



When Recorded, Mail To:

City of Saratoga Springs  
Attn: City Recorder  
1307 N. Commerce Drive, Suite 200  
Saratoga Springs, UT 84045

ENT 105952:2019 PG 1 of 12  
JEFFERY SMITH  
UTAH COUNTY RECORDER  
2019 Oct 16 10:21 am FEE 0.00 BY CS  
RECORDED FOR CITY OF SARATOGA SPRINGS

(Space Above for Recorder's Use Only)

**PERPETUAL AND NON-EXCLUSIVE UTILITY EASEMENT AND AGREEMENT**

This PERPETUAL AND NON-EXCLUSIVE UTILITY EASEMENT AND AGREEMENT (this "**Agreement**") is made and entered into effective as of the 10 day of October, 2019 (the "**Effective Date**"), by and between URSULA W. WAYMAN, ("**Grantor**"), the CITY OF SARATOGA SPRINGS, a Utah municipal corporation ("**Grantee**"), and JD IV, LLC, ("**Developer**").

**RECITALS**

A. Grantor is the owner of that certain real property located in the City of Saratoga Springs, Utah County, Utah (the "**Grantor Property**").

B. Grantee desires to obtain and Grantor is willing to convey a perpetual and non-exclusive utility easement over the Grantor Property subject to the terms and conditions of this Agreement.

C. Developer desires to obtain and Grantor is willing to convey a construction easement over the Grantor Property subject to the terms and conditions of this Agreement.

D. "Utilities" or "utility" are defined herein to include all utility facilities, pipes, channels, ponds, ditches, boxes, facilities, and all related appurtenances owned and operated by Grantee for the provision of services such as water, secondary water, irrigation water, drinking water, culinary water, storm drainage, storm sewer, sanitary sewer, sewer, roads, and transportation.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

**TERMS AND CONDITIONS**

1. **Grant of Easement.** Grantor does hereby convey, without warranty, unto Grantee for the benefit of Grantee a perpetual and non-exclusive easement (the "**Utility Easement**") under and across that portion of the Grantor Property more particularly described on Exhibit A and depicted Exhibit B, both of which are attached hereto and incorporated herein by this reference (the "**Utility Easement Area**"), for the replacement, relocation, removal, operation, use, maintenance and repair of utility improvements located therein from time to time (the

“Improvements”). Grantor does hereby convey to Developer, without warranty, a temporary construction easement to install the Improvements upon the Utility Easement Area. Developer shall be responsible for all construction obligations until such time as Grantee accepts the Improvements in writing as meeting City Code. Upon acceptance by Grantee of the Improvements, this Agreement shall terminate with respect to Developer, except for any obligations in Section 8 caused by Developer’s construction of the Improvements. Grantor shall ensure, guarantee, and warrant that no other easements or licenses shall be granted to any other person or entity on, over, or under the Utility Easement Area and that no above or below ground improvements, buildings, or facilities of any kind shall be constructed or maintained on the Utility Easement Area. All costs of the Utility Improvements and all construction, replacement, relocation, removal, operation, use, maintenance and/or repair thereof, shall be the sole responsibility of Grantee and Developer, respectively.

2. **Grantor’s Reservation of Rights.** Grantor reserves unto itself the right to cross over or under the Easement Property so long as such other uses do not unreasonably interfere with Developer’s and Grantee’s use of the Easement Property for the purposes herein granted. There shall be no unreasonable impairment, restriction or obstruction of the use and enjoyment of the Easement as provided herein, and no buildings, fences, walls, guardrails or other obstructions shall be erected over, across, upon, under or through the Easement Property.

3. **Access.** Grantee and Developer and their agents, servants, employees, consultants, contractors and subcontractors (collectively, “**Grantee’s Agents**”) shall have the right to enter upon the Utility Easement Area solely for the purposes permitted by this Agreement. Grantee and Developer shall enter upon the Utility Easement Area at their sole risk and hazard, and Grantee and Developer and their successors and assigns, hereby release Grantor from any and all claims relating to the condition of the Utility Easement Area and the entry upon the Utility Easement Area by Grantee/Developer and Developer’s/Grantee’s Agents.

4. **Condition of Easement Area.** Grantee and Developer accept the Utility Easement Area and all aspects thereof in their “AS IS,” “WHERE IS” condition, without warranties, either express or implied, “WITH ALL FAULTS,” including but not limited to both latent and patent defects, the existence of hazardous materials, if any, and any other easements, rights, or other encumbrances affecting the Utility Easement Area.

