

E 3540288 B 8316 P 137-151
RICHARD T. MAUGHAN
DAVIS COUNTY, UTAH RECORDER
08/15/2023 10:34:21 AM
FEE: \$40.00 Pgs: 15
DEP eCASH REC'D FOR: COTTONWOOD TITLE
INSURANCE AGENCY, INC.

WHEN RECORDED, MAIL TO:

Dentons Durham Jones & Pinegar
3301 N. Thanksgiving Way, #400
Lehi, UT 84043
Attn: Brian C. Cheney

11-061-0257, 11-061-0258, 11-061-0259 & 11-061-0260

EASEMENT AGREEMENT

This EASEMENT AGREEMENT (this “**Agreement**”), dated as of the 15th day of August, 2023 (the “**Effective Date**”), by and between North Utah Holdings, LLC, a Utah limited liability Company and 159 S Main, LLC, a Utah limited liability Company, (hereinafter collectively, the “**Grantor**”) having an address at 3651 N. 100 E., Ste. 125, Provo, UT 84604, and WINKEL ROCK, LLC, a Utah limited liability company (hereinafter, the “**Grantee**”), having an address at 4655 S. 2300 E., Ste. 205, Holladay, UT 84117.

WITNESSETH:

WHEREAS, Grantor is the fee owner of certain land located in Layton City, Davis County, State of Utah, hereinafter referred to collectively as “**Parcel A**” and more particularly described as set forth on Exhibit A attached hereto and made a part hereof;

WHEREAS, Grantee is the fee owner of certain land adjacent to Parcel A and located in Layton City, Davis County, State of Utah, hereinafter referred to as “**Parcel B**” and more particularly described as set forth on Exhibit B attached hereto and made a part hereof;

WHEREAS, Grantee is in the process of developing and constructing a mixed-use multi-family and commercial project on Parcel B and desires that Grantor grant to Grantee an easement over a portion of Parcel A more particularly described and depicted on Exhibits C and C-1 attached hereto and made a part hereof (the “**Easement Area**”) for storm water drainage and detention over and upon the Easement Area; and

WHEREAS, Grantor is willing to grant to Grantee such an easement on the terms and conditions provided in this Agreement;

NOW, THEREFORE, for good and valuable consideration paid by Grantee to Grantor and the mutual covenants, terms, and conditions set forth herein, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

AGREEMENT:

1. Grant. Grantor hereby grants and conveys to Grantee, its legal representatives, successors, and assigns, and to any future owner of Parcel B and any owners association formed in connection with the development of Parcel B (collectively, the “**Grantee Parties**”), a perpetual, non-exclusive, transferable easement and right-of-way on, over, across, under, and through the Easement Area for the development, construction, connection, installation, operation,

maintenance, servicing, repair, improvement, replacement, and use of a storm water drainage system and one or more related surface detention ponds, facilities and equipment, landscaping and fencing (collectively, the “**Facilities**”), and (b) an easement for access over the Easement Area for the purposes set forth in subsection (a) and in Sections 2 and 3 below (the “**Easements**”).

2. Access. Grantee Parties shall also be permitted access to a reasonable area of Parcel A nearby the Easement Area (the “**Access Area**”) as necessary to construct the improvements and perform maintenance and repairs to the Facilities as further described herein. Grantee Parties shall not interrupt Grantor’s use of Parcel A, and if such interruption is necessary, such interruption shall be temporary in nature and designed to limit any interruption of access to and from the remaining lands of Grantor.

3. Improvements. In furtherance of the Easements granted herein, Grantee may enter upon Parcel A for the purpose of constructing the Facilities over, under, in, along, across, and upon the Easement Area that are reasonably related to both the purpose of the Easements and Grantee’s use and enjoyment of the Easements.

