

14064865 B: 11397 P: 870 Total Pages: 11  
01/23/2023 10:16 AM By: ECarter Fees: \$40.00  
Rashelle Hobbs, Recorder, Salt Lake County, Utah  
Return To: PARR BROWN GEE & LOVELESS  
101 S 200 E SUITE 700 SALT LAKE CITY UT 84111



**WHEN RECORDED, RETURN TO:**

Lamont Richardson, Esq.  
Parr Brown Gee & Loveless  
101 South 200 East, Suite 700  
Salt Lake City, Utah 84111

### **ACCESS AND UTILITY EASEMENT**

This Access and Utility Easement (this “**Easement Agreement**”) is executed as of the 18<sup>th</sup> day of January, 2023, by **ALIGNED DATA CENTERS (WJU) PROPCO, LLC**, a Delaware limited liability company (“**Aligned**”) and **111 COMMERCE CENTER 1, L.C.**, a Utah limited liability company (“**111 Commerce**”; and together with Aligned, each a “**Grantor**” and collectively, the “**Grantors**”).

WHEREAS, Aligned owns certain real property located in Salt Lake County, Utah, as more particularly under the heading “**Aligned Parcel**” as set forth on Exhibit “A” attached hereto and made a part hereof (the “**Aligned Parcel**”), and 111 Commerce owns certain real property located in Salt Lake County, Utah, as more particularly under the heading “**111 Parcel**” as set forth on Exhibit “A” attached hereto and made a part hereof (the “**111 Parcel**”; and together with the Aligned Parcel, each a “**Parcel**” and collectively the “**Parcels**”); and

WHEREAS, immediately prior to recording of this Easement Agreement, that certain plat entitled **111 Commerce Center 2<sup>nd</sup> Amended** was recorded in the Salt Lake County Recorder’s Office (the “**Plat**”), which Plat shows a cross access easement area (the “**Access Area**”) between the Parcels and the public roadway known as 9800 South (the “**Public Thoroughfare**”), which Access Area is depicted on Exhibit “B” attached hereto and made a part hereof; and

WHEREAS, the Grantors desire to enter into this Easement Agreement for the purpose of confirming their respective rights and obligations with respect to the Access Area.

NOW, THEREFORE, to these ends and in consideration of the promises, mutual covenants and agreements set forth below, together with the mutual benefits to be derived from this Easement Agreement, the Grantors hereby declare as follows:

**1. Grant of Rights-of-Way and Easements in Access Area; Limitations.**

(a) Subject to the limitations set forth in this Easement Agreement, each Grantor (in such capacity, a “**Burdened Parcel Owner**” and collectively the “**Burdened Parcel Owners**”) hereby grants and conveys to the other Grantor (in such capacity, each a “**Benefited Parcel Owner**” and collectively the “**Benefited Parcel Owners**”) and for the benefit of the Parcel owned by a Benefited Parcel Owner (each a “**Benefited Parcel**” and collectively the “**Benefited Parcels**”) a non-exclusive perpetual right-of-way and easements for vehicular and pedestrian ingress and egress on, over and across the Access Area on the Parcel owned by such Burdened Parcel Owner (each a “**Burdened Parcel**” and collectively the “**Burdened Parcels**”) and between the Benefited Parcels, the Burdened Parcels and the Public Thoroughfares for the benefit of the Benefited Parcel Owners and their respective tenants, subtenants, licensees, invitees or other permitted users of each Benefited Parcel; provided, however, the Access Area shall not be used for providing construction access to or from a Parcel (any such construction access for a Parcel, including any access by construction vehicles, must be through a separate access point for such Parcel). Such rights-of-way and easements shall each (i) be appurtenant to and benefit the Benefited Parcels, (ii) bind and burden the Access Area on the Burdened Parcels and every person having any fee,

leasehold, lien or other interest, as and to the extent arising by, through or under the Burdened Parcels, in any portion of the Access Area, and (iii) constitute a covenant running with the land.

