

COTTONWOOD HEIGHTS

RESOLUTION NO. 2014-65

A RESOLUTION APPROVING ENTRY INTO AGREEMENTS  
TO DEDICATE GROUND FOR PUBLIC IMPROVEMENTS  
(1700 EAST SIDEWALK PROJECT)

**WHEREAS**, the city council (the “*Council*”) of the city of Cottonwood Heights (the “*City*”) met on 14 October 2014 to consider, among other things, authorizing the City’s entry into (a) an “Agreement to Dedicate Ground for Public Improvements” for approximately 2,929 square feet of ground abutting 1700 East at approximately 7035 South in the City; and (b) a second “Agreement to Dedicate Ground for Public Improvements” for approximately 1,118 square feet of ground abutting 1700 East at approximately 7021 South in the City (collectively, the “*Agreements*”), copies of which are annexed hereto as exhibits “A” and “B”; and

**WHEREAS**, after careful consideration, the Council has determined that it is in the best interests of the health, safety and welfare of the citizens of the City to authorize the City’s entry into the Agreements as proposed;

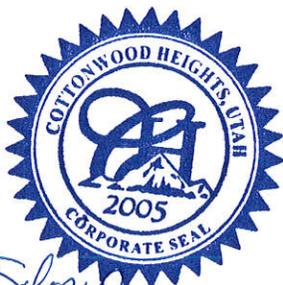
**NOW, THEREFORE, BE IT RESOLVED** by the city council of Cottonwood Heights that the Council hereby authorizes the City’s entry into the Agreements, and authorizes and directs the City’s mayor and recorder to execute and deliver the Agreements on behalf of the City.

This Resolution, assigned no. 2014-65, shall take effect immediately upon passage.

**PASSED AND APPROVED** this 14<sup>th</sup> day of October 2014.

**COTTONWOOD HEIGHTS CITY COUNCIL**

ATTEST:



Kory Solonio  
Kory Solonio, Recorder

By

Kelvyn H. Cullimore, Jr., Mayor

**VOTING:**

Kelvyn H. Cullimore, Jr.	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
Michael L. Shelton	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
J. Scott Bracken <i>Absent</i>	Yea <input type="checkbox"/>	Nay <input type="checkbox"/>
Michael J. Peterson	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>
Tee W. Tyler	Yea <input checked="" type="checkbox"/>	Nay <input type="checkbox"/>

**DEPOSITED** in the office of the City Recorder this 14<sup>th</sup> day of October 2014.

**RECORDED** this 15 day of October 2014.

EXHIBIT "A" TO  
RESOLUTION NO. 2014-65

7035 South 1700 East  
Affects a Portion of Parcel No. 22-28-201-046

**AFTER RECORDING RETURN TO:**

Wm. Shane Topham  
Cottonwood Heights City Attorney  
CALLISTER NEBEKER & McCULLOUGH  
10 East South Temple, 9<sup>th</sup> Floor  
Salt Lake City, UT 84133

**Agreement to Dedicate Ground  
for Public Improvements**

**THIS AGREEMENT TO DEDICATE GROUND FOR PUBLIC IMPROVEMENTS** (this "*Agreement*") is entered into effective 1 August 2013 between **COTTONWOOD HEIGHTS**, a Utah municipality whose address is 1265 East Fort Union Blvd., Suite 250, Cottonwood Heights, UT 84047 ("*City*"), and **MARLI B. STEVENS**, as trustee of The Claudette Stevens Irrevocable Trust dated January 20, 2012, whose address is 7035 South 1700 East, Cottonwood Heights, UT 84121 ("*Owner*").

**RECITALS:**

A. Owner owns fee simple title to certain improved real property that is known as 7035 South 1700 East, Cottonwood Heights, UT (the "*Property*"). The legal description of the Property is set forth on attached exhibit "A-1." The Property abuts a public street known as 1700 East.

B. City has determined that curb, gutter, sidewalk and related improvements (collectively, "*Improvements*") should be installed along the east side of 1700 East to connect currently-existing curb, gutter and sidewalk on either side, as shown on the "Proposed Sidewalk Map" (the "*Sidewalk Plan*") that is attached hereto as exhibit "B." As shown on the Sidewalk Plan, this public improvement project (the "*Project*") will be constructed on the realty located within approximately 16.5 feet to the East of the current edge of pavement/travel lane of 1700 East, fronting three properties known as 7059 South 1700 East; 7021 South 1700 East; and 7035 South 1700 East (collectively, the "*Affected Properties*").

C. The Project will include constructing Improvements along the portion of 1700 East that fronts the Property. Ownership of the affected portion (the "*Parcel*") of the Property is uncertain; City believes that some portion of the Parcel already may be part of the public right-of-way for 1700 East, while Owner believes that it is the sole owner of all of the Parcel. The Parcel, which contains approximately 2,929 square feet, is particularly described on attached exhibit "A-2," and is shown on the Sidewalk Plan.

