

When Recorded, Return to:

DPRE Lindon West, LLC
c/o DPRE Management, LLC
299 South Main Street, Suite 1850
Salt Lake City, Utah 84111
Attn: Scott Swallow

165038-CA13
Tax Parcel No. 40-274-0001 4
40-283-0003

ENT 51595:2024 PG 1 of 11
ANDREA ALLEN
UTAH COUNTY RECORDER
2024 Aug 01 01:55 PM FEE 40.00 BY CS
RECORDED FOR Cottonwood Title Insurance
ELECTRONICALLY RECORDED

SPACE ABOVE THIS LINE FOR RECORDER'S USE

EASEMENT AND MAINTENANCE AGREEMENT

THIS EASEMENT AND MAINTENANCE AGREEMENT (this "**Agreement**") is made as of August 1, 2024, to be effective as of the date of recording hereof (the "**Effective Date**"), by and between DPRE LINDON WEST, LLC, a Utah limited liability company ("**Lindon West**"), and DPRE LINDON EAST, LLC, a Utah limited liability company ("**Lindon East**").

RECITALS

A. Lindon West is the owner of that certain real property located in the City of Lindon, County of Utah, State of Utah, more particularly described on **Exhibit A** attached hereto as the **West Parcel** and Lindon East is the owner of that certain real property located in the City of Lindon, County of Utah, State of Utah, more particularly described on **Exhibit A** attached hereto as the **East Parcel** (the Lindon West Parcel and the Lindon East Parcel are collectively the "**Property**").

B. The East Parcel and the West Parcel contain certain landscaping and infrastructure improvements within the area outlined on the site plan attached hereto as **Exhibit B** (the "**Easement Area**") that service either individually or both the East Parcel and the West Parcel.

C. Lindon West and Lindon East desire to establish certain reciprocal easements, covenants and agreements for the mutual benefit and complement of the East Parcel and the West Parcel (each a "**Parcel**" and collectively, the "**Parcels**"), and the present and future owners, tenants, and lawful occupants and users thereof, on the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the above premises and of the covenants herein contained, intending that the Parcels and all present and future owners and occupants of the Parcels be subjected to the easements and covenants set forth in this Agreement, and that the Parcels be maintained, kept, sold and used in full compliance with and subject to this Agreement, each of Lindon West and Lindon East, on behalf of itself and its respective successors and assigns, provides as follows:

AGREEMENTS

1. Definitions. For purposes hereof:

1.1 The term “**Shared Facilities and Equipment**” means the irrigation systems, landscaped areas, lighting, curb, gutter, and other utilities serving either common areas of the Property or individual building systems for either of the Parcels located within the Easement Area, all as more particularly described on **Exhibit “C”** attached hereto.

1.2 The term “**Official Records**” means the official records of Utah County, State of Utah.

1.3 The term “**Owner**” or “**Owners**” means Lindon West and Lindon East and any and all successors or assigns of Lindon West or Lindon East as the owner or owners of fee simple title to all or any portion of the real property covered by this Agreement, whether by sale, assignment, inheritance, operation of law, trustee’s sale, foreclosure, or otherwise, but not including the holder of any lien or encumbrance on such real property or the tenant(s) of such real property prior to acquisition of fee title thereto.

1.4 The term “**Permittees**” means the tenant(s) or occupant(s) of a Parcel, and the respective employees, agents, contractors, customers, invitees and licensees of (i) the Owner of such Parcel, and (ii) such tenant(s) or occupant(s).

2. Easements.

2.1 **Grant of Reciprocal Easements for Access.** Subject to any express limitations contained in this Agreement, each Owner of a Parcel grants to the other Owner of a Parcel, for the use and benefit of such other Owner, its successors and assigns, its Permittees and its Parcel, a nonexclusive and perpetual easement over and across those portions of the East Parcel and the West Parcel upon which the Easement Area is located for purposes of operating, maintaining, repairing and replacing the Shared Facilities and Equipment.

2.2 **Indemnification.** Each Owner having rights with respect to an easement granted hereunder agrees to indemnify, defend and hold harmless the Owner whose Parcel is subject to the easement for, from and against all claims, liabilities and expenses (including reasonable attorneys’ fees) relating to accidents, injuries, loss, or damage of or to any person or property arising from (i) any activities of one of the Owners on the other Owner’s Parcel, and (ii) the negligent, intentional or willful acts or omissions of the indemnifying Owner, its contractors, employees, agents, or others acting on behalf of such Owner.

2.3 **Reasonable Use.**

(a) The easements granted herein may only be used and enjoyed by each Owner and its Permittees in such a manner as to not unreasonably interfere with, obstruct or delay the conduct and operations of the business(es) of the other Owner or its Permittees at any time conducted on its Parcel.

