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Rashelle Hobbs, Recorder, Salt Lake County, Utah  
Return To: GT TITLE SERVICES  
1250 E 200 S STE 3DLEHI, UT 840431490

Bennett Tueller Johnson & Deere  
Attn: Jeffrey E. Matson  
3165 East Millrock Drive, Suite 500  
Salt Lake City, Utah 84121

Parcel Numbers: 16-33-405-057; 16-33-405-058  
16-33-405-059; 16-33-405-060

## **DECLARATION OF ACCESS, DRAINAGE AND UTILITY EASEMENT**

This Declaration of Access, Drainage and Utility Easement (this “**Declaration**”) is made and entered into effective as of August 1, 2024 by Fry Construction and Development, LLC, a Utah limited liability company (“**Fry**”).

A. Fry is the current owner of those certain parcels of real property located in Salt Lake County, Utah, as more particularly described on Exhibit A (collectively, the “**Burdened Properties**”), and in such capacities is referred to herein as the “**Burdened Property Owners**.”

B. Fry is also the current owner of those certain parcels of real property located in Utah County, Utah, as more particularly described on Exhibit B (collectively, the “**Benefited Properties**” and together with the Burdened Properties, the “**Properties**” and each, a “**Property**”), and in such capacities is referred to herein as the “**Benefited Property Owners**.”

C. The Burdened Property Owners and the Benefited Property Owners, together with their successors and assigns, are each sometimes referred to herein individually as an “**Owner**” and collectively as the “**Owners**.”

D. A private access road will be constructed across portions of the Burdened Properties, as such private access road is shown on Exhibit C attached hereto (as the same is constructed and modified from time to time, the “**Access Road**”), for the purpose of providing each of the Owners egress and ingress to and from their respective Properties and 3900 South Street (the “**Public ROW**”).

E. In connection with the construction of the Access Road and the development of the Properties, one or more of the Owners intends to construct certain Drainage Facilities and Utilities, each as defined below.

F. Subject to the terms and conditions set forth herein, Fry desires to establish certain rights and maintenance obligations for the easement set forth below with respect to the Access Road for the benefit of the Benefited Properties.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Owners agree as follow:

### **COURTESY RECORDING**

This document is being recorded solely as a courtesy and an accommodation to the parties named herein. GT Title Services hereby expressly disclaims any responsibility or liability for the accuracy or content thereof.

1. Access Road Easement. The Burdened Property Owners, as the owners of the Burdened Properties, hereby create, grant, convey, transfer, and assign, without warranty, to the Benefited Property Owners, for the benefit of their respective Benefited Properties and all of their respective owners, employees, tenants, guests, customers, contractors, suppliers, licensees and other invitees thereof ("**Permittees**"), a nonexclusive, perpetual easement and right of way of access, passage and use, both pedestrian and vehicular (including without limitation trucks and construction traffic), on, over, upon and across the Access Road for the purpose of ingress and egress to and from the Public ROW and the Benefited Properties. No Owner may modify the course of any portion of the Access Road without the prior written consent of the other Owners, provided that consent for non-material changes shall not be unreasonably withheld, conditioned or delayed. Use of the Access Road shall be at the sole risk and hazard of the Owners and their Permittees, and no Owner shall have any liability for any liabilities, damages, judgments, costs, expenses, penalties, and/or injuries to persons or property caused by or arising out of (a) any entry by such person upon, the use of, or any work performed on the Access Road, or (b) the maintenance, repair and replacement of the Access Road, except to the extent caused by such Owner's gross negligence or willful misconduct. Each Owner, on behalf of itself and its Permittees, releases the other Owners and their Permittees from any and all claims relating to the condition or use of the Access Road other than the enforcement of this Declaration.

2. Drainage Easement. One or more of the Owners has constructed, or intends to construct, a storm drainage system servicing the Properties for which surface water and storm water from each Property drains, or may drain, into and through surface water drains, storm drain lines, pipes, catch basins and other facilities (collectively, "**Drainage Facilities**"). Each applicable Owner, as the owner of its respective Property, hereby grants, conveys, transfers, and assigns, without warranty, to the other Owners, for the benefit of their respective Properties, a perpetual nonexclusive easement to drain and direct surface and storm water from each Property over, under, upon and across each applicable Property and through such Drainage Facilities. Each Owner shall have all other rights and benefits necessary or convenient for the full use and enjoyment of the easement established in this Section 2, including, without limitation, the right at all times to connect into and use the Drainage Facilities. No Owner may modify any Drainage Facilities without the prior written consent of the other Owners, which consent for changes shall not be unreasonably withheld, conditioned or delayed. No such modification, however, may in any event unreasonably interfere with the other Owners' use of the Drainage Facilities. Notwithstanding the foregoing, each Owner agrees to use reasonable design, construction and maintenance efforts to (a) contain and direct all surface water originating on such Owner's Property into the storm drains located on such Owner's Property and (b) cause the Drainage Facilities on such Owner's Property to accommodate all such storm water.

