

COURTESY RECORDING

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ENT208144:2020 PG 1 of 10
Jeffery Smith
Utah County Recorder
2020 Dec 28 04:43 PM FEE 40.00 BY IP
RECORDED FOR Highland Title
ELECTRONICALLY RECORDED

ACCESS AND EASEMENT AGREEMENT

THIS ACCESS AGREEMENT ("Agreement") is made and entered into this 16th day of December 2020 (the "Effective Date") by and between Flagship EM Holdings, LLC, a Utah limited liability company, ("Grantor"), and Scarlet Ridge Partners LLC, a Utah limited liability company ("Grantee").

A. Grantor is the fee owner of that certain land parcel located in Eagle Mountain City, Utah County, Utah, (the "City"), further identified as Tax Parcel 59-018-0044, hereinafter referred to as "Flagship Parcel" and legally described in Exhibit A attached hereto and incorporated herein by this reference.

B. Grantee is under contract (via assignment) to purchase from a third-party that certain land parcel located in Eagle Mountain City (the "City"), Utah County, Utah, further identified as Tax Parcels 59-019-0004 and 59-019-0005, hereinafter together referred to as "Scarlet Ridge Parcel" and legally described in Exhibit B attached hereto and incorporated herein by this reference.

C. Flagship Parcel and Scarlet Ridge Parcel are not adjacent to each other but are located near each other.

B. Upon completion of its purchase of the Scarlet Ridge Parcel, Grantee will require an easement over and across a portion of the Flagship Parcel to construct and install certain improvements, defined below, in conjunction with his development of the Scarlet Ridge Parcel.

C. Grantor is willing to grant to Grantee, contingent upon Grantee's purchase of the Scarlet Ridge Parcel, a road and utility easement over and across a portion of the Flagship Parcel (herein "Easement Area") legally described and depicted Exhibit C attached hereto and incorporated herein by this reference.

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.** Expressly subject to the Contingency (defined below), Grantor hereby grants Grantee a 50-foot-wide non-exclusive access and utility easement on, over, under and across the Easement Area (the "Easement") for the purpose, and only the purpose, of installation, maintenance, and repair of a 40-foot-wide asphalt access road required by the City and built in accordance with the City standards connecting the Scarlet Ridge to Pony Express Parkway and to construct a sewer line of at least 8 inches in diameter (or as determined by the City sewer line capacity requirements) (herein collectively, the "Easement Improvements"). Grantor shall have the right to define the road alignment and location of the Easement Improvements within the Easement Area, provided the alignment and location of the Easement Improvements reasonably follow the locations depicted on Exhibit C attached hereto. Grantor shall have the right to generate or approve the final engineered drawings prior to construction or installation of the Easement Improvements. Grantor shall not be entitled to reimbursement for engineering and

surveying costs related to its review of the final engineered drawings for the Easement Improvements.

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 fifty feet (50') lying twenty-five feet (25') to either side of the centerline as described in Exhibit "C". Grantee shall give written notice to Grantor at least three (3) 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 and the improvements constructed and installed within the Easement Area, provided such use shall not unreasonably interfere with the rights granted to Grantee 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 and utility lines and facilities over or across the Easement nor change the contour thereof without the written authorization of Grantee. Prior to the commencement of the sewer pipe installation, Grantor may demand that Grantee upgrade the intended 8 inch diameter sewer pipe (to be installed in the Easement Area) to a sewer pipe with a larger diameter so long as Grantor pays for the additional costs directly related to the increased sewer pipe diameter.

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 solely responsible for the installation and construction of the Easement Improvements and all costs and expenses associated therewith. 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 sole responsibility of the Grantee, at Grantee's sole cost and 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, managers, partners, directors, officers, agents, contractors and employees 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 Easement Improvements and/or the use of the Easement by Grantee or any third-party, 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 sole cost and expense, obtain and keep in force during the existence of the Easement all of 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 and No/100 Dollars (\$1,000,000) for injury or death in any one accident or occurrence and Two Million and No/100 Dollars (\$2,000,000) 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 or certificate of insurance evidencing the coverage set forth herein shall be delivered to Grantor upon the execution of this Agreement by Grantee.

(d) A policy of all-risk property insurance covering the full replacement value of all Grantor's betterments and improvements located within the Easements, including, but not limited to the Easement Improvements.

(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 and No/100 Dollars (\$1,000,000) 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 as the servient estate and benefit the Grantor Property as the dominant estate and shall be binding upon the Grantee, its successors, assigns and any persons acquiring, leasing or otherwise owning an interest in the Grantee Property.

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 Grantor and Grantee 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 Grantee.

