

DECLARATION OF ACCESS EASEMENT

This Declaration of Access Easement (this "**Declaration**") is made and entered into the ____ day of October, 2019 (the "**Effective Date**"), by and between **VISTA HEIGHTS INVESTMENTS LOT 1, LLC**, a Utah limited liability company ("**Declarant**"), having its address at 259 S. Riverbend Way, Suite 102, North Salt Lake, UT 84054, **REDEVELOPMENT AGENCY OF PROVO CITY** ("**Beneficiary**"), having its address at 351 West Center Street, Provo, Utah 84601.

RECITALS:

A. Declarant is the fee title owner of approximately 16.14 acres of real property located in the City of Provo, Utah County, Utah and more particularly described on Exhibit A attached hereto and incorporated herein by reference (the "**Declarant Parcel**").

B. Beneficiary is the fee title owner of approximately 57.908 acres of real property located in the City of Provo, Utah County, Utah and more particularly described on Exhibit B attached hereto and incorporated herein by reference (the "**Beneficiary Parcel**").

C. The Beneficiary Parcel and the Declarant Parcel are collectively referred to herein as the "**Property**".

D. In order to facilitate the development of the Beneficiary Parcel, it is necessary to create a certain non-exclusive, permanent ingress and egress easement in, to, over and across certain portions of the Declarant Parcel for the benefit of the Beneficiary Parcel.

E. Declarant and Beneficiary desire to provide for the creation of such ingress and egress easement upon the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the above Recitals and of the easements, covenants, conditions and restrictions herein contained, Declarant and Beneficiary hereby declare, reserve, grant, covenant and agree that the Property and all present and future Owners of said Property or any part(s) thereof, shall be subject to the aforementioned Recitals and the following declarations, easements, covenants, conditions and restrictions set forth in this Declaration:

1. Incorporation of Recitals. All of the recitals above are hereby incorporated into this Declaration as if fully restated here.

2. Definitions. For purposes hereof:

(a) "**Access Easement Area**" shall mean those portions of the Declarant Parcel as more specifically described on Exhibit C and depicted on the map attached as Exhibit D, both attached hereto and incorporated herein by reference.

(b) "**Access Road**" shall mean and refer to the roadways to be constructed upon and within the Access Easement Area.

(c) "**Applicable Laws**" shall mean all applicable federal, state and local laws, rules, regulations, ordinances and orders, whether now existing or hereinafter enacted.

(d) **“Building”** shall mean any enclosed structure placed, constructed, or located on the Property, including any appurtenant canopies, supports, loading docks, truck ramps, and other outward extensions (such as, but not limited to, trash compactors).

(e) **“Owner(s)”** shall mean the Declarant, Beneficiary and any and all successors, assigns or grantees who own fee simple title to all or any portion of the Property, whether by sale, assignment, inheritance, operation of law, trustee’s sale, foreclosure, or otherwise, but not including the holder of any lien or encumbrance on such real property.

(f) **“Mortgage”** shall mean a mortgage, deed of trust or other written security instrument securing any indebtedness held by a Mortgagee.

(g) **“Mortgagee”** shall mean any financial institution or other holder of a Mortgage encumbering the Property or any portion thereof.

(h) **“Permittees”** shall mean the tenants, subtenants, or occupants of the Property, and the respective employees, agents, contractors, customers, invitees and licensees of (i) the Owners of the Property, and/or (ii) such tenants, subtenants, or occupants.

3. Access Easements. Declarant, hereby declares, reserves and grants to Beneficiary and its Permittees, in common with others entitled to use the same, a non-exclusive, perpetual easement and right-of-way over and across the Access Easement Area for vehicular and pedestrian access, ingress and egress to and from the Beneficiary Parcel and Mountain Vista Parkway.

4. Use of the Access Easement. The Owners of the Beneficiary Parcel and their Permittees, shall be entitled to use the Access Easement Area and shall have the right of access across the Access Easement Area in accordance with all Applicable Laws and the terms of this Declaration. The Owners of the Beneficiary Parcel and their Permittees shall not cause unreasonable wear, tear, damage or loss to the Access Easement Area, the Property, the Access Road or any related improvements located within the Access Easement Area.

