

01209319 B: 2793 P: 1112

Page 1 of 16

WHEN RECORDED MAIL TO:

Park City Municipal
c/o Michelle Kellogg, City Recorder
P.O. Box 1480
Park City, UT 84060

Rhonda Francis Summit County Recorder

09/08/2023 04:31:06 PM Fee \$40.00

By COTTONWOOD TITLE INSURANCE AGENCY, INC.

Electronically Recorded

File No.: 149390-MCF

Easement Agreement

In Reference to Tax ID Number(s).:

YARD-B-1AM-X & IHPC-A-AM

WHEN RECORDED RETURN TO:

**Park City Municipal
c/o Michelle Kellogg, City Recorder
P.O. Box 1480
Park City, UT 84060**

Space Above for Recorder's Use

EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT (this "**Agreement**") is entered into to be effective as of the 31st day of August, 2023 (the "**Effective Date**"), by and between PARK CITY MUNICIPAL CORPORATION, its successors in title as the owner of the Easement Parcel defined below ("**Grantor**"), and WINTZER-WOLFE PROPERTIES, LTD., a Utah limited partnership ("**Grantee**"). Grantor and Grantee may be referred to herein separately as a "**Party**" and collectively as the "**Parties**."

RECITALS:

A. Grantor is the owner of that certain parcel of real property located in Park City, Summit County, Utah, which is more particularly described in **EXHIBIT A** attached hereto and incorporated herein by this reference ("**Grantor's Property**").

B. Grantee is the owner of that certain parcel of real property located in Park City, Summit County, Utah, which is more particularly described in **EXHIBIT B** attached hereto and incorporated herein by this reference ("**Grantee's Property**").

C. Grantor's Property and Grantee's Property are contiguous, as depicted in the drawings (the "**Drawing**") attached hereto as **EXHIBIT C** and incorporated herein by this reference.

D. As part of addressing longstanding use patterns and accommodating Grantor's development plans, Grantor hereby grants to Grantee an easement for vehicular and pedestrian access and use on, over, across, and through that portion of Grantor's Property which is more particularly described on **EXHIBIT D** and depicted on **EXHIBIT C-1**, both attached hereto and incorporated herein by this reference (the "**Easement Parcel**"), pursuant to the terms and conditions set forth in this Agreement. The location of the Easement Parcel is depicted on **EXHIBIT C-1**.

AGREEMENT

NOW THEREFORE, FOR GOOD AND VALUABLE CONSIDERATION, the receipt and sufficiency of which are hereby acknowledged, the Parties agree as follows:

AW
8/31/23

1. Grant of Easement. Grantor hereby grants and conveys to Grantee an exclusive easement for vehicular and pedestrian access and use, including access by snow removal vehicles (the "**Easement**") on, over, across, and through the Easement Parcel by Grantee for purposes related to the operation by Grantee on Grantee's Property of a self-storage facility and other existing uses and businesses (the "**Existing Businesses**"). Grantee shall be permitted to install asphalt pavement and fences within the Easement Parcel, but Grantee shall not construct or install within the Easement Parcel any buildings. Grantee may allow the Easement to be utilized by Grantee's contractors, agents, employees and invitees ("**Grantee's Invitees**").

2. Duration of Easement. The Easement shall commence as of the Effective Date of this Agreement, and the Easement and this Agreement shall continue in effect until the later of (i) the date on which Wintzer-Wolfe Properties Ltd. no longer owns the Grantee's Property, or (ii) until the date Grantee's Property is no longer utilized for any of the Existing Businesses. Upon the reasonable request of any Party following the expiration or earlier termination of the Easement and this Agreement, written evidence of the expiration or earlier termination of the Easement and this Agreement in recordable form reasonably acceptable to the Parties shall be promptly executed, acknowledged, delivered and recorded by the Parties in the Office of the Recorder of Summit County, Utah.

