

WHEN RECORDED, MAIL TO:

Millcreek OG LLC
Attn: Micah W. Peters
336 West 300 South, Suite 101
Salt Lake City, UT 84101

Affects Parcel Nos. 21-01-228-015-0000, 21-01-228-006-0000, 21-01-228-008-0000, and Parcel I of the Phase 1 Plat-Opus Green PUD.

149875-DMP

ACCESS AND UTILITY EASEMENT

THIS ACCESS AND UTILITY EASEMENT (the “**Agreement**”) is made and entered into this ^{22nd} day of October, 2021], by and between ROCKY HOLDINGS, LLC, a Utah limited liability company (“**Grantor**”), and MILLCREEK OG LLC, a Utah limited liability company (“**Grantee**”).

RECITALS

A. Grantor is the record owner of the real property more particularly described on Exhibit A attached hereto and incorporated herein by reference (the “**Grantor’s Property**”).

B. Grantee is the owner of the real property more particularly described on Exhibit B attached hereto and incorporated herein by reference, and also known by the Salt Lake County Assessor’s Parcel No. 21-01-228-015-0000 (the “**Grantee’s Property**”).

C. Grantee desires to install, maintain and repair certain underground utilities (the “**Improvements**”) on a portion of the Grantor’s Property, which is more particularly described on Exhibit C attached hereto and incorporated herein by reference, and illustrated as “Easement E” on Exhibit D attached hereto and incorporated herein by reference (the “**Easement Area**”).

D. Grantee desires to obtain right of access for pedestrians and vehicles, motorcycles, motor scooters, and bicycles to Grantee’s Property across the Grantor’s Property in the Easement Area (the “**Access Rights**”).

E. Grantor is willing to grant an easement to Grantee for the Improvements and Access Rights in the Easement Area on the terms of this Agreement.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing, the mutual covenants contained herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

1. Grant of Non-Exclusive Easements. Grantor hereby grants to Grantee a perpetual, non-exclusive easement (a) over, across and under the Easement Area for the construction, repair and maintenance of the Improvements (the “**Improvements Easement**”), and (b) across the Easement Area for ingress and egress for pedestrian use and right of access to Grantee’s Property for vehicles, motorcycles, motor scooters and bicycles of the Grantee Benefited Parties (as defined below) and

emergency vehicles (the “**Access Easement**”; together with the Improvements Easement, the “**Easements**”) on the terms of this Agreement.

2. Use of Easements. The Easements are granted subject to the following Grantee obligations and restrictions:

a. Prior to commencing construction of the Improvements, Grantee shall submit to Millcreek City (the “**City**”) and Grantor for approval the plans and specifications for the Improvements (the “**Plans and Specifications**”). Grantee shall construct, at Grantor’s sole cost and expense, the Improvements in accordance with the Plans and Specifications, as approved by Grantor and the City. Grantor shall grant approval for the Plans and Specifications consistent with Grantor’s approval rights outlined in the Purchase and Sale Agreement between Grantor and Grantee.

b. Grantee shall have the obligation to maintain and repair the Improvements with respect to the proper functionality and safety of the Improvements. Grantee shall provide written notice not less than five (5) business days prior to commencing any maintenance or repair of the Improvements; provided, however, that if emergency work is required to be performed, no advance notice is required. Grantee’s maintenance and repair activities related to the Improvements and its use of the Easement Area as provided herein shall be performed in compliance with all applicable laws, rules and regulations provided, that Grantee shall use best efforts to complete the obligations under this Section 2.b. as soon as practicable and in a manner that mitigates the impacts on Grantor Benefited Party’s use of the Grantor’s Property.

c. In the event that any Grantee Benefited Party disturbs the Easement Area in connection with its maintenance or repair of the Improvements, Grantee shall restore the Easement Area to substantially the same condition as existed immediately prior to such activities causing the disturbance as soon as possible. Grantee shall use commercially reasonable efforts to complete all maintenance or repairs to the Improvements in the Easement Area without interruption or delay.

d. Grantee acknowledges that Grantor and the Grantor Benefited Parties require continuous access to the remainder of Grantor’s Property during any maintenance or repair activities conducted by Grantee. Grantee shall not take any action that will prevent any pedestrian or vehicle access to any Grantor Benefited Party across the Easement Area (i.e., restrict any Grantor Benefited Party from crossing from one side of the Grantor’s Property to the other side across the Easement Area).

e. In the event of any damage or destruction of the Improvements or portion of the remainder of Grantor’s Property or improvement thereon, caused by any Grantee Benefited Party, Grantee shall have the obligation to timely repair any damage, or replace any portion of the damaged or destroyed Improvements, or remainder of Grantor’s Property or improvement thereon, at its sole cost and expense.

