

REQUEST FOR COUNCIL ACTION

SUBJECT: Real Estate Purchase and Sale Contract between CW Copper Rim 1, LLC (Copper Rim), and the City of West Jordan.

SUMMARY: Copper Rim owns real property located at approximately 6150 West 7800 South in West Jordan, Utah. The attached Real Estate Purchase and Sale Contract authorizes the City to purchase a portion of Copper Rim's property, so the City can build a new water tank that was previously approved and funded by the City Council.

FISCAL AND/OR

ASSET IMPACT: \$656,100.00, plus closing costs up to \$5,000.00.

STAFF RECOMMENDATION:

Staff recommends approval.

MOTION RECOMMENDED:

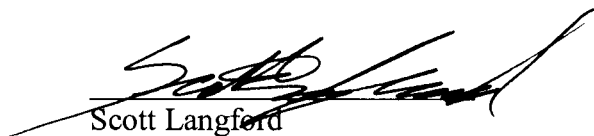
"I move to adopt Resolution No. 19-93 authorizing the Mayor to execute the attached Real Estate Purchase and Sale Contract between Copper Rim and the City of West Jordan, and authorizing the City's Real Property Administrator to sign all documents necessary to close the transaction."

Roll Call vote required

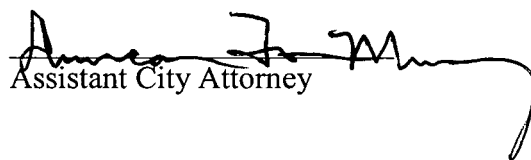
Prepared and to be Presented by:


David Clemence
Real Property Administrator

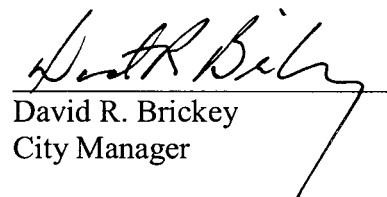
Recommended by:


Scott Langford
Community Development Director

Approving as to Form:


Assistant City Attorney

Authorized for Council Consideration:


David R. Brickey
City Manager

BACKGROUND DISCUSSION:

The City Council previously authorized and funded a new Zone 3 water tank within the Copper Rim development project near the Mountain View Corridor, at approximately 6150 West 7800 South in West Jordan. City staff has been working with the developer and design engineer over the past several months to appropriately design the water tank, resolve property conflicts, and appraise the acquisition area.

The attached Real Estate Purchase and Sale Contract is the end result of negotiations between City staff and Copper Rim and it complies with City policy and the Copper Rim Development Agreement approved by the City Council on November 7, 2018, under Resolution No. 18-179.

Attachments:

Resolution

Real Estate Purchase and Sale Contract

THE CITY OF WEST JORDAN, UTAH

A Municipal Corporation

RESOLUTION NO. 19-93

**A RESOLUTION AUTHORIZING THE CITY TO PURCHASE REAL PROPERTY
FROM
CW COPPER RIM 1, LLC**

Whereas, the City Council of the City of West Jordan has reviewed the attached Real Estate Purchase and Sale Contract between CW Copper Rim 1, LLC (Copper Rim) and the City of West Jordan; and

Whereas, the City Council desires that the attached Contract be executed by the Mayor; and

Whereas, the Mayor is authorized to execute the attached Real Estate Purchase and Sale Contract pursuant to the Utah State Code.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF THE CITY OF WEST JORDAN, UTAH, THAT:

Section 1. The Mayor is hereby authorized to execute the attached Real Estate Purchase and Sale Contract after it has been approved as to legal form by the City Attorney's office.

Section 2. The City's Real Property Administrator is authorized to act on behalf of the City while closing the transaction, with the right and authority to sign all documents necessary as part of said closing.

Section 3. This Resolution shall take effect immediately.

Adopted by the City Council of West Jordan, Utah, this 8th day of May, 2019.

CITY OF WEST JORDAN

ATTEST:

By: _____
JIM RIDING, Mayor

MELANIE S. BRIGGS, MMC
City Clerk/Recorder

Voting by the City Council

"YES"

"NO"

Council Member Chad Lamb

Council Member Kayleen Whitelock

Council Member Chris McConnehey

Council Member Dirk Burton

Council Member Zach Jacob

Council Member Alan Anderson

Mayor Jim Riding

REAL ESTATE PURCHASE AND SALE CONTRACT

This Real Estate Purchase and Sale Contract (the "Contract"), dated the _____ day of _____, 2019, is by and between CW COPPER RIM 1, LLC, a Utah limited liability company (hereinafter referred to as "Grantor"), whose principal office address is 1222 West Legacy Crossing Blvd., Suite 6, Centerville, Utah 84014, and the CITY OF WEST JORDAN, a municipal corporation and political subdivision of the State of Utah (hereinafter referred to as "City"), whose principal office address is 8000 South Redwood Road, West Jordan, Utah 84088.

RECITALS

A. Grantor is the owner of approximately 67 acres of certain real property located at 6150 West 7800 South in West Jordan City, Salt Lake County, State of Utah (the "Property").

B. City has determined that acquiring fee and easement interests in approximately 3.62 acres of the Property is necessary for the construction of a water tank to protect the health, safety and welfare of its residents (the "Acquisition Area").

C. The Acquisition Area is legally described in Exhibit "A", depicted in Exhibit "B", and shall be conveyed to City by three separate documents, as follows, (1) a 2.01-acre fee title deed (the "Fee Property"), (2) a 0.66-acre perpetual utility easement (the "Perpetual Utility Easement"), and (3) a 0.95-acre temporary construction easement (the "Temporary Construction Easement").

D. The total value of the Acquisition Area was determined by Eric Leonhardt of Integra Realty Resources, who is a MAI-certified appraiser chosen by City at City's sole cost and expense, and both Grantor and City have agreed to use Mr. Leonhardt's summary appraisal report as the valuation basis and just compensation for this transaction.

E. Grantor and City (also referred to individually as a "Party" or collectively as the "Parties") have agreed to a purchase and sale of the Acquisition Area pursuant to the terms and conditions of this Contract.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing, as well as other good and valuable consideration, the sufficiency of which is described below, the parties agree as follows:

1. Incorporation of Recitals. The foregoing Recitals and all Exhibits referenced herein are hereby incorporated into this Contract and are made a part hereof.

2. Purchase Price. City agrees to pay Grantor the total sum of SIX HUNDRED FIFTY-SIX THOUSAND ONE HUNDRED and 00/100 DOLLARS (\$656,100.00) for the purchase of the Acquisition Area and any and all claims, losses or damages of Grantor arising from City's purchase of the Acquisition Area, including but not limited to severance damages (the "Acquisition Amount"). Payment shall constitute full compensation for the following improvements affected by City's purchase of the property: all existing improvements, including but not limited to trees, fences, structures, irrigation facilities and landscaping.

3. No Personal Property. The Parties acknowledge that no personal property is being acquired and that no personal property is located on the Acquisition Area.

4. Risk of Loss for Damage to Improvements. Grantor shall be responsible for any risk of loss prior to closing, but no improvements exist on the Acquisition Area.

5. Conveyance of Title. At Closing, City shall receive its right, title and interest in and to the Acquisition Area by form of document outlined below, free and clear of all liens and encumbrances, subject only to the following: a) those matters identified as public records by the Salt Lake County Recorder and deemed acceptable to City; and b) those matters identifiable by viewing the Property.

- a. The Fee Property shall be conveyed by Special Warranty Deed in a form substantially similar to the sample attached hereto as Exhibit C.
- b. The Perpetual Utility Easement shall be conveyed by an easement document in a form substantially similar to the sample attached hereto as Exhibit D.
- c. The Temporary Construction Easement shall be conveyed by an easement document in a form substantially similar to the sample attached hereto as Exhibit E.

6. Possession and Closing. Possession shall be given to the City on the date of closing. Closing shall be on or before May 31, 2019, or such other date as the parties shall mutually agree to in writing.

7. Closing Costs and Prorations. The Acquisition Amount shall be due in full at closing, and the date of closing shall be used for proration of all property taxes due and owing on the Acquisition Area, including greenbelt rollback taxes, if any, which will all be paid at Grantor's sole cost and expense. At Closing Grantor shall pay for and cause to be issued to City the most current version of an ALTA standard owner's policy of title insurance to cover the Acquisition Area for the Acquisition Amount, and Grantor and City shall each pay one half of the fees charged by the escrow company to close this transaction. The escrow company is authorized and directed to withhold from Grantor's proceeds at Closing, sufficient funds to pay off all mortgages, trust deeds, judgments, mechanic's liens, tax liens, warrants and any other monetary encumbrances that may attach to the Acquisition Area. City shall pay the recording fees associated with filing the Special Warranty Deed in the office of the Salt Lake County Recorder.

8. Broker's Commission. No broker or finder has been used for this transaction; therefore, no commissions are due.

9. Inspection Rights. City has had full opportunity to inspect and investigate the Acquisition Area to its satisfaction. City is fully satisfied with the condition of the Acquisition Area and has agreed to accept the Acquisition Area in its present "as-is" condition. Grantor makes no representation or warranties as to the condition of the Acquisition Area or its suitability for City's intended use, except those representations specifically set forth herein.

10. Leases. Grantor represents that there are no written or oral leases on all or any portion of the Acquisition Area.

11. Time is of the Essence. Time is of the essence in this contract. Grantor has until 5:00 p.m. Mountain Daylight Time on Monday, May 13, 2019, to cause this instrument to be fully executed and returned to City, posted to the name and address listed below:

David Clemence
Real Property Administrator
City of West Jordan, Utah
8000 South Redwood Road
West Jordan, Utah 84088

12. Assignment. This Agreement shall not be assigned by either Party.

13. Attorneys' Fees. If either Party brings an action or proceedings for the interpretation, review, enforcement, resolution of a dispute hereunder, or for a breach of this Contract, the prevailing Party in any such action, proceedings, reference, trial or appeal shall be entitled to its reasonable attorneys' fees, to be paid by the non-prevailing Party as fixed by the court.

14. Controlling Law, Jurisdiction, Venue. This Contract shall be governed by the laws of the State of Utah. The venue shall be in Salt Lake County, Utah.

15. Entire Agreement. This Contract shall constitute the entire agreement between Grantor and City and supersedes all prior written or oral agreements, representations, promises, inducements, or understandings between the Parties with regard to this transaction. Any modification of this Contract shall be binding upon the Parties only when said modification is reduced to writing, signed by the Parties and is attached hereto as an Addendum.

16. Advice of Counsel. The Parties confirm, represent and warrant that they (a) have carefully read this Contract, (b) understand the terms hereof, (c) have had the opportunity to seek the advice from legal counsel of their own choosing, (d) find it to be a fair and reasonable compromise of the disputed claims, defenses and issues, (e) are executing this Contract as a voluntary act, and (f) agree to be bound by and to faithfully execute the terms of the Contract. The Parties further confirm, represent and warrant that they are not under duress, and they acknowledge that to the extent they have waived any rights or defenses by entry into this Contract, such waiver was made voluntarily and with full knowledge of the ramifications of such waiver.

17. Binding Effect. This Contract shall run with the land and shall be binding upon and inure to the benefit of the Parties and their respective successors and assigns, and any persons or entities claiming rights by, through or under them.

18. Execution of Agreement. This Contract shall be valid only after it has been executed by the Mayor, pursuant to authorization by the City Council, and attested by the City Recorder and approved as to legal form by the City Attorney's office.

19. Eminent Domain. Nothing contained herein shall affect City's power to acquire the Acquisition Area by eminent domain or the exercise thereof.

20. Authority. The individuals whose signatures appear below represent and warrant that they have full power and authority to enter into this Contract on behalf of the Parties for whom this Contract is executed, and no further act on behalf of any such Party shall be or is required to effectuate the terms hereof.

21. Effect of Contract. Nothing in this Contract shall be construed to relieve Grantor or City of any obligations imposed by federal, state or local laws, ordinances, regulations or standards.

22. **REPRESENTATION REGARDING ETHICAL STANDARDS FOR CITY OFFICERS AND EMPLOYEES AND FORMER CITY OFFICERS AND EMPLOYEES**

The bidder, offeror, or contractor represents that it has not (1) provided an illegal gift or payoff to a City officer or employee or former City officer or employee, or his or her relative or business entity; (2) retained any person to solicit or secure this contract upon an agreement or understanding for a commission, percentage, or brokerage or contingent fee, other than bona fide employees or bona fide commercial selling agencies for the purpose of securing business; (3) knowingly breached any of the ethical standards set forth in state ethics laws, including those codified at Sections 10-3-1301 et seq. and Sections 67-16-1 et seq., Utah Code Annotated; or (4) knowingly influenced, and hereby promises that it will not knowingly influence, a City officer or employee or former City officer or employee to breach any of the ethical standards set forth in state ethics laws, including those codified at Sections 10-3-1301 et seq. and Sections 67-16-1 et seq., Utah Code Annotated.

[Signatures begin on next page]

IN WITNESS WHEREOF, the parties have executed this Contract effective the date and year first above written.

CW COPPER RIM 1, LLC, a Utah limited liability company

By: _____
Its: _____

STATE OF _____)
: SS.
COUNTY OF _____)

On this _____ day of _____, 2019, personally appeared before me _____, who being by me duly sworn did say that s/he is the _____ of CW COPPER RIM 1, LLC, a Utah limited liability company, and that the foregoing instrument was duly authorized by said limited liability company at a lawful meeting held or by authority of its bylaws and signed in behalf of said company.

NOTARY PUBLIC
My Commission Expires: _____
Residing in _____, _____

CITY OF WEST JORDAN, UTAH

ATTEST

By: _____
Name: Jim Riding
Title: Mayor

By: _____
Name: Melanie Briggs
Title: City Recorder

Dated: _____

Exhibit "A"

WATER TANK SITE (FEE TITLE):

A PARCEL OF LAND LOCATED IN THE SOUTH HALF OF SECTION 26, TOWNSHIP 2 SOUTH, RANGE 2 WEST OF THE SALT LAKE BASE AND MERIDIAN, MORE PARTICULARLY DESCRIBED AS FOLLOWS, TO WIT:

BEGINNING AT A POINT ON THE EASTERLY RIGHT-OF-WAY LINE OF MOUNTAIN VIEW CORRIDOR, WHICH POINT IS 833.80 FEET NORTH 16°19'58" WEST FROM THE SOUTH QUARTER CORNER OF SAID SECTION 26; THENCE, ALONG SAID RIGHT-OF-WAY LINE, THE FOLLOWING TWO (2) COURSES, (1) NORTH 49°17'50" WEST 27.23 FEET, (2) NORTH 50°42'49" WEST 264.40 FEET; THENCE, LEAVING SAID RIGHT-OF-WAY LINE, THE FOLLOWING FIVE (5) COURSES, (1) NORTH 39°17'13" EAST 120.00 FEET, (2) NORTH 49°32'10" EAST 149.97 FEET, (3) NORTH 89°59'11" EAST 173.49 FEET, (4) SOUTH 00°00'02" WEST 206.39 FEET, (5) SOUTH 39°17'13" WEST 218.39 FEET TO THE POINT OF BEGINNING.

THE FOREGOING DESCRIPTION CONTAINS 87,370 SQUARE FEET, OR 2.01 ACRES, MORE OR LESS.

PERPETUAL UTILITY EASEMENT:

A THIRTY (30) FOOT WIDE NON-EXCLUSIVE UTILITY EASEMENT LOCATED IN THE SOUTH HALF OF SECTION 26, TOWNSHIP 2 SOUTH, RANGE 2 WEST OF THE SALT LAKE BASE AND MERIDIAN, THE CENTERLINE OF WHICH IS MORE PARTICULARLY DESCRIBED AS FOLLOWS, TO WIT:

BEGINNING AT A POINT WHICH IS 833.80 FEET NORTH 16°19'58" WEST AND 218.39 FEET NORTH 39°17'13" EAST AND 201.15 FEET NORTH 00°00'02" EAST FROM THE SOUTH QUARTER CORNER OF SAID SECTION 26; THENCE NORTH 44°44'23" EAST 58.06 FEET; THENCE SOUTH 89°59'59" EAST 903.06 FEET, MORE OR LESS, TO THE GRANTOR'S EASTERLY PROPERTY LINE, SAID POINT ALSO BEING LOCATED NORTH 34°58'50" EAST 1478.69 FEET FROM THE SOUTH QUARTER CORNER OF SAID SECTION 26.

THE THIRTY (30) FOOT WIDE NON-EXCLUSIVE UTILITY EASEMENT IS INTENDED TO BE FIFTEEN (15) FEET ON EACH SIDE OF THE ABOVE DESCRIBED CENTERLINE, AND THE SIDELINES ARE TO BE LENGTHENED OR SHORTENED AS NECESSARY TO CLOSE AT THE GRANTOR'S EASTERLY AND WESTERLY PROPERTY LINES.

THE FOREGOING DESCRIPTION CONTAINS 28,834 SQUARE FEET, OR 0.66 ACRES, MORE OR LESS.

TEMPORARY CONSTRUCTION EASEMENT:

A TWENTY (20) FOOT WIDE NON-EXCLUSIVE TEMPORARY CONSTRUCTION EASEMENT LOCATED IN THE SOUTH HALF OF SECTION 26, TOWNSHIP 2 SOUTH, RANGE 2 WEST OF THE SALT LAKE BASE AND MERIDIAN, MORE PARTICULARLY DESCRIBED AS FOLLOWS, TO WIT:

BEGINNING AT THE INTERSECTION OF THE NORTHERLY RIGHT-OF-WAY LINE OF 7800 SOUTH STREET WITH THE WESTERLY BOUNDARY LINE OF A GAS EASEMENT FOUND UNDER SALT LAKE COUNTY ENTRY NO. 7501201, IN BOOK 8319, AT PAGE 4705, WHICH POINT IS LOCATED 1,853.51 FEET SOUTH 89°58'45" WEST ALONG THE SECTION LINE AND 78.36 FEET NORTH 00°00'00" EAST FROM THE SOUTHEAST CORNER OF SECTION 26, TOWNSHIP 2 SOUTH, RANGE 2 WEST OF THE SALT LAKE BASE AND MERIDIAN; THENCE SOUTH 89°59'22" WEST 20.00 FEET ALONG SAID RIGHT-OF-WAY LINE; THENCE, LEAVING SAID RIGHT-OF-WAY LINE, ALONG THE FOLLOWING FIVE (5) COURSES, (1) NORTH 00°18'21" EAST 1,052.68 FEET TO A POINT ON A 45.00 FOOT RADIUS CURVE TO THE LEFT, (2) NORTHWESTERLY 70.93 FEET ALONG SAID CURVE, HAVING A CENTRAL ANGLE OF 90°18'19" (CHORD BEARS NORTH 44°50'49" WEST 63.81 FEET), (3) NORTH 89°59'59" WEST 778.07 FEET TO A POINT ON A 44.59 FOOT RADIUS CURVE TO THE LEFT, (4) SOUTHWESTERLY 35.51 FEET ALONG SAID CURVE, HAVING A CENTRAL ANGLE OF 45°38'15" (CHORD BEARS SOUTH 67°10'54" WEST 34.58 FEET), (5) SOUTH 44°44'23" WEST 59.91 FEET TO THE EASTERLY LINE OF A PROPOSED WATER TANK SITE; THENCE NORTH 00°00'00" EAST 28.41 FEET ALONG SAID EASTERLY LINE; THENCE, LEAVING SAID EASTERLY LINE, ALONG THE FOLLOWING THREE (3) COURSES, (1) NORTH 44°44'23" EAST 66.95 FEET, (2) SOUTH 89°59'59" EAST 870.34 FEET TO A POINT ON THE WESTERLY BOUNDARY LINE OF SAID GAS EASEMENT FOUND UNDER SALT LAKE COUNTY ENTRY NO. 7501201, IN BOOK 8319, AT PAGE 4705, (3) SOUTH 00°18'21" WEST 1,117.91 FEET ALONG SAID EASEMENT BOUNDARY LINE TO THE POINT OF BEGINNING.

THE FOREGOING DESCRIPTION CONTAINS 41,221 SQUARE FEET, OR 0.946 ACRES, MORE OR LESS.

The foregoing descriptions affect a portion of Salt Lake County Parcel No.: 20-26-326-005-4002.

Exhibit "C"

WHEN RECORDED, PLEASE RETURN TO:

West Jordan City Recorder
8000 South Redwood Road
West Jordan, Utah 84088

Portions of APN: 20-26-326-005-4002

SPECIAL WARRANTY DEED

CW COPPER RIM 1, LLC, a Utah limited liability company (hereinafter referred to as "Grantor"), whose principal office address is 1222 West Legacy Crossing Blvd., Suite 6, Centerville, Utah 84014, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, does hereby convey and warrant against all who claim by, through or under the Grantor, to the **CITY OF WEST JORDAN, a municipal corporation and political subdivision of the State of Utah (hereinafter referred to as "Grantee")**, whose principal office address is 8000 South Redwood Road, West Jordan, Utah 84088, the following parcels of real property located in Salt Lake County, State of Utah, more particularly described as follows, to wit:

[See Exhibit "C-1" attached hereto and incorporated herein by reference.]

TO HAVE AND TO HOLD the described property, together with the tenements, hereditaments, and appurtenances belonging to the property to Grantee, Grantee's successors and assigns forever.

IN WITNESS WHEREOF, Grantor has executed this instrument as of this _____ day of _____, 2019.

CW COPPER RIM 1, LLC, a Utah limited liability company

By: _____
Its: _____

STATE OF _____)
: SS.
COUNTY OF _____)

On this _____ day of _____, 2019, personally appeared before me _____, who being by me duly sworn did say that s/he is the _____ of CW COPPER RIM 1, LLC, a Utah limited liability company, and that the foregoing instrument was duly authorized by said limited liability company at a lawful meeting held or by authority of its bylaws and signed in behalf of said company.

NOTARY PUBLIC

My Commission Expires: _____

Residing in _____, _____

Exhibit "C-1"

A PARCEL OF LAND LOCATED IN THE SOUTH HALF OF SECTION 26, TOWNSHIP 2 SOUTH, RANGE 2 WEST OF THE SALT LAKE BASE AND MERIDIAN, MORE PARTICULARLY DESCRIBED AS FOLLOWS, TO WIT:

BEGINNING AT A POINT ON THE EASTERLY RIGHT-OF-WAY LINE OF MOUNTAIN VIEW CORRIDOR, WHICH POINT IS 833.80 FEET NORTH 16°19'58" WEST FROM THE SOUTH QUARTER CORNER OF SAID SECTION 26; THENCE, ALONG SAID RIGHT-OF-WAY LINE, THE FOLLOWING TWO (2) COURSES, (1) NORTH 49°17'50" WEST 27.23 FEET, (2) NORTH 50°42'49" WEST 264.40 FEET; THENCE, LEAVING SAID RIGHT-OF-WAY LINE, THE FOLLOWING FIVE (5) COURSES, (1) NORTH 39°17'13" EAST 120.00 FEET, (2) NORTH 49°32'10" EAST 149.97 FEET, (3) NORTH 89°59'11" EAST 173.49 FEET, (4) SOUTH 00°00'02" WEST 206.39 FEET, (5) SOUTH 39°17'13" WEST 218.39 FEET TO THE POINT OF BEGINNING.

THE FOREGOING DESCRIPTION CONTAINS 87,370 SQUARE FEET, OR 2.01 ACRES, MORE OR LESS.

Exhibit "D"

WHEN RECORDED, PLEASE RETURN TO:

West Jordan City Recorder
8000 South Redwood Road
West Jordan, Utah 84088

Portions of APN: 20-26-326-005-4002

PERPETUAL UTILITY EASEMENT

WEST BENCH, LLC, a Utah limited liability company, AND, YELLOWSTONE LEGACY, LLC, a Utah limited liability company, AND, CW COPPER RIM 1, LLC, a Utah limited liability company (hereinafter referred to as "Grantor"), whose principal office address is 1222 West Legacy Crossing Blvd., Suite 6, Centerville, Utah 84014, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, hereby grants, bargains and conveys unto the **CITY OF WEST JORDAN**, a municipal corporation and political subdivision of the State of Utah (hereinafter referred to as "Grantee"), whose principal office address is 8000 South Redwood Road, West Jordan, Utah 84088, its successors, assigns, licensees and agents, a non-exclusive PERPETUAL UTILITY EASEMENT upon, over, under, across and through the following described tract of land, which the Grantor owns or in which the Grantor has an interest, in Salt Lake County, State of Utah, more particularly described as follows, to wit:

[See Exhibit "D-1" attached hereto and incorporated herein by reference.]

