

ACCOMMODATION RECORDING ONLY.
COTTONWOOD TITLE INSURANCE AGENCY,
INC. MAKES NO REPRESENTATION AS TO
CONDITION OF TITLE, NOR DOES IT ASSUME
ANY RESPONSIBILITY FOR VALIDITY,
SUFFICIENCY OR EFFECTS OF DOCUMENT.

Ent 506316 Bk 1372 Pg 1034 - 1043
MARCY M. MURRAY, Recorder
WASATCH COUNTY CORPORATION
2021 Aug 30 08:51AM Fee: \$40.00 TC
For: Cottonwood Title Insurance Agency, In
ELECTRONICALLY RECORDED

RECORDING REQUESTED BY &
WHEN RECORDED RETURN TO:

Wadsworth dbUrban Heber, LLC
Attn: R. Roman Groesbeck
166 East 14000 South, Suite 210
Draper, UT 84020

Parcel Nos.: 00-0021-5172, 00-0021-5179, 00-0021-5174, 00-0021-5175, and 00-0021-5180

(space above for Recorder's use)

ACCESS EASEMENT AND MAINTENANCE AGREEMENT

THIS ACCESS EASEMENT AND MAINTENANCE AGREEMENT (this "**Agreement**") is made this 26th day of AUGUST 2021 (the "**Effective Date**"), by and between MEGCO PARTNERS LLC, an Arizona limited liability company ("**Grantor**"), and WADSWORTH DBURBAN HEBER, LLC, a Utah limited liability company ("**Grantee**"). Grantor and Grantee may be referred to herein collectively as the "**Parties**" or each individually as a "**Party**."

RECITALS

A. Grantor owns certain real property located in Wasatch County, Utah, commonly known as parcel numbers 00-0021-5172, 00-0021-5174, 00-0021-5175, and 00-0021-5180, as more particularly described on Exhibit A attached hereto and incorporated herein by this reference (the "**Grantor Property**").

B. Grantee owns certain real property located adjacent to the Grantor Property, commonly known as parcel number 00-0021-5173, as more particularly described on Exhibit B attached hereto and incorporated herein by this reference (the "**Grantee Property**"). The Grantor Property and the Grantee Property may be referred to herein collectively as the "**Properties**" or each individually as a "**Property**".

C. Grantee desires to obtain from Grantor, and Grantor is willing to grant to Grantee, a non-exclusive, permanent easement on, over and across a portion of the Grantor Property as more particularly described and depicted on Exhibit C attached hereto and incorporated herein by this reference (the "**Easement Area**") for the purpose of constructing and maintaining an extension of Turner Mill Road (the "**Road**"), as well as certain utilities and other related improvements associated with the same.

TERMS AND CONDITIONS

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and based upon the mutual promises and subject to the terms and conditions set forth below, the Parties agree as follows:

1. **Grant of Easement.** Grantor hereby grants and conveys to Grantee, and its successors and assigns, a non-exclusive, permanent easement (the "**Easement**") on, over and across the Easement Area for the purposes of: (i) providing vehicular and pedestrian ingress and egress to the Grantee

Property, including service and emergency vehicle access, (ii) constructing the Improvements (as such term is defined in Section 3.1 below), and (iii) operating, using, maintaining, repairing, and replacing the Improvements.

2. **Access.** Grantee, its invitees, licensees, guests, tenants, agents, employees, consultants, contractors and subcontractors (collectively, “**Agents**”) shall have the right to enter upon the Easement Area for the purposes permitted by this Agreement.

3. **Improvements.**

3.1. **Improvements.** Grantee may design, install, construct, and/or develop, at Grantee’s sole cost and expense, the following (collectively, the “**Improvements**”): (i) the Road, including grading, paving, temporary turn-arounds, and all other aspects of road construction, as such is required by Heber City (the “**City**”) and/or any other applicable governmental authorities or agencies (the governmental entity or entities having authority or jurisdiction to approve specific matters set forth in this Agreement shall hereinafter be referred to as the “**Governmental Entity**”), and as may be shown on any plans approved by the Governmental Entity; (ii) fire hydrants, curbs, street signs, gutters, landscape, berms, and sidewalks along the Road, as required by the Governmental Entity; (iii) all necessary underground horizontal improvements including, but not limited to, water lines, secondary water lines, sanitary sewer lines, storm drain lines, and all other utility lines required to service the Properties (including, without limitation, telephone, gas, and power lines, and three-phase power); and (iv) any other improvements, facilities, or infrastructure required by the Governmental Entity for the dedication and acceptance of the Road. The Improvements shall be constructed and installed by Grantee: (a) in a good and workmanlike manner; and (b) in accordance with the requirements, approvals, regulations, ordinances, specifications, standards, and other governing documents established by the Governmental Entity.

