

ENT67378:2020 PG 1 of 14
Jeffery Smith
Utah County Recorder
2020 May 19 09:35 AM FEE 40.00 BY SM
RECORDED FOR Cottonwood Title Insurance Agency, Inc.
ELECTRONICALLY RECORDED

PREPARED BY AND WHEN
RECORDED PLEASE RETURN TO:

Barton L. Gertsch, Esq.
Parr Brown Gee & Loveless
101 South 200 East, Suite 700
Salt Lake City, Utah 84111-1537

COMMUNICATIONS EASEMENT AGREEMENT

THIS COMMUNICATIONS EASEMENT AGREEMENT (the “**Agreement**”) is entered into as of the 8 day of MAY, 2020, between TANUKI INVESTMENTS, LLC, a Utah limited liability company (“**Grantor**”), whose address for purposes hereof is Exchange Place, Building B, 14034 South 145 East, Suite 204, Draper, Utah 84020, and FIRSTDIGITAL TELECOM, LLC, a Utah limited liability company (“**FirstDigital**”), whose address is 90 South 400 West, Suite M-100, Salt Lake City, Utah 84101. (Grantor and FirstDigital are referred to in this instrument collectively as the “**Parties**,” and individually as a “**Party**.”)

RECITALS

A. Grantor is the owner of a portion of the residential real estate development project generally known as Wildflower, located in the City of Saratoga Springs, Utah (such development together with related grounds, improvements, and facilities is referred to in this Agreement as the “**Project**”). The Project is depicted on the Site Plan attached hereto as Exhibit A (the “**Site Plan**”). The legal description of the portion of the property on which the Project is located which is owned by Grantor (the “**Property**”) is more particularly described on Exhibit B attached hereto.

B. FirstDigital is a certified competitive local exchange carrier authorized to provide communications services including voice, video, and high-speed data access in the state of Utah.

C. Due to the lack of any telecommunications facilities in the Project and the costs associated with providing high speed residential broadband services, Grantor has agreed to contract with FirstDigital to provide at FirstDigital’s cost and expense the communications infrastructure to the Project as set forth below.

D. Grantor desires to have FirstDigital provide ongoing management and maintenance of such communications infrastructure in order to assist in accommodating the needs of the residents in the Project, maintaining the integrity of the Project’s infrastructure during construction and the build out of the Project and providing maximum uptime for users.

E. Grantor desires to have FirstDigital’s communications infrastructure available for use by other Communications Service Providers who interconnect with the communications

network at the designated "Minimum Points of Entry," all in accordance with the terms of this Agreement, in order to help eliminate the duplication of facilities, prevent unnecessary trenching and the cutting of sidewalks and streets, and maintain the overall earth friendly, consistent and efficient use of resources within and throughout the Project; provided, however, that nothing herein shall restrict or limit such duplication of facilities and additional trenching.

AGREEMENT

NOW, THEREFORE, FOR THE SUM OF TEN DOLLARS (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, Grantor hereby agrees as follows:

1. Definitions. As used in this Agreement, each of the following terms shall have the indicated meaning:

"Communications Facilities" means the facilities (e.g. fiber, copper and coaxial cables, towers, satellites, other broadcasting and receiving devices, conduits, junction boxes), beginning at the demarcation point or points at the boundary or boundaries of the Project and ending at the entry Demarcation Point at each residence in the Project, as applicable, by means of which the Communications Services are provided to the Resident, as such systems and facilities are updated, supplemented or replaced from time to time.

"Communications Services" means voice, video, telecommunications and high speed data access services and any other services as may be offered to Residents via Communications Facilities.

"Communications Service Provider" means any telecommunications company that is certified to provide Communications Services to customers in Utah.

"Communications Services Agreement" shall mean that Agreement executed of even date herewith, between Grantor and Grantee.

"Demarcation Point" means the physical and electrical boundary between a Resident's voice, video, telecommunications and high speed data equipment and the Communications Facilities installed and owned by FirstDigital.

"Exclusive Telecommunications Easement Area" has the meaning given to such term in Section 2 below.

"Owner" means each person, who, at any given time, holds fee title to the Property or any portion thereof.

"Resident" means each Owner and any resident or occupant of all or any portion of the Property.