5. **Maintenance and Restoration.** Grantee, at its sole cost and expense, shall maintain and repair the Utility Improvements and any and all related improvements installed by Grantee, in good order and condition. To the extent possible considering the nature of the Improvements, Grantee shall promptly repair any damage to the Grantor Property caused by Grantee and/or Grantee’s Agents, and shall restore the Grantor Property and the improvements thereon to the same condition as they existed prior to any entry onto or work performed on the Grantor Property by Grantee and Grantee’s Agents. Notwithstanding the obligations of this Section 5, Grantor recognizes that the nature of the utility improvements may result in the inability of Grantee to fully restore the Grantor Property. So long as Grantee uses its best efforts to fully restore Grantor Property, Grantor waives the right to require strict performance of Grantee’s restoration requirements under this paragraph.

6. **Construction of the Improvements.** Developer will conduct all construction activities in a good and workmanlike manner in compliance with all laws, rules, and ordinances, both present and future. Upon completion of the Utility Improvements, Developer shall provide Grantor with evidence reasonably satisfactory to Grantor of such completion.

7. **Compliance with Laws.** Developer and Grantee will comply with all present or future laws, statutes, codes, acts, ordinances, rules, regulations, orders, judgments, decrees, injunctions, rules, regulations, permits, licenses, authorizations, directions and requirements of and agreements with all governments, departments, commissions, boards, courts, authorities, agencies, officials and officers, foreseen or unforeseen, ordinary or extraordinary, including, without limitation, any building, zoning and land use laws.

8. **Release.** After completion of construction of the Improvements and acceptance by Grantee in writing of the Improvements, and except for Grantor’s own negligence, Grantee hereby agrees to release, indemnify, and hold harmless Grantor and any entity controlling, controlled by, or under control with Grantor, and its and their Affiliates’ officers, directors, employees, managers, members, agents and servants (“**Affiliates**”) from and against any and all liens, encumbrances, costs, demands, claims, judgments, and/or damage that may be incurred by Grantor or its Affiliates as a result of any liabilities, damages, judgments, costs, expenses, penalties, and/or injuries to persons or property caused by or arising out of, either directly or indirectly, (i) the use of the Utility Easement Area by Grantee and/or Grantee’s Agents; (ii) any entry onto the Utility Easement Area and/or the Grantor Property by Grantee and/or Grantee’s Agents; and (iii) any work performed on the Utility Easement Area by Grantee and/or Grantee’s Agents. Prior to the completion of the improvements, Developer agrees to release, indemnify, and hold harmless Grantor on the same conditions as those given by Grantee and listed above in this Section 8.

9. **Liens.** Grantee and Developer shall keep the Utility Easement Area and the Grantor Property free from any liens arising out of any work performed, materials furnished, or obligations incurred by, through, for, or under Grantee or Developer, respectively.

10. **Notices.** All notices, demands, statements, and requests (collectively, the “**Notice**”) required or permitted to be given under this Agreement must be in writing and shall be deemed to have been properly given or served as of the date hereinafter specified: (i) on the date of personal service upon the Party to whom the notice is addressed or if such Party is not available the date such notice is left at the address of the Party to whom it is directed, (ii) on the date the notice is postmarked by the United States Post Office, provided it is sent prepaid, registered or certified mail, return receipt requested, and (iii) on the date the notice is delivered by a courier service (including Federal Express, Express Mail, Lone Star or similar operation) to the address of the Party to whom it is directed, provided it is sent prepaid, return receipt requested. The addresses of the signatories to this Agreement are set forth below:

If to Grantor:

Ursula Wayman  
178 W. Lake Vista Drive  
Saratoga Springs, UT 84045  
\_\_\_\_\_  
\_\_\_\_\_

If to Developer: JD IV, LLC  
1850 North 1450 West  
Lehi, UT 84043  
\_\_\_\_\_  
\_\_\_\_\_

If to Grantee: City of Saratoga Springs  
1307 N. Commerce Drive, Suite 200  
Saratoga Springs, UT 84045  
Attn: \_\_\_\_\_  
Fax: \_\_\_\_\_

**11. Miscellaneous.**

**11.1. Binding Effect.** Except as expressly stated herein, the provisions of this Agreement shall be binding upon and inure to the benefit of the Parties hereto, as well as the successors and assigns of such Persons.

**11.2. Partial Invalidity.** If any term, covenant or condition of this Agreement or the application of it to any person or circumstance shall to any extent be invalid or unenforceable, the remainder of this Agreement or the application of such term, covenant or condition to persons or circumstances, other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term, covenant or condition of this Agreement shall be valid and shall be enforced to the extent permitted by law.

**11.3. Captions.** The captions and headings in this Agreement are for reference only and shall not be deemed to define or limit the scope or intent of any of the terms, covenants or conditions contained herein.