(b) Subject to the limitations set forth in this Easement Agreement, each Burdened Parcel Owner hereby grants and conveys to Benefited Parcel Owner a nonexclusive and perpetual rights-of-way and easements under, through and across the Access Area on the applicable Burdened Parcel for the operation, inspection, servicing, maintenance, repair, removal, alteration, enlargement, relocation and replacement of underground electricity, communications, sewer, water, and natural gas lines (the "Utility Lines") under, across and through the Access Area for the benefit of the Benefited Parcel Owners and their respective tenants, subtenants, licensees, invitees or other permitted users of each Benefited Parcel. Such rights-of-way and easements shall each (i) be appurtenant to and benefit the Benefited Parcels, (ii) bind and burden the Access Area on the Burdened Parcels and every person having any fee, leasehold, lien or other interest, as and to the extent arising by, through or under the Burdened Parcels, in any portion of the Access Area, and (iii) constitute a covenant running with the land.

(c) Exclusive use of the Access Area is not hereby granted, and the right of way and easement for ingress and egress in common with all Parcels is hereby expressly reserved. Each Burdened Parcel Owner shall have the right to make any use of the Access Area on its Parcel, so long as, except as otherwise specified herein, any such use does not unreasonably interfere with the rights and easements for use and related ingress and egress which is herein granted to the Benefited Parcels.

(d) The rights-of-way and easements described in this Section 1 above, so long as the following do not unreasonably interfere with the right and easement for use and related ingress and egress which is herein granted to the Benefited Parcels, shall be subject to and limited as follows:

(i) They shall not be exercised in any manner which substantially interferes with the purposes for which the Access Area is to be used as provided herein;

(ii) The right of each Burdened Parcel Owner, in its sole discretion (subject, however, to this subsection 1(d)), to grant permits, licenses and easements over, across, through and under the Access Area to any governmental or quasi-governmental authority, to any public or private utility company, or to any other party, for the purpose of installing, operating, maintaining and repairing Utility Lines or for such other purposes reasonably necessary or appropriate, in such Burdened Parcel Owner's sole discretion, for the use construction, development, maintenance or operation of such Burdened Parcel; and

(iii) The Benefited Parcel Owner, and any one claiming, by, through or under the Benefited Parcel Owner, will not have the right to access any portion of a Burdened Parcel outside of the Access Area, and any such access, if granted by the Burdened Parcel Owner in its sole discretion, will be subject to any security protocols established by the Burdened Parcel Owner in its sole discretion.

(e) Each Burdened Parcel Owner will cooperate in the granting of appropriate and proper easements to each other or to utility companies and governmental authorities for the installation, operation, maintenance, repair, replacement and relocation of the Utility Lines. The location of the Utility Lines on a Burdened Parcel shall be within the Access Area unless otherwise agreed to by the Burdened Parcel Owner.

(f) Each Benefited Parcel Owner will have the right to enter upon any portion of Access Area as may be reasonably necessary or appropriate in order to accomplish the installation, operation, maintenance, inspection, repair, replacement and relocation of the Utility Lines subject to compliance with the following:

(i) The installation, operation, maintenance, inspection, repair and replacement of the Utility Lines (A) shall not unreasonably interfere with the use of the Burdened Parcel or with the normal operation of any business of the Burdened Parcel, (B) shall not unreasonably interfere with or diminish utility service to the businesses served by the Utility Lines, (C) shall not reduce or unreasonably impair the usefulness or functionality of the Utility Lines of the Burdened Parcel Owners, (D) shall be performed without cost or expense to the Benefited Parcel Owner, (E) shall be performed in a good and workmanlike manner, with due care, and in compliance with all laws, rules, regulations and ordinances, (F) shall not unreasonably interfere with the pedestrian and vehicular access or parking to the Burdened Parcel. For non-routine maintenance and repair that will impact the utilization of the Utility Lines of the Burdened Parcel, the Benefitted Owner performing such maintenance and repair shall provide written notice to the other Burdened Owner prior to performing any such non-routine maintenance and repair.