3. Condition of the Easement Parcel. Grantee accepts the Easement Parcel and all aspects thereof in its "AS IS," "WHERE IS" condition, without warranties, either express or implied, "WITH ALL FAULTS," including but not limited to both latent and patent defects, and subject to the existence of hazardous materials, if any, and any other licenses, easements, rights, or other encumbrances affecting the Easement Parcel. Grantee hereby waives all warranties, express or implied, regarding the title, condition and use of the Easement Parcel, including, but not limited to any warranty of merchantability or fitness for a particular purpose. Without limiting the generality of the foregoing, the Easement interests are granted to Grantee subject to: (a) any state of facts which an accurate ALTA/ASCM survey or physical inspection of the Easement Parcel might show; (b) all zoning regulations, restrictions, rules and ordinances, building restrictions and other laws and regulations now in effect or hereafter adopted by any governmental authority having jurisdiction; and (c) reservations, licenses, easements, rights-of-way, covenants, conditions, restrictions, encroachments, liens, and encumbrances and all other matters of record or enforceable at law or in equity. Grantee may maintain existing improvements within the Easement Parcel without any consents, approvals, permissions or other agreements. Should Grantee desire to modify the existing improvements in a manner allowed by this Agreement, Grantee must obtain any and all consents, approvals, permissions, and agreements to cross, encumber, or encroach upon any other easements or rights of others related to its modification of use and/or disturbance of the Easement Parcel.

4. Insurance. Grantee has obtained and shall maintain in full force and effect throughout the duration of this Agreement and the Easement, at Grantee's own expense, a commercial general liability policy of insurance, on which Grantor and all subsequent owners and/or lessees of Grantor's Property (the "**Grantor Parties**") shall be named as additional insured parties, insuring against liability for injury to persons and/or property and death of persons occurring in, on or about the Easement Parcel to the extent caused by the use by Grantee and/or Grantee's Invitees of the Easement Parcel, pursuant to this Agreement, with a limit of liability of not less than One Million Dollars (\$1,000,000) combined single limit. Such coverage afforded to

OW
8/31/23

Grantor and the Grantor Parties shall be primary and non-contributory. Grantee's commercial general liability insurance under this Section 4 may be part of a blanket or umbrella policy of insurance which Grantee has in force. Grantee shall also obtain and maintain all employee's compensation and employer liability insurance required under applicable workers' compensation laws.

5. Compliance with Laws. Grantee shall, at its own expense, promptly comply with and abide by all laws, ordinances, rules, orders, regulations and requirements of the federal, state, county or municipal governments now in force or hereafter enacted pertaining to the use by Grantee and/or Grantee's Invitees of the Easement Parcel and/or pertaining to the operation of Grantee's Existing Businesses on any portion of the Easement Parcel.

6. Damage; Repair; Restoration and Indemnification. Grantor, at its sole cost and expense, shall defend, indemnify and hold harmless Grantee, and Grantee's Invitees, from and against any and all claims, losses, damages, liabilities and expenses, including, but not limited to, attorneys' fees ("**Claims**"), arising out of injuries or damages to persons on Grantee's Property or to Grantee's Property as a result of Grantor's activities on Grantor's Property, including the excavation of areas adjacent to the Easement Parcel and Grantee's Property. Nothing herein shall require Grantor to indemnify, hold harmless or defend Grantee or Grantee's Invitees from any Claims arising from the fault of Grantee or Grantee's Invitees.

