

When Recorded, Mail To:

Jim Day Fields, LLC
Attn: Tom Day
2049 Ridge Road
Layton, Utah 84040

E 3540756 B 8319 P 516-527
RICHARD T. MAUGHAN
DAVIS COUNTY, UTAH RECORDER
8/18/2023 12:38 PM
FEE 40.00 Pgs: 12
DEP JMF REC'D FOR FADEL
LAW FIRM
RETURNED

AUG 18 2023

Tax Parcel No.(s): 10-065-0682

(Space Above for Recorder's Use Only)

No NAD83
EASEMENT AND ROADWAY DEVELOPMENT AGREEMENT

THIS EASEMENT AND ROADWAY DEVELOPMENT AGREEMENT ("Agreement") is made and entered into by and between JIM DAY FIELDS, LLC, a Utah limited liability company ("JDF"), and DVD FARM AND RANCH, LLC, a Utah limited liability company ("DVD"), to be effective on the closing date under the Distribution Agreement defined below ("Closing Date"). JDF and DVD are hereinafter collectively referred to as the "Parties" and individually as a "Party."

RECITALS

A. JDF and DVD's principal are parties to that certain Jim Day Fields, LLC Distribution Agreement, dated August 17, 2023 (the "Distribution Agreement"), concerning the distribution of certain real property (with water rights) that are more particularly described in said Distribution Agreement.

B. Pursuant to the Distribution Agreement, JDF has distributed and conveyed to DVD and DVD has received and accepted from JDF, that certain real property located in Davis County, State of Utah, described in Exhibit A attached hereto and incorporated herein by this reference ("Lot 3") and that certain real property located in Davis County, State of Utah, described in Exhibit B attached hereto and incorporated herein by this reference ("Lot 4").

C. After making the forgoing distributions pursuant to the Distribution Agreement, JDF continues to be the fee simple owner of those certain parcels of real property located in Davis County, State of Utah, as more particularly described on Exhibit C attached hereto and incorporated herein by this reference ("Lot 1") and on Exhibit D attached hereto and incorporated herein by this reference ("Lot 2").

D. DVD desires to grant to JDF and JDF desires to acquire from DVD certain permanent easements pertaining to Lot 3 as described herein.

E. DVD and JDF desire to describe the construction, timing, and cost sharing of certain roadway improvements on Lot 3 as more fully described herein.

F. In conjunction and simultaneously with the recording of the deeds and exchanging of the other documents called for under the Distribution Agreement on the Closing Date, this Agreement shall be recorded in the Official Records of County of Davis.

NOW, THEREFORE, incorporating the foregoing recitals and for and in consideration of the mutual agreements and covenants contained herein and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Parties hereby covenant and agree as follows:

1. Definitions. As used in this Agreement:

- a. **“Utility Installation”** means the actual physical commencement of any staking, demolition, grubbing, trenching or other work toward installation of water, sewer, electrical, data or telephonic lines services on or under any portion of Lot 3 for purposes of supplying any one or more of such services to Lot 4.
- b. **“Successors”** of a party shall mean the heirs, grantees, assignees, and successors in title to the subject Party’s property.
- c. **“Visitors”** shall mean the employees, customers, agents, contractors, visitors, and other licensees and invitees of the subject Party; and
- d. **“Occupants”** shall mean the owners, tenants, subtenants, occupants, and all other parties in possession of the subject Party’s property.
- e. **“Owner”** or **“Owners”** shall mean the record owner of the fee title to Lot 1, Lot 2, Lot 3, or Lot 4, as the case may be.

2. DVD’s Grant of Easement to JDF. DVD hereby gives, grants, and conveys, to JDF as the Lot 1 Owner and Lot 2 Owner and its Successors, Occupants and Visitors, a permanent easement (the **“Easement”**) over, on, upon, under and across Lot 3 for the purposes and subject to the terms, conditions, and limitations set forth herein. Except as described herein, the Lot 3 Owner shall retain the full use and enjoyment of Lot 3, and shall have the right to extend the use of Lot 3 to other properties.

a. Use and Purpose Prior to DVD’s Roadway Development. Unless and until Utility Installation on Lot 3 commences, the Easement granted herein may be used solely and exclusively by JDF and its Successors, Visitors and the Occupants of Lot 1 and Lot 2, to the exclusion of all others for the purpose of (i) farming and related agricultural uses consistent with its current use and prior use as of Closing Date; (ii) pedestrian and vehicular (including all types of farming equipment) ingress, egress, and access over Lot 3 to, from, and between Lot 1 and Lot 2 and all adjoining parcels and public roadways; (iii) surface drainage; and (iv) for other lawful purposes ancillary to the foregoing.