14. **Duration, Contingency 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. Notwithstanding anything herein to the contrary, this Agreement and all of the rights and obligations set forth herein, including, but not limited to, the Easement, are expressly contingent upon and subject to Grantee acquiring fee title ownership of the Scarlet Ridge Parcel (the "Contingency"). If the Contingency is not satisfied on or before February 1, 2021, then this Agreement shall be null and void, the Flagship Property and Easement Area shall not be subject to either this Agreement or the Easement and the Grantee and Grantor shall have no further rights, duties and obligations arising out of this Agreement. 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]

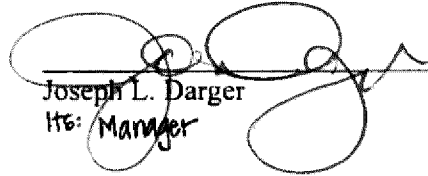
IN WITNESS WHEREOF, the parties have executed this Access Agreement as of the date state above.

Flagship EM Holdings, LLC (Grantor)

SCARLET RIDGE PARTNERS, LLC
JOSEPH L. DARGER (Grantee)



Peter Evans
Its: Manager

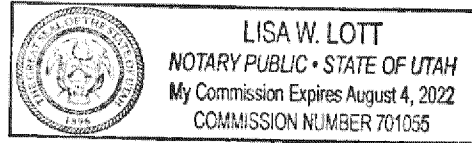


Joseph L. Darger
Its: ~~MANAGER~~


State of Utah):
County of Utah):ss

On this 16th day of December 2020, before me LISA W. LOTT, a notary public, personally appeared Joseph L. Darger, proved on the basis of satisfactory evidence to be the person whose name is subscribed to this instrument, and acknowledged he executed the same. ~~MANAGER OF SCARLET RIDGE PARTNERS, LLC~~

Witness my hand and official seal.



(Seal)
My Commission Expires:



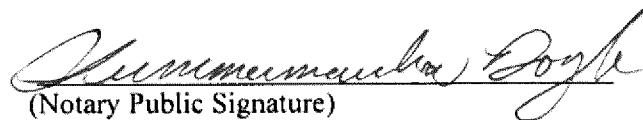
(Notary Public Signature)

State of Utah):
County of Utah):ss

On this 16th day of December 2020, before me Summermauloa Doyle, a notary public, personally appeared Peter Evans, 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:



(Notary Public Signature)

