

## ACCESS AND EASEMENT AGREEMENT

THIS ACCESS AGREEMENT ("Agreement") is made and entered into this 15<sup>th</sup> day of December 2020 (the "Effective Date") by and between Weston. Glade Berry, Zane R. Berry and Steven Glade Berry (together herein "Grantor"), and Cherie C. Green and Kylene Hilton, Successor Co-Trustees; David Alan Cummings, Successor Co-Trustee; Michael Jay Cummings, Successor Co-Trustee; Val Miller, Co-Trustee, Keith Cummings, Co-Trustee, and Bruce C. Cummings, Co-Trustee, each being a Co-Trustee of the H. Clay Cummings Family Trust, dated the 30<sup>th</sup> day of June 1997 (together herein "Grantee").

A. Grantor is the owner of a certain land parcel located in Eagle Mountain City, Utah County, Utah, (the "City"), further identified as Tax Parcel 59-019-0015, hereinafter referred to as "Berry Parcel" and better described in Exhibit A attached.

B. Grantee is the owner of those certain land parcels located in Eagle Mountain City, Utah County, Utah, (the "City"), further identified as Tax Parcels 59-019-0004 and 59-019-0005, hereinafter together referred to as "Cummings Trust Parcels" and better described in Exhibit B attached.

C. Berry Parcel and Cummings Trust Parcels are adjacent to each other.

D. Grantor is willing to grant to Grantee, a road and utility easement over a portion of the Berry Parcel (herein "Easement Area") described and attached hereto and incorporated herein as Exhibit C.

E. Grantor shall be paid a total sum of \$30,000.00 Thirty Thousand Dollars and no/100 paid by the Grantee at the time of the property closing. The payment shall come from Grantee's portion of the sale proceeds at closing. Payment distribution shall be in wire form as directed by the Grantor.

F. The Grantee at the Grantee's expense shall provide parts and install water and sewer laterals from the future installed main transmission lines within the ROW onto the Berry Property. These laterals shall be limited to two (2) each and shall stub outside of the ROW by 10 linear feet. Sizing shall be communicated by the Grantor to the Grantee prior to the installation but shall be no larger than mainline diameters. The Grantee shall also cover all associated costs to install One (1) each Electrical Power Service Box and 1 each Gas Mainline Hookup at the location along the mainline(s) as requested by the Grantor. There shall be no recovery or other costs/fees charged to the Grantor by the Grantee for installing mainlines through this purchased utility easement.

G. The Grantee at the Grantee's expense shall relocate approximately 2,640 LF of four (4) strand barbed wire fence prior to any construction activities commencing on the acquired parcels. This fence may be relocated from the current fence alignment or constructed of new materials to the new fence alignment. The Grantee shall contact the Grantor upon readiness to perform this fencing and to receive the exact location

of the relocated fence boundary. The purpose of this is to provide a livestock barrier between Berry leased grazing properties and the Grantees property.

NOW THEREFORE, in consideration of the premises, the mutual covenants and undertakings of the parties hereto, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto agree as follows:

1. **Grant of Easements.** Grantor hereby grants Grantee a non-exclusive access and utility easement on the Easement Area for the purpose of installation, maintenance, and repair of a 40-foot-wide asphalt access road for use by future owners of subdivided residential lots on the Cummings Trust Parcels (herein "Easement Improvements") required by the City and built in accordance with the City standards connecting the Cummings Trust Parcels to Lake Mountain Road and to construct a sewer line of at least 8 inches in diameter (or as determined by the City sewer line capacity requirements).

2. **Easement Appurtenant to Grantee Property.** Except as hereinafter set forth, the Easement shall be appurtenant to and run with the land and constitute a portion of the Grantee Property and each part thereof.

