

Eaglewood Plaza, LLC
262 N. Hill Farms Lane
Kaysville, UT 84037

E 3339513 B 7681 P 1790-1806

RICHARD T. MAUGHAN

DAVIS COUNTY, UTAH RECORDER

1/22/2021 2:25:00 PM

FEE \$40.00 Pgs: 17

DEP eCASH REC'D FOR COTTONWOOD TITLE INS

JOINT USE AND CROSS EASEMENT AGREEMENT

("Agreement")

129579-JCP
01-501-0002

DATED: January 21, 2021

PARTIES: Village Station NSL, LLC ("Village Station") and Eaglewood Plaza, LLC. ("Purchaser") (each a "Party", collectively "the Parties").

RECITALS

- A. Village Station NSL, LLC is a Utah Limited Liability Company ("Village Station"), organized under the laws of the state of Utah, and owns and undivided interest in Lot 1C as described more particularly on Exhibit A ("VS Property"). Village Station intends to construct apartment units and associated improvements on the VS Property.
- B. Eaglewood Plaza, LLC is a Utah Corporation ("Purchaser"), organized under the laws of the state of Utah, and owns an undivided interest in Lot 1B as described more particularly on Exhibit B ("Purchaser Property"). Purchaser intends to construct and/or develop an office building with a potential retail component and associated improvements on the Purchaser Property.
- C. The Parties desire to establish certain non-exclusive cross access easements and non-exclusive parking easements over and across the Development and define the rights and obligations of the Parties pertaining to the construction, maintenance, and upkeep of the Shared Parking Area (as defined herein) subject to this Agreement, including any improvements installed thereon in accordance with this Agreement and the respective declarations of the Parties.
- D. This Agreement affects the real property located in Davis County, State of Utah, described with particularity on Exhibits A and B, as attached hereto and incorporated herein by reference.
- E. Nothing in this agreement shall grant use of parking stalls designated as private parking on the attached Site Plan ("Private Parking").

AGREEMENT

In consideration of the foregoing and the mutual covenants of the parties contained in this agreement, the receipt and adequacy of which are hereby acknowledged, the Parties agree follows:

1. **Grant of Easement to Purchaser.** Subject to the rights and restrictions set forth in this Agreement, Village Station hereby grants and conveys to Purchaser a

permanent and nonexclusive easement over and across the Village Station roadways, driveways, accesses, walkways and visitor parking areas as described on the plat/depicted on the attached Site Plan attached hereto as Exhibit C, for purposes of temporary parking, pedestrian and vehicular access to, ingress to and egress from Village Stations' private roadways and parking areas, as presently or hereafter constructed, benefitting Purchaser so as to provide for the passage of motor vehicles and pedestrians between all portions of the Development so designed for such traffic, including to and from all abutting streets or public rights-of-way furnishing access to the Development (the "Purchaser Easement"). The Purchaser Easement is granted by Village Station as a benefit and right appurtenant to the Purchaser property. The Purchaser Easement is granted for the right, benefit and use of Purchaser and Purchasers' successors, heirs, assigns, owners, guests, employees, managers, mortgagees, lessees and beneficiaries under any deeds of trust (collectively the "Purchaser permitted users"), subject to the provisions of this Agreement. The Purchaser Easement shall not include Private Parking areas.