D. The parties desire to amicably resolve their difference of opinion so that the Improvements can be installed for the benefit of the public. The purpose of this Agreement is to formalize the parties' agreement for public dedication and conveyance to City of the Parcel, for City's construction of the Project Improvements thereon, and for City's restoration of the remaining Property that is affected by such construction.

E. The parties intend to set forth herein their entire agreement regarding the subject dedication and all related matters, and to supersede hereby and to consolidate herein all of their prior negotiations and agreements, whether oral or written, regarding the same.

**A G R E E M E N T :**

**NOW, THEREFORE**, in consideration of the recitals above and the mutual covenants, promises and agreements contained herein, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

Section 1. **Dedication and Conveyance**. Owner agrees to dedicate and convey the Parcel to City as specified in this Agreement. Such dedication and conveyance shall occur as of the Closing (defined below) through Owner's execution and delivery to City of a general warranty deed (the "*Deed*") in such form as City reasonably may require, conveying the Parcel to City, free and clear of all liens and encumbrances.

Section 2. **Purchase Price**. The purchase price (the "*Purchase Price*") to be paid by City for the Parcel and for City's other rights hereunder shall be \$35,148.00 (calculated at \$12/square foot for 2,929 square feet). City shall pay the Purchase Price to Owner at Closing in cash or other cash-equivalent, immediately available funds.

Section 3. **Project**. Following Closing, City may proceed with the Project on such timetable as City deems appropriate. City shall give Owner at least two weeks' prior verbal or written notice of commencement of the Project. Once commenced, City shall endeavor, through all reasonable means, to cause the Project to be diligently prosecuted to completion. Throughout the Project, City staff shall be available to consult with Owner concerning construction timing, issues, etc. in order to resolve Owner's legitimate concerns as fully and promptly as reasonably possible. The parties acknowledge, however, that any construction project, no matter how well-planned or well-managed, is disruptive. Consequently, the parties desire to be cooperative and responsive throughout the Project in order to minimize controversy and to assure that the Project is properly completed in accordance with applicable City standards with as little adverse impact on Owner and the remaining Property as reasonably possible.

Section 4. **Mitigations**. The Property currently contains landscaping and other improvements associated with Owner's residential use of the Property which will be affected by the Project. Given City's desire to minimize the adverse impact of the Project on Owner and the remaining Property, City shall undertake the following mitigations as part of the Project:

(a) **Mailboxes**. The current mailboxes on 1700 East will either be reused or replaced with comparable mailboxes, and will be relocated to another place on the Property outside of the Parcel, as reasonably directed by Owner. City will cause temporary mailboxes to be erected for use during the construction process, as reasonably directed by Owner.

(b) **Yard Light**. The current pole light on or near the Parcel will be relocated at least ten feet closer to the residence on the Property, as reasonably directed by Owner.

(c) Landscaping. Landscaping affected by the Project will be replaced or restored substantially as shown on the landscape plan (the "Landscape Plan") that is attached hereto as exhibit "C." City will work with Owner during the landscape restoration process to help assure that the finished result is reasonable acceptable to Owner.

(i) Lawn: Foliage. Affected lawn area will be restored to comparable condition as at present. Affected trees, shrubs, etc. will be replaced as shown on the Landscape Plan, using mature stock that is reasonably comparable to the current foliage; provided that the parties acknowledge that the replacement foliage may be of lesser size and caliper than the current foliage due to transplanting constraints, and increased costs, of utilizing equal-sized stock.

(ii) Berm. The landscaped berm currently located between the entrances to the circular driveway on the Property will be relocated, re-vegetated, etc. as shown on the Landscape Plan. The new berm will be made to match the current berm (in terms of height, grade and landscaping) to the extent reasonably possible given the size and configuration of the remaining Property. The replacement berm will be placed so as to not erode onto the public sidewalk to be constructed as part of the Improvements.

(iii) Sprinkling System. Affected portions of the fully automatic sprinkler system on the remaining Property will be repaired, replaced and/or reconfigured to properly irrigate the remaining Property, including use of comparable replacement components and revision of sprinkler "zones" to provide a properly functional whole.

(iv) Parkstrip. The parkstrip between the sidewalk and curb (to be constructed) fronting the remaining Property will be constructed of stamped concrete. City will offer Owner, and the owners of the other Affected Properties, the choice of several available patterns and colors, and will install a uniform parkstrip at City's cost as part of the Project.

(d) Access; Driveways. The Property currently contains three ingress/egress points, including the two ends of a circular driveway and a private lane, all intersecting with 1700 East. Such access points will be relocated Easterly off the Parcel as part of the Project, and will be replaced with comparable concrete entries as at present, with no reduction in their widths. Vehicular access to the remaining Property during construction of the Project will be preserved as reasonably possible through use of steel plate ramps, staggering of construction of each of the replacement ramps, etc.