3. **Temporary Construction Easement.** Grantor does hereby further convey, grant and transfer to Grantee a temporary construction easement (the "**Construction Easement**") to grade, excavate, contour and install the Easement Improvements to a width of sixty feet (60') lying thirty feet (30') to either side of the centerline as described in Exhibit "C". Grantee shall give written notice to Grantor at least three (30) days prior to the anticipated commencement date of the development, construction, and installation of the Easement Improvements. Grantee shall have five (5) years from the date of written notice within which to substantially complete the improvements. The Construction Easement shall only be utilized at such times as construction or excavation associated with the Easement Improvements is required excepting, however, Grantee, its successors and assigns may access the Construction Easement for the maintenance, repair and replacement of the improvements.

4. **Grantor's Reservation of Rights.** Grantor shall have the right to use the Easement provided such use shall not unreasonably interfere with the rights granted hereunder. 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 except paving shall be erected by Grantee or Grantor over, across, upon or through the Easement. Grantor shall not build or construct or permit to be built or constructed any building or other improvement, except paving over or across the Easement, nor change the contour thereof without the written authorization of Grantee.

5. **Maintenance and Related Costs Regarding Easement and Easement Improvements.** Until such time as Grantee assigns and conveys all of its right, title and interest hereunder to the City through a public road dedication, Grantee or assigns shall be responsible for the installation of the Easement Improvements All subsequent maintenance, repair and replacement of the Easement Improvements shall, until such time as all rights hereunder are assigned or conveyed to the City, be the responsibility of the Grantee, at Grantee's sole expense.

The frequency, scope and nature of the maintenance, repair and replacement of the Easement Improvements shall be left to the sole discretion of Grantee, its successors and assigns.

6. **Costs and Expenses.** In the event of a breach of any of the foregoing covenants or agreements contained herein, the breaching party shall pay all costs and expenses, including reasonable attorney's fees, which may arise or accrue from enforcing this Agreement or in pursuing any remedy provided by the laws of the State of Utah, whether such remedies are pursued by commencing a non-judicial foreclosure, by filing suit, or otherwise. Grantor and Grantee acknowledge that in the event of any default hereunder, it would be difficult to ascertain the exact money damages suffered by the non-defaulting party. Accordingly, the parties agree that such non-breaching party is entitled to appropriate equitable remedies in the event of any such default.

7. **Indemnity and Insurance.**

(a) **Indemnity.** Grantee shall indemnify and hold harmless Grantor, its members, partners, directors, officers, agents, contractors and employees free from or against any and all liability, loss, damage, costs and expenses (including reasonable attorney's fees) for injury to persons or death or property damage to the extent arising from the use of the Easements by Grantee except for any such liability, loss, damage, costs and expenses to the extent arising directly and solely from the acts of Grantor.

(b) **Insurance to be Maintained by Grantee.** Grantee shall, at Grantee's expense, obtain and keep in force during the term of this Agreement the following:

(c) A policy of comprehensive public liability insurance insuring Grantee and Grantor against any liability arising out of the use, occupancy or maintenance of the Easements and all areas appurtenant thereto. Such insurance shall be combined single limit liability and shall be in the amount of not less than One Million Dollars for injury or death in any one accident or occurrence and Two Million Dollars in the aggregate. The limit of any such insurance shall not, however, limit the liability of the Grantee hereunder. Grantee may provide this insurance under a blanket policy, provided the said insurance shall have a Grantor's protective liability endorsement attached thereto. A copy of the endorsement evidencing the coverage set forth herein shall be delivered to Grantor upon demand.

(d) A policy of all-risk property insurance covering the full replacement value of all Grantor's betterments and improvements located within the Easements.

(e) Workers compensation coverage for protection of Grantee's employees as required by law and employer liability insurance with a minimum limit of One Million Dollars per occurrence and any and all other labor insurance required by any constituted authority having legal jurisdiction over the area in which Grantee's work is to be performed.

8. **Covenants to Run with the Land.** Subject to the terms of this Agreement, the Agreement and all covenants herein shall constitute covenants running with the land and shall burden the Grantor Property as the servient estate and benefit the Grantee Property and future properties of Benefited Parties as the dominant estate, and shall be binding upon the Grantor, their successors, assigns and any person acquiring, leasing or otherwise owning an interest in the Easements. Subject to the terms of this Agreement, the obligation to periodically maintain the

Easement and Easement Improvements shall constitute covenants running with the land and shall burden the Grantee Property and future properties of the Benefited Parties as the servient estate and benefit the Grantor Property as the dominant estate and shall be binding upon the Benefited Parties, their successors, assigns and any persons acquiring, leasing or otherwise owning an interest in the Grantee Property or future properties of Benefited Parties.

9. **Public Dedication.** It is mutually agreed and understood that upon the completion of the Easement Improvements and the approval of those Easement Improvements by the City, the Easement Area and all of Grantee's rights, interest and title in and to the Easement Improvements will be conveyed and dedicated to the City, and the Parties will execute any document reasonably necessary to complete the conveyance and public dedication.

10. **No Relationship.** The parties hereto do not, by this Agreement nor by any parties' acts, become principal and agent, limited or general partners, joint venturers or any other similar relationship of each other in the conduct of their respective businesses or otherwise.

11. **Cooperation.** The parties hereto agree to cooperate reasonably to attempt to resolve any disputes that may arise in the future between them with respect to the use of the Easements by Grantee and Grantor.

12. **No Waiver.** Failure of a party hereto to insist upon strict performance of any provisions hereof shall not be construed as a waiver for future purposes with respect to any such provision or option. No provision of this instrument shall be deemed to have been waived unless such waiver is in writing and signed by the party alleged to have waived its rights.

13. **Successors and Assigns.** This Agreement shall be binding upon and inure to the benefit of the parties and their respective heirs, executors, administrators, successors, legal representatives, and assigns may be assigned in whole or in part by the Parties.

14. **Duration and Amendment.** Subject to the terms of this Agreement, this Agreement and the Easements shall be perpetual and may only be terminated by a written notice of termination executed by the parties and recorded in the Office of the Utah County Recorder. The parties may amend this Agreement only by a written instrument executed by the parties and recorded in the Office of the Utah County Recorder. Notwithstanding anything within this Agreement to the contrary, the parties may terminate this Agreement only by a written notice of termination executed by the parties and recorded in the office of the Utah County Recorder. The parties may amend this Agreement only by a written instrument executed by the parties, and recorded in the office of the Utah County Recorder.

15. **Recitals.** The Recitals set forth above shall be binding upon the parties to this Agreement.

16. **Counterparts.** This Agreement may be executed in one or more counterparts which together shall constitute the Agreement.

17. **Authority.** The undersigned represent and warrant that each of them has been duly authorized by all necessary corporate or company action, as appropriate, to execute this Agreement for and on behalf of the respective parties. The undersigned represent and warrant that this

Agreement, when fully executed, shall constitute a legal, valid, and binding agreement for each of the respective parties, enforceable in accordance with its terms.

18. **Enforcement.** Each party shall have the full power and authority to enforce compliance with this Agreement in any manner provided for in law or in equity, including, without limitation, the right to bring an action for damages, to enjoin the violation, or specifically enforce the provisions of this Agreement, and if that party prevails in such action, it shall recover as part of its costs all reasonable attorney's fees, court costs and expert witness fees.

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

20. **Applicable Law.** This Agreement shall be governed by, construed in accordance with and interpreted under the laws of the State of Utah.

[Signature Page Follows]

IN WITNESS WHEREOF, the parties have executed this Access Agreement as of the date state above.

**GRANTORS**

**GRANTEES**

X: SIGNED IN COUNTERPART  
Weston Glade Berry

X: SIGNED IN COUNTERPART  
Cherie C. Green, Successor Co-Trustee of the H. Clay Cummings Family Trust, dated the 30<sup>th</sup> day of June, 1997.

X: SIGNED IN COUNTERPART  
Zane R. Berry

X: SIGNED IN COUNTERPART  
Kylene Hilton, Successor Co-Trustee of the H. Clay Cummings Family Trust, dated the 30<sup>th</sup> day of June, 1997.

