

RECORDING REQUESTED BY  
AND AFTER RECORDING RETURN TO:

BRC ADG JV Heber, LLC  
Attn: Brad Watson  
166 East 14000 South, Suite 110  
Draper, Utah 84020

Affecting Tax Parcel No.: 00-0021-5172

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*(space above for Recorder's use)*

## DRAINAGE AND SIDEWALK EASEMENT AGREEMENT

THIS DRAINAGE AND SIDEWALK EASEMENT AGREEMENT (this "**Agreement**") is made and entered into as of this 24<sup>th</sup> day of NOVEMBER, 2021 (the "**Effective Date**"), by and between BRC ADG JV HEBER, LLC, a Utah limited liability company ("**Grantor**"), and HEBER CITY CORPORATION, a Utah municipal corporation ("**Grantee**"). Grantor and Grantee are sometimes referred to herein individually as a "**Party**," and collectively as the "**Parties**."

### RECITALS

- A. Grantor is the owner of certain real property located in Heber City, Wasatch County, Utah, as more particularly described on Exhibit A attached hereto and incorporated herein by this reference (the "**Grantor's Property**").
- B. Grantee desires to obtain a non-exclusive drainage and access easement on, over, under, and across portions of the Grantor's Property for the benefit of the public.
- C. Grantee further desires to obtain a perpetual, non-exclusive sidewalk easement on, over, and across a portion of the Grantor's Property to provide pedestrian access along Turner Mill Road.
- D. Grantor is willing to grant the forgoing easements to Grantee, subject to the terms and conditions 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 conditions set forth below, the Parties agree as follows:

1. **Grant of Drainage Easement.** Grantor, at its cost and expense, shall construct and install an underground drainage line and related facilities (the "**Drainage Improvements**") within that portion of the Grantor Property described on Exhibit B attached hereto and incorporated herein by this reference (the "**Drainage Easement Area**"). Following completion of construction of the Drainage Improvements, Grantor hereby conveys unto Grantee a non-exclusive easement (the "**Drainage Easement**") on, over, under and across the Drainage Easement Area for the sole purpose of Grantee operating, repairing, altering, protecting, restoring, and maintaining the Drainage Improvements within the Drainage Easement Area at its cost and expense; provided, however, Grantor shall be responsible for maintaining any landscaping located within the Easement Area.

2. **Grant of Sidewalk Easement.** Grantor hereby conveys to Grantee a perpetual, non-exclusive sidewalk easement (the "**Sidewalk Easement**" and together with the Drainage Easement, the "**Easements**") on, over and across portions of the Grantor's Property (the "**Sidewalk Easement Area**" and together with the Drainage Easement Area, the "**Easement Areas**"), as more particularly described on Exhibit B attached hereto and incorporated herein by reference, for the sole purpose of constructing, using, operating, maintaining, repairing and replacing a sidewalk (collectively, the "**Sidewalk Improvements**" and together with the Drainage Improvements, the "**Improvements**").

3. **Access.** Grantee and its successors and assigns, contractors, agents, servants, employees, invitees, and guests (collectively, "**Grantee's Agents**") will have the right to enter upon the Easement Areas for the purposes permitted by this Agreement. Grantee and Grantee's Agents will enter upon the Easement Areas from existing roads and at its sole risk and hazard, and Grantee and its successors and assigns hereby release Grantor from any claims relating to the condition of the Easement Areas and the entry upon the Easement Areas by Grantee and Grantee's Agents.

4. **Reservation by Grantor.** Grantor hereby reserves the right to use the Easement Areas for any use not inconsistent with Grantee's rules, regulations, and permitted use of the Easement Areas. Without limiting the above, Grantor reserves the right: (a) for pedestrian ingress to and egress on and over the Easement Areas; (b) for the construction, placement, and maintenance of landscaping, signs, light standards, sidewalks, curbs and gutters, irrigation pipes and related appurtenances, and utilities of any type or nature; (c) to grant other non-exclusive easements, licenses and rights within or on the Easement Areas to other parties; and (e) to convey or transfer any or all of its interests in Grantor's Property or the Easement Areas to any party at any time. No changes to topography and structures above or below ground are nor shall be allowed in the Easement Area without the written consent of the City Engineer. Any structures located within the Easement Area, or changes made, without the written consent of the City Engineer may be removed, at the City's sole discretion, at the current property owner's sole expense.

