

WHEN RECORDED RETURN TO:

Mark and Kelli Thomas
2101 West 900 North
Lehi, Utah 84043

Tax Parcel Nos.: 34-647-0001 and
12-031-0086

CT-152083-MCC

(Space Above for Recorder's Use)

ENCROACHMENT EASEMENT AGREEMENT

THIS ENCROACHMENT EASEMENT AGREEMENT (this "**Agreement**") is made this 4 day of February, 2022 (the "**Effective Date**"), by and between ASCENT ACADEMIES OF UTAH, a Utah non-profit corporation ("**Grantor**"), and MARK A. THOMAS and KELLI J. THOMAS, as individuals ("**Grantee**"). Grantor and Grantee may be referred to collectively as the "**Parties**" or individually as a "**Party**."

RECITALS

A. Grantor owns certain real property in Utah County, Utah, commonly known as tax parcel number 34-647-0001, as more particularly described on Exhibit A attached hereto and incorporated herein by this reference (the "**Grantor Property**").

B. Grantee owns certain real property located adjacent to the Grantor Property, commonly known as tax parcel number 12-031-0086, as more particularly described on Exhibit B attached hereto and incorporated herein by this reference (the "**Grantee Property**" and together with the Grantor Property, the "**Properties**").

C. Grantee has constructed a shed, concrete pads, fencing and other improvements (the "**Improvements**") on or near the property boundary between the Grantor Property and the Grantee Property, which Improvements encroach onto the Grantor Property as depicted on Exhibit C and described on Exhibit D attached hereto and incorporated herein by this reference (the "**Easement Area**").

D. Grantee desires to obtain and Grantor is willing to convey a permanent, exclusive easement on, over, and across the Easement Area for the purposes more fully set forth in this Agreement.

TERMS AND CONDITIONS

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and based upon the mutual promises and subject to the terms and conditions set forth below, the Parties agree as follows:

1. **Grant of Easement.** Grantor hereby grants to Grantee a permanent, exclusive easement on, over and across the Easement Area for the purpose of permitting and using said Improvements and maintaining, repairing and replacing the same (collectively the "**Easement**").

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

3. **Condition of the Easement Area.** Grantee accepts the Easement Area and all aspects thereof in “AS IS”, “WHERE IS” condition, without warranties, either express or implied, “with all faults”, including but not limited to both latent and patent defects, and the existence of hazardous materials, if any. Grantee hereby waives all warranties, express or implied, regarding the condition and use of the Easement Area, including, but not limited to any warranty of merchantability or fitness for a particular purpose.

4. **Maintenance; Restoration.** Grantee, at its sole cost and expense, shall maintain and repair the Easement Area in good order and condition, including without limitation, keeping the Improvements in a good condition and state of repair. Grantee shall promptly repair any damage to the Easement Area, the Grantor Property, and Grantor’s improvements located thereon caused by Grantee and/or Grantee’s Agents, and shall restore the Easement Area, the Grantor Property, and the improvements thereon to the same condition as they existed prior to any entry onto or work performed on the Easement Area by Grantee and Grantee’s Agents. Should Grantee fail to maintain or repair the Easement Area, the Grantor Property, and/or Grantor’s improvements located thereon in accordance with the requirements of this paragraph set forth hereinabove, then, within ten (10) days after delivery of notice to Grantee, Grantor may perform such maintenance and/or repair and submit to Grantee an invoice for the actual costs and expenses Grantor incurred, which Grantee shall pay within thirty (30) days of receiving said invoice.

5. **Liens.** Grantee shall keep the Grantor Property, including the Easement Area, free from any liens arising out of any work performed, materials furnished, or obligations incurred by, through, for or under Grantee, and shall indemnify, hold harmless and agree to defend Grantor from any liens that may be placed on the Grantor Property pertaining to any work performed, materials furnished or obligations incurred by, through, for, or under Grantee or any of Grantee’s Agents. Any such liens shall be released of record within thirty (30) days.

6. **Insurance.** Grantee shall obtain and maintain a policy of general liability insurance sufficient to insure its interests against claims for personal injury, bodily injury, death, and property damage occurring on, in or about the Grantor Property. Grantor shall be named as an additional insured on each such policy. Grantee shall provide Grantor with proof of such insurance prior to exercising its rights under this Agreement.

