record, the motion is denied,  
18     and I'll submit -- resubmit, through the electronic system,  
19     the charging order and the injunction.

20          MR. DUNN: And will you throw out the writ?

21          MR. LETA: And I'll withdraw the writ.

22          THE COURT: Okay, so state it in your order. All  
23     right. Anything further today that we need to do?

24          MR. LETA: No, Your Honor.

25          MR. DUNN: No, Your Honor.

REPORTER'S CERTIFICATE

STATE OF UTAH                    )  
  )  
COUNTY OF SALT LAKE        )

I, Kellie Peterson, Registered  
Professional Reporter and Notary Public in and for  
The State of Utah, do hereby certify:


That on 9/2/14, Jessica Taylor  
transcribed an electronic sound recording at  
The request of Attorney Adam Dunn.

That the statements and testimony of all  
speakers were reported by her in type and thereafter  
transcribed, and that a full, true and correct  
transcript of said statements and testimony is set forth  
in the preceding pages according to her ability to hear  
and understand the electronic sound recording provided:

That the original transcript was sealed and  
delivered to Attorney Jason Schatz for safekeeping.

I further certify that she is not kin or  
otherwise associated with any of the parties to said  
cause of action and that she is not interested in the  
outcome thereof.

Witness my hand and official seal this 2nd  
day of September 2014.

  
Kellie Peterson, CSR, RPR

## AFFIDAVIT OF JESSICA TAYLOR

I, Jessica Taylor, after first being sworn and upon oath, do hereby state and depose  
as follows:

1. I am a resident of Summit County, Utah.
2. I am at least 18 years of age and of a sound mind.
3. On 9/2/14, I made the attached transcription of the  
electronic audio recording.
4. Under penalty of perjury I certify that this transcript is a correct and accurate  
transcription of the hearing recording.

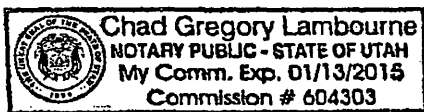
Further affiant sayeth not.

DATED this 2<sup>nd</sup> day of September, 2014.

  
JESSICA TAYLOR

NOTARY:

Subscribed and sworn to before me this 2 day of Sep, 2014.



  
Notary Public

1 MR. DUNN: The access and utility easement was  
2 actually provided for in the settlement agreement. And the  
3 settlement agreement says Mellon Valley is going to give a  
4 free and clear access and utility easement on its property.

5 THE COURT: Only its property.

6 MR. DUNN: That's what it says.

7 THE COURT: Okay.

8 MR. DUNN: Now, included in the settlement  
9 agreement is a legal description of property that includes  
10 that little triangle that was Elim Valley. And so that's a  
11 mistake that we say exists, Your Honor, is that that  
12 triangle was included and was not intended to be included  
13 in that strip parcel. Elim Valley was not a party to the  
14 agreement -- the settlement agreement. It was not intended  
15 to be a party or obligor, and Mellon Valley said we will  
16 give free and clear, and it did. Mellon Valley went through  
17 many hurdles and got a number of subordinations from its  
18 lender, from other entities, to provide free and clear  
19 access and utility easement on its property. And they  
20 completed that.

21 THE COURT: Well, as I understand it, the  
22 plaintiffs say that it was very important to them that they  
23 get the title cleared on all of the properties, including  
24 the parcel in question. And that they did -- it was not a  
25 mutual mistake, they say, because we intended that that's



1 what would result here, and we didn't make a mistake as far  
2 as our side was concerned. We wanted that piece included.

3 MR. DUNN: Well, a couple of items on that point,  
4 Your Honor.

5 THE COURT: Am I right, Mr. Leta?

6 MR. LETA: Absolutely.

7 MR. DUNN: A couple of points on that, Your Honor.  
8 At the time the settlement was reached, I don't think that  
9 any of the parties contemplated that that strip parcel  
10 included that triangle of Elim Valley property. The entire  
11 discussions of the settlement agreement, the entire  
12 negotiation was with Mellon Valley on its property. This  
13 litigation; they had an expert, they had other individuals  
14 that identified the strip parcels, they knew about them,  
15 and they knew what Elim Valley owned and didn't own. The  
16 legal description, in the haste of getting the settlement  
17 agreement completed before trial, did include that  
18 triangle. And that is, I would argue, a mutual mistake.  
19 But, Your Honor, even if it's a unilateral mistake, it -- I  
20 believe -- is excusable. It is Elim Valley's property, and  
21 Elim Valley is not a party, as I mentioned, third party,  
22 not a third-party obligor, or beneficiary.

23 THE COURT: But they own the Lexus.

24 MR. DUNN: Well, they own that little triangle,  
25 and I think it's a little bit of a red herring to say that

1 that piece was so critical, and here's why. Throughout the  
2 process --

3 THE COURT: So you're saying that it's not --  
4 this piece is not critical and that's an issue of fact,  
5 correct?

6 MR.. DUNN: That will be an issue of fact, Your  
7 Honor. And I'll point to some of what the evidence will  
8 show. Your honor, as we go through the evidence, we will  
9 see that that little triangle actually has an easement on  
10 it currently for a water and sewer line that goes to

11 another development. And Red Bridge accepted that easement.

12 And so it follows and tracks Sand Hollow Road and then cuts  
13 right along that triangle. That is an issue of fact that  
14 will remain, Your Honor. Now --

15 THE COURT: So why is this not material?

16 MR. DUNN: Because what they want, what Red Bridge  
17 cares about, is two access points, two access points  
18 anywhere along those strip parcels that are owned by Mellon  
19 Valley.

20 THE COURT: And you're sure that that's all they  
21 care about?

22 MR. DUNN: That's what the access easement says.

23 THE COURT: Okay.

24 MR. DUNN: That's what they negotiated. Two fifty-  
25 foot-wide access easements, and the utilities will run

1 where those access easements are.

2 THE COURT: So you don't think it matters that  
3 they don't have waivers from the owners of that parcel in  
4 question?