5. **Maintenance; Repair.** Grantee, at its sole cost and expense, shall maintain and repair the Improvements, and any and all related improvements installed by Grantee, in good order and condition. Grantee shall promptly repair any damage to the Grantor's Property and Grantor's improvements located thereon (including, without limitation, any and all landscaping, trees, fences, water and/or irrigation pipes, lines and ditches, curbs, gutters, asphalt surfaces, fences, signs, lighting, buildings, etc.) caused by Grantee and/or Grantee's Agents, and, with the exception of the sidewalk to be installed by Grantee in the Sidewalk Easement Area, shall restore the Grantor's Property and the improvements thereon to the same condition as they existed prior to any entry onto or work performed on the Grantor's Property by Grantee and/or Grantee's Agents.

6. **Insurance.** Grantee shall obtain and maintain a policy or policies of commercial general liability insurance sufficient to insure Grantee against claims for personal injury, bodily injury, death, and property damage occurring on, in or about the Easement Areas arising from the exercise of Grantee's rights hereunder. Grantee may obtain such insurance of its own choosing.

7. **Indemnification by Grantee.** Grantee hereby agrees to indemnify, save, defend (with counsel reasonably acceptable to Grantor) and hold harmless Grantor, and any entity controlling, controlled by, or under control with Grantor, and its and their Affiliates' officers, directors, employees, managers, members, agents and servants ("**Affiliates**") from and against any and all liens, encumbrances, costs, demands, claims, judgments, and/or damage that may be incurred by Grantor or its Affiliates as a result of any liabilities, damages, judgments, costs, expenses, penalties, and/or injuries to persons or property caused by or arising out of, either directly or indirectly, (i) the use of the Easement Areas by Grantee and/or Grantee's Agents; (ii) any entry onto the Easement Areas and/or the Grantor's Property by Grantee and/or

Grantee's Agents; and (iii) any work performed on the Easement Areas by Grantee and/or Grantee's Agents, except to the extent caused directly by Grantor and/or its Affiliates.

8. **Liens.** Grantee shall keep the Grantor's Property free from any liens arising out of any work performed, materials furnished, or obligations incurred by, through, for or under Grantee.

9. **Termination.** This Agreement and the Easements set forth herein will be automatically terminated upon the earliest to occur of the following: (i) Grantee decides that it will no longer use the Easements and gives Grantor written notice thereof, and (ii) Grantee ceases to use the Easement Areas for a consecutive period of two (2) years.

10. **Notices.** Except as otherwise required by law, any notice, demand or request given in connection with this Agreement shall be in writing and shall be given by (i) personal delivery, (ii) recognized, national overnight courier service, or (iii) United States certified mail, return receipt requested, postage or other delivery charge prepaid. In all events, notice shall only be deemed given if properly addressed to Grantor or Grantee as applicable, at the following addresses (or at such other address as Grantor or Grantee or the person receiving copies may designate in writing given in accordance with this Section):

If to Grantor:                   BRC ADG JV Heber, LLC  
Attn: Brad Watson  
166 East 14000 South, Suite 110  
Draper, Utah 84020

With a copy to:               Kirton McConkie  
Attn: Bryce K. Dalton  
50 E. South Temple, 4th Floor  
Salt Lake City, Utah 84111

If to Grantee:                 Heber City Corporation  
Attn: City Manager  
75 N. Main Street  
Heber City, UT 84032

11. **Miscellaneous.**

11.1 **Entire Agreement.** This Agreement contains the entire agreement between the Parties. All previous agreements, communications, discussions and negotiations relating to the subject matter hereof have been merged and finalized. This Agreement may only be modified or amended in writing by both Parties hereto.

11.2 **Successors and Assigns.** The provisions of this Agreement shall extend to and be binding upon the heirs, executors, administrators, personal representatives, successors and assigns of the Parties hereto.

11.3 **Governing Law; Jurisdiction.** To the fullest extent possible, this Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Utah, without regard to any conflicts of law issues.

11.4 **Attorneys' Fees and Costs.** In any action arising out of this Agreement, the prevailing Party shall be entitled to costs and reasonable attorneys' fees.

11.5 Authority. The individuals executing this Agreement represent and warrant that they have the power and authority to do so and to bind the entities for which they are executing this Agreement.

11.6 Non-Fiduciary or Agency Relationship. The Parties hereto expressly disclaim and disavow any partnership, joint venture, fiduciary, agency or employment status or relationship between them and expressly affirm that they have entered into this Agreement as part of an “arms-length” transaction. No Party hereto has the authority to make any representation or warranty or incur any obligation or liability on behalf of any other Party hereto, nor shall they make any representation to any third Party inconsistent with this Section. Both Parties acknowledge that: (i) Grantee has only entered into this Agreement to facilitate the construction of religious facilities; and (ii) Grantee is not a developer.

11.7 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, and all of which when taken together shall constitute one and the same document and agreement. A copy or electronic transmission of any part of this Agreement, including the signature page, shall have the same force and effect as an original.

