

COURTESY RECORDING

No assurances are given by the company either Express or implied for accuracy or content.



W3277831

WHEN RECORDED RETURN TO:
Ogden Canyon DAI, LLC
Exchange Place, Building B
14034 South 145 East, Suite 204
Draper, Utah 84020

E# 3277831 PG 1 OF 12
Leann H. Kiltz, WEBER COUNTY RECORDER
28-Mar-23 0253 PM FEE \$40.00 DEP DAI
REC FOR: OLD REPUBLIC TITLE (COMMERCIAL)
ELECTRONICALLY RECORDED

FILE# 220357UMT
Parcel: 13-071-0054

Space above for County Recorder's Use

EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT (“**Agreement**”) is made effective as of February 28, 2023 (“**Effective Date**”), by and between Ogden Canyon DAI, LLC, a Utah limited liability company (“**Grantor**”), and Canyon Terrace Homeowners Association, Inc., a Utah nonprofit corporation (“**Grantee**”), with reference to the following:

- A. Grantor owns certain real property located in Weber County, Utah (“**Grantor Property**”).
- B. Grantee owns certain real property located adjacent to the Grantor Property (“**Grantee Property**”).
- C. Grantee previously constructed a waterline on the Grantor Property (“**Waterline**”). The Waterline is a private utility and is not located within any current private or public utility easements.
- D. Grantee desires to obtain from Grantor a non-exclusive easement on a portion of the Grantor Property for the Waterline and Grantor is willing to grant to Grantee the easement subject to the terms and conditions of this Agreement.

FOR GOOD AND VALUABLE CONSIDERATION, the receipt and sufficiency of which are hereby acknowledged, Grantor and Grantee agree as follows:

- 1. Definitions. In addition to the terms defined elsewhere in this Agreement, for purposes of this Agreement, the following terms are defined as follows:
 - (a) “**Easement**” means the easement granted in Section 2 below for the Waterline.
 - (b) “**Easement Parcel**” means the portion of the Grantor Property described on the attached Exhibit A and shown on the attached Exhibit B as the Easement Parcel.
 - (c) “**Environmental Law**” means all applicable Laws now existing or hereafter promulgated by any governmental body that relate in each case to the protection of the environment including without limitation, environmental, health or safety laws, regulations, governmental authorizations, ordinances, and rules, and the common law relating to the use, refinement, recycling, handling, treatment, removal, storage, production, manufacture, transportation, disposal, emissions, discharges, releases or threatened releases of Hazardous

Substances, or otherwise relating to pollution or protection of human health or the environment or to emissions, discharges, releases or threatened releases of pollutants, contaminants, chemicals or industrial, toxic or hazardous substances or wastes into the environment (including, without limitation, ambient air, soil, surface water, ground water, wetlands, natural resources, land surface or subsurface strata), or otherwise relating to the manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of pollutants, contaminants, chemicals or industrial, toxic or Hazardous Substances or wastes, as the same may be amended or modified, and as now existing or hereafter adopted.

(d) **“Grantee Parties”** means Grantee and its parents, subsidiaries and affiliates and each of their respective directors, officers, employees, agents, contractors, subcontractors, advisors, consultants, representatives and invitees.

(e) **“Grantor Parties”** means Grantor and its parents, subsidiaries and affiliates and each of their respective directors, officers, employees, agents, contractors, subcontractors, advisors, consultants, representatives and invitees

(f) **“Hazardous Substances”** will be interpreted broadly to include any material or substance that is defined, regulated or classified under Environmental Laws, including without limitation, as: (i) a “hazardous substance” pursuant to section 101 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. § 9601(14), section 311 of the Federal Water Pollution Control Act, 33 U.S.C. § 1321, as now or hereafter amended; (ii) a “hazardous waste” pursuant to section 1004 or section 3001 of the Resource Conservation and Recovery Act, 42 U.S.C. §§ 6903, 6921, as now or hereafter amended; (iii) a toxic pollutant under section 307(a)(1) of the Federal Water Pollution Control Act, 33 U.S.C. § 1317(a)(1); (iv) a “hazardous air pollutant” under section 112 of the Clean Air Act, 42 U.S.C. § 7412, as now or hereafter amended; (v) a “hazardous material” under the Hazardous Materials Transportation Uniform Safety Act of 1990, 49 U.S.C. App. § 1802(4), as now or hereafter amended; (vi) a toxic or hazardous material or substance pursuant to regulations promulgated now or hereafter under the aforementioned laws or any state or local counterpart to any of the aforementioned laws; (vii) presenting a risk to human health or the environment under other applicable federal, state or local laws, ordinances, or regulations, as now or as may be passed or promulgated in the future; or (viii) any substance or energy that after release into the environment and upon exposure, ingestion, inhalation, or assimilation, either directly from the environment or directly by ingestion through food chains, will or may reasonably be anticipated to cause death, disease, behavior abnormalities, cancer, or genetic abnormalities. Hazardous Substances specifically includes asbestos, polychlorinated biphenyls, radioactive materials including naturally occurring radionuclides, petroleum and petroleum-based derivatives, and urea formaldehyde.