(e) Dust; Staging. City will adopt a construction mitigation plan designed to reasonably minimize Project-caused dust and refuse. City will require its contractors to not place construction vehicles, equipment or materials on Owner's remaining Property except during the limited times that such items are needed to prosecute the restoration work on Owner's remaining Property as contemplated by this Agreement. Worker vehicles, etc. shall not be parked on Owner's remaining Property or elsewhere so as to block access to Owner's remaining Property.

Section 5. Conditional Efficacy. City's obligations under this Agreement are conditioned on City obtaining conveyance or occupancy rights to the balance of the realty

required for the Project from the owners of the other two Affected Properties. City reserves the right to waive this condition in its sole, unfettered discretion.

Section 6. **Closing.** Closing and consummation of the transactions contemplated by this Agreement (“*Closing*”) may be delayed by up to one year from the effective date of this Agreement to provide adequate time for City to arrange for conveyance or occupancy of the balance of the realty required for the Project from the owners of the other two Affected Properties. The actual date, time and place of Closing will be specified by City upon at least two weeks’ prior notice (verbal or written) to Owner. Closing will occur either at City’s offices or at the offices of a local title company specified by City. At Closing, Owner will execute and deliver the Deed to City, conveying fee simple absolute title to the Parcel, free and clear of all liens and encumbrances, and City will pay the Purchase Price to Owner. Expenses and income of the Parcel shall be prorated as of the Closing. City may, at its cost, obtain a policy of title insurance in the amount of the Purchase Price, insuring that upon execution, delivery and recording of the Deed, City will own the Parcel as provided herein.

Section 7. **Default.** If either party defaults hereunder, then either party may pursue any and all legal and/or equitable remedies against the defaulting party. City’s remedies upon Owner’s default shall include, without limitation, the right of specific performance.

Section 8. **Covenants Run With Land.** Owner’s obligations under this Agreement shall (a) create an equitable servitude on the Parcel described on exhibit “A-2” in favor of City; (b) constitute a covenant running with the land constituting the Parcel; (c) bind every person having any fee, leasehold or other interest in any portion of the Parcel at any time or from time to time; and (d) inure to the benefit of and be binding upon (i) City and its successors and assigns, and (ii) Owner its successors and assigns as to legal ownership of Parcel.

Section 9. **No Partnership.** City and Owner do not by this Agreement in any way or for any purpose become partners or joint venturers with each other.

Section 10. **General Provisions.** The following provisions are also an integral part of this Agreement:

(a) **Binding Agreement.** This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the respective parties hereto.

(b) **Captions.** The headings used in this Agreement are inserted for reference purposes only and shall not be deemed to define, limit, extend, describe, or affect in any way the meaning, scope or interpretation of any of the terms or provisions of this Agreement or the intent hereof.

(c) **Counterparts.** This Agreement may be signed in any number of counterparts with the same effect as if the signatures upon any counterpart were upon the same instrument. All signed counterparts shall be deemed to be one original.

(d) Severability. The provisions of this Agreement are severable, and should any provision hereof be void, voidable, unenforceable or invalid, such void, voidable, unenforceable or invalid provision shall not affect the other provisions of this Agreement.

(e) Waiver of Breach. Any waiver by either party of any breach of any kind or character whatsoever by the other, whether such be direct or implied, shall not be construed as a continuing waiver of, or consent to any subsequent breach of this Agreement.

(f) Cumulative Remedies. The rights and remedies of the parties hereto shall be construed cumulatively, and none of such rights and remedies shall be exclusive of, or in lieu or limitation of any other right, remedy or priority allowed by law.

(g) Amendment. This Agreement may not be modified except by an instrument in writing signed by the parties hereto.

(h) Interpretation. This Agreement shall be interpreted, construed and enforced according to the substantive laws of the state of Utah.

(i) Notices. Any notice or other communication required or permitted to be given hereunder shall be deemed to have been received (a) upon personal delivery or actual receipt thereof or (b) within two (2) days after such notice is deposited in the United States mail, postage prepaid and certified and addressed to the respective addresses set forth herein or to such other address(es) as may be supplied by a party to the other from time to time in writing.

(j) Time of Essence. Time is the essence of this Agreement.

(k) Assignment. Owner may assign or otherwise convey its rights or delegate its duties under this Agreement only in connection with the conveyance of fee title to Owner's Property. Such assignment and delegation shall be deemed to occur automatically and contemporaneously with any such conveyance. No such conveyance shall relieve the original Owner of its obligations hereunder; instead, the original Owner shall remain liable to assure and to guaranty the full and timely performance of all of Owner's obligations hereunder notwithstanding that a successor Owner may then hold legal title to Owner's Property.

(l) Recording. This Agreement shall be immediately recorded in the official records of the Recorder of Salt Lake County, Utah. Owner hereby authorizes such recording, and grants to City a power of attorney, coupled with an interest, to effect such recording on behalf of Owner.

[Signatures to appear on following page.]