(b) Once commenced, any construction undertaken in reliance upon an easement granted herein must be diligently prosecuted to completion, so as to minimize any interference with the business(es) of the other Owner and its Permittees. Except in cases of emergency or default continuing uncured after notice and expiration of applicable grace period, the right of an Owner to enter upon the Parcel of the other Owner to exercise any right pursuant to the easements set forth

herein, or to prosecute work on such Owner's own Parcel if such work interferes with utility easements or easements of ingress, egress or access to or in favor of the other Owner's Parcel, must be undertaken only in such a manner as to minimize any interference with the business(es) of the other Owner and its Permittees. The Owner undertaking such work must with due diligence repair any and all damage caused by such work and restore the affected portion of the Parcel upon which such work is performed to a condition that is equal to or better than the condition that existed prior to the commencement of such work. In addition, the Owner undertaking such work agrees to indemnify, defend and hold harmless the other Owner and its Permittees for, from and against all damages, losses, liens and claims attributable to the performance of such work, subject to payment of any reimbursement from the other Owner required by this Agreement.

(c) An Owner's Permittees are entitled to the use and enjoyment of the easements granted herein, subject to such conditions as the Owner may impose; provided, however, a breach of this Agreement by an Owner's Permittee constitutes a breach by the Owner, and no grant or delegation of rights of use or enjoyment by an Owner to its Permittees relieves or releases the Owner from its responsibilities and obligations contained in this Agreement.

3. Operation and Maintenance.

3.1 Operation of the Shared Facilities and Elements. The Owner of the West Parcel shall be responsible for the operation and maintenance of the Shared Facilities and Elements, including to maintain the Shared Facilities and Elements in reasonably good clean condition and repair and in working order. The Owner of the West Parcel shall, if appropriate, engage appropriate maintenance contractors with third parties for the maintenance and repair of the Shared Facilities and Elements.

3.2 Cost Sharing between Parcels. Each Owner shall be responsible for fifty percent (50%) of the cost to operate and maintain the Shared Facilities and Elements. The Owner of the West Parcel shall provide reasonable records, invoices and accounting of such costs and shall bill the Owner of the East Parcel not more frequently than quarterly for such costs. Upon request of the Owner of the East Parcel, the Owner of the West Parcel shall provide to the Owner of the East Parcel such information as may be reasonably necessary to audit such expenses billed to the Owner of the East Parcel.

4. No Rights in Public; No Implied Easements. Nothing contained herein creates any rights in the general public or dedicates for public use any portion of the Parcels. No easements, except those expressly set forth herein, are implied by this Agreement.

5. Remedies and Enforcement.

5.1 All Legal and Equitable Remedies Available. In the event of a breach or threatened breach by any Owner or its Permittees of any of the terms, covenants, restrictions or conditions hereof, the other Owner(s) are entitled forthwith to full and adequate relief by injunction and/or all other available legal and equitable remedies from the consequences of such breach, including payment of any amounts due and/or specific performance; provided however, any claim for damages shall be limited to the non-defaulting party's actual damages and the non-defaulting party shall not seek, and hereby waives any right to receive, speculative, consequential, lost profits, punitive, exemplary or any other special damages due to the defaulting party's default hereunder.

5.2 **Self-Help.** In addition to all other remedies available at law or in equity, upon the failure of a defaulting Owner to cure a non-monetary breach of this Agreement within thirty (30) days after written notice thereof by an Owner (unless, with respect to any such non-monetary breach the nature of which cannot reasonably be cured within such thirty (30)-day period, the defaulting Owner commences such cure within such thirty (30)-day period and thereafter diligently prosecutes such cure to completion), any non-defaulting Owner has the right to perform such obligation contained in this Agreement on behalf of the defaulting Owner and be reimbursed by the defaulting Owner upon demand for the reasonable costs thereof together with interest at the prime rate charged from time to time by Wells Fargo Bank, National Association (its successors or assigns), plus two percent (2%) (not to exceed the maximum rate of interest allowed by law) (the “**Default Rate**”). Notwithstanding the foregoing, in the event of (i) an emergency, (ii) an immediate risk of damage to property, injury to person, or interruption of utility service, or (iii) blockage or material impairment of access, ingress or egress, an Owner may immediately cure such matter and be reimbursed by the defaulting Owner upon demand for the reasonable cost thereof together with interest at the Default Rate as above described. Each Owner has an easement to reasonably enter upon the Parcel of the other Owner pursuant to the self-help provisions of this Paragraph 5.2 for the purpose of performing any such defaulted obligation of the other Owner. In addition, the non-defaulting Owner shall have the right to record an Assessment Lien against the Parcel of the defaulting Owner in accordance with the provisions of Paragraph 5.3.