(g) **“Laws”** means collectively all present and future federal, state and local laws, orders, rules, regulations and requirements of every duly constituted government authority, agency or instrumentally, that are applicable in respect of this Agreement.

(h) **“Party”** or **“Parties”** means individually Grantor or Grantee and collectively Grantor and Grantee.

2. Grant of Easement. Subject to the terms and conditions set forth in this Agreement, Grantor hereby grants and conveys against all those claiming by, through or under Grantor to Grantee, the Easement on, over, under, across and through the Easement Parcel for the sole purposes of installing, operating, maintaining, repairing and replacing the Waterline for the delivery of water to and from the Grantee Parcel.

3. Grantee Use. Grantee, its successors and assigns, will not oppose, hinder or interfere with existing and future use and development of the Grantor Property by Grantor and its successors and assigns. Grantee's use of the Easement will be undertaken in a manner calculated to cause the least inconvenience to the ownership, use and enjoyment by Grantor of the Easement Parcel and other property of Grantor. Grantee will take all reasonable and necessary measures to avoid injury to persons or damage to property and for the discharge of water from the Waterline.

4. Condition of Easement Parcel. Grantee accepts the Easement Parcel and all aspects thereof "AS IS", "WHERE IS", without representations or warranties, either express or implied, "with all faults", including but not limited to both latent and patent defects, and the existence of Hazardous Substances, if any. 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 is granted to Grantee subject to: (a) any state of facts which an accurate 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 over the Easement Parcel; and (c) all reservations, easements, rights-of-way, covenants, conditions, restrictions, encroachments, liens, and encumbrances and all other matters of record or enforceable at law or in equity.

5. Grantor Connection to Waterline. Grantee hereby authorizes Grantor, at Grantor's expense, to connect to the Waterline for Grantor's use at a location determined by Grantor in its sole discretion.

6. Reservation. Grantor reserves the right to use the Easement Parcel, to place or grant other easements on, along, across, or under the Easement Parcel, and to otherwise make improvements to the Easement Parcel, provided that the Grantor will not unreasonably interfere with Grantee's use of the Easement.

7. Improvements; Maintenance. Grantee will give 30 days prior written notice (except in an emergency, in which case Grantee will give as much notice as is practicable under the circumstances) of its intent to construct, maintain, remove or replace any improvements if such activities would cause any disturbance of the surface of the Grantor Property, and Grantee will perform those activities expeditiously and will take reasonable efforts to minimize any disruption of operations on the Grantor Property caused by the activities. Grantee, at Grantee's sole cost and expense, will at all times keep and maintain the Waterline in good condition and repair, except for such connections to or other portions of the Waterline servicing only Grantor's Property pursuant to paragraph 5 above, which portions shall be maintained by Grantor. Grantee, at Grantee's sole cost and expense, will be solely responsible for the construction, inspection, repair and replacement of the Waterline and Grantee acknowledges and agrees that Grantor will have no

responsibility whatsoever to maintain, repair or replace any portion of the Easement Parcel or the Waterline, except for such portions of the Waterline servicing only Grantor's Property pursuant to paragraph 5 above, which portions shall be maintained by Grantor.

