

PREPARED BY AND WHEN
RECORDED PLEASE RETURN TO:

Barton L. Gertsch, Esq.
Parr Brown Gee & Loveless
101 South 200 East, Suite 700
Salt Lake City, Utah 84111-1537

COMMUNICATIONS EASEMENT AGREEMENT

THIS COMMUNICATIONS EASEMENT AGREEMENT (the “**Agreement**”) is entered into as of the 2ND DAY OF FEBRUARY, 2023, Brighton Provo Offices, LLC, a Utah limited liability company, (“**Grantor**”), whose address for purposes hereof is 45 E Center St Suite 103, North Salt Lake, Utah 84054, and FIRSTDIGITAL TELECOM, LLC, a Utah limited liability company (“**FirstDigital**”), whose address is 90 South 400 West, Suite M-100, Salt Lake City, Utah 84101. (Grantor and FirstDigital are referred to in this instrument collectively as the “**Parties**,” and individually as a “**Party**.”)

RECITALS

A. Grantor is the owner of the commercial real estate development generally known as River’s Edge on University, located in Provo, Utah (such development together with related grounds, improvements, and facilities is referred to in this Agreement as the “**Project**”). The Project is depicted on the Site Plan attached hereto as Exhibit A (the “**Site Plan**”). The legal description of the property on which the Project is located (the “**Property**”) is more particularly described on Exhibit B attached hereto.

B. FirstDigital is a certified competitive local exchange carrier authorized to provide communications services including voice, video, and high-speed data access in the state of Utah.

C. Due to the lack of any telecommunications facilities in the Project and the costs associated with providing high speed residential and commercial broadband services, Grantor has agreed to contract with FirstDigital to provide at FirstDigital’s cost and expense the communications infrastructure to the Project as set forth below.

D. Grantor desires to have FirstDigital provide ongoing management and maintenance of such communications infrastructure in order to assist in accommodating the needs of the occupants in the Project, maintaining the integrity of the Project’s infrastructure during construction and the build out of the Project and providing maximum uptime for users.

E. Grantor desires to have FirstDigital’s communications infrastructure available for use by other Communications Service Providers who interconnect with the communications network at the designated “Minimum Points of Entry,” all in accordance with the terms of this Agreement, in order to help eliminate the duplication of facilities, prevent unnecessary trenching and the cutting of sidewalks and streets, and maintain the overall earth friendly, consistent and efficient use of resources within and throughout the Project.

AGREEMENT

NOW, THEREFORE, FOR THE SUM OF TEN DOLLARS (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which are acknowledged, Grantor hereby agrees as follows:

1. Definitions. As used in this Agreement, each of the following terms shall have the indicated meaning:

“**Communications Facilities**” means the facilities (e.g. fiber, copper and coaxial cables, towers, satellites, other broadcasting and receiving devices, conduits, junction boxes), beginning at the demarcation point or points at the boundary or boundaries of the Project and ending at the entry Demarcation Point at each residence or commercial unit in the Project, as applicable, by means of which the Communications Services are provided to the Occupant, as such systems and facilities are updated, supplemented or replaced from time to time.

“**Communications Services**” means voice, video, telecommunications and high-speed data access services and any other services as may be offered to Occupants via Communications Facilities.

“**Communications Service Provider**” means any telecommunications company that is certified to provide Communications Services to customers in Utah.

“**Demarcation Point**” means the physical and electrical boundary between an Occupant’s voice, video, telecommunications and high-speed data equipment and the Communications Facilities installed and owned by FirstDigital.

“**Occupant**” means each Owner and any residential or commercial occupant of all or any portion of the Property.

“**Owner**” means each person, who, at any given time, holds fee title to the Property or any portion thereof.

