

E 3536563 B 8295 P 387-396  
RICHARD T. MAUGHAN  
DAVIS COUNTY, UTAH RECORDER  
7/14/2023 1:37 PM  
FEE 0.00 Pgs: 10  
DEP AAM REC'D FOR LAYTON  
CITY

WHEN RECORDED, MAIL TO:

ROCKWORTH COMPANIES  
Attn: Tom Henriod  
4655 S. 2300 E. #205  
Holladay, Utah 84117

Affecting Parcel No(s) 11-061-0260

RETURNED  
JUL 14 2023

## TEMPORARY CONSTRUCTION EASEMENT AGREEMENT

THIS TEMPORARY CONSTRUCTION EASEMENT AGREEMENT (this "Agreement") is made and entered into as of July 6, 2023, by and between WINKEL ROCK, LLC, a Utah limited liability company (the "Owner"), whose address is 4655 South 2300 East #205, Holladay, Utah 84117, and Layton City Corporation, (the "City"), whose mailing address is 437 North Wasatch Drive, Layton, Utah 84041.

### RECITALS

- A. Owner is the owner of that certain real property located in Davis County, Utah more particularly described on Exhibit A attached hereto (the "Property").
- B. City has requested that Owner grant City a temporary, non-exclusive, easement over the Property for the purposes and in the locations provided in this Agreement.
- C. Owner is willing to grant City such an easement, subject to the terms and conditions provided herein.

NOW, THEREFORE, to these ends and in consideration of the terms and conditions of this agreement, as well as the mutual benefits to be derived herefrom and other good and valuable consideration acknowledged and received by each of the parties hereto, the City and the Owner hereby agree as follows:

### TERMS

1. Grant of Easement. The Owner hereby grants and conveys a non-exclusive, temporary easement and right of way (the "Easement") upon, over and across the portion of the Property described on Exhibit B and depicted on Exhibit B-1 attached hereto (the "Easement Property") for the purposes described in Section 2 and Section 3 below.
2. Shared, Non-exclusive Use. Exclusive use of the Easement Property is not hereby granted by the Owner. Instead, the Owner expressly reserves to itself, the right and easement for

ingress and egress and all other uses or purposes that do not materially interfere with the City's use of the Easement consistent with this Agreement, including, but not limited to, Owner's development and construction of a mixed-use multi-family residential and commercial project (the "Project") on the Property.

3. Permitted Use. The Easement shall be used by the City, its contractors, agents and assigns solely for the purposes of accessing the UDOT right of way property north of the Easement Property (the "UDOT Property") and, subject to the terms below, constructing and installing a pedestrian trail connection (and certain accessory or incidental purposes related thereto) on such UDOT Property (collectively, the "Kay's Creek Trail Connection"). The Easement does not include or grant any independent right to install any portion of the Kay's Creek Trail Connection, or any other utilities or structures, on or under the Property. Rather, it is intended that the Easement Property be used by the City for the sole purpose of ingress and egress to the UDOT Property to perform its intended surface activities thereon (e.g., temporary staging, construction, cleaning and maintenance, etc.). However, this Agreement is not intended to abrogate or diminish any of the City's existing or future land use rights, including any surface or subsurface land use rights (e.g., public utility and drainage easements that are near or within the Easement Property). Except as authorized herein, the City shall not utilize the Easement Property in any manner that has a material adverse effect on the Owner's use of the Property (or its successors, assigns, contractors, guests, residents, invitees, tenants, or agents) or its development and construction of the Project. City shall promptly repair, at its sole cost and expense, any damage to the Property, including the Easement Property, caused by the actions of City or its employees, contractors, or agents (Authorized Parties) pursuant to the rights granted under this Agreement.

4. Amendment and Termination. This Agreement may not be amended or modified except with the consent of the Owner and the City and, then, only by written instrument duly executed and acknowledged and recorded in the office of the County Recorder of Davis County, Utah. The Easement granted herein shall terminate upon the City's completion of the construction and installation of the Kay's Creek Trail Connection on the UDOT Property. After the completion of the construction and upon Owner's request, City shall execute and acknowledge a termination and release of this Agreement in recordable form.