5 MR. DUNN: If I could step back, I think there are  
6 waivers actually from the owner in question of that piece.  
7 The issue remains that there is a judgment that was  
8 recorded against that triangle, against Elim Valley  
9 Planning and Development. Elim Valley -- we were actually  
10 able to obtain that Lexus, as you used in your  
11 hypothetical, Your Honor - and Elim Valley did sign an  
12 access and utility easement on that triangle.

13 THE COURT: So they signed over title, but there's  
14 a lien on it.

15 MR. DUNN: There is a lien on it. And that --

16 THE COURT: So? I mean, does that help them, I  
17 mean, that there's a lien on it? Or could that be a problem  
18 for them?

19 MR. DUNN: It could be a problem if that triangle  
20 becomes material. But again, I would argue it's not  
21 material because, and as the facts will show, there's  
22 already another easement on that property, and encumbrance,  
23 that Red Bridge didn't mind was there and accepted,  
24 because, again, the access easement will show that they  
25 require just two access points.

1 THE COURT: So the fact that maybe there were two  
2 liens on the Lexus and they said one was okay but the other  
3 isn't okay. And one is good enough, you say.

4 MR. DUNN: What I'm pointing to, Your Honor, is  
5 that it is an acceptance of them that that particular lien  
6 on that particular property is not material because that  
7 particular triangle where there's already a lien is not  
8 material because of where they're planning to locate the  
9 entrances.

10 THE COURT: Why -- so you say, even though

11 arguably we've agreed to get that lien removed, we don't  
12 have to do it because it's not material because they've  
13 already got other access.

14 MR. DUNN: That would be the secondary argument.  
15 The first argument would be that we didn't agree to get the  
16 lien removed on that triangle. Mellon Valley agreed to get  
17 the liens removed on its property, and it did.

18 THE COURT: So you should be able to get past the  
19 unilateral mistake because it's immaterial, the mistake is  
20 immaterial?

21 MR. DUNN: Yes, and holding the plaintiff to that  
22 -- or excuse me, the defendants, Mellon Valley -- to that  
23 requirement would be of great consequence, because Mellon  
24 Valley complied in every other aspect of this development  
25 agreement. And that material issue --

1 THE COURT: Why didn't they comply on this one?

2 MR. DUNN: Your honor, they tried. They tried.

3 They could not get that lien removed in time, on that  
4 triangle.

5 THE COURT: And have they done anything since, or  
6 did they just stop because they didn't meet the deadline?

7 MR. DUNN: Well, they've tried. They've tried. The  
8 lien holder has stopped communicating.

9 THE COURT: So you think that if something should  
10 come up where -- I'm sure we're going to hear from Mr. Leta  
11 why he thinks this is a problem for his client. And you're  
12 saying to me that, well, we couldn't do it, but if  
13 something happens down the road, Mr. Leta can do it.

14 MR. DUNN: Well, no, the defendants have and  
15 desire to continue to be very workable and do everything  
16 they can to assist Red Bridge in the development of its  
17 properties.

18 THE COURT: So you say get this lien holder away -  
19 -

20 MR. DUNN: On another piece of property that's  
21 owned by a nondefendant. Yes, Your Honor, which they've  
22 tried.

23 THE COURT: So we have -- I thought we had a  
24 stipulated set of facts here. I thought I saw that from Mr.  
25 Leta.

1 MR. DUNN: We do, Your Honor.

2 THE COURT: And that stipulated set of facts says  
3 this is an integrated agreement.

4 MR. DUNN: It is, Your Honor.

5 THE COURT: So the Court looks at the integrated  
6 agreement and says, I don't hear any parole evidence.

7 MR. DUNN: That's correct, Your Honor.

8 THE COURT: So the issues on materiality are out  
9 the window. I don't see that I could hear that if I have a  
10 stipulated, integrated agreement. There's no question on

11 what the agreement says. And if you say that it's a mistake  
12 of fact, then I guess I would let you try to show that  
13 there was a mistake of fact. But if it's a unilateral  
14 mistake, I'm not sure that I can hear evidence on the  
15 unilateral side, because it seems to me that that would  
16 violate the parole evidence rule.

17 MR. DUNN: And I disagree, Your Honor, because I  
18 don't think mistake goes to parole evidence. I think,  
19 within the four corners of the document, we can see where  
20 that mistake comes. The recital via the settlement  
21 agreement explicitly says that the strip parcels are owned  
22 by Mellon Valley. And the agreement, as written and  
23 contemplated, and I'll again point to the third-party  
24 language, explicitly says, this agreement is not intended  
25 to create an obligation on a nonparty. And at the time the

1 agreement --

2 THE COURT: And it doesn't. I mean, I don't think  
3 Mr. Leta is arguing that it creates an obligation on a  
4 nonparty. I think what he's saying is, it creates an  
5 obligation on you and your client, and your client hasn't  
6 been able to deliver on that obligation.

7 MR. DUNN: Well, and I think what he's arguing is  
8 that the parties intended that those strip parcels would  
9 include that triangle.

10 THE COURT: And it's included in the agreement,  
11 isn't it?

12 MR. DUNN: That's how it's written. But I don't  
13 think that that was the intent, as how the settlement  
14 agreement -- (inaudible)--

15 THE COURT: So you want to change the wording of  
16 the contract, delete this paragraph with parole evidence?

17 MR. DUNN: No. This is an exhibit to the  
18 settlement agreement, and I believe the language of the  
19 settlement agreement actually supports this, the fact that  
20 this is a mistake, within the four corners.

21 THE COURT: Okay, and that is again, what?

22 MR. DUNN: In recital D of the settlement  
23 agreement, it says, "The properties are each separated by  
24 certain strip parcel that are owned by Mellon and that are  
25 parallel to Sand Hollow Road." The settlement agreement

1 does not contemplate additional property that's not owned  
2 by Mellon. That's explicitly from the language. I'm not  
3 trying to change it.

4 THE COURT: Read that last part of that paragraph.

5 MR. DUNN: The last sentence?

6 THE COURT: Yes.

7 MR. DUNN: "The legal descriptions of the strip  
8 parcels are attached hereto as Exhibit B, which defendant  
9 represents and warrants to Red Bridge constitutes all of  
10 the property that Mellon owns between the properties on  
11 Sand Hollow Road." And that warranty, and I understand  
12 where you're coming from, Your Honor --

13 THE COURT: That's what they own, but they've also  
14 committed to get clear title on the Lexus, and they don't  
15 have it. Right?

