

**After Recording Return to:**  
**Kevin D. Allen and Associates, Inc.**  
 c/o Kenyon D. Dove, Esq.  
 Smith Knowles  
 4723 Harrison Blvd, #200  
 Ogden, Utah 84403

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 11/13/2009 2:44:00 PM \$28.00  
 Book - 9779 Pg - 6937-6946  
 Gary W. Ott  
 Recorder, Salt Lake County, UT  
 SMITH KNOWLES PC  
 BY: eCASH, DEPUTY - EF 10 P.

### **ACCESS EASEMENT AGREEMENT**

For value received, WMJ Real Estate II, LLC a Utah limited liability company, ("Grantor"), hereby grants to Kevin D. Allen and Associates, Inc., a Utah corporation, its successors and assigns, ("Grantee"), a non-exclusive easement for a surface right of way (the "Easement") for residential ingress and egress over a portion of an existing dirt road for ingress and egress to adjacent property owned by Grantee, located at 2806 North 2200 West, Salt Lake City, Utah and more particularly described on Exhibit B hereto (the "Benefitted Parcel"). Said Easement shall be located on the surface of a portion of Grantor's real property which is situated in Salt Lake County, State of Utah, and as more particularly described as follows and as more particularly shown on Exhibit A, by this reference made a part hereof (the "Easement Area"):

A right of way access easement 32 feet in width, more or less, from the eastern edge of 2200 West, for the purpose of ingress and egress for foot and residential vehicular traffic to the Benefitted Parcel located in Salt Lake County, in the State of Utah:

The legal description of the Easement Area is as follows:

Beginning at a point 896.49 (838.465 deed) feet North along the center of a 4 rod (66 feet) street from the Southwest corner of the Southeast quarter of the Southeast quarter of Section 9, Township 1 North, Range 1 West, Salt Lake Base and Meridian and running thence North 34.48 feet (32.24 deed); thence South 89deg.17'15" East (East deed) 153.00 feet; thence South 00deg. 01'10" East 33.03 feet (South 32.24 deed), to the North line of Parcel No. 08-09-476-004; thence along said parcel line North 89deg. 49'45" West (West deed) 153.00 feet to the point of beginning.

It is the intent of the above-described legal description to provide a permanent non-exclusive easement ("Easement") for the benefit of Parcel No. 08-09-476-004 ("Parcel"), and that the western end of said Easement is located immediately adjacent to the eastern edge of the public road now known as 2200 West providing access to said Parcel across that certain portion of real property belonging to Grantor located immediately to the North of the Parcel as described above for ingress and egress to the Parcel as specifically outlined in other provisions of this Agreement.

A Portion of Tax Parcel No.:08-09-476-003

The Grantor and Grantee agree that the foregoing Easement is subject to the following terms and conditions:

1. Right of Ingress and Egress.

This Easement includes only a limited non-exclusive right of residential ingress and egress on the surface of the Easement Area to the Benefitted Parcel; provided, however, Grantee's rights of ingress and egress shall not unreasonably interfere with Grantor's rights to use the Easement Area to access the Grantor's property or any adjacent or surrounding property. Grantee shall use the Easement in compliance with all requirements of law. Grantee's rights of ingress and egress shall be limited to residential vehicles only. For purposes of this Easement, residential vehicles shall mean and refer to any passenger car, pick-up truck, van, SUV, residential type utility and/or travel trailer owned or used by Grantee or its tenants of the single family residence located on the Benefitted Parcel ("Residential Vehicles"). Grantee shall not be permitted to use the Easement Area to access the Benefitted Parcel with any commercial vehicle, construction or heavy equipment of any kind ("Commercial Vehicles"). For purposes of this Easement, Commercial Vehicles, shall mean and refer to any vehicle or trailer not otherwise defined as a Residential Vehicle herein. By way of example, but without limitation, Commercial Vehicles include any dump truck, cement truck, bulldozer, backhoe, skidsteer, bobcat, excavator, or similar equipment used in commercial or construction work including any trailer carrying any Commercial Vehicle or construction equipment.