b. Use and Purpose From and After DVD’s Roadway Development. From and after the time Lot 3 is improved with the Roadway Improvements (as defined below),

the Easement granted herein may be used by the Owners of Lot 1 and Lot 2 and their respective Successors, Visitors and Occupants for the purpose of (i) pedestrian and vehicular ingress, egress, and access over Lot 3 to, from, and between Lot 1 and Lot 2 and all adjoining parcels and any public roadways; (ii) at the sole cost and expense of the Owners of Lot 1 and Lot 2, developing, constructing, installing, and maintaining installation of water, sewer, electrical, data or telephonic line services on or under any portion of Lot 3 for purposes of supplying any one or more of such services to Lot 1 or Lot 2; (iii) surface drainage; and (iv) for other lawful purposes ancillary to the foregoing.

c. Generally. As of the Effective Date of this Agreement, JDF maintains fencing, gates and barriers for existing animals on Lot 3 (the “**Existing Fencing**”). Except for the Existing Fencing, no walls, fences, or barriers of any kind shall be constructed or maintained on Lot 3, or any portion thereof, by either Party which shall prevent or impair the use or exercise of the Easement granted herein, or the free access and movement, including without limitation, of pedestrians and vehicular traffic between the properties; provided, however, reasonable traffic or animal controls approved in advance by the other Party (which approval shall not be unreasonably withheld, conditioned, or delayed) as may be necessary to guide and control the orderly flow of traffic and implement the safety and security of either Parties’ operations may be installed so long the Lot 3 is not unreasonably closed or blocked, and DVD may install such walls, fences, and/or barriers as are required to meet Utah Department of Transportation (“UDOT”) and Davis County standards and guidelines. The only other exceptions to this provision shall be for incidental, temporary encroachments upon Lot 3 which may occur in conjunction with the construction, maintenance, or repair of improvements, so long as such construction, maintenance, or repair is being diligently pursued, and/or for temporary blockage of certain areas deemed necessary by the Parties to prevent a public dedication of an easement or access right.

3. Construction of Lot 3 Roadway Improvements.

a. Construction of Roadway Improvements. At such time as Utility Installation begins on Lot 3, then the Lot 4 Owner shall promptly commence and diligently pursue to completion and public dedication all construction and improvement of Lot 3 into a fully paved residential roadway that (i) includes a concrete or asphalt vehicular road, cement curb and gutter; (ii) includes two concrete pedestrian sidewalks (one on each side of the residential roadway); and (iii) otherwise fully complies with then applicable Layton City Code requirements and passes all required Layton City inspections (the foregoing being referred to as the “**Roadway Improvements**”).

b. Costs and Reimbursement for Roadway Improvements. The Lot 4 Owner shall be solely responsible for payment of all costs and expenses associated with the Roadway Improvements and shall timely and fully pay for the same. In completing and paying for the Roadway Improvements the Lot 4 Owner shall maintain reasonably detailed records of its costs, expenses, and payment records (“**Roadway Improvement Records**”). Upon final completion of the Roadway Improvements and payment of the same, the Lot 1 and Lot 2 Owner (jointly and severally) shall promptly reimburse the Lot 4 Owner up to a maximum of Fifty Thousand Dollars (\$50,000)

within thirty (30) days of receipt of the Lot 4 Owner's written request which written request shall include the Roadway Improvement Records. Upon payment of the foregoing amount, the Lot 1 Owner and Lot 2 Owner shall have unrestricted use of the Easement and the Roadway Improvements without payment of any costs or expenses whatsoever.

4. Abandonment; Termination. This Agreement shall only be deemed abandoned or terminated upon lawful execution and recording of a written grant or deed by the Owners of Lot 1, Lot 2, and Lot 3 conveying and abandoning or terminating this Agreement.