(ii) To the extent any construction, maintenance, inspection, repair or replacement relates to utility lines which serve only the Benefitted Parcel (the "Separate Utility Lines"), the Benefitted Parcel Owner shall, (A) to the extent applicable, comply with Section 1(f)(i) of this Easement Agreement; (B) repair to the original specifications any damage to any building, signs, Utility Lines or Parcel resulting from such installation, operation, maintenance, inspection, repair and replacement; and (C) shall provide as built plans for all such Separate Utility Lines to the Burdened Parcel Owner upon which such Separate Utility Lines are located within thirty (30) days after the date of completion of construction of same. All costs associated with the installation, operation, maintenance, inspection, repair and replacement of Separate Utility Lines shall be borne solely by the owner of the Parcel served thereby.

(iii) At any time and from time to time a Burdened Parcel Owner shall have the right to relocate on its Parcel any Utility Line which is then located on such Burdened Parcel, provided that any such relocation (A) shall be performed only after sixty (60) days' notice of the Burdened Parcel Owner's intention to undertake the relocation shall have been given to the owner of each Parcel served by the Utility Line, (B) shall not unreasonably interfere with or diminish utility service to the businesses served by the Utility Line, (C) shall not reduce or unreasonably impair the usefulness or function of the Utility Line, (D) shall be performed without cost or expense to the owner of the other Parcel, (E) shall provide for the original and relocated area to be restored to a condition that is equal to or better than the condition prior to such work being completed, and (F) shall not unreasonably interfere with the pedestrian and vehicular access or the parking areas on the other Parcel.

(g) A Benefited Parcel Owner shall not permit any lien or claim of mechanics, laborers or materialmen to be filed against the Access Area located on the Burdened Parcels, or any part or parts thereof, for any work, labor or materials furnished, alleged to have been furnished or to be furnished pursuant to any agreement by such Benefited Parcel Owner or any one claiming by, through or under such Benefited Parcel Owner. If such a lien is filed, within ten (10) business days after the date of the filing or recording of any such lien, such Benefited Parcel Owner shall cause the same to be paid and discharged of record.

(h) Each Burdened Parcel Owner may, on a temporary basis, for reasonable construction, repair, maintenance (as permitted hereunder), or to prevent a public dedication or the accrual of any rights to the public, close the Access Area on its Burdened Parcel for access, provided that, in any such event, such Burdened Parcel Owner shall first notify the Benefited Parcel Owners in writing and shall, to the extent possible, provide for alternate access to the Benefited Parcels during such period of closure.

(g) The grant and conveyance of the rights to the Benefited Parcels set forth in this Section 1 are made on an "AS-IS" basis and Grantors have not made and hereby expressly disclaim any statements or representations, express or implied, made by Grantors or their respective agents or brokers, as to the condition of or characteristics of the Access Area, its fitness for use for any particular purpose, or

the Access Area's compliance with any zoning or other rules, regulations, laws or statutes applicable to the Access Area, or the uses permitted on or the development requirements for or any other matters relating to the Access Area.

2. Maintenance and Maintenance Expenses of Access Area.

(a) 111 Commerce shall maintain the roadway on the Access Area and the Utility Lines in the Access Area which serve both Parcels (the "Common Maintenance Areas"). Aligned grants to 111 Commerce, its agents, contractors and employees, a license to enter upon its Parcel for the purposes of performing 111 Commerce's duties hereunder. 111 Commerce shall expend only such funds as are reasonably necessary for the operation, maintenance and repair of the Common Maintenance Areas ("Common Maintenance Area Costs"), and shall promptly pay all such costs when incurred. In connection with performing its obligations under this Section 2, 111 Commerce may hire or subcontract with third parties, provided, if such third parties are affiliated with 111 Commerce such contracts must be on terms similar to those obtained on an arm's length basis.

(b) From and after the date Aligned commences construction of a building on any portion of the Aligned Property that uses the Access Area for access to the Aligned Property, Aligned agrees to pay fifty percent (50%) of Common Maintenance Area Costs actually incurred during each calendar year. Aligned shall pay to 111 Commerce in equal monthly payments, in advance, on the first day of each calendar month, its fifty percent (50%) share of Common Maintenance Area Costs based upon the amount set forth in the approved Budget (defined below), or the Budget from the prior calendar year plus a five percent (5%) increase if the Budget for the current calendar year has not been approved in accordance with Section 2(d) below.