IN WITNESS WHEREOF, Grantor and Grantee have executed this Agreement to be effective as of the \_\_\_ day of \_\_\_\_\_, 2021.

*[Signatures and Acknowledgments Follow]*

SIGNATURE AND ACKNOWLEDGEMENT  
OF  
GRANTOR

GRANTOR:

BRC ADG JV HEBER, LLC,  
a Utah limited liability company

By: Alpha-Heber GP, LLC,  
a Utah limited liability company  
Its: Manager

By: Wadsworth dbUrban Heber, LLC,  
a Utah limited liability company  
Its: Manager

By: Wadsworth Heber, LLC,  
a Utah limited liability company  
Its: Manager

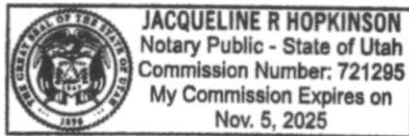
By: Wadsworth & Sons II, LLC,  
a Utah limited liability company  
Its: Manager

By: \_\_\_\_\_  
Name: Kip L. Wadsworth  
Its: Executive Manager

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

On this 22<sup>nd</sup> day of November, 2021, personally appeared before me Kip L. Wadsworth, Executive Manager of Wadsworth & Sons II, LLC, a Utah limited liability company, Manager of Wadsworth Heber, LLC, a Utah limited liability company, Manager of Wadsworth dbUrban Heber, LLC, a Utah limited liability company, Manager of Alpha-Heber GP, LLC, a Utah limited liability, Manager of BRC ADG JV Heber, LLC, a Utah limited liability company, who duly acknowledged to me that said company executed the same.

Jacqueline R. Hopkinson  
NOTARY PUBLIC



SIGNATURE AND ACKNOWLEDGEMENT  
OF  
GRANTEE

GRANTEE:

HEBER CITY CORPORATION,  
a Utah municipal corporation

By: Kelleen Potter  
Name: Kelleen Potter  
Its: Mayor



STATE OF UTAH                    )  
  : ss.  
COUNTY OF WASATCH        )

On this 24<sup>th</sup> day of November, 2021, personally appeared before me  
Kelleen Potter, Mayor of Heber City Corporation, a Utah municipal  
corporation, who duly acknowledged to me that said municipality executed the same.

Trina N. Cooke  
NOTARY PUBLIC



**EXHIBIT A**

(Legal Description of Grantor's Property)

Lot 1, TURNER MILL MASTER SUBDIVISION PLAT, according to the official plat thereof, as filed in the office of the Wasatch County Recorder, State of Utah, recorded August 28, 2020 as Entry No. 483557 in Book 1309 at Page 807.

**EXHIBIT B**

(Legal Description of Easement Area; Depiction of Easement Area)

**Legal Description of Easement Area**

A sidewalk & road drainage easement being a part of Lot 1, Turner Mill Master Subdivision Plat recorded August 28, 2020 as Entry No. 483557 in Book 1309, at Page 807 in the Office of the Wasatch County Recorder. Said easement is located in the Northwest Quarter of Section 8, Township 4 South, Range 5 East, Salt Lake Base and Meridian and is described as follows:

**Beginning** at the northwesterly corner of said Lot 1; thence N. 89°51'12" E. 506.87 feet along the northerly line of said Lot 1 to a point of non-tangency with a 40.00 – foot radius curve to the left, concave southerly (Radius point bears S.00°08'46"E.); thence Westerly 18.95 feet along the arc of said curve, through a central angle of 27°08'54" (Chord bears S. 76°16'47" W. 18.78 feet); thence S.62°42'20"W. 14.54 feet to a point of tangency with a 45.00 – foot radius curve to the left, concave northerly; thence Westerly 21.32 feet along the arc of said curve, through a central angle of 27°08'54" (Chord bears S. 76°16'47" W. 21.12 feet); thence S.89°51'14"W. 455.18 feet to the westerly line of said Lot 1; thence N.00°01'45"W. 16.00 feet along said westerly line of Lot 1 to the **Point of Beginning**.

The above-described easement contains 7,703 square feet or 0.176 acre, more or less.

