WHEN RECORDED, MAIL TO:

Diamond Hall Development Partners, LLC 259 Riverbend Way, Suite 102 North Salt Lake, Utah 84054

Attn: Ryan Brimley

CTC 12165A-SVP

ENT 73143: 2020 PG 1 of 15

Jeffery Smith

Utah County Recorder

2020 May 29 12:59 PM FEE 40.00 BY SW

RECORDED FOR Cottonwood Title Insurance Agency, Ir

ELECTRONICALLY RECORDED

APN: 47:340:0001 47:344:0002

# PARKING, ACCESS AND UTILITY EASEMENT AND ABANDONMENT AGREEMENT

This Parking, Access and Utility Easement and Abandonment Agreement (this "Agreement") is made and entered into effective as of the day of way, 2020 by Vista Heights Investments Lot 1, LLC, a Utah limited liability company ("VHT"), and Diamond Hall Development Partners, LLC, a Utah limited liability company ("DHDP"). VHI and DHDP, together with their successors and assigns, are each sometimes referred to herein individually as an "Owner" and collectively as the "Owners."

- A. VHI is the owner of all of Lot 1 ("Lot 1") of New Vista Subdivision Plat "A", according to the official plat thereof, on file and of record in the Utah County Recorder's Office, Utah County, Utah, recorded February 15, 2018 as Entry No. 15293:2018 ("Plat A").
- B. DHDP is the owner of all of Lot 2 ("*Lot 2*") of New Vista Subdivision Plat "B", according to the official plat thereof, on file and of record in the Utah County Recorder's Office, Utah County, Utah, recorded July 19, 2018 as Entry No. 67827:2018 ("**Plat B**").
- C. Subject to the terms and conditions set forth herein, the Owners desire to (a) establish certain parking, access, and utility easements upon Lot 1 and Lot 2 (each a "Lot" and collectively the "Lots"), as applicable, for the benefit of the respective Lot, (b) vacate certain building restrictions on Plat A and Plat B, and (c) grant certain other rights and easements.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Owners agree as follow:

### 1. Access and Parking Easement.

1.1 VHI, as the owner of Lot 1, hereby grants, conveys, transfers, and assigns to DHDP, for the benefit of Lot 2 and its owners and all employees, tenants, guests, customers, contractors, suppliers, and other invitees thereof, (a) a nonexclusive, perpetual easement of access, passage and use, both pedestrian and vehicular, over, upon and across the access point to Mountain Vista Parkway, a public street, and the drive aisles located on Lot 1, as more particularly described on Exhibit A attached hereto and as depicted on Exhibit B attached hereto (the "Access Area"), as the same may from time to time be constructed and maintained for such use and (b) a nonexclusive, perpetual easement for the parking of vehicles upon and within the designated parking areas of Lot 1, as more particularly described on Exhibit C attached hereto and as depicted on Exhibit D

Easement Area"), as the same may from time to time be constructed and maintained for such use, for the purpose of (i) obtaining ingress and egress to and from Lot 2 and Mountain Vista Parkway, (ii) reasonable daily parking of vehicles; (iii) access to parking areas located on Lot 2, (iv) pedestrian access, (v) access necessary for the maintenance, repair and replacement of improvements to Lot 2, and (vi) uses reasonably ancillary thereto. The Owner of Lot 2 shall use efforts to limit the use of the foregoing access easement to that reasonably necessary for the operation of the business on Lot 2.

- 1.2 The Owners and their respective successors in interest to each Lot, as the owner of each respective Lot, shall be equally responsible for maintaining, repairing and replacing the Access and Parking Easement Area, and all improvements now or hereafter situated thereon, in a good and safe condition and repair, reasonably free and clear from obstruction, debris, hazard, and nuisance and in accordance with all applicable laws and regulations; provided, however, that any damage to the Access and Parking Easement Area specifically caused by an Owner or invitee of a Lot shall be repaired by the Owner of such Lot, at such Owner's cost. Promptly after an Owner's maintenance, repair or replacement of any portion of the Access and Parking Easement Area as described herein, such Owner shall cause such portion of the Access and Parking Easement Area to be restored to a substantially similar or better condition than existed immediately prior to the performance of such work. No Owner may materially modify the access point and drive aisles located in the Access and Parking Easement Area without the prior written consent of the other Owner, which consent shall not be unreasonably withheld, conditioned or delayed. Neither the construction of any alterations or improvements to, nor the maintenance, repair or use of, the Access and Parking Easement Area and improvements thereon, by any Owner shall unreasonably interfere with the other Owner's use of such areas and improvements or such other Owner's Lot.
- 1.3 Each Owner shall indemnify, defend and hold harmless the other Owner from and against all losses, costs, claims, liabilities and damages (including reasonable attorney fees and expenses) arising out of or resulting from the use of the Access and Parking Easement Area by such Owner or its agents, employees, representatives, contractors, tenants, licensees or invitees except to the extent caused by the negligence or willful misconduct of the other Owner. Each Owner shall cause all liability insurance policies carried by it to designate the other Owner as an additional insured with respect to such Owner's use of the Access and Parking Easement Area. Each Owner shall deliver to each other Owner copies of such liability insurance policies upon the other Owner's request from time to time.

### 2. Drainage Easement.

2.1 Each Owner acknowledges that there currently exists surface water and storm drainage systems servicing both Lots, and that the Owners intend that surface water and storm water from each Lot drain into and through surface water drains, storm drain lines, pipes, catch basins and other facilities as currently in place, or as proposed to be constructed, as of the date of this Agreement (collectively, "Drainage Facilities"). Each Owner hereby grants to the other Owner, as an appurtenance to each Lot, a reciprocal, perpetual nonexclusive easement (the "Drainage Easement") to drain and direct surface and storm water from each Lot over, under, upon and across each Lot and through such Drainage Facilities. Each Owner shall have all other rights and benefits necessary or convenient for the full use and enjoyment of the Drainage

Easement, including, without limitation, the right at all times to tap into and use the Drainage Facilities.

2.2 Each Owner shall maintain all Drainage Facilities on its respective Lot in good and safe condition and repair, reasonably free and clear from obstruction, debris, hazard and nuisance and in accordance with all applicable laws and regulations. Promptly after the maintenance, repair or replacement of any Drainage Facilities as described herein, each Owner shall cause the Drainage Facilities to be restored to a substantially similar or better condition than existed immediately prior to the performance of such work. If any Owner fails so to maintain, repair or replace any such Drainage Facilities, which failure materially affects the drainage from the other Lot, then the non-defaulting Owner shall have the right, but not the obligation, after thirty (30) days' written notice to the defaulting Owner, to undertake necessary and reasonable maintenance, repair and replacement of such Drainage Facilities at the defaulting Owner's sole cost and expense, for which purpose the repairing Owner, and its tenants and contractors, shall have full and free rights of ingress and egress, both pedestrian and vehicular, over, under and across such other Lot to the extent reasonably necessary to perform such maintenance, repair and replacement. No Owner may modify any Drainage Facilities without the prior written consent of the other Owner, which consent shall not be unreasonably withheld, conditioned or delayed. No such modification, however, may in any event unreasonably interfere with the other Owner's use of the Drainage Easement or the Drainage Facilities.

### 3. Utility Easement.

- 3.1 Each Owner acknowledges that electrical, natural gas, sewer and other utilities servicing one or both Lots are connected, or proposed to be connected, to shared facilities and or to private facilities by means of improvements on one or both Lots, as the case may be (collectively, the "Utilities"), and that the Owners intend that such Utilities service the applicable Lot or Lots. Each Owner hereby grants to the other Owner, as an appurtenance to each Lot, a perpetual nonexclusive easement (the "Utility Easement") to connect to and use Utilities as currently in place, or as proposed to be constructed, as of the date of this Agreement. Each Owner shall have all other rights and benefits necessary or convenient for the full use and enjoyment of the Utility Easement, including, without limitation, the right at all times to use the Utilities.
- Utilities on its respective Lot in a good and safe condition and repair, reasonably free and clear from damage and hazard and in accordance with all applicable laws and regulations; provided, that, if any Utilities service only one Lot and not the other, the Owner of the serviced Lot shall have primary responsibility of maintaining the Utilities servicing such Owner's Lot. Promptly after the maintenance, repair or replacement of any Utilities as described herein, each Owner shall cause such Utilities to be restored to a substantially similar or better condition than existed immediately prior to the performance of such work. In the event of any nonroutine maintenance, repair or replacement of any of the Utilities servicing both Lots, the Owners shall share the reasonable cost of such maintenance, repair or replacement 50% for each Lot; provided, however, that any damage to any Utility specifically caused by an Owner or its tenant, contractor or invitee shall be repaired by such Owner at such Owner's sole cost and expense. If any Owner fails so to maintain, repair or replace any such Utilities, which failure materially affects the use of the Utilities by the other Lot, then the non-defaulting Owner shall have the right, but not the obligation, after

five (5) days' written notice to the defaulting Owner, to undertake necessary and reasonable maintenance, repair and replacement of such Utilities at the defaulting Owner's sole cost and expense, for which purpose the repairing Owner, and its tenants and contractors, shall have full and free rights of ingress and egress, both pedestrian and vehicular, over, under and across such other Lot to the extent reasonably necessary to perform such maintenance, repair and replacement. No Owner may modify any Utilities without the prior written consent of the other Owner, which consent shall not be unreasonably withheld or delayed; *provided, that*, any Owner may modify any Utilities servicing only its Lot without the prior written consent of the other Owner so long as such modification does not materially alter the scope and course of such Utilities. No such modification, however, may in any event unreasonably interfere with the other Owner's use of the Utilities or the Utility Easement.

- 4. Abandonment of "No Build" Restrictions. VHI and DHDP each hereby vacate and abandon any no-build easements or restrictions shown on Plat A or Plat B affecting any portion of the Lots adjacent to the boundary line between the Lots and hereby unconditionally release each other Owner for any claims of whatever kind or nature arising out of the construction of improvements among such boundary.
- 5. Improvement Along Property Line. The Owners intend that the buildings constructed on the Lots be part of a phased construction of improvements, which buildings are intended to meet along the boundary line between the Lots. VHI and DHDP each hereby grant each other Owner an easement for any minor encroachments of such buildings or related improvements appearing on any future survey of the Lots. VHI further conveys, transfers and assigns to DHDP all footings, foundations and other improvements constructed by VHI on Lot 2 for the purpose of phased construction.
- 6. **Duration**. The easements and each covenant and restriction set forth in this Agreement shall be perpetual.
- 7. Covenants run with Land. Each right and obligation in this Agreement (whether affirmative or negative in nature) (a) shall constitute a covenant running with the land; (b) shall benefit and bind every person having any fee, leasehold or other interest in any portion of a Lot to the extent that such portion is affected or bound by the easements or the covenant or restriction in question, or to the extent that such easement, covenant or restriction is to be performed on such portion; and (c) shall benefit and be binding upon any person whose title is acquired by conveyance, judicial foreclosure, trustee's sale, deed in lieu of foreclosure or otherwise. Every person who owns, occupies or acquires any right, title, estate or interest in any portion of a Lot shall be conclusively deemed to have consented and agreed to the obligations and restrictions contained herein, whether or not any reference to this Agreement is contained in the instrument by which such person acquired an interest in such property.
- 8. Limit of Benefit. The easements created hereunder are limited in use for the benefit of each Lot and cannot be used by, or transferred for the benefit of, any other property. Nothing contained in this Agreement shall be deemed a gift or dedication of any portion of either Lot to the general public or for the public or for any public purpose.