Notwithstanding the foregoing, in the event the Grantee has a necessity to use the Easement Area for ingress and egress for Commercial Vehicles to the Benefitted Parcel for a limited period of time and for a specific purpose relating to work performed on the Benefitted Parcel, Grantee may request such limited use by providing a written request to Grantor. The written request shall include the reason why the necessity arises, the type of Commercial Vehicle(s) Grantee seeks to use within the Easement Area, the expected duration, any work Grantee seeks to perform on the Benefitted Parcel using the Commercial Vehicles, and the dates and times Grantee wishes to use the Easement Area. Grantee, however, shall not make any written request to use the Easement Area for Commercial Vehicles if the access to the Benefitted Parcel can be accommodated by reasonable means through Grantee's own property. Grantor shall be entitled to use its judgment, which shall not be exercised arbitrarily or capriciously, to grant or deny Grantee's written request. Grantor shall either approve or deny Grantee's written request in writing within a reasonable period of time. Grantor shall also be entitled to set reasonable limitations on Grantee's use of the Easement Area for Commercial Vehicles in order to protect Grantee's use of the Easement Area and minimize any damage to the Easement Area. In no event shall Grantee be entitled to use the Easement Area for any Commercial Vehicle unless it first obtains Grantor's prior written approval.

Grantee agrees that any unauthorized or prohibited use of the Easement Area set forth herein shall constitute a breach of this Easement.

2. Fencing and Width of Opening

Except as set forth herein, Grantor and Grantee shall be entitled to fence the boundaries of their respective properties. However, Grantor shall not be entitled to install any fence on the boundary of the Benefitted Parcel and the Easement Area that restricts Grantee's reasonable use of the Easement. If it chooses to install a fence between the boundary of the Easement Area and Benefitted Parcel, Grantor shall provide a minimum 24 foot opening in its fence. Grantee agrees that a 24 foot opening allows Grantee reasonable use of the Easement Area to access the Benefitted Parcel. The opening in Grantor's fence shall begin at the eastern most point of the Easement Area and extend at least 24 feet westerly along the boundary of the Easement Area and the Benefitted Parcel. Nothing in this Easement shall be construed to limit Grantor's right install a fence or a gate elsewhere on Grantor's property, including but not limited to, the eastern boundary of the Easement Area. Furthermore, Grantor reserves the right to install a gate at or near the boundary of the Easement Area and the public right of way at 2200 West if in the future it becomes necessary or expedient to do so. Grantor, however, shall not install a gate at 2200 West unless Grantor first provides Grantee with a key or key code to the gate and obtains Grantee's written consent, which consent shall not be unreasonably withheld.

3. Responsibility for Costs/Expenses

The costs for maintaining the driveable portion of the Easement Area ("Driveable Area") shall be shared equally by the Grantor and the Grantee, except as specifically provided herein. The responsibility for performing ordinary and normal maintenance of such Driveable Area of the Easement Area shall be that of both the Grantor and the Grantee. Maintenance, repairs, and improvement of other portions of the Easement Area not included in the Driveable Area shall be the sole responsibility of Grantor. However, except as provided herein, neither Grantor nor Grantee shall perform any work within the Driveable Area or incur expense for maintenance of the Driveable Area without first obtaining the written permission of the other party, which shall not be unreasonably withheld and may be reasonably conditioned. As set forth in Section 4(b) herein, Grantor reserves the right to improve the Easement Area, except that no improvement shall be made to the Driveable Area until **after two (2) years** following the recording of this Access Easement Agreement, except as otherwise agreed in writing by both Grantor and Grantee. Grantee agrees to share equally in the costs of any improvements to the Driveable Area that benefit or serve the Benefitted Parcel (e.g., paving the Easement Area). Grantee shall participate in the bidding and planning process for any such improvements and shall be allowed to review and approve any plans and bids for such improvements, which review shall be conducted in a reasonably expeditious manner and which approval shall not be unreasonably withheld and may be reasonably conditioned. However, any improvements that benefit only Grantor's property or planned for portions of the Easement Area **not included** in the Driveable Area shall be paid for exclusively by the Grantor and Grantee **shall not** be involved in the planning or bidding processes or allowed to review and approve such plans or bids. Notwithstanding any other provision in this Agreement, Grantor shall be entitled to perform maintenance, repairs, and improvements in the Easement Area, including without limitations those improvements

