

PREPARED BY AND WHEN
RECORDED PLEASE RETURN TO:

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Jeffery Smith
Utah County Recorder
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COMMUNICATIONS EASEMENT AGREEMENT

THIS COMMUNICATIONS EASEMENT AGREEMENT (the "**Agreement**") is entered into as of the 19th day of January, 2016, between **Flagship Development, Inc.**, a Utah corporation ("**Grantor**"), whose address for purposes hereof is 170 S. 1200 E. #250, Lehi, UT 84043, and **FIRSTDIGITAL TELECOM, LLC**, a Utah limited liability company ("**FirstDigital**"), whose address is 90 South 400 West, Suite M-100, Salt Lake City, Utah 84101. (Grantor and FirstDigital are referred to in this instrument collectively as the "**Parties**," and individually as a "**Party**.")

RECITALS

A. Grantor is the owner of the residential real estate development generally known as Water's Edge, located in Vineyard, Utah (such development together with related grounds, improvements, and facilities is referred to in this Agreement as the "**Project**"). The Project is depicted on the Site Plan attached hereto as Exhibit A (the "**Site Plan**"). The legal description of the property on which the Project is located (the "**Property**") is more particularly described on Exhibit B attached hereto.

B. FirstDigital is a certified competitive local exchange carrier authorized to provide communications services including voice, video, and high-speed data access in the state of Utah.

C. Due to the lack of any telecommunications facilities in the Project and the costs associated with providing high speed residential broadband services, Grantor has agreed to contract with FirstDigital to provide at FirstDigital's cost and expense the communications infrastructure to the Project as set forth below.

D. Grantor desires to have FirstDigital provide ongoing management and maintenance of such communications infrastructure in order to assist in accommodating the needs of the residents in the Project, maintaining the integrity of the Project's infrastructure during construction and the build out of the Project and providing maximum uptime for users.

E. Grantor desires to have FirstDigital's communications infrastructure available for use by other Communications Service Providers who interconnect with the communications network at the designated "Minimum Points of Entry," all in accordance with the terms of this Agreement, in order to help eliminate the duplication of facilities, prevent unnecessary trenching and the cutting of sidewalks and streets, and maintain the overall earth friendly, consistent and efficient use of resources within and throughout the Project.

AGREEMENT

NOW, THEREFORE, FOR THE SUM OF TEN DOLLARS (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, Grantor hereby agrees as follows:

1. Definitions. As used in this Agreement, each of the following terms shall have the indicated meaning:

“**Communications Facilities**” means the facilities (e.g. fiber, copper and coaxial cables, towers, satellites, other broadcasting and receiving devices, conduits, junction boxes), beginning at the demarcation point or points at the boundary or boundaries of the Project and ending at the entry Demarcation Point at each residence in the Project, as applicable, by means of which the Communications Services are provided to the Resident, as such systems and facilities are updated, supplemented or replaced from time to time.

“**Communications Services**” means voice, video, telecommunications and high speed data access services and any other services as may be offered to Residents via Communications Facilities.

“**Communications Service Provider**” means any telecommunications company that is certified to provide Communications Services to customers in Utah.

“**Communications Services Agreement**” shall mean that Agreement executed of even date herewith, between Grantor and Grantee.

“**Demarcation Point**” means the physical and electrical boundary between a Resident’s voice, video, telecommunications and high-speed data equipment and the Communications Facilities installed and owned by FirstDigital.

“**Owner**” means each person, who, at any given time, holds fee title to the Property or any portion thereof.

“**Resident**” means each Owner and any resident or occupant of all or any portion of the Property.