DATED effective the date first above written.

OWNER:

*Marli B. Stevens* Trustee

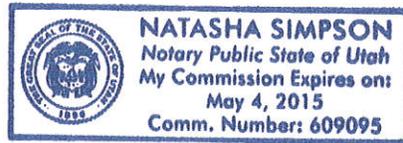
MARLI B. STEVENS, as trustee of The Claudette Stevens Irrevocable Trust dated January 20, 2012

STATE OF UTAH                    )  
  : ss.  
COUNTY OF SALT LAKE        )

SUBSCRIBED AND SWORN to before me on 2nd August 2013 by Marli B. Stevens, as trustee of The Claudette Stevens Irrevocable Trust dated January 20, 2012.

*Natasha Simpson*

Notary Public



CITY:

ATTEST:

COTTONWOOD HEIGHTS, a Utah municipality

By: \_\_\_\_\_  
Linda W. Dunlavy, Recorder

By: \_\_\_\_\_  
Kelvyn H. Cullimore, Jr., Mayor

STATE OF UTAH            )  
  :ss.  
COUNTY OF SALT LAKE )

On the \_\_\_\_ day of \_\_\_\_\_ 2013, personally appeared before me **Kelvyn H. Cullimore, Jr.** and **Linda W. Dunlavy**, who being duly sworn, did say that they are the Mayor and City Recorder, respectively, of **COTTONWOOD HEIGHTS**, and said persons acknowledged to me that said municipality executed the same.

\_\_\_\_\_  
Notary Public

598143.1

Exhibit A-1

11331123

11331123  
2/10/2012 2:23:00 PM \$11.00  
Book - 9990 Pg - 5481  
Gary W. Ott  
Recorder, Salt Lake County, UT  
MERIDIAN TITLE  
BY: eCASH, DEPUTY - EF 1 P.

When Recorded Mail To:  
Grantee  
7035 South 1700 East  
Cottonwood Heights, UT 84121  
MTC File No. 203848

**WARRANTY DEED**

Jane C. Strong, and her successors in trust, as Trustee of the Ruth M. Challis Family Trust created by a trust instrument dated September 1, 2008, GRANTORS, for and in consideration of TEN DOLLARS (\$10.00) and other good and valuable consideration, hereby CONVEY(S) and WARRANT(S) to

Marli B. Stevens, Trustee of The Claudette Stevens Irrevocable Trust dated January 20, 2012, as GRANTEE(S), the following real property located in Salt Lake County, State of Utah, described as:

Beginning South 10.66 rods from the North 1/4 corner of Section 28, Township 2 South, Range 1 East, Salt Lake Meridian; thence South 156.75 feet; East 20 rods; North 156.75 feet; West 20 rods to the point of beginning.

Less the following conveyed to Kraig B. Steffensen and Janet L. Steffensen by deed dated February 1, 1987: Beginning at a point South 10.66 rods and East 252.5 feet from the North 1/4 corner of Section 28, Township 2 South, Range 1 East, Salt Lake Meridian; thence South 112.75 feet, South 45° West 33.94 feet, more or less, to a point which is South 136.75 feet and West 24 feet of the point of beginning; South 20 feet; East 101.5 feet; North 156.75 feet; West 77.5 feet to the point of beginning.

Tax Parcel No. 22-28-201-046

Subject to general property taxes for the current year and thereafter.  
Subject to easements, conditions, covenants and restrictions of record.

In witness whereof, the grantors have executed this 10<sup>th</sup> day of February, 2012

Jane C. Strong, Trustee  
Jane C. Strong, Trustee

STATE OF UTAH )  
 ) :ss  
COUNTY OF SALT LAKE )

The foregoing instrument was acknowledged before me this 10<sup>th</sup> day of February, 2012, by Jane C. Strong, and her successors in trust, as Trustee of the Ruth M. Challis Family Trust created by a trust instrument dated September 1, 2008.

Vicki L Fleming  
Notary Public

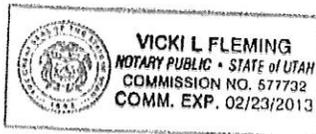


Exhibit "A-1" to  
Agreement to Dedicate Ground  
for Public Improvements

The following-described real property located in Salt Lake County, Utah:

Beginning South 10.66 rods from the North 1/4 corner of Section 28, Township 2 South, Range 1 East, Salt Lake Meridian; thence South 156.75 feet; East 20 rods; North 156.75 feet; West 20 rods to the point of beginning.

**Less the following** conveyed to Kraig B. Steffensen and Janet L. Steffensen by deed dated February 1, 1987: Beginning at a point South 10.66 rods and East 252.5 feet from the North 1/4 corner of Section 28, Township 2 South, Range 1 East, Salt Lake Meridian; thence South 112.75 feet, South 45 degrees West 33.94 feet, more or less, to a point which is South 136.75 feet and West 24 feet to the point of beginning; South 20 feet; East 101.5 feet; West 77.5 feet to the point of beginning.

