

WHEN RECORDED, RETURN TO:

SNELL & WILMER L.L.P.
Attn: Wade R. Budge
15 West South Temple, Suite 1200
Salt Lake City, UT 84101

Affects Parcel Nos: 101905747249212010
101905747150812013
101905745850212028
101905745849012029
101905746347412007
101905747047412008
101905747747412009

ACCESS EASEMENT AGREEMENT

THIS ACCESS EASEMENT AGREEMENT (“Agreement”) is made as of the 24 day of June, 2016 (the “Effective Date”), by and among **MILLER FAMILY REAL ESTATE, L.L.C.**, a Utah limited liability company (“MFRE”), on the one hand, and **SHELLEY M OHNLEITER, BRYAN M & SHARON ARNDT, DAVID A PARKS ET UX, KENNEY R KENNEDY, and VIRGINIA M & MANUEL A LUNA** (collectively, “Adjoining Landowners”), on the other.

A. The Adjoining Landowners claim to be benefitted by a ten foot (10’) wide access easement claimed to be held by the City of Albuquerque (the “City”) in the location marked as “Existing Access Easement” on the attached Exhibit A; and

B. A twenty foot (20’) easement, larger than and including the Existing Access Easement, was first created by the Replat of Portions of Blocks C, G, & S and the Elimination of Block G of the Bosque Redondo Addition dated October 1960 and filed of record February 24, 1961, and was later modified and vacated in part by the Summary Plat dated December 1981 and approved and accepted by the City on January 15, 1982 and issued under number SP-82-16; and

C. The City confirmed the vacation and modification of the easement described in Recital B above by a Quitclaim Deed to the predecessors-in-title of MFRE dated April 15, 1982 and recorded with the County of Bernalillo Recorder on April 15, 1982 on Book D161-A, Page 107; and


D. The Adjoining Landowners are owners of lots comprising the benefitted property (the “Benefitted Property”) that is claimed to be benefitted by the Existing Access Easement. MFRE is the owner of the real property burdened by the Existing Access Easement (the “Burdened Property”). The Benefitted Property is more particularly described on Exhibit B and the Burdened Property is more particularly described on Exhibit C; and

E. MFRE has acquired the Burdened Property to be used in conjunction with its affiliates’ operation of an adjacent auto dealership.

NOW, THEREFORE, in consideration of the mutual promises set forth herein and for other good and valuable consideration, the receipt and sufficient of which are hereby acknowledged, MFRE and the Adjoining Landowners, agree as follows:

1. **Access Easement.**

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08/15/2016 02:02 PM Page: 1 of 10
EASE R:\$25.00 M. Toulouse Oliver, Bernalillo County


(a) MFRE hereby grants for the benefit of each lot comprising the Benefitted Property a non-exclusive access easement (the “**Access Easement**”), in common with MFRE, its successors and assigns, tenants and licensees, and its and their respective agents, invitees, customers, employees, and contractors, over the Burdened Property in the location depicted on the attached Exhibit A as “Proposed Access Easement” and described on Exhibit D, for the limited and enumerated purposes of providing vehicular and pedestrian ingress and egress to and from the Benefitted Property. By acceptance of the Access Easement, the Adjoining Landowners agree for themselves and their successors in title to waive and release any claims to access or an easement over the Burdened Property, other than the Access Easement, and the use of the Existing Access Easement for so long as they have access to the Access Easement.

(b) The Access Easement shall automatically terminate if (i) the City attempts to or actually does use or enforce the Existing Access Easement; or (ii) the City seeks to reestablish an easement in the area of the Existing Access Easement. Upon the occurrence of any of the foregoing events of termination, this Agreement and all rights associated herewith shall terminate and be of no further force or effect.

(c) The parties acknowledge that it is MFRE’s intention to make an alternative use of the Existing Access Easement area and that this Agreement shall terminate if MFRE is unable to have the Existing Access Easement terminated and vacated and the associated area used for landscaping and parking as depicted in the attached Exhibit E.

