

When recorded return to:
Wasatch View Retail, LLC
c/o The DRH Company
5445 S. Highland Drive
SLC, UT 84117



W3213688

**GRANT OF EASEMENTS, DECLARATION OF
RESTRICTIONS, AND
MAINTENANCE AGREEMENT**

Wasatch View North Commercial Subdivision

This Grant of Easements, Declaration of Restrictions, and Maintenance Agreement (“Agreement”) is made as of the date signed below, by Wasatch View Retail, LLC (“Wasatch View”), title owner of the real property described herein. Wasatch View is referred to herein as Wasatch View and Declarant. Wasatch View is currently the sole owner of Lot 1, Lot 2 and Lot 3 (defined below), but anticipates selling one or more of the lots. The owners of each of the lots are collectively referred to herein as the “Parties” and individually as a Party.

RECITALS

1. The real property described herein consists of three (3) parcels as indicated on the site plan attached hereto as Exhibit “A”. The three (3) parcels are collectively referred to herein as the “Subject Property” and individually as a “Parcel”. The owners of the Subject Property are referred to herein collectively as the “Owners” and separately as an “Owner.”

2. Wasatch View is the Owner of the following real property (“Lot 1”)

All of Lot 1, Wasatch View North Commercial Subdivision, Pleasant View City, Weber County, State of Utah, According to the Official Plat Thereof.

Tax ID: _____

3. Wasatch View is the Owner of the following real property (“Lot 2”):

All of Lot 2, Wasatch View North Commercial, Amended Subdivision, Pleasant View City, Weber County, State of Utah, According to the Official Plat Thereof.

Tax ID: _____

4. Wasatch View is the Owner of the following real property (“Lot 3”):

All of Lot 3, Wasatch View North Commercial, Amended Subdivision, Pleasant View City, Weber County, State of Utah, According to the Official Plat Thereof.

Plat Thereof.

Tax ID: _____

5. Wasatch View intends to develop, lease or sell some or all of the Subject Property and desire to place easements, restrictions and maintenance covenants on the Subject Property in connection with ownership, use and development of the Subject Property.
6. Wasatch View desires that portions of the Subject Property be subject to certain terms, conditions, stipulations, and easements which serve to benefit the Subject Property.
7. Wasatch View desires that the future owners of Lot 1, Lot 2 and Lot 3 share the expenses associated with maintaining certain portions of the Subject Property identified herein and in the Maintenance Addendum as Shared Maintenance Areas ("SMA").

NOW THEREFORE, the Wasatch View hereby submits the Subject Property to the following easements, covenants, restrictions and maintenance obligations as set forth herein and described below.

Introductory Notes:

- (A) Attached hereto and incorporated herein is a Maintenance Addendum outlining the duties and responsibilities of the Maintenance Director and the process by which Shared Maintenance Expenses ("SMEs") will be apportioned and collected.
- (B) The words "Lot" and "Parcel" are used interchangeably and shall have the same meaning herein unless the context clearly indicates otherwise.
- (C) The Recitals set forth above are accepted as being accurate and incorporated as part of this Agreement.

1. SHARED DRIVE AISLE ("SDA") - GRANT OF EASEMENT

1.1 **Construction of the Shared Drive Aisle.** The owner of Lot 1 shall be solely responsible for the cost to construct the SDA. The location and placement of the SDA is more particularly shown on the site plan attached as Exhibit "A" and described on the legal description attached as Exhibit "B".

1.2 **Grant of Ingress, Egress and Access Easement.** The Owners of the Subject Property, to wit Lot 1, Lot 2 & Lot 3, hereby grant, reserve, declare and create for the benefit of each other and all Owners of the Subject Property, their successors and assigns, and their respective Owners, invitees, employees and guests, a perpetual non-exclusive access easement, over, across and through those portions of the SDA

identified and described on the attached Exhibits "A" and "B", for the purpose of providing and permitting pedestrian and vehicular ingress, egress and cross-access to the Subject Property.

1.3 **Maintenance and Shared Expenses.**

- (a) **Shared Pro-Rata Assessments.** The Owners of the Subject Property shall be assessed for those SMEs associated with maintaining the SDA, including but not limited to snow removal and asphalt maintenance. The SMEs incurred in connection with the SDA shall be assessed against each Subject Property based on a pro-rata share of the SDA SMEs. The amount assessed to each Subject Property shall be calculated based upon the square footage of each Parcel in relation to the total square footage of all Parcels within the Subject Property, or, if additional property owners are granted an easement or access to the SDA, the total square footage of all Parcels having legal access to the SDA.
- (b) **Insurance.** Each Parcel Owner within the Subject Property shall separately obtain and pay for liability insurance coverage for that portion of the SDA located within their Parcel.