set forth in Section 4(b), without the approval of the Grantee at any time and without the Grantee's involvement, but in such event Grantee shall not be responsible for sharing the costs of such maintenance, repairs, or improvements, but must nonetheless give Grantee reasonable notice of such intended maintenance, repairs or improvements and the anticipated reasonable length of time such maintenance, repairs or improvements will take to complete insofar as Grantee's access to the Easement Area will likely be restricted somewhat during this time. Said maintenance, repairs or improvements shall, in all cases, be completed in a reasonably expeditious manner.

4. Nonexclusive Rights

- (a) The rights hereby granted to Grantee are nonexclusive and are subject to all other easements, exceptions, reservations, rights, and encumbrances of record, enforceable in equity or evidenced physically on Grantor's Property. THE EASEMENT IS GRANTED WITHOUT REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, INCLUDING, BUT NOT LIMITED TO, ANY REPRESENTATION AS TO TITLE, PHYSICAL CONDITION, ENVIRONMENTAL CONDITION, SUITABILITY FOR GRANTEE'S INTENDED USE OR OTHERWISE. GRANTEE HEREBY ACCEPTS THE PROPERTY UNDERLYING THE EASEMENT IN ITS AS-IS AND WHERE-IS CONDITION.
- (b) Grantee acknowledges that Grantor, its successors or assigns, may make improvements including, but not limited to, paving, sidewalks, phone or fiber optic lines, water lines, gas mains, sanitary, or storm sewers and any other utilities or uses; provided that such uses shall not include structures that unreasonably interfere with the Grantee's use of the Easement Area for the purposes indicated herein. In addition, the Easement Area may be used for any purposes by such person or entity as Grantor, its successors or assigns, may designate at any time, so long as such uses do not unreasonably interfere with the rights of Grantee granted herein.
- (c) Grantee shall not disturb any existing or future utilities within the boundaries of the Easement Area.
- (d) Grantor shall have the right, upon reasonable notice, to close off the Easement Area for limited periods to facilitate construction of surface improvements, the installation of utilities, to avoid public dedication, or for safety purposes if Grantor is using the Easement Area to bring in animals or equipment. In such event, Grantor shall perform such work and/or function as expeditiously as practicable under the circumstances so as to minimize Grantee's interruption of use of the Easement Area.

5. Indemnity

Grantee shall defend, indemnify and hold harmless Grantor and any parent, affiliate or subsidiary of Grantor, and their respective directors, officers, managers, employees,

representatives, agents, successors and assigns, (individually, an "Indemnitee" and collectively, the "Indemnitees"), separately and collectively, from and against any and all liability, claims, damages, losses, costs or expenses (including reasonable attorneys' fees), including, but not limited to, loss of or damage to property (to whomever belonging) or injury to or death of any person (including an employee of Grantee or any Indemnitee) arising out of Grantee's use of the Easement Area, or for loss or damage arising from attachments, liens or claims of materialmen or laborers, including claims and reasonable attorneys' fees and expenses relating to any of the foregoing, to the extent arising out of or relating in any way to the rights herein granted. Such indemnity shall apply whether or not Indemnitee was or is claimed to be passively, concurrently or actively negligent, and regardless of whether liability without fault is imposed or sought to be imposed on one or more Indemnitees. This indemnity shall not apply where such loss, damage, injury, liability or claim is the result of the sole negligence, gross negligence or willful misconduct of an Indemnitee.