7. Fences. Grantor and Grantee hereby acknowledge and agree that as of the Effective Date of this Agreement there exists a chain link fence (the "**Existing Fence**") that is located on Grantor's Property near or adjacent to the northern boundary of the Easement Parcel. Grantor has disclosed to Grantee that Grantor intends to lease to JF EngineHouse Partners, LLC, a Utah limited liability company ("**Lessee**"), all of Grantor's Property for the construction and development by Lessee on Grantor's Property of a new multi-family affordable housing project (the "**Housing Project**"). The lease agreement (the "**Lease**") between Grantor and Lessee, pursuant to which Grantor leases to Lessee Grantor's Property, shall be subject to all of the terms and conditions of this Agreement. Grantor has disclosed to Grantee that Lessee will construct on Grantor's Property a new fence (the "**New Fence**"), which shall be located immediately adjacent to the northern boundary line of the Easement Parcel. Grantor will require Lessee to work in good faith with Grantee to establish a work plan (the "**Work Plan**") that is reasonably acceptable to Grantee and Lessee pertaining to the construction of the New Fence, which Work Plan: (a) will minimize the disruption to the operation of Grantee's Existing Businesses on Grantee's Property during the construction of the New Fence, and (b) will maintain the security that is currently provided to Grantee's Property by the Existing Fence during the period of time when the Existing Fence is removed in order to allow the New Fence to be constructed.

8. Waiver and Extinguishment of Rights by Grantee. As a material inducement for Grantor to execute this Agreement, and as a material inducement for Grantee to waive its claims to the Easement Parcel, which waiver shall only occur, and is expressly conditioned upon Grantor, or its Lessee, installing the New Fence by October 31, 2024, as more particularly described in Section 7 herein and pursuant to the terms of that certain Side Letter Agreement of even date herewith by and between Grantee and Lessee (the "**Waiver Condition**"). Upon satisfaction of the Waiver Condition, Grantee hereby waives, releases, vacates, extinguishes and terminates any and all claims, rights, interests, easements, licenses and any and all other interests of any nature

pertaining to the use, occupancy or ownership of all or any portion of Grantor's Property, including without limitation any and all claims that may arise, exist, or that may be based upon or asserted under the doctrines of adverse possession, prescriptive easement, boundary by acquiescence, and any and all other doctrines or theories, whether legal or equitable, pertaining to the ownership, occupancy or use by Grantee of all or any portion of Grantor's Property, other than the Easement granted by Grantor to Grantee pertaining to the Easement Parcel pursuant to this Agreement, which rights of Grantee pertaining to the Easement shall be solely and strictly in accordance with the express terms and conditions of this Agreement.

9. Not a Public Dedication. Nothing contained in this Agreement shall be deemed to be a gift or a dedication of any portion of the Easement Parcel to or for the general public or for any public purpose whatsoever.

10. Covenants Run with Land. The obligations of the Parties hereunder shall be covenants running with the land and shall be binding upon the owners of Grantor's Property, Grantee's Property, and the Easement Parcel and their respective successors in title. The terms, conditions and provisions of this Agreement shall extend to and be binding upon each successor in title to the Grantee's Property and Grantor's Property for the duration of this Agreement.

11. Remedies in the Event of a Breach. In the event of any violation or threatened violation by a Party of any of the terms of this Agreement, the other Party shall have the right to enjoin such violation or threatened violation in a court of competent jurisdiction. The right of injunction may be sought by the Parties and shall be in addition to all other remedies set forth in this Agreement or provided by law or in equity.

12. Notices. Any notices under this Agreement shall be given in writing by registered or certified mail, postage prepaid, return receipt requested and addressed as follows:

To Grantor: Park City Municipal Corporation
445 Marsac Ave.
P.O. Box 1480
Park City, UT 84060-1480
Attention: City Attorney's Office
Email Address: PCMC_Notices@parkcity.org

To Grantee: Wintzer-Wolfe Properties, Ltd.
1040 Ironhorse Drive – Box 4199
Park City, UT 84060
Attention: Mary C. Wintzer

or to such other addresses as may hereafter be designated in writing by the respective Parties hereto. The time of rendering or giving of a notice shall be deemed to be the time when the same is actually received or delivery thereof is attempted by registered or certified mail.

AW
8/31/23

13. General Provisions.

(a) No Waiver. Any Party's failure to enforce any provision of this Agreement shall not constitute a waiver of the right to enforce such provision. The provisions of this Agreement may only be waived by a writing signed by the Party intended to be benefited by the provisions to be waived specifically acknowledging an intent to waive such provisions. A waiver by a Party of any breach hereunder by any other Party shall not be construed as a waiver of any succeeding breach of the same or other provisions.