2. **RECIPROCAL EASEMENT FOR ACCESS**

- 2.1 **Grant of Parking, Ingress, Egress and Access Easement.** Wasatch View hereby grants, reserves, declares and creates for the benefit of the Lot 1, Lot 2 & Lot 3, and their respective Owners, invitees, employees and guests, a perpetual non-exclusive reciprocal access and parking easement, over, across and through Lot 1, Lot 2 & Lot 3 for the purpose of providing and permitting pedestrian and vehicular parking, ingress egress and cross-access on Lot 1, Lot 2 & Lot 3
- 2.2 **Limited Reserved Parking.** Lot 1, Lot 2 & Lot 3 invitees, employees, customers, and guests shall be entitled to park in the parking areas on Lot 1, Lot 2 & Lot 3. The Lot 1, Lot 2 & Lot 3 Owners agree to cooperate with each other in the use of the parking areas. Lot 1, Lot 2 & Lot 3 Owners reserve the right, in their separate, reasonable, and sole discretion, to determine whether the parking area on their Lot is becoming crowded and, in such event, to reserve a limited number of customer parking spaces on their Lot solely for their Lot's customers. However, Lot 1, Lot 2 & Lot 3 shall not be allowed to install signs that create more than ten (10) reserved parking stalls per Lot.
- 2.3 **Maintenance Expenses.** Except as provided in Paragraph 1.3(a) above, the owners of Lot 1, Lot 2 & Lot 3 shall be responsible for maintenance and all costs associated with the maintenance of the asphalt areas located on each Owner's owned Lot, including but not limited to cleaning, snow removal and asphalt maintenance.
- 2.4 **Grant of Drainage Easement.** Wasatch View hereby grants, reserves, declares and creates for the benefit of the Lot 1, Lot 2 & Lot 3 and their respective Owners,

invitees, employees and guests, a perpetual non-exclusive reciprocal drainage easement, over and across Lot 1, Lot 2 & Lot 3 for the purpose of providing and permitting ground water to freely flow from Lot 1 onto Lot 2 & Lot 3, from Lot 2 onto Lot 1 & Lot 3 and from Lot 3 onto Lot 1 & Lot 2. The Lot Owners shall not construct, reconstruct, repair, maintain or grade the identified drainage easements in a way that will obstruct the free flow of surface water.

3. UTILITY EASEMENTS.

- 3.1 **Grant of Utility Easement.** Wasatch View hereby grants, reserves, declares and creates for the benefit of the Lot 1, Lot 2 & Lot 3 and their respective Owners, invitees, employees and guests, a perpetual non-exclusive reciprocal utility easement, under, across and through Lot 1, Lot 2 & Lot 3 for the installation, operation, maintenance, repair and replacement of water drainage systems or structures, water mains, sewers, water sprinkler system lines, telephone lines, electrical conduits or systems, gas mains and other public or private utilities. All such systems, structures, mains, sewers, conduits, lines and other utilities shall be installed and maintained below the ground level or surface within the easements, except for ground mounted electrical transformers and such other facilities as are required to be above ground by the utility providing such service (including temporary service required during the construction, maintenance, repair, replacement, alteration or expansion of any buildings or improvements). The installation, operation, maintenance, repair and replacement of such easement facilities shall not unreasonably interfere with the use of the Lot or with the normal operation of any business on the Lot. The owner of the dominant estate shall bear all costs related to the installation, operation, maintenance, repair and replacement of such easement facilities, shall repair to the original specifications any damage to the Lot resulting from such use and shall provide as-built plans for all such facilities to the Owners of all Lots upon which such utility lines and facilities are located within thirty (30) days after the date of completion of construction of same.
- 3.2 **Relocation of a Utility.** At any time and from time to time the Owner of a Lot shall have the right to relocate on its Lot any utility line or facility installed pursuant to the foregoing grant of easement, provided that any such relocation (i) shall be performed only after sixty (60) days' notice of the Owner's intention to undertake the relocation shall have been given to the Owner of each Lot served by the utility line or facility, (ii) shall not unreasonably interfere with or diminish the utility, service to the Lots served by the utility line or facility, (iii) shall not reduce or unreasonably, impair the usefulness or function of the utility line or facility, (iv) shall be performed without cost or expense to the Owner or occupant of any other Lot, and (v) shall provide for the original and relocated area to be restored to the original specifications. The Owner performing such relocation shall provide as-built plans for all such relocated utility lines and facilities to the Owners of all Lots served by such utility lines and facilities within thirty (30) days after the date of completion of such relocation.
- 3.3 **Future Utilities.** Each Owner agrees to grant such additional easements as are reasonably required by any public or private utility for the purpose of providing the

utility lines and facilities described herein provided such easements are not otherwise inconsistent with the provisions of this Agreement.