4. Costs/Lien-Free Construction. Grantee Parties shall bear and promptly pay without the imposition of any lien or charge on or against all or any portion of Parcel A, all costs and expenses incurred by the Grantee Parties in connection with the construction, maintenance, operation and repair of the Facilities. Grantee Parties hereby acknowledge and agree that if any lien is filed against Parcel A as a result of the Easement or Grantee Parties’ activities in the Easement Area and Grantee Parties have not had such lien removed of record within sixty (60) days of the date Grantee Parties receive notice of such lien, Grantee shall be in default of this Agreement, and Grantor shall have the right to exercise all of its remedies pursuant to this Agreement, at law and in equity.

5. Compliance with Laws. Grantee shall construct the Facilities in a workmanlike manner and in compliance with the applicable statutes, ordinances, rules, and regulations of all governing public authorities as those statutes, ordinances, rules, and regulations are amended from time to time.

6. Maintenance and Repair. Grantee hereby assumes the obligation, including all costs and expenses, to maintain and repair the Facilities, Easement Area and Access Area. In addition to the foregoing, Grantee shall perform necessary maintenance so as to keep the Easement Area and Access Area at all times free of all liens and monetary encumbrances.

7. Representations and Warranties. Grantor hereby represents and warrants to Grantee that: (a) it has the full right, power, title, and interest to make the within grant of Easement to Grantee; (b) such grant of Easement and any rights granted under this Agreement may be fully and thoroughly enjoyed and utilized by Grantee and Grantee Parties pursuant to the terms hereof; and (c) Grantee’s easement rights hereunder shall not be defeased, impaired, and adversely affected by superior title.

8. Relocation. Grantor agrees to relocate the Easements if the Easement Area is part of a future development on Parcel A that is annexed into and made a part of the project being

developed by Grantee on Parcel B. If Grantee desires to relocate the Easement and/or Easement Area, Grantee shall send a notice to relocate the Easement and/or Easement Area, in writing, to Grantor, and Grantor shall work in good faith with Grantee to relocate the Easement and Easement Area to accommodate the development of Parcel A and this Agreement shall be amended to reflect same. Grantee hereby acknowledges and agrees that it shall be solely responsible for all costs and expenses, including reasonable attorneys' fees, incurred in connection with relocating the Easement and/or Easement Area. Grantor may relocate the Easements and the Easement Area upon written request to Grantee so long as: (i) at least the same amount of drainage and retention capacity is provided at the new location (Exhibit C-2); and (ii) Grantor shall be solely responsible for all costs and expenses associated with such relocation and construction of new drainage and detention facilities; provided, however, that Grantee shall continue to be responsible for ongoing maintenance.

9. Grantor's Use of Property. Grantor reserves the right to use Parcel A in any manner and for any purpose that does not interfere with Grantee's Easement rights and its use of the Easement as provided in this Agreement.

10. Transferability. The parties to this Agreement hereby acknowledge and agree that the easements and other rights conferred by this Agreement are intended to, and do, constitute covenants that run with the land and shall inure to the benefit of and be binding upon the parties and their respective grantees, heirs, successors, and assigns.

11. Default and Remedies. In the event of a default by Grantor or Grantee, the non-defaulting party may seek any and all remedies permitted by law.

12. Insurance. Grantee shall maintain, at its expense, and keep in force at all times during the term of this Agreement, a policy of comprehensive general public liability insurance, including a contractual liability endorsement, and personal injury liability coverage, which shall include coverage against claims for any injury, death, or damage to persons or property occurring on, in, or about the Easement Area and/or the Access Area with a combined single limit of not less than \$1,000,000.00 with respect to the Easement Area and/or Access Area and Grantee's use therein. Grantor shall be named as additional insureds on such insurance policies. Such insurance policy shall provide that it may not be cancelled on less than thirty (30) days prior written notice to Grantor.

13. Grantor Not Liable. In no event shall Grantor be liable for any damage to, or loss of personal property or equipment sustained by Grantee within the Easement Area and/or Access Area, whether or not it is insured, even if such loss is caused by the negligence of Grantor.

14. Limitation of Damages. NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED IN THIS AGREEMENT, IN THE EVENT OF A DEFAULT HEREUNDER, OR FOR ANY OTHER REASON, NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, PUNITIVE, SPECIAL, CONSEQUENTIAL, OR INCIDENTAL DAMAGES WHATSOEVER, INCLUDING LOSS OF GOODWILL OR LOSS OF PROFITS.

