

When recorded return to  
North Utah County Water Conservancy District  
c/o John H. Jacobs  
75 North Center Street  
American Fork, Utah 84003

### CORRECTED EASEMENT AGREEMENT

This Corrected Easement Agreement is made this 1<sup>st</sup> day of April, 2016, by and between the North Utah County Water Conservancy District (75 North Center Street, American Fork, Utah 84003) referred to as "Grantor"; and David E. Smith and Loretta Alice Smith, Trustees, or their successors in trust under the David Evans Smith Living Trust, dated April 13, 2004, as well as their heirs, successors and assignees, hereinafter referred to as "Grantees".

#### RECITALS

- A. Grantor is owner of certain real property located in Utah County, Utah and is known as the Grove Creek Dam and Debris Basin, and identified by the Utah County Recorder as parcel number 14:037:0066 ( the "Burdened Property").
- B. The purpose of the dam and debris basin is for flood control and to detain and retain water flowing into the debris basin.
- C. Any easement granted herein shall not interfere with the purpose of the dam and debris basin.
- D. The Burdened Property is adjacent to a certain parcel of real property owned by the Grantees identified by the Utah County Recorder as parcel number 14:037:0164 ("Benefitted Property")

- C. Grantor is willing to grant an easement to Grantees subject to the terms of this Agreement.
- D. Grantees request a 56-foot wide nonexclusive, perpetual easement, along with the necessary slope, the dimensions and location of which are identified on Exhibit A attached hereto and incorporated herein by this reference (the Easement Area”), to provide ingress, egress, and utilities to the Benefitted Property and shall inure to the benefit of the Grantees, and their respective, heirs, successors, and assigns (the “Easement Holders”).
- E. This Corrected Easement Agreement is to replace that previous *Easement Agreement* that was recorded on the 26th day of January, 2016 as Entry No. 21090:2016. It is noted that the original Easement Agreement had the wrong property description. The Grantees of the original Easement Agreement have filed a *Notice of Abandonment of Easement* which has been recorded with the Utah County Recorder on the 7<sup>TH</sup> day of April 2016, as Entry No. 29876:2016. The purpose of this Corrected Easement Agreement is to identify the correct property description of the easement.

WHEREFORE THE PARTIES AGREE IN CONSIDERATION OF THE RECITALS, TERMS AND CONDITIONS AS FOLLOWS:

1. Grant of Easement: Subject to the reservation, conditions and consideration of this Agreement, Grantor does hereby grant unto the Grantees, a 56' foot wide (together with the necessary slope ), nonexclusive, perpetual easement and right of way over, across, under, and upon the Easement Area which shall be appurtenant to, and for the benefit of the Grantees, as well as the Benefitted Property and may be used by the Easement Holders and their licensees and guests. Grantor also hereby grants and declares temporary easements for the installation of improvements and for incidental encroachment upon the Burdened Property which may occur as a result of any construction performed in the development, repair, or maintenance of the Easement Area. The property description of the easement is as follows:

Beginning at a point located South 1021.10 feet and East 882.80 feet and North 55

degrees 55 minutes 00 seconds East 10.00 feet from the Northwest Quarter Corner of Section 22, Township 5 South, Range 2 East, Salt Lake Base and Meridian; thence North 55 degrees 55 minutes 00 seconds East 56.01 feet; thence South 33 degrees 10 minutes 00 seconds East 367.98 feet; thence South 44 degrees 50 minutes 00 seconds West 57.25 feet; thence North 33 degrees 10 minutes 00 seconds West 378.985 feet to the point of beginning. Area = 28,342.80 square feet/ 0.651 Acres.

Together with the necessary slope easement needed on either side of the described easement.