5.3 **Lien Rights.** Any claim for reimbursement, including Default Interest, and all costs and expenses including reasonable attorneys’ fees awarded to any Owner in enforcing any payment in any suit or proceeding under this Agreement will be assessed against the defaulting Owner in favor of the prevailing Owner and constitutes a lien (the “**Assessment Lien**”) against the Parcel of the defaulting Owner until paid, effective upon the recording of a notice of lien with respect thereto in the Official Records; provided, however, that any such Assessment Lien is subject and subordinate to (i) liens for taxes and other public charges which by applicable law are expressly made superior, (ii) all liens recorded in the Official Records, prior to the date of recordation of said notice of lien, (iii) all bona fide acquisition, development, construction and permanent financing or refinancing in any amount secured by a lien or encumbrance, including junior mortgages and deeds of trust, now or hereafter placed against a Parcel or any portion thereof, and (iv) all leases entered into, whether or not recorded, prior to the date of recordation of said notice of lien. In the event such Assessment Lien is not paid in full within ninety (90) days of filing the same, the Owner filing the same shall have the right to foreclose against the Parcel subject to the Assessment Lien in order to satisfy such Assessment Lien. Subject to the foregoing, all liens recorded subsequent to the recordation of the notice of lien described herein are junior and subordinate to the Assessment Lien. Upon the timely curing by the defaulting Owner of any default for which a notice of lien was recorded, the Owner recording the notice of lien will record an appropriate release of such notice of lien and Assessment Lien.

5.4 **Remedies Cumulative.** The remedies specified herein are cumulative and in addition to all other remedies permitted at law or in equity.

5.5 **No Termination For Breach.** Notwithstanding the foregoing to the contrary, no breach of this Agreement entitles any Owner to cancel, rescind, or otherwise terminate this Agreement. No breach hereunder defeats or renders invalid the lien of any mortgage or deed of trust upon any Parcel made in good faith for value, but the easements, covenants, conditions and restrictions hereof are binding upon and effective against any Owner of such Parcel covered hereby whose title thereto is acquired by foreclosure, trustee’s sale, or otherwise.

6. Term and Termination.

6.1 **Term.** This Agreement is effective upon the date of recordation in the Official Records, and continues in perpetuity unless this Agreement is modified, amended, or terminated in accordance with Paragraph 6.2.

6.2 **Termination for Convenience.** Either Owner shall at any time have the right to cause this Agreement to be terminated at such Owner's sole discretion and convenience subject to the following at such terminating Owner's sole expense: (i) such Owner electing to terminate shall take all necessary actions to separate the Shared Facilities and Elements so that each of the East Parcel and the West Parcel have separate functional systems that fully replace for such Parcel the Shared Facilities and Elements; and (ii) such Owner prepares and records in the Official Records an appropriate document in form and substance reasonably satisfactory to the other Owner terminating this Agreement of record.

7. Miscellaneous.

7.1 **Attorneys' Fees.** If a party institutes a legal action or proceeding for the enforcement of any right or obligation herein contained, the prevailing party after a final adjudication shall recover its costs and reasonable attorneys' fees incurred in the preparation and prosecution of such action or proceeding.

7.2 **Amendment.** This Agreement may be modified or amended, in whole or in part, or terminated, only by the written consent of all record Owners of the East Parcel and the West Parcel. Any such amendment shall be evidenced by a document that has been fully executed and acknowledged by all such parties required by this paragraph and recorded in the Official Records.

7.3 **Consents.** Wherever in this Agreement the consent or approval of an Owner is required, unless otherwise expressly provided herein, such consent or approval may not be unreasonably withheld or delayed. Any request for consent or approval must: (a) be in writing; (b) specify the section hereof which requires that such notice be given or that such consent or approval be obtained; and (c) be accompanied by such background data as is reasonably necessary to allow an informed decision thereon to be made. The consent of an Owner under this Agreement, to be effective, must be given, denied or conditioned expressly and in writing.

7.4 **No Waiver.** No waiver of any default of any obligation by any Owner may be implied from any omission by another Owner to take any action with respect to such default.

7.5 **No Agency.** Nothing contained in this Agreement creates the relationship of principal and agent or of limited or general partners or of joint venturers or of any other association between the Owners.

7.6 **Covenants to Run with Land.** Each of the easements, covenants, conditions, restrictions, assessments, rights and obligations set forth herein runs with the land and creates an equitable servitude in favor of the real property benefited thereby, binds every person having any fee, leasehold or other interest therein and inures to the benefit of the respective parties and their successors, assigns, heirs, and personal representatives. However, no easement, covenant, condition, restriction, or other right or benefit accruing hereunder in favor of any Parcel is assignable, transferable or otherwise delegable to or for the benefit of neighboring real property that is not a

Parcel covered by this Agreement. This Agreement shall automatically terminate without the execution or recordation of any further document or instrument as to any tract or parcel of land that is dedicated or conveyed to any governmental authority, utility provider or irrigation district, which tract or parcel of land shall thereupon be released from and no longer be subject to or burdened by the provisions of this Agreement.

