

WHEN RECORDED, RETURN TO:
Anaya Gayle
Holland & Hart, LLP
222 S. Main St. Suite 2200
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DECLARATION OF SHARED DRIVEWAY EASEMENT AND MAINTENANCE AGREEMENT

This **DECLARATION OF SHARED DRIVEWAY EASEMENT AND MAINTENANCE AGREEMENT** (“**Shared Driveway Declaration**”) is made as of June, 14 , 2023 by Wasatch Peaks Ranch, LLC, a Delaware limited liability company whose address is 36 South State Street Suite 500, Salt Lake City, UT 84111 (“**WPR**”), for the benefit of Fee Owner and Easement Lot Owner, as such terms are defined herein (referred to herein at times individually as an “**Owner**” and collectively as “**Owners**”), and for the benefit of WPR, Wasatch Peaks Ranch Homeowners Association, Inc., a Utah nonprofit corporation (“**Association**”) and Wasatch Peaks Ranch Club, LLC, a Utah limited liability company (“**Club**”). Fee Owner, Easement Lot Owner, WPR, Association, and Club may be referred to herein at times individually as a “**Benefitted Party**” and collectively as the “**Benefitted Parties**”.

RECITALS:

A. WPR is the record owner of certain land in Morgan County, Utah (“**County**”), which WPR is developing into a private planned recreational community known as “Wasatch Peaks Ranch” (“**Community**”).

B. WPR is “**Declarant**” under the Master Declaration of Covenants, Conditions, Restrictions and Reservation of Easements for Wasatch Peaks Ranch recorded in the official records of the Morgan County Recorder’s Office, Morgan County, Utah (“**Official Records**”) on May 3, 2022, as Entry No. 160853, that certain First Supplemental Declaration for Wasatch Peaks Ranch recorded in the Official Records on May 1, 2023 as Entry No. 163348, in Book 399, Page 1242, and that certain Second Supplemental Declaration and First Amendment to Master Declaration for Wasatch Peaks Ranch recorded in the Official Records on May 1, 2023 as Entry No. 163355, in Book 399, Page 1288, as the same may be supplemented, amended, and otherwise revised from time to time (collectively, the “**Declaration**”), and is “**WPR**”, “**Owner**”, and “**Declarant**” as such terms may be used and defined in that certain Final Plat Wasatch Peaks Ranch Plat 1, dated April 13, 2022 and recorded in the Official Records on May 3, 2022 as Entry No. 160852, (as the same may be amended, revised, or restated from time to time “**FP1**”) and as amended by that certain Final Plat Wasatch Peaks Ranch Plat 1, First Amendment, dated March 20, 2023 and recorded in the Official Records on May 1, 2023 as Entry No. 163347, in Book 399, Page 1237, (as the same may be amended, revised, or restated from time to time “**FP1 Amd.**”) and that certain Final Plat Wasatch Peaks Ranch Plat 2A, dated April 14, 2023 and recorded in the Official Records on May 1, 2023 as Entry No. 163354, in Book 399, Page 1278 (as the same may be amended, revised, or restated from time to time “**FP2**” and together with FP1 and FP1 Amd., the “**Plat**”).

C. Pursuant to the Plat, WPR owns certain residential subdivision lots and parcels situated within the Community (each a “**Lot**”, and collectively, “**Lots**”).

D. Exhibit A, attached and incorporated by reference, describes certain Lots and designates each as a “**Fee Lot**” (the Lots so designated being referred to herein at times collectively as the “**Fee Lots**”), or an “**Easement Lot**” (the Lots so designated being referred to herein at times collectively as the “**Easement Lots**”).

E. Excepting WPR, the Association, and the Club, the Owners of the Fee Lots are referred to herein individually as a “**Fee Owner**” and collectively as the “**Fee Owners**”, and Owners of the Easement Lots are referred to herein individually as an “**Easement Owner**” and collectively as the “**Easement Owners**”.

F. Section 3.5 of the Declaration establishes that Shared Driveway Lots are lots that are accessible by Shared Driveway Easements, which are shared driveways serving two Residential Lots as depicted on a Plat.