f. No Grantee or Grantee Benefited Party shall park or stop any vehicles, motorcycles, bicycles or other mode of transportation in the Easement Area, thereby blocking or otherwise impeding the flow of traffic or otherwise use or impede the use of any parking stalls in the Easement Area. Similarly, no Grantor or Grantor Benefited Party shall park or stop any vehicles, motorcycles, bicycles or other mode of transportation in the drive aisles in the Easement Area, thereby blocking or otherwise impeding the flow of traffic in the drive aisles in the Easement Area. For the avoidance of doubt, Grantor, Grantee and their respective Benefited Parties shall have uninterrupted

access in the drive aisles across the Easement Area 24 hours per day, 365 days per year, after the completion of construction of the Improvements. Such access includes Grantor's obligation to keep the Easement Area free of snow, debris or other conditions that make continuous passage through the drive aisles in the Easement Area difficult.

g. Grantee shall indemnify, defend and hold Grantor harmless from any losses, claims or liabilities arising from Grantee's design, construction, maintenance or repair of the Improvements or use of the Easement Area by Grantee or any Grantee Benefited Party.

3. Grantor's Restrictions on Use. Grantor retains the right to eject from the Easement Area any person whose use of the Easement Area does not comply with the intended use of the Access Easement or whose conduct creates an unreasonable disturbance.

4. No Liens. Grantee shall promptly pay all suppliers or contractors providing materials or labor for the repair or maintenance of the Improvements. Grantee shall indemnify, defend and hold Grantor and its lessees and affiliates harmless from any lawsuits, liens, or other matters relating thereto. In addition, Grantor shall be authorized to use whatever means in its discretion it may deem appropriate to cause such liens or suits to be removed or dismissed and the cost thereof, together with actual attorneys' fees and costs, shall be immediately due and payable to Grantor by Grantee.

5. Grantor's Damage to Improvements. In the event of any damage or destruction to the Improvements caused by Grantor or any Grantor Benefited Party, Grantor shall have the obligation to timely repair any damage, or timely replace any portion of the damaged or destroyed Improvements at Grantor's sole cost and expense.

6. Grantee's Indemnification. Grantee covenants and agrees to defend, protect, indemnify and hold harmless Grantor from and against all claims, including any action or proceedings brought thereon, and all costs, losses, expenses and liability (including reasonable attorney's fees actually incurred and cost of suit) (collectively, "Losses") arising from or as a result of the negligent acts or omissions or willful misconduct of Grantee or any Grantee Benefited Party in exercise of the Easements granted by this Agreement or the negligence or willful misconduct by Grantee or any Grantee Benefited Party in the use of the Easements, except to the extent such Losses result from the negligence or willful act or omission of Grantor or any Grantor Benefited Party. The provisions of this Section shall survive the expiration or sooner termination of this Agreement with respect to any claims or liability arising in connection with any event occurring prior to such expiration or termination.

7. Grantor's Reservation of Rights. Except as otherwise expressly provided herein, Grantor reserves unto itself and the Grantor Benefited Parties forever the right to cross over, across, through or under the Easement Area, provided such other uses do not materially impair or materially diminish Grantee's use of the Easement Area for the purposes herein granted.

8. Benefited Parties. For purposes of this Agreement, "Benefited Parties" shall mean Grantor or Grantee, as the case may be, its managers, members, employees, agents, invitees, lessees, affiliates, and its/their successors and assigns (any owner of record of any portion of the Grantee's Property shall be deemed a Benefited Party). Grantor Benefited Parties shall include Grantor's lessees and affiliates, and their Benefited Parties. Where appropriate, the term Grantor or Grantee also shall include any Grantor Benefited Party or Grantee Benefited Party, as the case may be. Millcreek City shall be deemed a Benefited Party for emergency purposes.

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 Area or the Improvements located thereon to or for the general public or for any public purpose whatsoever, it being the intent of the parties that this Agreement be strictly limited to and for the purposes expressed herein, and that the Improvements be used solely to service the Grantee's Property.

10. Duration; Modification. The Agreement shall be perpetual in duration, unless earlier modified or terminated by the mutual written agreement of the respective parties hereto, or their successors or assigns. Any provision, covenant, condition or restriction contained in this Agreement may be modified or amended only by written agreement of Grantor and Grantee, or their successors or assigns, as the case may be. No modification or amendment of this Agreement will be effective until a written instrument setting forth its terms has been executed, acknowledged and recorded in the Office of the Salt Lake County Recorder.

11. No Partnership. The parties hereto do not, by this Agreement, become partners or joint venturers of each other in the conduct of their respective businesses, or otherwise.