16 MR. DUNN: Well, I'll agree. They do not have  
17 clear title on that triangle, Your Honor.

18 THE COURT: Okay. Well, thank you. Anything else  
19 you want to tell me?

20 MR. DUNN: Yes, Your Honor. There is another issue  
21 that has been raised and that is the release of a  
22 telecommunications easement. And the evidence will show  
23 that Red Bridge, in writing, from an email from counsel,  
24 delineated exactly which obligations it required to be  
25 cleared from the strip parcels, and that telecommunications



1 easement was not included. We argue that that constitutes  
2 waiver. That was - that email was again reiterated months  
3 later, and then on the eleventh hour prior to the  
4 deadlines, the evidence will show that plaintiff then sent  
5 an email saying, "We think you should remove this." And  
6 then defendants said, "We're happy to, as it relates to  
7 where those access easements are going to be located." And  
8 defendants tried in every respect to comply with that  
9 particular component, but there was - (cough) excuse me, a  
10 component of waiver based on writings from plaintiff.

11 THE COURT: So after the twelfth hour passed, you  
12 just stopped trying to get the telecommunications --

13 MR. DUNN: Communications stopped with plaintiffs.

14 THE COURT: Okay, before we begin with any  
15 evidence, if we have to have any evidence, let me hear from  
16 you, Mr. Leta.

17 MR. LETA: Thank you, Your Honor. First, let me  
18 begin by thanking Mr. Dunn, and I don't mean that in a  
19 critical or sarcastic way. Mr. Dunn has been on vacation  
20 this week. And in spite of that, he has been very  
21 professional and courteous in working with us to put  
22 together for Your Honor the stipulated facts and a binder -  
23 - two binders, actually - of exhibits. Your honor mentioned  
24 the stipulated facts. You didn't mention the exhibits. I'm  
25 hoping my office --

1 THE COURT: I have a collection of the exhibits,  
2 the two binders worth.

3 MR. LETA: Thank you. You'll notice that, with  
4 those exhibits, we also filed a joint statement indicating  
5 which of the exhibits we agreed would be offered, which of  
6 those offered exhibits we agreed should be admitted. And  
7 when you look at that statement, you will see that ninety  
8 percent of all of the exhibits -- and in fact all of the  
9 exhibits I am going to refer to in my remarks -- have been  
10 stipulated to as admitted. We did that -- and Mr. Dunn was  
11 very cooperative -- so that we could hopefully focus on the  
12 issues and not have a lot of time spent on stuff that's  
13 really not in dispute.

14 The first question that Your Honor asked us to  
15 address this morning in its pretrial order was whether we  
16 should have a hearing or not, and if we're going to have a  
17 hearing, what is the scope of evidence that should be  
18 heard. And that's appropriate. Let me tell you why we don't  
19 need a hearing. And let me tell you why there really isn't  
20 any dispute about how the Court should rule. There's really  
21 only one issue in this case. That issue has three  
22 components. The issue is whether or not the defendants have  
23 complied with section five of the settlement agreement. And  
24 if Your Honor would like to look at the settlement  
25 agreement, it's in exhibit 8 of the binder. It may be

1 helpful. If they complied --

2 THE COURT: Go ahead.

3 MR. LETA: If they complied, then the judgment  
4 should be satisfied and released, and that we agreed in the  
5 settlement agreement that if the conditions for satisfying  
6 that judgment were fulfilled, that judgment would be  
7 satisfied. But the agreement also says if those conditions  
8 are not met, then the agreement becomes fully enforceable  
9 and collectible. Now, in order to comply with section five,  
10 each of the events that are specified in paragraphs 1 and  
11 4A through D must have occurred on or before November 19 of  
12 2013. Partial performance, even significant performance,  
13 and even substantial performance of those conditions  
14 doesn't satisfy section five. If one of the conditions is  
15 not fulfilled, then the agreement -- then the judgment,  
16 excuse me, is enforceable. Here we have three unfulfilled  
17 events.

18 Now before we get into the specifics of the  
19 agreement, I think it's appropriate to talk about the legal  
20 standards. This settlement agreement has been stipulated to  
21 as unambiguous and integrated. Section 17 of the document  
22 does not permit parole or extrinsic evidence that  
23 contradict or explain any term of the agreement. And I  
24 think the law in Utah is pretty clear on this point. That  
25 if the language of the four corners of the contract is

1 unambiguous, the parties' intentions are determined from  
2 the plain meaning of the contractual language. That's the  
3 Zions Management Services versus Record case from the Utah  
4 Supreme Court. Or, in the Mid-America Pipeline case, the  
5 Court said it a different way. It said the Court will  
6 consider extrinsic evidence of the parties' intentions only  
7 if the language of the contract language is ambiguous.  
8 Here's a stipulation that it is unambiguous and integrated.

9 I think the case that is most important on this  
10 point is the 2008 decision of the Utah Supreme Court in  
11 Tangren -- or Tangreen, I'm not quite sure how it's  
12 pronounced. T-A-N-G-R-E-N -- and by the way, you honor, I  
13 have copies of all these cases for counsel and for Your  
14 Honor. But in Tangren, the issue came as to whether or not  
15 the Court could consider parole evidence in an integrated  
16 contract, and here's what the Court said: "We've expounded  
17 on the parole evidence rule on a number of occasions and  
18 explained that, as a principle of contract interpretation,  
19 the parole evidence rule has a very narrow application.  
20 Simply stated, the rule operates in the advance of fraud or  
21 other invalidating causes to exclude evidence of  
22 contemporaneous conversations, representations, or  
23 statements offered for the purpose of varying or adding to  
24 the terms of an integrated contract. Thus, if a contract  
25 integrated, parole evidence is admissible only to clarify

1   ambiguous terms, and it is not admissible to vary a  
2   contract, contradict clear and unambiguous terms of the  
3   contract.

4               THE COURT: Unless there's some other invalidating  
5   situation.

6               MR. LETA: Yes. And that case also recognized that  
7   even if the contract is integrated, there is one very, very  
8   narrow situation where the Court can consider parole  
9   evidence, but it doesn't exist here.

