

## REAL ESTATE TRANSFER AGREEMENT

**THIS REAL ESTATE TRANSFER AGREEMENT** (this “**Agreement**”) is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2022 (the “**Effective Date**”), between SUMMIT COUNTY, a political subdivision of the State of Utah (the “**County**”) and MARKET PLACE AT SILVER CREEK CENTER, LLC, a Utah limited liability company (“**MPA**”). The County and MPA are individually referred to as a “**Party**” and collectively as the “**Parties.**”

### **RECITALS**

A. The County is the owner of Lot 1 (“**Gillmor Lot 1**”) of FJ Gillmor Subdivision, according to the official plat thereof on file in the Summit County Recorder’s Office (the “**Recorder’s Office**”), consisting of approximately 125.25 acres, off of the Old US 40 Highway (the “**Frontage Road**”) in Summit County, Utah. The zoning of the Gillmor Lot 1 is Rural Residential.

B. MPA is the owner of Lot 10 of the Silver Creek Commerce Center Plat, according to the official plat thereof on file in the Recorder’s Office, consisting of approximately 14.95 acres, and designated as Parcel No. SCO-C-10-2AM (“**Lot 10**”). The zoning of Lot 10 is Community Commercial.

C. The County desires to acquire from MPA approximately 3.2 acres in Lot 10 for the purpose of construction of Paintbrush Road (as defined below), and two roundabouts on Silver Creek Drive, together with expanded rights-of-way on Silver Creek Drive and the Frontage Road, as generally depicted on the map set forth in Exhibit A (together, the “**ROW Property**”). MPA desires to trade the ROW Property to the County in exchange for approximately 3.044 acres of land within the Gillmor Lot 1, as generally depicted on the map set forth in Exhibit A (the “**Gillmor Property**” and together with the ROW Property, the “**Trade Property**”), with the actual acreages of both the ROW Property and Gillmor Property to be determined by the Survey (as defined below).

D. As further consideration for the ROW Property, the County agrees to process the Zoning Interpretation (defined below).

E. The Parties desire to enter into this Agreement in order to effectuate the transfer of the Trade Property.

### **AGREEMENT**

NOW, THEREFORE, in consideration of the mutual covenants herein contained, and other good and valuable consideration, the receipt and adequacy of which is hereby acknowledged, the Parties hereby agree as follows:

1. Recitals and Exhibits. The recitals set forth above and the exhibits are true, correct and complete in all material respects, and the Parties hereto incorporate the above recitals and the exhibits by this reference into this Agreement to the same extent as if set forth in the

body of this Agreement.

2. Survey. Within ten (10) days following the Effective Date, the Parties agree to engage a surveyor licensed in the State of Utah to perform surveys of the ROW Property and the Gillmor Property (the “**Survey**”), to determine actual metes and bounds descriptions and as-surveyed areas for each of the ROW Property and the Gillmor Property, consistent with Exhibit A. The Exhibit A depiction is general in nature and the approximate acreages referenced in Recital C above shall be “trued up” based upon the Survey as follows: (a) the ROW Property shall contain the sum of all areas required for: (i) 20 feet of additional right-of-way width along the east side of Frontage Road for a distance of approximately 980 feet (Area E), (ii) the proposed expansion of the existing roundabout at the intersection of the Frontage Road and Silver Creek Drive having an outer diameter of 375 feet (the “**Silver Creek Roundabout**”) (Area D), (iii) 20 feet of additional right-of-way width along the south side of Silver Creek Drive for a distance of approximately 715 feet (Area C), (iv) the new 80’ right of way for the proposed new public street to be known as “**Paintbrush Road**” located on the east side of Lot 10 (Area A), and (v) the proposed new roundabout at the intersection of Silver Creek Drive and Paintbrush Road (the “**Paintbrush Roundabout**”) (Area B); and (b) the Gillmor Property shall be that portion in the northwest corner of the Gillmor Lot 1 containing an area equal to the area within the portions of Lot 10 contained within Paintbrush Road, the expanded Frontage Road right-of- way, the area of a boundary nine feet (9’) deep for the full length of the western edge of Paintbrush Road (Area F), and 75% of the combined acreage contained within the expanded Silver Creek right-of-way, the Silver Creek Roundabout, and the Paintbrush Roundabout. The Parties agree to equally share in the cost of the Survey. The County and MPA shall require the surveyor to complete and deliver the Survey within sixty (60) days of commencement. The Parties shall each have the right to reasonably in its discretion determine and approve in writing the Survey and the respective property boundaries in accordance with the above (if and as mutually approved in writing, the “**Survey Acceptance**”).