### 9. Miscellaneous.

- 9.1 Should any Owner default in any of the covenants or restrictions herein contained, such defaulting Owner shall pay all costs and expenses, including reasonable attorney fees, which may arise or accrue from enforcing this Agreement or in pursuing any remedy provided hereunder or by applicable law, whether such remedy is pursued by filing suit or otherwise. This obligation of the defaulting Owner to pay costs and expenses includes, without limitation, all costs and expenses, including reasonable attorney fees, incurred on appeal and in bankruptcy proceedings.
- 9.2 Subject to Section 9.4, below, in the event of a default by an Owner hereunder, the non-defaulting Owner shall have the right to prosecute any proceedings at law or in equity against the defaulting Owner, and to recover damages for any such violation or default. Such proceeding shall include the right to restrain by injunction any violation or threatened violation of any of the terms, covenants, or conditions of this Agreement, or to obtain a decree to compel performance of any such terms, covenants, or conditions, it being agreed that the remedy at law for a breach of any such term, covenant, or condition (except those, if any, requiring the payment of a liquidated sum) is not adequate. Subject to Section 9.4, below, all of the remedies permitted or available to an Owner under this Agreement or at law or in equity shall be cumulative and not alternative, and invocation of any such right or remedy shall not constitute a waiver or election of remedies with respect to any other permitted or available right or remedy.
- 9.3 No waiver by any Owner of any default under this Agreement shall be effective or binding on such Owner unless made in writing by such Owner, and no such waiver shall be implied from any omission by an Owner to take action in respect to such default. No express written waiver of any default shall affect any other default or cover any other period of time other than any default and/or period of time specified in such express waiver. One or more written waivers or any default under any provision of this Agreement shall not be deemed to be a waiver of any subsequent default in the performance or the same provision or any other term or provision contained in this Agreement.
- 9.4 It is expressly agreed that no breach of or event of default under this Agreement shall: (a) entitle any Owner to cancel, rescind, or otherwise terminate this Agreement; or (b) defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value as to any part of a Lot. This limitation shall not affect in any manner any other rights or remedies that an Owner may have hereunder by reason of any such breach or default.
- 9.5 The section and other headings contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement.
- 9.6 This Agreement shall apply to, inure to the benefit of and bind each Owner and all successors and assigns of each Owner's interest in such Owner's Lot. The rights and obligations conferred or imposed upon the Owners pursuant to this Agreement shall not be transferred or assigned to any other person, including a tenant of any Owner, except together with the transfer or conveyance of such Owner's respective Lot subject to the easements and the terms and conditions of this Agreement. Any Owner transferring its interest in such Owner's Lot shall

be released from all further obligations under this Agreement arising from and after the effective date of such transfer or conveyance. Nothing contained herein shall, however, be construed to release any Owner from obligations accruing prior to the date of such transfer or conveyance, including obligations relating to any maintenance or repairs performed prior to such transfer.

- 9.7 This Agreement, together with all exhibits hereto, contains the entire agreement of the parties with respect to the subject matter hereof.
- 9.8 No amendment of this Agreement shall be effective unless such amendment has been executed and notarized by the Owners of the Lots and further provided that any such amendment is recorded in the Official Records of the Recorder's Office of Utah County, Utah.
- 9.9 All notices, consents, approvals and other communications provided for herein or given in connection herewith shall be validly given, made, delivered or served, if in writing, addressed to the Owner of record of the applicable Lot or its registered agent, and (a) delivered by any means if actually received; (b) delivered personally; or (c) sent by registered, certified mail, or receipted overnight service (by a reputable overnight company), postage prepaid addressed to such Owner at the address of the building located on the applicable Lot.
- 9.10 The Owners acknowledge their mutual intent and desire that the easements shall be and remain at all times senior and superior in title and priority to any mortgage, deed of trust or similar lien at any time encumbering any of the Lots.
- 9.11 This Agreement is not intended, nor shall it be construed, to create any third-party beneficiary rights in or for the benefit of any person who is not an Owner, including any tenants of the Owners, except as otherwise expressly provided to the contrary in this Agreement.
- 9.12 This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which shall together constitute one and the same document, with the same effect as if all parties had signed the same signature page. Any signature page of this Agreement may be detached from any counterpart of this Agreement and reattached to any other counterpart hereof.

[Remainder of page intentionally left blank. Signature page follows immediately.]

IN WITNESS WHEREOF, the Owners have executed this Parking, Access and Utility Easement and Abandonment Agreement the day and year first above written.

VISTA HEIGHTS INVESTMENTS LOT 1, LLC, a Utah limited liability company

By: STS Diamond, LLC, its manager

Bv:

Thomas D. Stuart, Manager

DIAMOND HALL DEVELOPMENT PARTNERS, LLC, a Utah limited liability company

By: STS Diamond, LLC, its manager

By:

Thomas D. Stuart, Manager

STATE OF UTAH

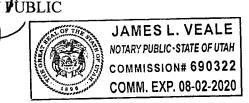
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COUNTY OF Suth )

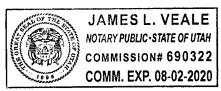
The foregoing instrument was acknowledged before me this 25 day of May 2020 by Thomas D. Stuart, the manager of STS Diamond, LLC, which is the manager of Vista Heights Investments Lot 1, LLC, who acknowledged to me that the foregoing instrument was executed on behalf of said limited liability company.

STATE OF UTAH

COUNTY OF Sautlak )



The foregoing instrument was acknowledged before me this 2 day of May 2020 by Thomas D. Stuart, the manager of STS Diamond, LLC, which is the manager of Diamond Hall Development Partners, LLC, who acknowledged to me that the foregoing instrument was executed on behalf of said limited liability company.