2. **Grant of Easement to Village Station.** Subject to the rights and restrictions set forth in this Agreement, Purchaser hereby grants and conveys to Village Station a permanent and nonexclusive easement over and across the Purchaser's roadways, driveways, accesses, walkways and visitor parking areas, as described on the plat for Purchaser/depicted on the Site Plan attached hereto as Exhibit C, for purposes of parking, and pedestrian and vehicular access to, ingress to and egress from the Purchaser's roadways and parking areas, as presently or hereafter constructed, so as to provide for the passage of motor vehicles and pedestrians between all portions of the Development so designed for such traffic, including to and from all abutting streets or public rights-of-way furnishing access to the Development (the "Village Station Easement"). The Village Station Easement is granted by Purchaser as a benefit and right appurtenant to the Village Station property. The Village Station Easement is granted for the right, benefit and use of the Village Station and Village Station's successors, heirs, assigns, owners, guests, employees, managers, mortgagees, lessees and beneficiaries under any deeds of trust (collectively the "Village Station Permitted Users"), subject to the provisions of this Agreement. The Village Station Easement shall not include Private Parking areas.
3. **Parking Easement.** The Parties hereby acknowledge and agree that upon completion of construction of all improvements of the Purchaser Property, the shared parking area as depicted on the Site Plan ("Shared Parking Area") shall be used and occupied for the Purchaser's employees, patrons, business invitees, tenants, occupants, and agents only during the hours of 8:00 am – 6:00 pm Monday through Friday. During the hours of 6:00 pm – 8:00 am Monday through Friday, and anytime Saturday and Sunday such Shared Parking Area may be used and occupied by the Village Station residents, visitors, invitees, employees and agents. Village Station shall require all permitted users of the Shared Parking Area to use a sticker/decal non-removable parking pass to identify their vehicle as a

permitted parker during designated hours. . Purchaser reserves the right to enforce the parking restrictions as delineated in this agreement including fines, booting, towing and other measures to ensure parking compliance.

- 4. Shared Parking Area Construction, Maintenance, Repair and Replacement.** Purchaser shall construct the Shared Parking Area, upon completion of such construction Village Station shall reimburse Purchaser for fifty percent (50%) of such Construction Costs ("Construction Costs") within Forty Five (45) days of receipt of invoice therefor. If Village Station fails to make timely payment, Village Station shall pay a late fee equal to six percent (6%) of such past due amount to compensate Purchaser for administrative, collection, processing, accounting and other costs incurred through Village Station's nonpayment. The Construction Costs shall include and be limited to, asphalt, road base, excavation of subgrade including cut or fill, haul off or import of subgrade material, curb and gutter, streetlights and landscaping of the area defined in in Exhibit C, Purchaser agrees to provide Village Station with 3 bids prior to construction of the shared area and use the lowest bid as the construction cost of this area. Purchaser shall maintain the private roadways, improvements, visitor parking, and amenities located within the Shared Parking Area in good condition and repair and in accordance with all applicable laws, ordinances, rules, regulations, covenants, conditions and restrictions and governmental requirements. Such maintenance shall include, but not be limited to, maintaining, repairing, and resurfacing all paved areas, removing all snow and trash, installing, operating, maintaining, repairing and replacing (as necessary) any lighting and/or signage, parking enforcement, and liability insurance as described below. All maintenance, repair and replacement obligations shall be performed in a prompt, diligent and regular manner. The total sum of the shared maintenance, repair and replacements costs shall be the "Shared Easement Costs" and shall be shared equally between the Parties.
- 5. Allocation of Costs.** The intent of this Section and of this Agreement is that the costs of maintaining the Shared Parking Area, as described above, will be split between the Parties. Village Station and Purchaser shall share the costs of maintenance and upkeep of the Shared Parking Area on an equal (50/50) basis. The Parties shall collectively fund the maintenance, repair, and replacement of the improvements designated as Construction Costs items. Upon completion of construction of the Shared Parking Area, Purchaser shall prepare a reasonable estimate of the annual Shared Easement Costs, and thereafter each January, Village Station shall agree upon the proposed annual estimates within 15 days of receiving said estimates from Purchaser and Purchaser and Village Station shall make equal monthly payments of its share of the estimated Shared Easement Costs, in advance on the first (1st) day of each month. The Shared Easement Cost payments shall be held in an independent account. Each month Purchaser shall send Village station a statement of the total Shared Easement Costs for such period, and Village Station's share for such period shall be adjusted accordingly, as applicable. Any excess paid by Purchaser or Village Station shall be credited to their next payment. Purchaser and Village Station shall pay any deficiency within

thirty (30) days of receipt of invoice from Purchaser for the same. If Purchaser or Village Station fails to make timely payment, Purchaser or Village Station shall pay a late fee equal to six percent (6%) of such past due amount to compensate Purchaser for administrative, collection, processing, accounting and other costs incurred through nonpayment of either party. In addition, Village Station shall pay to Purchaser an amount equal to ten percent (10%) of the total Shared Easement Costs for each calendar year as an administrative fee. Section 4 of this agreement shall not go into effect until Village Station has received a certificate of occupancy on lot 1C as shown in Exhibit C. In the event that the purchaser fails to maintain the easement area, Village Station has the right to take over the contract and responsibility to manage the maintenance of the shared area as described in Exhibit 1C.