3. Trade Property. At the Closing (as defined below), the County shall convey to MPA by Special Warranty Deed the Gillmor Property, in form and substance consistent with Exhibit B, attached hereto (the “**County Deed**”), in consideration of MPA’s simultaneous conveyance to the County by Special Warranty Deed of the ROW Property, in form and substance consistent with Exhibit C, attached hereto (the “**MPA Deed**”). There shall be no proration of real property taxes. There are no water rights associated with the Trade Property. Each Party accepts the deeds set forth herein in their “as is, where is” condition and neither Party makes any representations or warranties regarding the same except for each’s warranty as to title contained in each deed.

4. Preconditions to Closing.

4.1 Zoning Interpretation. The County, acting in its land use capacity and not in its capacity as a property owner, shall process a zoning interpretation under Summit County Code §10-2-15 (the “**Zoning Interpretation**”), wherein the traded lands will each bear the zoning of their respective receiving areas. The County does not pre-determine or make any representations as to the outcome of the Zoning Interpretation. The Zoning Interpretation requires a recommendation from the Snyderville Basin Planning Commission and a final decision from the Summit County Council (the “**Council**”). The Zoning Interpretation may be

processed concurrently with the subdivision plat amendments described in Section 4.2 below.

4.2 Plat Amendments. Within sixty (60) days of Survey Acceptance, if applicable, each Party shall make an application to the County for a subdivision plat amendment corresponding respectively to the Gillmor Property (the “**FJ Gillmor Subdivision 2<sup>nd</sup> Amendment**”) and the ROW Property (the “**Silver Creek Commerce Center Plat, Lot 10 Amendment**,” together with the FJ Gillmor Subdivision 2<sup>nd</sup> Amendment, the “**Plat Amendments**” or individually, a “**Plat Amendment**”), as appropriate, and bear each Party’s respective costs associated with the preparation, approval, and recording of each. The County’s review and potential approval of the Plat Amendments shall be conducted pursuant to the County’s capacity as the land use authority and not in its capacity as a land owner.

4.2.1 The County agrees to waive all Plat Amendment fees associated with each application.

4.2.2 All public utilities along public roads shall be located within the County’s rights-of-way.

4.2.3 All intersections must meet County and AASHTO design standards.

4.2.4 With the exception of Transportation and/or Traffic Impact Fees, Lot 10 shall not bear any additional costs associated with County sponsored traffic improvements which relate to Lot 10.

4.2.5 Lot 10 shall have access to all public roads and utility rights-of-way in accordance with the provisions and requirements set forth in the Summit County Code.

4.2.6 The Parties shall reasonably cooperate with each other during the design of and planning for the Plat Amendments to anticipate the need to manage and mitigate for any storm water drainage or sheet flows emanating from or discharging upon their respective properties and to agree upon the proper allocations of such costs (if any).

4.3 Satisfaction of Closing Conditions; No Encumbrances.

4.3.1 Closing Conditions. The Parties attainment of the Survey Acceptance, the Zoning Interpretation and the Plat Amendments are collectively referred to herein as the “**Closing Conditions**”. If the Closing Conditions are not satisfied on or before July 31, 2022, either Party may terminate this Agreement at any time thereafter by giving written notice to the other Party, in which case neither Party shall have any obligations to or claims against the other Party.

4.3.2 No Encumbrances. After the Survey Acceptance, neither Party will encumber or transfer any interest in or to the Trade Property inconsistent with this Agreement.