2. Use of Easement Area: The easement granted herein and the entire Easement Area shall be used for the purposes of ingress and egress to the Benefitted Property and shall allow for construction and maintenance on and through the Easement Area for the purposes of providing ingress and egress to the Benefitted Property. The Easement Area shall also be used to provide installation, maintenance, repair and replacement of utilities to the Benefitted Property. Such utilities shall include electric, cable, gas, telephone, sewer, water, and other utilities. However, any improvements or utilities that are constructed or installed shall not interfere with the historical or natural water flows or run-off that course into the dam or debris basin. Grantees shall be responsible for installing and maintaining appropriate culverts, piping, or such other water conveyance so as not to interfere with the water flow. Prior to installing any improvements on the easement, Grantees shall provide Grantor notice and obtain written approval from the Grantor for any culverts, piping, or other means to allow the water flow into the basin. Such approval shall not be unreasonable withheld.
3. Construction, Maintenance, and Repair: The Easement Holders shall have the right, but not the obligation to construct, at their sole expense, improvements upon the Easement Area, including, but not limited to asphalt or concrete surfacing, curb, gutter and sidewalk, and other related improvements. The Easement Holders shall be responsible for maintaining the Easement Area, (including any culverts, piping, etc., for the water flows as described above) and to the extent necessary for the uses described in this Easement.
4. Permanent Easement: The easement created herein shall be a permanent and perpetual easement running with and for the benefit of and burden upon the properties identified herein. This Easement Agreement shall be binding upon the Grantor, the Easement

Holder, and their respective personal or legal representatives, heirs, successors, and assigns. Grantor acknowledges that the easement may be dedicated to Pleasant Grove City. Any successor to this easement shall be bound by the terms of this Easement Agreement.

5. Existing Easements: Grantee acknowledges that this easement is subject to any and all other easements whether recorded or unrecorded, including but not limited to, the easement with the United States of America, Salt Lake Metropolitan Water, and the City of Pleasant Grove.
6. Operation and Maintenance of Grove Creek: Grantee acknowledges that this easement is subject to Grantor's operation and maintenance of Grove Creek Dam and debris basin. Grantor retains the absolute right to take any and all measures necessary to operate and maintain the dam and debris basin. If such action requires the encroachment or damage to the improvements or utilities, or temporarily interferes with the ingress and egress IT SHALL BE AT GRANTEE'S EXPENSE. However, Grantor shall exercise due diligence in its operation and maintenance as to minimize the interference or damage to the improvements or utilities. Grantee acknowledges that this easement takes subject to rehabilitation of the dam, and any future measures the Grantor may take to maintain and preserve the dam and debris basin. Grantor shall not be held responsible for any damage or encroachment of the ingress, egress, improvements or utilities easement as a result of the rehabilitation work.
7. Storm water and Watershed: The Grove Creek Debris Basin is part of the Dry Creek-American Fork Watershed. As such, preservation of the watershed is material to the operation and maintenance of Grove Creek Debris Basin. Grantee acknowledges this condition. Grantee, and its successors, agree not to allow, and shall prevent, any street or development storm drainage into the Grove Creek Debris Basin as a condition of the grant of this easement.
8. Indemnification: Grantee and its successors and assigns shall indemnify and hold Grantor, its successors and assigns, harmless from any and all damages that may be caused by the ingress, egress, improvements, or utilities. This indemnification and hold harmless shall also include any personal injury, lien claims, or environmental issues that arise out of the project or its use and operation. Grantee shall keep the real property interest which it holds under this Agreement free from any claim, lien or encumbrance from any third

parties. Grantee further agrees to indemnify and hold Grantor harmless from any and all liability, loss, or damages Grantor may suffer as a result of claims, demands, costs, including attorney's fees, or judgments against it arising out of Grantee's construction, operation or maintenance of the ingress, egress, improvements or utilities. Grantee shall have a duty to defend Grantor against such claims.