15. Indemnification. Grantee shall indemnify, defend, and hold Grantor harmless from and against any and all losses, costs, damages, liens, claims, liabilities, or expenses (including, but not limited to, reasonable attorneys' fees, court costs, and disbursements) incurred by Grantor arising from or by reason of Grantee's access to, or use of the Easement Area and/or Access Area.

16. Attorneys' Fees. In the event of any dispute between the parties regarding the enforcement or effect of this Agreement, including one subject to arbitration, the non-prevailing party in any such dispute shall pay the prevailing party's reasonable attorneys' fees and costs incurred. In the event of arbitration, the fees of the arbitrator and the cost of the arbitration shall be paid by the non-prevailing party. In the event that neither party wholly prevails, the court or arbitrator, as applicable, may apportion the costs or fees as the court or arbitrator deems appropriate.

17. Subordination. Grantor shall obtain a subordination and non-disturbance agreement, in a form reasonably acceptable to Grantee, from any and all lienholders holding a lien on Parcel A, subordinating such agreements of lien to this Agreement.

18. Notice. Unless specifically stated otherwise in this Agreement, all notices, waivers, and demands required or permitted hereunder shall be in writing and delivered to the addresses set forth below, by one of the following methods: (a) hand delivery, whereby delivery is deemed to have occurred at the time of delivery; (b) a nationally or regionally recognized overnight courier company, whereby delivery is deemed to have occurred the business day following deposit with the courier; (c) registered United States mail, signature required and postage-prepaid, whereby delivery is deemed to have occurred on the third business day following deposit with the United States Postal Service; or (d) electronic transmission (facsimile or email) provided that the transmission is completed no later than 4:00 p.m. Utah time on a business day and the original also is sent via overnight courier or United States Mail, whereby delivery is deemed to have occurred at the end of the business day on which electronic transmission is completed.

To Grantor:

Name: North Utah Holdings, LLC
Name: 159 S Main, LLC
Address: 3651 N. 100 E., Ste. 125, Provo, UT 84604
Telephone:
Email: mckaywinkel@gmail.com

with a copy to:

Name:
Address:
Telephone:
Email:

To Grantee:

Name: Winkel Rock, LLC
Address: 4655 S. 2300 E., Ste. 205
Holladay, UT 84117
Attn: Tom Henriod
Telephone: 801-501-0727

Email: thenriod@rockworthco.com

with a copy to:

Name: Dentons Durham Jones & Pinegar
Address: 3301 N. Thanksgiving Way, #400
Lehi, UT 84043
Attn: Brian Cheney
Telephone: 801-655-4768
Email: brian.cheney@dentons.com

Any party may change its address for purposes of this Section 18 by giving written notice as provided in this Section 18. All notices and demands delivered by a party's attorney on a party's behalf shall be deemed to have been delivered by said party. Notices shall be valid only if served in the manner provided in this Section 18.

19. Amendment. This Agreement may not be modified, amended, or terminated except in a writing signed by each party hereto.

20. Time of the Essence. Both parties agree that time is of the essence and that time specifications contained herein shall be strictly construed.