5. Rights Reserved. Declarant, and its successors and assigns, hereby reserve the following right to use the Access Easement Area for any and all uses and purposes not inconsistent with the rights and privileges granted to Beneficiary by this Declaration, including, without limitation, access, installation of, driveways, roads, parking areas, curbs, or sidewalks, grass, shrubbery, trees, and other landscaping, lighting, non-masonry fencing, utility lines, pipes, sprinklers, drains, and related improvements; provided, however, that Declarant shall not erect any building or other permanent structure (except as listed herein) within the Access Easement Area.

6. No Obstructions. Except as may be required as a result of Applicable Laws, no Owner nor Permittee shall permit any future curbing, barriers, walls or other structures in the Access Easement Area or take any actions which would adversely impede or prohibit the free flow of pedestrian and/or vehicular traffic as intended by this Declaration.

7. No Liens. No Owners shall grant or permit any lien or encumbrance and no Permittees shall allow to be placed or levied any lien or encumbrance on the Access Easement Area or the Property as a result of this Declaration; provided, however, that an Owner whose property is benefited by this Declaration shall be entitled to grant a mortgagee a lien or security interest in and or to any rights that such Owner may have to use the Access Road and the Access Easement Area, subject to and in accordance with this Declaration.

8. Term; Binding on Successors and Assigns.

(a) Each and every declaration, covenant, condition, easement, right, privilege, and restriction made, declared, granted or assumed in this Declaration shall be an equitable servitude on the Property and shall run with the land and shall be binding upon and inure to the benefit of the Owners and such Owner's successors, assigns and grantees.

(b) Use of the Access Road and the Access Easement Area by any and all Permittees shall be subject to and in accordance with this Declaration. Any provision contrary to the terms of this Declaration in any lease, license or other occupancy agreement affording any Permittee a right to utilize the Access Road and the Access Easement Area will not be effective to modify, amend or otherwise alter the terms and provision of this Declaration, and the terms and provisions of this Declaration shall prevail and control.

(c) Except as expressly stated to the contrary herein, this Declaration shall confer no rights on any parties other than the Owners and the Permittees as provided herein.

9. Notices. Any notice or demand required or permitted to be given by or to any of the parties hereto and every alleged breach of this Declaration shall be made in writing and shall be deemed to have been given or delivered, as the case may be, when delivered by: (a) hand delivery; (b) express overnight delivery service; or (c) certified or registered mail, return receipt requested, and shall be deemed to have been delivered upon: (i) receipt, if hand delivered; (ii) the next business day, if delivered by express overnight delivery service; or (iii) the third business day following the day of deposit of such notice with the United States Postal Service, if sent by certified or registered mail, return receipt requested. Notices shall be provided to address shown in the first paragraph of this Declaration. Any party may change its address at any time by written notice of such change to the other party in the manner provided herein. Any notice to any Owner or any Permittee may be given in the manner contemplated above to any address that the party initiating such notice reasonably believes to be the respective party's address for legal notices, including, without limitation, the address of any registered agent.

10. Severability. If any clause, sentence, or other portion of the terms, conditions, covenants, and restrictions of this Declaration become illegal, null, or void for any reason, or be held by any court of competent jurisdiction to be so, the remaining portions will remain in full force and effect.

11. Governing Law. This Declaration shall be subject to and construed in accordance with the laws of the State of Utah.

12. Captions. The captions of the paragraphs of this Declaration are for convenience only and are not intended to affect the interpretation or construction of the provisions herein contained.

13. Integration. This Declaration contains the complete agreement of the parties and cannot be varied except by written agreement of the parties. The parties agree that there are no oral agreements, representations, or warranties that are not expressly set forth in this Declaration.

14. Recitals. The recitals above are incorporated herein by reference.

15. Legal Construction. If any provision in this Declaration is for any reason unenforceable, to the extent the unenforceability does not destroy the basis of the bargain among the parties, the unenforceability will not affect any other provision hereof, and this Declaration will be construed as if the unenforceable provision had never been a part of the Agreement. Whenever context requires, the singular

will include the plural and neuter include the masculine or feminine gender, and vice versa. This Declaration will not be construed more or less favorably between the parties by reason of authorship or origin of language.

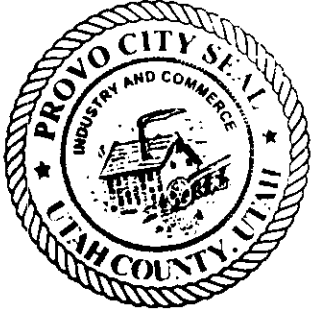
16. Authority. Each party has the full right and lawful authority to grant the easements contemplated in and under this Declaration.

17. Recordation. As soon as reasonably practicable after the execution and acknowledgment hereof, the parties shall cause this Declaration to be recorded in the office of the Recorder of Utah County, Utah.

18. Counterparts. This Declaration may be executed in any number of counterparts with the same effect as if all signatory parties had signed the same document. All counterparts will be construed together and will constitute one and the same instrument.


[SIGNATURE PAGE FOLLOWS.]

IN WITNESS WHEREOF, Declarant and Beneficiary have executed this Declaration and made it effective as of the Effective Date set forth above.



“Declarant”


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


By: 
Tom Stuart, Manager

“Beneficiary”

REDEVELOPMENT AGENCY OF PROVO CITY

Attest:

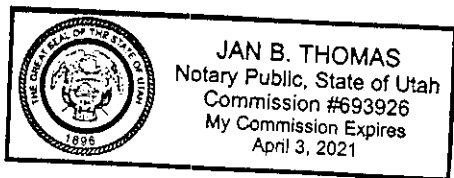
By: 
Printed: Amanda Erwinbrack
Title: City Recorder

By: 
Printed: Michelle Kaufusi
Title: CEO

STATE OF UTAH)
)SS:
COUNTY OF DAVIS)

BEFORE ME, a Notary Public in and for said County and State personally appeared the above named **VISTA HEIGHTS INVESTMENTS LOT 1, LLC**, a Utah limited liability company, by Tom Stuart, in his capacity as the Manager, and who acknowledged that he did sign the foregoing instrument for and on behalf of said limited liability company and that the same is the free act and deed of said limited liability company and his free act and deed individually and as such Manager.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at _____,
_____ this 7 day of October, 2019.



Jan B Thomas

NOTARY PUBLIC
My Commission Expires: 4-3-21

STATE OF Utah)
)SS:
COUNTY OF Utah)

BEFORE ME, a Notary Public in and for said County and State personally appeared the above named **REDEVELOPMENT AGENCY OF PROVO CITY**, by Michelle Kauff in ~~his~~/her capacity as a CEO, and who acknowledged that ~~he~~ she did sign the foregoing instrument for and on behalf of said corporation and that the same is the free act and deed of said corporation and ~~his~~ her free act and deed individually and as such officer.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at _____, this 16th day of October, 2019.

Tracy Orme
NOTARY PUBLIC
My Commission Expires: 7/26/23



EXHIBIT A

LEGAL DESCRIPTION OF DECLARANT PARCEL

LOT 1, NEW VISTA SUBDIVISION PLAT "A", ACCORDING TO THE OFFICIAL PLAT THEREOF ON FILE
AND OF RECORD IN THE UTAH COUNTY RECORDER'S OFFICE.

EXHIBIT B**LEGAL DESCRIPTION OF BENEFICIARY PARCEL**

A parcel of land being a part of an entire tract described in that Quit Claim Deed recorded April 7, 2003 as Entry No. 52334:2003 in the Office of the Utah County Recorder. Said parcel of land is located in the Southwest Quarter of Section 21, Northwest Quarter of Section 28, Northeast Quarter of Section 29, and the Southeast Quarter of Section 20, Township 7 South, Range 3 East, Salt Lake Base and Meridian and described as follows:

Beginning at a the southwesterly corner of Plat "I" Mountain Vista Business Center Subdivision recorded December 4, 2017 as Entry No. 119308:2017, which is 2300.99 feet S. $00^{\circ}41'57''$ E. and 397.34 feet West from the East Quarter Corner of said Section 20; thence along the South and East line of said Subdivision the following two (2) courses: 1) N. $89^{\circ}59'57''$ E. (Plat = $S90^{\circ}00'00''$ E) 930.82 feet; 2) N. $00^{\circ}00'00''$ E. 71.71 feet; thence S. $42^{\circ}12'16''$ E. 461.85 feet to a point of tangency having a 250.00 – foot radius curve to the right, concave southwesterly; thence southeasterly 184.14 feet along the arc of said curve, through a central angle of $42^{\circ}12'06''$ (Chord bears S. $21^{\circ}06'13''$ E. 180.01 feet); thence S. $00^{\circ}00'49''$ E. 874.48 feet to the northerly right-of-way line of State Route - 75, per that Utah Department of Transportation (UDOT) Project No. F-001-6(6); thence along said northerly right-of-way line the following three (3) courses: 1) N. $88^{\circ}51'33''$ W. 515.11 feet to an existing UDOT monument; 2) N. $79^{\circ}52'53''$ W. 776.06 feet to an existing UDOT monument; 3) N. $78^{\circ}15'33''$ W. 457.50 feet to the easterly right-of-way line of the Denver & Rio Grande Western Railroad; thence N. $22^{\circ}01'50''$ W. 1376.37 feet along said easterly right-of-way line; thence N. $65^{\circ}31'04''$ E. 56.00 feet; thence S. $22^{\circ}02'53''$ E. 200.18 feet; thence N. $65^{\circ}31'04''$ E. 348.88 feet; thence N. $24^{\circ}28'56''$ W. 200.00 feet; thence N. $65^{\circ}31'04''$ E. 321.47 feet to a point on the Northwest Corner of Lot 1 Plat "F" Mountain Vista Business Center Subdivision recorded August 10, 2015 as Entry No. 72051:2015, thence S. $29^{\circ}34'04''$ E. (Plat = S. $29^{\circ}34'07''$ E.) 575.15 feet along Westerly line of said plats to the **Point of Beginning**.

The above-described parcel of land contains 2,522,481 square feet in area or 57.908 acres, more or less.

BASIS OF BEARING: S. $01^{\circ}29'15''$ E along the Section line between the Northeast Corner and the East Quarter Corner of said Section 20, Township 7 South, Range 3 East, Salt Lake Base and Meridian.

EXHIBIT C

LEGAL DESCRIPTION OF ACCESS EASEMENT AREA

LEGAL DESCRIPTION

An easement located in the Southwest Quarter of Section 20, Township 7 South, Range 3 East, Salt Lake Base and Meridian being further described as follows:

Beginning at a point on the westerly right-of-way line of Mountain Vista Parkway said point being 1609.97 feet South 0°41'57" East along the East line of Section 20, Township 7 South, Range 3 East, Salt Lake Base and Meridian, thence 386.84 feet West to the POINT OF BEGINNING; and running thence South 65°34'35" West 610.45 feet; thence South 24°14'50" East 55.72 feet; thence South 65°31'10" West 40.00 feet; thence North 24°14'50" West 55.76 feet; thence South 65°34'35" West 350.54 feet; thence South 22°01'02" East 56.17 feet; thence South 65°30'02" West 46.04 feet; thence North 22°01'02" West 102.28 feet; thence North 65°34'35" East 1041.03 feet; thence South 29°28'41" East 46.18 feet to the POINT OF BEGINNING.

Containing 52840.65 square feet or 1.21 acres, more or less.

EXHIBIT D

DEPICTION OF ACCESS EASEMENT AREA

