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GARY W. OTT
RECORDER, SALT LAKE COUNTY, UTAH
SOUTH JORDAN
1600 W TOWNE CENTER DR
SOUTH JORDAN UT 84095-8265
BY: DKA, DEPUTY - WI 5 P.

WHEN RECORDED, MAIL TO:
Attn: South Jordan City Recorder
1600 West Towne Center Drive
South Jordan, Utah 84095

AFFECTING PARCELS: 27-19-200-007

JORDAN HEIGHTS ACCESS EASEMENT AGREEMENT

The CITY OF SOUTH JORDAN, a Utah municipal corporation ("City"), and the JHSJ OFFICE #1, LLC ("Grantee"), enter into this agreement August 1, 2016 ("Effective Date"), and agree as set forth below.

RECITALS

A. City, is the record owner of certain real property located at approximately 4002 West Daybreak Parkway (11400 South), South Jordan, Utah 84095 (the "Property"), and legally described as follows:

A 33' wide area located in the NE1/4 of Section 19, Township 3 South, Range 1 West, Salt Lake Base and Meridian, more particularly described as follows:

Beginning at a point located South 2,500.03 feet and West 382.57 feet from the Northeast Corner of Section 19, Township 3 South, Range 1 West, Salt Lake Base & Meridian (Basis of Bearing: S89°50'52"E between the Northeast Corner of Section 19 and the North 1/4 Corner of Section 20); thence Southwesterly along the arc of a 131.00 foot radius non-tangent curve (radius bears: S55°28'16"E) 63.98 feet through a central angle of 27°58'51" (chord: S20°32'18"W 63.34 feet); thence S6°32'52"W 28.01 feet; thence N83°38'33"W 33.00 feet; thence N6°32'52"E 28.12 feet; thence along the arc of a 164.00 foot radius curve to the right 62.82 feet through a central angle of 21°56'47" (chord: N17°31'16"E 62.43 feet); thence Southeasterly along the arc of a 3467.00 foot radius non-tangent curve (radius bears: N6°34'58"E) 36.43 feet through a central angle of 0°36'07" (chord: S83°43'05"E 36.43 feet) to the point of beginning.

Contains: 3,015± s.f.

B. Grantee desires to construct a commercially viable office project on its property, Lot 1 and Lot 2 of the Jordan Heights Phase 1A Subdivision, which is located at approximately the northwest corner of Daybreak Parkway and 4000 West in South Jordan (the "Project"), and that has sufficient ingress and egress to the Project.

C. City desires to ensure the free flow of traffic in the area around the Project by granting Grantee an access easement across the Property, which is part of a large parkstrip located between the Project and Daybreak Parkway.

Based on the foregoing recitals, the Parties agree as follows:

TERMS

1. **EASEMENT.** City hereby grants to Grantee a non-exclusive, irrevocable, and perpetual easement for access as well as pedestrian and vehicular ingress and egress over, upon, and across the Property (the "Easement").
2. **AGREEMENTS WITH RESPECT TO EASEMENT.** The following terms and provision shall govern the rights and obligations of the parties and their successors in interest with respect to the easements granted hereunder:
 - a. **Condition of the Easement Area.** Grantee accepts the Easement and all aspects thereof as "AS IS," "WHERE IS" condition, without warranties, either express or implied, "with all faults," including but not limited to both latent and patent defects.
 - b. **No barriers or Interference.** Grantee shall not construct, place, or permit to be constructed or placed within the Easement any fences, curbs, barriers, or other improvements or obstacles that prevent, obstruct, or impede the passage of pedestrians or vehicles within or across the Easement. The foregoing provision shall not prohibit Grantee from temporarily erecting a barricade that is reasonably necessary for the construction, repair, or maintenance of any portion of the Easement; provided, however, that any such work shall be conducted in a manner calculated to cause the least interference to the use of the Easement as is reasonably practicable.
 - c. **Construction, Repair, and Maintenance.** Grantee, at its own cost and expense, shall be responsible for and shall have control of the construction, maintenance, and repair of the driveway and other access improvements in the Easement, which shall include snow removal and the maintenance, repairs, and replacement of any asphalt, concrete, storm drainage improvements, lighting improvements, and restriping drive lanes. Grantee shall at all times maintain the Easement in a clean, sightly, safe, unobstructed, good, and usable condition.
 - d. **Liens.** Grantee shall at all times keep the Property free from mechanics' liens or similar liens arising on account of or resulting from any act by or on behalf of Grantee. If any mechanics' lien or similar lien is recorded against the Property on account of any act by or on behalf of Grantee, Grantee shall, within 45 days after notice from City, cause such mechanics' lien to be removed from the Property.
3. **COVENANTS RUN WITH LAND.** All provisions of this agreement, including the benefits and burdens set forth herein, shall run with the Property and are binding on and shall inure to the benefit of the successors and assigns of the parties hereto. Grantee may freely assign this agreement to future owners of the Project.
4. **INDEMNITY.** Grantee and its successors, assigns, customers, employees and agents shall use the Easement at their own risk. Grantee shall defend, indemnify, and hold City,

its elected officials, officers, and employees, harmless from any and all claims, damages, injuries, lawsuits, demands, judgments or liability arising out of, directly or indirectly, the Grantee's or its employees', customers', vendors', or other invitees' use or occupancy of the Easement by authority of this agreement, or Grantee's negligent performance, or any negligent omission in performing the obligations described herein.