Tax Parcel No. 22-28-201-046.

Exhibit A-2

A parcel of ground for additional Right of Way and Public street improvements, Parcel beginning at the Northwest corner of grantors property, said point being located South 10.66 rods from the North Quarter of Section 28, Township 2 South, Range 1 East, Salt Lake Base and Meridian; And running thence East 16.50 feet along the North line of grantors property; Thence South 119.70 feet; Thence South 30°00'00" East 27.00 feet; Thence South 13.66 feet to a point on the south line of grantors property; Thence West 30.00 feet along South line of Grantors property to the Southwest corner of grantors property; Thence North 156.75 feet along Grantors Westerly line to the point of beginning.

Contains approx 2,929 sq ft



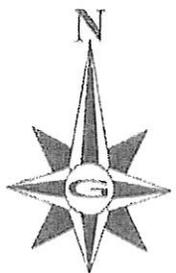
Exhibit "A-2" to  
Agreement to Dedicate Ground  
for Public Improvements

A parcel of real property located in Salt Lake County, Utah for additional public right-of-way and street improvements:

Beginning at the Northwest corner of grantor's property, said point being located South 10.66 rods from the North Quarter of Section 28, Township 2 South, Range 1 East, Salt Lake Base and Meridian, and running thence East 16.50 feet along the North line of grantor's property; thence South 119.70 feet; thence South 30 degrees 00'00" East 27 feet; thence South 13.66 feet to a point on the South line of grantor's property; thence West 30.00 feet along the South line of grantor's property to the Southwest corner of grantor's property; thence North 156.75 feet along the Westerly line of grantor's property to the point of beginning.

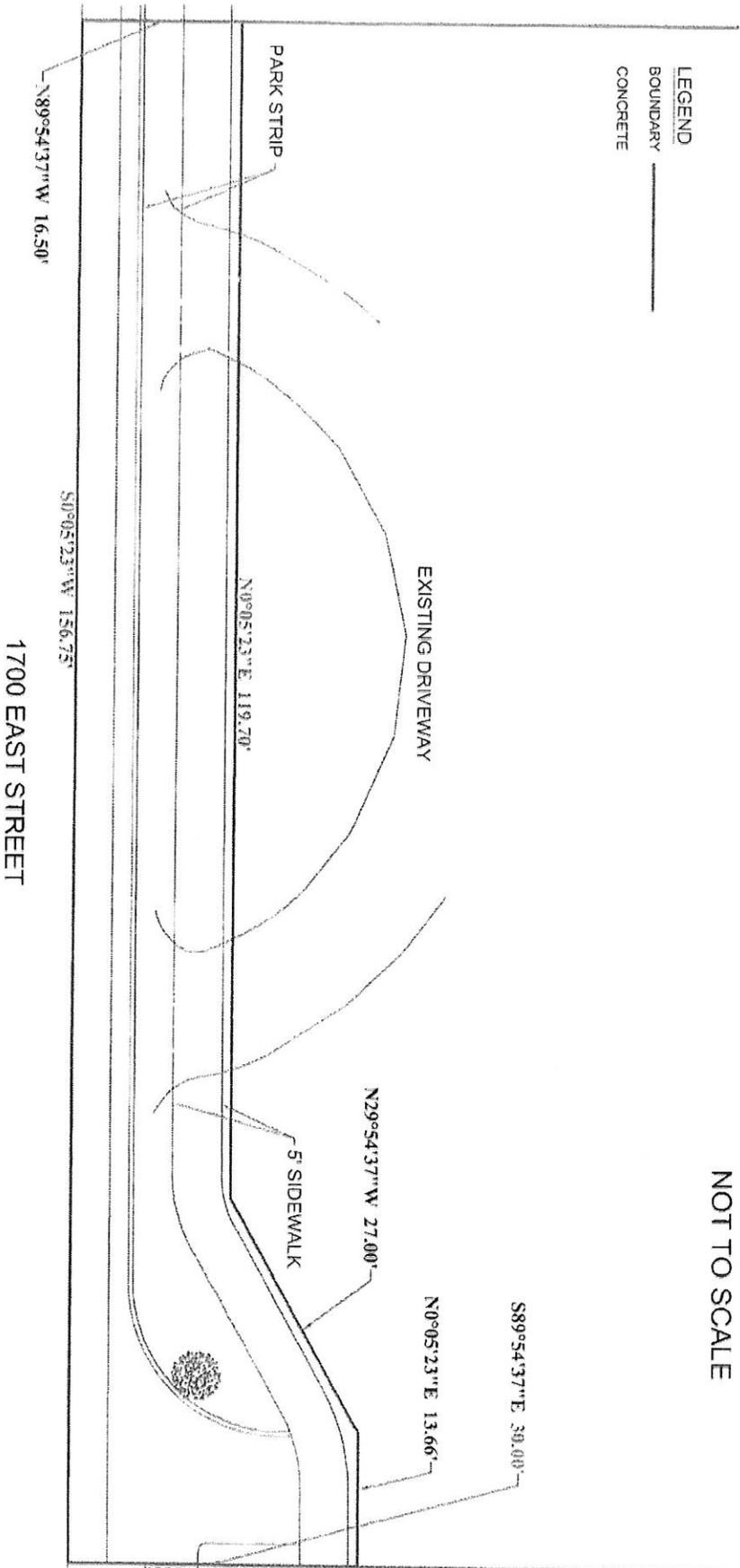
Contains approximately 2,929 square feet.