7.7 **Separability.** Each provision of this Agreement and the application thereof to the Parcels are declared to be independent of and severable from the remainder of this Agreement. If any provision contained herein is held to be invalid or to be unenforceable or not to run with the land, such holding does not affect the validity or enforceability of the remainder of this Agreement. If the validity or enforceability of any easement granted under this Agreement is held to be dependent upon the existence of a specific legal description, the Owners agree to promptly cause such legal description to be prepared. Ownership of both Parcels by the same person or entity does not terminate this Agreement or in any manner affect or impair the validity or enforceability of this Agreement.

7.8 **Time of Essence.** Time is of the essence of this Agreement.

7.9 **Entire Agreement.** This Agreement contains the complete understanding and agreement of the parties hereto with respect to all matters referred to herein, and all prior representations, negotiations, and understandings are superseded hereby.

7.10 **Additional Documentation.** The Owners agree to execute, acknowledge and deliver such additional documentation as is reasonably necessary or desirable to carry out the purpose and intent of this Agreement, including, without limitation, any documentation requested by the City pertaining to easements, construction or maintenance pertaining to the subject matter of this Agreement.

7.11 **Governing Law.** The laws of the State of Utah govern the interpretation, validity, performance, and enforcement of this Agreement.

[balance of page intentionally left blank]

EXHIBIT "A"

Legal Description of the Property

West Parcel

Lot 3, Plat "A", Gateway Technology Center II, (a revision of Gateway Technology Center "B") Subdivision, Lindon City, Utah County, Utah, according to the official plat thereof on file and of record in the office of the Utah County Recorder.

East Parcel

Lot 1, PLAT "A", GATEWAY TECHNOLOGY CENTER SUBDIVISION, Lindon City, Utah County, Utah, according to the official plat thereof on file and of record in the office of the Utah County Recorder, recorded July 13, 1999 as Entry No. 79622

EXHIBIT "B"

Depiction of Easement Area

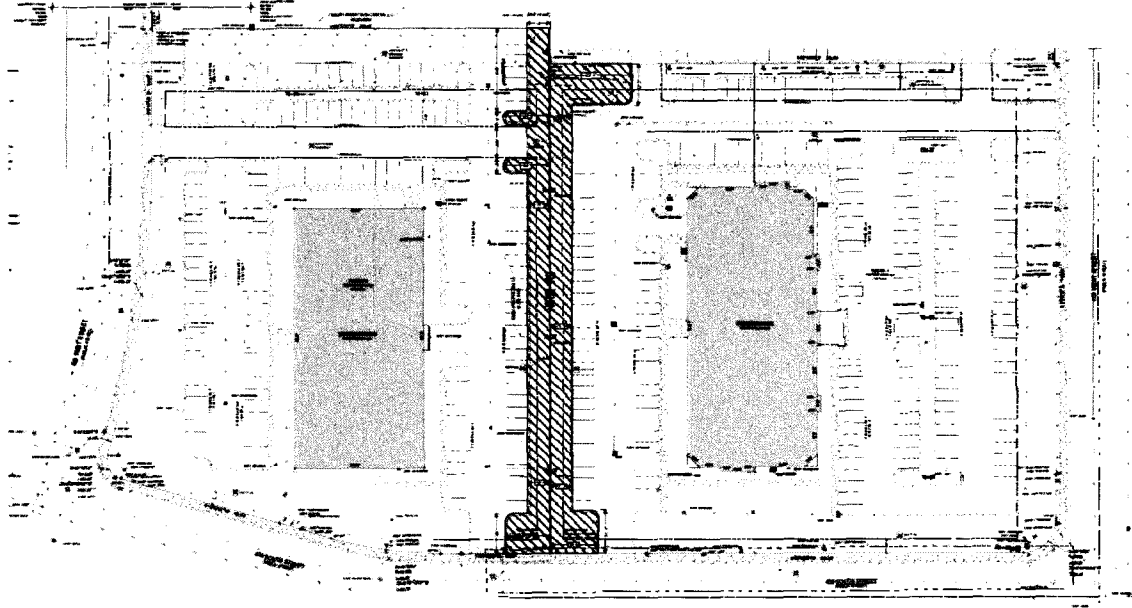


Exhibit "B"

EXHIBIT "C"

Description of Shared Facilities and Elements