2. Grant of Easement. Grantor conveys and grants to FirstDigital and its successors and assigns a telecommunications easement and right-of-way in gross in the easement area more particularly described in Exhibit C attached hereto and incorporated herein (the "**Exclusive**

Telecommunications Easement Area”). Pursuant to this Easement, Grantee shall have the exclusive right within such Exclusive Telecommunications Easement Area to design, engineer, construct, install, test, operate, maintain, repair, replace, relocate, remove and manage Communications Facilities on, under over and across such Exclusive Telecommunications Easement Area up to a Resident’s Demarcation Point(s); provided, however that nothing herein shall restrict the rights of other Communications Service Providers to dig trenches and lay their own Communications Facilities pursuant to existing or future franchise rights and/or public utility easements (or to otherwise provide satellite-based telecommunications services); and provided, further, that Grantor shall not be limited in any way from granting other easements or rights within the Exclusive Telecommunications Easement Area to any utility service provider or other party not intending to construct Communications Facilities within such Exclusive Telecommunications Easement Area so long as such grant of other easements or rights does not unreasonably interfere with FirstDigital’s operations therein. In addition, Grantor hereby grants to FirstDigital the sole and exclusive right and easement to design, engineer, construct, install, test, operate, maintain, repair, replace, relocate, and remove Communications Facilities within the Exclusive Telecommunications Easement Area up to a Resident’s Demarcation Point(s) and to manage the way by which other Communications Service Providers shall gain access to such Demarcation Point(s) through FirstDigital’s Communication Facilities; provided, however, that nothing herein shall restrict the rights of other Communications Service Providers to dig trenches and lay their own Communications Facilities pursuant to existing or future franchise rights and/or public utility easements. FirstDigital and its employees, agents, contractors, invitees, and licensees shall have the right to access its Communications Facilities in the Project on a 24-hour-per-day 7-day-per-week basis, provided that such access shall not unreasonably disturb, disrupt or interfere with the ongoing development, construction, use and enjoyment of the Project.

3. Infrastructure. Each Owner will coordinate with FirstDigital to designate a mutually agreeable Demarcation Point(s) on its property and FirstDigital at its cost and expense will design, engineer, extend and install the Communications Facilities to such designated Demarcation Point(s).

4. Securing Other Communications Facilities and Services; Failure to Perform by FirstDigital. An Owner shall have the right to secure its own Communications Facilities and Services at its own cost and expense for any reason. Furthermore, an Owner shall have the right to elect to terminate this Easement with respect to its property if FirstDigital breaches or fails to perform any obligation under this Easement and fails to cure such breach or failure within thirty (30) days after receipt of written notice from an Owner describing such breach or failure; provided, however, that (a) if the nature of the breach or failure is such that more than 30 days are reasonably required to cure, prior to such Owner having the right to terminate this Easement with respect to its property, FirstDigital shall have such period as is reasonably necessary to cure so long as it commences the cure of such breach within the 30-day period and after such commencement diligently prosecutes the same to completion; and (b) in no event shall an Owner have the right to terminate this Easement with respect to any property that is needed or is being used to provide Communications Facilities and Communications Services to other Residents in the Project.

5. Repair of Damage. FirstDigital shall promptly repair any damage to the Project that is caused by FirstDigital’s installation, use, maintenance, repair, or removal of

Communications Facilities; provided that FirstDigital shall not be responsible for damage caused by Owner or other persons.

6. Ownership of Communications Facilities. FirstDigital will retain ownership of and title to all Communications Facilities installed at the Project by or on behalf of FirstDigital. The Communications Facilities will retain their character as personal property following their installation. In no event will the Communications Facilities installed at the Project by or on behalf of FirstDigital be deemed to be a fixture of the Project or of any Resident. Without limiting the generality of the foregoing, Owner shall not have the right to create any security interest in such Communications Facilities. FirstDigital shall have the right to grant a security interest in such Communications Facilities to one or more lenders and to assign its rights and obligations under this Agreement.