The Easement herein granted is for the following purpose: installation and maintenance of water lines, electric lines, drain lines, and any appurtenances connected thereto or necessary in the Grantee's operation of its water tank (the "Facilities").

Grantee shall have the right to plan, install, construct, operate, maintain, repair, remove and replace any material(s) comprising the Facilities from time to time as Grantee may require. Grantee shall have the right of reasonable ingress and egress to and from the Facilities over and across Grantor's land lying coincident with the land described above. Grantee shall have the right to clear and remove all trees and other obstructions that may interfere with the use of said Easement by Grantee. Grantor reserves the right to occupy, use and cultivate said property for all purposes not inconsistent with the rights herein granted.

1. *Journal of the American Medical Association*, 1997; 278: 1039-1044.

STATE OF _____)

: SS.

COUNTY OF _____)

On this _____ day of _____, 2019, personally appeared before me _____, who being by me duly sworn did say that s/he is the _____ of WEST BENCH, LLC, a Utah limited liability company, and that the foregoing instrument was duly authorized by said limited liability company at a lawful meeting held or by authority of its bylaws and signed in behalf of said company.

NOTARY PUBLIC

My Commission Expires: _____

Residing in _____, _____

YELLOWSTONE LEGACY, LLC, a Utah limited liability company

By: _____
Its: _____

STATE OF _____)
: SS.
COUNTY OF _____)

On this _____ day of _____, 2019, personally appeared before me _____, who being by me duly sworn did say that s/he is the _____ of YELLOWSTONE LEGACY, LLC, a Utah limited liability company, and that the foregoing instrument was duly authorized by said limited liability company at a lawful meeting held or by authority of its bylaws and signed in behalf of said company.

NOTARY PUBLIC

My Commission Expires: _____

Residing in _____, _____

CW COPPER RIM 1, LLC, a Utah limited liability company

By: _____
Its: _____

STATE OF _____)
: SS.
COUNTY OF _____)

On this _____ day of _____, 2019, personally appeared before me _____, who being by me duly sworn did say that s/he is the _____ of CW COPPER RIM 1, LLC, a Utah limited liability company, and that the foregoing instrument was duly authorized by said limited liability company at a lawful meeting held or by authority of its bylaws and signed in behalf of said company.

NOTARY PUBLIC

My Commission Expires: _____

Residing in _____, _____

LENDER CONSENT AND SUBORDINATION

FOR VALUABLE CONSIDERATION, the receipt and sufficiency of which is hereby acknowledged, the undersigned, as the beneficiary and holder of those certain Deeds of Trust dated January 12, 2018 and January 31, 2019, and filed in the official records of the Salt Lake County Recorder on January 16, 2018 and January 31, 2019, under Entry No. 12698422, in Book 10638, at Page 8656, and Entry No. 12927578, in Book 10749, at Page 7729, respectively (the "Trust Deeds"), which Trust Deeds encumber real property owned by Grantor (the "Grantor's Property"), hereby: (1) consents to the execution and delivery of the within and foregoing Easement by Grantor affecting the Grantor's Property; and (2) subordinates all of its rights, title and interests under the Trust Deeds in and to the Grantor's Property to the rights, title, interests, obligations and benefits created by, or arising under, the within and foregoing Easement, so that the Easement shall unconditionally be and remain at all times an interest in real property prior and superior to the Trust Deeds. Nothing contained herein shall be construed to impose upon the undersigned any obligation created by the Easement, unless and until the undersigned has acquired fee title to all or a portion of the Grantor's Property.

MOUNTAIN WEST DEBT FUND, LP,
a Delaware limited partnership

By: _____

Its: _____

STATE OF _____)
: ss.
COUNTY OF _____)

On this ____ day of _____, 2019, personally appeared before me _____, who being by me duly sworn did say that s/he is the _____ of MOUNTAIN WEST DEBT FUND, LP, a Delaware limited partnership, and that the foregoing instrument was duly authorized by the limited partnership at a lawful meeting held or by authority of its bylaws and signed in behalf of said limited partnership.