G. Fee Lots and Easement Lots are Shared Driveway Lots accessible by Shared Driveway Easements.

H. The Fee Lots and Easement Lots are listed on Exhibit A in pairs (“**Owner Pair**”) and each pair shares a single Shared Driveway as more specifically depicted on the Plat.

I. Pursuant to and in accordance with Section 3.5 of the Declaration:

- a. Each Owner Pair share the right and obligation to plan, improve, construct, install, operate, and maintain the Shared Portion of the common Shared Driveway Easement pursuant to the terms and provisions of the Declaration.
- b. Easement Owners each have the full obligation to plan, construct, install, operate, and maintain the Easement Portion that is appurtenant to such Easement Owner’s Easement Lot.
- c. Each Owner Pair share the obligations to plan, construct, install, operate, and maintain the Shared Portion of the Shared Driveway appurtenant to the Lots owned by the respective Owner Pair pursuant to the terms and provisions of the Declaration.
- d. This Shared Driveway Declaration is being recorded in the Official Records concurrently with or soon after Final Plat Wasatch Peaks Ranch Plat 2A, the first of the Plats to contain Shared Driveways, and prior to any construction or installation of the Shared Driveway Improvements.

DECLARATION

NOW THEREFORE, by the execution, acknowledgement, and recording of this Shared Driveway Declaration in the Official Records, WPR hereby declares that the Fee Lots and the Easement Lots are hereby encumbered and benefitted by and shall be conveyed in perpetuity subject to the following restrictions, each and all of which shall run with and be appurtenant to the Fee Lots and Easement Lots for the benefit of the Benefitted Parties:

1. **Recitals**. The foregoing recitals are incorporated as though fully set forth herein.
2. **Defined Terms**. Capitalized terms used and not defined herein have the meanings set forth in the Declaration.
3. **Creation of Easement**. The Shared Driveway Easements have been established of record pursuant to the Plats and the Declaration. The Shared Driveway Easements are each and all non-exclusive, perpetual easements as more fully described in the Declaration and as depicted and described on the Plats.
4. **Obligations and Benefits Run to Owners of Appurtenant Lots**. The rights, interests, benefits, duties, obligations, and burdens detailed below apply to all Fee Lots and Easement Lots; however, the specific obligations and benefits apply individually to each Fee Lot and each Easement Lot as the same are appurtenant to a respective Shared Driveway Easement. Under no circumstance shall a Lot Owner whose Lot is appurtenant to one Shared Driveway Easement have any duty or obligation related to or arising from construction, maintenance, or operation of a Shared Driveway Easement to which the Lot Owner's Lot is not appurtenant.
5. **Initial Shared Driveway Improvement Installation**. Pursuant to and in accordance with the Declaration, all costs arising from planning, designing, construction, installation, operation, and maintenance of the Shared Driveway Improvements within the Shared Portion ("**Shared Portion Improvements**") shall be borne by the Owner Pair whose lots are appurtenant to the respective Shared Portion in accordance with the terms and provisions of the Declaration. Either Owner may take the initiative to pursue installation of the Shared Portion Improvements, such Owner being referred to as the ("**First Owner**") and the other Owner being referred to as the ("**Second Owner**").
 - a. **Initial Plans and Budget**. First Owner is obligated to plan, improve, construct, install, operate, and maintain the Shared Driveway Improvements as to the Shared Portion in accordance with the Declaration and this Shared Driveway Declaration. Prior to beginning construction, First Owner shall prepare plans and specifications for the Shared Portion Improvements (including the finished grade thereof) ("**Plans**") and shall (i) seek approval of the Plans from the Association (or its duly appointed Design Review Board) ("**Association Approval**") in accordance with the terms and provisions of the Declaration, and (ii) provide to the Second Owner a copy of the Plans together with a budget of the expected costs, inclusive of design costs ("**Budget**") for Second Owner's review and approval.
 - b. **Approval of Plans and Budget**. The Second Owner shall have 15 calendar days for review and comment on the Plans, Budget, or both ("**Comment Period**") and both