(c) No later than sixty (60) days prior to the commencement of a calendar year, 111 Commerce shall provide Aligned an estimated budget for the next succeeding calendar year (the "Budget"). If Aligned believes the charge for a particular line item in the Budget is excessive, Aligned shall notify 111 Commerce of such belief, and thereupon 111 Commerce shall obtain no fewer than two (2) competitive bids for such function. Unless the existing provider's cost is lower, the lowest acceptable bidder shall be utilized as soon as the contract with the existing provider can be terminated without penalty. Notwithstanding the foregoing, 111 Commerce shall not be required to accept a low bid pursuant to this subsection if 111 Commerce has a commercially reasonable basis for not accepting it. The Budget shall reasonably identify each of the categories of Common Maintenance Area Costs to be incurred by 111 Commerce.

(d) If Aligned disapproves of the proposed Budget, Aligned shall give written notice to 111 Commerce within thirty (30) days of 111 Commerce's delivery of such Budget (the "Budget Objection Notice"), which Budget Objection Notice shall include a reasonably detailed description of what changes, if made, would result in the Aligned approving the proposed Budget. If a Budget Objection Notice is not delivered to 111 Commerce within such thirty (30) day period, the Budget shall be deemed approved. If a Budget Objection Notice is delivered to 111 Commerce within such thirty (30) day period, 111 Commerce shall revise the Budget and resubmit the Budget to the Approving Parties for their approval in accordance with the procedure set forth above. If a Budget for the next calendar year is not approved by December 15th of a calendar year, until the approval of the Budget for such next calendar year the Budget from the prior calendar year shall be used, plus an increase of five percent (5%) for each line item.

(e) 111 Commerce shall use its commercially reasonable efforts to operate and maintain the Common Maintenance Areas on the Parcels in a first-class condition. 111 Commerce shall have the right to make emergency repairs to the Common Maintenance Area on the Parcels to prevent injury or damage to Persons or property, it being understood that 111 Commerce shall nevertheless advise Aligned

of such emergency condition as soon as reasonably possible, including the corrective measures taken and the cost thereof, the cost of which repairs will be included as Common Maintenance Area Costs.

(f) Within one hundred twenty (120) days after each calendar year, 111 Commerce shall furnish Aligned with a written reconciliation statement comparing the actual Common Maintenance Area Costs paid by 111 Commerce during the previous calendar year against the amounts paid by Aligned during the previous calendar year. If the annual reconciliation statement indicates that Common Maintenance Area Costs paid by Aligned for any year exceeded the actual Common Maintenance Area Costs owing by Aligned during such year, 111 Commerce shall promptly pay the amount of such excess to Aligned. If the annual reconciliation statement indicates that Common Maintenance Area Costs paid by Aligned for any year is less than the actual Common Maintenance Area Costs owing by Aligned for such calendar year, Aligned shall pay to 111 Commerce any such deficiency within thirty (30) days of Aligned's receipt of such reconciliation statement.

(g) If not paid when due, the amounts payable under this Section 2 shall accrue interest at a rate of ten percent (10%) per annum..

3. Failure to Perform; Remedies. In the event that a Benefited Parcel Owner fails to perform when due any act or obligation required by this Easement Agreement to be performed by such Benefited Parcel Owner, a Burdened Parcel Owner, in addition to and not in lieu of any other remedies available at law or in equity, shall be entitled to file a suit in equity to enjoin such Benefited Parcel Owner from such breach or threatened breach and/or for the specific performance of such Benefited Parcel Owner's obligations under this Easement Agreement. In the event a Burdened Parcel Owner fails to perform when due any act or obligation required by this Easement Agreement to be performed by such Burdened Parcel Owner, a Benefited Parcel Owner, in addition to and not in lieu of any other remedies available at law or in equity, shall be entitled to file a suit in equity to enjoin such Burdened Parcel Owner from such breach or threatened breach and/or for the specific performance of such Benefited Parcel Owner's obligations under this Easement Agreement. Notwithstanding any other provision of this Easement Agreement, the rights granted to each Benefited Parcel under this Easement shall not be terminated or suspended in the event an Owner is in default of its obligations hereunder.