21. Governing Law. THIS AGREEMENT SHALL BE GOVERNED AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF UTAH. EACH PARTY HERETO AGREES THAT ALL ACTIONS OR PROCEEDINGS ARISING IN CONNECTION WITH THIS AGREEMENT AND THE TRANSACTIONS CONTEMPLATED HEREBY SHALL BE TRIED AND LITIGATED IN STATE OR FEDERAL COURTS LOCATED IN THE STATE OF UTAH, UNLESS SUCH ACTIONS OR PROCEEDINGS ARE REQUIRED TO BE BROUGHT IN ANOTHER COURT TO OBTAIN SUBJECT MATTER JURISDICTION OVER THE MATTER IN CONTROVERSY. TO THE EXTENT PERMITTED BY LAW, EACH PARTY HERETO IRREVOCABLY WAIVES ANY RIGHT ANY PARTY HERETO MAY HAVE TO ASSERT THE DOCTRINE OF FORUM NON CONVENIENS, TO ASSERT THAT ANY PARTY HERETO IS NOT SUBJECT TO THE JURISDICTION OF THE AFORESAID COURTS, OR TO OBJECT TO VENUE TO THE EXTENT ANY PROCEEDING IS BROUGHT IN ACCORDANCE WITH THIS SECTION. SERVICE OF PROCESS, SUFFICIENT FOR PERSONAL JURISDICTION IN ANY ACTION AGAINST ANY PARTY HERETO, MAY BE MADE BY REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED, TO ANY SUCH PARTY'S ADDRESS INDICATED IN SECTION 18 OF THIS AGREEMENT.

22. Counterparts. This Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be deemed an original for all purposes, and all such counterparts shall together constitute but one and the same instrument. A signed copy of this Agreement delivered by facsimile or email shall be deemed to have the same legal effect as delivery of an original signed copy of this Agreement. Notwithstanding the foregoing, each party hereto shall deliver original counterpart signatures to the other parties by no later than five (5) days after the date hereof.

23. Authority. Both parties represent and warrant that they have the authority to execute this Agreement and each individual signing on behalf of a party to this Agreement states that he or she is the duly authorized representative of the signing party and that his or her signature on this Agreement has been duly authorized by, and creates the binding and enforceable obligation of, the party on whose behalf the representative is signing.

24. Further Cooperation. Each of the signatories to this Agreement agree to execute such other documents and to perform such other acts as may be reasonably necessary or desirable to further the expressed and intent purpose of this agreement.

[Signatures to Follow]

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the date first written above.

GRANTOR:

North Utah Holdings, LLC
a Utah limited liability company

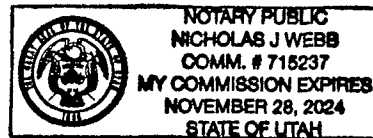
By: [Signature]
Name: McKay Winkel
Title: MANAGER

STATE OF UTAH)
)
) : ss.
COUNTY OF SALT LAKE)

SUBSCRIBED, SWORN TO AND ACKNOWLEDGED before me, a Notary Public, by McKay Winkel, as the MANAGER of North Utah Holdings, LLC this 11th day of August, 2023.

WITNESS my hand and official seal.

[Signature]
NOTARY PUBLIC
My Commission Expires: NOVEMBER 28, 2024



GRANTOR:
159 S Main, LLC
a Utah limited liability company

By: *[Signature]*
Name: Mckay Winkel
Title: MANAGER

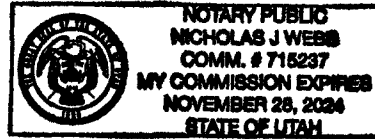
STATE OF UTAH)
) : ss.
COUNTY OF SALT LAKE)

SUBSCRIBED, SWORN TO AND ACKNOWLEDGED before me, a Notary Public, by Mckay Winkel, as the MANAGER of 159 S Main, LLC this 11th day of August, 2023.

WITNESS my hand and official seal.

Nicholas J Webb
NOTARY PUBLIC
My Commission Expires: NOVEMBER 28, 2024

[Grantee signature on following page]



GRANTEE:

WINKEL ROCK, LLC,
a Utah limited liability company

By: Rockworth Companies, LLC
Its: Manager

By: 

Name: Adam Davis

Title: Manager

STATE OF UTAH)
) ss.
COUNTY OF SALT LAKE)

SUBSCRIBED, SWORN TO AND ACKNOWLEDGED before me, a Notary Public, by Adam Davis, as the Manager of Rockworth Companies, LLC, the Manager of Winkel Rock, LLC this 14 day of August, 2023.

WITNESS my hand and official seal.

