

AFTER RECORDING, RETURN TO:

CW THE LUCY, LLC
ATTN: URBAN DEVELOPMENT TEAM
1222 W. LEGACY CROSSING BLVD., SUITE 6
CENTERVILLE, UTAH 84014

12963837
04/08/2019 12:15 PM \$33.00
Book - 10767 Pg - 6910-6919
RASHELLE HOBBS
RECORDER, SALT LAKE COUNTY, UTAH
CW THE LUCY, LLC
1222 W LEGACY CROSSING BLVD
SUITE 6
CENTERVILLE UT 84014
BY: SSA, DEPUTY - MI 10 P.

AFFECTING PARCEL NUMBER(S): 1512458008, 1512458009, 1512458010

**AGREEMENT TO TERMINATE PRIOR EASEMENTS AND GRANT REVISED
CROSS ACCESS AND RIGHT OF WAY EASEMENTS**

THIS AGREEMENT TO TERMINATE PRIOR EASEMENTS AND GRANT REVISED CROSS ACCESS AND RIGHT OF WAY EASEMENTS (the "**Agreement**") is made and entered into this 29 day of January, 2019, by and between DD Management, LLC, a Utah limited liability company ("**Owner 1**") and CW THE LUCY, LLC, a Utah limited liability company ("**Owner 2**", together with Owner 1, each a "**Party**" and collectively, the "**Parties**").

RECITALS

WHEREAS, Owner 1 is the fee title owner of that certain real property located in Salt Lake County, Utah, as more particularly described in **Exhibit A** attached hereto and incorporated herein by reference (the "**Owner 1 Property**");

WHEREAS, Owner 2 is the fee title owner of that certain real property located in Salt Lake County, Utah, as more particularly described in **Exhibit B** attached hereto and incorporated herein by reference (the "**Owner 2 Property**");

WHEREAS, by that certain "Right of Way Agreement" recorded October 4, 1973 as Entry No. 2574038 in the office of the Salt Lake County Recorder, Book 3433, Page 18, Owner 1's predecessor in interest of the Owner 1 Property granted in favor of Owner 2, and Owner 2's predecessor in interest of the Owner 2 Property granted in favor of Owner 1, certain cross access and right-of-way easement rights, duties, and obligations with respect to each other (collectively, the "**Original Easements**"); and

WHEREAS, Owner 1 and Owner 2 each now desire, subject to the terms of this Agreement, to terminate the Original Easements and to grant new cross access and right of way easements in favor of each other that will be more precise and specific in scope than the Original Easements.

NOW THEREFORE, in consideration of the mutual and reciprocal benefits resulting from the recordation of the Agreement, the Parties agree as follows:

1. Termination of Original Easements. By execution and recordation of this Agreement, the Original Easements are hereby terminated and vacated in their entirety and removed as a burden upon the Owner 1 Property and the Owner 2 Property.

2. Grant of New Easement by Owner 1. Owner 1 hereby grants unto Owner 2, for the benefit of Owner 2 and its successors, assigns, transferees, tenants, subtenants, agents, employees, guests, and invitees, a perpetual cross access and right of way easement for automobiles and other motor vehicles upon, over, and across that portion of the Owner 1 Property ("**Easement 1**"), as more particularly described in **Exhibit C** attached hereto and incorporated herein by reference.

3. Grant of New Easement by Owner 2. Owner 2 hereby grants unto Owner 1, for the benefit of Owner 1 and its successors, assigns, transferees, tenants, subtenants, agents, employees, guests, and invitees, a perpetual cross access and right of way easement for automobiles and other motor vehicles upon, over, and across that portion of the Owner 2 Property ("**Easement 2**", together with Easement 1, the "**Easement Area**"), as more particularly described in **Exhibit D** attached hereto and incorporated herein by reference. A graphic depiction of the Easement Area is attached hereto as **Exhibit E**.

4. Use of Easement Area. The Easement Area is intended to (i) promote better vehicular traffic, access, and circulation to and from the Owner 1 Property and Owner 2 Property, and (ii) permit each Party to satisfy any and all access and use requirements imposed by all applicable governmental agencies for their respective property uses. In connection therewith, each Party is permitted to and hereby agrees to use the Easement Area for (i) the conducting of such Party's ordinary business activities, and (ii) the granting of any and all access rights, duties, obligations, and restrictions imposed or otherwise required by all applicable governmental agencies (which right shall authorize each Party to extend such rights in favor of the requesting governmental agency). With the exception of certain vehicles parking for the maintenance, repair, installation, removal, or the like, of the cell tower equipment, located on the Owner 1 Property, neither Party nor occupant of any part of the Parties' properties shall permit parking or storage of vehicles in or on the Easement Area, nor any obstruction of any nature, however permanent or temporary, of any portion of the Easement Area, nor the storage of any materials thereon. Owner 1 hereby acknowledges that Owner 2 intends to construct certain multi-family residential units on the Owner 2 Property. Owner 1 hereby consents to such use of the Owner 2 Property and accepts the burden that such use will have on the Easement Area and Owner 1 Property. Owner 2 hereby consents to Owner 1's use of the Owner 1 Property as of the Effective Date and accepts the burden that such use will continue to have on the Easement Area and the Owner 2 Property.

5. Construction and Maintenance. The Easement Area shall generally be constructed and maintained in a good and useful condition. The following provisions shall apply:

- a. Initial Construction Period. The Parties acknowledge that Owner 2 intends to construct multi-family residential units on the Owner 2 Property. The Parties acknowledge and consent to the Owner 2 Property modifying, replacing,

enhancing, or otherwise altering the Easement Area in connection with its construction activities, provided that upon completion of such construction activities, the Easement Area shall be in the same or better condition as it existed prior to Owner 2 commencing its construction activities.

- b. Maintenance. Initially, the Easement Area will be maintained by Owner 2. Upon completion of Owner 2's construction activities referenced in Section 5(a) above, Owner 2 intends to incorporate, or cause to be incorporated, a homeowners association for the Owner 2 Property (the "**Owner 2 HOA**"). Upon incorporation of the Owner 2 HOA, Owner 2 intends to assign, transfer, and convey all of its maintenance obligations described hereunder to the Owner 2 HOA, and Owner 1 hereby consents to such transfer without requiring further consent of any Party. Accordingly, the rights, duties, and obligations hereunder with respect to the Easement Area shall inure to the benefit of and otherwise apply to the Owner 2 HOA, once incorporated. Owner 2 shall maintain the Easement Area in a good and useful condition; provided, however, if Owner 1, or its invitees, guests, employees, contractors, and other related parties, causes damage to the Easement Area, Owner 1 shall be obligated to promptly repair the Easement Area to the same or better condition as it existed prior to such damage. Additionally, although Owner 2 is assuming maintenance obligations of the Easement Area, if Owner 1 alters its use of the Owner 1 Property such that it materially increases its burden, impact, and use of the Easement Area, Owner 1 shall be obligated to pay for the incremental increase in costs related to the maintenance of the Easement Area caused by Owner 1's increased burden, impact, and use. As necessary, Owner 1 and Owner 2 hereby agree to hold a meeting to determine if Owner 1's use has altered such that it materially increases its burden, impact, and use of the Easement Area. In the event Owner 1 and Owner 2 do not mutually agree that Owner 1's use has, or has not, materially increased, Owner 1 and Owner 2 hereby agree to submit the issue to mediation. Owner 1 and Owner 2 shall each be responsible for their respective costs and expenses associated with said mediation, including but not limited to attorney fees.
- c. Self-Help Rights. To the extent Owner 2 fails to properly maintain the Easement Area, or to the extent Owner 1 causes damage to the Easement Area and fails to properly repair such damage, then the other Party shall have the right, after 60 days written notice to the non-performing Party, and assuming that within such 60 day period the non-performing Party fails to make good faith efforts to remedy its non-performance, to step in, make the appropriate repairs or maintenance needs, and thereafter seek reimbursement for its reasonable costs incurred from the non-performing Party.