5. Force Majeure. If a Party is delayed in or prevented from the performance of any act required under this Agreement by reason of acts of God, strikes, lockouts, other labor troubles, inability to procure labor or materials, disruptions to material and/or equipment supply, restrictive laws, ordinances, rules or regulations of general applicability, riots, civil commotion, insurrection, war, pandemic, illness of the Party's workforce or that of its subcontractors and/or unavailability of labor, government quarantines, shelter in place orders, closures, vaccination and/or testing requirements, or other mandates, restrictions, and/or directives, UDOT mandates (including, but not limited to, those related to vaccination or testing), restrictions and/or directives, fulfillment of the Party's health and safety obligations associated with a pandemic or epidemic, or other reason not the fault of and beyond the control of the Party, 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 equitably adjusted to account for such impacts (extending the period of performance by no less than the period equivalent to the period of such delay).

6. Amendment. This Agreement may be modified or amended only upon the mutual written consent of the Parties, or the Parties' respective legal representatives or Successors, and any such amendment shall become effective only upon the recording of the same in the Public Records of Davis County, Utah.

7. Binding in Perpetuity. This Agreement is irrevocable and shall bind each Party's respective property in perpetuity, and all of the benefits and burdens of this Agreement shall inure to and be binding upon the respective legal representatives, heirs, executors, administrators, successors, and assigns of the Parties. The Easement over Lot 3 is granted for the benefit of and is appurtenant to Lot 1 and Lot 2, as the dominant tenements, and shall burden Lot 3, as the servient tenement. The Easement shall run with the land, may not be assigned or transferred separate or apart from the parcels which they burden or benefit, and shall bind and inure to the benefit of the Owners of the Lot 1 and Lot 2 and their respective Successors in title and Occupants.

8. Governing Law; Venue. The Parties acknowledge that this Agreement was entered into in the State of Utah. This Agreement shall be construed and governed in accordance with the laws of the State of Utah without giving effect to any choice of laws or rules thereof that may direct the application of laws of another jurisdiction. Venue for any legal action arising under this Agreement shall be in the district court in Davis County, Utah. Each Party hereto irrevocably waives all right to trial by jury in any action, proceeding, or counterclaim arising out of or relating to this Agreement.

9. Paragraph Headings and Severability of Terms. The paragraph and subparagraph captions included herein are for reference only and shall not amend, modify, or be used to interpret or construe the meaning or intent of the Parties as to any of the terms and provisions hereof. If any provisions of this Agreement or the application thereof shall be held to be invalid or unenforceable in a court of law, the remainder of this Agreement shall otherwise remain valid and enforceable to the fullest extent permitted by law.

10. Attorney Fees. If any Party hereto institutes an action or proceeding for a declaration of the rights of the Parties under this Agreement, for injunctive relief, for specific performance of the obligations under, for an alleged breach or default of, or any other action or proceeding arising out of or relating to this Agreement or the transactions contemplated hereby, whether or not suit is filed or prosecuted to final judgment, the Party determined by the court or referee to be the non-defaulting or prevailing Party shall be entitled to its actual attorneys' and legal fees and to any court or other proceeding costs incurred, in addition to any other damages or relief awarded.

11. Notices. Any notice pursuant to this Agreement shall be given in writing by personal delivery, receipted delivery services, registered or certified mail, first class postage prepaid, return receipt requested, or by reputable overnight delivery service with proof of delivery, sent to the intended addressee at the address set forth below, or to such other address or to the attention of such other person as the addressee shall have designated by written notice sent in accordance herewith. Any notice so given shall be deemed to have been given upon actual receipt or refusal to accept delivery. Unless changed in accordance with the preceding sentence, the addresses for notices given pursuant to this Agreement shall be as follows:

To JDF:

Attn: Tom Day
2049 Ridge Road
Layton, Utah 84040

With a copy to:

Douglas K. Fadel
The Fadel Law Firm
170 W. 400 S.
Bountiful, Utah 84010

To DVD:

Attn: Tom Day
2516 W. Gentile Street
Layton, Utah 84041

With a copy to:

Jason C. Hunter
140 N. Union Ave, Suite 220
Farmington, Utah 84025

12. No Public Dedication. The provisions of this Agreement and the rights and easements established in this Agreement are not intended to create and shall not create or be deemed to constitute a dedication for public use or to create any rights in the general public. The rights granted herein are private and for the benefit of the Parties hereto and their Successors.

13. Entire Agreement. All Attachments and Exhibits to which reference is made in this Agreement are deemed incorporated into the Agreement whether or not actually attached. This Agreement (including the Attachments, Exhibits and Recitals) is intended to be the entire agreement of the Parties with respect to the subject matter hereof. Except as noted in this paragraph, all prior negotiations and written and contemporary oral agreements between the Parties and their agents with respect to the express subject matter of this Agreement are merged in this Agreement together with its exhibits.