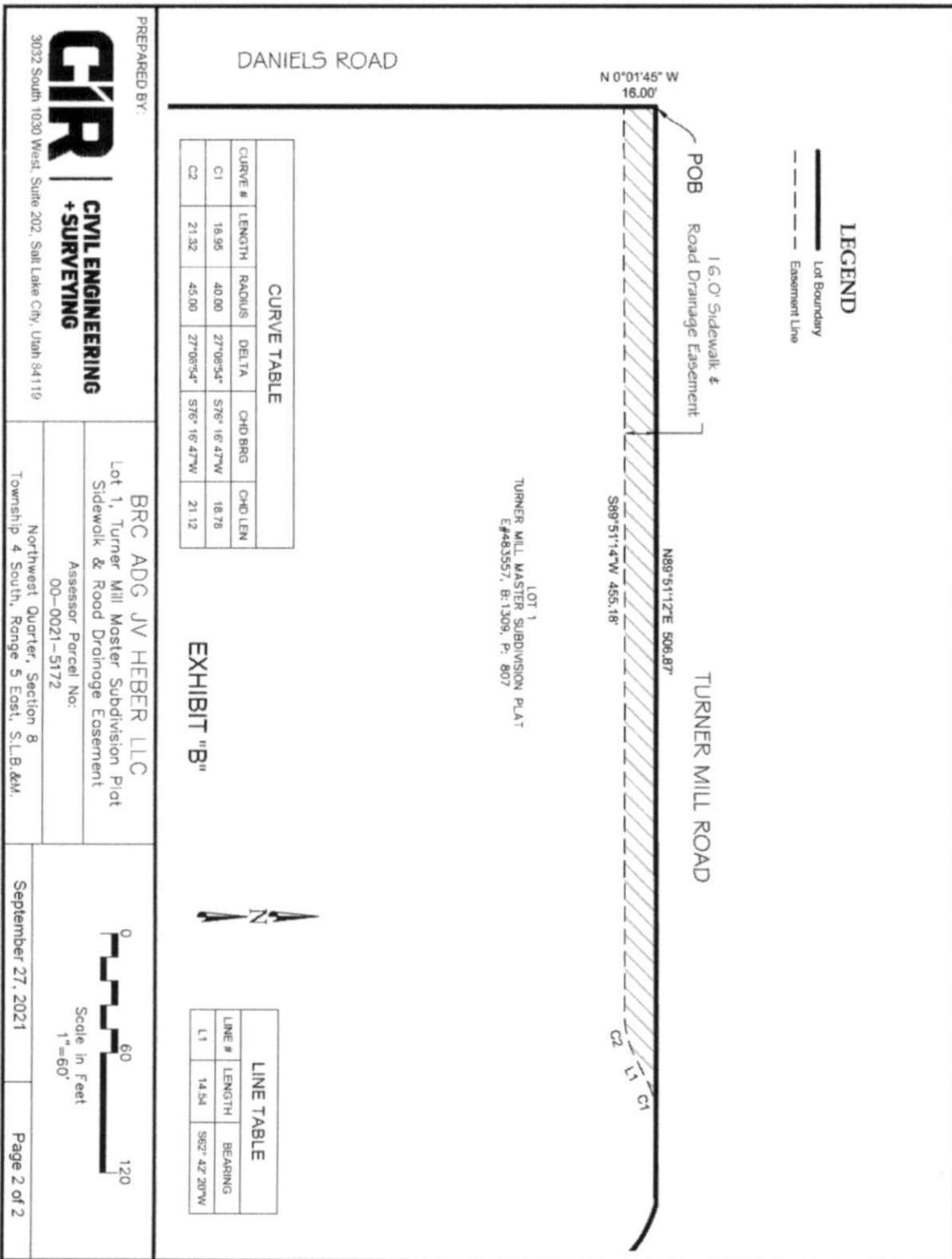
**EXHIBIT "B":** By this reference, made a part hereof.

**BASIS OF BEARING** is N. 00°03'25" W. per said Turner Mill Master Subdivision Plat along the Section line between the West Quarter Corner and the Northwest Corner of said Section 8, Township 4 South, Range 5 East, Salt Lake Base and Meridian.



**EXHIBIT B (Cont.)**

**Depiction of Easement Area**



CURVE TABLE					
CURVE #	LENGTH	RADIUS	DELTA	CHD BRG	CHD LEN
C1	18.95	40.00	27°08'54"	S76° 16' 47"W	18.76
C2	21.32	45.00	27°08'54"	S76° 16' 47"W	21.12

LINE TABLE		
LINE #	LENGTH	BEARING
L1	14.54	S62° 42' 20"W

**GIR** CIVIL ENGINEERING + SURVEYING

3032 South 1030 West, Suite 202, Salt Lake City, Utah 84119

PREPARED BY:

BRC ADG JV HEBER LLC

Lot 1, Turner Mill Master Subdivision Plat  
Sidewalk & Road Drainage Easement

Assessor Parcel No:  
00-0021-5172

Northwest Quarter, Section 8  
Township 4 South, Range 5 East, S.L.B.&M.



September 27, 2021

Page 2 of 2