2. Grant of Easement. Grantor conveys and grants to FirstDigital and its successors and assigns an exclusive easement and right-of-way to design, engineer, construct, install, test, operate, maintain, repair, replace, relocate, remove and manage Communications Facilities on, under over and across the Property up to a Resident’s Demarcation Point(s). In addition, Grantor hereby grants to FirstDigital the sole and exclusive right and easement to design, engineer, construct, install, test, operate, maintain, repair, replace, relocate, and remove Communications Facilities in the Project up to a Resident’s Demarcation Point(s) and to manage the way by which other Communications Service Providers shall gain access to such Demarcation Point(s). FirstDigital and its employees, agents, contractors, invitees, licensees shall have the right to access its Communications Facilities in the Project on a 24-hour-per-day 7-day-per-week basis.

3. Infrastructure. Each Owner will coordinate with FirstDigital to designate a mutually agreeable Demarcation Point(s) on its property and FirstDigital at its costs and expense will design, engineer, extend and install the Communications Facilities to such designated Demarcation Point(s).

4. Failure to Perform by First Digital. An Owner shall have the right to secure its own Communications Facilities and Services at its own cost and expense and to elect to terminate this Easement with respect to its property if FirstDigital breaches or fails to perform any obligation under this Easement and fails to cure such breach or failure within thirty (30) days after receipt of written notice from an Owner

describing such breach or failure; provided, however, that (a) if the nature of the breach or failure is such that more than 30 days are reasonably required to cure, prior to such Owner having the right to terminate this Easement with respect to its property, FirstDigital shall have such period as is reasonably necessary to cure so long as it commences the cure of such breach within the 30-day period and after such commencement diligently prosecutes the same to completion; and (b) in no event shall an Owner have the right to terminate this Easement with respect to any property that is needed or is being used to provide Communications Facilities and Communications Services to other Residents in the Project.

5. Repair of Damage. FirstDigital shall promptly repair any damage to the Project that is caused by FirstDigital's installation, use, maintenance, repair, or removal of Communications Facilities; provided that FirstDigital shall not be responsible for damage caused by Owner or other persons.

6. Ownership of Communications Facilities. FirstDigital will retain ownership of and title to all Communications Facilities installed at the Project by or on behalf of FirstDigital. The Communications Facilities will retain their character as personal property following their installation. In no event will the Communications Facilities installed at the Project by or on behalf of FirstDigital be deemed to be a fixture of the Project or of any Resident. Without limiting the generality of the foregoing, Owner shall not have the right to create any security interest in such Communications Facilities. FirstDigital shall have the right to grant a security interest in such Communications Facilities to one or more lenders and to assign its rights and obligations under this Agreement.

7. Other Communications Service Providers. FirstDigital recognizes and agrees that Residents in the Project are not obligated to select FirstDigital as their Communications Service Provider. In the event any such Resident selects another Communications Service Provider, such Resident shall not be obligated hereunder to compensate FirstDigital for Communications Services obtained by Resident from another Communications Service Provider and FirstDigital shall reasonably cooperate with such other Communications Service Provider and allow such Communications Service Provider access to the requesting Resident in accordance with the terms of an interconnection agreement between FirstDigital and such other Communications Service Provider which contains terms and conditions acceptable to FirstDigital. No such interconnection shall adversely impact FirstDigital's Communications Facilities or FirstDigital's ability to provide Communications Services to the Project. Notwithstanding anything to the contrary in this Section 7, FirstDigital shall be entitled to reasonable compensation from the interconnecting Communications Service Provider or the Resident for the reasonable costs and fees associated with an interconnection of the other provider's Equipment with FirstDigital's Communications Facilities.

8. Interconnection. All Communications Service Providers desiring to provide Communications Services to Residents will do so by interconnecting to FirstDigital's Communications Facilities. Other than FirstDigital, no Owner nor FirstDigital shall permit any other Communications Service Provider to disrupt, dig, or excavate any streets, common areas or other property, or install any Equipment within the Project without the prior written consent of the applicable Owner and FirstDigital, which consent shall not be unreasonably withheld, conditioned or delayed. FirstDigital will have the authority to interconnect a Communications Service Provider's communications facilities to FirstDigital's Communications Facilities and need not obtain permission from an Owner to do so.

9. Quality of Service. FirstDigital will provide and maintain a quality of service with respect to its Communications Facilities equal to or greater than Bellcore standards.