14. Effective Date. The Effective Date of this Agreement shall mean the Closing Date under the Distribution Agreement.

15. Recordation. This Agreement may be recorded by either Party hereto upon receipt of a fully-executed and acknowledged original counterpart of this Agreement.

[SIGNATURES TO FOLLOW]

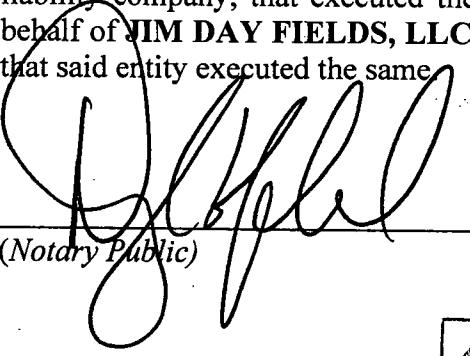
IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

JIM DAY FIELDS, LLC,
a Utah limited liability company

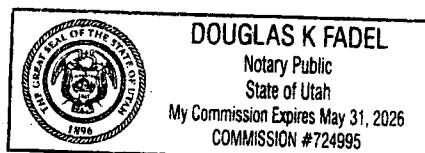
By: Thomas Day
Its: Manager
Date: Aug 17, 2023

State of Utah)
)
County of DAVIS)

On this 17 day of August, 2023, before me, the undersigned Notary Public in and for said State, personally appeared Thomas Day, known or identified to me to be the Manager of **JIM DAY FIELDS, LLC**, a Utah limited liability company, that executed the instrument or the person who executed the instrument on behalf of **JIM DAY FIELDS, LLC**, a Utah limited liability company, and acknowledged to me that said entity executed the same.


(Notary Public)


(Seal)



DVD FARM AND RANCH, LLC,
a Utah limited liability company

By: Jeannie Day

Its: MANAGER

Date: August 17, 2023

State of Utah)
)
§
County of DAVIS)

On this 17th day of August, 2023, before me, the undersigned Notary Public in and for said State, personally appeared JEANNE DAY, known or identified to me to be the MANAGER of **DVD FARM AND RANCH**, a Utah limited liability company, that executed the instrument or the person who executed the instrument on behalf of **DVD FARM AND RANCH**, a Utah limited liability company, and acknowledged to me that said entity executed the same.

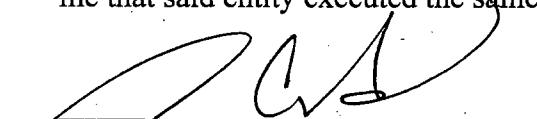
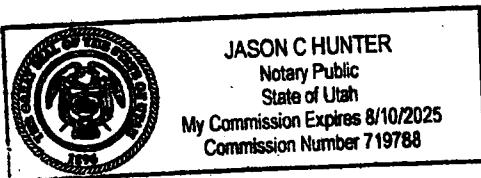

(Notary Public)
(Seal)

EXHIBIT "A"

TAKE DOWN 3 DESCRIPTION

[Subject to verification]

A part of parcel 100650082 as identified by the Davis County Recorder's office, also being a part of the Southeast Quarter of Section 19, Township 4 North, Range 1 West, Salt Lake Base & Meridian, located in Layton City, Davis County, Utah, being more particularly described as follows:

Beginning at a point located along that Boundary Line Agreement recorded August 21, 2008 as Entry No. 2387561 in Book 4599 at Page 72 in the Davis County Recorder's Office, said point also being located along the Section line N89°55'40"E 661.32 feet and N0°13'56"E 442.81 feet from the South Quarter Corner of Section 19, T4N, R1W, SLB&M; running thence N89°55'16"E 138.51 feet; thence N00°00'01"E 162.00 feet; thence N89°55'16"E 60.00 feet; thence S00°00'01"W 222.00 feet; thence S89°55'16"W 198.75 feet to said aforementioned Boundary Line Agreement; thence along said Boundary Line Agreement N00°13'56"E 60.00 feet to the point of beginning.