3. Utility Easement. The Owners acknowledge that electrical, natural gas, water and other utilities servicing the Properties are, or will be, constructed within the Access Road and connected to certain improvements on the Properties through one or more connections for each such utility (the "**Utilities**"), and that the Owners intend that such Utilities service one or more of the Properties. Each Owner, as the owner of its respective Property, hereby grants, conveys, transfers, and assigns, without warranty, to the other Owners, for the benefit of their respective Properties, a perpetual nonexclusive easement to install, maintain, connect to and use the Utilities. Each Owner shall have all other rights and benefits necessary or convenient for the full use and enjoyment of the easement established in this Section 3. No Owner may modify any

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shared connections to the Utilities without the prior written consent of the other affected Owners, which consent shall not be unreasonably withheld, conditioned or delayed. No such modification, however, may in any event unreasonably interfere with the other Owners' use of the Utilities.

4. Maintenance, Repair and Replacement.

4.1 Access Road. The Owners shall share equally the costs of maintaining, repairing and replacing the Access Road; provided, however, that any damage specifically caused by an Owner or a Permittee of an Owner shall be repaired by such Owner, at such Owner's cost. For purposes of clarity, the maintenance, repair and replacement obligations of the Access Road shall include: (a) maintaining and repairing the surface of the roadway area; (b) removing all trash, debris and other refuse from and periodically sweeping the road area to the extent necessary to maintain the same in a clean, safe and orderly condition; (c) maintaining striping and signage as needed; (e) arranging for prompt removal of snow, ice, and other weather-related hazards; and (f) performing any and all such other duties, whether specifically listed herein or not, as are necessary to maintain the Access Road in a clean, safe and orderly condition.

4.2 Drainage Facilities. The Owners shall retain the responsibility of maintaining, repairing and replacing the portions of the Drainage Facilities situated on their respective Properties, in a good and safe condition and repair, reasonably free and clear from obstruction, debris, hazard, and nuisance and in accordance with all applicable laws and regulations; provided, however, that any damage specifically caused by an Owner or a Permittee of an Owner shall be repaired by such Owner, at such Owner's cost. Promptly after the maintenance, repair or replacement of the Drainage Facilities as described herein, each Owner shall cause the Drainage Facilities to be restored to a substantially similar or better condition than existed immediately prior to the performance of such work.

4.3 Utilities. Each Owner shall retain the responsibility of maintaining, repairing and replacing any Utilities used to service such Owner's Property; provided, however, that any damage specifically caused by an Owner or a Permittee of an Owner shall be repaired by such Owner, at such Owner's cost. Promptly after the maintenance, repair or replacement of any Utilities as described herein, such Owner shall cause the Access Road to be restored to a substantially similar or better condition than existed immediately prior to the performance of such work.

5. No Barriers. No walls, fences, structures, landscaping, or barriers of any kind shall be constructed or maintained on any portion of the Access Road, and no person is permitted to make any changes to grade elevations, that would materially limit, prevent or impair the use or exercise of the easement established in this Declaration, or the free access and movement of pedestrian and vehicular traffic on and across the Access Road, except temporary barriers as may be reasonably necessary during construction on the Burdened Properties provided that such temporary barriers do not completely block reasonable vehicular access to and from the Properties from the Public ROW. The Owners agree to work together in good faith to resolve any unforeseen circumstances in order to minimize to the extent practicable the impact of any temporary construction within the Access Road.

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6. Indemnification. Each Owner agrees to indemnify, save, defend (with counsel reasonably acceptable to the Indemnified Party (as defined below)) and hold harmless each other Owner, and any affiliate of such other Owner, and its and their officers, directors, employees, managers, members, agents and servants (collectively, the "**Indemnified Party**") from and against any and all liens, encumbrances, costs, demands, claims, judgments, and/or damage that may be incurred by the such Indemnified Party as a result of any action of the indemnifying Owner or its Permittees to the extent caused by or arising out of, either directly or indirectly, any action of the indemnifying Owner or its Permittees upon, the use of, or any work performed on the Access Road, except to the extent caused by the Indemnified Party's negligence, willful misconduct, or breach of this Declaration. Notwithstanding the foregoing, each Owner, on behalf of itself and its Permittees hereby releases any such claims to the extent covered by insurance of any Owner. Nothing in this section is intended to limit the release provided in Section 1.