**11.4. Gender.** In construing the provisions of this Agreement and whenever the context so requires, the use of a gender shall include all other genders, the use of the singular shall include the plural, and the use of the plural shall include the singular.

**11.5. Relationship of the Parties.** Nothing contained herein shall be construed to make the parties hereto partners or joint venturers, or render any of such parties liable for the debts or obligations of the other party hereto.

**11.6. Amendment.** This Agreement may be canceled, changed, modified or amended in whole or in part only by the written and recorded agreement of the Parties or their successor and assigns (as determined by the provisions herein).

**11.7. Counterparts.** This Agreement may be executed in any number of counterparts and each such counterpart hereof shall be deemed to be an original instrument, but all of such counterparts shall constitute but one Agreement.

**11.8. Attorney Fees.** In the event any legal action or proceeding for the enforcement of any right or obligations herein contained is commenced, the prevailing party in such action or proceeding shall be entitled to recover its costs and reasonable attorneys' fees incurred in the preparation and prosecution of such action or proceeding.

**11.9. Assignment.** Grantee or Developer may not at any time during this Agreement assign its rights and obligations under this Agreement without the prior written consent of Grantor, which consent may be granted or withheld in Grantors sole and absolute discretion and for any reason or no reason at all.

*[Signatures and acknowledgements to follow]*



**GRANTEE:**

City of Saratoga Springs, a Utah municipal corporation

By:   
Name: MARK CHRISTENSEN

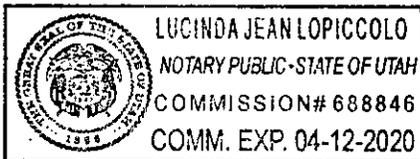
Title: CITY MANAGER

STATE OF UTAH            )  
  :SS  
COUNTY OF UTAH        )

On this 15 day of OCTOBER, 2019, personally appeared before me MARK CHRISTENSEN, who indicated to me that he/~~she~~ is a CITY MANAGER of THE CITY OF SARATOGA SPRINGS, a Utah municipal corporation, and that he/~~she~~ duly acknowledged to me that he/~~she~~ executed the foregoing instrument as a free and voluntary act for and on behalf of the said municipal corporation

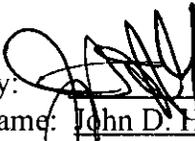
My Commission Expires: 4-12-2020

  
Notary Public for Utah



**DEVELOPER:**

JD IV, LLC, a Utah Limited Liability Company

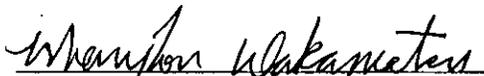
By:   
Name: John D. Hadfield

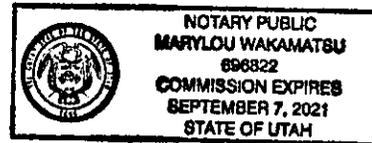
Title: Manager

STATE OF UTAH            )  
  :SS  
COUNTY OF UTAH        )

On this 15<sup>th</sup> day of October, 2019, personally appeared before me **John D. Hadfield**, who indicated to me that he is **MANAGER** of JD IV, LLC, a Utah Limited Liability Company, and that he duly acknowledged to me that he executed the foregoing instrument as a free and voluntary act for and on behalf of the said company.

My Commission Expires:  
Sept. 7<sup>th</sup>, 2021

  
Notary Public for Utah



**EXHIBIT A**

Legal description of the Utility Easement Area

**OFFSITE EASEMENTS**

**OFFSITE SEWER EASEMENT**

A 30' sewer easement located in the SE1/4 of Section 13, Township 6 South, Range 1 West, Salt Lake Base & Meridian, Saratoga Springs, Utah, more particularly described as follows:

Beginning at a point located N00°17'20"E along the Section line 1,699.65 feet from the Southeast Corner of Section 13, T6S, R1W, SLB&M; thence N89°42'45"W 30.00 feet; thence N00°17'20"E 332.71 feet; thence S89°55'40"E 30.00 feet to the Section line; thence S00°17'20"W along the Section line 332.82 feet to the point of beginning.