Owners shall cooperate in good faith to (i) mutually agree upon the Plans and Budget, (ii) obtain the Association Approval, and (iii) obtain any additional approvals that may be required by governmental or quasi-governmental divisions, districts, special service districts, or agencies (“**Government Approval**”). Should the Plans or Budget require revision prior to receiving the Association Approval or the Government Approval, First Owner shall promptly deliver such revisions to Second Owner and Second Owner shall have 15 days from such delivery to make comment to such revised Plans, Budget, or both (“**Revised Comment Period**”). The Second Owner shall not unreasonably withhold or delay its comments to the Plans and Budget. In the event that the Second Owner fails to provide comments within the Comment Period or the Revised Comment Period, if applicable, the Plans and Budget as delivered to the Second Owner shall be forfeit the opportunity to make comment. If there is no Second Owner (meaning that WPR, Association, or Club own the Lot that would otherwise be the Second Owner’s Lot) the First Owner may proceed with its Plans once First Owner obtains both Association Approval and Government Approval. The First Owner has a temporary construction easement to enter upon such portion of the Second Owner’s Lot as may be reasonably necessary for the purpose of constructing the Shared Driveway Improvements.

c. Construction of Shared Driveway Improvements. The First Owner shall begin construction and installation of the Shared Portion Improvements in a reasonable period of time from the date upon which First Owner and Second Owner have resolved Second Owner’s comments to the Plans and Budget, if any, and First Owner receives the last of the Association Approval and Government Approval, to the extent required (the “**Approval Date**”). Such reasonable period of time from the Approval Date shall be no longer than 60 days, unless weather and ground conditions require a delay, in which case, such reasonable period of time shall be not longer than 60 days from May 1 immediately subsequent to the Approval Date.

d. Obligation to Complete. Once begun, First Owner shall complete the Shared Portion Improvements expeditiously and without substantial interruption. First Owner shall construct the Shared Portion Improvements in a good and workmanlike manner, and in accordance with all applicable covenants, restrictions, laws, codes, and other regulations, including the approved Plans and Budget. If First Owner fails to complete the Shared Portion Improvements, then the Second Owner, WPR, and Association shall have the right, but not the obligation, to complete the Shared Portion Improvements as if it were First Owner, and all provisions hereof will be applied accordingly, except that neither WPR nor Association shall under any circumstances be considered a Fee Owner, Easement Owner, First Owner, or Second Owner and are individually and collectively exempt from any and all obligations to bear the costs associated with the installation, construction, maintenance, or operation of any of the Shared Portion Improvements.

6. Costs. First Owner shall pay all upfront costs for the completion of the Shared Portion Improvements. Upon completion of the same, including the completion of any and all required inspections (whether such are required by WPR, the Association, the Club, or any governmental or quasi-governmental division, district, or agency), First Owner shall be entitled to submit to the Second Owner an invoice for one-half of the actual costs incurred by the First Owner to construct and install the Shared Portion Improvements (“**Invoice**”). Regardless of the total actual costs of the Shared Portion Improvements and the amount reflected in the Invoice (“**Invoiced Amount**”), the Second Owner shall only be obligated to reimburse First Owner for the lesser of the Invoiced Amount and 65% of the total initial Budget (“**Second Owner’s**

Obligation”). The Second Owner shall pay the Second Owner’s Obligation no later than 30 calendar days from receipt of the Invoice. If the Second Owner fails to pay the Second Owner’s Obligation within the stated time period, interest shall accrue until fully paid at a rate equal to the generally prevailing national "prime" rate (or equivalent) plus two percent (2%), and such amount shall be deemed in default under Section 9 below.

7. **Maintenance of Shared Driveway**. The Fee Owner is obligated maintain the Shared Portion and the Shared Portion Improvements in a good and clean condition and state of repair as set forth below; however, the Owners may enter into an agreement that provides the Easement Owner is obligated to perform such maintenance. For purposes of this Shared Driveway Declaration, whichever Owner has the responsibility for ongoing maintenance and operation of the Shared Portion shall be the “**Maintaining Owner**”. The Owner that is not the Maintaining Owner is the “**Reimbursement Owner**”.

a. **Maintenance Obligation**. Owner Pairs are under the joint and several absolute obligation to maintain the Shared Portion Improvements in a good and clean condition and state of repair to include: (i) keeping the Shared Portion at all times in a clean, uncluttered, orderly and sanitary condition, by, among other things, removing all papers, debris, filth and refuse, and washing or thoroughly sweeping the Shared Portion on a regular basis; (ii) promptly and adequately clearing ice and snow; and (iii) repaving or resurfacing the Shared Portion as needed to generally maintain the same in a smooth, even, and navigable condition (“**Maintenance Obligations**”).