10              THE COURT: Well, it says fraud and other  
11   invalidating provisions.

12              MR. LETA: Right, in other words -

13              THE COURT: I think Mr. Dunn is saying that a  
14   mistake is an invalidating proof.

15              MR. LETA: And it's not what Tangrenn says.  
16   Tangrenn says you don't look at specific terms. The only  
17   situation in which you can consider parole evidence is  
18   evidence of the invalidity of the whole contract. If the  
19   contract is a joke, if the contract is the result of a  
20   mistake, if the contract was because of a fraud, yes, you  
21   can consider parole evidence there. But if the contract is  
22   unambiguous -- as is stipulated -- and if it's integrated -  
23   - as it is and is stipulated -- the only parole evidence  
24   you can consider is evidence going to whether this  
25   contract, whether the contract is at all valid. And there's

1 no dispute here that the contract is valid. The parties  
2 both rely on the contract. So parole evidence is simply not  
3 permitted in this context.

4           So let's now go back and look at a second legal  
5 principle that is material, (someone sneezes) and that is -  
6 - bless you -- and that is waiver. They've asserted  
7 basically that we have waived the right to ask for all  
8 encumbrances against the strip parcels to be removed. And  
9 they are specifically talking about our communications  
10 easement that does in fact burden on these strip parcels.

11 First, the contract says no waiver is binding unless it's  
12 signed by the party who is supposedly giving up the waiver.  
13 And there is no evidence anywhere, no stipulation, that Red  
14 Bridge waived the right to have the encumbrances released.  
15 Secondly --

16           THE COURT: In writing pursuant to the --

17           MR. LETA: In writing pursuant to the contract -

18           THE COURT: Unambiguous integrated agreement.

19           MR. LETA: Absolutely. Secondly, if you overcome  
20 that and say, well, I can still consider an oral waiver or  
21 some other evidence of waiver, or if you say, well, a  
22 communication from counsel could be a writing, could be a  
23 digital signature that would be binding on the party, okay.  
24 So I'm going to try to give the defendants the full benefit  
25 of the doubt. The Soter's case from the Utah Supreme Court

1 makes it very clear that, in order to constitute waiver of  
2 an existing right, then there must be knowledge of its  
3 existence and an intent to relinquish it. The intent to  
4 relinquish it must be distinct. In other words, it can't be  
5 implied, or can't be through a suggestion or some other  
6 inference. It has to be a distinct intent to relinquish a  
7 known right, and we don't have that here. And I'll explain  
8 why we don't have that here. If you look at the one email  
9 that counsel is relying upon, it's basically an email I  
10 sent on August 27th, and that email is exhibit --

11 MR. DUNN: Twenty.

12 MR. LETA: Exhibit 20. Does Your Honor have it?

13 THE COURT: I have exhibit 20, which in my book  
14 consists of nine pages. Do you have page number?

15 MR. LETA: Yes, Your Honor, the first page should  
16 be an email from myself.

17 THE COURT: The first page I have is a letter from  
18 Mr. Dunn's office dated September 5<sup>th</sup>.

19 MR. LETA: Oh boy, I hope our exhibits are not  
20 misnumbered. Exhibit 20, Your Honor, should be an email  
21 dated August 27<sup>th</sup> at 8:05 -- excuse me, 8:03 p.m.

22 THE COURT: Does it just contain that one  
23 document?

24 MR. LETA: Actually, there's a memorandum attached  
25 to that email as well, with some proposed agreements. I

1 hope our indexes didn't get messed up, Your Honor. I  
2 apologize. This should be in binder two. -- (inaudible) --

3 MR. DUNN: Let him use this binder.

4 MR. LETA: Oh, thank you. Mr. Dunn has offered the  
5 Court the use of his binder, Your Honor.

6 THE COURT: All right.

7 MR. LETA: May I present?

8 THE COURT: Yes, thank you.

9 MR. LETA: Thank you. So does the Court have  
10 exhibit 20 now? It's an email from me dated August 27th.

11 THE COURT: Yes.

12 MR. LETA: Okay, this is the document that the  
13 defendants say constitutes a waiver. And if you read -- I'm  
14 going to read the entire document. It says, "We've taken a  
15 look at the title issues in light of the settlement and  
16 have determined that several corrective actions are  
17 required. Attached is a memo that explains the actions that  
18 are required with the documents that need to be executed to  
19 correct" -- and this is the critical word -- "some of the  
20 title defects. Please call or reply if you have any  
21 questions." And then that's memorandum that's attached goes  
22 through a number of the title exceptions and specifically  
23 lays out in what's called directives what we think needs to  
24 be done to fix them. Now, what the defendant wants to say  
25 is that word some should say all, but it doesn't. It says



1 here "some of the title defects," and if you then look at  
2 the title defects, you will see that, first of all, we  
3 focused the attention on exception 20, which is the  
4 exception in question, and the very title report that was  
5 submitted on June 17th. And then we contin-- we referenced  
6 -- excuse me, it was June 14th, which is exhibit 10. And we  
7 reference that exception on November 5th, November 8th,  
8 November 15th, and again on November 19th. I don't think  
9 how, based on our continuous representations that this is  
10 something that needs to be fixed, on the fact that the  
11 document that they're relying on says some and not all, you  
12 can come to the conclusion that this was a knowing,  
13 intentional relinquishment of a right. It simply wasn't.  
14 There's not evidence that it was a knowing, intentional  
15 relinquishment of a right. And there's no evidence that  
16 today that communications easement encumbers all of this  
17 property. It encumbers it. Now why is that important that  
18 it encumbers it? Because what we bargained for when we made  
19 this settlement agreement is that we would have access --  
20 see, that's a straight line -- this is our property on the  
21 east and this is our property on the west. These are  
22 straight lines that go from the southern borders of our  
23 property right to Sand Hollow Road. That's the property  
24 description. These are legal descriptions that are attached  
25 to the document. The legal descriptions of these parcels

1 are referenced in the easement. The access easement does  
2 not have a specific location, and that was very intentional  
3 because these properties -- all of these properties -- are  
4 currently undeveloped. They're not plotted. They're not  
5 subdivided. We don't know where those roads are going to  
6 go. So the key component for us of this deal was that we  
7 wanted four access points, two on one side and two on the  
8 other side, so we could get to Sand Hollow Road anywhere we  
9 decided to put those access points in the future based on  
10 whatever development was ultimately decided for our

11 properties. That access point could come up this road and  
12 go right through this triangle, right there into that  
13 property. It could come close to SR-9. It might be farther  
14 down the road. You might have a different access point for  
15 the west and a separate access point for the east because  
16 the properties were undeveloped.