5. No Liens. City shall keep the Easement Property and the Property free from any liens or payment bond claims arising out of any work performed, materials furnished, or obligations incurred by, through, for or under City. City agrees not to permit or suffer and, to the extent permitted or suffered, cause to be removed and released, any mechanic's lien, materialmen's or other lien on account of supplies, machinery, tools, equipment, labor or materials furnished or used in connection with entry or work upon the Easement Property by City or the Authorized Parties.

6. Insurance. City shall maintain or shall require all Authorized Parties that enter on the Easement Property to maintain commercial general liability insurance in the sum of not less than One Million Dollars (\$1,000,000.00) per occurrence and Two Million Dollars (\$2,000,000.00) in the aggregate, insuring against any damages or liabilities which may occur as a result of such Authorized Party exercising its rights under this Agreement. Owner shall be named

as an additional insured on such insurance on a primary and noncontributory basis. In addition, City or its Authorized Parties shall maintain worker's compensation insurance as required under applicable law and automobile insurance for any motor vehicle owned or leased by such party and used on the Easement Property. At Owner's request, City shall provide Owner with a certificate of said insurance from itself and any Authorized Party before they commence activity on the Easement Property.

7. Indemnification. City and its successors and assigns hereby agree to indemnify, defend (with counsel acceptable to Owner) and hold harmless Owner, Owner's officers, directors, employees, managers, members, agents, trustees, servants, successors, and assigns from and against any and all liens, claims, encumbrances, costs, demands, claims, judgments, and/or damage caused by or arising out of: (i) the acts and omissions of City and the Authorized Parties; (ii) the use of the Easement Property by City, the Authorized Parties, or third parties trespassing on the Easement Property; and (iii) any work performed on the Easement Property by City or the Authorized Parties or its successors or assigns, and their agents, servants, employees, consultants and/or contractors. The terms and conditions of this provision shall remain effective, notwithstanding the expiration or termination of this Agreement.

8. Default. No party shall be deemed to be in default of any provision of this Agreement except upon the expiration of fourteen (14) days from receipt of written notice specifying the particulars in which such person has failed to perform the obligations of this Agreement, unless such party, prior to the expiration of said fourteen (14) days, has rectified the particulars specified in said notice. Failure to cure any such default shall entitle the nonbreaching party to any remedies at law or equity including, without limitation, specific performance, and reasonable expenses. If any action at law or in equity is necessary to enforce or interpret the terms of this Agreement, the prevailing party shall be entitled to reasonable attorneys' fees, costs and necessary disbursements in addition to any other relief to which such party may be entitled.

9. Repair of Easement Property. The City shall be responsible, at its sole cost and expense, to promptly repair any damage it, or any of its Authorized Parties, causes to the Easement Property or the Property. After such repair, the damaged location within the Easement Property or the Property shall be in the substantially same or better condition as it existed immediately prior to such damage. If, after 14 days' written notice is received by the City, the City does not timely repair any such damage, then the Owner may be permitted to do so on behalf of the City and thereafter seek reimbursement from the City of all costs and expenses Owner incurred in so doing.

10. Waiver. The failure of a party to insist upon strict performance of any of the terms, covenants, conditions or agreements contained herein shall not be deemed a waiver of any rights or remedies that said party may have, and shall not be deemed a waiver of any subsequent breach or default in any of the terms, covenants, conditions or agreements contained herein by the same or any other party.