b. **Reimbursement**. Reimbursement Owner shall reimburse the Fee Owner for 50% of the total reasonable costs directly related to and arising from the Maintenance Obligations (total costs being the “**Maintenance Costs**” and 50% of the same being the “**Reimbursement**”). The Maintaining Party shall, as a courtesy and no later than January 1 of each year, make an annual good faith estimate of Maintenance Costs, which it must provide to the Reimbursement Owner no later than January 31 each year. The Owners shall work in good faith to resolve Reimbursement Owner’s questions or concerns about such estimate, if any; however Maintaining Owner is not obligated to secure Reimbursement Owner’s approval of such estimate and may proceed with the Maintenance Obligations as Maintaining Owner deems reasonable and necessary. Maintaining Owner shall present to Reimbursement Owner a final invoice and supporting documentation reflecting the actual costs of such maintenance and operation on a monthly basis (“**Monthly Invoice**”). Reimbursement Owner shall pay 50% of such Monthly Invoice within 30 of receiving the same. The Reimbursement shall be paid in any manner specified by the Maintaining Owner.

c. **Additional Agreements Between Owners**. The reimbursement process detailed above may be adjusted in the future by a written agreement between the Owners which must be place of record in the Official Records.

8. **Repairing Damage**. Notwithstanding anything herein to the contrary, any Owner that causes or allows in any manner (including by such Owner's agents, employees, contractors, sub-contractors or material suppliers) the Shared Portion Improvements appurtenant to said Owner’s Lot to be damaged shall bear sole responsibility for the costs and expenses of repairing such damage. Such repairs must be undertaken promptly and completed within six months of said

damage. Reasonable extensions of the time in which to complete repairs may be made in the event of extreme weather or ground conditions that would necessarily limit the required repair activities.

9. **Default and Remedies.** If any Owner fails to fulfill any of its obligations under this Shared Driveway Declaration (“**Defaulting Owner**”), and fails to remedy such default within 30 days from notice of the same, the other Owner may file a lien against the Defaulting Owner's Lot for all such costs and amounts, which lien will be superior to all liens recorded after the date hereof, and which may be enforced or foreclosed as permitted under Utah law. Further, the substantially prevailing party in any enforcement action arising out of a default of the obligations hereunder shall be entitled to recover its costs and attorneys’ fees in amounts awarded by the Court.

10. **Covenants Run with the Land.** Each of the easement, covenants, conditions, and restrictions set forth in this Shared Driveway Declaration shall benefit and burden the respective Lots referenced herein and shall constitute covenants running with the land. The easements and obligations detailed herein both bind and benefit the Shared Driveway Lots pursuant to the terms and provisions of the Plats, Declaration, Governing Documents, and this Shared Driveway Declaration.

11. **Notices.** Any notice which any party to this Shared Driveway Declaration may or is required to give, will be given by personal delivery, delivery by overnight courier or by mailing the same, postage prepaid, certified mail, return receipt requested, at the record address for the Lot Owner being served and is effective upon receipt or refusal of acceptance.

12. **Mutual Indemnification.** The Benefitted Parties shall each indemnify (“**Indemnifying Party**”) and hold the others (“**Indemnified Party**” whether one or more) harmless from any and all losses, claims, liabilities, cause of actions, damages, and expenses, including, without limitation, reasonable attorneys’ fees (each, a “**Liability**”) arising out of or related to the Indemnifying Party’s or its respective family members’, guests’, tenants’, licensees’, permittees’, contractors’, subcontractors’, independent contractors’, employees’, representatives’, agents’, and all other related parties’ (“**Indemnifying Party’s Permittees**”) use of the Shared Driveway Easement, including, but not limited to, any Liability for personal injuries, deaths, property damage, mechanic’s liens or other claims and causes of action of any kind arising out of use of the Shared Driveway by Indemnifying Party or its respective Indemnified Party’s Permittees (but excluding any Liability arising out of the use of the Easement Area by Indemnified Party or its respective permittees, or out of the gross negligence or willful misconduct of Indemnified Party or its respective permittees).