(b) Entire Agreement. This Agreement, together with all exhibits and attachments, constitutes the entire agreement between Grantor and Grantee pertaining to the subject matter hereof and supersedes any prior understandings, agreements, or representations, verbal or written pertaining to the subject matter hereof. No modification of, or amendment to, this Agreement shall be effective unless in writing signed by all Parties or by their respective successors in title as the owners of Grantor's Property and Grantee's Property. This Agreement shall not be supplemented or modified by any course of dealing.

(c) Interpretation. Whenever the context requires construing the provisions of this Agreement, the use of a gender shall include both genders, use of the singular shall include the plural, and the use of the plural shall include the singular. The word "including" shall be construed inclusively, and not in limitation, whether or not the words "without limitation" or "but not limited to" (or words of similar import) are used with respect thereto. The provisions of this Agreement shall be construed as a whole and not strictly for or against any Party. Unless otherwise provided, references to Sections refer to the Sections of this Agreement.

(d) Governing Law. This Agreement shall be governed by and construed in accordance with and interpreted under the laws of the State of Utah.

(e) Severability. If any term or provision of this Agreement or the application thereof to any person or circumstance shall, to any extent, be invalid or unenforceable, then 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 held invalid or unenforceable, shall not be affected thereby, and each term, condition, and provision of this Agreement shall be valid and enforced to the fullest extent permitted by law, so long as removing the severed portion does not materially alter the overall intent of this Agreement.

(f) Relationship of Parties. The Parties shall not, by this Agreement nor by any act of any Party, be deemed principal and agent, limited or general partners, joint venturers or to have any other similar relationship to each other in the conduct of their respective businesses, or otherwise.

(g) Authority. Each undersigned represents and warrants that each has been duly authorized by all necessary corporate, company or governmental action, as appropriate, to execute this Agreement for and on behalf of the respective Parties.

(h) Counterparts. This Agreement may be executed in one or more counterparts, each of which, when so executed, shall be deemed to be an original. Such counterparts shall together constitute and be one and the same instrument.

cd
2/3/23

IN WITNESS WHEREOF the Parties have executed this Agreement to be effective as of the Effective Date.

PARK CITY MUNICIPAL CORPORATION

By: Nancy Worel
Name: Nancy Worel
Title: Mayor



Attest:

By: Michelle Kellogg
City Recorder

APPROVED AS TO FORM:

[Signature]
City Attorney's Office

WINTZER-WOLFE PROPERTIES, LTD.,
a Utah limited partnership

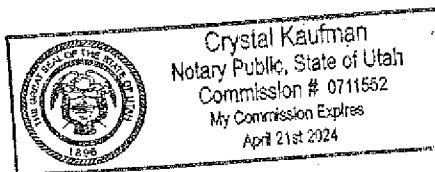
By: [Signature]
Name: Charles D. Wintzer
Title: General Partner

STATE OF UTAH)

COUNTY OF Summit) ss.

The foregoing instrument was acknowledged before me this 31st day of August, 2023, by Crystal Kaufman, in such person's capacity as the Notary of PARK CITY MUNICIPAL CORPORATION.

Crystal Kaufman
NOTARY PUBLIC



CW
8/31/23

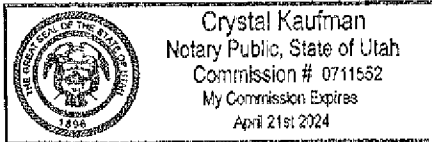
STATE OF UTAH

SS.

COUNTY OF Summit)

The foregoing instrument was acknowledged before me this 31st day of August, 2023, by Charles D Wintzer, in such person's capacity as the General Partner of Wintzer-Wolfe Properties, Ltd., a Utah limited partnership.

