

WHEN RECORDED, PLEASE RETURN TO:

Fionnuala B. Kofoed, City Recorder  
Eagle Mountain City  
1650 E. Stagecoach Run  
Eagle Mountain, UT 84005

Owner Parcel No. 58,048! 0090

## **Easement Agreement**

This Easement Agreement ("Agreement") is entered into this 17 day of September 2024 (the "Effective Date"), by and between JDH SMITH, LLC (collectively "Owner"), the owner(s) of certain property described in Exhibit A ("Easement Property," and EAGLE MOUNTAIN CITY, a Utah municipality ("City") ("Owner" and "City" may be individually referred to as a "Party" or collectively as the "Parties"), located at 1650 E. Stagecoach Run, Eagle Mountain, UT 84005.

### **RECITALS**

A. Owner owns the Easement Property that is described on Exhibit A, attached hereto and incorporated herein;

B. The City is also looking to construct a roadway ("Roadway") to provide emergency ingress and egress into and out of the Lone Tree neighborhood ("Neighborhood") to the nearest existing public roadway.

C. The City is looking to acquire a temporary easement more particularly described in Exhibit B ("Easement") across a portion of the Easement Property to establish additional ingress and egress into and out of the Lone Tree neighborhood primarily for emergency purposes.

D. The Roadway will have the following qualities:

1. A 30 foot width;
2. The ability to be graded;
3. Road base where needed; and
4. Drainage and shoulders.

E. Due to the relative positions of the Neighborhood and the nearest public roadway, the City would need to construct a portion of the Roadway through the Easement Property;

F. Due to the current lack of alternative routes for emergency ingress and egress from the Neighborhood, the City has need for the Roadway through the Easement Property to be used in emergency circumstances; and

G. The Owner is willing to grant to City an easement to construct and maintain the emergency roadway ("Easement") upon the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual promises set forth herein and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

1. Incorporation of Recitals. The above stated Recitals are incorporated herein as part of this Agreement.

2. Grant of Easement. The Owner hereby grants to the City the Easement on the Easement Property for the purpose of constructing, and maintaining an emergency roadway.

3. Entry upon the Easement Property. The Easement is created to be used by the public only in emergency circumstances. Should other circumstances arise that necessitate entry (i.e. road maintenance or construction), the City shall provide notice to Owner of at least 24 hours before entering the Easement Property.

3. Termination of Easement. The Parties anticipate entering into the Purchase Agreement in the future. The Easement and this Agreement shall terminate once an alternative route for emergencies has been established to City standards.

4. Easement(s) -- Non-Interference. At the request of the City, the Owner shall move any property interfering with the construction, installation, or maintenance of the Roadway at Owner's sole cost and expense.

5. Run with Land. The provisions of this Agreement shall run with the Easement Property in perpetuity and shall be binding upon any person or entity having or acquiring any right, title, and interest in or to any portion of the Easement Property, unless the Easement is terminated in accordance with paragraph 2.

6. Recording Agreement / Termination. Owner or the City may cause this Agreement to be recorded.

7. Indemnification. Owner (including all future owners of the Easement Property) agrees to indemnify and hold the City harmless from any and all claims, injuries, death, loss, or damage arising from any liability associated with Owner's use of the Easement Property prior to the termination of this Agreement. City agrees to indemnify and hold the Owner harmless from any and all claims, injuries, death, loss, or damage arising from any liability associated with City's use of the Easement Property.

8. Further Action. The Parties hereby agree to execute and deliver such additional documents and to take further action as may become necessary or desirable to fully carry out the provisions and intent of this Agreement.