4. Limitation on Authority.

(a) The Burdened Parcel Owners are not to be deemed or construed as the agent or joint venturer of a Benefited Parcel Owner in any respect, all other provisions of this Easement Agreement notwithstanding. Each Burdened Parcel Owner has not and does not hereby assume or agree to assume any liability whatsoever of any Benefited Parcel Owner and such Burdened Parcel Owner does not assume or agree to assume any obligation of any Benefited Parcel Owner under any contract, agreement, indenture, or any other document to which a Benefited Parcel Owner may be a party or by which a Benefited Parcel Owner is or may be bound, or which in any manner affects the Benefited Parcels or any part thereof, except as expressly provided in this Easement Agreement.

(b) The Benefited Parcel Owners are not to be deemed or construed as the agent or joint venturer of a Burdened Parcel Owner in any respect, all other provisions of this Easement Agreement notwithstanding. Each Benefited Parcel Owner has not and does not hereby assume or agree to assume any liability whatsoever of any Burdened Parcel Owner and such Benefited Parcel Owner does not assume or agree to assume any obligation of any Burdened Parcel Owner under any contract, agreement, indenture, or any other document to which a Burdened Parcel Owner may be a party or by which a Burdened Parcel Owner is or may be bound, or which in any manner affects the Burdened Parcels or any part thereof, except as expressly agreed to by a Benefited Parcel Owner in this Easement Agreement.

5. Notices. All communications, consents, and other notices provided for in this Easement Agreement shall be in writing and shall be effective on the date hand delivered, sent by facsimile, or mailed by registered or certified mail, return receipt requested, postage prepaid, and addressed as follows:

If to 111 Commerce, to:

c/o the Boyer Company  
101 South 200 East, Suite 200  
Salt Lake City, Utah 84111  
Attention: President

If to the Aligned, to:

Aligned Data Centers (WJU) PropCo, LLC  
2800 Summit Avenue  
Plano, TX 75074  
Attn: Legal Department

Any Owner may designate a different notice address by delivering written notice to the other Owners.

6. Miscellaneous Provisions.

(a) This Easement Agreement shall be interpreted in accordance with the laws of the State of Utah. The recital paragraphs set forth above are hereby expressly incorporated in and made a part of this Easement Agreement, however, the paragraph headings and titles are not part of this Easement Agreement, having been inserted for reference only, and shall have no effect upon the construction or interpretation hereof.

(b) The waiver by any party hereto of a breach of any term or condition of this Easement Agreement shall not constitute a waiver of any further breach of a term or condition. As concerns all matters of performance agreed hereunder, it is covenanted by the parties that time is strictly of the essence.

(c) This Easement Agreement constitutes the entire agreement between the parties pertaining to the subject matter contained herein, which supersedes all prior and contemporaneous agreements, representations and understandings of the parties with respect thereto. No supplement, modification or amendment of this Easement Agreement shall be binding unless executed in writing by all parties. No waiver of any of the provisions of this Easement Agreement shall be deemed, or shall constitute, a waiver of any other provision, whether or not similar, nor shall any waiver constitute a continuing waiver. No waiver shall be binding unless executed, in writing, by the party making the waiver. No amendment to this Easement Agreement shall in any way affect the rights of a holder (a "Mortgagee") of a mortgage, deed of trust or other security agreement (a "Mortgage") creating a lien on an owner's interest in a Parcel or a portion of a Parcel as security for the payment of indebtedness that is recorded at the time of the recordation of the amendment, or the rights of any successor in interest or title to such Mortgagee, either before or after such Mortgagee or its successor enters into possession or acquires title pursuant to foreclosure, trustee's sale or any arrangement or proceeding in lieu thereof, unless such Mortgagee has consented in writing to such amendment.

(d) This Easement Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. The recitals stated above and the exhibits attached to this Easement Agreement shall be and hereby are incorporated in and an integral part of this Easement Agreement by this reference.

(e) This Easement Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns, and the Burdened Parcels and the Benefited Parcels shall be subject to the easements, covenants, restrictions and charges set forth herein, which shall run with each of the Burdened Parcels and the Benefited Parcels and shall be binding upon all parties having or acquiring any right, title or interest in (i) the Burdened Parcels, or any part thereof, by, through or under the Burdened Parcel Owner, or (ii) the Benefited Parcels, or any part thereof, by, through or under the Burdened Parcel Owners, as the case may be.