12. Compliance. Failure of a party hereto to insist upon strict performance of any provision hereof shall not be construed as a waiver for future purposes with respect to any such provision or option. No provision of this instrument shall be deemed to have been waived unless such waiver is in writing and signed by the party waiving its rights.

13. Covenant to Run with Land. The Easements and rights granted hereunder shall be appurtenant to the Grantee's Property, for the use and benefit of the Grantee Benefited Parties, and shall run with the land and shall burden the Easement Area until the written termination of this Agreement by the parties.

14. Successors. All provisions of this instrument, including the benefits and burdens, shall run with the land and shall be binding upon and shall inure to the benefit of the parties hereto, their legal representatives, heirs, successors and assigns.

15. Applicable Law. This Agreement shall be governed by and construed in accordance with and interpreted under the laws of the State of Utah.

16. Costs, Expenses and Remedies Upon Breach. In the event of a breach in any of the covenants or agreements contained herein, the breaching party shall pay all costs and expenses, including reasonable attorneys' fees, which may arise or accrue from enforcing this Agreement or in pursuing any remedy provided by the laws of the State of Utah, whether such remedies are pursued by filing suit or otherwise. Grantor and Grantee acknowledge that in the event of any default hereunder, it would be difficult to ascertain the exact money damages suffered by the non-defaulting party. Accordingly, the parties agree that such non-breaching party is entitled to appropriate equitable remedies in the event of any such default.

[SIGNATURE PAGE FOLLOWS IMMEDIATELY]

IN WITNESS WHEREOF, the undersigned have executed this Access and Utility Easement as of the date first-above written.

GRANTOR:

Rocky Holdings, LLC,
a Utah limited liability company

By: [Signature]
Dustin Buckthal
Its: Manager

STATE OF UTAH)
:SS
COUNTY OF SALT LAKE)

The foregoing Access and Utility Easement was acknowledged before me this 22 day of October, 2021, by Dustin Buckthal, the Manager of Rocky Holdings, LLC, a Utah limited liability company.

My Commission Expires:
2-22-25

[Signature]
Notary Public

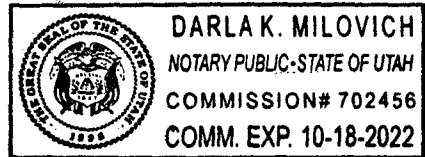
GRANTEE:

Millcreek OG LLC,
a Utah limited liability company

By: [Signature]
Micah W. Peters
Its: Manager



STATE OF UTAH)
:SS
COUNTY OF SALT LAKE)



The foregoing Access and Utility Easement was acknowledged before me this 22 day of October, 2021, by Micah W. Peters, the Manager of Millcreek OG LLC, a Utah limited liability company.

My Commission Expires:
10/18/22

[Signature]
Notary Public

EXHIBIT A

Legal Description of Grantor's Property

A part of the NE 1/4 of Section 1, Township 2 South, Range 1 West, Salt Lake Base and Meridian, Salt Lake County, Utah, being proposed PARCEL I, OPUS GREEN PUD PHASE 1, more particularly described as follows:

Beginning at a point located on the westerly line of GORDONS SOUTH LAWN ADDITION recorded as Entry No. 252873, Book "F" of Plats, Page 9 in the Office of the Salt Lake County Recorder, said point being located N0°15'54"E 945.65 feet along the monument line of Main Street and West 227.83 feet from the street monument found in the intersection of Main Street and Fireclay Avenue, said point also being located N0°06'21"W along the Section line 2,040.44 feet and West 198.26 feet from the East 1/4 Corner of Section 1, T2S, R1W, SLB&M; thence N85°54'06"W 23.63 feet; thence N04°05'54"E 20.73 feet; thence along the arc of a curve to the left with a radius of 300.00 feet a distance of 33.14 feet through a central angle of 06°19'47" Chord: N00°56'01"E 33.13 feet; thence N02°13'53"W 27.87 feet; thence N85°54'06"W 13.60 feet; thence N01°54'48"W 3.53 feet; thence Northerly along the arc of a non-tangent curve to the right having a radius of 313.50 feet (radius bears: S89°31'25"E) a distance of 19.82 feet through a central angle of 03°37'19" Chord: N02°17'15"E 19.81 feet; thence N04°05'54"E 148.94 feet; thence N03°56'52"E 35.04 feet; thence N00°57'41"E 20.10 feet; thence N89°02'19"W 18.00 feet; thence N00°57'41"E 33.61 feet to the southerly line of that Real Property described in Deed Entry No. 7808706, Book 8419 Page 2042-2043 recorded in the Office of the Salt Lake Recorder; thence along said southerly line S89°14'06"E 28.67 feet to a corner of that Real Property described in Deed Entry No. 4341938, Book 5834, Page 2967 recorded in the Office of the Salt Lake County Recorder; thence along the southerly line of said deed S89°14'45"E 35.17 feet to the westerly line of said GORDANS SOUTH LAWN ADDITION; thence said westerly line S04°01'54"W 345.16 feet to the point of beginning.

