

153798-KAP  
WHEN RECORDED, MAIL TO:

E 3452393 B 7933 P 199-211  
RICHARD T. MAUGHAN  
DAVIS COUNTY, UTAH RECORDER  
1/26/2022 9:27:00 AM  
FEE \$0.00 Pgs: 13  
DEP eCASH REC'D FOR COTTONWOOD TITLE INS

JF PARKWAY PARTNERS QOZB, LLC  
Attn: Brock Loomis  
1216 W. Legacy Crossing Blvd., Suite 300  
Centerville, Utah 84014

Affecting Parcel No(s) 11-856-0001

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**DECLARATION AND GRANT  
OF  
CONSTRUCTION AND MAINTENANCE EASEMENT**

THIS DECLARATION AND GRANT OF CONSTRUCTION AND MAINTENANCE EASEMENT (this "Declaration") is made and entered into as of Jan. 18, 2022, by and between JF PARKWAY PARTNERS QOZB, LLC, a Utah limited liability company (the "Owner"), whose address is 1216 W. Legacy Crossing Blvd., Suite 300, Centerville, Utah 84014, and Layton City Corporation, (the "City"), whose mailing address is 437 North Wasatch Drive, Layton, Utah 84041.

RECITALS

- A. The City owns real property located in Davis County, Utah, and as more specifically set forth in Exhibit A attached hereto (the "City Property").
- B. The Owner owns real property located in Davis County, Utah, and as more specifically set forth in Exhibit B attached hereto (the "Easement Property"), which Easement Property is a portion of a larger tract of land owned by Owner.

NOW, THEREFORE, to these ends and in consideration of the terms and conditions of this agreement, as well as the mutual benefits to be derived herefrom and other good and valuable consideration acknowledged and received by each of the parties hereto, the City and the Owner hereby agree as follows:

TERMS

1. Grant of Easement. The Owner hereby grants and conveys a nonexclusive easement and right of way (the "Easement") upon, over and across the Easement Property for the uses described herein.
2. Shared, Nonexclusive Use. Exclusive use of the Easement Property is not hereby granted by the Owner. Instead, the Owner expressly reserves to itself, the right and easement for ingress and egress and all other uses or purposes that do not materially interfere with the City's use of the Easement consistent with this Declaration.

3. Scope of Use. The Easement shall be used by the City, and its successors, assigns, contractors and agents, for the purposes of accessing the City Property and, subject to the terms below, constructing, installing, managing, operating, repairing and maintaining a pedestrian bridge (and certain accessory or incidental purposes related thereto) on such City Property (collectively, the “Pedestrian Bridge Infrastructure”). Except as indicated in Exhibit B (i.e, the hatched public utility and drainage easement area, situated northeast and contiguous to Area B, which is hereby granted), this Dedication does not include or grant any independent right to install any portion of the Pedestrian Bridge Infrastructure, or any other utilities or structures, on or under the Easement Property. Rather, it is intended that the Easement Property be used by the City for the purpose of ingress and egress to the City Property and to perform its intended surface activities thereon (e.g., temporary staging, construction, cleaning and maintenance, etc.). However, this Dedication is not intended to abrogate or diminish any of the City’s existing or future land use rights, including any surface or subsurface land use rights (e.g., public utility and drainage easements that are near or within the Easement Property). Except as authorized herein, the City shall not utilize the Easement Property in any manner that has a material adverse effect on the Owner’s use of the Property (or its successors, assigns, contractors, guests, residents, invitees, tenants, or agents).

4. Amendment and Termination. This Declaration may not be amended or modified except with the consent of the Owner and the City and, then, only by written instrument duly executed and acknowledged and recorded in the office of the County Recorder of Davis County, Utah. Notwithstanding the foregoing, this Declaration shall automatically terminate in the event of an uncured default by the City under that certain Permitted Use Agreement, dated JANUARY 15<sup>th</sup> and a Memorandum of such Permitted Use Agreement recorded on 1-26-22 in the official records of the Davis County Recorder’s Office.