(f) In the event that any provision of this Easement Agreement shall be held invalid and unenforceable, such provision shall be severable from, and such invalidity and unenforceability shall not be construed to have any effect on, the remaining provisions of this Easement Agreement.

(g) Nothing contained herein will be construed or deemed to constitute a dedication, express or implied, of any real property to or for any public use or purpose whatsoever.

(h) For purposes of this Easement Agreement, "*force majeure*" shall mean any delay caused by acts of nature, strikes, lockouts, other labor troubles, riots, civil commotion, insurrection, war or other reason not the fault of the party delayed (financial inability excepted), in which case performance of the action in question shall be excused for the period of delay and the period for the performance of such act shall be extended for a period equivalent to the period of such delay.

(i) In the event of default by either party, or if any action is brought because of any breach of or to enforce or interpret any of the provisions of this Easement Agreement, the defaulting party or the party prevailing in such action shall be entitled to recover from the other party reasonable attorneys' fees, costs and expenses incurred in the enforcement of or the termination of this Easement Agreement.

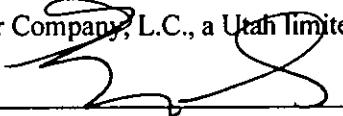
*[signatures and acknowledgments on following page]*

IN WITNESS WHEREOF, Grantors have executed this Easement Agreement to be effective as of the date first written above.

**111 COMMERCE**

111 COMMERCE CENTER 1, L.C., a Utah limited liability company, by its manager

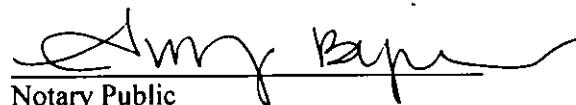
The Boyer Company, L.C., a Utah limited liability company

By:   
Name: Brian Gochman  
Title: Manager

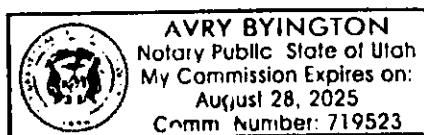
STATE OF UTAH

COUNTY OF SALT LAKE

On the 17<sup>th</sup> day of January, 2023, personally appeared before me Brian Gochman, who acknowledged himself to be a Manager of The Boyer Company, L.C., a Utah limited liability company, the Manager of 111 Commerce Center 1, L.C. a Utah limited liability company, and that he, as such Manager, being authorized so to do, executed the foregoing instrument for the purposes therein contained.



Notary Public



**ALIGNED**

ALIGNED DATA CENTERS (WJU) PROPCO, LLC, a  
Delaware limited liability company

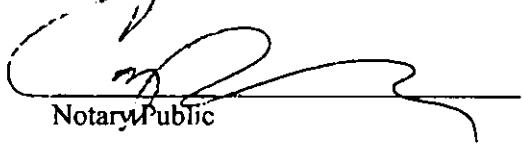
By: 

Name: David W. Robinson

Title: EVP

STATE OF New Jersey  
COUNTY OF Essex

On the 18<sup>th</sup> day of January, 2023, personally appeared before me David W. Robinson, who acknowledged herself/himself to be EVP of Aligned Data Centers (WJU) Propco, LLC, a Delaware limited liability company, and that s/he, as such EVP, being authorized so to do, executed the foregoing instrument for the purposes therein contained.

  
Notary Public



**EXHIBIT "A"**

Property located in Salt Lake County, Utah more particularly described as follows:

**Aligned Parcel**

Lot 2B of 111 Commerce Center 2<sup>nd</sup> Amended according to the official plat thereof recorded in the Salt Lake County Recorder's Office in Book 14064864 and Page 869 <sup>11397</sup>.

Tax Parcel Id. 26-10-326-007, 26-10-326-008, and 26-10-326-009

**111 Commerce Parcel**

Lot 1 of 111 Commerce Center Subdivision according to the official plat thereof recorded in the Salt Lake County Recorder's Office in Book 2022P at Page 178.

Tax Parcel Id No. 26-10-400-005

**EXHIBIT "B"**

**(Depiction of Access Area)**