2. Grant of Easement. Grantor conveys and grants to FirstDigital and its successors and assigns an exclusive easement and right-of-way to design, engineer, construct, install, test, operate, maintain, repair, replace, relocate, remove and manage Communications Facilities on, under over and across the Property up to an Occupant’s Demarcation Point(s). In addition, Grantor hereby grants to FirstDigital the sole and exclusive right and easement to design, engineer, construct, install, test, operate, maintain, repair, replace, relocate, and remove Communications Facilities in the Project up to an Occupant’s Demarcation Point(s) and to manage the way by which other Communications Service Providers shall gain access to such Demarcation Point(s). FirstDigital and its employees, agents, contractors, invitees, licensees shall have the right to access its Communications Facilities in the Project on a 24-hour-per-day 7-day-per-week basis.

3. Infrastructure. Each Owner will coordinate with FirstDigital to designate a mutually agreeable Demarcation Point(s) on its property and FirstDigital at its costs and expense will design, engineer, extend and install the Communications Facilities to such designated Demarcation Point(s).

4. Failure to Perform by First Digital. An Owner shall have the right to secure its own Communications Facilities and Services at its own cost and expense and to elect to terminate this Easement with respect to its property if FirstDigital breaches or fails to perform any obligation under this Easement and fails to cure such breach or failure within thirty (30) days after receipt of written notice from an Owner describing such breach or failure; provided, however, that (a) if the nature of the breach or failure is such that more than 30 days are reasonably required to cure, prior to such Owner having the right to terminate

this Easement with respect to its property, FirstDigital shall have such period as is reasonably necessary to cure so long as it commences the cure of such breach within the 30-day period and after such commencement diligently prosecutes the same to completion; and (b) in no event shall an Owner have the right to terminate this Easement with respect to any property that is needed or is being used to provide Communications Facilities and Communications Services to other Occupants in the Project.

5. Repair of Damage. FirstDigital shall promptly repair any damage to the Project that is caused by FirstDigital's installation, use, maintenance, repair, or removal of Communications Facilities; provided that FirstDigital shall not be responsible for damage caused by Owner or other persons.

6. Ownership of Communications Facilities. FirstDigital will retain ownership of and title to all Communications Facilities installed at the Project by or on behalf of FirstDigital. The Communications Facilities will retain their character as personal property following their installation. In no event will the Communications Facilities installed at the Project by or on behalf of FirstDigital be deemed to be a fixture of the Project or of any Occupant. Without limiting the generality of the foregoing, Owner shall not have the right to create any security interest in such Communications Facilities. FirstDigital shall have the right to grant a security interest in such Communications Facilities to one or more lenders and to assign its rights and obligations under this Agreement.

7. Other Communications Service Providers. FirstDigital recognizes and agrees that Occupants in the Project are not obligated to select FirstDigital as their Communications Service Provider. In the event any such Occupant selects another Communications Service Provider, such Occupant shall not be obligated hereunder to compensate FirstDigital for Communications Services obtained by Occupant from another Communications Service Provider and FirstDigital shall reasonably cooperate with such other Communications Service Provider and allow such Communications Service Provider access to the requesting Occupant in accordance with the terms of an interconnection agreement between FirstDigital and such other Communications Service Provider which contains terms and conditions acceptable to FirstDigital. No such interconnection shall adversely impact FirstDigital's Communications Facilities or FirstDigital's ability to provide Communications Services to the Project. Notwithstanding anything to the contrary in this Section 7, FirstDigital shall be entitled to compensation from the interconnecting Communications Service Provider or the Occupant for the reasonable costs and fees associated with an interconnection of the other provider's Equipment with FirstDigital's Communications Facilities.

8. Interconnection. All Communications Service Providers desiring to provide Communications Services to Occupants will do so by interconnecting to FirstDigital's Communications Facilities. Other than FirstDigital, no Owner nor FirstDigital shall permit any other Communications Service Provider to disrupt, dig, or excavate any streets, common areas or other property, or install any Equipment within the Project without the prior written consent of the applicable Owner and FirstDigital, which consent shall not be unreasonably withheld, conditioned or delayed. FirstDigital will have the authority to interconnect a Communications Service Provider's communications facilities to FirstDigital's Communications Facilities and need not obtain permission from an Owner to do so.