5. **INSURANCE.** Grantee shall obtain and maintain a policy of commercial general liability insurance sufficient to insure its interest against claims for personal injury, bodily injury, death, and property damage occurring on, in or about the Property. City shall be named as an additional insured on each such policy.

6. **MISCELLANEOUS.**

- a. **No Gift or Dedication.** Nothing contained in this agreement shall be deemed to be a gift or dedication to or for the general public or for any public purposes whatsoever, it being the intention of the parties that this Agreement be strictly limited to and for the purposes expressed herein.
- b. **Entire Agreement.** This agreement sets forth the entire understand of the parties as to the matters set forth herein and cannot be altered or otherwise amended, except pursuant to an instrument in writing signed by each of the parties hereto.
- c. **No Waiver.** Any party's failure to enforce any provision of this agreement shall not constitute a waiver of the right to enforce such provision. The provisions may be waived only in writing by the party intended to be benefited by the provisions, and a waiver by a party of a breach hereunder by any other party shall not be construed as a waiver of any succeeding breach of the same or other provisions.
- d. **Breach Will Not Terminate.** No breach or violation of any provision of this agreement will entitle any person or entity to cancel, rescind, or otherwise terminate this agreement, but this limitation will not affect, in any manner, any other rights or remedies to which a party may be entitled at law or in equity by reason of a breach of this agreement.
- e. **Headings.** The descriptive headings of the paragraphs of this agreement are inserted for convenience only and shall not control or affect the meaning or construction of any provision this agreement.
- f. **Severability.** If any of the provisions of this agreement are declared void or unenforceable, such provision shall be severed from this agreement. This agreement shall otherwise remain in full force and effect provided the fundamental purpose of this agreement and the parties' ability to complete the development of the Improvements as set forth herein is not defeated by such severance.
- g. **Governing Law.** The laws of the State of Utah shall govern the interpretation and enforcement of this agreement.

- h. **Attorney's Fees and Costs.** If any party brings legal action either because of a breach of this agreement or to enforce a provision of this agreement, the prevailing party or parties shall be entitled to reasonable attorney's fees and court costs.
- i. **Binding Effect.** The benefits and burdens of this agreement shall be binding upon and shall inure to the benefit of the parties and their respective heirs, legal representatives, successors in interest and assigns.
- j. **No Third Party Rights.** The obligations of the parties set forth in this agreement shall not create any rights in or obligations to any other persons or parties except to the extent otherwise provided herein.
- k. **No Agency Created.** Nothing contained in this Agreement shall create any partnership, joint venture, or agency relationship between the parties.

[SIGNATURE PAGES FOLLOW]

IN WITNESS WHEREOF, the parties have executed this agreement as of the Effective Date.

"CITY"

CITY OF SOUTH JORDAN, a Utah municipal corporation

By: *Gary L Whatcott*

Gary L Whatcott, City Manager
(Print name and title above)

APPROVED AS TO FORM:

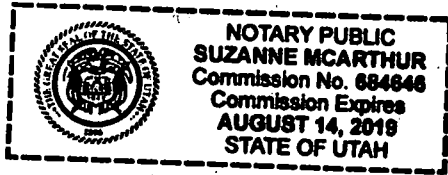
[Signature]
Attorney for City

State of Utah)

ss:

County of Salt Lake)

The foregoing instrument was acknowledged before me this 29th day of July, 2016, by *Gary L Whatcott*, the *City Manager* of the City of South Jordan, a Utah municipal corporation, on behalf of said municipal corporation.



Suzanne McArthur
Notary Public
My commission expires:
Residing at:

"GRANTEE"

JHSJ OFFICE #1, LLC, a Utah limited liability company

By: *[Signature]*

G. CHAS JOHNSON
(Print name and title above)

State of Utah)

ss:

County of Salt Lake)

The foregoing instrument was acknowledged before me this 1 day of August, 2016, by *G. Chas Johnson*, the *Manager* of JHSJ Office #1, LLC, a Utah limited liability company, on behalf of said LLC.



[Signature]
Notary Public
My commission expires:
Residing at: