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**IN THE FOURTH JUDICIAL DISTRICT COURT
UTAH COUNTY, STATE OF UTAH**

<p>LSC REAL ESTATE, LLC, a Utah limited liability company,</p> <p style="text-align: center;">Plaintiff,</p> <p style="text-align: center;">vs.</p> <p>EAGLE MOUNTAIN CITY, an incorporated city within Utah County, State of Utah, and DOES 1-20,</p> <p style="text-align: center;">Defendants.</p>	<p style="text-align: center;">COMPLAINT</p> <p>Case No. _____ Judge _____ (Tier I)</p>
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Plaintiff LSC Real Estate, LLC (“LSC” or “Plaintiff”) hereby complains and alleges against Defendant Eagle Mountain City (the “City” or “Defendant”) and DOES 1-20 (collectively, “Defendants”) as follows:

DESCRIPTION OF THE PARTIES

1. Plaintiff LSC Real Estate, LLC (“LSC” or “Plaintiff” or “Owner”) is a Utah limited liability company with its principal place of business in Payson, Utah County, State of Utah. Larry S. Carson is a manager and registered agent of LSC.

2. Defendant Eagle Mountain City (the “City” or “Defendant”) is an incorporated city in Utah County, State of Utah.

3. DOES 1-20 are persons or entities not presently known to LSC who are also liable on the claims asserted herein. When LSC learns the true identities of DOES 1-20, LSC will make an amendment to this Complaint to allege their true identities.

JURISDICTION, VENUE AND TIER

4. This Court has jurisdiction over the Defendants herein.

5. This Court has jurisdiction to hear this matter pursuant to Utah Code § 78A-5-102(2).

6. Venue is proper in this Court pursuant to Utah Code § 78B-3-307.

GENERAL ALLEGATIONS

7. In or about 2020, LSC granted Pony Express Dental, LLC, Michael Tornow, and Ivy Tornow (individually and collectively the “Buyer Parties”) a contractual right to purchase certain property in Eagle Mountain City (the “Property”).

8. Buyer Parties engaged with LSC with the intent to construct a dental building on the Property to house Pony Express Dental.

9. In early October 2021, representatives of Buyer Parties engaged with City personnel to calculate the estimated water required for the then planned dental building.

10. On or about October 5th, 2021, Christopher T. Trusty, City employee, sent a letter to the City recorder, Fionnuai Kofod, providing the calculation of the anticipated water usage, 2.93 acre feet of water.

11. On October 11th, 2021, Buyer Parties entered into that certain Public Water Supply Agreement that had been prepared by the City (the “Water Supply Agreement”) and paid \$39,760 (the “Water Fee”) to purchase the 2.93 acre feet of water required by City.

12. A pre-condition to the Buyer Parties being able to develop the Property was to either (a) provide 2.93 acre feet of water to the City, or (b) enter into the Water Supply Agreement and pay the Water Fee to purchase 2.93 acre feet of water.

13. The calculation resulting in the City requiring 2.93 acre feet of water contained errors and misapplied Utah Administrative Rule R309-510.

14. Moreover, the assumptions used to approximate the water consumption of a dental office grossly overstated the expected actual water consumption for a dental office

15. Buyer Parties and LSC had a dispute as to who was ultimately responsible to pay the Water Fee, which was resolved by Buyer Parties assigning all of their claims related to the Water Fee to LSC.

16. Pursuant to the Utah Municipal Land Use, Development, and Management Act (the “LUDMA”), the City cannot require LSC or Buyer Parties to bear these public burdens which, in fairness and justice, should be borne by the public as a whole, and the City cannot impose an exaction that is not proportionate to the impact of the proposed development.

17. 2.93 acre feet of water is not roughly proportionate to the actual water demand for Pony Express Dental.

FIRST CAUSE OF ACTION
(Illegal Exaction)

18. LSC incorporates by this reference the allegations set forth in the foregoing paragraphs as if fully set forth herein.

19. Under LUDMA an exaction for water must be “roughly proportionate ... to the impact of the proposed development.” *See* UCA 10-9a-508.

20. The calculation of projected water consumption had arithmetic errors and misapplied Utah Administrative Rule R309-510.

21. Had the calculation been performed correctly the assumptions used to approximate the water consumption of a dental office are not proportional to the actual water consumption for a dental office.

SECOND CAUSE OF ACTION
(Illegal Impact Fee)

22. LSC incorporates by this reference the allegations set forth in the foregoing paragraphs as if fully set forth herein.

23. An “‘Impact Fee’ means a payment of money imposed upon new development activity as a condition of development approval to mitigate the impact of the new development.” UCA 11-36a-102(10).

24. “A fee that meets the definition of an impact fee under Section 11-36a-102 is an impact fee . . . regardless of what term the [City] uses to refer to the fee.” UCA 11-36a-204

25. The Water Fee was a payment of money imposed upon new development activity as a condition of development.

26. The Water Fee was an ‘impact fee’ under Utah Law. *See* UCA 11-36a (the “Impact Fee Act”)

27. The impact fee imposed by the City did not comply with the Impact Fees Act.

28. LSC is entitled to a refund of the difference between the Water Fee that was paid and the amount the impact fee should have been if it had been correctly calculated. UCA 11-36a-701

29. LSC is entitled to attorney fees under the Utah Impact Fees Act. *See* UCA 11-36a-703(4).

THIRD CAUSE OF ACTION
(Unconstitutional Taking – Federal and State Constitution)

30. LSC incorporates by this reference the allegations set forth in the foregoing paragraphs as if fully set forth herein.

31. The City required the payment of a disproportionate Water Fee from Plaintiffs without just compensation.

32. Pursuant to Article 1, Section 22 of the Utah Constitution, and the Fifth Amendment of the United States Constitution, LSC is entitled to judgment against the City for an unconstitutional taking, in an amount to be proven at the trial of this matter, plus costs, attorneys' fees, and pre- and post-judgment interest, as permitted by law.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests the following relief against Defendant as follows:

1. On Plaintiff's First, Second and Third Causes of Action, asserting an improper exaction claim, an improper impact fee and an unconstitutional taking, for judgment against Defendant in an amount to be proven at trial plus attorneys' fees, costs, and pre- and post-judgment interest, as permitted by law.

2. For this Court to recalculate the impact fee in a manner that is properly proportionate to the impact of a dental office.

3. For actual and compensatory damages caused by Defendant's wrongful acts and omissions.

4. For statutory damages as provided by law.

5. For Plaintiff's attorneys' fees and costs incurred in bringing this action.

6. For such other and further relief as the Court deems necessary, just, and proper.

DATED this 11th day of October, 2022.

CHECKETTS LAW

/s/ Thomas K. Checketts
Attorney for Plaintiff