9. Notice. Any notice required or permitted to be given hereunder shall be deemed sufficient if given by a communication in writing, and shall be deemed to have been received (a)

upon personal delivery or actual receipt thereof, or (b) within three days after such notice is deposited in the United States mail, postage pre-paid, and addressed to following Address:

To City:      Eagle Mountain City  
                   Attn: City Recorder  
                   1650 East Stagecoach Run  
                   Eagle Mountain, UT 84005

To Owner:      JDH SMITH, LLC  
                   \_\_\_\_\_  
                   \_\_\_\_\_  
                   \_\_\_\_\_

Electronic delivery of notice shall be deemed effective upon its actual receipt provided that a copy of the email is printed out in physical form and mailed or personally delivered as set forth herein on the same day and the sending party has an electronic receipt of the delivery of the notice. If the copy is not sent on the same day, then notice shall be deemed effective the date that the mailing or personal delivery occurs.

10. Attorney Fees / Venue. In the event of any litigation to enforce this Agreement, the prevailing party shall be entitled, in addition to any other relief as may be granted, to court costs and reasonable attorneys' fees as determined by a court of competent jurisdiction. All actions to enforce this Agreement shall be brought in the Fourth Judicial District Court in and for Utah County, Utah.

11. No Third Party Beneficiaries. Enforcement of the terms of this Agreement is reserved to the parties hereto and their respective successors and assigns, and nothing contained in this Agreement provides any claim, benefit or right of action for enforcement to any other person or entity not a party hereto.

12. Interpretation. This Agreement shall be interpreted, construed and enforced according to the substantive laws of the state of Utah.

13. Construction. This Agreement is the result of negotiations between the Parties, neither of whom has acted under any duress or compulsion, whether legal, economic or otherwise. Accordingly, the terms and provisions hereof shall be construed in accordance with their usual and customary meanings. Each Party hereby waives the application of any rule of law which otherwise would be applicable in connection with the construction of this Agreement that ambiguous or conflicting terms or provisions should be construed against the Party who (or whose attorney) prepared the executed Agreement or any earlier draft of the same. As used herein, all words in any gender shall be deemed to include the masculine, feminine, or neuter gender, all singular words shall include the plural, and all plural words shall include the singular, as the context may require.

14. Amendment. This Agreement may not be modified or amended except by an instrument in writing signed by both Parties.

15. Waiver. No waiver of any of the terms of this Agreement shall be valid unless in writing and expressly designated as such. Any forbearance or delay on the part of either

party in enforcing any of its rights as set forth in this Agreement shall not be construed as a waiver of such right for such occurrence or any other occurrence. Any waiver by either party of any breach of any kind or character whatsoever by the other shall not be construed as a continuing waiver of, or consent to any subsequent breach of this Agreement.

16. Warranty of Authority. Each individual executing this Agreement does hereby represent and warrant that he or she has been duly authorized to sign this Agreement in the capacity and for the entities identified herein. City and Applicant each represent and warrant that it has full legal right and authority to enter into this Agreement.

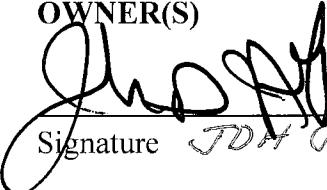
17. Governmental Immunity. The City is a governmental entity under the "Utah Governmental Immunity Act" (*Utah Code Ann. § 63G-7-101, et seq.*) (the "Immunity Act"). Nothing herein shall be construed as a waiver of any defenses available under the Immunity Act nor does City waive any limits of liability provided by the Immunity Act or any other provisions of Utah law.

18. Force Majeure. Any prevention, delay or stoppage of the performance of any obligation under this Agreement which is due to strikes, labor disputes, inability to obtain labor, materials, equipment or reasonable substitutes therefor; acts of nature, governmental restrictions, regulations or controls, judicial orders, enemy or hostile government actions, wars, civil commotions, fires or other casualties or other causes beyond the reasonable control of the Party obligated to perform hereunder shall excuse performance of the obligation by that Party for a period equal to the duration of that prevention, delay or stoppage.