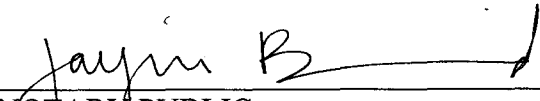

NOTARY PUBLIC
My Commission Expires: 8/04/2024



EXHIBIT A
Legal Description of Parcel A

That certain real property in the City of Layton, Davis County, State of Utah, more particularly described as follows:

Parcel ID: 11-061-0257

BEGINNING AT A POINT ON AN EASTERLY LINE OF THAT CERTAIN PARCEL CITED IN THAT CERTAIN SPECIAL WARRANTY DEED RECORDED JULY 6, 2023, AS ENTRY NO. 3531604 IN BOOK 8270 AT PAGE 737-739, SAID POINT ALSO BEING SOUTH 00°04'16" WEST 784.49 FEET AND EAST 1356.95 FEET FROM THE NORTHEAST CORNER OF SECTION 29, TOWNSHIP 4 NORTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN AND RUNNING THENCE NORTH 76°40'21" EAST 48.94 FEET; THENCE SOUTH 01°45'39" EAST 119.30 FEET; THENCE NORTH 25°24'32" WEST ALONG SAID EASTERLY LINE 119.52 FEET TO THE POINT OF BEGINNING.

CONTAINS: 2,860 SQUARE FEET OR 0.066 ACRES, STATE PLAIN ROTATION, CLOCKWISE 0°21'19"

Parcel ID: 11-061-0258

BEGINNING AT A POINT ON AN EASTERLY LINE OF THAT CERTAIN PARCEL CITED IN THAT CERTAIN SPECIAL WARRANTY DEED RECORDED JULY 6, 2023, AS ENTRY NO. 3531604 IN BOOK 8270 AT PAGE 737-739, SAID POINT ALSO BEING SOUTH 00°04'16" WEST 784.49 FEET AND EAST 1356.95 FEET FROM THE NORTHEAST CORNER OF SECTION 29, TOWNSHIP 4 NORTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN AND RUNNING THENCE NORTH 25°24'32" WEST ALONG SAID EASTERLY LINE 74.91 FEET; THENCE NORTH 64°35'28" EAST 1.01 FEET; THENCE NORTH 76°40'21" EAST 78.48 FEET; THENCE SOUTH 01°53'39" EAST 74.95 FEET; THENCE SOUTH 76°40'21" WEST 48.94 FEET TO THE POINT OF BEGINNING.

CONTAINS: 4,718 SQUARE FEET OR 0.108 ACRES, STATE PLAIN ROTATION, CLOCKWISE 0°21'19"

Parcel ID: 11-061-0259

BEGINNING AT A POINT ON A SOUTHERLY LINE OF THAT CERTAIN PARCEL CITED IN THAT CERTAIN SPECIAL WARRANTY DEED RECORDED JULY 6, 2023, AS ENTRY NO. 3531604 IN BOOK 8270 AT PAGE 737-739, SAID POINT ALSO BEING SOUTH 00°04'16" WEST 716.40 FEET AND EAST 1325.64 FEET FROM THE NORTHEAST

CORNER OF SECTION 29, TOWNSHIP 4 NORTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN AND RUNNING NORTH 64°35'28" EAST ALONG SAID SOUTHERLY LINE 80.54 FEET TO A SOUTHEASTERLY CORNER OF SAID CERTAIN PARCEL; THENCE DEPARTING FROM SAID CORNER NORTH 47°38'55" EAST ALONG A SOUTHEASTERLY LINE OF SAID CERTAIN PARCEL 4.04 FEET; THENCE SOUTH 01°53'39" EAST 19.20 FEET; THENCE SOUTH 76°40'21" WEST 78.48 FEET TO THE POINT OF BEGINNING.