5. Closing. The transactions contemplated by this Agreement shall be settled and closed (the “**Closing**”) through escrow (“**Escrow**”) at the offices of First American Title Insurance Company, 215 South State Street, Suite 280, Salt Lake City, Utah 84111 (Attn: Carol Pauli, cpauli@firstam.com, 801-578-8807), (the “**Escrow Agent**”). The Closing shall be conditioned upon the Parties’ successfully obtaining or satisfying the Closing Conditions, it being expressly understood that the Parties’ respective benefits of Trade Property cannot be satisfactorily achieved and the Closing cannot proceed without the satisfaction of the Closing Conditions. At the Closing, the Parties shall do the following: (a) each Party shall pay into Escrow the cost of any owner’s policy of title insurance that such Party wishes to purchase from the Escrow Agent on the property such Party is receiving, together with the costs of recording such Party’s deed and Plat Amendment, and any other proportional Closing or Escrow fees charged by the Escrow Agent; (b) the County shall execute and deliver into Escrow the FJ Gillmor Subdivision 2<sup>nd</sup> Amendment and County Deed; and (c) MPA shall execute and deliver into Escrow the Silver Creek Commerce Center Plat, Lot 10 Amendment, and MPA Deed (collectively, the “**Closing Deliverables**”). When the Escrow Agent is in possession of the Closing Deliverables and is prepared to issue an owner’s policy of title insurance covering any of the properties, as appropriate, Escrow Agent shall record the deeds and Plat Amendments (in that order), and retain for itself the Closing costs and title insurance premium(s).

6. Environmental Indemnification. Each Party (the “**Indemnifying Party**”), at its sole cost and expense, hereby irrevocably and unconditionally agrees to defend, protect, indemnify and hold the other Party (the “**Indemnified Party**”) harmless from and against any and all expenses, claims, demands, suits, at law or equity, actions, penalties, losses, damages, fines, costs, of whatsoever kind and nature, incurred by the Indemnified Party relating to, resulting from or otherwise attributable to, directly or indirectly, with respect to the Gillmor Property, as it relates to the County as the Indemnifying Party, and the ROW Property, as it relates to MPA as the Indemnifying Party: (i) any hazardous substance present or alleged to be present in, upon, under, over or at, or emanating from or alleged to be emanating from the respective properties, whether or not such hazardous substances were produced, stored, used or transported in compliance with applicable federal, state and local environmental laws and regardless of whether such hazardous substances are present (or alleged to be present) at or emanating (or are alleged to be emanating) from either the Gillmor Property or the ROW Property, as the case may be, (ii) any activity (and the consequences thereof), including any release of hazardous substances, or claimed activity (and the consequences thereof) carried on or undertaken on or off of the Gillmor Property or the ROW Property, as the case may be, whether by the appropriate Indemnifying Party, any predecessor in title, or any employees, agents, contractors or subcontractors of the foregoing, or any third parties at any time occupying or present on either of these properties, without limitation, in connection with the handling, treatment, removal, storage, decontamination, clean-up, restoration, transport or disposal of any Hazardous Substance at any time located or present on, under or incorporated in, or used in connection with either of these properties, (iii) the violation (and the consequences thereof) or claimed violation (and the consequences thereof) of any applicable federal, state or local environmental law affecting either of these properties, (iv) the nonperformance (and the consequences thereof) or delay in performance (and the consequences thereof) of any corrective work, to include remediation and restoration work done or required by governmental entities to be done on either of these properties, (v) any place or location used for the disposal of hazardous

substances by the Indemnifying Party or their predecessors-in-interest, whether for its own behalf or on behalf of others, (vi) any other environmental matter, and any action or inaction of the Indemnifying Party or their predecessors-in-interest with respect thereto, (viii) any discharge, release or emission, or any alleged discharge, release or emission, of any hazardous substance upon or from the respective properties into the environment, (ix) any use of these properties at any time as a permanent or temporary treatment, storage or disposal site for any hazardous substances to any location which is listed or proposed for listing under CERCLA or on any similar state list or which is the subject of federal, state or local enforcement actions or other investigations.