9. Reservation: Subject to Grantee's prior written approval, Grantor reserves the right to grant third parties an easement along with Grantee's easement, provided such easement will not interfere with the Grantee's easement.
10. Utah to Control: This Agreement shall be governed by the laws of the State of Utah.
11. Waiver: Failure by either party to enforce any provision of this Agreement shall not be construed as a waiver of such provision of the right to such party thereafter to enforce such provision. No term or provision hereof shall be deemed waived and no breach excused unless such waiver or consent shall be in writing and signed by the party claimed to have waived or consented.
12. Modification: Except as expressly set forth elsewhere in this Agreement, the Agreement may be modified only in writing signed by all parties hereto.
13. Merger: This Agreement shall constitute the entire agreement between the parties hereto with respect to the subject matter hereof and shall supersede all prior correspondence, conversations, and negotiations with respect thereto.
14. Fees and Costs: The parties agree that reasonable attorney's fees and costs shall be awarded to the prevailing party in any arbitration or litigation between the parties in connection with this Agreement.
15. Severability: If any provision, in whole or in part, of this Agreement should be found to be invalid or unenforceable, it shall not affect the validity of any other provision within this Agreement which shall continue to bind the parties.
16. Existing Conditions: Grantee acknowledges that the easement granted hereunder is subject to the following:

- i. Any facts, rights, interests, or claims which are not shown by the public records, but which could be ascertained by an inspection of the land or by making inquiry of persons in possession thereof.
  - ii. Easements, liens or encumbrances, or claims thereof, which may be shown by the public records. Subject to all easements and rights of way actual or of record or that may be apparent upon inspection of the surface.
  - iii. Discrepancies, conflicts with boundary lines, shortages in area, encroachments, or any other facts which a correct survey would disclose, and which are not shown by the public records.
  - iv. Water rights, claims or titles to water.
  - v. Any requirements or restrictions which may now exist or could be imposed in the future by the State of Utah or United States of America.
  - vi. Any adverse claim based upon the assertion that: a) some portion of the land forms the bed or bank of a navigable river or lake, or lies below the mean high water mark thereof; b) the boundary of the land has been affected by a change in the course of water level of a navigable river or lake; c) the land is subject to water rights, claims or title to water and to any law or governmental regulation pertaining to wetlands.
17. Authority: The persons who have executed this Agreement represent and warrant that they are duly authorized to execute this Agreement in their individual or representative capacity as indicated.
18. Signature: This Agreement shall not become binding until signed by all of the parties.

**SIGNATURE AND NOTARIZATION ARE ON FOLLOWING PAGE**

IN WITNESS WHEREOF, the Grantor and Grantee have executed this Easement

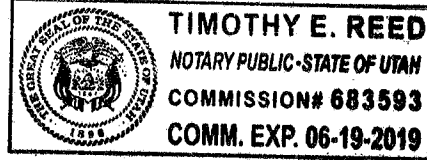
Agreement this 7 day of April, 2016.

Kathleen M. Cardwell  
KATHLEEN M. CARDWELL

Trustee of the  
David Evans Smith Living Trust, u.a.d. 4/13/2004  
Grantee

Hunt Willoughby  
NORTH UTAH COUNTY WATER  
CONSERVANCY DISTRICT

Grantor



STATE OF UTAH )

:SS.

County of Utah )

On the 25th day of March, 2016, personally appeared before me, Hunt Willoughby, who being by me duly sworn did individually say that he is the Chairman of the North Utah County Water Conservancy District, and that the within and foregoing instrument was signed in behalf of said special service district by authority of a motion of its board of directors and each duly acknowledged to me that said special service district executed the same.

Timothy E. Reed

Notary Public  
Residing at Utah County, Utah

STATE OF COLORADO )

:SS.

County of Douglas )

On the 1st day of April, 2016, personally appeared before me, Kathleen M. Cardwell, who being by me duly sworn did individually say that she is the Trustee of the David Evans Smith Living Trust under agreement dated April 13, 2004, and that the within and foregoing Corrected Easement Agreement was signed in behalf of said Trust and by that, the undersigned has authority to execute this agreement and duly acknowledged to me that said she executed the same.

Christie Thompson

Notary Public  
Residing at Douglas County, Colorado