3.2. **Temporary Construction License.** Grantor hereby grants to Grantee and Grantee’s Agents, a temporary, non-exclusive license over and across the portions of the Grantor Property as is reasonably necessary to construct the applicable Improvements. Upon the completion of the Improvements, such temporary license shall automatically terminate.

3.3. **Liens.** Grantee shall keep the Grantor Property free from any liens arising out of any work performed, materials furnished, or obligations incurred by, through, for or under Grantee, and shall indemnify, hold harmless and agree to defend Grantor from any liens that may be placed on the Grantor Property pertaining to any work performed, materials furnished or obligations incurred by, through, for, or under Grantee or any of its Agents. Any such liens shall be released of record within thirty (30) days of recordation.

3.4. **Construction Costs.** Grantee shall be responsible for all out-of-pocket costs incurred by Grantee in constructing the Improvements (the “**Construction Costs**”).

3.5. **Dedication.** Within thirty (30) days following completion of the Improvements, if required and/or requested by the applicable Governmental Entity, or written notice from Grantee, Grantor shall cooperate with Grantee to dedicate to the applicable Governmental Entity and/or other public utility service providers (collectively, the “**Dedication Entities**”) all required areas for the Improvements located on the Grantor Property for a public right-of-way. The Parties agree to fully cooperate with each other in the dedication, development, design, installation and construction of the Improvements, which cooperation includes, but is not limited to, signing dedication documents (including dedication plats), easements and other instruments necessary for the Improvements to be

fully functional, installed, dedicated and accepted by the Dedication Entities pursuant to the requirements of the applicable Dedication Entities.

4. **Maintenance Obligations.**

4.1. **Responsible Party.** For purposes of this Section 4, the term “**Responsible Party**” shall mean Grantee, or, should Grantee or its successor or assign fail to perform the maintenance obligation set forth in this Section 4, any Party who agrees to perform the maintenance obligation set forth herein after giving written notice to the other Parties.

4.2. **Maintenance, Repair and Replacement.** Responsible Party shall maintain in good order and repair the Improvements. Responsible Party’s maintenance of the Improvements shall be in accordance with all laws, rules, and ordinances respecting the same. Maintenance of the Improvements by Responsible Party shall include, but not be limited to, the following:

- i. Maintaining all asphalt surfaces in a level, smooth and evenly covered condition with the type of surfacing material originally installed or such substitute as shall be in all respects equal in quality, use and durability;
- ii. Keeping the Road clear of all snow and ice; and
- iii. Maintaining all Improvements in good working condition and repair.

Except for snow and ice removal, Responsible Party will use reasonable efforts to minimize any interference or disruption to the other Party’s use and occupancy of its Property. In order to provide the necessary notice as set forth in this Section, Responsible Party shall contact the other Party at the notice information set forth in Section 6, or as otherwise designated in writing by the Party or the Party’s successor-in-interest.

4.3. **Liens.** Except as provided for in Section 4.5, Responsible Party shall keep the Properties free from any liens arising out of any work performed, materials furnished, or obligations incurred by, through, for or under Responsible Party, and shall indemnify, hold harmless and agree to defend the other Party from any liens that may be placed on the other Party’s Property pertaining to any work performed, materials furnished or obligations incurred by, through, for, or under Responsible Party or any of its Agents.

4.4. **Intentionally omitted.**

4.5. **Enforcement; Attorney’s Fees.** Each Party shall have the right to enforce, by any proceedings at law or in equity, all restrictions, conditions, covenants, easements, liens and charges now or hereafter imposed by the provisions of this Agreement. The Party prevailing in any such action shall be entitled to collect from the non-prevailing Party the reasonable costs and expenses, including, without limitation, reasonable attorney’s fees, the prevailing Party incurs prosecuting or defending such action. Failure by a Party to enforce any covenant or restriction contained in this Agreement shall not be deemed a waiver of the right to do so thereafter.

4.6. **Damage Fees.** Each Party agrees to reimburse a damaged Party for any losses (including lost profits) and expenses due to property damage, loss of rental income or other loss or damage that results from a Party’s or its Agents’: (i) entry onto, presence upon, or work performed on the damaged Party’s Property; and (ii) failure to comply with any of the terms or conditions of this Agreement.

4.7. **Estoppel Certificates.** Each Party agrees it will, within ten (10) days after the written request from another Party, certify by written instrument, duly executed and acknowledged, to any purchaser or proposed purchaser, or mortgagee or proposed mortgagee, or any other party specified in the request, to the best of the Party's current, actual knowledge: (i) whether any amounts are owed and delinquent under this Agreement; (ii) whether the any Party claims any lien against a Property; and (iii) such other matters as may be reasonably requested.

5. **Indemnification.** Grantee shall indemnify and hold Grantor and its and their employees, officers, divisions, subsidiaries, partners, members and affiliated companies and entities and its and their employees, officers, shareholders, members, directors, agents, representatives, and professional consultants and its and their respective successors and assigns (collectively, the "**Indemnitees**") harmless from and against any loss, damage, injury, accident, fire or other casualty, liability, claim, cost or expense (including, but not limited to, reasonable attorneys' fees) of any kind or character to any person or property, including the property of the Indemnitees, (collectively, the "**Claims**" or a "**Claim**") from or by any unaffiliated third party, Grantee, and/or its Agents, arising from or relating to (i) any use of the Easement Area or of the license granted under Section 3.3 by Grantee or its Agents, (ii) any act or omission of Grantee or its Agents, (iii) any bodily injury, property damage, accident, fire or other casualty to or involving Grantee, its Agents and/or their property on the Easement Area, (iv) any violation or alleged violation by Grantee or its Agents of any law or regulation now or hereafter enacted, (v) any loss or theft whatsoever of any property or anything placed or stored by Grantee or its Agents on or about the Easement Area, (vi) any breach by Grantee of its obligations under this Agreement, and (vii) any enforcement of a Party of any provision of this Agreement and any cost of removing Grantee from the Easement Area or restoring the same as provided herein; provided, however, that the foregoing indemnity shall not apply to the extent any such Claim is ultimately established by a court of competent jurisdiction to have been caused solely by gross negligence or willful misconduct of the Indemnitees. Grantee, as a material part of the consideration of this Agreement, waives all claims or demands against the Indemnitees for any such loss, damage or injury of Grantee or Grantee's property. The indemnity provided by Grantee in favor of the Indemnitees in this Agreement shall not require payment as a condition precedent. The terms and conditions of this provision shall remain effective, notwithstanding the expiration or termination of this Agreement.

6. **Notices.** Any notice required or desired to be given under this Agreement shall be considered given either: (i) when delivered in person to the intended Party, or (ii) three (3) days after deposit in the United States mail, either registered or certified mail, return receipt requested, postage prepaid, addressed by name to the intended Party. All notices shall be given to such Party at the address on file in the Wasatch County Assessor's Office for tax notices. Either Party may designate a different individual or address for notices, by giving written notice thereof in the manner described above.

7. **Termination.** This Agreement and the Easement set forth herein shall automatically terminate upon written consent of all Parties or upon dedication of the Improvements to the Dedication Entities, whichever occurs first. If this Agreement is terminated by the written consent of all Parties, the Parties will execute and record an instrument terminating this Agreement and the Easement.

8. **Authorization.** Each individual executing this Agreement represents and warrants that he or she has been duly authorized by appropriate action of the governing body of the Party for which he/she signs to execute and deliver this Agreement in the capacity and for the entity set forth where he/she signs and that as a result of his/her signature, this Agreement shall be binding upon the Party for which he/she signs.

9. **No Public Use/Dedication.** Unless otherwise dedicated to the public, the Easement Area is and shall at all times remain the private property of Grantor. The use of the Easement Area is

permissive and shall be limited to the express purposes contained herein. Neither Grantee, nor its successors or assigns, nor the public shall acquire nor be entitled to claim or assert any rights to the Easement Area beyond the express terms and conditions of this Agreement.

10. **No Third-Party Beneficiaries.** In assuming and performing the obligations of this Agreement, each Party is acting as an independent Party and shall not be considered or represent itself as a joint venture, partner, agent, or employee of any other Party. There is no intent by any Party to create or establish third-party beneficiary status or rights in any third-party. This Agreement shall not be deemed to confer any rights upon any individual or entity which is not a Party hereto, and each Party expressly disclaims any such third-party benefit.

11. **Entire Agreement.** This Agreement (including all attached Exhibits) constitutes the entire agreement between the Parties hereto pertaining to the subject matter hereof and all prior and contemporaneous agreements, representations and understandings of the Parties hereto, oral or written, are hereby superseded and merged herein.

12. **Miscellaneous.** No supplement, modification or amendment of this Agreement shall be binding unless in writing and executed by the Parties. This Agreement shall be binding on and inure to the benefit of the respective successors, assigns, and personal representatives of the Parties hereto. This Agreement shall be construed in accordance with and governed by the laws of the State of Utah. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provisions, whether or not similar, nor shall any waiver be a continuing waiver. No waiver shall be binding unless executed in writing by the Party making the waiver. The headings of this Agreement are for purposes of reference only and shall not limit or define the meaning of the provisions hereof. The Recitals set forth above are incorporated into this Agreement by reference. If any provision of this Agreement or the application thereof to any person, place, or circumstance, shall be held by a court of competent jurisdiction to be invalid, unenforceable, or void, the remainder of this Agreement and such provisions as applied to other persons, places, and circumstances shall remain in full force and effect; provided, however, the invalid provision does not have a materially adverse effect on either Party. This Agreement is the result of negotiations among the Parties, none 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. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute but one and the same instrument. Time is of the essence for the terms and provisions of this Agreement.

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

[Signatures and Acknowledgements Follow]

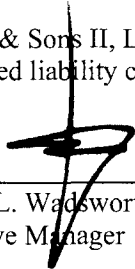
SIGNATURE AND ACKNOWLEDGMENT
TO
ACCESS EASEMENT AND MAINTENANCE AGREEMENT

GRANTEE:

WADSWORTH DBURBAN HEBER, LLC,
a Utah limited liability company


By: Wadsworth Heber, LLC,
a Utah limited liability company
Its: Manager

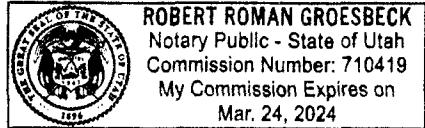
By: Wadsworth & Sons II, LLC,
a Utah limited liability company
Its: Manager

By: 
Name: Kip L. Wadsworth
Its: Executive Manager

STATE OF UTAH)
: ss.
COUNTY OF SALT LAKE)

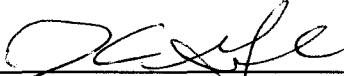
On this 26th day of August 2021, personally appeared before me Kip L. Wadsworth, Executive Manager of Wadsworth & Sons II, LLC, a Utah limited liability company, Manager of Wadsworth Heber, LLC, a Utah limited liability company, Manager of Wadsworth dbUrban Heber, LLC, a Utah limited liability company, who duly acknowledged to me that said company executed the same.


Notary Public



GRANTOR:

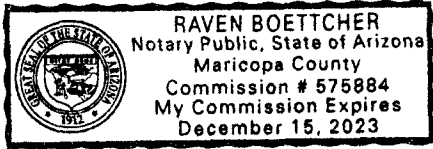
MEGCO PARTNERS LLC,
an Arizona limited liability company

By: 
Name: J. CHRIS GOOCH
Its: VP/GENERAL COUNSEL

STATE OF ARIZONA)
: ss.
COUNTY OF MARICOPA)

SIGNATURE AND ACKNOWLEDGMENT
TO
ACCESS EASEMENT AND MAINTENANCE AGREEMENT

On this 19 day of August 2021, personally appeared before me
J. CHRIS GOOCH, VP/GENERAL COUNSEL of Megco Partners LLC, an
Arizona limited liability company, who duly acknowledged to me that said company executed the same.



Raven Boettcher
Notary Public

EXHIBIT A

(Legal Description of the Grantor Property)

LOT 1, 3, 4 AND PARCEL E OF THE TURNER MILL MASTER SUBDIVISION PLAT, ACCORDING TO THE OFFICIAL PLAT THEREOF AS RECORDED IN THE OFFICE OF THE WASATCH COUNTY RECORDER ON AUGUST 28, 2020 AS ENTRY NO. 483557 IN BOOK 1309 AT PAGE 807.

Parcel Nos.: 00-0021-5172, 00-0021-5174, 00-0021-5175, and 00-0021-5180

EXHIBIT B

(Legal Description of the Grantee Property)

LOT 2 OF THE TURNER MILL MASTER SUBDIVISION PLAT, ACCORDING TO THE OFFICIAL PLAT THEREOF AS RECORDED IN THE OFFICE OF THE WASATCH COUNTY RECORDER ON AUGUST 28, 2020 AS ENTRY NO. 483557 IN BOOK 1309 AT PAGE 807.