17           That was a critical component of this agreement,  
18 and therefore, we needed to make certain that all  
19 encumbrances on these properties were removed because we  
20 didn't want to have to come along and say, ah, the best  
21 access point for us is to go right through here, and then  
22 have a judgment lien creditor say, -- (inaudible) -- sorry,  
23 I've got a judgment lien. You can't put your access there.  
24 I'm going to foreclose my lien, it's senior to your access,  
25 and you've got to pay a bunch of money before you can put

1 your road there. Or we didn't want somebody holding the  
2 communications easement to come along and say, ah, --  
3 (inaudible) -- you can't put your road there because I want  
4 to put my cell tower there, or I want to put my fiber optic  
5 cable box there, or I want to do something else there with  
6 your property. So therefore, even though that road would  
7 maximize the value of our parcels and allow them to be  
8 developed, we're not going to let you do that.

9 That's why we said in the settlement agreement,  
10 if you look at paragraph 4B of the settlement agreement --  
11 again, exhibit 8.

12 THE COURT: Blanket access and utility easement.

13 MR. LETA: Yes, and if you read down that  
14 paragraph. The first part of the paragraph says this is  
15 what the easement is going to consist of, it's going to be  
16 in four locations, it says with the specific location and  
17 description to be determined at the sole discretion of Red  
18 Bridge, as long as it's commercially reasonable. But then  
19 if you read farther down, the second to the last sentence,  
20 it begins "within 180 days." Do you see that, Your Honor?

21 THE COURT: Yes.

22 MR. LETA: It says, "Within 180 days after the  
23 entry of the judgment" -- which was May 23rd; 2013 --  
24 "defendants also shall cause all liens and encumbrances to  
25 be removed from the strip parcels." It doesn't say "all

1 liens and encumbrances that are encumbrances against  
2 Mellon." It doesn't say "all liens and encumbrances that  
3 are encumbrances only against the defendant's property that  
4 they own." It says "all liens and encumbrances that affect  
5 the strip parcels." So that we got the benefit of our  
6 bargain, which was that we could put the access roads  
7 anywhere it made sense to put them without fear that we had  
8 to negotiate with somebody else, pay additional money in  
9 order to put the road there. And we didn't get that  
10 bargain. Today, we still don't have that bargain. So what's  
11 the consequence in the agreement for not getting the  
12 bargain? We thought about that. We thought what happens if  
13 we make this deal and then the defendants for whatever  
14 reason refused to get the encumbrances removed, can't get  
15 the encumbrances removed, what's the consequence? A  
16 judgment. That's the consequence. We get a judgment. Now do  
17 we want a judgment? We would much prefer to have  
18 unencumbered access to our properties. We would much prefer  
19 the value that that renders to our properties so that we  
20 could develop them without fear of somebody else coming in  
21 and stepping on our toes. But barring that, the next best  
22 alternative for us under the contract is a judgment.

23 And the defendants knew that that was an option.  
24 In fact, they specifically bargained in the document for a  
25 way to pay that judgment in installments. If they couldn't

1 comply, they said; well, we don't want to have to pay two  
2 million dollars to you a year from now. Give us -- let us  
3 pay a million dollars in a year and then we'll pay the rest  
4 another year later, spread it out over a two year period of  
5 time. We said okay. They didn't pay the million dollars. So  
6 we're here -- and we sat waiting for them from last  
7 November until May. We said, okay, you've got until May  
8 23rd of 2014 to pay up the million bucks. We're still not  
9 going to enforce this judgment because you have the right  
10 to pay it, pay it, and they never did. We only acted on  
11 filing our writ when all of their rights had expired under  
12 the contract. So --

13 THE COURT: To your knowledge, have they done  
14 anything from November to May?

15 MR. LETA: Not to our knowledge. We have a title  
16 report, Your Honor, that's part of these exhibits, that's  
17 dated June 17, 2014, and it still shows the communications  
18 easement as a burden, it still shows the judgment lien as a  
19 burden against these properties. Nothing has been done. And  
20 so what do we have? We have access easements, sure enough.  
21 Right? But we still don't know where we're going to put  
22 those access easements, and now we know that, where ever we  
23 put them, we're going to have to negotiate something about  
24 this communication easement. And if we want to put it in  
25 this corner, we're going to have to negotiate something

1 with T&R Lumber because they've got a lien out there.

2 THE COURT: How much was the lien?

3 MR. LETA: \$39,000..

4 THE COURT: I can see worrying about --

5 (inaudible) -- 39,000 -- million.

6 MR. LETA: That's actually one of my arguments,  
7 Your Honor. The defendants have gone to great lengths to  
8 say, oh, this was an error. It shouldn't have been in here.  
9 No, remember, they control Elim Valley too. This isn't a,  
10 you know, a distant relative over here. It's not even --

11 it's in the family. In fact, when you look in the  
12 documents, you'll see they can't really claim an error.  
13 Why? Because when we got the title report, which was after  
14 we signed the dea -- the document, we said, wait a minute,  
15 Elim Valley has got this corner piece down there. In order  
16 to give us an unencumbered, broad easement across the  
17 property, we need Elim Valley to sign it. So we amended the  
18 easement. We said, we need Elim Valley to sign that amended  
19 easement. The defendants come back and say, that's a  
20 mistake. Elim Valley shouldn't be part of this agreement.  
21 There's no obligations on the part of Elim Valley. No, what  
22 did they do? They signed it. Elim Valley signed the amended  
23 easement. Why? Because it knew it had a responsibility to  
24 give us unencumbered access, just like it has a  
25 responsibility to remove that judgment lien. They didn't

1 say this was an error. The only time they asserted an error  
2 was on November 14th, five days before the deadline when  
3 they hadn't made peace with T&R Lumber, when they hadn't  
4 either paid the judgment they owed, paid something to T&R  
5 Lumber to subordinate that judgment to our easement --  
6 that's all we needed, was a subordination. We didn't care,  
7 you know, whether they had paid it off. We just needed it  
8 subordinated so we didn't have to deal with it in the  
9 future. Or if they had some dispute with T&R Lumber, let  
10 them bond around it. Put up some money to get the lien  
11 released. Do something. That's all we needed. But they did  
12 nothing.