13. **Miscellaneous Provisions.**

a. **Governing Law.** The validity and effect of this Shared Driveway Declaration shall be determined in accordance with the laws of the State of Utah without regard to its choice of law principles.

b. **Severability.** If any provision of this Shared Driveway Declaration or the application thereof to any person or circumstance shall be invalid, illegal, or unenforceable, it shall not affect or impair the validity, legality or enforceability of any other provision of this Shared Driveway Declaration, or the applicability of such provision to persons or circumstances other

than those to which it is held invalid or unenforceable, and each provision of this Shared Driveway Declaration shall be valid and enforced to the fullest extent permitted by law.

c. Headings for Convenience. All headings and captions used herein are for convenience only and are of no meaning in the interpretation or effect of this Shared Driveway Declaration.

d. No Dedication. Nothing in this Shared Driveway Declaration shall be construed as a grant or dedication of any portion of the properties as a public area or public road or as a dedication of any portion of the property for the use and benefit of the public.

e. Counterparts. This Shared Driveway Declaration may be signed in several counterparts, each of which will be deemed an original, and all such counterparts together will constitute one and the same instrument.

f. No Joint Venture or Partnership. No form of joint venture or partnership exists between Owners, and nothing contained in this Shared Driveway Declaration shall be construed as making Owners joint venturers or partners.

g. No Third Party Beneficiaries. It is expressly understood and agreed that enforcement of the terms and conditions of this Shared Driveway Declaration, and all rights of action relating to such enforcement, shall be strictly reserved to the Owners. Nothing contained in this Shared Driveway Declaration shall give or allow any such claim or right of action by any other third party on this Shared Driveway Declaration. It is the express intention of the Parties that any person other than the Owners receiving benefits under this Shared Driveway Declaration shall be deemed to be an incidental beneficiary only.

h. Modification and Waiver. No modification of the terms of this Shared Driveway Declaration shall be valid unless in writing and executed with the same formality as this Shared Driveway Declaration, and no waiver of the breach of the provisions of any section of this Shared Driveway Declaration shall be construed as a waiver of any subsequent breach of the same section or any other sections which are contained herein.

i. Authority. The undersigned signatories represent and warrant that they have full power and authority to enter into this Shared Driveway Declaration.


[Remainder of this page is intentionally blank. Signature page follows.]

IN WITNESS WHEREOF, the undersigned has executed this Declaration of Shared Driveway Easement and Maintenance Agreement for Wasatch Peaks Ranch Lots as of the date and year first written above.

WPR:

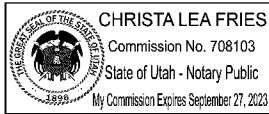
WASATCH PEAKS RANCH, LLC, a Delaware limited liability company

By: Wasatch Peaks Ranch Management, LLC, its Manager


By: Ed Schultz 
Name: Ed Schultz
Its: Authorized Officer

STATE OF UTAH)
) ss.
County of SALT LAKE)

This instrument was acknowledged before me on June 14, 2023, by Ed Schultz, as Authorized Officer of Wasatch Peaks Ranch Management, LLC, manager of Wasatch Peaks Ranch, LLC.



Online Notary Public. This notarial act involved the use of online audio/video communication technology.

Christa Lea Fries 
Notary Public

My Commission Expires: September 27, 2023

EXHIBIT A

Fee Lots

Lots D22, D30, D39, D40 of Final Plat Wasatch Peaks Ranch Plat 2A recorded in the Office of the County Recorder, Morgan County, Utah, on May 1, 2023, as Entry No. 163354, in Book 399, Page 1278.

Parcel Nos. 00-0091-9741, 00-0091-9749, 00-0091-9758, and 00-0091-9759

EXHIBIT B

Easement Lots

Lots D23, D31, D39, D40 of Final Plat Wasatch Peaks Ranch Plat 2A recorded in the Office of the County Recorder, Morgan County, Utah, on May 1, 2023, as Entry No. 163354, in Book 399, Page 1278.

Parcel Nos. 00-0091-9742, 00-0091-9750, 00-0091-9758, and 00-0091-9759

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