NOTARY PUBLIC



**EXHIBIT A
TO
EASEMENT AGREEMENT**

Legal Description of Grantor's Property

Legal Description: LOT B THE YARD SUBDIVISION FIRST
AMENDED; ACCORDING TO THE OFFICIAL PLAT ON FILE
IN THE SUMMIT COUNTY RECORDERS OFFICE. CONT
APPROXIMATELY 1.86 AC. 2408-4

aw
8/31/23

**EXHIBIT B
TO
EASEMENT AGREEMENT**

Legal Description of Grantee's Property

Parcel A Ironhorse Park Commercial Subdivision First Amended
according to the official plat on file in the Summit County Records
office. Approximately 2.20 acres.

Parcel No. IHPC-A-AM, Wintzer-Wolfe Properties LTD

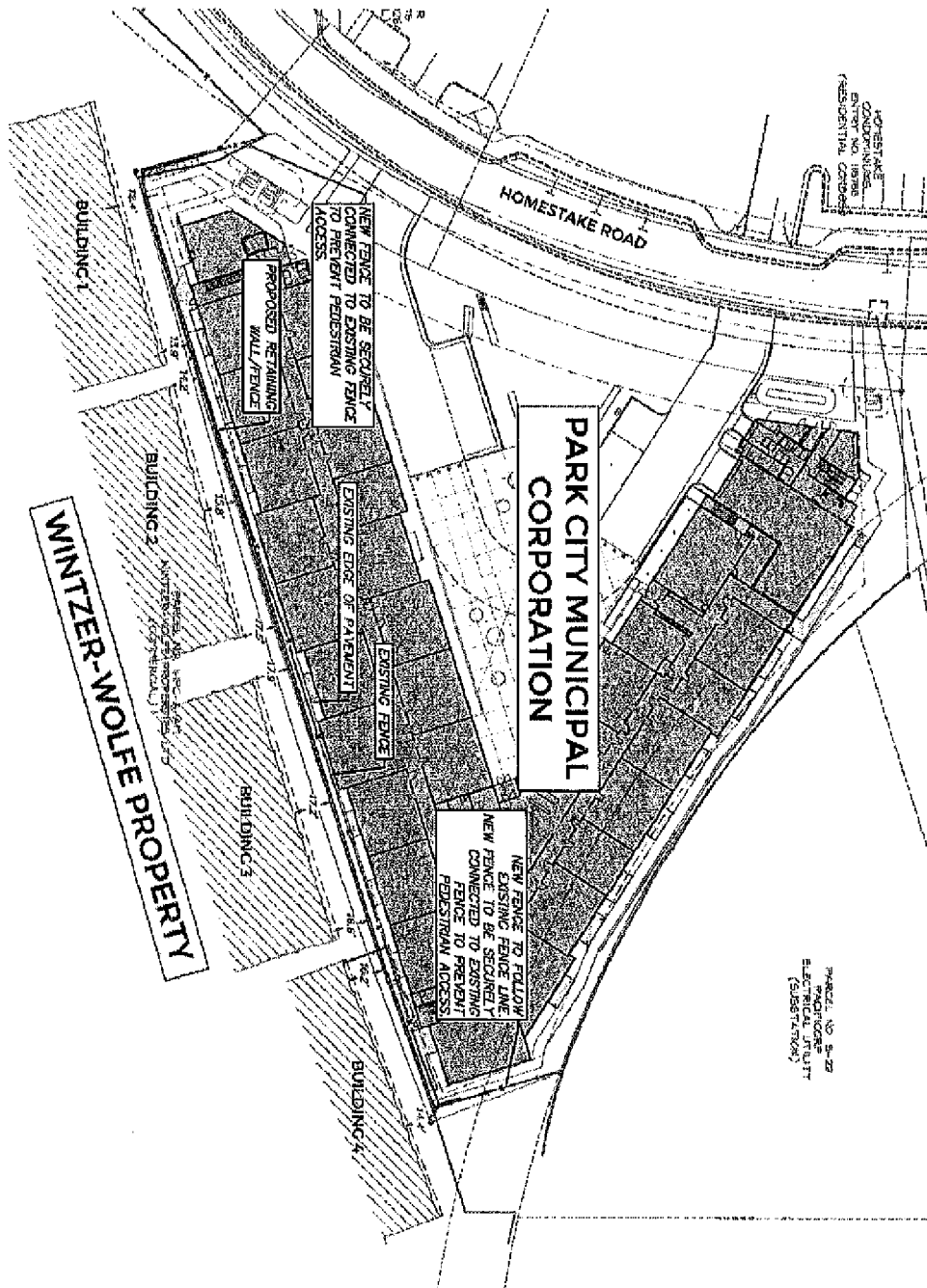
CW
8/31/23

**EXHIBIT C
TO
EASEMENT AGREEMENT**

**Drawing Depicting the Approximate Locations of
Grantor's Property and Grantee's Property**

(See attached page)