6. **Damage by Purchaser or Village Station.** If damage to the Shared Parking Area beyond ordinary wear and tear is directly attributable to Purchaser or Purchaser's permitted users, then Purchaser shall repair such damage as soon as reasonably possible, at its sole expense without any right of partial reimbursement from Village Station. Likewise, if damage to the Shared Parking Area beyond ordinary wear and tear is directly attributable to Village Station or Village Station's permitted users, then Village Station shall repair such damage as soon as reasonably possible, at its sole expense without any right of partial reimbursement from Purchaser.
7. **Restriction on Use.** Neither Village Station nor Purchaser, nor any Village Station or Purchaser permitted users shall place any obstruction within the Shared Parking Area, except in the event of regular maintenance and repair. Neither Village Station nor Purchaser, shall place any building or other improvement within the Shared Parking Area. Each party and its permitted users shall be bound by any posted or published rules governing the Shared Parking Area.
8. **Condemnation.** In the event Village Station or Purchaser property or any portion thereof is taken by power of eminent domain, or is conveyed under threat of condemnation, the obligations hereunder of the party owning such property shall be abated to the extent of the taking. Proceeds from any taking of Village Station or Purchaser properties shall belong exclusively to the owners of such property.
9. **Non-Use.** No obligation arising out of this Agreement, or right granted under this Agreement shall lapse because of non-use.
10. **Easements Run with the Land.** The Village Station Easement and Purchaser Easement shall run with the land as to all property benefitted and burdened thereby, including any partition or division of such property. The rights, covenants and obligations contained in this agreement shall bind, burden, and benefit Village Station and Purchaser and their respective successors, assigns, heirs, lessees, mortgagees, and beneficiaries under any deeds of trust.
11. **Conformance with Governmental Requirements.** Both parties shall cause all

their respective uses of the easement area to be in conformance with all applicable federal, state, county and municipal laws, ordinances, regulations and requirements. The laws of the state of Utah shall govern the interpretation, validity, performance and enforcement of this Agreement.

12. **Recording.** This Agreement shall be recorded in the official records of Davis County, Utah.
13. **Waiver.** Failure of either Party at any time to require performance of any provision of this Agreement shall not limit such party's right to enforce such provision, nor shall any waiver of breach of any provision of this agreement constitute a waiver of any succeeding breach of such provision or waiver of such provision itself.
14. **Attorney Fees.** If a suit, action or other proceeding of any nature whatsoever is instituted in connection with any controversy arising out of this agreement or to enforce any rights hereunder, the prevailing party shall be entitled to recover its attorney fees and expenses and all other fees and expenses actually incurred and reasonably necessary in connection therewith, as determined by the court at trial or on any appeal or review, in addition to all other amounts provided by law.
15. **Remedies.** In the event that either Party fails to perform any obligation under this agreement, the other Party shall be entitled to require specific performance of such obligation, to obtain appropriate injunctive relief (without the necessity of showing inadequate remedies at law), to cure the default of such obligation and recover the costs thereof from the party reaching such obligation, or to pursue any other remedy available at law or equity. The remedies authorized throughout this Agreement are not mutually exclusive and may be maintained independently of each other.
16. **Amendment and Termination.** This Agreement may be amended and/or terminated only by a written agreement signed by representatives of the Parties, their successors or assigns. Such signors must be authorized in accordance with their governing documents. Said amendment and/or notice of termination shall be recorded in the official records of Davis County, Utah.
17. **Insurance.** Purchaser shall obtain and maintain at all times commercial general liability insurance insuring against claims on account of death, bodily injury or property damage that may arise from or be occasioned by the condition, use or occupancy of the easements granted pursuant to this Agreement and located on its respective lot. Purchaser agrees that the liability limits of said policy will be at least \$1,000,000 and shall name Village Station as an additional insured.
18. **Indemnity.** Each Party indemnifies, defends and holds the other, its successors, assigns, and agents harmless from any and all claims, liability, losses, costs, charges, or expenses which may be incurred as a result of use of the easements

granted pursuant to this Agreement located on its respective lot. If any action, claim or demand is made against the indemnified Party for any occurrence on the indemnifying Party's lot, the indemnifying Party agrees to assume the expense and shall pay all costs, charges, attorney fees, settlements, judgment or other expenses incurred by or obtained against the indemnified Party. The indemnification obligations under this Section exclude actions, claims, or demands arising from the willful misconduct or gross negligence of an indemnified Party.

19. Disclaimer of Public Dedication. From and after the date of this Agreement, no use of the property by Village Station, Purchaser or their respective permittees shall be interpreted or construed to be a public dedication, or to ever confer upon the public any right to continue to make such use permanently.

IN WITNESS WHEREOF, the parties have executed this Joint Use Agreement and Easement as of the date first set forth above.

Village Station NSL LLC

By: _____

Its: _____

Eaglewood Plaza, LLC

By: _____

Its: _____

granted pursuant to this Agreement located on its respective lot. If any action, claim or demand is made against the indemnified Party for any occurrence on the indemnifying Party's lot, the indemnifying Party agrees to assume the expense and shall pay all costs, charges, attorney fees, settlements, judgment or other expenses incurred by or obtained against the indemnified Party. The indemnification obligations under this Section exclude actions, claims, or demands arising from the willful misconduct or gross negligence of an indemnified Party.

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IN WITNESS WHEREOF, the parties have executed this Joint Use Agreement and Easement as of the date first set forth above.

Village Station NSL LLC

By: _____

Its: _____

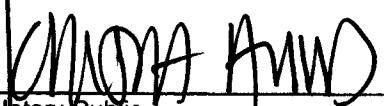
Eaglewood Plaza, LLC

By: Ryan W. Long

Its: Member

State of Utah
County of **DAVIS**

On January 21, 2021, personally appeared before me Ryan W. Forsyth, ~~John Macfarlane and Ashton Hyde~~, who acknowledged themselves to be members of Eaglewood Plaza, LLC, a Utah limited liability company and that they as the members, being authorized to do, did execute the foregoing instrument for and in behalf of Eaglewood Plaza, LLC, a Utah limited liability company for the purposes contained herein.



Notary Public



granted pursuant to this Agreement located on its respective lot. If any action, claim or demand is made against the indemnified Party for any occurrence on the indemnifying Party's lot, the indemnifying Party agrees to assume the expense and shall pay all costs, charges, attorney fees, settlements, judgment or other expenses incurred by or obtained against the indemnified Party. The indemnification obligations under this Section exclude actions, claims, or demands arising from the willful misconduct or gross negligence of an indemnified Party.

19. Disclaimer of Public Dedication. From and after the date of this Agreement, no use of the property by Village Station, Purchaser or their respective permittees shall be interpreted or construed to be a public dedication, or to ever confer upon the public any right to continue to make such use permanently.

IN WITNESS WHEREOF, the parties have executed this Joint Use Agreement and Easement as of the date first set forth above.

Village Station NSL LLC

By: _____

Its: _____

Eaglewood Plaza, LLC

By: *John MacFarlane* John MacFarlane

Its: Member MacFarlane Investments

State of Utah
County of

On January 21, 2021, personally appeared before me _____, who acknowledged himself to be a _____ of _____, LLC, a Utah limited liability company and that he as a _____, being authorized to do, did execute the foregoing instrument for and in behalf of _____, LLC, a Utah limited liability company for the purposes contained herein.

Notary Public

State of Utah
County of Salt Lake

On January 21, 2021, personally appeared before me John MacFarlane, who acknowledged himself to be a Member of Eaglewood Plaza, LLC, a Utah limited liability company and that he as a Member, being authorized to do, did execute the foregoing instrument for and in behalf of Eaglewood Plaza, LLC, a Utah limited liability company for the purposes contained herein.

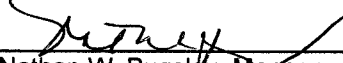
[Signature]

Notary Public



Dated this 21st day of January, 2021.

Village Station NSL, LLC, a Utah limited liability
company

BY: 
Nathan W. Pugsley, Manager

STATE OF UTAH

COUNTY OF DAVIS

On the 21st day of January, 2021, personally appeared before me Nathan W. Pugsley, who acknowledged themselves to be the Manager of Village Station NSL, LLC, a Utah limited liability company, and that they, as such Manager, being authorized so to do, executed the foregoing instrument for the purposes therein contained.


Notary Public

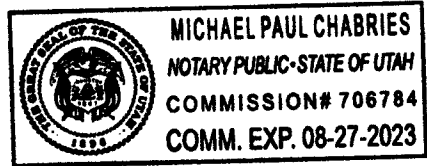


EXHIBIT A

LEGAL DESCRIPTION

Lot 1C- Village Station (Seller)

Beginning at the Northeast Corner of Lot 6 of the Eaglewood Village Subdivision 2nd Amendment, said point being South 89°53'31" West 439.83 feet along the Section line and North 241.32 feet from the East Quarter corner of Section 11, Township 1 North, Range 1 West, Salt Lake Base and Meridian;

Thence North 69°15'30" West 372.50 feet along the Northerly line of said Lot 6;
Thence 50.58 feet along the arc of 3245.04 foot radius curve to the Right thru a central angle of 0°53'35" (Chord bears North 14°40'12" East 50.58 feet);
Thence North 17°59'21" East 161.10 feet;
Thence North 23°00'19" East 39.35 feet;
Thence South 68°12'50" East 336.11 feet;
Thence 117.53 feet along the arc of a 724.83 foot radius curve to the Left thru a central angle of 9°17'28" (Chord bears South 10°16'18" West 117.40 feet);
Thence 131.77 feet along the arc of a 983.50 foot radius curve to the Right thru a central angle of 7°40'36" (Chord bears South 9°04'12" West 131.68 feet) to The Point of Beginning.

Contains 2.023 Acres or 88,085 Square Feet, more or less

EXHIBIT B

LEGAL DESCRIPTION

Lot 1B-Eaglewood Plaza (Purchaser)

Beginning at a point being South 89°53'31" West 398.14 feet along the Section line and North 486.80 feet from the East Quarter corner of Section 11, Township 1 North, Range 1 West, Salt Lake Base and Meridian;

Thence North 68°12'50" West 336.11 feet;

Thence North 23°00'19" East 122.44 feet;

Thence North 66° 59'41" West 20 feet;

Thence North 23°00'19" East 144.36 feet to the Southwest corner of Lot 1A, Eaglewood Village 3rd Amendment Subdivision;

Thence South 65°03'31" East 359.50 feet along the Southerly line of Lot 1A;

Thence 34.96 feet along the arc of 485.42 foot radius curve to the Right thru a central angle of 4°07'37"

(Chord bears South 28°14'32" West 34.95 feet);

Thence 184.95 feet along the arc of a 723.91 foot radius curve to the Left thru a central angle of 14°38'18" (Chord bears South 24°06'04" West 184.45 feet);

Thence 28.48 feet along the arc of a 724.83 foot radius curve to the Left thru a central angle of 2°15'04" (Chord Bears South 16°02'35" West 28.49 feet) to The Point of Beginning.

Contains 2.024 Acres or 88,175 Square Feet, more or less

**EAGLE WOOD VILLAGE SUBDIVISION
4th AMENDMENT**

LOCATED IN THE NORTHEAST QUARTER OF SECTION 11
TOWNSHIP 1 NORTH RANGE 1 WEST SALT LAKE BASIN AND MERIDIAN
NORTH SALT LAKE CITY, DAVIS COUNTY, UTAH