EXHIBIT "B&C" AGREEMENT TO DEDICATE  
GROUND FOR PUBLIC IMPROVEMENTS



NOT TO SCALE

LEGEND  
BOUNDARY \_\_\_\_\_  
CONCRETE \_\_\_\_\_



**GILSON ENGINEERING**

12401 SOUTH 450 E

571-9414

DATE

7-18-13

DRAWING NAME

EXHIBIT B&C

DRAWN BY

CCS

CHECKED APPROVER

REVISIONS

NO. DATE BY COMMENTS

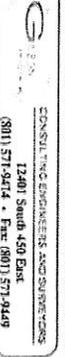
1 7/18/13 CCS

2

3

4

5



CONSULTING ENGINEERS AND SURVEYORS  
12401 South 450 East  
Salt Lake City, UT 84119  
(801) 571-9414 • Fax: (801) 571-9449

REV. A  
TITLE BLOCK

CHC179

EXHIBIT "B" TO  
RESOLUTION NO. 2014-65

7021 South 1700 East  
Affects a Portion of Parcel No. 22-28-201-002

**AFTER RECORDING RETURN TO:**

Wm. Shane Topham  
Cottonwood Heights City Attorney  
CALLISTER NEBEKER & MCCULLOUGH  
10 East South Temple, 9<sup>th</sup> Floor  
Salt Lake City, UT 84133

## Agreement to Dedicate Ground for Public Improvements

**THIS AGREEMENT TO DEDICATE GROUND FOR PUBLIC IMPROVEMENTS** (this "*Agreement*") is entered into effective \_\_ August 2013 between **COTTONWOOD HEIGHTS**, a Utah municipality whose address is 1265 East Fort Union Blvd., Suite 250, Cottonwood Heights, UT 84047 ("*City*"), and **JOSEPH K. ANDERSEN JR. and PAULINE E. ANDERSEN**, joint tenants, whose address is 7021 South 1700 East, Cottonwood Heights, UT 84121 (collectively, "*Owner*").

### **RECITALS:**

A. Owner owns fee simple title to certain improved real property that is known as 7021 South 1700 East, Cottonwood Heights, UT (the "*Property*"). The legal description of the Property is set forth on attached exhibit "A-1." The Property abuts a public street known as 1700 East.

B. City has determined that curb, gutter, sidewalk and related improvements (collectively, "*Improvements*") should be installed along the east side of 1700 East to connect currently-existing curb, gutter and sidewalk on either side, as shown on the "Proposed Sidewalk Map" (the "*Sidewalk Plan*") that is attached hereto as exhibit "B." As shown on the Sidewalk Plan, this public improvement project (the "*Project*") will be constructed on the realty located within approximately 16.5 feet to the East of the current edge of pavement/travel lane of 1700 East, fronting three properties known as 7059 South 1700 East; 7021 South 1700 East; and 7035 South 1700 East (collectively, the "*Affected Properties*").

C. The Project will include constructing Improvements along the portion of 1700 East that fronts the Property. Ownership of the affected portion (the "*Parcel*") of the Property is uncertain; City believes that some portion of the Parcel already is part of the public right-of-way for 1700 East, while Owner believes that it is the sole owner of all of the Parcel. The Parcel, which contains approximately 1,318 square feet of ground in total, and approximately 1,118 square feet of ground not underlying the actual pavement of 1700 East, is particularly described on attached exhibit "A-2," and is shown on the Sidewalk Plan.

D. The parties desire to amicably resolve their difference of opinion so that the Improvements can be installed for the benefit of the public. The purpose of this Agreement is to formalize the parties' agreement for public dedication and conveyance to City of the Parcel, for City's construction of the Project Improvements thereon, and for City's restoration of the remaining Property that is affected by such construction.

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### **A G R E E M E N T :**

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Section 2. **Purchase Price.** The purchase price (the "*Purchase Price*") to be paid by City for the Parcel and for City's other rights hereunder shall be \$13,416.00 (calculated at \$12/square foot for the 1,118 square feet not underlying the current pavement of 1700 East). City shall pay the Purchase Price to Owner at Closing in cash or other cash-equivalent, immediately available funds.