9. Quality of Service. FirstDigital will provide and maintain a quality of service with respect to its Communications Facilities equal to or greater than Bellcore standards.

10. Nature of Provisions. The Parties expressly intend that the rights and easements granted to FirstDigital shall be easements in gross and shall: (a) constitute a covenant running with the Property; (b) bind every person and Owner having any fee, leasehold, mortgage lien or other interest in any portion of the Property concerned; (c) bind any person and Owner whose title to the Property or any portion thereof is acquired by judicial foreclosure, trustee's sale, deed in lieu of foreclosure or other means.

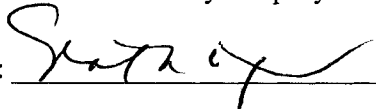
11. Term of Agreement. Except as set forth in Section 4 above, this Agreement and the rights and easements granted to FirstDigital hereunder shall be perpetual unless terminated by Owner and FirstDigital.

12. General Provisions. This instrument shall be governed by, and construed and interpreted in accordance with, the laws (excluding the choice of laws rules) of the State of Utah. This instrument shall inure to the benefit of, and be binding on, the Parties and their respective successors and assigns. Whenever possible, each provision of this instrument shall be interpreted in such manner as to be valid under applicable law; but, if any provision of this instrument shall be invalid or prohibited under applicable law, such provision shall be ineffective to the extent of such invalidity or prohibition without invalidating the remainder of such provision or the remaining provisions of this instrument.

The parties have executed this Agreement to be effective on the Effective Date.

GRANTOR:

Brighton Provo Offices, LLC,
a Utah limited liability company

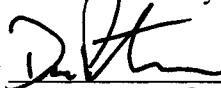
By: 

Name: Nathan W. Pugsley

Title: Manager

FIRSTDIGITAL:

FirstDigital Telecom, LLC,
a Utah limited liability company

By: 

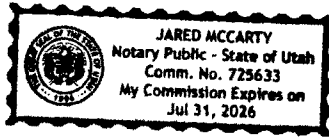
Name: Drew Peterson

Title: CEO

State of Utah)
) ss.
County of ~~Salt Lake~~)
 DAVIS

The foregoing instrument was acknowledged before me this 2 day of ~~FEBRUARY~~ ²⁰²³ 2021, by NATHAN W. PROSEY the MANAGER of BRIGHTON PROX OFFICES LLC.

(Seal)

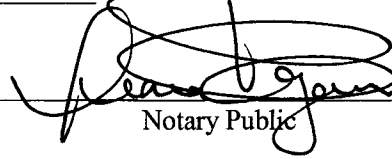


Jared McCarty
Notary Public

State of Utah)
) ss.
County of Salt Lake)

The foregoing instrument was acknowledged before me this 2ND day of FEBRUARY ²⁰²³ 2021, by DREW PETERSON, the CRO of FIRSTDIGITAL TELECOM, LLC.

(Seal)