7. **Indemnification.** Grantee shall indemnify, defend with counsel acceptable to Grantor and hold Grantor and its employees, officers, divisions, subsidiaries, partners, members and affiliated companies and entities and its and their employees, officers, shareholders, members, directors, agents, representatives, and professional consultants and its and their respective successors and assigns (collectively, the “**Indemnitees**”) harmless from and against any loss, damage, injury, accident, fire or other casualty, liability, claim, cost or expense (including, but not limited to, reasonable attorneys’ fees) of any kind or character to any person or property, including the property of the Indemnitees, (collectively, the “**Claims**” or a “**Claim**”) from or by any unaffiliated third party, Grantee, and/or Grantee’s Agents, to the extent such Claims arise from or relate to (i) any use of the Easement Area, and/or adjacent areas by Grantee, or Grantee’s Agents, and (ii) any act or omission of Grantee or any of

Grantee's Agents; Grantee shall have no obligation to indemnify Grantor or Indemnitees for claims or liabilities directly caused by Grantor or Indemnitees' gross negligence and/or willful misconduct. The terms and conditions of this provision shall remain effective, notwithstanding the expiration or termination of this Agreement, so long as the event for which the indemnification is needed occurred prior to such expiration or termination of this Agreement.

8. **Term, Termination and Remedies.** Unless otherwise specifically agreed to by Grantor and Grantee, the Easement granted by this Agreement shall terminate upon the earliest to occur of: (i) written agreement of the Parties, or (iii) completion of a lot line adjustment with the City of Lehi and deeding of the Easement Area to Grantee . If this Agreement is terminated by the written consent of all Parties, the Parties will execute and record an instrument terminating this Agreement and the Easement.

9. **Attorney's Fees.** If any action, suit, or proceeding is brought by a Party hereto with respect to a matter or matters covered by this Agreement or if a Party finds it necessary to retain an attorney to enforce its rights under this Agreement, all costs and expenses of the prevailing Party incident to such proceeding or retention, including reasonable attorneys' fees, will be paid by the non-prevailing Party.

10. **Succession.** This Agreement shall extend to and be binding upon the Parties and their successors and assigns and the Parties shall inform any successor and assigns of the existence of this Agreement.

11. **Runs with the Land.** This Agreement and the Easement created hereby shall be a burden on the Properties and shall run with the land. This Agreement shall be recorded in the official records of Utah County, Utah.

12. **No Public Use/Dedication.** The Easement Area is and shall at all times remain the private property of Grantor. The use of the Easement Area is permissive and shall be limited to the express purposes contained herein by Grantee. Neither Grantee, nor its successors or assigns, nor the public shall acquire nor be entitled to claim or assert any rights to the Easement Area beyond the express terms and conditions of this Agreement.

13. **No Third-Party Beneficiaries.** In assuming and performing the obligations of this Agreement, Grantor and Grantee are each acting as independent Parties and neither shall be considered or represent itself as a joint venture, partner, agent, or employee of the other. There is no intent by either Party to create or establish third-party beneficiary status or rights in any third-party. This Agreement shall not be deemed to confer any rights upon any individual or entity which is not a Party hereto, and Grantor and Grantee expressly disclaim any such third-party benefit.

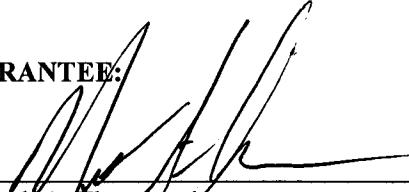
14. **Miscellaneous.** This Agreement (including all attached Exhibits) constitutes the entire agreement between the Parties hereto pertaining to the subject matter hereof and all prior and contemporaneous agreements, representations and understandings of the Parties hereto, oral or written, are hereby superseded and merged herein. No supplement, modification or amendment of this Agreement shall be binding unless in writing and executed by the Parties. This Agreement shall be construed in accordance with and governed by the laws of the State of Utah. No waiver of any of the provisions of this Agreement shall be deemed or shall constitute a waiver of any other provisions, whether or not similar, nor shall any waiver be a continuing waiver. No waiver shall be binding unless executed in writing by the Party making the waiver. The headings of this Agreement are for purposes of reference only and shall not limit or define the meaning of the provisions hereof. The Recitals set forth above are incorporated into this Agreement by reference. If any provision of this Agreement or the application thereof to any person, place, or circumstance, shall be held by a court of competent jurisdiction to be invalid, unenforceable, or