5. Default. No party shall be deemed to be in default of any provision of this Declaration except upon the expiration of fourteen (14) days from receipt of written notice specifying the particulars in which such person has failed to perform the obligations of this Declaration, unless such party, prior to the expiration of said fourteen (14) days, has rectified the particulars specified in said notice. Failure to cure any such default shall entitle the nonbreaching party to any remedies at law or equity including, without limitation, specific performance, and reasonable expenses. Notwithstanding the foregoing, each party shall pay its own costs or attorney fees that arise from the adoption or enforcement of this Declaration.

6. Repair of Easement Property. The City shall be responsible, at its sole cost and expense, to promptly repair any damage it, or its successors, assigns, contractors or agents, causes to the Easement Property. After such repair, the damaged location within the Easement Property shall be in the substantially same or better condition as it existed immediately prior to such damage. If, after 14 days’ written notice is received by the City, the City does not timely repair any such damage, then the Owner may be permitted to do so on behalf of the City and thereafter seek reimbursement from the City of all costs and expenses Owner incurred in so doing.

7. Waiver. The failure of a party to insist upon strict performance of any of the terms, covenants, conditions or agreements contained herein shall not be deemed a waiver of any rights or remedies that said party may have, and shall not be deemed a waiver of any subsequent breach or default in any of the terms, covenants, conditions or agreements contained herein by the same or any other party.

8. No Joint Venture; Merger. The provisions of this Declaration are not intended to create, nor shall they be in any way interpreted or construed to create, a joint venture, partnership or any similar relationship between the parties. No separate legal entity is created by this agreement. This Declaration contains the entire agreement between the parties and supersedes all prior agreements, oral or written, with respect to the subject matter hereof. The provisions of this Declaration shall be construed as a whole and not strictly for or against any party. The parties recognize and acknowledge the City is covered by the Governmental Immunity Act of Utah, codified at Section 63G-7-101, et seq., Utah Code Annotated, as amended, and nothing herein is intended to waive or modify any and all rights, defenses, or provisions provided therein. Officers and employees performing services pursuant to this agreement shall be deemed officers and employees of the party employing their services, even if performing functions outside of the territorial limits of such party and shall be deemed officers and employees of such party under the provisions of the Utah Governmental Immunity Act, if applicable.

9. Choice of Law; Recordation. This Declaration shall be governed by and construed in accordance with the laws of the State of Utah. This Declaration shall be recorded in the records of the County Recorder of Davis County, Utah.

10. Successors and Assigns; Run with the Land. All of the provisions in this Declaration, including the benefits and burdens, shall be and are binding upon and inure to the benefit of the successors and assigns of the parties hereto. All obligations of each party under this Declaration, if more than one person or entity is the successor or assign of such party, shall be jointly and severally binding on each such person or entity. The covenants agreed to and the restrictions imposed herein shall continue as a servitude running in perpetuity with the Properties and shall survive any death or termination of any party's existence. The easements, agreements, duties, responsibilities and covenants herein contained shall be easements and covenants running with the land.

11. No Third Party Beneficiaries. Nothing in this Declaration is intended to create an enforceable right, claim or cause of action by any third party against any party to this Declaration.

12. Authority of Signatory. Each person executing this Declaration certifies that he or she is duly authorized to execute this Declaration on behalf of the party for which he or she is signing, and that the person has the authority to bind said party to the terms of this Declaration.

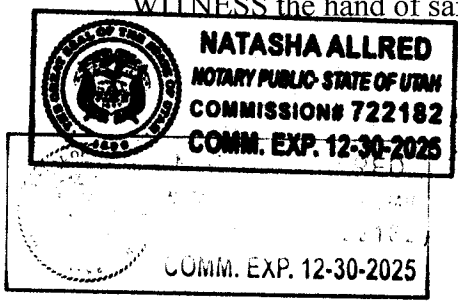
13. Independent Provisions. If any provision herein is held invalid or unenforceable, such a finding shall not affect the validity of the remainder of the Declaration, the parties hereto hereby stipulate that all provisions are deemed severable and independent.