Contains: 13,971 square feet or 0.32 acres+/-

EXHIBIT B

Legal Description of Grantee's Property

A portion of the NE1/4 of Section 1, Township 2 South, Range 1 West, Salt Lake Base and Meridian, Salt Lake County, Utah, more particularly described as follows:

Beginning at a point located N0°15'54"E 655.15 feet along the monument line of Main Street and West 33.00 feet from the street monument found in the intersection of Main Street and Fireclay Avenue, said point also being located N0°06'21"W along the Section line 1749.95 feet and West 5.31 feet from the East 1/4 Corner of Section 1, T2S, R1W, SL B&M; thence N76°16'11"W 23.32 feet to a point on the Northerly boundary of BIRKHILL PHASE 2 recorded as Entry No. 11227070, Book 2011P, Page 104 in the Office of the Salt Lake County Recorder; thence along said plat the following four (4) courses; 1) N40°00'30"W 154.80 feet; 2) N68°26'54"W 290.80 feet; 3) N76°57'23"W 457.00 feet; 4) S29°13'33"W 50.46 feet to the Easterly line of the UTA Right of Way as depicted on that record of survey filed as Survey No. S1997090651 in the Office of the Salt Lake County Surveyor; thence N9°02'04"W along said Right of Way 359.24 feet to the Southwest corner of that Real Property described in Deed Entry No. 7808706, Book 8419 Page 2042-2043 recorded in the Office of the Salt Lake Recorder; thence S89°14'06"E along said deed 714.58 feet to a corner of that Real Property described in Deed Entry No. 4341938, Book 5834, Page 2967 recorded in the Office of the Salt Lake County Recorder; thence S89°14'45"E along said deed 35.17 feet to the Westerly line of GORDONS SOUTH LAWN ADDITION recorded as Entry No. 252873, Book "F" of Plats, Page 9 in the Office of the Salt Lake County Recorder; thence S4°01'54"W along said plat 367.72 feet; thence N85°26'54"E along said plat 197.01 feet to the Westerly Right of Way of Main Street; thence S0°15'54"W along said street 283.63 feet to the point of beginning.

Contains: 7.06 Acres

EXHIBIT C

Legal Description of Easement Area

A part of the NE1/4 of Section 1, Township 2 South, Range 1 West, Salt Lake Base and Meridian, Salt Lake County, Utah, being proposed PARCEL I, OPUS GREEN PUD PHASE 1, more particularly described as follows:

Beginning at a point located on the westerly line of GORDONS SOUTH LAWN ADDITION recorded as Entry No. 252873, Book "F" of Plats, Page 9 in the Office of the Salt Lake County Recorder, said point being located N0°15'54"E 945.65 feet along the monument line of Main Street and West 227.83 feet from the street monument found in the intersection of Main Street and Fireclay Avenue, said point also being located N0°06'21"W along the Section line 2,040.44 feet and West 198.26 feet from the East 1/4 Corner of Section 1, T2S, R1W, SLB&M; thence N85°54'06"W 23.63 feet; thence N04°05'54"E 20.73 feet; thence along the arc of a curve to the left with a radius of 300.00 feet a distance of 33.14 feet through a central angle of 06°19'47" Chord: N00°56'01"E 33.13 feet; thence N02°13'53"W 27.87 feet; thence N85°54'06"W 13.60 feet; thence N01°54'48"W 3.53 feet; thence Northerly along the arc of a non-tangent curve to the right having a radius of 313.50 feet (radius bears: S89°31'25"E) a distance of 19.82 feet through a central angle of 03°37'19" Chord: N02°17'15"E 19.81 feet; thence N04°05'54"E 148.94 feet; thence N03°56'52"E 35.04 feet; thence N00°57'41"E 20.10 feet; thence N89°02'19"W 18.00 feet; thence N00°57'41"E 33.61 feet to the southerly line of that Real Property described in Deed Entry No. 7808706, Book 8419 Page 2042-2043 recorded in the Office of the Salt Lake Recorder; thence along said southerly line S89°14'06"E 28.67 feet to a corner of that Real Property described in Deed Entry No. 4341938, Book 5834, Page 2967 recorded in the Office of the Salt Lake County Recorder; thence along the southerly line of said deed S89°14'45"E 35.17 feet to the westerly line of said GORDANS SOUTH LAWN ADDITION; thence said westerly line S04°01'54"W 345.16 feet to the point of beginning.

Contains: 13,971 square feet or 0.32 acres+/-

EXHIBIT D

Diagram of the Easement Area

[Attached]