10. Nature of Provisions. The Parties expressly intend that the rights and easements granted to FirstDigital shall be easements in gross and shall: (a) constitute a covenant running with the Property; (b) bind every person and Owner having any fee, leasehold, mortgage lien or other interest in any portion of the

Property concerned; (c) bind any person and Owner whose title to the Property or any portion thereof is acquired by judicial foreclosure, trustee's sale, deed in lieu of foreclosure or other means.

11. Term of Agreement. Except as set forth in Section 4 above, this Agreement and the rights and easements granted to FirstDigital hereunder shall continue until (a) this Agreement is terminated by Grantor and FirstDigital or (b) the Communications Services Agreement expires or is terminated.

12. General Provisions. This instrument shall be governed by, and construed and interpreted in accordance with, the laws (excluding the choice of laws rules) of the State of Utah. This instrument shall inure to the benefit of, and be binding on, the Parties and their respective successors and assigns. Whenever possible, each provision of this instrument shall be interpreted in such manner as to be valid under applicable law; but, if any provision of this instrument shall be invalid or prohibited under applicable law, such provision shall be ineffective to the extent of such invalidity or prohibition without invalidating the remainder of such provision or the remaining provisions of this instrument.

The parties have executed this Agreement to be effective on the Effective Date.

GRANTOR:

Flagship Development, Inc.,
a Utah corporation

By: 

Name: Peter Evans

Title: Authorized Signor

FIRSTDIGITAL:

FirstDigital Telecom, LLC,
a Utah limited liability company

By: _____

Name: _____

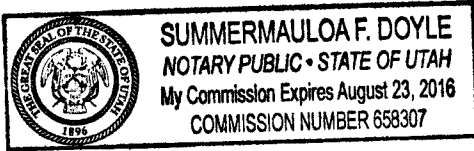
Title: _____

State of Utah)
) ss.
County of Salt Lake)

The foregoing instrument was acknowledged before me this 19th day of January, 2018⁵⁰, by Peter Evans the Authorized Sign of Flagship Development, Inc.

(Seal)

Summermaula F. Doyle
Notary Public



State of Utah)
) ss.
County of Salt Lake)

The foregoing instrument was acknowledged before me this 19th day of January, 2018, by Wesley McDougal the President of FIRST DIGITAL TELECOM, LLC.

(Seal)

Teara Bryan
Notary Public



EXHIBIT B

to

COMMUNICATIONS EASEMENT AGREEMENT

Legal Description of the Property

PARCEL 1:

COMMENCING AT THE NORTHEAST CORNER OF SECTION 18, TOWNSHIP 6 SOUTH, RANGE 2 EAST, SALT LAKE BASE AND MERIDIAN, THENCE SOUTH 26.02 CHAINS, THENCE WEST 36.05 CHAINS TO THE MEANDER LINE OF UTAH LAKE THENCE ALONG SAID LINE AS FOLLOWS NORTH 14° EAST 2.17 CHAINS; THENCE NORTH 5° WEST 24.07 CHAINS; THENCE LEAVING SAID LINE EAST 37.5 CHAINS TO BEGINNING.

EXCEPTING THEREFROM THAT PORTION WITHIN THE COUNTY ROAD.

ALSO LESS THAT PORTION OF THE NORTH END OF THE NORTHEAST QUARTER OF SECTION LYING NORTH OF THE COUNTY ROAD.