CONTAINS: 691 SQUARE FEET OR 0.016 ACRES, STATE PLAIN ROTATION, CLOCKWISE 0°21'19"

EXHIBIT B
Legal Description of Parcel B

That certain real property in the City of Layton, Davis County, State of Utah, more particularly described as follows:

A PARCEL OF LAND LYING WITHIN THE NORTHWEST QUARTER OF SECTION 28, TOWNSHIP 4 NORTH, RANGE 1 WEST, SALT LAKE BASE AND MERIDIAN, MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT IN THE CENTERLINE OF KAYS CREEK, SAID POINT ALSO BEING ON THE WESTERLY RIGHT OF WAY AND NON ACCESS LINE OF INTERSTATE 15, SAID POINT ALSO BEING LOCATED NORTH 89°28'04" WEST ALONG SECTION LINE 1270.98 FEET (NORTH 89°27'20" WEST 1271.00 FEET BY DEED) AND SOUTH 84.50 FEET AND NORTH 77°14'00" WEST 108.64 FEET (NORTH 77°13'31" WEST BY DEED) FROM A FOUND BRASS CAP MONUMENT MARKING THE NORTH QUARTER CORNER OF SAID SECTION 28; RUNNING THENCE ALONG SAID RIGHT OF WAY LINE THE FOLLOWING THREE (3) COURSES: 1) SOUTH 77°14'00" EAST 146.12 FEET, 2) SOUTH 42°21'05" EAST 210.65 FEET TO A POINT ON A 1759.90 FOOT TANGENT RADIUS CURVE TO THE RIGHT; 3) THENCE SOUTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 6°53'35" A DISTANCE OF 211.73 FEET (CHORD BEARS SOUTH 40°41'49" EAST 211.60 FEET); THENCE SOUTH 47°38'55" WEST 386.32 FEET; THENCE SOUTH 64°35'28" WEST 81.55 FEET; THENCE SOUTH 25°24'32" EAST 205.85 FEET; THENCE SOUTH 1°35'03" EAST 46.21 FEET; THENCE SOUTH 88°25'02" WEST 146.85 FEET TO A POINT ON THE EASTERLY RIGHT OF WAY LINE OF MAIN STREET; THENCE ALONG SAID RIGHT OF WAY LINE NORTH 25°24'32" WEST 515.66 FEET TO THE CENTER LINE OF SAID KAYS CREEK; THENCE ALONG SAID CREEK THE FOLLOWING FOUR (4) COURSES: 1) NORTH 62°43'40" EAST 98.30 FEET TO A POINT ON A 70.0 FOOT TANGENT RADIUS CURVE TO THE LEFT, 2) NORTHEASTERLY ALONG THE ARC OF SAID CURVE THROUGH A CENTRAL ANGLE OF 47°32'16" A DISTANCE OF 58.08 FEET (CHORD BEARS NORTH 38°57'32" EAST 56.43 FEET), 3) NORTH 15°11'24" EAST 159.73 FEET, 4) NORTH 16°27'33" EAST 178.28 FEET TO THE POINT OF BEGINNING.

(NAD83 STATE PLAIN ROTATION, CLOCKWISE 0°21'19'')