X: SIGNED IN COUNTERPART  
Steven Glade Berry

X: SIGNED IN COUNTERPART  
David Alan Cummings, Successor Co-Trustee of the H. Clay Cummings Family Trust dated the 30<sup>th</sup> day of June 1997

X: SIGNED IN COUNTERPART  
Michael Jay Cummings, Successor Co-Trustee of the H. Clay Cummings Family Trust, dated the 30<sup>th</sup> day of June, 1997.

X:   
Val Miller, Co-Trustee of the H. Clay Cummings Family Trust, dated the 30<sup>th</sup> day of June, 1997.

~~X: \_\_\_\_\_  
Val Miller, Co-Trustee of the H. Clay Cummings Family Trust, dated the 30<sup>th</sup> day of June, 1997.~~

IN WITNESS WHEREOF, the parties have executed this Access Agreement as of the date state above.

**GRANTORS**

**GRANTEES**

X: Weston Glade Berry  
Weston Glade Berry

X: Cherie C. Green  
Cherie C. Green, Successor Co-Trustee of the H. Clay Cummings Family Trust, dated the 30<sup>th</sup> day of June, 1997.

X: Zane R. Berry  
Zane R. Berry

X: Kylene Hilton  
Kylene Hilton, Successor Co-Trustee of the H. Clay Cummings Family Trust, dated the 30<sup>th</sup> day of June, 1997.

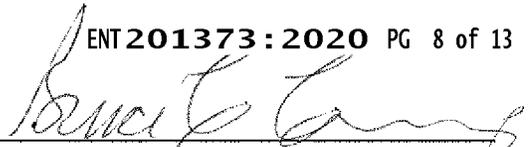
X: Steven Glade Berry  
Steven Glade Berry

X: David Alan Cummings  
David Alan Cummings, Successor Co-Trustee of the H. Clay Cummings Family Trust dated the 30<sup>th</sup> day of June 1997

X: Michael Jay Cummings SUCCESSOR CO TRUSTEE  
Michael Jay Cummings, Successor Co-Trustee of the H. Clay Cummings Family Trust, dated the 30<sup>th</sup> day of June, 1997.

X: SIGNED IN COUNTERPART  
Val Miller, Co-Trustee of the H. Clay Cummings Family Trust, dated the 30<sup>th</sup> day of June, 1997.

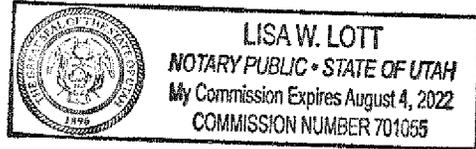
X: Keith Cummings  
Keith Cummings, Co-Trustee of the H. Clay Cummings Family Trust, dated the 30<sup>th</sup> day of June, 1997.

X:   
Bruce C. Cummings, Co-Trustee of the H.  
Clay Cummings Family Trust, dated the  
30<sup>th</sup> day of June, 1997.

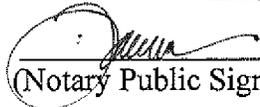
State of Utah ):  
County of Utah

On this 15th day of December 2020, before me Lisa W. Lott, a notary public, personally appeared Weston Glade Berry, proved on the basis of satisfactory evidence to be the person whose name is subscribed to this instrument, and acknowledged he executed the same.

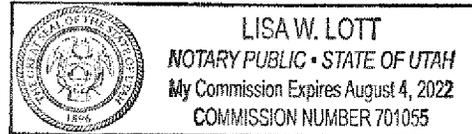
Witness my hand and official seal.



(Seal)  
My Commission Expires: ~~8-4-22~~

  
(Notary Public Signature)

State of Utah ):  
County of Utah



On this 15th day of December 2020, before me Lisa W. Lott, a notary public, personally appeared Zane R. Berry, proved on the basis of satisfactory evidence to be the person whose name is subscribed to this instrument, and acknowledged he executed the same.

Witness my hand and official seal.