11. No Joint Venture; Merger. The provisions of this Agreement are not intended to create, nor shall they be in any way interpreted or construed to create, a joint venture, partnership

or any similar relationship between the parties. No separate legal entity is created by this Agreement. This Agreement contains the entire agreement between the parties and supersedes all prior agreements, oral or written, with respect to the subject matter hereof. The provisions of this Agreement shall be construed as a whole and not strictly for or against any party. The parties recognize and acknowledge the City is covered by the Governmental Immunity Act of Utah, codified at Section 63G-7-101, et seq., Utah Code Annotated, as amended, and nothing herein is intended to waive or modify any and all rights, defenses, or provisions provided therein. Officers and employees performing services pursuant to this agreement shall be deemed officers and employees of the party employing their services, even if performing functions outside of the territorial limits of such party and shall be deemed officers and employees of such party under the provisions of the Utah Governmental Immunity Act, if applicable.

12. Choice of Law; Recordation. This Agreement shall be governed by and construed in accordance with the laws of the State of Utah. This Agreement shall be recorded in the records of the County Recorder of Davis County, Utah.

13. Successors and Assigns; Run with the Land. All of the provisions in this Agreement, including the benefits and burdens, shall be and are binding upon and inure to the benefit of the successors and assigns of the parties hereto. All obligations of each party under this Agreement, if more than one person or entity is the successor or assign of such party, shall be jointly and severally binding on each such person or entity. The covenants agreed to and the restrictions imposed herein shall continue as a servitude running in perpetuity with the Properties and shall survive any death or termination of any party's existence. The easements, agreements, duties, responsibilities and covenants herein contained shall be easements and covenants running with the land.

14. No Third Party Beneficiaries. Nothing in this Agreement is intended to create an enforceable right, claim or cause of action by any third party against any party to this Agreement.

15. Authority of Signatory. Each person executing this Agreement certifies that he or she is duly authorized to execute this Agreement on behalf of the party for which he or she is signing, and that the person has the authority to bind said party to the terms of this Agreement.

16. Independent Provisions. If any provision herein is held invalid or unenforceable, such a finding shall not affect the validity of the remainder of the Agreement, the parties hereto hereby stipulate that all provisions are deemed severable and independent.

17. Counterparts. This Agreement and any originals of exhibits referred to herein may be executed in any number of duplicate originals or counterparts, each of which (when the original signatures are affixed together with the applicable acknowledgment) shall be an original but all of which shall constitute one and the same instrument.

18. Miscellaneous. The paragraph and other headings contained in this Agreement are for purposes of reference only and shall not limit, expand, or otherwise affect the construction of any of the provisions of this Agreement. Whenever the context reasonably permits, the singular

shall include the plural, the plural shall include the singular, and the whole shall include any part thereof. Further, the masculine gender shall include the female gender and neuter, and vice versa. The recital paragraphs set forth above are expressly incorporated in this Agreement by this reference. This Agreement represents the wording selected by the parties to define their agreement and no rule of strict construction shall apply against either party. Each party represents that it has had or has been advised to have the representation of its legal counsel in connection with the preparation of this Agreement. The words "hereof," "hereto," "herein" and "hereunder" and words of similar import, when used in this Agreement, shall refer to this Agreement as a whole and not to any particular provision of this Agreement. References herein to Paragraphs and Exhibits shall be construed as references to Paragraphs and Exhibits of this Agreement unless the context otherwise requires. Any terms defined in this Agreement in the singular shall have a comparable meaning when used in the plural, and vice versa.

[Signature Page Follows]

WITNESS the hand of said Owner this 20 day of June, 2023.

WINKEL ROCK, LLC,  
a Utah limited liability company

By: Rockworth Companies, LLC  
Its: Manager

By: [Signature]  
Name: Tom Henrad  
Its: Manager

STATE OF UTAH            )  
                                      : ss.  
County of Salt Lake        )

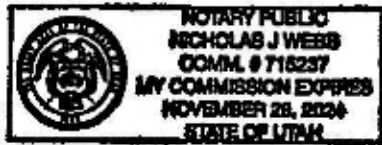
On this 20<sup>th</sup> day of JUNE, 2023, before me, the undersigned, a Notary Public in and for said State of Utah, personally appeared THOMAS HENRAD, the MANAGER of Rockworth Companies, LLC, a Utah limited liability company, the manager of WINKEL ROCK, LLC, a Utah limited liability company, to me known and acknowledged to me that the said instrument is the free and voluntary act and deed, for the uses and purposes therein mentioned, and on oath stated that he is authorized to execute the said instrument.