7. Notices. Any notice to be given by any Party to the other with respect to this Agreement shall be in writing and shall be deemed effective: (i) upon personal delivery to the other Party at the address set forth below (or upon the refusal of any such attempted personal delivery), or (ii) one (1) day after deposit with a nationally recognized air courier service for overnight delivery, addressed as set forth below, with delivery charges prepaid, or (iii) three (3) days after deposit in the United States mail, certified, return receipt requested, postage prepaid (or as of any earlier date evidenced by a receipt from the United States Postal Service). Notices shall be addressed as follows:

County: Summit County  
County Manager  
60 N. Main St., P.O. Box 128  
Coalville, Utah 84017

With a copy to: David L. Thomas  
Chief Civil Deputy  
60 N. Main St., P.O. Box 128  
Coalville, Utah 84017

MPA: Marketplace at Silver Creek Center, LLC  
Attn: Stephen Coleman  
PO Box 681329  
Park City, UT 84068

With a copy to: Anderson & Karrenberg  
Attn: Steven W. Dougherty  
Broadway Media Building  
50 West Broadway, Suite 600  
Salt Lake City, UT 84101

Any Party may designate a different address for itself by giving written notice in the manner required by this Section 7.

8. No Third-Party Beneficiary. No term or provision of this Agreement or the exhibits attached hereto is intended to be, nor shall any such term or provision be construed to

be, for the benefit of any person, firm, corporation, or other entity not a Party hereto or successor in interest to a Party, and no such other person, firm, corporation, or entity shall have any right or cause of action hereunder.

9. Miscellaneous.

9.1 Entire Agreement. This Agreement contains the entire agreement between the Parties. All previous agreements, communications, discussions and negotiations relating to the subject matter hereof have been merged and finalized. This Agreement may only be modified or amended in writing by all Parties hereto.

9.2 Successors and Assigns. This Agreement shall inure to the benefit of, and will be binding upon, the Parties hereto and their respective successors and assigns.

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

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

9.5 Severability. If any term or provision of this Agreement or the application of it to any person, entity or circumstance shall to any extent be invalid and unenforceable, the remainder of this Agreement or the application of such term or provision to persons or circumstances other than those as to which it is invalid or unenforceable shall not be affected thereby, and each term and provision of this Agreement shall be valid and shall be enforced to the extent permitted by law.

9.6 Applicable Law. This Agreement, and the interpretation, validity, effect and performance hereof, shall be governed by the laws of the State of Utah. Any action brought to interpret or enforce this Agreement shall be brought exclusively in the Third Judicial District Court for Summit County, Utah, Silver Summit Department.

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

9.8 Authority. The individuals executing this Agreement represent and warrant that they have the power and authority to do so and to bind the entities for which they are executing this Agreement.

9.9 Non-Fiduciary or Agency Relationship. The Parties hereto expressly disclaim and disavow any partnership, joint venture, fiduciary, agency or employment status or relationship between them and expressly affirm that they have entered into this Agreement as part of an “arms-length” transaction. No Party hereto has the authority to make any representation or warranty or incur any obligation or liability on behalf of any other Party hereto, nor shall they make any representation to any third party inconsistent with this Section 9.9.

9.10 Counterparts. This Agreement may be executed in any number of duplicate counterparts, each of which shall be deemed an original, and when taken together shall constitute one and the same original Agreement, which shall be fully binding upon each Party who executes the same. Further, executed copies of this Agreement delivered by facsimile, email, DocuSign, or other similar electronic means shall be deemed an original signed copy of this Agreement.

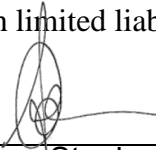
9.11 Survival. The provisions of this Agreement shall survive the Closing and the delivery and recordation of the Deeds and the Plat Amendments.

