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JEFFERY SMITH
UTAH COUNTY RECORDER
2020 Aug 20 2:57 pm FEE 0.00 BY MA
RECORDED FOR SPANISH FORK CITY CORPORATI

When Recorded, Mail To:

City of Spanish Fork
Attn: City Recorder
40 S Main
Spanish Fork, UT 84660

(Space Above for Recorder's Use Only)

MUNICIPAL UTILITY EASEMENT AND AGREEMENT

This MUNICIPAL UTILITY EASEMENT AND AGREEMENT (this "Agreement") is made and entered into effective as of the 20 day of July, 2020 (the "Effective Date"), by and between Kent B McKell and Barbara McKell ("Grantor"), and the CITY OF SPANISH FORK, a Utah municipal corporation ("Grantee").

RECITALS

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

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

C. "Utilities" or "utility" are defined herein to include all municipal 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, electric power, telecommunications, 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 an exclusive easement (the "Municipal Utility Easement") under and across that portion of the Grantor Property more particularly described and depicted on Exhibit A, attached hereto and incorporated herein by this reference (the "Municipal Utility Easement

Area”). 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 Municipal Utility Easement Area and that no above or below ground improvements, buildings, or facilities of any kind shall be constructed or maintained on the Municipal Utility Easement Area.

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

3. **Condition of Easement Area.** Grantee accepts the Municipal 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.

4. **Purposes of the Utility Easement.** The purpose of this Municipal Utility Easement is to allow the construction of the Utilities by Grantor and its successors, assigns, and agents in order to meet Grantee’s development standards for the subdivision and development of all or a portion of the Property and to allow Grantee the ability to maintain the Utilities after acceptance in writing. Grantor or its successors, assigns, and agents shall be responsible for the proper and timely construction and installation of the Utilities per Grantee’s standards. Upon the proper and timely construction of the Utilities and acceptance in writing by Grantee per Grantee’s development standards, Grantee, at its sole cost and expense, shall maintain the Utilities in good order and condition, except for repair of the Utilities during the 1-year warranty period per Grantee’s development standards. Grantee shall also have the right to repair, replace, restore, and relocate the Utilities within the Municipal Utility Easement Area. In doing so, Grantee shall restore the Grantor Property to the same condition prior to Grantee’s entry. Notwithstanding the obligations of this Section 5, Grantor recognizes that the nature of the Utilities 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.

5. **Replacement of Utility Easement with Subdivision Plat Recordation.** Upon the recordation of a subdivision plat with the Utah County Recorder’s Office per Grantee’s development standards, which shall provide for the equivalent replacement of the easements in this Agreement in the favor of Grantee, the Municipal Utility Easement shall automatically be deemed superseded and replaced, but only with respect to such portion of the Property over which a subdivision plat is recorded. Upon such subdivision plat recordation, the rights and obligations in this Agreement shall be of no force or effect so long as the equivalent rights of Grantee are granted in such recorded subdivision plat. For the remainder of Grantor’s Property that is not subdivided pursuant to a recorded subdivision plat, this Agreement shall continue in full force and effect.

6. **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:	Kent B McKell Barbara McKell 1753 Fairway lane Spanish Fork, UT 84660
If to Grantee:	Spanish Fork City 40 S Main Spanish Fork, UT 84660 Attn: _____ Fax: _____

7. **Miscellaneous.**

7.1. **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.

7.2. **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.

7.3. **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.

7.4. **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.

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

7.6. **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).

7.7. **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.

7.8. **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.

7.9. **Assignment.** Grantee 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]

EXHIBIT A

Legal description and depiction of the Municipal Utility Easement Area

McKell Waterline Easement

A 50.00 foot wide Construction Easement and a 25.00 foot wide Permanent Easement for Installation, Operation and Maintenance of a Water Line, the centerline of said Easement being described as follows:

Beginning at a point which lies South 0°12'30" East 54.98 feet along the Section Line and West 77.19 feet from the Northwest Corner of Section 30, Township 8 South, Range 3 East, Salt Lake Base and Meridian; and running thence South 56°22'51" East 530.53 feet; thence North 90°00'00" East 550.84 feet; thence South 3°02'37" West 662.24 feet.

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

GRANTOR:

Kent B. McKell
By: **Kent B McKell**

Barbara McKell
By: **Barbara McKell**

STATE OF UTAH)
) :SS
COUNTY OF Utah)

On this 20 day of July 2020, personally appeared before me the above named Owner(s) and duly acknowledged that he is the owner of the property and has executed the same as such.

My Commission Expires: 1-4-22

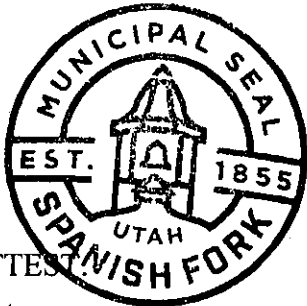
[Signature]
Notary Public for Utah

*Kent B. McKell &
v Barbara McKell*



GRANTEE:

Spanish Fork City, a Utah municipal corporation



By: [Signature]
Name: Steve Linton
Title: Mayor

ATTEST

Kent R. Clark
City Recorder