14. Counterparts. This Declaration and any originals of exhibits referred to herein may be executed in any number of duplicate originals or counterparts, each of which (when the original signatures are affixed together with the applicable acknowledgment) shall be an original but all of which shall constitute one and the same instrument.

15. Miscellaneous. The paragraph and other headings contained in this Declaration are for purposes of reference only and shall not limit, expand, or otherwise affect the construction of any of the provisions of this Declaration. Whenever the context reasonably permits, the singular shall include the plural, the plural shall include the singular, and the whole shall include any part thereof. Further, the masculine gender shall include the female gender and neuter, and vice versa. The recital paragraphs set forth above are expressly incorporated in this Declaration by this reference. This Declaration represents the wording selected by the parties to define their agreement and no rule of strict construction shall apply against either party. Each party represents that it has had or has been advised to have the representation of its legal counsel in connection with the preparation of this Declaration. The words “hereof,” “hereto,” “herein” and “hereunder” and words of similar import, when used in this Declaration, shall refer to this Declaration as a whole and not to any particular provision of this Declaration. References herein to Paragraphs and Exhibits shall be construed as references to Paragraphs and Exhibits of this Declaration unless the context otherwise requires. Any terms defined in this Declaration in the singular shall have a comparable meaning when used in the plural, and vice versa.

[Signature Page Follows]

WITNESS the hand of said Owen Fisher ~~Owner~~ this 18<sup>th</sup> day of January, 2022.



JF PARKWAY PARTNERS QOZB, LLC,  
a Utah limited liability company

By: [Signature]  
Name: Owen Fisher  
Its: manager

STATE OF UTAH            )  
County of Davis         )                   : ss.

On this 18<sup>th</sup> day of JANUARY, 2022, before me, the undersigned, a Notary Public in and for said State of Utah, personally appeared OWEN FISHER, the MANAGER of JF Parkway Partners QOZB, LLC, a Utah limited liability company, to me known and acknowledged to me that the said instrument is the free and voluntary act and deed, for the uses and purposes therein mentioned, and on oath stated that he/she/it is authorized to execute the said instrument.

WITNESS MY HAND and official seal hereto affixed the day, month and year in this certificate first above written.

My commission expires:  
12/30/2025

[Signature]  
Residing at: DAVIS COUNTY

WITNESS the hand of said City this 14<sup>th</sup> day of January, 2022.



Joy Petro  
Name: Joy Petro, Mayor

STATE OF UTAH )

: ss.

County of Davis )

On this 14<sup>th</sup> day of January, 2022, before me, the undersigned, a Notary Public in and for said State of Utah, personally appeared Joy Petro, individually, to me known and acknowledged to me that the said instrument is the free and voluntary act and deed, for the uses and purposes therein mentioned, and on oath stated that he/she/it is authorized to execute the said instrument.

WITNESS MY HAND and official seal hereto affixed the day, month and year in this certificate first above written.

My commission expires:

4/10/23

Joni Bird  
Residing at: \_\_\_\_\_

ATTEST

Kimberly Read  
KIMBERLY READ, City Recorder



APPROVED AS TO FORM

David Price  
DAVID PRICE, Parks and Recreation

Gary Crane  
GARY CRANE, City Attorney

EXHIBIT "A"

CITY PROPERTY





EXHIBIT "B"

LEGAL DESCRIPTION OF EASEMENT PROPERTY

## EXHIBIT B

### CONSTRUCTION AND MAINTENANCE EASEMENT

**Overall Area**

A part of the Northwest Quarter of Section 28, Township 4 North, Range 1 West, Salt Lake Base and Meridian, U.S. Survey, Layton City, Davis County, Utah:

A parcel of land being part of Lot 1, Layton Parkway North Subdivision recorded in the office of Davis County Recorder on March 20, 2020 as Entry no. 3235533 in Book 7474 at Pages 347-348, with the point of beginning being 1486.85 feet North 00°04'16" East and 810.50 feet East to the southeast corner of said Lot 1 from the West Quarter Corner of said Section 28, and running thence South 56°48'54" West 275.21 feet, thence North 33°11'06" West 165.51 feet, thence North 56°48'54" East 170.14 feet to a point on a 6.50 foot radius curve to the left a distance of 11.61 feet (Central Angle equals 102°21'14" and Long Chord bears North 05°38'17" East 10.13 feet), thence North 45°32'20" West 32.93 feet, thence North 71°33'41" West 31.17 feet, thence North 33°11'06" West 7.01 feet, thence South 56°48'54" West 2.23 feet, thence North 33°11'06" West 42.97 feet, thence North 18°43'36" East 29.19 feet, thence North 44°27'40" East 41.43 feet to a point on a 5.630 foot radius curve to the right the distance of 313.48 feet (Central Angle equals 03°11'25" and Long Chord bears South 44°56'54" East 313.44 feet) along the easterly line of Lot 1, said easterly line also being the Westerly right-of-way line of the Union Pacific Railroad Property to the point of beginning.

Contains 1.20 acres (52,279.63 sq. ft.)

Less and Except:

**Area A**

A part of the Northwest Quarter of Section 28, Township 4 North, Range 1 West, Salt Lake Base and Meridian, U.S. Survey, Layton City, Davis County, Utah:

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Contains 0.49 acres (21,358.12 sq. ft.)

Less and Except:

**Area B**

A part of the Northwest Quarter of Section 28, Township 4 North, Range 1 West, Salt Lake Base and Meridian, U.S. Survey, Layton City, Davis County, Utah:

A parcel of land being part of Lot 1, Layton Parkway North Subdivision recorded in the office of Davis County Recorder on March 20, 2020 as Entry no. 3235533 in Book 7474 at Pages 347-348, with the point of beginning being on the arc of 5.630 foot radius curve to the left a distance of 133.35 feet (Central Angle equals 01°21'25" and Long Chord bears North 44°02'14" West 133.34 feet) along the easterly line of Lot 1, said easterly line also being the Westerly right-of-way line of the Union Pacific Railroad Property, and 21.83 feet South 44°27'40" West from the southeast corner of said Lot 1, said point being 1486.85 feet North 00°04'16" East and 810.50 feet East from the West Quarter Corner of said Section 28, and running thence South 44°27'40" West 18.00 feet, thence North 45°32'20" West 97.00 feet to a point on a 3.0 foot radius curve to the right a distance of 4.71 feet (Central Angle equals 89°55'43" and Long Chord bears North 00°32'20" West 4.24 feet), thence North 44°27'40" East 15.00 feet, thence South 45°32'20" East 100.00 feet to the point of beginning.

Contains 0.04 acres (1,797.88 sq. ft.)

Total Acreage 0.67 acres (29,123.63 sq. ft.)

| LINE TABLE |             |          |
|------------|-------------|----------|
| LINE       | BEARING     | DISTANCE |
| L1         | S56°48'54"W | 2.23'    |
| L2         | N33°11'06"W | 26.01'   |
| L3         | N33°11'06"W | 3.58'    |
| L4         | N56°48'54"E | 5.35'    |
| L5         | S33°11'06"E | 1.50'    |
| L6         | S33°11'06"E | 18.50'   |
| L7         | S33°11'06"E | 11.50'   |
| L8         | S44°27'40"W | 21.83'   |
| L9         | S44°27'40"W | 18.00'   |
| L10        | N44°27'40"E | 15.00'   |

| CURVE TABLE |            |        |        |               |              |
|-------------|------------|--------|--------|---------------|--------------|
| CURVE       | DELTA      | RADIUS | LENGTH | CHORD BEARING | CHORD LENGTH |
| C1          | 102°21'14" | 6.50'  | 11.61' | N05°38'17"E   | 10.13'       |
| C2          | 89°59'50"  | 16.50' | 25.92' | N11°48'54"E   | 23.33'       |
| C3          | 12°32'46"  | 25.0'  | 5.47'  | S09°57'32"W   | 5.46'        |
| C4          | 89°55'43"  | 3.0'   | 4.71'  | N00°32'20"W   | 4.24'        |

**NOTE**

THE NAD83 ROTATION BEARING IS NORTH 00°26'25" EAST, ALONG THE SECTION LINE BETWEEN THE WEST QUARTER CORNER AND THE NORTHWEST CORNER OF SECTION 28, TOWNSHIP 4 NORTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN AS SHOWN.