13 THE COURT: So what about the communications  
14 easement?

15 MR. LETA: The communications easement, we made  
16 that super duper simple. So the communications easement was  
17 sitting out there. We said, look guys, you've got to  
18 release this communications easement because it's a burden  
19 on the entire strip parcel. We don't know where you're  
20 going to put your cell towers and your infrastructure. We  
21 can't develop our property with the unknown and the risk  
22 out there. And they said, well, we'll consider giving you a  
23 subordination but later, later down the road whenever you  
24 figure out where you're going to put your easements, then -  
25 - and when you have a tenant for the property, then we'll

1 consider giving you a subordination. That's not good  
2 enough. We can't live with the uncertainty and the risk. We  
3 need to know now that that communication easement is  
4 subordinated, and we said, we'll make it super simple for  
5 you. Here's the document. On November 15, four days prior  
6 to the deadline, here's the document. It's a subordination.  
7 All you have to do is sign it. It'll fix the problem. Mr.  
8 Roland Walker. You can sign it. You signed everything else.  
9 You signed for all of the other entities.

10 When you look at -- see, the communications  
11 easement also burdened these other properties, Your Honor,  
12 because it burdened all of Elim Valley, not just these  
13 parcels. We said, we can't develop our properties with that  
14 communications easement sitting out there. As to our  
15 properties -- and this is in paragraph 4A -- you've got to  
16 terminate that easement. And they did. Elim Valley signed  
17 it. Mellon signed it. The Walker Family Trust signed it.  
18 All the various parties that had an interest in that  
19 easement signed off on it. And whose signature is on the  
20 document for everybody? Roland Walker. Only one person  
21 signed five, six times for all the various entities. So  
22 what we did is we said, here's a subordination agreement.  
23 Just subordinate the communications easement to our access  
24 easement and have Mr. Walker sign his name six times and  
25 we're done. They could have done that. It would have taken



1 two minutes to sign that subordination agreement. They  
2 didn't. Why? There's only one possible, logical explanation  
3 for why they didn't do it. Because they wanted leverage.  
4 They wanted leverage, leverage on us. They wanted to be  
5 able to hold that communications easement over our head  
6 when we said, we want to put the access road here, or we  
7 want to put the access road over here. They held -- they  
8 wanted to hold out leverage because they knew they were  
9 going to get a judgment against them. And today they still  
10 have that leverage because that communications easement is  
11 still out there as a burden on our property, on our access  
12 easement. So we don't have the benefit of our bargain.

13 THE COURT: But they're paying, you say, two  
14 million dollars for that leverage.

15 MR. LETA: That's exactly right. Or, I -- you  
16 know, look, what I think -- I have a fundamental procedural  
17 problem with where we are here today too. They filed a  
18 motion under Rule 58 for satisfaction of the judgment. That  
19 is a motion that shows that you've paid the judgment, that  
20 you've taken some steps --

21 THE COURT: Well, as I see it, they're asking for  
22 declaratory relief and a summary judgment, basically, on  
23 that.

24 MR. LETA: Exactly. What they're really asking  
25 for, I think, is to reform the contract. They're really

1 asking for reformation, or they're asking for relief under  
2 Rule 60 to get rid of the judgment, and that isn't even  
3 before us. But, so I think we have a fundamental procedural  
4 problem, and I'm not waiving that, I'm reserving that. But  
5 when you get beyond it, the facts don't support even that  
6 relief had it been plugged properly.

7 And the other issue we have is the subordination  
8 agreement -- excuse me, the joint mutual development  
9 agreement. There's just too many agreements. Okay, so let  
10 me talk about the mutual development agreement. And if Your

11 Honor -- before I do that, let me just make one additional  
12 point. If Your Honor has the settlement agreement, recital  
13 D is relied on heavily.

14 THE COURT: Yes.

15 MR. LETA: It says "the properties are each  
16 separated by" -- recital D, I'm reading in its entirety --  
17 it says "the properties are each separated by certain strip  
18 parcels"--

19 THE COURT: Can you tell me which page you're on?

20 MR. LETA: I'm sorry, it's the first page of the  
21 settlement agreement. It's exhibit 8.

22 THE COURT: Exhibit 8.

23 MR. LETA: Eight. Yes, it's -

24 THE COURT: Okay, go ahead.

25 MR. LETA: Recital D says "the properties are each

1 separated by certain strip parcels that are owned by Mellon  
2 that are parallel to Sand Hollow Road, which bisects the  
3 strip parcels." That's the first sentence. Notice, it  
4 doesn't say "are solely or exclusively" owned by Mellon; it  
5 says "are owned by Mellon," and certainly, Mellon did own  
6 parts of those strip parcels. And then it goes on to say  
7 "the legal descriptions of the strip parcels are attached  
8 as Exhibit B, which defendant represents and warrants to  
9 Red Bridge constitutes all of the property that Mellon owns  
10 between the properties in Sand Hollow Road." Now, there's  
11 two parts to that. First, it is true that it represents all  
12 of the property that Mellon owns, but it doesn't say that  
13 nobody else has an interest in the property. And secondly,  
14 the defendants controlled Elim Valley. They agreed to these  
15 property descriptions. The descriptions of the strip  
16 parcels were attached to the agreement. They were the very  
17 descriptions used in the access easement and in have been  
18 used for all of the subordinations. So we understood we  
19 were getting all of this property, not the property without  
20 the triangle. And we prepared all of the documents based on  
21 those legal descriptions. So there can't be mutual mistake.  
22 It wasn't -- it may have been their mistake, but it wasn't  
23 our mistake. There's no mutual mistake.