ALSO THE BOUNDARY LINE OF PARCEL 1 IS ALSO MADE SUBJECT TO THE PARTICULARS AS SET FORTH BY STIPULATION FOR SETTLEMENT OF UTAH LAKE BOUNDARY BETWEEN THE STATE OF UTAH AND THE CORPORATION OF THE PRESIDING BISHOPRIC OF THE CHUCH OF JESUS CHRIST OF LATTER-DAY SAINTS, A UTAH CORPORATION SOLE, RECORDED DECEMBER 14, 1999 AS ENTRY NO. 128739 IN BOOK 5298 AT PAGE 627 OF OFFICIAL RECORDS; STIPULATION FOR PARTIAL SETTLEMENT OF UTAH LAKE BOUNDARY BETWEEN THE STATE OF UTAH AND THE UNITED STATES OF AMERICA RECORDED SEPTEMBER 18, 2001 AS ENTRY NO. 94662:2001 OF OFFICIAL RECORDS; AFFIDAVIT OF A. JOEL FRANSDEN RECORDED MARCH 27, 2003 AS ENTRY NO. 46094:2003 OF OFFICIAL RECORDS.

PARCEL 2:

BEGINNING AT THE NORTH QUARTER CORNER OF SECTION 17, TOWNSHIP 6 SOUTH, RANGE 2 EAST, SALT LAKE BASE AND MERIDIAN; AND RUNNING THENCE SOUTH 89°25.03. WEST 2,052.30 FEET ALONG THE SECTION LINE TO A POINT WHICH IS 662.64 FEET FROM THE NORTHWEST CORNER OF SAID SECTION 17; THENCE SOUTH 28°49.57. EAST 465.96 FEET; THENCE SOUTH 89°55.03. WEST 876.46 FEET TO THE SECTION LINE; THENCE SOUTH 01°32.22. EAST 1,433.06 FEET ALONG THE SECTION LINE TO A POINT WHICH IS 804.25 FEET FROM THE WEST QUARTER CORNER OF SAID SECTION 17; THENCE SOUTH 89°52.00. EAST 1,012.70 FEET; THENCE SOUTH 42°43.00. EAST 295.50 FEET; THENCE SOUTH 26°03.00. EAST 552.37 FEET TO THE NORTHERLY RIGHT-OF-WAY LINE OF PROPOSED GAMMON ROAD (PER THE HOMESTEADS AT VINEYARD PROJECT NO. AND.011.06 PREPARED BY GILSON ENGINEERING); THENCE NORTH 89°38.03. EAST 432.39 FEET ALONG SAID NORTHERLY RIGHT-OF-WAY LINE; THENCE SOUTHEASTERLY 177.10 FEET ALONG THE ARC OF A 2,051.00 FOOT RADIUS CURVE TO THE RIGHT (CENTER BEARS SOUTH 00°21.57. EAST AND THE CHORD BEARS SOUTH 87°53.32. EAST 177.05 FEET WITH A CENTRAL ANGLE OF 04°56.51.) ALONG SAID NORTHERLY RIGHT-OF-WAY LINE; THENCE SOUTH 85°25.06. EAST 151.78 FEET ALONG SAID NORTHERLY RIGHT-OF-WAY LINE; THENCE SOUTHEASTERLY 168.30 FEET ALONG THE ARC OF A 1,949.00 FOOT RADIUS CURVE TO THE LEFT (CENTER BEARS NORTH 04°34.54. EAST AND THE CHORD BEARS SOUTH 87°53.32. EAST 168.24 FEET WITH A CENTRAL ANGLE OF 04°56.51.) ALONG SAID NORTHERLY RIGHT-OF-WAY LINE; THENCE NORTH 89°37.52. EAST 308.49 FEET ALONG

SAID NORTHERLY RIGHT-OF-WAY LINE TO THE QUARTER SECTION LINE; THENCE NORTH 00°36.23. WEST 878.70 FEET ALONG THE QUARTER SECTION LINE; THENCE EAST 858.00 FEET TO THE WESTERLY RIGHT- OF-WAY LINE OF THE RIO GRANDE WESTERN RAILROAD; THENCE NORTH 29°16.47. WEST 1,788.09 FEET ALONG SAID WESTERLY RIGHTOF-WAY LINE TO THE QUARTER SECTION LINE; THENCE NORTH 00°36.23. WEST 160.38 FEET ALONG SAID QUARTER SECTION LINE TO THE POINT OF BEGINNING.