WITNESS MY HAND and official seal hereto affixed the day, month and year in this certificate first above written.

My commission expires:

NOVEMBER 28, 2024

[Signature]  
Residing at: Salt Lake City



WITNESS the hand of said City this 6<sup>th</sup> day of July, 2023.



Joy Petro  
Name: Joy Petro, Mayor

STATE OF UTAH            )  
                                      : ss.  
County of Davis         )

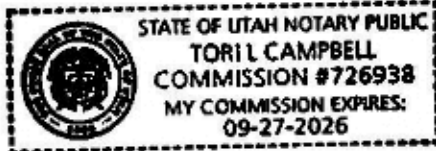
On this 6<sup>th</sup> day of July, 2023, before me, the undersigned, a Notary Public in and for said State of Utah, personally appeared Joy Petro, Mayor of Layton City, to me known and acknowledged to me that the said instrument is the free and voluntary act and deed, for the uses and purposes therein mentioned, and on oath stated that he/she/it is authorized to execute the said instrument.

WITNESS MY HAND and official seal hereto affixed the day, month and year in this certificate first above written.

My commission expires:

9.27.26

Tori L. Campbell



Residing at: Davis County

ATTEST

Kimberly S Read  
KIMBERLY S READ, City Recorder

APPROVED AS TO FORM

David Price  
DAVID PRICE, Parks and Recreation

Gary Crane  
GARY CRANE, City Attorney

11-061-0260

**EXHIBIT A**

**LEGAL DESCRIPTION OF PROPERTY**

That certain real property located in Davis County, State of Utah, more particularly described as follows:

A PARCEL OF LAND LYING WITHIN THE NORTHWEST QUARTER OF SECTION 28, TOWNSHIP 4 NORTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE CENTERLINE OF KAYS CREEK, SAID POINT ALSO BEING ON THE WESTERLY RIGHT OF WAY AND NON ACCESS LINE OF INTERSTATE 15, SAID POINT ALSO BEING LOCATED NORTH 89°28'04" WEST ALONG SECTION LINE 1270.98 FEET (NORTH 89°27'20" WEST 1271.00 FEET BY DEED) AND SOUTH 84.50 FEET AND NORTH 77°14'00" WEST 108.64 FEET (NORTH 77°13'31" WEST BY DEED) FROM A FOUND BRASS CAP MONUMENT MARKING THE NORTH QUARTER CORNER OF SAID SECTION 28; RUNNING THENCE ALONG SAID RIGHT OF WAY LINE THE FOLLOWING THREE (3) COURSES: 1) SOUTH 77°14'00" EAST 146.12 FEET, 2) SOUTH 42°21'05" EAST 210.65 FEET TO A POINT ON A 1759.90 FOOT TANGENT RADIUS CURVE TO THE RIGHT; 3) THENCE SOUTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 6°53'35" A DISTANCE OF 211.73 FEET (CHORD BEARS SOUTH 40°41'49" EAST 211.60 FEET); THENCE SOUTH 47°38'55" WEST 386.32 FEET; THENCE SOUTH 64°35'28" WEST 81.55 FEET; THENCE SOUTH 25°24'32" EAST 205.85 FEET; THENCE SOUTH 1°35'03" EAST 46.21 FEET; THENCE SOUTH 88°25'02" WEST 146.85 FEET TO A POINT ON THE EASTERLY RIGHT OF WAY LINE OF MAIN STREET; THENCE ALONG SAID RIGHT OF WAY LINE NORTH 25°24'32" WEST 515.66 FEET TO THE CENTER LINE OF SAID KAYS CREEK; THENCE ALONG SAID CREEK THE FOLLOWING FOUR (4) COURSES: 1) NORTH 62°43'40" EAST 98.30 FEET TO A POINT ON A 70.0 FOOT TANGENT RADIUS CURVE TO THE LEFT, 2) NORTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 47°32'16" A DISTANCE OF 58.08 FEET (CHORD BEARS NORTH 38°57'32" EAST 56.43 FEET), 3) NORTH 15°11'24" EAST 159.73 FEET, 4) NORTH 16°27'33" EAST 178.28 FEET TO THE POINT OF BEGINNING.