9.12 Timing of Construction of Improvements. The County, in its sole and absolute discretion, shall determine the timing and phasing for the construction and installation of any roadway or utility improvements, over, upon, through, under, or across the ROW Property.

IN WITNESS WHEREOF, each of the Parties hereto has duly signed and sealed this Agreement or caused such to be done, effective as of the Effective Date.

MPA:

MARKETPLACE AT SILVER CREEK CENTER,  
LLC, a Utah limited liability company

By:   
Name: Stephen Coleman  
Its: ~~XXXXXX~~ Manager

EXECUTED: March 10, \_\_\_\_\_, 2022.

COUNTY:

SUMMIT COUNTY, a body corporate and politic  
of the State of Utah

By: THE COUNTY MANAGER

By: \_\_\_\_\_  
Thomas C. Fisher  
County Manager

EXECUTED: \_\_\_\_\_, 2022.

CONSENT

By: Christopher F. Robinson  
Chair, Summit County Council

EXECUTED: \_\_\_\_\_, 2022.

ATTEST:

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Evelyn Furse  
County Clerk

APPROVED AS TO FORM:

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David L. Thomas  
Chief Civil Deputy Summit County Attorney



**EXHIBIT A**  
**To**  
**Real Estate Transfer Agreement**

Map

[See Attached]

**EXHIBIT B**  
**To**  
**Real Estate Transfer Agreement**

County Deed

[See Attached]

**AFTER RECORDED, PLEASE RETURN TO:**

Anderson & Karrenberg  
Attn: Steven W. Dougherty  
Broadway Media Building  
50 West Broadway, Suite 600  
Salt Lake City, Utah 84101

Tax Parcel No. \_\_\_\_\_

**SPECIAL WARRANTY DEED**

FOR GOOD AND VALUABLE CONSIDERATION, Summit County, a political subdivision of the State of Utah, having a mailing address at 60 N. Main, Coalville, Utah 84017 (the “**Grantor**”) hereby CONVEYS AND WARRANTS, against those claiming by, through and under the Grantor and not otherwise, to Marketplace at Silver Creek Center, LLC, a Utah limited liability company (the “**Grantee**”), having a mailing address at \_\_\_\_\_, all of the Grantor’s right, title and interest in and to that certain tract of land located in Summit County, State of Utah, as follows (the “**Subject Property**”):

[METES AND BOUNDS DESCRIPTION]

SUBJECT TO those permitted exceptions set forth on Exhibit A, attached hereto and incorporated herein by this reference.

TO HAVE AND TO HOLD the Subject Property, together with all tenements, hereditaments, and appurtenances thereunto belonging, unto the Grantee, and its successors and assigns, forever. The Grantor does hereby covenant to and with the Grantee that the Grantee is owner in fee simple of the Subject Property and that the Grantor will warrant and defend the same from all lawful claims whatsoever arising by, through and under the Grantor and not otherwise.

The undersigned acknowledges and affirms that no consent of a third party is required for conveyance of the Subject Property.

The undersigned further hereby acknowledges and affirms to the below named Notary Public that the undersigned appeared before such Notary Public and either executed this Deed before such Notary Public or acknowledged to such Notary Public that the undersigned executed this Deed for the purposes stated in it.

DATED as of the \_\_\_\_\_ day of \_\_\_\_\_, 2022.

Summit County

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

Print Name: Thomas C. Fisher

Title: County Manager

STATE OF UTAH )  
 :ss.  
COUNTY OF SUMMIT )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2022, by Thomas C. Fisher, in his capacity as County Manager of Summit County, Utah.