2. **Access Controls.** MFRE shall have the right to control access to the Burdened Property and the Access Easement, by gated-access or other means, so long as MFRE provides the Adjoining Landowners with a means to use such access controls. If an electronic gate is installed, MFRE will provide Adjoining Landowners one gate-opener per lot comprising the Benefitted Property. Any additional, replacement or subsequent gate-openers or other access controls must be purchased by the Adjoining Landowners.

3. **Relocation.** The owner of the Burdened Property, or any portion thereof, may relocate or reconfigure, at such Burdened Property owner’s own cost, the Access Easement created hereby, provided that any relocation or reconfiguration shall not interfere materially with the purposes of the above-described Access Easement.

4. **Cooperation.** The parties hereto agree to cooperate in the use of the Access Easement so as to minimize impacts related to the operation of the Burdened Property as a business and also any construction, repair or maintenance activities.

5. **Rights Run With The Land.** All provisions of this Agreement, including the benefits and burdens, shall run with the land and are binding upon and shall inure to the benefit of the successors and assigns of the owner(s) of the Benefitted Property and Burdened Property.

6. **No Public Dedication/No Third Party Beneficiaries.** The provisions of this Agreement are not intended to and do not constitute a dedication for public use of the Access Easement, and the rights herein created are for private use of the owners of the Benefitted Property, and no other. This Agreement is not intended to confer benefits other than on the owners of the properties defined herein.

7. **Miscellaneous.** If any term, provision or condition contained in this Agreement shall to any extent be deemed invalid or unenforceable, the remainder of the Agreement shall not be affected thereby so long as MFRE is not obligated to provide access over the Existing Access Easement. This Declaration shall be governed by the laws of the State of New Mexico.

[Signatures and Acknowledgements Follow]

IN WITNESS WHEREOF, the parties have executed this Agreement as of the day and year first above written.

MFRE:


MILLER FAMILY REAL ESTATE, L.L.C.,
a limited liability company

By: 

STATE OF UTAH)
) ss.
COUNTY OF Utah)

The foregoing instrument was acknowledged before me this 9 day of August, 2016, by
Scott Bates.

WITNESS my hand and official seal.


Notary Public

My Commission Expires: 2-4-2018



1-11-2011 10:00 AM

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11/11/2011

BRENDA K HARDY
NOTARY PUBLIC-STATE OF UTAH
COMMISSION # 88338
COMM. EXP. 02-04-2012



Kenny Kennedy
KENNEY R KENNEDY

STATE OF New Mexico)
COUNTY OF Bernalillo) ss.

The foregoing instrument was acknowledged before me this 24 day of June, 2016, by Kenny Kennedy

WITNESS my hand and official seal.