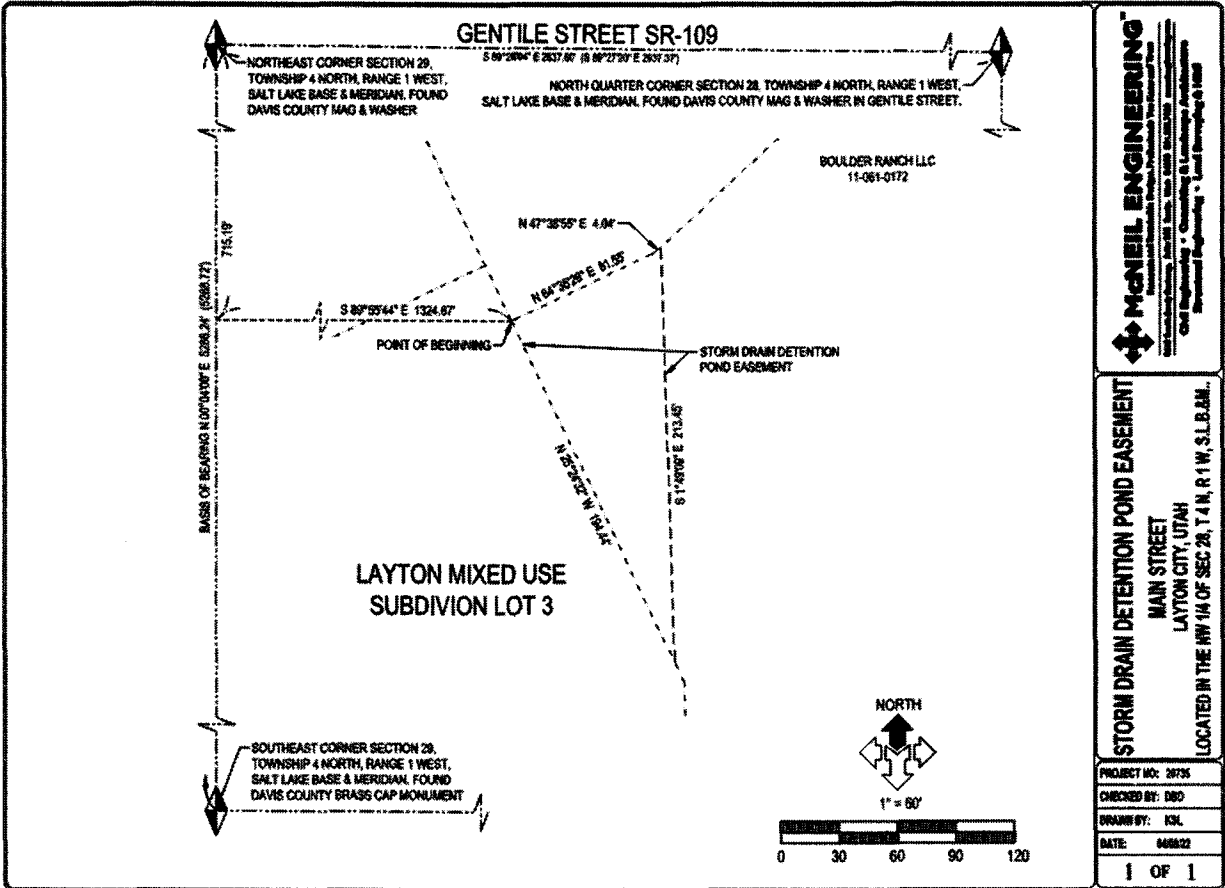
EXHIBIT C
Legal Description of Easement Area

BEGINNING AT A POINT SOUTH 0°04'00" WEST ALONG THE SECTION LINE 715.19 FEET AND SOUTH 89°55'44" EAST 1324.67 FEET FROM THE NORTHEAST CORNER OF SECTION 29, TOWNSHIP 4 NORTH, RANGE 1 WEST, SALT LAKE BASE & MERIDIAN, AND RUNNING THENCE NORTH 64°35'28" EAST 81.55 FEET; THENCE NORTH 47°38'55" EAST 4.04 FEET; THENCE SOUTH 1°49'09" EAST 213.45 FEET; THENCE NORTH 25°24'32" WEST 194.44 FEET TO THE POINT OF BEGINNING.

CONTAINS 4,395 SQ. FT.

STATE PLAIN ROTATION, CLOCKWISE 0°21'19"

EXHIBIT C-1 DEPICTION OF EASEMENT AREA



MCNEIL ENGINEERING
 Surveying & Engineering
 1100 South Main Street, Suite 200
 Layton, Utah 84041
 Phone: 313-222-2222
 Fax: 313-222-2222
 Email: info@mcneileng.com
 Surveying & Engineering • Consulting & Landmarks Architecture
 Professional Registration • Land Surveying & M.E.

STORM DRAIN DETENTION POND EASEMENT
 MAIN STREET
 LAYTON CITY, UTAH
 LOCATED IN THE NW 1/4 OF SEC 28, T. 4 N, R. 1 W, S. 1 R. 1 M.

PROJECT NO:	28735
CHECKED BY:	DSD
DRAWN BY:	KSL
DATE:	6/28/22
1 OF 1	

EXHIBIT C-2 DEPICTION OF DRAINAGE