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

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

My Commission Expires:

\_\_\_\_\_

[insert Exhibit A, permitted exceptions]

**EXHIBIT C**  
**To**  
**Real Estate Transfer Agreement**

MPA Deed

[See Attached]

**AFTER RECORDED, PLEASE RETURN TO:**

Summit County Attorney  
Attn: David L. Thomas  
Summit County Courthouse  
60 N. Main Street  
Coalville, Utah 84017

Tax Parcel No. \_\_\_\_\_

**SPECIAL WARRANTY DEED**

FOR GOOD AND VALUABLE CONSIDERATION, Marketplace at Silver Creek Center, LLC, a Utah limited liability company, having a mailing address at \_\_\_\_\_ (the “**Grantor**”) hereby CONVEYS AND WARRANTS, against those claiming by, through and under the Grantor and not otherwise, to Summit County, a political subdivision of the State of Utah (the “**Grantee**”), having a mailing address at 60 N. Main, Coalville, Utah 84017, all of the Grantor’s right, title and interest in and to that certain tract of land located in Summit County, State of Utah, as follows (the “**Subject Property**”):

[METES AND BOUNDS DESCRIPTION]

SUBJECT TO those permitted exceptions set forth on Exhibit A, attached hereto and incorporated herein by this reference.

TO HAVE AND TO HOLD the Subject Property, together with all tenements, hereditaments, and appurtenances thereunto belonging, unto the Grantee, and its successors and assigns, forever. The Grantor does hereby covenant to and with the Grantee that the Grantee is owner in fee simple of the Subject Property and that the Grantor will warrant and defend the same from all lawful claims whatsoever arising by, through and under the Grantor and not otherwise.

The undersigned acknowledges and affirms that no consent of a third party is required for conveyance of the Subject Property.

The undersigned further hereby acknowledges and affirms to the below named Notary Public that the undersigned appeared before such Notary Public and either executed this Deed before such Notary Public or acknowledged to such Notary Public that the undersigned executed this Deed for the purposes stated in it.

DATED as of the \_\_\_\_\_ day of \_\_\_\_\_, 2022.

Marketplace at Silver Creek Center, LLC

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

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

Title: \_\_\_\_\_

STATE OF UTAH )

:ss.

COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2022, by \_\_\_\_\_, in his capacity as \_\_\_\_\_ of Marketplace at Silver Creek Center, LLC.