Section 3. **Project.** Following Closing, City may proceed with the Project on such timetable as City deems appropriate. City shall give Owner at least two weeks' prior verbal or written notice of commencement of the Project. Once commenced, City shall endeavor, through all reasonable means, to cause the Project to be diligently prosecuted to completion. Throughout the Project, City staff shall be available to consult with Owner concerning construction timing, issues, etc. in order to resolve Owner's legitimate concerns as fully and promptly as reasonably possible. The parties acknowledge, however, that any construction project, no matter how well-planned or well-managed, is disruptive. Consequently, the parties desire to be cooperative and responsive throughout the Project in order to minimize controversy and to assure that the Project is properly completed in accordance with applicable City standards with as little adverse impact on Owner and the remaining Property as reasonably possible.

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(d) Access; Driveways. The Property currently contains two ingress/egress points intersecting with 1700 East. Such access points will be relocated Easterly off the Parcel as part of the Project, and will be replaced with comparable concrete entries as at present, including widths of at least 21 feet each. Vehicular access to the remaining Property during construction of the Project will be preserved as reasonably possible through use of steel plate ramps, staggering of construction of each of the replacement ramps, etc.

(e) Dust; Staging. City will adopt a construction mitigation plan designed to reasonably minimize Project-caused dust and refuse. City will require its contractors to not place construction vehicles, equipment or materials on Owner's remaining Property except during the limited times that such items are needed to prosecute the restoration work on Owner's remaining Property as contemplated by this Agreement. Worker vehicles, etc. shall not be parked on Owner's remaining Property or elsewhere so as to block access to Owner's remaining Property.

(F) Tree Stump. The tree stump in the location of the new sidewalk on the Parcel will be removed.

Section 5. Conditional Efficacy. City's obligations under this Agreement are conditioned on City obtaining conveyance or occupancy rights to the balance of the realty required for the Project from the owners of the other two Affected Properties. City reserves the right to waive this condition in its sole, unfettered discretion.

Section 6. Closing. Closing and consummation of the transactions contemplated by this Agreement ("Closing") may be delayed by up to one year from the effective date of this Agreement to provide adequate time for City to arrange for conveyance or occupancy of the

balance of the realty required for the Project from the owners of the other two Affected Properties. The actual date, time and place of Closing will be specified by City upon at least two weeks' prior notice (verbal or written) to Owner. Closing will occur either at City's offices or at the offices of a local title company specified by City. At Closing, Owner will execute and deliver the Deed to City, conveying fee simple absolute title to the Parcel, free and clear of all liens and encumbrances, and City will pay the Purchase Price to Owner. Expenses and income of the Parcel shall be prorated as of the Closing. City may, at its cost, obtain a policy of title insurance in the amount of the Purchase Price, insuring that upon execution, delivery and recording of the Deed, City will own the Parcel as provided herein.

Section 7. **Default.** If either party defaults hereunder, then either party may pursue any and all legal and/or equitable remedies against the defaulting party. City's remedies upon Owner's default shall include, without limitation, the right of specific performance.

Section 8. **Covenants Run With Land.** Owner's obligations under this Agreement shall (a) create an equitable servitude on the Parcel described on exhibit "A-2" in favor of City; (b) constitute a covenant running with the land constituting the Parcel; (c) bind every person having any fee, leasehold or other interest in any portion of the Parcel at any time or from time to time; and (d) inure to the benefit of and be binding upon (i) City and its successors and assigns, and (ii) Owner its successors and assigns as to legal ownership of Parcel.

Section 9. **No Partnership.** City and Owner do not by this Agreement in any way or for any purpose become partners or joint venturers with each other.

Section 10. **General Provisions.** The following provisions are also an integral part of this Agreement:

(a) **Binding Agreement.** This Agreement shall be binding upon and shall inure to the benefit of the successors and assigns of the respective parties hereto.

(b) **Captions.** The headings used in this Agreement are inserted for reference purposes only and shall not be deemed to define, limit, extend, describe, or affect in any way the meaning, scope or interpretation of any of the terms or provisions of this Agreement or the intent hereof.

(c) **Counterparts.** This Agreement may be signed in any number of counterparts with the same effect as if the signatures upon any counterpart were upon the same instrument. All signed counterparts shall be deemed to be one original.

(d) **Severability.** The provisions of this Agreement are severable, and should any provision hereof be void, voidable, unenforceable or invalid, such void, voidable, unenforceable or invalid provision shall not affect the other provisions of this Agreement.

(e) **Waiver of Breach.** Any waiver by either party of any breach of any kind or character whatsoever by the other, whether such be direct or implied, shall not be construed as a continuing waiver of, or consent to any subsequent breach of this Agreement.

(f) Cumulative Remedies. The rights and remedies of the parties hereto shall be construed cumulatively, and none of such rights and remedies shall be exclusive of, or in lieu or limitation of any other right, remedy or priority allowed by law.

(g) Amendment. This Agreement may not be modified except by an instrument in writing signed by the parties hereto.

(h) Interpretation. This Agreement shall be interpreted, construed and enforced according to the substantive laws of the state of Utah.