The undersigned, BOKF, NA dba BOK Financial (formerly known as BOKF, NA dba Colorado State Bank and Trust), hereby consents to the filing of this Parking, Access and Utility Easement and Abandonment Agreement in the office of the Utah County Recorder and agrees that its liens and security interests in Lot 1 with respect to any and all obligations of Vista Heights Investments Lot 1, LLC, a Utah limited liability company, now or hereafter existing under or in connection with that certain Construction Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing, on file and of record in the Utah County Recorder's Office, Utah County, Utah, recorded March 23, 2018, as Entry No. 27853:2018, are and shall be subordinate to the rights and obligations set forth in this Agreement, and that such subordination is for the benefit of and enforceable by the Owners and any mortgagee with a recorded mortgage or assignment of leases and rent presently and hereinafter existing on the Lots.

**BOKF, NA** dba BOK Financial

Name: Parin Visseler

Title: SVP.

STATE OF <u>Colorado</u> ) :ss COUNTY OF <u>Jensey</u> )

The foregoing instrument was acknowledged before me this 21 day of way 2020 by Norin Viscoler, the SVV of BOKF, NA dba BOK Financial, who acknowledged to me that the foregoing instrument was executed on behalf of said party.

ELIZABETH J LECHMAN

NOTARY PUBLIC

STATE OF COLORADO

NOTARY ID 19904006128

MY COMMISSION EXPIRES 05-15-2023

### EXHIBIT A

### ACCESS EASEMENT AREA DESCRIPTION

A perpetual access easement being a part of Lot 1, New Vista Subdivision Plat "A" recorded February 15, 2018 as Entry No. 15293:2018 as Map # 15926 in the Office of the Utah County Recorder. Said perpetual access easement is located in the Southeast Quarter of Section 20, Township 7 South, Range 3 East, Salt Lake Base and Meridian and described as follows:

Beginning at a point on the northeasterly boundary of said Lot 1, New Vista Subdivision Plat "A" recorded February 15, 2018 as Entry No. 15293:2018 as Map # 15926 in the Office of said Recorder, which is 13.84 feet S. 29°28'41" E. from the northeasterly corner of said Lot 1. Said point also being 712.67 feet S. 00°41'57" E. and 883.06 feet West from the East Quarter of said Section 20; thence S. 29°28'41" E. 41.21 feet along said northeasterly boundary line of said Lot 1; thence S. 67°59'18" W. 32.27 feet; thence S. 22°04'37" E. 417.00 feet; thence S. 68°04'08" W. 25.00 feet; thence N. 22°04'37" W. 416.96 feet; thence S. 67°59'18" W. 36.13 feet to the westerly boundary line of said Lot 1; thence N. 22°07'23" W. 41.18 feet along said westerly boundary line; thence N. 68°11'58" E. 88.13 feet to the Point of Beginning.

The above-described perpetual access easement contains 14,148 square feet in area or 0.325 acre, more or less.