Tammy Burns
Notary Public

My Commission Expires: 11/10/19

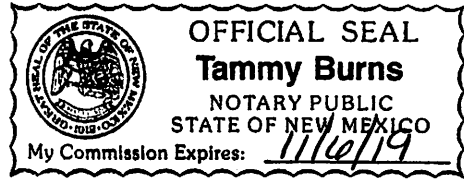
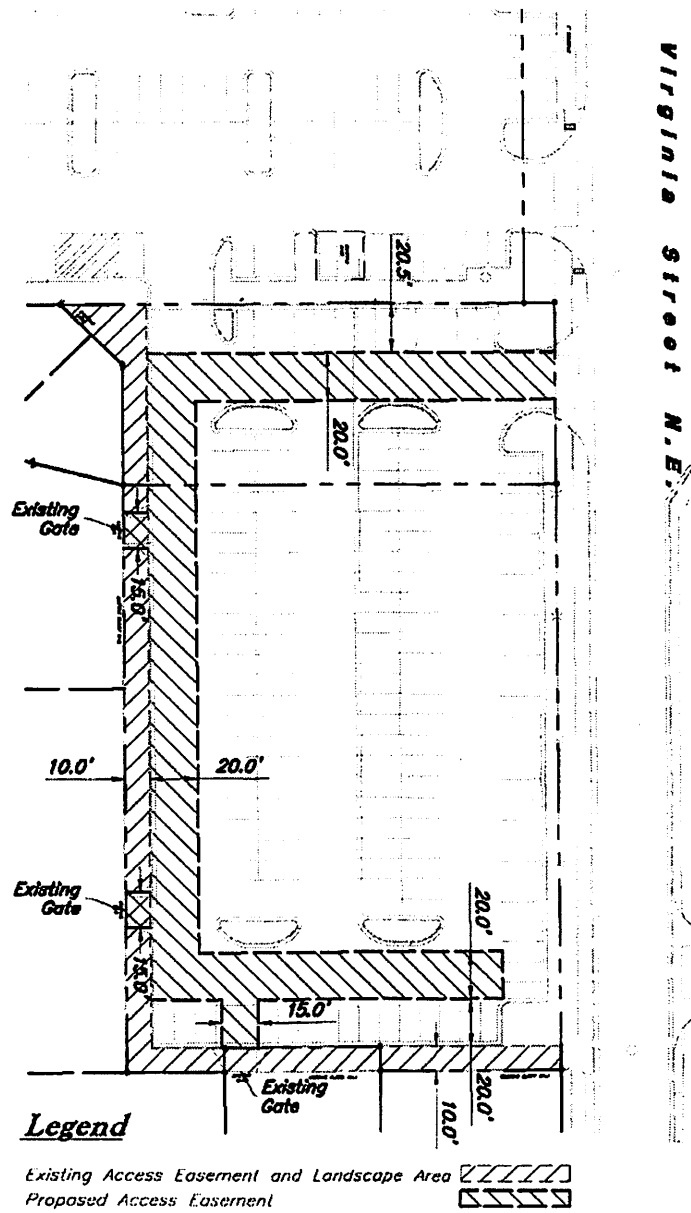


Exhibit A
(Depiction of Existing Access Easement and Access Easement)



ANDERSON WAHLEN & ASSOCIATES

2010 North Redwood Road, Salt Lake City, Utah 84116
 801 521-8529 - AWAngeering.net

Exhibit A

Scale: 1" = 60'



Exhibit B
(Legal Description of the Benefitted Property)

1. Lot 29, Block C, Bosque Redondo Addition, Section 19, T.10N., R.4E., N.M.P.M., City of Albuquerque, Bernalillo County, New Mexico
2. Lot 30, Block C, Bosque Redondo Addition, Section 19, T.10N., R.4E., N.M.P.M., City of Albuquerque, Bernalillo County, New Mexico
3. Lot 12, Block G, Bosque Redondo Addition, Section 19, T.10N., R.4E., N.M.P.M., City of Albuquerque, Bernalillo County, New Mexico
4. Lot 11, Block G, Bosque Redondo Addition, Section 19, T.10N., R.4E., N.M.P.M., City of Albuquerque, Bernalillo County, New Mexico
5. Lot 10, Block G, Bosque Redondo Addition, Section 19, T.10N., R.4E., N.M.P.M., City of Albuquerque, Bernalillo County, New Mexico

Exhibit C
(Legal Description of the Burdened Property)