Contains: 9,982 square feet+/-

**OFFSITE DRAINAGE EASEMENT**

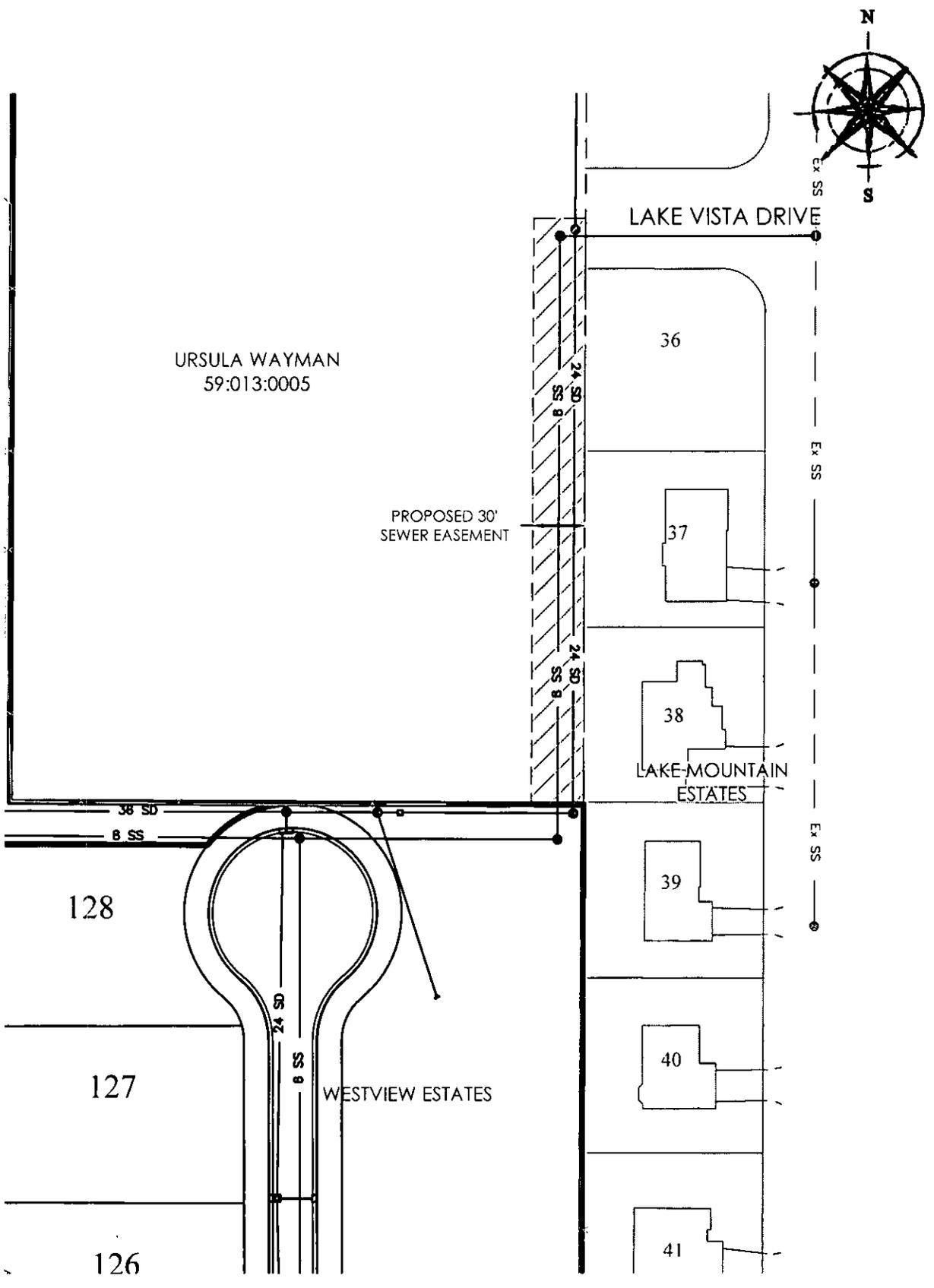
A 20' drainage easement located in the SE1/4 of Section 13, Township 6 South, Range 1 West, Salt Lake Base & Meridian, Saratoga Springs, Utah, more particularly described as follows:

Beginning at a point located N00°17'20"E along the Section line 1,699.65 feet from the Southeast Corner of Section 13, T6S, R1W, SLB&M; thence N89°42'45"W 20.00 feet; thence N00°17'20"E 924.00 feet to the 1/4 Section line; thence S89°43'31"E along the 1/4 Section line 20.00 feet to the East 1/4 Corner of said Section 13; thence S00°17'20"W along the Section line 924.00 feet to the point of beginning.

Contains: 18,480 square feet+/-

**EXHIBIT B**

Depiction of the Utility Easement Area



**FOCUS**<sup>®</sup>  
 ENGINEERING AND SURVEYING, LLC  
 32 WEST CENTER STREET  
 MIDVALE, UTAH 84047 PH: (801) 352-4075  
 www.focusutah.com

# WESTVIEW ESTATES OFFSITE SEWER EASEMENT

Date Created	5/8/2019
Scale	1"=XX'
Drawn	SWL
Job	18-455
Sheet	
1 OF 1	

L:\2018\18-455 Westview Estates\18-455\DWG\18-455\OFFSITE SEWER EASEMENT.dwg