aw
8/31/23

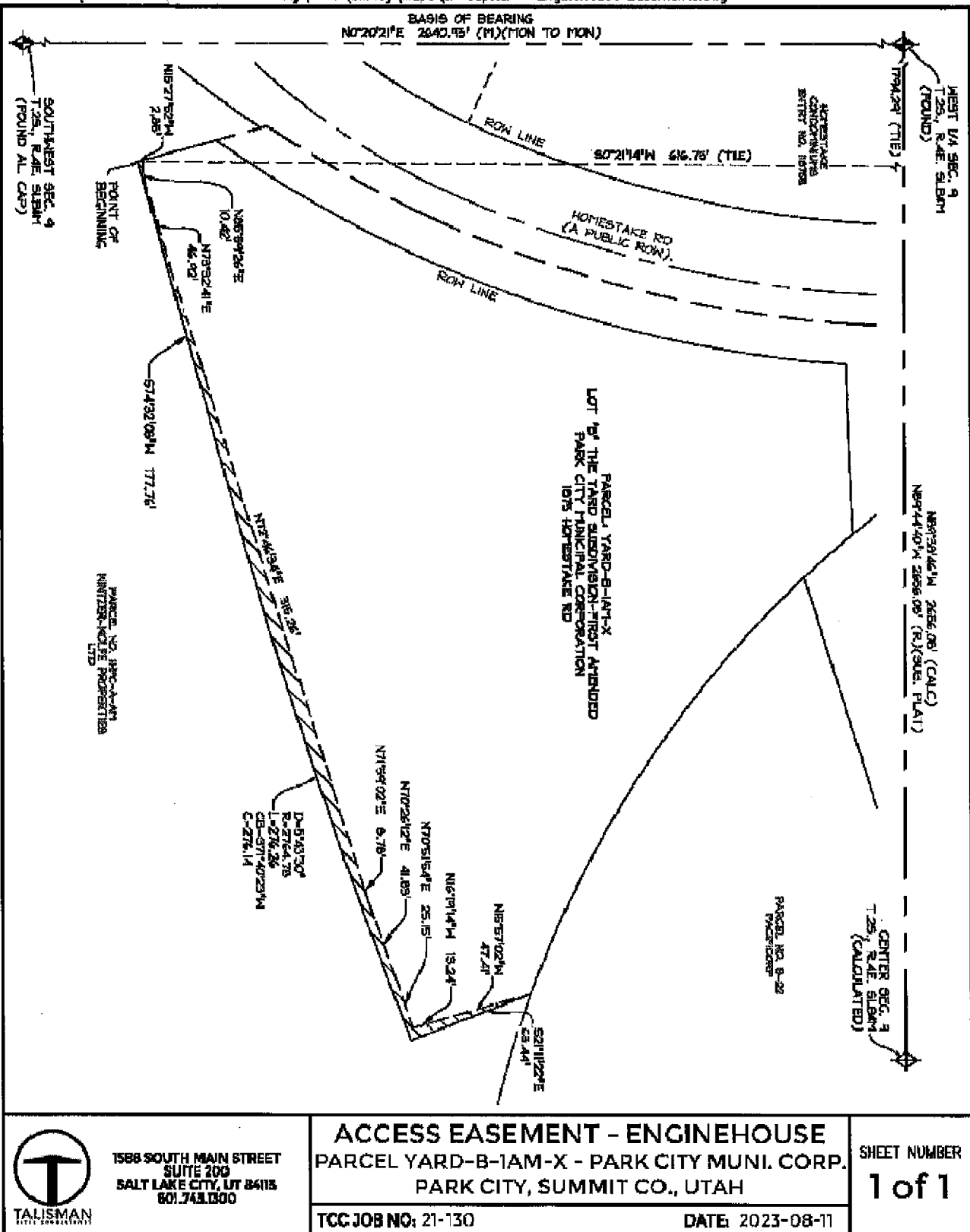


**EXHIBIT C-1
TO
EASEMENT AGREEMENT**

Depiction of Easement

(See attached page)

du
8/31/23



04/31/25

**EXHIBIT D
TO
EASEMENT AGREEMENT**

Legal Description of the Easement Parcel

ENGINEHOUSE
ACCESS EASEMENT
PARCEL: YARD-B-1AM-X
PARK CITY MUNICIPAL CORPORATION
1875 WOODBINE WAY
2023-08-11

THE BASIS OF BEARING FOR THIS EASEMENT IS NORTH
0°20'21" EAST 2640.95 FEET

MEASURED BETWEEN THE FOUND MONUMENTS AT THE
SOUTHWEST CORNER AND WEST QUARTER CORNER OF
SECTION 9, TOWNSHIP 2 SOUTH, RANGE 4 WEST, SALT
LAKE BASE AND MERIDIAN.

BEGINNING AT A POINT WHICH IS ON THE
SOUTHWESTERLY PROPERTY CORNER OF THE PARK
CITY MUNICIPAL CORP PROPERTY, PARCEL YARD-B-
1AM-X, SAID POINT BEING SOUTH 89°38'46" EAST 1794.29
FEET, AND SOUTH 0°21'14" WEST 616.75 FEET, FROM THE
FOUND MONUMENT AT THE WEST QUARTER CORNER OF
SECTION 9, TOWNSHIP 2 SOUTH, RANGE 4 EAST, SALT
LAKE BASE AND MERIDIAN, AND RUNNING, THENCE
ALONG SAID WESTERLY PROPERTY NORTH 15°27'52"