PARCEL 3:

COMMENCING AT THE NORTHWEST CORNER OF SECTION 17, TOWNSHIP 6 SOUTH, RANGE 2 EAST, SALT LAKE BASE AND MERIDIAN; THENCE SOUTH 6.10 CHAINS; THENCE SOUTH 89-1/2° EAST 13.38 CHAINS; THENCE NORTH 28-1/4° WEST 7.06 CHAINS; THENCE WEST 10.04 CHAINS TO BEGINNING.

ADDITIONAL PARCELS:

LOTS 1-29, inclusive of the WATER'S EDGE PHASE 1 PLAT "A", located in the northwest quarter of section 17, township 6 south, range 2 east, Salt Lake base and meridian.

LOTS 1-17, inclusive, of the WATER'S EDGE PHASE 2 PLAT "A", located in the northwest quarter of section 17, township 6 south, range 2 east, Salt Lake base and meridian.

7D – Condominium Lot

Beginning at a point which is North 89°25'01" East 821.94 feet along the section line and North 1384.53 feet from the Southwest Corner of Section 8, Township 6 South, Range 2 East, Salt Lake Base and Meridian; thence South 89°26'00" West 226.42 feet; thence Westerly 49.60 feet along the arc of a 1040.50 foot radius curve to the left, through a central angle of 02°43'52", the chord of which bears South 88°04'04" West 49.59 feet; thence Northwesterly 15.44 feet along the arc of a 10.00 foot radius curve to the right, through a central angle of 88°28'31", the chord of which bears North 49°03'36" West 13.95 feet; thence South 84°26'00" West 56.00 feet; thence Southwesterly 15.25 feet along the arc of a non-tangent 10.00 foot radius curve to the right, through a central angle of 87°22'43", the chord of which bears South 38°52'01" West 13.81 feet; thence Southwesterly 152.03 feet along the arc of a 1040.50 foot radius curve to the left, through a central angle of 08°22'18", the chord of which bears South 78°22'13" West 151.90 feet; thence South 74°11'04" West 34.65 feet; thence Southwesterly 73.88 feet along the arc of a 959.50 foot radius curve to the right, through a central angle of 04°24'43", the chord of which bears South 76°23'26" West 73.87 feet; thence Westerly 15.59 feet along the arc of a 81.50 foot radius curve to the right, through a central angle of 10°57'39", the chord of which bears South 84°04'37" West 15.57 feet; thence South 89°33'27" West 74.48 feet; thence Westerly 10.29 feet along the arc of a 118.50 foot radius curve to the left, through a central angle of 04°58'33", the chord of which bears South 87°04'10" West 10.29 feet; thence Westerly 1.07 feet along the arc of a 947.50 foot radius curve to the right, through a central angle of 00°03'52", the chord of which bears South 84°36'50" West 1.07 feet; thence South 84°38'46" West 84.68 feet; thence Northwesterly 11.81 feet along the arc of a 7.50 foot radius curve to the right, through a central angle of 90°14'23", the chord of which bears North 50°14'03" West 10.63 feet; thence Northerly 154.28 feet along the arc of a 1553.00 foot radius curve to the left, through a central angle of 05°41'31", the chord of which bears North 07°57'37" West 154.22 feet; thence North 10°48'16" West 237.99 feet; thence Northerly 9.67 feet along the arc of a 79.50 foot radius curve to the right, through a central angle of 06°58'15", the chord of which bears North 07°19'09" West 9.67 feet; thence North 03°50'01" West 78.45 feet; thence Northerly 14.66 feet along the arc of a 120.50 foot radius curve to the left, through a central angle of 06°58'15", the chord of which bears North 07°19'09" West 14.65

feet; thence North $10^{\circ}48'16''$ West 102.06 feet; thence North $45^{\circ}19'22''$ East 35.55 feet; thence North $79^{\circ}07'23''$ East 864.90 feet; thence South $01^{\circ}45'44''$ East 576.47 feet; thence South $00^{\circ}08'18''$ West 128.85 feet to the point of beginning.