19. Severability. The provisions of this Agreement are severable, and should any provision hereof be void, voidable, unenforceable or invalid, such void, voidable, unenforceable or invalid provision shall not affect the other provisions of this Agreement.

20. Entire Agreement. This written Agreement, including exhibits, constitutes the entire agreement between the parties and may be amended only by written agreement, properly executed by the parties.

OWNER(S)

  
 Signature John D. Smith LLC  
 Print Name: John D. Smith  
OWNER.

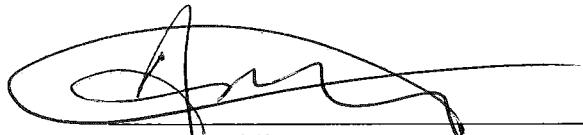
Signature

Print Name: \_\_\_\_\_

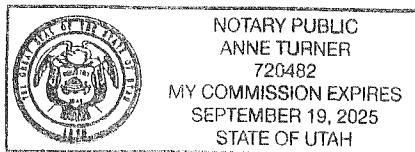
STATE OF UTAH )  
COUNTY OF UTAH )  
:SS  
)

On 09/17/2024, 2024, personally appeared before me, a notary public, John D. Headfield, who is personally known or proved to me to be the person whose name is subscribed to the above instrument, who acknowledged to me that (s)he executed the above instrument.

OWNER, JDH SMITH, LLC



Notary Public



### EAGLE MOUNTAIN CITY

By: Tom Westmoreland

Tom Westmoreland, Mayor

ATTEST:

Fionnuala B. Kofoed  
Fionnuala B. Kofoed, City Recorder



APPROVED AS TO FORM:

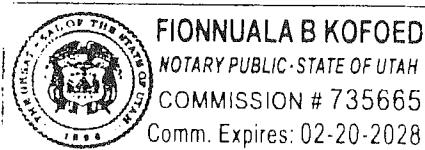
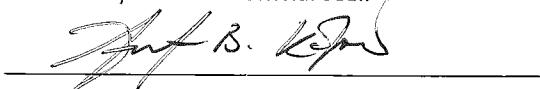
Marcus O. Draper  
Marcus O. Draper, City Attorney

### Acknowledgement

State of Utah  
County of Utah

On this 9 day of October, in the year 2024, before me, FIONNUALA B. KOFOED, a notary public, personally appeared Tom Westmoreland, proved on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to this instrument and acknowledged he/she/they executed the same.

Witness my hand and official seal.

## Exhibit A

### (Easement Property)



Wednesday, July 31, 2024

**Exhibit 'A'**

**Subject: Legal Description for R.O.W. Sunset Ridge dirt road access, 15 ft offset of center line both sides**

Parcel #58:048:0090

Beginning at the North  $\frac{1}{4}$  corner of section 25, T5S, R2W, SLB&M; S 0deg 00'00" E 1558.24 ft; N 90deg 00'00" E 55.23 ft to POB of center line easement, off set 15 ft of center line both sides; Thence N 75deg 14'42" W 27.71 ft; N 75deg 14'58" W 33.41 ft; S 87deg 30'42" W 43.10 Ft; S 78deg 42'52" W 73.23 ft; S 56deg 12'02" W 72 ft; S 41deg 05'23" W 54.57 ft; S 31deg 42'16" W 60.54 ft; S 23deg 26'16" W 56.51 ft; S 16deg 37'17" W 44.73 ft; S 12deg 50'00" W 42.05; S 06deg 36'41" W 57.53 ft; S 03deg 50'07" W 67.75 ft; S 01deg 36'48" E 75.10 ft; S 06deg 46'17" E 59.25 ft; S 19deg 33'29" E 56.77 ft; S 25deg 57'03" E 122.57 ft; S 27deg 35'06" E 113.51; S 23deg 33'59" E 152.45 ft; S 28deg 59'05" E 145.58 ft.



# JDH Smith Property Easement Exhibit

ENT 69915:2024 PG 8 of 8

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