8. Compliance with Law; Mechanics' Liens. Grantee will comply with all applicable Laws and will be responsible for obtaining all necessary permits or governmental approvals required in connection with the use, maintenance, repair and/or replacement of the Waterline. Grantee will at all times keep the Easement Parcel and the Grantor Property free from mechanics' liens or similar liens arising on account of or resulting from any act by or on behalf of Grantee. In the event any mechanics' lien or similar lien is recorded against the Easement Parcel or the Grantor Property or any portion thereof on account of any act by or on behalf of Grantee, Grantee will, within 30 days of discovery by Grantee or receipt of notice from Grantor, cause such mechanics' lien to be removed from the Easement Parcel. Grantee will indemnify and hold Grantor harmless from any liability for the payment of such liens.

9. Insurance and Indemnity. At all times while this Agreement is in effect, Grantee will maintain a policy of commercial general liability insurance (in a form reasonably acceptable to Grantor) with respect to the Easement Parcel and Grantee's activities thereon, written on an occurrence basis and including contractual liability coverage to cover Grantee's indemnity obligations hereunder. Such policy will have a limit of liability of at least \$1,000,000.00 combined single limit per occurrence. Grantor may require by written notice a reasonable increase in the insurance limits specified in this Section based on inflation or commercial adequacy. Such policy will name Grantor as an additional insured. Within 10 days after request by Grantor, Grantee will provide to Grantor evidence of insurance meeting the requirements of this Section. In the event Grantee fails to obtain and maintain insurance, or to provide evidence thereof, as required herein, Grantor will have the right, but not the obligation, to purchase such insurance in its own name or in the name of Grantee, and Grantee will reimburse Grantor for the cost of such insurance on demand. Grantee will indemnify, defend, and hold harmless Grantor and the Grantor Parties from and against any and all losses, claims, actions, damages, liabilities, penalties, fines, or expenses of any nature whatsoever, including, without limitation, reasonable attorneys' fees and costs on account of mechanics' lien claims, injury to persons, the death of any person, or damages to property (collectively, "**Claims**") arising from the use by Grantee and/or the Grantee Parties of the Easement Parcel, except to the extent any such Claims are caused by the gross negligence or willful misconduct of Grantor. Grantor, at Grantee's expense, will have the right to participate in the defense of any Claim to the extent of Grantor's interest.

10. Environmental.

(a) Except in compliance with all applicable Laws, including all applicable Environmental Laws, Grantee will not create, generate, store, treat, emit, dispose of, discharge, release, threaten to release, or permit to be created, generated, stored, treated, emitted, disposed of, discharged, released, or threatened to be released any Hazardous Substances on, over or under the Easement Parcel, or any property adjacent thereto. If Grantee breaches any of its obligations set forth in this Section, Grantee will, upon Grantor's request and at Grantee's sole cost and expense, promptly and diligently undertake, perform and complete any and all corrective action or response, removal or remedial activities necessary to remove, remediate and eliminate any and all

Hazardous Substances and to obtain certification from the appropriate governmental authorities that such corrective action, response, removal, remediation and elimination are complete.

(b) Grantee will indemnify, defend and hold harmless Grantor and the Grantor Parties from and against any and all Claims suffered, incurred by or asserted against the Grantor and the Grantor Parties arising from or relating to access to, use of, or activities on Easement Parcel by Grantee or the Grantee Parties, including but not limited to, the discharge of Hazardous Substances or the violation of, or failure to comply with governmental permits or requirements, excluding only Claims arising from the gross negligence or willful misconduct of Grantor or the Grantor Parties.

11. Default. If Grantee fails to cure a default hereunder within 90 days (or such longer period as may reasonably be required to cure such default, provided that cure has commenced and Grantee is diligently proceeding to complete such cure) after receiving written notice thereof from Grantor, Grantor will be entitled to exercise all remedies provided by law or in equity to the same extent as if fully set forth herein word for word. Notwithstanding the foregoing, Grantor will not exercise the right to terminate the Easement so long as Grantor is fully compensated for any and all damages and Grantee is obligated to perform its obligations and abide by the terms and conditions of this Agreement through specific performance or similar remedy. No remedy conferred upon, or reserved to Grantor will exclude any other remedy, by law or in equity, but each will be cumulative.

12. Costs and Expenses and Limitation on Damages. In the event of a breach in any of the covenants or agreements contained herein, the breaching Party will pay all costs and expenses, including reasonable attorneys' fees and experts' 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. Notwithstanding any other provisions of this Agreement to the contrary, and to the fullest extent permitted by law, under no circumstances will either Party be liable for any consequential, exemplary, punitive, special, indirect or incidental damages or economic losses arising out of any claim, demand, or action brought with respect to this Agreement.

13. Mutuality; Runs With the Land.

(a) The Easement, rights, and obligations granted or created hereby are appurtenances to the Easement Parcel and may not be transferred, assigned, or encumbered except as an appurtenance to the Easement Parcel. For the purposes of the Easement and rights set forth herein, the Grantee Property will constitute the dominant estate, and the Easement Parcel will constitute the servient estate.

(b) The Easement and rights contained in this Agreement (whether affirmative or negative in nature) (i) will constitute covenants running with the land; (ii) will bind every person having a fee, leasehold or other interest in any portion of the Easement Parcel at any time or from time to time to the extent such portion is affected or bound by the Easement or right in question, or to the extent that easement or right is to be performed on such portion; and (iii) will inure to the benefit of and be binding upon the Parties and their respective successors and assigns.

(e) No Waiver. Failure of a Party to insist upon strict performance of any provisions of this Agreement will not be construed as a waiver for future purposes with respect to any such provision or option. No provision of this Agreement will be waived unless such waiver is in writing and signed by the Party alleged to have waived its rights.

(f) Severability. If any provision of this Agreement will be held to be invalid or unenforceable for any reason, the remaining provisions will continue to be valid and enforceable. If a court finds that any provision of this Agreement is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision will be deemed to be written, construed, and enforced as so limited.

(g) No Relationship. The Parties will not, by virtue of this Agreement nor by the act of any Party, be deemed principal and agent, limited or general partners, joint venturers or of any other similar relationship of each other in the conduct of their respective businesses, or otherwise.

(h) Binding Effect. This Agreement will be binding upon and will inure to the benefit of the Parties hereto and their heirs, personal representatives, successors, and assigns. All provisions of this Agreement, including the benefits and burdens, run with the land and are binding upon and inure to the benefit of the respective assigns and successors of the Parties.

(i) Third Party Rights. Nothing in this Agreement, expressed or implied, is intended to confer any rights upon any person or entity other than the Parties and their successors and assigns.

(j) Amendment. No modification of this Agreement will be made or effective unless and until such modification is made in writing and executed by the Grantee and Grantor, or their successors or assigns.

(k) Entire Agreement. This Agreement constitutes the sole agreement between the Parties and supersedes any and all other agreements, whether oral or written, with respect to the obligations identified herein. The Parties acknowledge that no representations, inducements, promises, or agreements, whether oral or otherwise, have been made by any Party or anyone acting on behalf of any Party which is not embodied herein; and that no other agreement, statement, or promise not contained in this Agreement regarding the provisions of this Agreement will be valid or binding.

(l) Applicable Law. This Agreement will be construed, administered and enforced according to the laws of the State of Utah.

(m) Authority. Each individual executing this Agreement represents and warrants: (i) that he or she is authorized to do so on behalf of the respective Party to this Agreement; (ii) that he or she has full legal power and authority to bind the respective Party in accordance with the terms herein and, if necessary, has obtained all required consents or delegations of such power and authority; and (iii) that the execution, delivery, and performance by the respective Party of this Agreement will not constitute a default under any agreement to which such Party is a party.

(n) Counterparts. This Agreement may be executed in any number of counterpart originals, each of which will be deemed an original instrument for all purposes, but all of which will comprise one and the same instrument.

[SIGNATURE PAGES FOLLOW]

**EXHIBIT A
TO
EASEMENT AGREEMENT**

Legal Description of the Easement Parcel

The real property referenced in the foregoing instrument as the Easement Parcel are located in Weber County, Utah and are more particularly described as:

PART OF THE SOUTHEAST QUARTER OF SECTION 22, TOWNSHIP 6 NORTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN, U.S. SURVEY, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT BEING S00°44'44"W 31.88 FEET AND N89°15'16"W 1084.57 FEET FROM THE EAST QUARTER CORNER OF SAID SECTION 22 AND RUNNING THENCE S88°13'54"W 210.49 FEET; THENCE N00°17'02"E 10.01 FEET; THENCE N88°13'54"E 210.00 FEET; THENCE S02°30'20"E 10.00 FEET TO THE POINT OF BEGINNING.

CONTAINING 2,102 SQUARE FEET OR 0.048 ACRES.

EXHIBIT B TO EASEMENT AGREEMENT

Depiction of the Easement