(i) Notices. Any notice or other communication required or permitted to be given hereunder shall be deemed to have been received (a) upon personal delivery or actual receipt thereof or (b) within two (2) days after such notice is deposited in the United States mail, postage prepaid and certified and addressed to the respective addresses set forth herein or to such other address(es) as may be supplied by a party to the other from time to time in writing.

(j) Time of Essence. Time is the essence of this Agreement.

(k) Assignment. Owner may assign or otherwise convey its rights or delegate its duties under this Agreement only in connection with the conveyance of fee title to Owner's Property. Such assignment and delegation shall be deemed to occur automatically and contemporaneously with any such conveyance. No such conveyance shall relieve the original Owner of its obligations hereunder; instead, the original Owner shall remain liable to assure and to guaranty the full and timely performance of all of Owner's obligations hereunder notwithstanding that a successor Owner may then hold legal title to Owner's Property.

(l) Recording. This Agreement shall be immediately recorded in the official records of the Recorder of Salt Lake County, Utah. Owner hereby authorizes such recording, and grants to City a power of attorney, coupled with an interest, to effect such recording on behalf of Owner.

[Signature pages follow.]

DATED effective the date first above written.

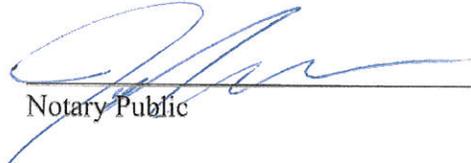
OWNER:

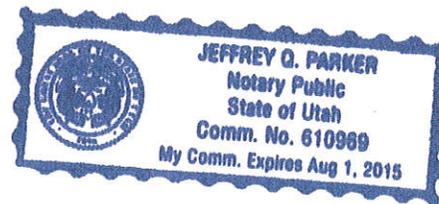
  
\_\_\_\_\_  
JOSEPH K. ANDERSEN JR.

  
\_\_\_\_\_  
PAULINE E. ANDERSEN

STATE OF UTAH                    )  
  : ss.  
COUNTY OF SALT LAKE        )

SUBSCRIBED AND SWORN to before me on 1 30 201~~8~~<sup>4</sup> by Joseph K. Andersen Jr. and Pauline E. Andersen.

  
\_\_\_\_\_  
Notary Public



CITY:

COTTONWOOD HEIGHTS, a Utah municipality

ATTEST:

By: \_\_\_\_\_  
Linda W. Dunlavy, Recorder

By: \_\_\_\_\_  
Kelvyn H. Cullimore, Jr., Mayor

STATE OF UTAH            )  
  :SS.  
COUNTY OF SALT LAKE )

On the \_\_\_\_ day of \_\_\_\_\_2013, personally appeared before me **Kelvyn H. Cullimore, Jr.** and **Linda W. Dunlavy**, who being duly sworn, did say that they are the Mayor and City Recorder, respectively, of **COTTONWOOD HEIGHTS**, and said persons acknowledged to me that said municipality executed the same.

\_\_\_\_\_  
Notary Public

602550.1

Exhibit "A-1" to  
Agreement to Dedicate Ground  
for Public Improvements

The following-described real property located in Salt Lake County, Utah:

Beginning at a point South 0 degrees 05'23" West along the center section line 96.0 feet from the Northwest corner of the Northeast quarter of Section 28, Township 2 South, Range 1 East, Salt Lake Base and Meridian; and running thence South 0 Degrees 05'23" West along said section line 79.89 feet; thence South 89 degrees 58'25" East 147.00 feet to a fence line; thence North 1 degrees 14'13" East along said fence line 79.90 feet; thence North 89 degrees 58'25" West 148.60 feet to the point of beginning.

Less and excepting any of that portion lying within the bounds of 1700 East Street.

Tax Parcel No. 22-28-201-002.

Exhibit "A-2" to  
Agreement to Dedicate Ground  
for Public Improvements

A parcel of real property located in Salt Lake County, Utah for additional public right-of-way and street improvements:

Beginning at the Northwest corner of grantor's property, said point being located South 0 degrees 05'23" West 96.01 feet from the North quarter of Section 28, Township 2 South, Range 1 East, Salt Lake Base and Meridian; and running thence South 89 degrees 58'25" East 16.50 feet along the North line of grantor's property; thence South 0 degrees 05'23" West 79.88 feet to the South line of grantor's property; thence North 89 degrees 58'25" West 16.5 feet along the South line of grantor's property to the Southwest corner of grantor's property; thence North 0 degrees 05'23" East 79.88 feet along the Westerly line of grantor's property to the point of beginning.

Contains approximately 1,318 square feet.

Exhibit "B" to  
Agreement to Dedicate Ground  
for Public Improvements

*(Attach Sidewalk Plan)*

Exhibit “C” to  
Agreement to Dedicate Ground  
for Public Improvements

*(Attach Landscape Plan)*