void, the remainder of this Agreement and such provisions as applied to other persons, places, and circumstances shall remain in full force and effect; provided, however, the invalid provision does not have a materially adverse effect on either Party. This Agreement is the result of negotiations among the Parties, none of whom has acted under any duress or compulsion, whether legal, economic or otherwise. Accordingly, the terms and provisions hereof shall be construed in accordance with their usual and customary meanings. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute but one and the same instrument.

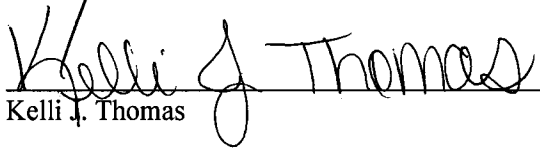
IN WITNESS WHEREOF, the Parties have executed this Agreement as of the Effective Date.

[Signature Pages Follow]

GRANTEE:



Mark A. Thomas



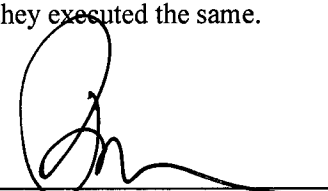
Kelli J. Thomas

STATE OF UTAH)

COUNTY OF Utah) :ss

On this 4 day of February, 2022, personally appeared before me Mark A. Thomas and Kelli J. Thomas, as individuals, proved on the basis of satisfactory evidence to be the persons whose names are subscribed to this instrument, and acknowledged they executed the same.

WITNESS my hand and official seal.



Notary Public for the
State of Utah

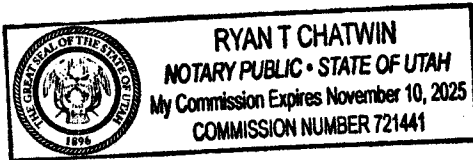


EXHIBIT A

(Legal Description of Grantor Property)

ALL OF LOT 1, ASCENT ACADEMY LEHI SUBDIVISION, ACCORDING TO THE OFFICIAL PLAT THEREOF, RECORDED OCTOBER 29, 2019 AS ENTRY NO. 111981:2019 IN THE OFFICE OF THE UTAH COUNTY RECORDER.

EXHIBIT B

(Legal Description of Grantee Property)

Beginning at point which is South 00° 46' 44" West 46.00 feet and North 90° 00' 00" East 1183.87 feet from the West Quarter Corner of Section 7, Township 5 South, Range 1 East, Salt Lake Base and Meridian, and running thence North 90° 00' 00" East 158.03 feet; thence South 01° 49' 54" West along a fence line 172.74 feet; thence North 88° 59' 03" West 158.06 feet; thence North 01° 51' 40" East 169.94 feet to the point of beginning.

Basis of Bearing is North 00° 27' 25" East between the Southwest Corner and the West Quarter Corner of Section 7, Township 5 South, Range 1 East, Salt Lake Base and Meridian.

LESS AND EXCEPTING THEREFROM: any portion of land lying within the bounds of 900 North Street.

EXHIBIT C

(Depiction of Easement Area)