Parcel No.: 00-0021-5173

EXHIBIT C

(Legal Description and Depiction of the Easement Area)

Beginning at a point being North 89°51'14" East 432.02 feet along the section line and East 792.50 feet from the West Quarter Corner of Section 8, Township 4 South, Range 5 East, Salt Lake Base and Meridian; and running

thence North 00°08'46" West 68.00 feet;
thence North 89°51'14" East 533.99 feet;
thence South 00°06'31" West 68.00 feet;
thence South 89°51'14" West 533.68 feet to the point of beginning.

Contains 36,301 Square Feet or 0.833 Acres

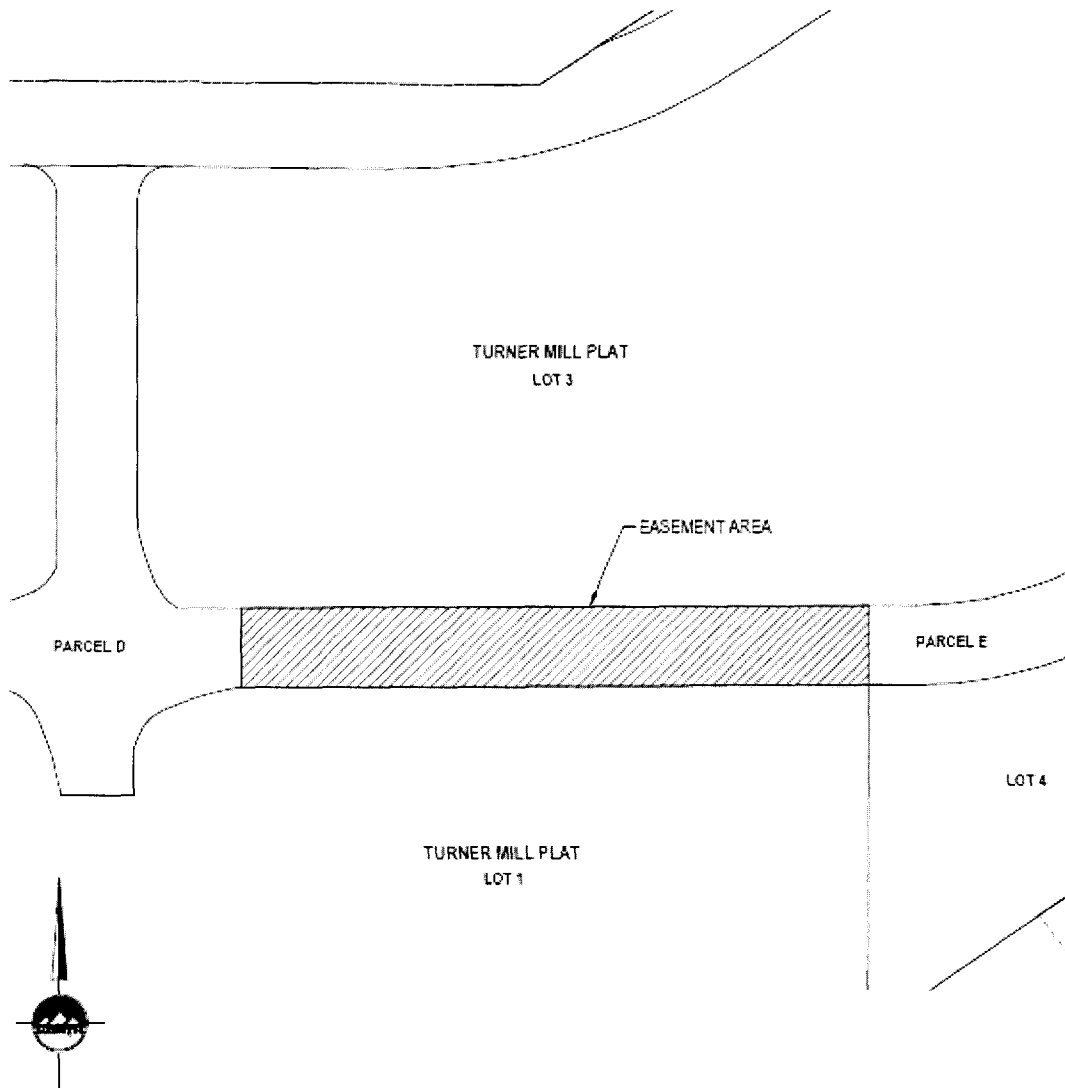


Exhibit C