**EXHIBIT "B":** By this reference, made a part hereof.

**BASIS OF BEARING:** S. 00°41'57" E. per said along the Section line between the East

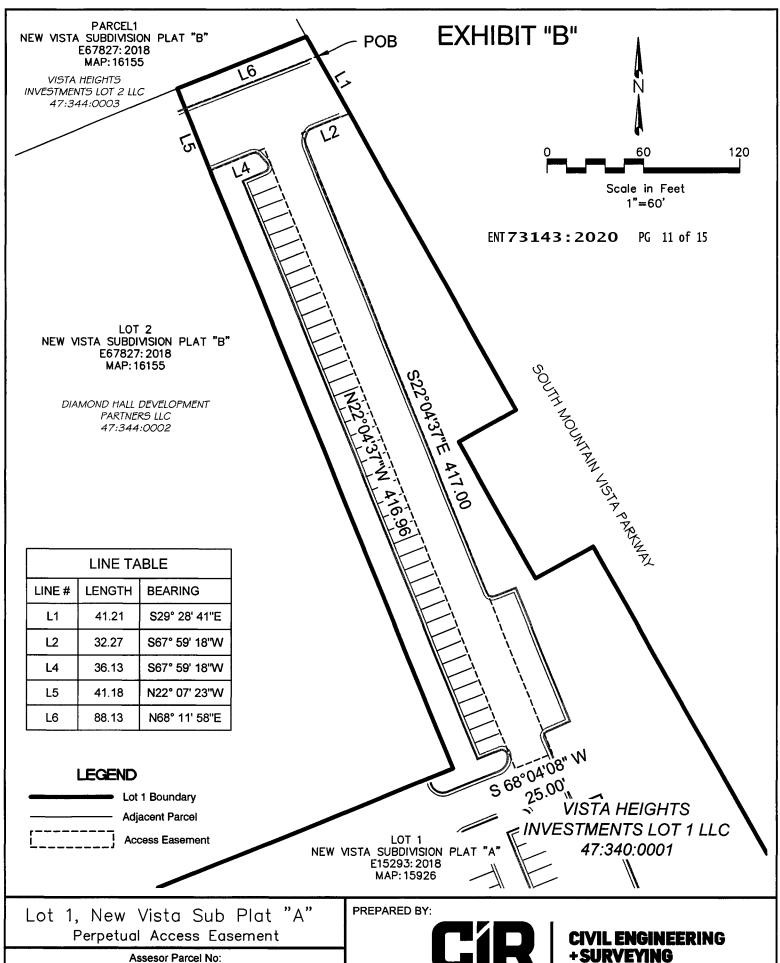
Quarter and the Southeast Corner of said Section 20, Township 7

South, Range 3 East, Salt Lake Base and Meridian.

# EXHIBIT B

# ACCESS EASEMENT AREA DEPICTION

(See Attached)



47: 340: 0001

Part of the Southeast Quarter Sec. 20, T.7S., R.3E., S.L.B.&M.



3032 South 1030 West, Suite 202, Salt Lake City, Utah 84119

Date: May 12, 2020

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### **EXHIBIT C**

#### PARKING EASEMENT AREA DESCRIPTION

A perpetual parking easement being a part of Lot 1, New Vista Subdivision Plat "A" recorded February 15, 2018 as Entry No. 15293:2018 as Map # 15926 in the Office of the Utah County Recorder. Said perpetual parking easement is located in the Southeast Quarter of Section 20, Township 7 South, Range 3 East, Salt Lake Base and Meridian and described as follows:

**Beginning** at a point which is 93.46 feet S. 29°28'41" E. and 67.15 feet West from the northeasterly corner of said Lot 1 also, being 781.99 feet S. 00°41'57" E. and 911.87 feet West from the East Quarter of said Section 20; thence S. 22°04'37" E. 390.28 feet; thence S. 68°28'31" W. 19.82 feet; thence N. 22°07'40" W. 389.74 feet; thence N. 66°55'43" E. 20.17 feet to the **Point of Beginning**.

The above-described perpetual parking easement contains 7,797 square feet in area or 0.179 acre, more or less.

**EXHIBIT "B":** By this reference, made a part hereof.

**BASIS OF BEARING:** S. 00°41'57" E. per said along the Section line between the East

Quarter and the Southeast Corner of said Section 20, Township 7

South, Range 3 East, Salt Lake Base and Meridian.

### Lot 1 Parking Easement 2 Description

A perpetual parking easement being a part of Lot 1, New Vista Subdivision Plat "A" recorded February 15, 2018 as Entry No. 15293:2018 as Map # 15926 in the Office of the Utah County Recorder. Said perpetual parking easement is located in the Southeast Quarter of Section 20, Township 7 South, Range 3 East, Salt Lake Base and Meridian and described as follows:

**Beginning** at a point which is 125.61 feet S. 29°28'41" E. and 75.69 feet West from a northeasterly corner of said Lot 1 also, being 1126.86 feet S. 00°41'57" E. and 729.70 feet West from the East Quarter of said Section 20; thence S. 66°00'42" W. 18.12 feet; thence N. 22°04'37" W. 91.06 feet; thence N. 68°02'28" E. 18.02 feet; thence S. 22°07'41" E. 90.41 feet to the **Point of Beginning**.

The above-described perpetual parking easement contains 1,639 square feet in area or 0.038 acre, more or less.

**EXHIBIT "B":** By this reference, made a part hereof.

BASIS OF BEARING: S. 00°41'57" E. per said along the Section line between the East

Quarter and the Southeast Corner of said Section 20, Township 7

South, Range 3 East, Salt Lake Base and Meridian.

# **EXHIBIT D**

# PARKING EASEMENT AREA DEPICTION

(See Attached)