6. Mutual Indemnification. Each Party shall defend, hold harmless, and indemnify the other from all claims, actions, demands, and liability arising from the use of the Easement Area by such Party and all of its invitees, guests, employees, contractors, and other related parties, except to the extent arising from or related to the other Party's gross negligence or willful misconduct.

7. Other Provisions. None of the provisions, conditions, covenants or restrictions of this Agreement and the easements granted herein may be expanded or modified except by a further agreement in writing and in recordable form by the Parties hereto or their heirs, successors, or assigns. It is agreed that the mutual use herein contemplated of the Easement Area is permissive and by consent and upon termination neither Party shall claim or assert any right in, over or upon the parcels of the other. This Agreement shall be interpreted pursuant to Utah law. This Agreement shall run with the land.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be duly executed as of the day and year first above written.

[SIGNATURE PAGES TO FOLLOW]

EXHIBIT A

Owner 1 Property

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

THE W 9 FT OF LOT 9, ALL LOTS 10 & 11, FOXS SUB, ALSO BEG ATNW COR SD LOT 11; 25 FT; E 75 FT; S 26 FT; W 75 FT TO BEG LESS STREET 4518-301 6123-2677 7063-029 7340-2542 7701-20997701-2100 8215-1945

EXHIBIT B

Owner 2 Property

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

Beginning at a point on the southerly right of way line of Lucy Avenue; said point being North 89°56'40" East, along the monument line, 752.12 feet and South 00°03'20" East, 8.07 feet from a Salt Lake City Survey monument located at the intersection of 300 West Street and Lucy Avenue; said point also being North 00°09'42" West, 26.00 feet from the Northeast Corner of Lot 1, Fox's Subdivision, Block 23, Plat "A"; and running thence South 00°09'42" East, 271.93 feet to a point on the northerly right of way line of 1300 South Street; thence along said northerly right of line the following two (2) courses: South 89°56'43" West, 273.61 feet; thence South 89°13'19" West, 30.89 feet; thence North 00°09'42" West, 272.31 feet to a point on the southerly right of way line of Lucy Avenue; thence North 89°56'40" East, along said southerly right of way line, 304.50 feet to the point of beginning.

Contains: 1.90 Acres (or 82,807 Sq. Ft.)

EXHIBIT C

Easement 1 Property

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

Beginning at a point on the southerly right of way line of Lucy Avenue; said point being North 89°56'40" East, along the monument line, 447.62 feet and South 00°03'20" East, 8.07 feet from a Salt Lake City Survey monument located at the intersection of 300 West Street and Lucy Avenue; and running thence North 89°56'40" East, along said southerly right of way line, 12.00 feet; thence South 00°09'42" East, 280.10 feet to a point on the northerly right of way line of 1300 South Street; thence South 89°56'43" West, along said northerly right of way line, 12.00 feet; thence North 00°09'42" West, 280.10 feet to the point of beginning.

Contains: 3,361 Sq. Ft.

EXHIBIT D

Easement 2 Property

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

Beginning at a point on the southerly right of way line of Lucy Avenue; said point being North 89°56'40" East, along the monument line, 447.62 feet and South 00°03'20" East, 8.07 feet from a Salt Lake City Survey monument located at the intersection of 300 West Street and Lucy Avenue; and running thence South 00°09'42" East, 280.10 feet to a point on the northerly right of way line of 1300 South Street; thence South 89°56'43" West, along said northerly right of way line, 13.50 feet; thence North 00°09'42" West, 280.10 feet to a point on the southerly right of way line of Lucy Avenue; thence North 89°56'40" East, along said southerly right of way line, 13.50 feet to the point of beginning.

Contains: 3,781 Sq. Ft.