6. Environmental Responsibilities

Grantee shall not, except in compliance with relevant environmental laws and regulations, (i) cause or permit hazardous waste, substance or material to be placed, held, located, or disposed of on, under or along the Easement Area, or (ii) permit any of the Easement Area to ever be used (whether permanent or temporary) for any hazardous waste, substance or material. Grantee shall take all steps to clean up, remove, resolve or minimize the impact of, or otherwise deal with, any hazardous discharge or environmental complaint upon receipt of notice from Grantor or any governmental entity, or other person, asserting the existence of any hazardous discharge or environmental complaint on or pertaining to the Easement Area which, if true, could result in environmental liability against Grantor, Grantee or otherwise. If Grantee should fail to perform such responsibility, in addition to its other rights and remedies at law or in equity, Grantor may, but shall not be obligated to, do so and all costs and expenses (including attorneys' and consulting and engineering fees) incurred by Grantor or its representatives in the exercise of such rights, remedies, powers and privileges under this Easement, common law or statutory law shall be fully reimbursed to Grantor by Grantee.

7. Damages

In the event any injury, loss or damage occurs as a result of an act or omission of Grantee in using the Easement Area, Grantor shall not be liable or responsible for any such injuries, losses or damages. Grantee shall promptly notify Grantor of the occurrence of, and shall compensate Grantor for all damage to, fences, structures, buildings, equipment, improvements, roads and landscaping caused by Grantee's usage of the Easement Area, except to the extent such damage is caused by the sole negligence, gross negligence or willful misconduct of Grantor, its agents, invitees, employees, or contractors. In addition, Grantee shall restore the same to substantially the condition in which it existed immediately prior to such damage to the fullest extent practical. In the event that damage is caused within the Easement Area that is a result of the sole negligence, gross negligence or willful misconduct of Grantor and that disrupts Grantee's use of the

Easement Area, Grantor shall be responsible for restoring Grantee's use of the Easement Area within a reasonable period of time so as to minimize Grantee's interruption of thereof.

8. Notices

All notices and other communications required under this Easement shall be in writing, and delivered personally, sent certified mail, or be sent via email to the party at the following addresses. In the event a party elects to provide a notice in writing by email and receives no confirmation by return email that the email has actually been received and viewed by the other party, the party shall also communicate directly in person or by telephone with the other party to ensure receipt of the email communication. Otherwise, the email communication shall be considered ineffectual and the party shall be required to provide notice by personal delivery or by certified mail to the address set forth below:

WMJ Real Estate II, LLC  
c/o Walter and Karen Jarman  
1487 Arlington Dr.  
Federal Heights, Utah 84103

[wmjarman@yahoo.com](mailto:wmjarman@yahoo.com) and [jmatkin@parrbrown.com](mailto:jmatkin@parrbrown.com)

Kevin D. Allen and Associates, Inc.  
c/o Kevin D. Allen  
2861 East 7000 South  
Salt Lake City, Utah 84121

[kdallen1@comcast.net](mailto:kdallen1@comcast.net)

Notice will be deemed received: (i) on the date of delivery if delivered in person, (ii) on the third (3rd) business day, if mailed, and (iii) if by email, on the date the recipient of the email acknowledges its receipt either by email or in person. Any change in address may be accomplished by delivery of notice in compliance with this Section.

9. Termination

In the event Grantee breaches this Easement, the Easement shall automatically terminate and be of no further force or effect and Grantee shall have no right to use any portion of Grantor's property.

10. Attorneys Fees and Costs

In the event there is any legal action to enforce or interpret the rights of the parties set forth in this Easement, the prevailing party shall be entitled to its expenses and costs, including reasonable attorneys' fees incurred in connection therewith.

11. Entire Agreement/Amendments

This Easement constitutes the entire agreement between the parties hereto relating to the Easement and may only be amended by a writing specifically referencing this Easement and signed by Grantor and Grantee or their successors, legal representatives, assignees or transferees. All covenants and agreements herein contained shall extend to and be binding upon the respective heirs, devisees, legal representatives, successors, and assigns of the parties hereto, including all other rights and benefits necessary or convenient for the full enjoyment or use of the rights herein granted.

12. Severability

If any provision of this Easement is or becomes illegal, or is found to be null or void for any reason, or is held unenforceable by a court of competent jurisdiction, the remaining portions of the Easement shall remain in full force and effect.