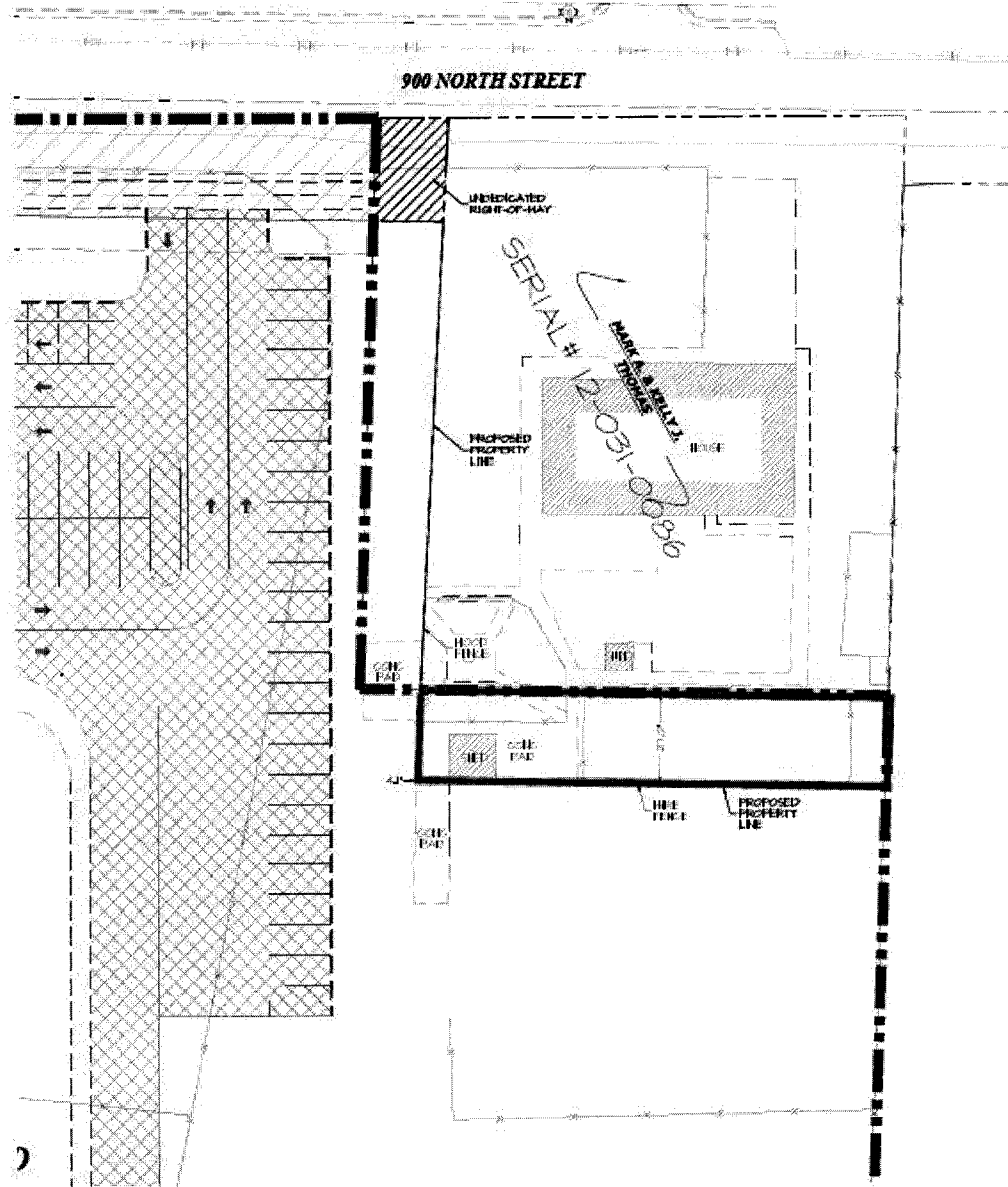


EXHIBIT D

(Legal Description of the Easement Area)

A part of the Southwest Quarter of Section 7, Township 5 South, Range 1 East, Salt Lake Base and Meridian, U.S. Survey, Lehi City, Utah County, Utah

Beginning at a point on the Northerly line of Ascent Academy Lehi Subdivision, as recorded with the Utah County Recorder, being 46.00 feet South 0°46'44" West, 1205.34 feet due East, and 170.39 feet South 2°58'21" West from the West Quarter corner of said Section 7; running thence South 88°59'03" East 139.90 feet along said northerly line to the Easterly line of said Ascent Academy Lehi Subdivision; thence South 1°49'54" West 27.00 feet along said Easterly line to an existing fence; thence North 88°59'03" West 140.44 feet along said existing fence; thence North 2°58'21" East 27.02 feet to the point of beginning.

Contains: 3,785 sq.f.t or 0.087 acres