CONTAINS 272,658 SQ. FT.

(NAD83 STATE PLAIN ROTATION, CLOCKWISE 0°21'19")



**EXHIBIT B**

**LEGAL DESCRIPTION OF EASEMENT AREA**

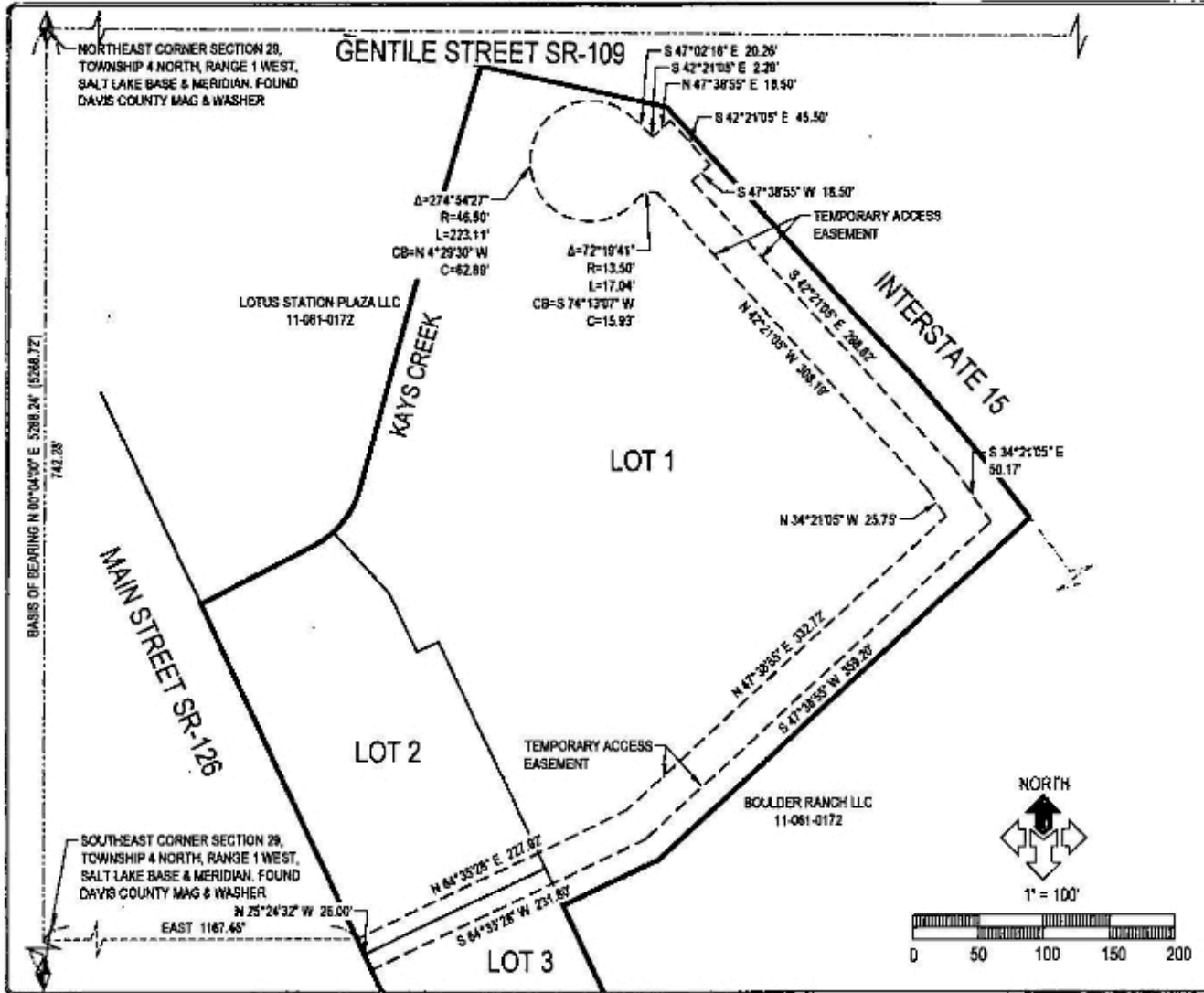
That certain real property located in Davis County, State of Utah, more particularly described as follows:

BEGINNING AT A POINT ON THE EASTERLY RIGHT OF WAY LINE OF SR 126 (LAYTON MAIN STREET), SAID POINT BEING SOUTH  $0^{\circ}04'16''$  WEST 742.28 FEET ALONG THE SECTION LINE AND EAST 1167.46 FEET FROM THE NORTHWEST CORNER OF SECTION 28, TOWNSHIP 4 NORTH, RANGE 1 WEST, SALT LAKE BASE & MERIDIAN, AND RUNNING THENCE NORTH  $64^{\circ}35'28''$  EAST 227.92 FEET; THENCE NORTH  $47^{\circ}38'55''$  EAST 332.72 FEET; THENCE NORTH  $34^{\circ}21'05''$  WEST 25.75 FEET; THENCE NORTH  $42^{\circ}21'05''$  WEST 308.19 FEET TO A POINT ON THE ARC OF A 13.50 FOOT NON TANGENT RADIUS CURVE TO THE LEFT; THENCE WESERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF  $72^{\circ}19'41''$  A DISTANCE OF 17.04 FEET, CHORD BEARS SOUTH  $74^{\circ}13'07''$  WEST 15.93 FEET, TO A POINT ON THE ARC OF A 46.50 FOOT RADIUS CURVE TO THE RIGHT; NORTHWESTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF  $274^{\circ}54'27''$  A DISTANCE OF 223.11 FEET, CHORD BEARS NORTH  $4^{\circ}29'30''$  WEST 62.89 FEET; THENCE SOUTH  $47^{\circ}02'16''$  EAST 20.26 FEET; THENCE SOUTH  $42^{\circ}21'05''$  EAST 2.28 FEET; THENCE NORTH  $47^{\circ}38'55''$  EAST 18.50 FEET; THENCE SOUTH  $42^{\circ}21'05''$  EAST 45.50 FEET; THENCE SOUTH  $47^{\circ}38'55''$  WEST 18.50 FEET; THENCE SOUTH  $42^{\circ}21'05''$  EAST 298.82 FEET; THENCE SOUTH  $34^{\circ}21'05''$  EAST 50.17 FEET; THENCE SOUTH  $47^{\circ}38'55''$  WEST 359.20 FEET; THENCE SOUTH  $64^{\circ}35'28''$  WEST 231.80 FEET TO A POINT ON SAID EASTERLY RIGHT OF WAY LINE; THENCE NORTH  $25^{\circ}24'32''$  WEST 26.00 FEET TO THE POINT OF BEGINNING

CONTAINS 32,333 SQ. FT.

STATE PLAIN ROTATION, CLOCKWISE  $0^{\circ}21'19''$

EXHIBIT B-1  
DEPICTION OF EASEMENT AREA



**M McNEIL ENGINEERING**  
 Surveying and Mapping, Design, Professional Site, Road and Traffic  
 117 South Park Valley, Suite 200, Salt Lake City, UT 84119  
 Civil Engineering • Consulting & Landscape Architecture  
 Structural Engineering • Land Surveying & MDS

**TEMPORARY ACCESS EASEMENT**  
 MAIN STREET  
 LAYTON, UTAH  
 LOCATED IN THE NW 1/4 OF SEC 28, T 41 N, R 1 E, S.L.B.&M.

PROJECT NO: 20735  
 CHECKED BY: DBD  
 DRAWN BY: KSL  
 DATE: 09/22/22  
**1 OF 1**