7. Compliance with Laws. The Owners agree to comply with all present or future laws, ordinances, orders, judgments, regulations, permits, licenses, authorizations, directions and requirements of and agreements with all governments, agency affecting their respective Property, including, without limitation, any building, zoning and land use laws, to the extent related to the construction, use or maintenance of the Access Road, the Drainage Facilities and the Utilities.

8. Duration. The easements and each covenant and restriction set forth in this Declaration shall be perpetual.

9. Covenants Run with Land. Each right and obligation in this Declaration (whether affirmative or negative in nature) (a) shall constitute a covenant running with the land; (b) shall benefit and bind every person having any fee, leasehold or other interest in any portion of a Property; and (c) shall benefit and be binding upon any person whose title is acquired by conveyance, judicial foreclosure, trustee's sale, deed in lieu of foreclosure or otherwise. Every person who owns, occupies or acquires any right, title, estate or interest in any portion of a Property shall be conclusively deemed to have consented and agreed to the obligations and restrictions contained herein, whether or not any reference to this Declaration is contained in the instrument by which such person acquired an interest in such Property.

10. Third-Party Beneficiaries. This Declaration is not intended, nor shall it be construed, to create any third-party beneficiary rights in or for the benefit of any person who is not an Owner, including any tenants of the Owners, except as otherwise expressly provided to the contrary in this Declaration.

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11. Miscellaneous.

11.1 Should any Owner default in any of the covenants or restrictions herein contained, such defaulting Owner shall pay all costs and expenses, including reasonable attorney fees, which may arise or accrue from enforcing this Declaration or in pursuing any remedy provided hereunder or by applicable law, whether such remedy is pursued by filing suit or otherwise. This obligation of the defaulting Owner to pay costs and expenses includes, without limitation, all costs and expenses, including reasonable attorney fees, incurred on appeal and in bankruptcy proceedings.

11.2 Subject to Section 11.4, below, in the event of a default by an Owner hereunder, the non-defaulting Owner shall have the right to prosecute any proceedings at law or in equity against the defaulting Owner, and to recover damages for any such violation or default. Such proceeding shall include the right to restrain by injunction any violation or threatened violation of any of the terms, covenants, or conditions of this Declaration, or to obtain a decree to compel performance of any such terms, covenants, or conditions, it being agreed that the remedy at law for a breach of any such term, covenant, or condition (except those, if any, requiring the payment of a liquidated sum) is not adequate. Subject to Section 11.4, below, all of the remedies permitted or available to an Owner under this Declaration or at law or in equity shall be cumulative and not alternative, and invocation of any such right or remedy shall not constitute a waiver or election of remedies with respect to any other permitted or available right or remedy.

11.3 No waiver by any Owner of any default under this Declaration shall be effective or binding on such Owner unless made in writing by such Owner, and no such waiver shall be implied from any omission by an Owner to take action in respect to such default. No express written waiver of any default shall affect any other default or cover any other period of time other than any default and/or period of time specified in such express waiver. One or more written waivers or any default under any provision of this Declaration shall not be deemed to be a waiver of any subsequent default in the performance or the same provision or any other term or provision contained in this Declaration.

11.4 It is expressly agreed that no breach of or event of default under this Declaration shall: (a) entitle any Owner to cancel, rescind, or otherwise terminate this Declaration; or (b) defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value as to any part of a Property. This limitation shall not affect in any manner any other rights or remedies that an Owner may have hereunder by reason of any such breach or default.

11.5 The section and other headings contained in this Declaration are for reference purposes only and shall not in any way affect the meaning or interpretation of this Declaration.

11.6 This Declaration shall apply to, inure to the benefit of and bind each Owner and all successors and assigns of each Owner's interest in such Owner's Property or any portion thereof. The rights and obligations conferred or imposed upon the Owners pursuant to this Declaration shall not be transferred or assigned to any other person, including a tenant of any Owner, except together with the transfer or conveyance of such Owner's respective Property subject to the easements and the terms and conditions of this Declaration. Any Owner transferring

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its interest in such Owner's Property shall be released from all further obligations under this Declaration arising from and after the effective date of such transfer or conveyance. Nothing contained herein shall, however, be construed to release any Owner from obligations accruing prior to the date of such transfer or conveyance, including obligations relating to any maintenance or repairs performed prior to such transfer. Nothing contained in this Declaration shall be deemed a gift or dedication of any portion of the Properties to the general public or for the public, or for any public purpose.

11.7 This Declaration, together with all exhibits hereto, contains the entire agreement of the Owners with respect to the subject matter hereof.

11.8 Upon execution, this Declaration, and any amendment hereto, any Owner may cause the Declaration and/or amendment to be recorded in the Official Records of the Recorder's Office of Salt Lake County, Utah. No amendment of this Declaration shall be effective unless such amendment has been executed and notarized by the Owners of the Properties and further provided that any such amendment is recorded in the Official Records of the Recorder's Office of Salt Lake County, Utah.