7. Other Communications Service Providers. FirstDigital recognizes and agrees that Residents in the Project are not obligated to select FirstDigital as their Communications Service Provider. In the event any such Resident selects another Communications Service Provider, such Resident shall not be obligated hereunder to compensate FirstDigital for Communications Services obtained by Resident from another Communications Service Provider and FirstDigital shall reasonably cooperate with such other Communications Service Provider and allow, at such other Communications Service Provider's request, such Communications Service Provider access to the requesting Resident in accordance with the terms of an interconnection agreement between FirstDigital and such other Communications Service Provider which contains terms and conditions acceptable to FirstDigital; provided, however, that such other Communications Service Provider shall not be required to enter into such interconnection agreement if it elects to provide Communication Services in another manner and without the use of FirstDigital's Communication Facilities. No such interconnection shall adversely impact FirstDigital's Communications Facilities or FirstDigital's ability to provide Communications Services to the Project. Notwithstanding anything to the contrary in this Section 7, FirstDigital shall be entitled to reasonable compensation from the interconnecting Communications Service Provider or the Resident for the reasonable costs and fees associated with an interconnection of the other provider's Equipment with FirstDigital's Communications Facilities, in the event that such other Communication Service Provider enters into such interconnection agreement with FirstDigital.

8. Interconnection. All Communications Service Providers desiring to provide Communications Services to Residents through means requiring fiber, copper and coaxial cables or other similar Communications Facilities installed by FirstDigital (specifically excluding satellite telecommunications services) will do so by interconnecting to FirstDigital's Communications Facilities, subject to the rights of other Communications Service Providers to dig trenches and lay their own Communications Facilities pursuant to existing or future franchise rights and/or public utility easements or to otherwise provide satellite-based telecommunications services. FirstDigital will have the authority to interconnect a Communications Service Provider's communications facilities to FirstDigital's Communications Facilities and need not obtain permission from an Owner to do so.

9. Quality of Service. FirstDigital will provide and maintain a quality of service with respect to its Communications Facilities equal to or greater than Bellcore product quality

and reliability standards. Furthermore, FirstDigital will maintain a local or toll-free telephone number which will be available to its subscribers 24 hours a day, 7 days a week. FirstDigital representatives will be available to respond to customer telephone inquiries during normal business hours. FirstDigital will begin working on service interruptions promptly and in no event later than the next business day after notification of the service problem, excluding conditions beyond the reasonable control of FirstDigital.

10. Nature of Provisions. The Parties expressly intend that the rights and easements granted to FirstDigital shall be easements in gross and shall: (a) constitute a covenant running with the Property; (b) bind every person and Owner having any fee, leasehold, mortgage lien or other interest in any portion of the Property concerned; (c) bind any person and Owner whose title to the Property or any portion thereof is acquired by judicial foreclosure, trustee's sale, deed in lieu of foreclosure or other means.

11. Term of Agreement. Except as set forth in Section 4 above, this Agreement and the rights and easements granted to FirstDigital hereunder shall continue until (a) this Agreement is terminated by Grantor and FirstDigital or (b) the Communications Services Agreement expires or is terminated.


12. General Provisions. This instrument shall be governed by, and construed and interpreted in accordance with, the laws (excluding the choice of laws rules) of the State of Utah. This instrument shall inure to the benefit of, and be binding on, the Parties and their respective successors and assigns. Whenever possible, each provision of this instrument shall be interpreted in such manner as to be valid under applicable law; but, if any provision of this instrument shall be invalid or prohibited under applicable law, such provision shall be ineffective to the extent of such invalidity or prohibition without invalidating the remainder of such provision or the remaining provisions of this instrument.

[Signatures on the Next Page]

The parties have executed this Agreement to be effective on the Effective Date.


GRANTOR:

Tanuki Investments, LLC,
a Utah limited liability company

By: 
Name: Bryan Flamm
Title: Manager

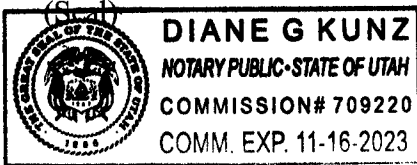
FIRSTDIGITAL:

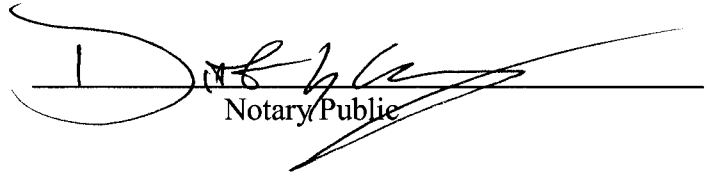
FirstDigital Telecom, LLC,
a Utah limited liability company

By: 
Name: WESLEY MCDONALD
Title: President

State of Utah)
) ss.
County of Salt Lake)

The foregoing instrument was acknowledged before me this 12th day of May, 2020, by Bryan Flamm the Manager of Tanuki Investments, LLC, a Utah limited liability company.

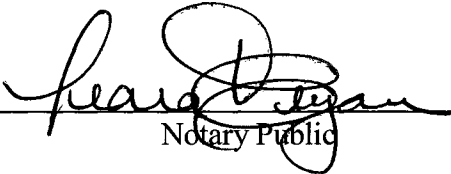



Notary Public

State of Utah)
) ss.
County of Salt Lake)

The foregoing instrument was acknowledged before me this 9th day of MAY, 2020, by Wesley McDuggal, the PRESIDENT of FIRSTDIGITAL TELECOM, LLC.

(Seal)



Notary Public



EXHIBIT A

to

COMMUNICATIONS EASEMENT AGREEMENT

Site Plan

[See attached]

TANUKI, LLC



EXHIBIT B

to

COMMUNICATIONS EASEMENT AGREEMENT

Legal Description of the Property

Legal Description

WEST PORTION OF COLLINS PURCHASE (TANUKI)

A Portion of the West Half of Section 10 and West Half of Section 3, Township 5 South, Range 1 West, Salt Lake Base and Meridian, described as follows:

Beginning at a point located S0°11'02"W along the Quarter Section Line 2969.72 feet and West 1216.19 feet from the North 1/4 Corner of Section 10, Township 5 South, Range 1 West, Salt Lake Base and Meridian; thence S89°40'27"W 1047.25 feet; thence N5°03'04"E 6998.96 feet; thence N89°52'43"E 1644.05 feet; thence S0°17'28"W 304.24 feet to the proposed westerly right-of-way line of Mountain View Corridor; thence along said right-of-way line the following twelve (12) courses: thence southwesterly along the arc of a 1000.00 foot radius non-tangent curve to the left (radius bears: S69°02'57"E) 21.43 feet through a central angle of 1°13'41" (chord: S20°20'12"W 21.43 feet); thence S19°43'22"W 600.87 feet; thence S15°24'52"W 391.36 feet; thence S17°09'12"W 330.78 feet; thence along the arc of a 1229.50 foot radius curve to the left 452.55 feet through a central angle of 21°05'21" (chord: S6°36'32"W 450.00 feet); thence S3°56'09"E 560.76 feet; thence along the arc of a 1085.00 foot radius curve to the right 643.69 feet through a central angle of 33°59'29" (chord: S13°03'36"W 634.29 feet); thence S30°03'20"W 320.30 feet; thence along the arc of a 4000.00 foot radius curve to the left 1453.26 feet through a central angle of 20°48'59" (chord: S19°38'51"W 1445.28 feet); thence S9°14'21"W 197.23 feet; thence along the arc of a 5312.50 foot radius curve to the left 1686.05 feet through a central angle of 18°11'03" (chord: S0°08'50"W 1678.98 feet); thence S8°56'42"E 252.73 feet to the point of beginning.

Contains: ±190.43 Acres

LESS AND EXCEPTING THEREFROM THE FOLLOWING DESCRIBED PROPERTY:

A parcel of land situated in the SW ¼ SW ¼ of Section 3, Township 5 South, Range 1 West, S.L.B. & M., more particularly described as follows:

Beginning at the southeast fence corner of an existing fence surrounding a water tank, which point is 1549.27 feet N89°32'24"W along the section line and 564.31 feet North from the South quarter corner of said Section 3; and running thence along said existing fence the following four (4) courses and distances: (1) N85°19'19"W 200.71 feet; (2) thence N5°06'14"E 200.67 feet; (3) thence S85°06'52"E 200.20 feet; (4) thence S4°57'34"W 199.94 feet to the point of beginning.

Contains: ±0.92 Acres

NET AREA OF WEST PORTION OF COLLINS PURCHASE (TANUKI): ±189.51 ACRES

EXHIBIT C

to

COMMUNICATIONS EASEMENT AGREEMENT

Exclusive Telecommunications Easement Area

[TO BE INSERTED.]

EXHIBIT D

TO

COMMUNICATIONS SERVICES AGREEMENT

Multifamily Area Pricing

1-149 Units	150-249 Units	250+ Units
\$30.00 mo./Unit	\$27.50 mo./Unit	\$25.00 mo./Unit