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

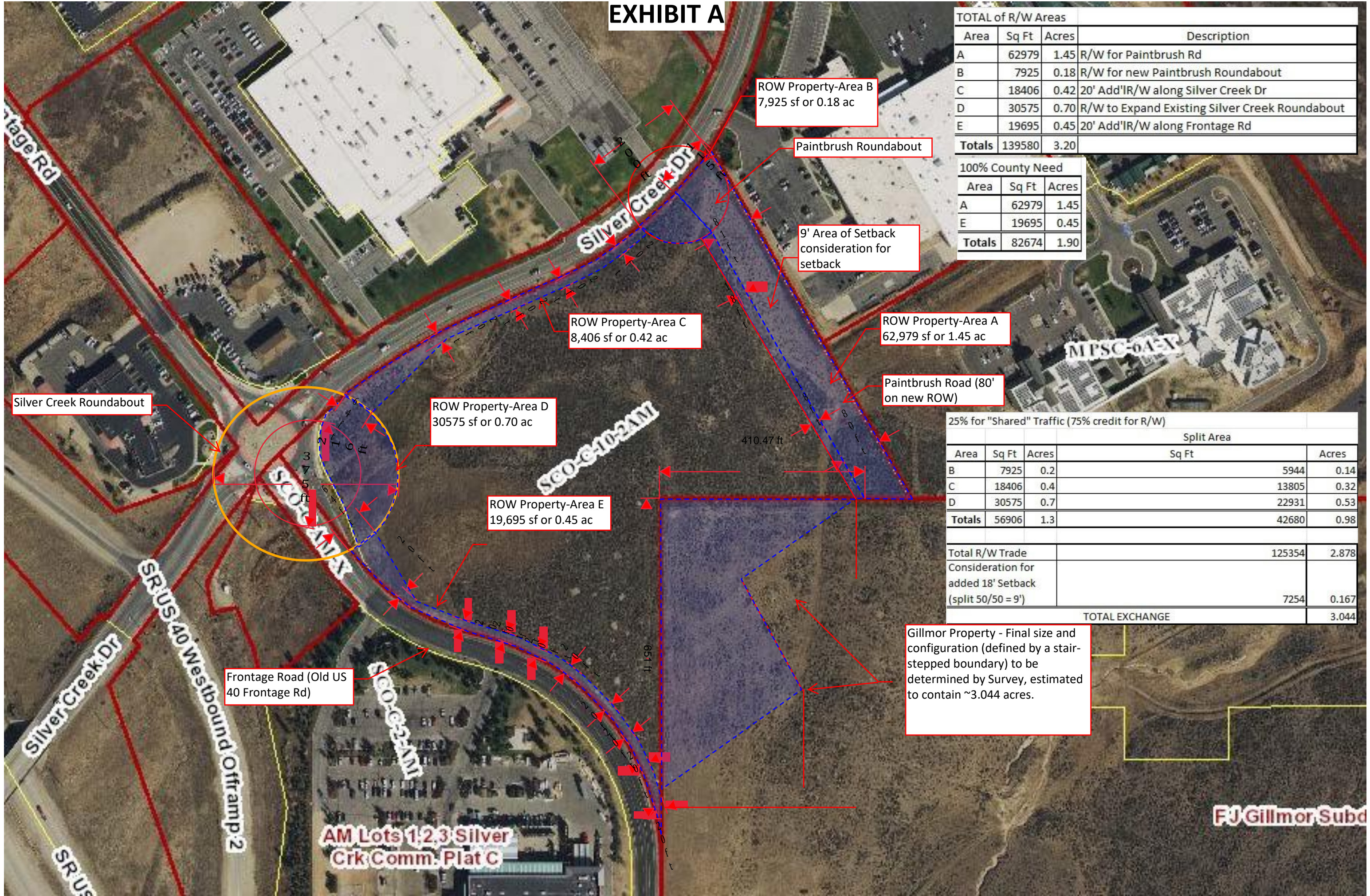
Residing at: \_\_\_\_\_

My Commission Expires:

\_\_\_\_\_

[insert Exhibit A, permitted exceptions]

# EXHIBIT A



ROW Property-Area B  
7,925 sf or 0.18 ac

Paintbrush Roundabout

9' Area of Setback  
consideration for  
setback

ROW Property-Area C  
8,406 sf or 0.42 ac

ROW Property-Area A  
62,979 sf or 1.45 ac

Paintbrush Road (80'  
on new ROW)

ROW Property-Area D  
30,575 sf or 0.70 ac

ROW Property-Area E  
19,695 sf or 0.45 ac

Frontage Road (Old US  
40 Frontage Rd)

Gillmor Property - Final size and configuration (defined by a stair-stepped boundary) to be determined by Survey, estimated to contain ~3.044 acres.

TOTAL of R/W Areas			
Area	Sq Ft	Acres	Description
A	62979	1.45	R/W for Paintbrush Rd
B	7925	0.18	R/W for new Paintbrush Roundabout
C	18406	0.42	20' Add'l R/W along Silver Creek Dr
D	30575	0.70	R/W to Expand Existing Silver Creek Roundabout
E	19695	0.45	20' Add'l R/W along Frontage Rd
<b>Totals</b>	<b>139580</b>	<b>3.20</b>	

100% County Need			
Area	Sq Ft	Acres	
A	62979	1.45	
E	19695	0.45	
<b>Totals</b>	<b>82674</b>	<b>1.90</b>	

25% for "Shared" Traffic (75% credit for R/W)				
		Split Area		
Area	Sq Ft	Acres	Sq Ft	Acres
B	7925	0.2	5944	0.14
C	18406	0.4	13805	0.32
D	30575	0.7	22931	0.53
<b>Totals</b>	<b>56906</b>	<b>1.3</b>	<b>42680</b>	<b>0.98</b>

Total R/W Trade		125354	2.878
Consideration for added 18' Setback (split 50/50 = 9')		7254	0.167
<b>TOTAL EXCHANGE</b>			<b>3.044</b>

AM Lots 1,2,3 Silver  
Crk Comm. Plat C

FJ Gillmor Subd