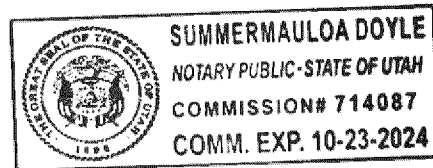


EXHIBIT "A"
Depiction of Properties

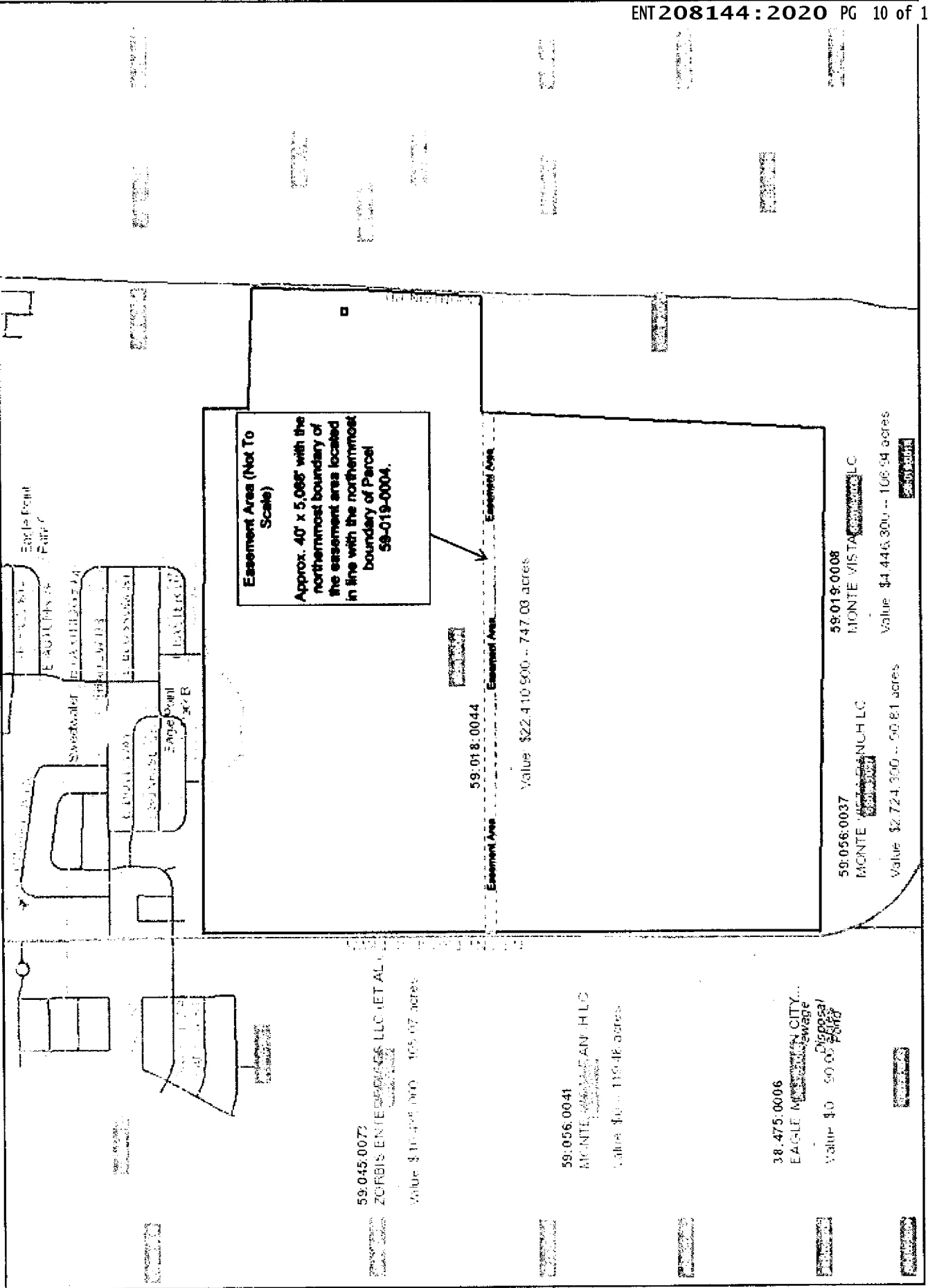
COM AT S 1/4 COR. SEC. 18, T6S, R1W, SLB&M.; S 89 DEG 56' 13" E 879.69 FT; N 3 DEG 7' 31" E 1089.4 FT; N 2 DEG 7' 48" E 1130.21 FT; N 87 DEG 43' 58" W 944.77 FT; S 0 DEG 56' 32" W 937.37 FT; E 698.02 FT; N 25 FT; E 50 FT; S 50 FT; W 50 FT; N 25 FT; W 698.02 FT; N 0 DEG 56' 32" E 937.37 FT; N 87 DEG 43' 58" W 219.07 FT; N 3 DEG 3' 20" E 419.66 FT; N 89 DEG 13' 44" W 5100.88 FT; S 0 DEG 27' 5" W 5966.21 FT; S 88 DEG 55' 5" E 4897.88 FT; N 3 DEG 11' 17" E 3314.01 FT; S 89 DEG 54' 25" E 225.58 FT; N 0 DEG 56' 32" E 840.61 FT; W 267.72 FT; S 25 FT; S 0 DEG 1' 30" W 10.94 FT; S 50 FT; W 50 FT; N 50 FT; E 50 FT; N 0 DEG 1' 30" E 10.94 FT; W 50 FT; N 50 FT; E 50 FT; S 25 FT; E 267.72 FT; S 0 DEG 56' 32" W 840.61 FT TO BEG. AREA 747.031 AC.

EXHIBIT "B"
Depiction of Properties

THE EAST ½ OF THE EAST ½ OF SECTION 19, TOWNSHIP 6 SOUTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN (TAX ID NOS. 59:019:0004 AND 59:019:0005) AS RECORDED IN THE RECORDER'S OFFICE, UTAH COUNTY, STATE OF UTAH.

EXHIBIT "C"
Easement Area

A handwritten signature or set of initials in black ink, located in the lower right quadrant of the page. The signature is stylized and appears to consist of a few connected letters.



Easement Area (Not To Scale)
 Approx. 40' x 5,088' with the northernmost boundary of the easement area located in line with the northernmost boundary of Parcel 59-019-0004.

59-045-0073
 ZORBIS ENTERPRISES LLC (ET AL)
 Value \$10,495,000 -- 105.07 acres

59-056-0041
 MONTE VISTARANCH LLC
 Value \$0 -- 119.48 acres

38-475-0006
 EAGLE MOUNTAIN CITY...
 Value \$0 -- 50.00 acres

59-018-0044
 Value \$22,410,900 -- 747.08 acres

59-056-0037
 MONTE VISTARANCH LLC
 Value \$2,724,300 -- 50.81 acres

59-019-0008
 MONTE VISTARANCH LLC
 Value \$4,446,300 -- 106.94 acres

Utah County Parcel Map
 590180044

This cadastral map is generated from Utah County Recorder data. It is for reference only and no liability is assumed for any inaccuracies, incorrect data or variations with an actual survey

Date: 9/15/2020



Handwritten signature or initials.