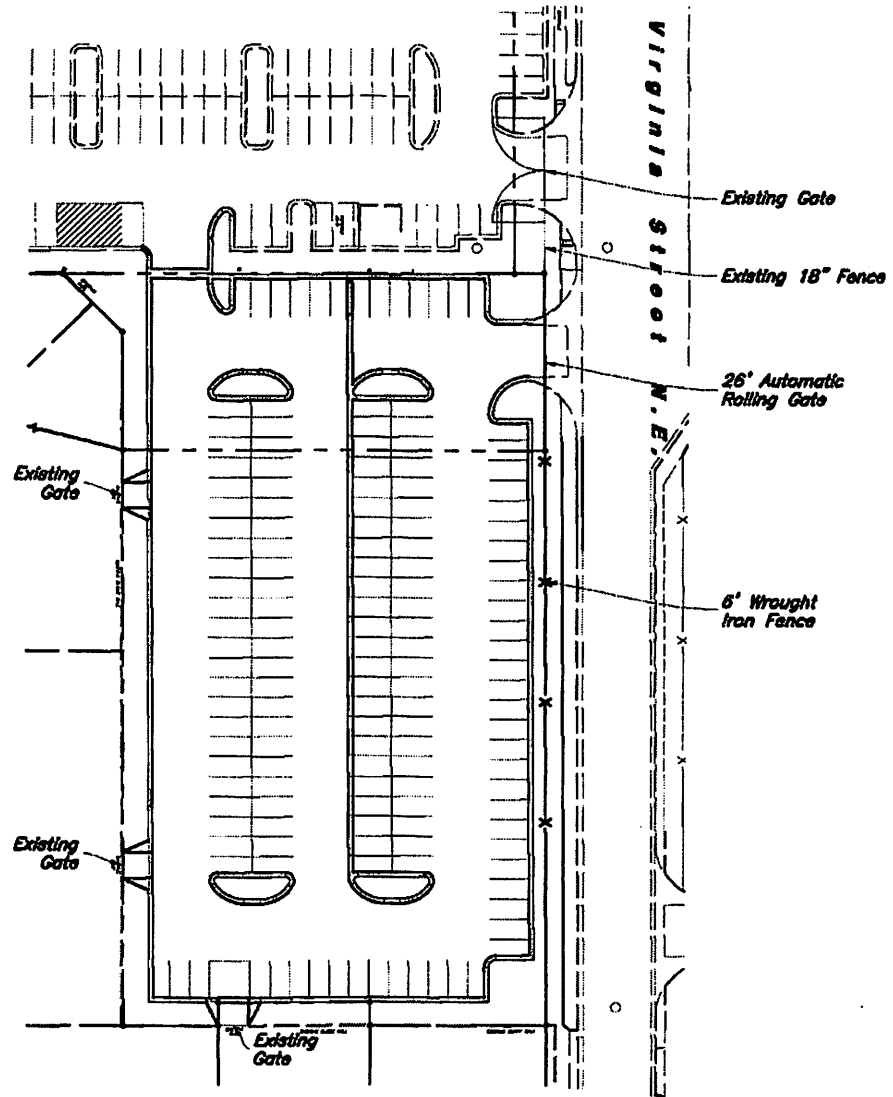
Lot 46-A and Lot 49-A, Block C, Bosque Redondo Addition, Section 19, T.10N., R.4E.,
N.M.P.M., City of Albuquerque, Bernalillo County, New Mexico

Exhibit D
(Legal Description of Access Easement)

A part of Lots 46-A and 49-A, Block C, Bosque Redondo Addition, Section 19, T.10N., R.4E., N.M.P.M., City of Albuquerque, Bernalillo County, New Mexico

Beginning at a point that is S 76°17'30" E 1091.39 feet and N 89°37'04" E 10.00 feet from the ARGS Station "17_K19" and running thence N 00°27'55" W 52.78 feet, thence N 89°29'09" E 169.67 feet to the West right-of-way line of Virginia Street N.E., thence along said street S 00°33'19" E 20.00 feet, thence S 89°29'09" W 149.71 feet, thence S 00°27'55" E 228.13 feet, thence N 89°26'59" E 126.61 feet, thence S 00°33'19" E 20.00 feet, thence S 89°26'59" W 101.62 feet, thence S 00°33'01" E 20.00 feet, thence S 89°26'59" W 15.00 feet, thence N 00°33'01" W 20.00 feet, thence S 89°26'59" W 30.02 feet, thence N 00°27'55" W 31.02 feet, thence S 89°32'05" W 10.00 feet, thence N 00°27'55" W 15.00 feet, thence N 89°32'05" E 10.00 feet, thence N 00°27'55" W 142.87 feet, thence S 89°32'05" W 10.00 feet, thence N 00°27'55" W 15.00 feet, thence N 89°32'05" E 10.00 feet, thence N 00°27'55" W 11.47 feet to the point of beginning.

**Exhibit E
(Depiction of Parking Area)**



AWA
ANDERSON WAHLEN & ASSOCIATES
 2010 North Redwood Road, Salt Lake City, Utah 84116
 801 521-8528 -- AWAengineering.net

Exhibit E

Scale: 1" = 60'