24 And if they're going to rely on unilateral  
25 mistake to try to overcome this document, I think they have

1 a huge problem with the Equitable Life and Casualty  
2 Insurance case. That's a 1993 decision from the Court of  
3 Appeals of Utah, and here's what it says. It says, in Klaus  
4 vs. Vanwagoner, a 1992 decision, "we outlined the four  
5 criteria that must be satisfied before rescission" - and this  
6 is terminating the contract; they're not even seeking that  
7 - "based on unilateral mistake will be granted. One, the  
8 mistake must be so great a consequence that to enforce the  
9 contract as actually made would be unconscionable. The  
10 matter - number two -- the matter as to which the mistake  
11 was made must relate to a material feature of the contract.  
12 Number three, generally the mistake must have occurred  
13 notwithstanding the exercise of ordinary care and diligence  
14 by the party making the mistake. And four, it must be  
15 possible to give relief by way of rescission without serious  
16 prejudice to the other party except for the loss of his  
17 bargain. In other words, it must be possible to put him in  
18 the status quo." They can't fulfill those four criteria  
19 here. They don't have a basis for unilateral mistake, based  
20 on the stipulated exhibits and the stipulated facts.

21 So now let me turn to the mutual development  
22 agreement, and the language I'd like Your Honor to look at  
23 is in paragraph 4.C. I make these remarks first by  
24 prefacing that the contract is unambiguous and integrated,  
25 and the Court must apply a plain meaning to the words:

1 Paragraph 4C is on page three of the settlement agreement.  
2 I will start reading, and it's says, it's entitled "Mutual  
3 Settlement Agreement." Now the first word is *mutual*. Mutual  
4 between who? The parties.

5 THE COURT: Whom.

6 MR. LETA: Whom. Sorry. Mutual between whom? The  
7 parties. They have taken great pains to say Elim Valley  
8 Planning and Development is not a party of this contract.  
9 Who signed the 2007 old development agreement? Elim Valley.  
10 Not a party to this settlement agreement. What's mutual  
11 about the old development agreement, which was placed on  
12 these properties and affected all of Elim Valley even  
13 before our trustees were recorded. There's nothing mutual  
14 about that. So the plain meaning of this word is that there  
15 has to be something between the parties to this document.  
16 That's first.

17 It says "Within 180 days after the entry of the  
18 judgment, Mellon or its successors and assigns and Red  
19 Bridge or its successors and assigns shall negotiate in  
20 good faith to enter into a mutually acceptable development  
21 agreement -- which we call the development agreement --  
22 regarding the strip parcels and the properties that  
23 provides for the mutual future development of the strip  
24 parcels and the properties in a manner that is satisfactory  
25 to both Red Bridge and Mellon." It is a future

1 contemplating agreement. It is not a historical agreement.  
2 It's not the old agreement. It's not the 2007 agreement. It  
3 is a new agreement between these parties that affects only  
4 these four parcels of property. Was any such agreement even  
5 proposed by the defendants? No. They've stipulated they  
6 never did that. What they did is they came to a meeting  
7 late, late, late in the hour, on November 11th of 2013,  
8 eight days before their deadline, and they said -- and we  
9 said to them, and the record is clear on this, we're happy  
10 to have a meeting. Just give us your proposal three  
11 business days prior to the meeting. Didn't get it. Did we  
12 get one at the meeting? No. Instead, what we got was, oh,  
13 we think the 2007 development agreement meets the criteria  
14 of section 4.C. And we said, no, it doesn't. That  
15 development agreement is like a master zoning agreement.  
16 It's like the Sandy zoning code. It doesn't deal with the  
17 property dispute between Your Honor and your neighbor as to  
18 how you're going to mutually -- you know, what fence you're  
19 going to put up, and what trees you're going to plant, and  
20 you know, where the dog access is going to be between you  
21 and your neighbor's property. That's what we're talking  
22 about here. We're talking about these four properties. And  
23 how can we be sure that you're not going to develop these  
24 strip parcels in such a way that we can't make commercial  
25 use of our properties? Are you going to put a brothel over

1 there? Are you going to put like maybe, you going to try to  
2 put some sort of kiosk on these little strip parcels? What  
3 are you going to do? Because it matters. Because what you  
4 intend to do legally on these properties will impact how we  
5 can develop our properties. That's why we need a mutual  
6 development agreement between us, not the old development -  
7 - not the zoning plan. We need to know what you're going to  
8 do with your properties. So give us your proposal. We  
9 didn't get a proposal. There's no dispute. We never got a  
10 proposal.

11           So we don't need to talk about what the parties  
12 discussed at the meeting, why we talked about the  
13 development agreement as not being appropriate, why we  
14 discussed the fact that they can't really make any  
15 commercial use of those strip parcels because they're too  
16 small. We don't need to go into the discussions that  
17 happened at the meeting because there was never a proposal.  
18 And by the plain meaning of this contract, it couldn't be  
19 the 2007 development agreement. And if they say to you, oh,  
20 yes, it could. Of course it's not consistent with the  
21 language, but the defendants agreed to it. Where is there a  
22 writing that says we agreed to it? Because that would be an  
23 amendment to this contract, and this contract has never  
24 been amended. This contract says we're going to enter into  
25 a new development agreement. And you know something? The

1 defendants knew that too. If you look at exhibit 33, and  
2 hopefully you have the right binder..

3 THE COURT: Yes. -- (inaudible) --

4 MR. LETA: Hold on just a minute, Your Honor. I  
5 want to make sure I get my facts straight. Oh, I'm sorry,  
6 it's exhibit 17.

7 THE COURT: Seventeen?

8 MR. LETA: Seventeen. And I want to make sure you  
9 have the right exhibit too.

10 THE COURT: I don't have that in this binder. What  
11 is the document?

12 MR. LETA: It's a letter dated July 31st. Thank  
13 you. May I present Mr. Dunn's binder, Your Honor?

14 THE COURT: Yes.

15 MR. LETA: You know, my sense is that, Your Honor  
16 may have -- I know we've given you a lot of documents, and  
17 when we filed our application, we submitted what's called  
18 an appendix. And we had many of these same exhibits in our  
19 appendix, but the tabbing and the numbering was completely  
20 different. That's probably the source of the problem.