WEST 2.85 FEET; THENCE NORTH 85°59'26" EAST 10.42
FEET; THENCE NORTH 73°32'41" EAST 46.92 FEET; THENCE
NORTH 72°46'34" EAST 315.26 FEET; THENCE NORTH
71°59'02" EAST 8.78 FEET; THENCE NORTH 70°26'12" EAST
41.83 FEET; THENCE NORTH 70°51'54" EAST 25.15 FEET;
THENCE NORTH 16°19'14" WEST 13.24 FEET; THENCE
NORTH 15°57'02" WEST 47.41 FEET TO THE EASTERLY LINE
OF SAID PROPERTY; THENCE ALONG SAID EASTERLY
LINE SOUTH 21°11'22" EAST 63.44 FEET TO THE
SOUTHEASTERLY CORNER OF SAID PROPERTY; THENCE
ALONG SAID SOUTHERLY PROPERTY LINE FOLLOWING 2
(TWO) COURSES: 1) WESTERLY ALONG A NON-TANGENT
CURVE TO RIGHT, HAVING A RADIUS 2764.78 FEET,
(CHORD BEARS: SOUTH 71°40'23" WEST 276.14 FEET),
THROUGH A CENTRAL ANGLE 5°43'30", FOR AN ARC

D-1

4892-4939-1731.v7

CW
8/31/23

LENGTH 276.26' FEET, 2) THENCE SOUTH 74°32'08" WEST
177.76 FEET, TO THE POINT OF BEGINNING.

LOCATED IN THE SOUTHWEST QUARTER OF SAID
SECTION 9

CONTAINING 2133.24 SQ. FT. OR 0.0490 ACRES

D-2

4892-4939-1731.v7

EW
8/31/23