NOTARY PUBLIC
My Commission Expires: _____
Residing in _____, _____

Exhibit "D-1"

A THIRTY (30) FOOT WIDE NON-EXCLUSIVE UTILITY EASEMENT LOCATED IN THE SOUTH HALF OF SECTION 26, TOWNSHIP 2 SOUTH, RANGE 2 WEST OF THE SALT LAKE BASE AND MERIDIAN, THE CENTERLINE OF WHICH IS MORE PARTICULARLY DESCRIBED AS FOLLOWS, TO WIT:

BEGINNING AT A POINT WHICH IS 833.80 FEET NORTH 16°19'58" WEST AND 218.39 FEET NORTH 39°17'13" EAST AND 201.15 FEET NORTH 00°00'02" EAST FROM THE SOUTH QUARTER CORNER OF SAID SECTION 26; THENCE NORTH 44°44'23" EAST 58.06 FEET; THENCE SOUTH 89°59'59" EAST 903.06 FEET, MORE OR LESS, TO THE GRANTOR'S EASTERLY PROPERTY LINE, SAID POINT ALSO BEING LOCATED NORTH 34°58'50" EAST 1478.69 FEET FROM THE SOUTH QUARTER CORNER OF SAID SECTION 26.

THE THIRTY (30) FOOT WIDE NON-EXCLUSIVE UTILITY EASEMENT IS INTENDED TO BE FIFTEEN (15) FEET ON EACH SIDE OF THE ABOVE DESCRIBED CENTERLINE, AND THE SIDELINES ARE TO BE LENGTHENED OR SHORTENED AS NECESSARY TO CLOSE AT THE GRANTOR'S EASTERLY AND WESTERLY PROPERTY LINES.

THE FOREGOING DESCRIPTION CONTAINS 28,834 SQUARE FEET, OR 0.66 ACRES, MORE OR LESS.

Exhibit "E"

WHEN RECORDED, PLEASE RETURN TO:

West Jordan City Recorder
8000 South Redwood Road
West Jordan, Utah 84088

Portions of APN: 20-26-326-005-4002

TEMPORARY CONSTRUCTION EASEMENT

WEST BENCH, LLC, a Utah limited liability company, AND, YELLOWSTONE LEGACY, LLC, a Utah limited liability company, AND, CW COPPER RIM 1, LLC, a Utah limited liability company (hereinafter referred to as "Grantor"), whose principal office address is 1222 West Legacy Crossing Blvd., Suite 6, Centerville, Utah 84014 (hereinafter referred to as "Grantor"), for good and valuable consideration, the receipt of which is hereby acknowledged, hereby grants, bargains and conveys unto the CITY OF WEST JORDAN, a municipal corporation and political subdivision of the State of Utah (hereinafter referred to as "Grantee"), its successors, assigns, lessees, licensees and agents, a non-exclusive TEMPORARY CONSTRUCTION EASEMENT upon, over, under, across and through the following land which Grantor owns or in which the Grantor has an interest, situated in the County of Salt Lake, State of Utah, more particularly described as follows:

[See Exhibit "E-1" attached hereto and incorporated herein by reference.]

This Temporary Easement is granted for the following purpose: construction of a water tank, water lines, electric lines, drain lines, and any appurtenances connected thereto (the "Facilities").

Grantee shall have the right to plan, install and construct any material(s) comprising the Facilities from as Grantee may require. Grantee shall have the right to clear and remove all obstructions from the above described property that may interfere with the use of said Easement by Grantee. Grantor reserves the right to occupy, use and cultivate said property for all purposes not inconsistent with the rights herein granted.

This Temporary Construction Easement shall expire upon completion of construction of the Facilities or two years from the date of this document, whichever first occurs.

IN WITNESS WHEREOF, Grantor has executed this instrument as of this _____ day of _____, 2019.

WEST BENCH, LLC, a Utah limited liability company

By: _____
Its: _____

STATE OF _____)
: SS.
COUNTY OF _____)

On this _____ day of _____, 2019, personally appeared before me _____, who being by me duly sworn did say that s/he is the _____ of WEST BENCH, LLC, a Utah limited liability company, and that the foregoing instrument was duly authorized by said limited liability company at a lawful meeting held or by authority of its bylaws and signed in behalf of said company.

NOTARY PUBLIC

My Commission Expires: _____

Residing in _____, _____

YELLOWSTONE LEGACY, LLC, a Utah limited liability company

By: _____
Its: _____

STATE OF _____)
 : SS.
COUNTY OF _____)

On this _____ day of _____, 2019, personally appeared before me _____, who being by me duly sworn did say that s/he is the _____ of YELLOWSTONE LEGACY, LLC, a Utah limited liability company, and that the foregoing instrument was duly authorized by said limited liability company at a lawful meeting held or by authority of its bylaws and signed in behalf of said company.

NOTARY PUBLIC

My Commission Expires: _____

Residing in _____, _____

By: _____
Its: _____

STATE OF _____)
 : SS.
COUNTY OF _____)

On this _____ day of _____, 2019, personally appeared before me _____, who being by me duly sworn did say that s/he is the _____ of CW COPPER RIM 1, LLC, a Utah limited liability company, and that the foregoing instrument was duly authorized by said limited liability company at a lawful meeting held or by authority of its bylaws and signed in behalf of said company.