21 MR. LETA: All right, I'm not looking at a letter  
22 dated July 31<sup>st</sup> from Mr. Dunn's office.

23 MR. LETA: Right. If you turn to the second page  
24 and the third full paragraph that begins "exception 19."

25 THE COURT: Yes.



1 MR. LETA: It says "exception 19 relates to the  
2 development agreement for Elim Valley. As you recall,  
3 paragraph 4C of the development agreement anticipates  
4 discussions toward entering into a new development  
5 agreement between the parties." They knew it was a new  
6 development agreement, Your Honor. As late as July 31st,  
7 they knew it a new development agreement, not the old  
8 development agreement. They knew that's what the contract  
9 contemplated, and they simply didn't propose one. So --

10 THE COURT: It continues on in the same paragraph  
11 "so that I can facilitate an appropriate meeting to discuss  
12 and negotiate a development agreement that would comply  
13 with the intent of paragraph 4C."

14 MR. LETA: Exactly. So, we never had it, we never  
15 even had a proposed new development agreement. And that  
16 leaves us, frankly, where we are today.

17 THE COURT: So you say the lien on the property  
18 that's marked in red on that chart on the left side. Number  
19 two, the communications --

20 MR. LETA: Ease -- it's the easement.

21 THE COURT: Easements. And three, a new  
22 development agreement.

23 MR. LETA: None of those things occurred, and they  
24 still don't. So today, as I stand here before you, my  
25 client has an access easement that is subordinate to a

1 communications easement. That is not what we bargained for.  
2 We have an access easement that is subject to a judgment  
3 lien. That's not what we bargained for. We do not have a  
4 mutual development agreement between our properties and the  
5 strip parcels. That's not what we bargained for. We didn't  
6 get paid a million dollars. That's not what we bargained  
7 for. What we did bargain for is that if we couldn't get  
8 those things, which were our first options and preferences,  
9 then we would have a two million dollar judgment, and  
10 that's what we have.

11 THE COURT: Well, the language of 4C says "shall  
12 negotiate in good faith to enter into a mutually acceptable  
13 development agreement."

14 MR. LETA: Yes.

15 THE COURT: So is that what the obligation is?  
16 Good faith negotiations?

17 MR. LETA: No, I think it's -- yes, it's good  
18 faith negotiations to enter into an agreement, but I think  
19 it contemplates an agreement. I don't think --

20 THE COURT: Well, it contemplates maybe you'll  
21 have an agreement. But it doesn't say that. It says "shall  
22 negotiate in good faith."

23 MR. LETA: It does.

24 THE COURT: Did they do that?

25 MR. LETA: I don't think so.

1 THE COURT: Why not?

2 MR. LETA: Because they didn't propose a new  
3 agreement.

4 THE COURT: Did you?

5 MR. LETA: No.

6 THE COURT: So you didn't do it either.

7 MR. LETA: We didn't propose a new agreement, Your  
8 Honor, and I'll tell you why we didn't. Number one, it  
9 wasn't our responsibility to. If you look at paragraph 4 of  
10 that same document --

11 THE COURT: Of what same document?

12 MR. LETA: The one you're looking at.

13 THE COURT: Yes.

14 MR. LETA: Look at the introductory language in  
15 paragraph 4. It says "within the time period set forth  
16 below, defendants shall do or cause to be done all of the  
17 following."

18 THE COURT: So you say they didn't negotiate in  
19 good faith because they didn't provide you with a proposal.

20 MR. LETA: Right.

21 THE COURT: Well, don't they contend that they did  
22 provide you with a proposal, namely the old agreement.

23 MR. LETA: Yes, but I don't think that's a good  
24 faith negotiation, Your Honor, simply because the document  
25 contemplates a new agreement.

1 THE COURT: If you took the terms of the old 07  
2 agreement and put a cover page on it and say this is our  
3 new agreement; doesn't it contain the terms of their new  
4 proposal.

5 MR. LETA: No, it doesn't. That 2007 development  
6 agreement doesn't even address these four parcels. In fact,  
7 these four parcels didn't exist when that 2007 development  
8 agreement was recorded. When that agreement was recorded,  
9 none of these properties were even described by leads and  
10 bounds. Our properties were created in July of 2007 for  
11 purposes of collateralizing a loan.

12 THE COURT: Well, did you say that when you were  
13 negotiating back in November of 2013?

14 MR. LETA: I'm sorry, I misunderstood.

15 THE COURT: Did you say that when you were  
16 negotiating back in November of 2013?

17 MR. LETA: Did we say that -- ?

18 THE COURT: We can't use the 2007 agreement  
19 because these parcels didn't apply, didn't exist.

20 MR. LETA: Absolutely, we said that. And we also  
21 said --

22 THE COURT: What was their response to that?

23 MR. LETA: Their response was, well, it doesn't  
24 matter because the overall 2007 agreement governs all of  
25 the properties in Elim Valley. And we don't disagree that

1 it governs all the properties in Elim Valley, but it  
2 doesn't address the specific development needs of these  
3 four parcels, which weren't even in existence then and to  
4 this day have not been planned or -- (inaudible) --

5 THE COURT: And you told them at the time?

6 MR. LETA: Yes. We also discussed at great length  
7 why the 2007 agreement wouldn't work. Why, in order to  
8 accommodate us, it would need to be --

9 THE COURT: Well, Mr. Leta, if we're going to get  
10 into whether there was good faith negotiations back under  
11 this language in November of 2011 or leading up to that  
12 even, don't we have a whole bunch of facts that we need to  
13 talk about?

14 MR. LETA: If we go there, I agree, but we don't  
15 need to go there.

16 THE COURT: So you can abandon that argument for  
17 the sake of this proceeding and say, putting that aside and  
18 not giving up on it, we still -- there's no question of  
19 fact on these other two issues.

20 MR. LETA: Yes, no question of fact on the other  
21 two issues, and it only takes one.

22 THE COURT: All right. Thank you. Mr. Dunn, do you  
23 want to respond to any of that?

24 MR. DUNN: I would, Your Honor.

25 THE COURT: How much money has already changed