Containing 0.50 acres +/-

EXHIBIT "B"

TAKE DOWN 4 DESCRIPTION

[Subject to verification]

A part of parcel 100650082 as identified by the Davis County Recorder's office, also being a part of the Southeast Quarter of Section 19, Township 4 North, Range 1 West, Salt Lake Base & Meridian, located in Layton City, Davis County, Utah, being more particularly described as follows:

Beginning at a point located along that Boundary Line Agreement recorded August 21, 2008 as Entry No. 2387561 in Book 4599 at Page 72 in the Davis County Recorder's Office, said point also being located along the Section line N89°55'40"E 661.32 feet and N0°13'56"E 604.82 feet from the South Quarter Corner of Section 19, T4N, R1W, SLB&M; running thence along said Boundary Line Agreement N00°13'56"E 2,037.34 re re feet to the southerly boundary line of that Special Warranty Deed recorded June 28, 2010 as Entry No. 2536563 in Book 5055 at Page 685 in the Davis County Recorder's Office; thence along said deed N89°52'30"E 323.00 feet; thence S00°07'30"E 2,037.57 feet; thence S89°55'16"W 335.70 feet to the point of beginning.

Containing 15.40 acres +/-

EXHIBIT "C"

TAKE DOWN 1 DESCRIPTION

[Subject to verification]

A part of parcel 100650082 as identified by the Davis County Recorder's office, also being a part of the Southeast Quarter of Section 19, Township 4 North, Range 1 West, Salt Lake Base & Meridian, located in Layton City, Davis County, Utah, being more particularly described as follows:

Beginning at a point located along that Boundary Line Agreement recorded August 21, 2008 as Entry No. 2387561 in Book 4599 at Page 72 in the Davis County Recorder's Office, said point also being located along the Section line N89°55'40"E 661.32 feet and N0°13'56"E 185.92 feet from the South Quarter Corner of Section 19, T4N, R1W, SLB&M; thence along said Boundary line agreement N00°13'56"E 196.89 feet; thence N89°55'16"E 198.75 feet; thence N00°00'01"E 222.00 feet; thence N89°55'16"E 137.85 feet; thence N00°07'30"W 2,037.57 feet to Special Warranty Deed recorded June 28, 2010 as Entry No. 2536563 in Book 5055 at Page 685 in the Davis County Recorder's Office; thence along said Deed N89°52'30"E 194.50 feet; thence S34°43'30"E 252.41 feet; thence S00°11'20"W 2,104.99 feet; thence West 1.50 feet; thence S00°04'20"E 73.95 feet to that Special Warranty Deed recorded March 31, 2009 as Entry No. 2437410 in Book 2437410 at Page 4744 in the Davis County Recorder's Office; thence along said Deed the following two (2) courses: (1) S89°55'40"W 109.29 feet; thence (2) S00°04'20"E 223.05 feet to the Northerly Right of Way of Gentile Street; thence along said Street S89°55'40"W 112.00 feet to that Warranty Deed Entry recorded August 11, 2021 as Entry No. 3408193 in Book 7820 at Page 1489 in the Davis County Recorder's Office; thence along said Deed the following three (3) courses: (1) N00°04'20"W 223.05 feet; thence (2) S89°55'40"W 116.00 feet; thence (3) S00°04'20"E 32.00 feet to that Quit Claim Deed Entry No. 2105531 recorded September 15, 2005 as Entry No 2105531 in Book 3871 at Page 107 in the Davis County Recorder's Office; thence along said Deed the following two (2) courses: (1) S89°55'40"W 228.00 feet; thence (2) S00°04'20"E 38.13 feet; thence S89°55'40"W 97.69 feet to the point of beginning.

Containing 20.45 acres +/-

EXHIBIT "D"

TAKE DOWN 2 DESCRIPTION

[Subject to verification]

A part of parcel 100650082 as identified by the Davis County Recorder's office, also being a part of the Southeast Quarter of Section 19, Township 4 North, Range 1 West, Salt Lake Base & Meridian, located in Layton City, Davis County, Utah, being more particularly described as follows:

Beginning at a point located along that Boundary Line Agreement recorded August 21, 2008 as Entry No. 2387561 in Book 4599 at Page 72 in the Davis County Recorder's Office, said point also being located along the Section line N89°55'40"E 661.32 feet and N0°13'56"E 442.81 feet from the South Quarter Corner of Section 19, T4N, R1W, SLB&M; thence along said Boundary Line Agreement N00°13'56"E 162.00 feet; thence N89°55'16"E 137.85 feet; thence S00°00'01"W 162.00 feet; thence S89°55'16"W 138.51 feet to the point of beginning.

Containing 0.51 acres +/-