My Commission Expires: _____

Residing in _____, _____

LENDER CONSENT AND SUBORDINATION

FOR VALUABLE CONSIDERATION, the receipt and sufficiency of which is hereby acknowledged, the undersigned, as the beneficiary and holder of those certain Deeds of Trust dated January 12, 2018 and January 31, 2019, and filed in the official records of the Salt Lake County Recorder on January 16, 2018 and January 31, 2019, under Entry No. 12698422, in Book 10638, at Page 8656, and Entry No. 12927578, in Book 10749, at Page 7729, respectively (the "Trust Deeds"), which Trust Deeds encumber real property owned by Grantor (the "Grantor's Property"), hereby: (1) consents to the execution and delivery of the within and foregoing Easement by Grantor affecting the Grantor's Property; and (2) subordinates all of its rights, title and interests under the Trust Deeds in and to the Grantor's Property to the rights, title, interests, obligations and benefits created by, or arising under, the within and foregoing Easement, so that the Easement shall unconditionally be and remain at all times an interest in real property prior and superior to the Trust Deeds. Nothing contained herein shall be construed to impose upon the undersigned any obligation created by the Easement, unless and until the undersigned has acquired fee title to all or a portion of the Grantor's Property.

MOUNTAIN WEST DEBT FUND, LP,
a Delaware limited partnership

By: _____

Its: _____

STATE OF _____)
: ss.
COUNTY OF _____)

On this _____ day of _____, 2019, personally appeared before me _____, who being by me duly sworn did say that s/he is the _____ of MOUNTAIN WEST DEBT FUND, LP, a Delaware limited partnership, and that the foregoing instrument was duly authorized by the limited partnership at a lawful meeting held or by authority of its bylaws and signed in behalf of said limited partnership.

NOTARY PUBLIC
My Commission Expires: _____
Residing in _____, _____

Exhibit "E-1"

A TWENTY (20) FOOT WIDE NON-EXCLUSIVE TEMPORARY CONSTRUCTION EASEMENT LOCATED IN THE SOUTH HALF OF SECTION 26, TOWNSHIP 2 SOUTH, RANGE 2 WEST OF THE SALT LAKE BASE AND MERIDIAN, MORE PARTICULARLY DESCRIBED AS FOLLOWS, TO WIT:

BEGINNING AT THE INTERSECTION OF THE NORTHERLY RIGHT-OF-WAY LINE OF 7800 SOUTH STREET WITH THE WESTERLY BOUNDARY LINE OF A GAS EASEMENT FOUND UNDER SALT LAKE COUNTY ENTRY NO. 7501201, IN BOOK 8319, AT PAGE 4705, WHICH POINT IS LOCATED 1,853.51 FEET SOUTH 89°58'45" WEST ALONG THE SECTION LINE AND 78.36 FEET NORTH 00°00'00" EAST FROM THE SOUTHEAST CORNER OF SECTION 26, TOWNSHIP 2 SOUTH, RANGE 2 WEST OF THE SALT LAKE BASE AND MERIDIAN; THENCE SOUTH 89°59'22" WEST 20.00 FEET ALONG SAID RIGHT-OF-WAY LINE; THENCE, LEAVING SAID RIGHT-OF-WAY LINE, ALONG THE FOLLOWING FIVE (5) COURSES, (1) NORTH 00°18'21" EAST 1,052.68 FEET TO A POINT ON A 45.00 FOOT RADIUS CURVE TO THE LEFT, (2) NORTHWESTERLY 70.93 FEET ALONG SAID CURVE, HAVING A CENTRAL ANGLE OF 90°18'19" (CHORD BEARS NORTH 44°50'49" WEST 63.81 FEET), (3) NORTH 89°59'59" WEST 778.07 FEET TO A POINT ON A 44.59 FOOT RADIUS CURVE TO THE LEFT, (4) SOUTHWESTERLY 35.51 FEET ALONG SAID CURVE, HAVING A CENTRAL ANGLE OF 45°38'15" (CHORD BEARS SOUTH 67°10'54" WEST 34.58 FEET), (5) SOUTH 44°44'23" WEST 59.91 FEET TO THE EASTERLY LINE OF A PROPOSED WATER TANK SITE; THENCE NORTH 00°00'00" EAST 28.41 FEET ALONG SAID EASTERLY LINE; THENCE, LEAVING SAID EASTERLY LINE, ALONG THE FOLLOWING THREE (3) COURSES, (1) NORTH 44°44'23" EAST 66.95 FEET, (2) SOUTH 89°59'59" EAST 870.34 FEET TO A POINT ON THE WESTERLY BOUNDARY LINE OF SAID GAS EASEMENT FOUND UNDER SALT LAKE COUNTY ENTRY NO. 7501201, IN BOOK 8319, AT PAGE 4705, (3) SOUTH 00°18'21" WEST 1,117.91 FEET ALONG SAID EASEMENT BOUNDARY LINE TO THE POINT OF BEGINNING.

THE FOREGOING DESCRIPTION CONTAINS 41,221 SQUARE FEET, OR 0.946 ACRES, MORE OR LESS.