Notary Public



EXHIBIT A

to

COMMUNICATIONS EASEMENT AGREEMENT

Site Plan

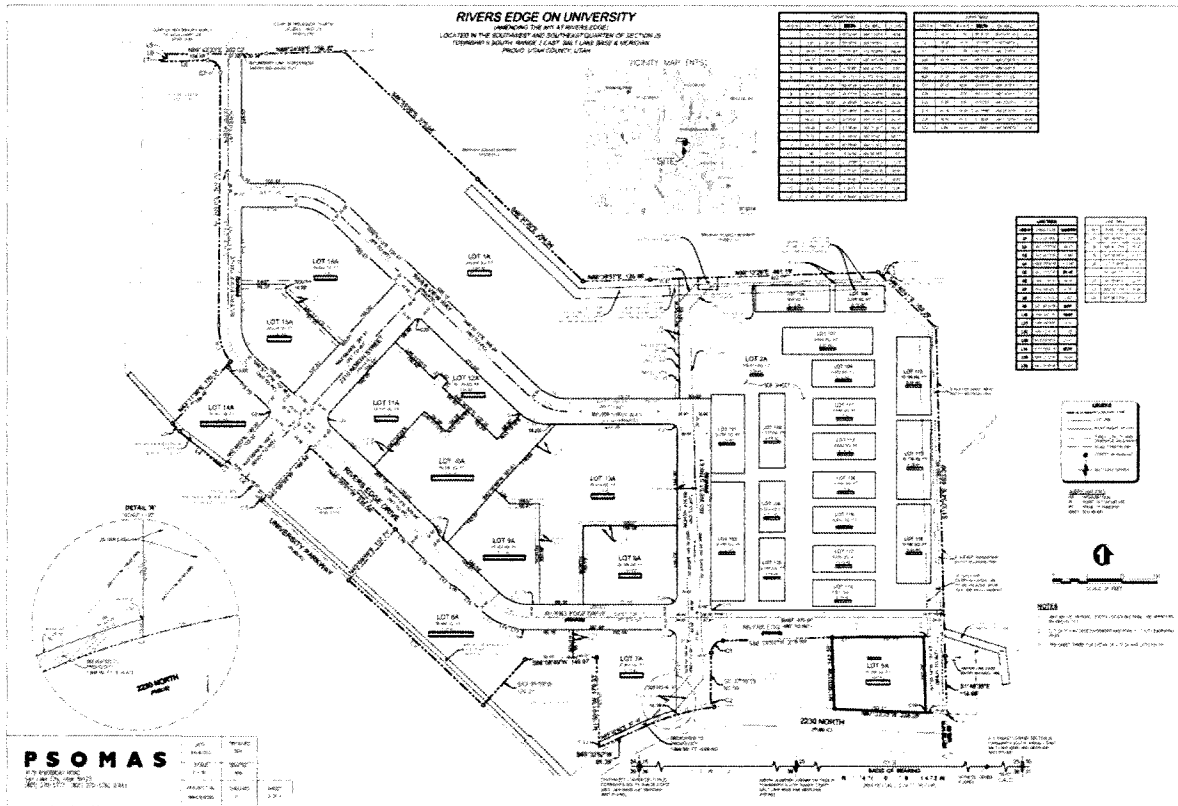


EXHIBIT B

to

COMMUNICATIONS EASEMENT AGREEMENT

Legal Description of the Property

Brighton Provo Offices LLC
Parcel No. 51:733:0005

Lot 5A, Rivers Edge on University Subdivision as recorded on October 3, 2022 as Entry No. 106668:2022 and Map No. 18518 in the office of the Utah County Recorder, more particularly described as follows:

A parcel of land lying and situated in the southeast quarter of Section 25, Township 6 South, Range 2 East, Salt Lake Base and Meridian, more particularly described as follows:

Beginning at a point being 525.51 feet North 88°26'46" East and 1042.81 feet North 01°33'14" West from the South Quarter Corner of Section 25, Township 6 South, Range 2 West, Salt Lake Base and Meridian and running thence North 87°33'25" West 182.31 feet; thence North 01°50'01" West 142.70 feet; thence North 88°09'59" East 53.06 feet; thence East 131.73 feet; thence South 01°55'18" East 141.29 feet; thence southerly 11.39 feet along the arc of a 20.00 foot radius curve to the right, through a central angle of 32°37'18", chord bears South 14°23'21" West 11.23 feet to the Point of Beginning.

Contains 27,366 Sq. Ft. (0.628 Ac.)

Basis of Bearing being North 88°26'46" East along the section line from the South Quarter Corner to a witness corner marking the Southeast Corner of Section 25, Township 6 South, Range 2 East, Salt Lake Base and Meridian.