### EXHIBIT B CONSTRUCTION AND MAINTENANCE EASEMENT

|                   |            |       |   |              |  |
|-------------------|------------|-------|---|--------------|--|
| DRAWN BY _____    | DATE _____ | SHEET | 1 | TOTAL SHEETS |  |
| APPROVED BY _____ | DATE _____ | SHEET | 2 | TOTAL SHEETS |  |

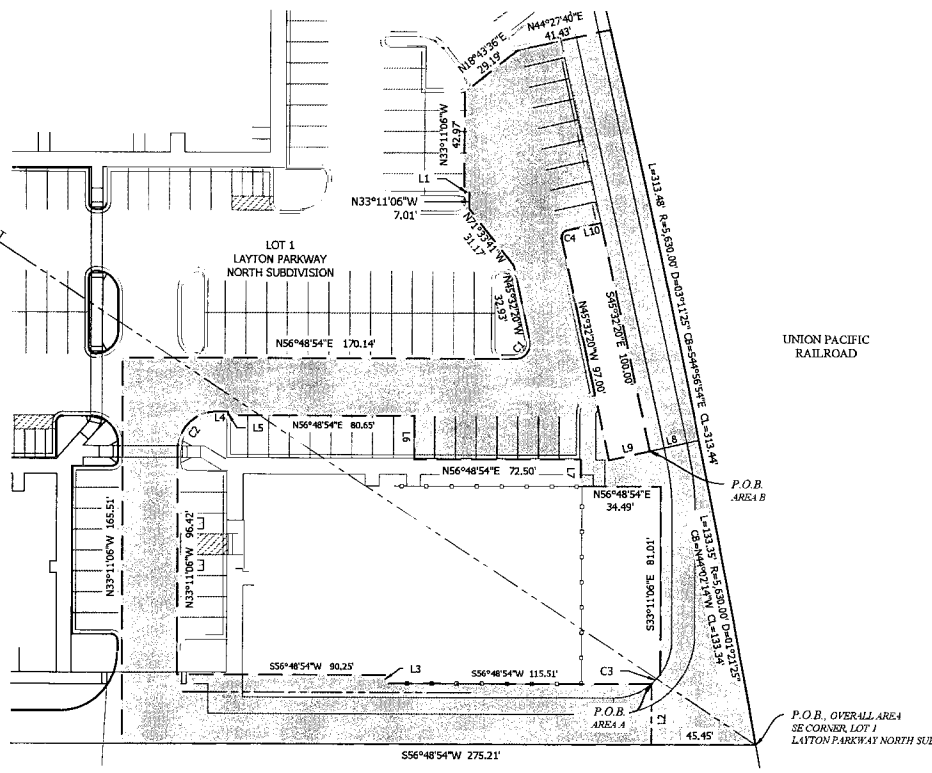
### EXHIBIT B

SCALE 1" = 40'

LEGEND

-  SUBDIVISION BOUNDARY
-  MAINTENANCE ACCESS

WEST QUARTER CORNER OF SECTION 28, TOWNSHIP 4 NORTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN



UNION PACIFIC RAILROAD

P.O.B. AREA B

P.O.B. OVERALL AREA SE CORNER LOT 1 LAYTON PARKWAY NORTH SUB.

NOTE  
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**Layton City**  
437 N WASATCH DR.  
LAYTON, UT 84041  
(801) 336-3700

EXHIBIT B  
CONSTRUCTION AND MAINTENANCE EASEMENT

|      |    |   |          |
|------|----|---|----------|
| DATE | BY | 2 | REVISION |
|      |    |   |          |
|      |    |   |          |
|      |    |   |          |

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