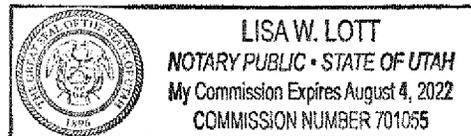
(Seal)  
My Commission Expires: ~~8-4-22~~

  
(Notary Public Signature)

State of Utah ):  
County of Utah

On this 10th day of December 2020, before me Lisa W. Lott, a notary public, personally appeared Steven Glade Berry, proved on the basis of satisfactory evidence to be the person whose name is subscribed to this instrument, and acknowledged he executed the same.

Witness my hand and official seal.



(Seal)  
My Commission Expires: ~~8-4-22~~

  
(Notary Public Signature)

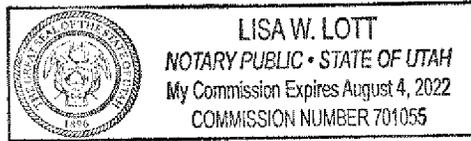
State of Utah

):ss

County of Utah

On this 10th day of December 2020, before me Lisa W. Lott, a notary public, personally appeared Cherie C. Green, Kylene Hilton, Successor Co-Trustees David Alan Cummings, Successor Co-Trustee, Michael Jay Cummings Successor Co-Trustee, Keith Cummings, Co-Trustee and Bruce C. Cummings, each being a Co-Trustee of The H. Clay Cummings Family Trust, dated the 30<sup>th</sup> day of June, 1997, proved on the basis of satisfactory evidence to be the person whose name is subscribed to this instrument, and acknowledged he executed the same.

Witness my hand and official seal.



(Seal)

My Commission Expires: 8-4-22

[Signature]  
(Notary Public Signature)

State of Nevada

):ss

County of Clark

On this 15 day of December 2020, before me Lisa G. Hee a notary public, personally appeared Val Miller, Co-Trustee of The H. Clay Cummings Family Trust, dated the 30<sup>th</sup> day of June 1997, proved on the basis of satisfactory evidence to be the person whose name is subscribed to this instrument, and acknowledged he executed the same.

Witness my hand and official seal.

(Seal)

My Commission Expires:

June 13, 2021 [Signature]

(Notary Public Signature)

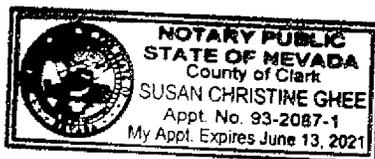


EXHIBIT "A"

Description of Berry Parcel

COMMENCING SOUTH 1.35 FEET AND EAST 946.75 FEET FROM THE NORTH  $\frac{1}{4}$  CORNER OF SECTION 19, TOWNSHIP 6 SOUTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN; THENCE SOUTH 89 DEGREES 55' 14" EAST 370.64 FEET; THENCE SOUTH 0 DEGREES 5' 25" WEST 827.87 FEET; THENCE NORTH 89 DEGREES 56' 3" WEST 398.07 FEET; THENCE NORTH 1 DEGREE 59' 17" EAST 828.43 FEET TO THE POINT OF BEGINNING.

EXHIBIT "B"

Description of Cummings Trust Parcels

THE EAST HALF OF THE EAST HALF OF SECTION 19, TOWNSHIP 6 SOUTH, RANGE 1  
WEST, SALT LAKE BASE AND MERIDIAN

## Description of Easement Area

**Berry Roadway and Public Utility Easement Description**

A 60.00 foot wide easement for a roadway and public utilities across parcel 59:019:0015. Said easement being described as follows:

Beginning at a point located South 89°56'03" East along the section line 946.76 feet from the North quarter corner of Section 19, Township 6 South, Range 1 West, Salt Lake Base and Meridian; thence continuing South 89°56'03" East along section line 369.74 feet; thence South 00°10'27" West 60.00 feet; thence North 89°56'03" West 371.64 feet; thence North 01°59'17" East, a distance of 60.03 feet to the point of beginning.

Containing 22,241 square feet or 0.51 acres, more or less.

**Surveyor's Certification**

I Aaron D. Thomas, do hereby certify that I am a Registered Land Surveyor, licensed to practice in the State of Utah, holding license number 6418780, and that in October 2020, I made a survey of the property described in this description. This survey was made in conformity with generally accepted local surveying practices.