11.9 All notices, consents, approvals and other communications provided for herein or given in connection herewith shall be validly given, made, delivered or served, if in writing, addressed to the Owner of record of the applicable Property or its registered agent, and (a) delivered by any means if actually received; (b) delivered personally; or (c) sent by registered, certified mail, or receipted overnight service (by a reputable overnight company), postage prepaid addressed to such Owner at the address of the building located on the applicable Property.

11.10 The Owners acknowledge their mutual intent and desire that the easements shall be and remain at all times senior and superior in title and priority to any mortgage, deed of trust or similar lien at any time encumbering any of the Properties.

*[Remainder of page intentionally left blank. Signature page follows immediately.]*

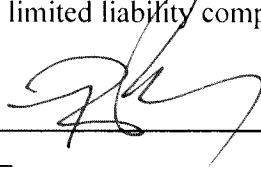
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IN WITNESS WHEREOF, Fry has executed this Declaration the day and year first above written.

**FRY:**

FRY CONSTRUCTION AND DEVELOPMENT  
LLC,  
a Utah limited liability company

By: 

Brandon Fry, Manager

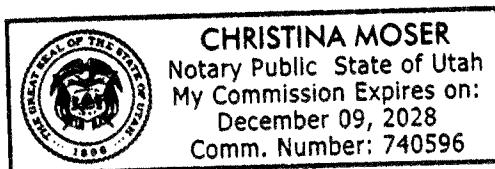
STATE OF UTAH )  
:ss.  
COUNTY OF SALT LAKE )

On this 18 day of March, 2024, personally appeared before me Brandon Fry, the Manager of Fry Construction and Development LLC, a Utah limited liability company, the signer of the foregoing instrument, who known to me (or proved on the basis of sufficient identification), acknowledged to me that she executed the same.



Notary Public

My Commission Expires: 12/9/28



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*[Signature page to Declaration of Access, Drainage and Utility Easement]*

## EXHIBIT A

(Legal Description of Burdened Properties)

**Parcel Number:** 16-33-405-057

[LOT 1].

**Parcel Number:** 16-33-405-058

[LOT 2].

**Parcel Number:** 16-33-405-059

[LOT 3].

**Parcel Number:** 16-33-405-060

[LOT 4].

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**EXHIBIT B**  
(Legal Description of Benefited Properties)

*Legal Description*

*Information for Reference Purposes Only:*

Parcel Number(s): **16-33-405-057**

Property Address(es):

**3905 SOUTH HOLLADAY COURT, HOLLADAY, UT 84124**

**EXHIBIT "A"**

The real property referred to herein is situated in **SALT LAKE** County, Utah, and is described as follows:

LOT 1, HOLLADAY COURT SUBDIVISION, ACCORDING TO THE OFFICIAL PLAT THEREOF ON FILE  
AND OF RECORD IN THE OFFICE OF THE SALT LAKE COUNTY RECORDER.

*Legal Description*

*Information for Reference Purposes Only:*  
Parcel Number(s): **16-33-405-058**

**EXHIBIT "A"**

The real property referred to herein is situated in **SALT LAKE** County, Utah, and is described as follows:

LOT 2, HOLLADAY COURT SUBDIVISION, ACCORDING TO THE OFFICIAL PLAT THEREOF, ON FILE AND OF RECORD IN THE OFFICE OF THE SALT LAKE COUNTY RECORDER.

*Legal Description*

*Information for Reference Purposes Only:*

Parcel Number(s): **16-33-405-059**

Property Address(es):

**3915 S HOLLADAY COURT, HOLLADAY, UT 84124**

**EXHIBIT "A"**

The real property referred to herein is situated in **SALT LAKE** County, Utah, and is described as follows:

**LOT 3, HOLLADAY COURT SUBDIVISION, ACCORDING TO THE OFFICIAL PLAT THEREOF, ON FILE AND OF RECORD IN THE OFFICE OF THE SALT LAKE COUNTY RECORDER.**

*Legal Description*

*Information for Reference Purposes Only:*  
Parcel Number(s): **16-33-405-060**

**EXHIBIT "A"**

The real property referred to herein is situated in **SALT LAKE** County, Utah, and is described as follows:

LOT 4, HOLLADAY COURT SUBDIVISION, ACCORDING TO THE OFFICIAL PLAT THEREOF, ON FILE AND OF RECORD IN THE OFFICE OF THE SALT LAKE COUNTY RECORDER.

**EXHIBIT C**

(Depiction of the Access Road)

**EXHIBIT D**  
(Depiction of the Drainage Facilities)

**EXHIBIT E**

(Depiction of the Utilities)