13. Relationship of Parties.

This instrument does not create any fiduciary or other relationship between the parties except as grantor and grantee. Any obligation or liability whatsoever of Grantor which may arise at any time under this instrument or any obligation or liability which may be incurred by Grantor pursuant to any other instrument, transaction, or undertaking contemplated hereby shall not be personally binding upon, nor shall resort for the enforcement thereof be had to the property of Grantor's managers, members, officers, employees, agents, attorneys or representatives, regardless of whether such obligation or liability is in the nature of contract, tort, or otherwise. This instrument does not create any fiduciary or other relationship between the parties.

15. Governing Law

This Easement, right-of-way and these covenants shall be construed under and shall be enforceable in accordance with the laws of the State of Utah, shall run with the land, and shall be binding upon and inure to the benefit of the successors and assigns of Grantor and the successors and assigns of Grantee subject to the terms thereof.

[signature page follows]

IN WITNESS WHEREOF, the parties hereto have executed this Access Easement to be effective as of the 1st day of September, 2009, ~~2008~~

GRANTOR:

GRANTEE:

**WMJ Real Estate II, LLC,  
a Utah Limited Liability Company**

**Kevin D. Allen and Associates, Inc.,  
a Utah Corporation**

By: [Signature]

By: [Signature]

Title: Pres. client

Title: Pres.

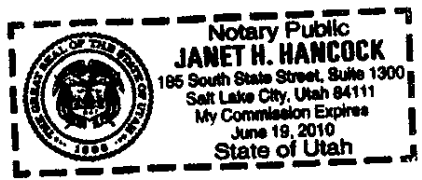
Date: 1 Sept 09

Date: 9/19/09

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

The foregoing instrument was acknowledged before me this 1st day of September, 2009, by Walter Mark Jarman, the President of, **WMJ Real Estate II, LLC.**

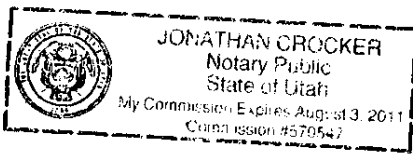
[Signature]  
Notary Public



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

The foregoing instrument was acknowledged before me this 19th day of September, 2009 by Kevin D Allen, the President of **Kevin D. Allen and Associates, Inc.**

[Signature]  
Notary Public





**EXHIBIT A**  
**to**  
**ACCESS EASEMENT**

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**Legal Description of Easement Area**

A right of way access easement 32 feet in width, more or less, from the eastern edge of 2200 West, for the purpose of ingress and egress for foot and residential vehicular traffic to the Benefitted Parcel located in Salt Lake County, in the State of Utah:

The legal description of the Easement Area is as follows:

Beginning at a point 896.49 (838.465 deed) feet North along the center of a 4 rod (66 feet) street from the Southwest corner of the Southeast quarter of the Southeast quarter of Section 9, Township 1 North, Range 1 West, Salt Lake Base and Meridian and running thence North 34.48 feet (32.24 deed); thence South 89deg.17'15" East (East deed) 153.00 feet; thence South 00deg. 01'10" East 33.03 feet (South 32.24 deed), to the North line of Parcel No. 08-09-476-004; thence along said parcel line North 89deg. 49'45" West (West deed) 153.00 feet to the point of beginning.

It is the intent of the above-described legal description to provide a permanent non-exclusive easement ("Easement") for the benefit of Parcel No. 08-09-476-004 ("Parcel"), and that the western end of said Easement is located immediately adjacent to the eastern edge of the public road now known as 2200 West providing access to said Parcel across that certain portion of real property belonging to Grantor located immediately to the North of the Parcel as described above for ingress and egress to the Parcel as specifically outlined in other provisions of this Agreement.

**A Portion of Tax Parcel No.:08-09-476-003**

**EXHIBIT B**  
**to**  
**ACCESS EASEMENT**

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**Benefited Parcel**

The "Benefitted Parcel" referred to in the foregoing Access Easement is located in Salt Lake County, Utah and is more particularly described as follows:

Commencing in the center of a 4 rod street 696.46 North from the Southeast corner of the Southeast quarter of the Section 9, Township 1 North, Range 1 West, Salt Lake Base and Meridian and running thence North on the center of said street 140 feet; thence East 333 feet; thence South 140 feet; thence West 333 feet to the point of beginning.

**Tax Parcel No. 08-09-476-004**