3.4 **Allocation of Expenses.** SMEs associated with the use, maintenance, repair or replacement of utilities shall be apportioned by and paid to the Maintenance Director as set forth below.

(a) **Water Line.** A culinary water line ("Water Line") is located on Lot 1, Lot 2 and Lot 3 and provides service to Lot 1, Lot 2 & Lot 3. The Lot Owners using a shared Water Line shall pay a pro-rata portion of the expenses associated with the maintenance, repair and replacement of that portion of the Water Line located on Lot 1 that is shared or used in common with other Lot Owners. Each Lot using a shared Water Line shall be separately metered and each Lot shall be responsible for connection and users' fees incurred with the Lot and utility. The pro-rata portion of the Water Line maintenance, repair and replacement expenses shall be assessed to each Lot Owner based upon the square footage of each Lot using the Water Line in relation to the total square footage of all Lots which are sharing the Water Line in common with other Lot Owners or user(s). Once a section of a Water Line is no longer being shared with another Lot Owner (meaning that a section of the Water Line serves less than all the Lot Owners), the Lot Owner(s) who remain using and benefitting from the non-shared section of the Water Line shall be responsible for the maintenance, repair and replacement of that section of the Water Line they are using, even though the Water Line may be located on another Lot Owner's Lot. For example, Lot 2 shall be solely responsible for all maintenance, repair and replacement of that portion of the Water Line solely on Lot 2, as well for that portion of the Water Line used solely by Lot 2 but which is located on Lot 1. At the point Lot 1, Lot 2 & Lot 3 jointly share the Water Line, they shall share pro-rata (as described above based on the square footage of each Lot) in the cost of maintenance, repair and replacement of the Water Line from that shared point until another Lot Owner connects to the Water Line, at which point the additional Lot Owner(s) shall also pay a pro-rata share the expenses described herein.

(b) **Storm Drain.** Lot 2 & Lot 3 share the use of a storm drain. All SMEs and uses associated with the maintenance, repair and replacement of the storm drain serving Lot 2 & Lot 3 shall be apportioned equally between Lot 2 & Lot 3.

3.5 **Maintenance and Repair.** Each Party, at such Party's sole cost and expense, shall maintain and repair those utilities that serve solely that Lot, and are located on the Party's Lot, in reasonably good condition. Such Party shall do so without payment to or direction from the Maintenance Director. Notwithstanding the foregoing, any damage to the utility and/or Lot improvements thereto shall be promptly repaired and/or replaced at the sole cost and expense of the Lot Owner causing the damage. Except during reasonable periods of construction, each Party will keep the utility easements free from structures, debris and large vegetation that could impede

vehicular ingress and egress and take such other actions in connection therewith as are reasonable under the circumstances.

4. **Insurance.** Throughout the term of this Agreement, each Party, and its successors and assigns, shall keep and maintain commercial general liability insurance covering any and all claims for damages to persons or property for loss of life or of property caused by it or its licensees, invitees, permittees, agents, lessees, suppliers, contractors, customers and employees occurring upon, in or about its property or any easement it has on another Lot, such insurance to afford immediate protection, with a limit of not less than the amounts specified in the Maintenance Addendum. The Maintenance Director shall also purchase, as a SME apportioned pro-rata among all Parties to this Agreement, commercial general liability insurance covering risks created by utilities not otherwise covered by the Lot Owners' policies.
5. **No Interference.** Except as specifically provided for in this Agreement or to the extent necessary for reasonable construction, repair and maintenance, no fence, wall, barricade or any other obstruction, whether temporary or permanent in nature, which materially limits or impairs the free and unimpeded access to, from or across an easement, will be constructed or erected, nor will any Party in any other manner obstruct or interfere with the flow of pedestrian or vehicular traffic to or over any portion of an easement.
6. **Enforcement.** If a Party (the "Defaulting Party") fails to observe or perform any of the provisions of this Agreement, and such failure continues for a period of thirty (30) days after receipt of written notice from a non-defaulting party (the "Non-Defaulting Party"), then the Defaulting Party shall be in default hereof, provided that if the default reasonably cannot be cured within thirty (30) days, the Defaulting Party shall have such additional time as may be reasonably necessary to cure the default, provided that the Defaulting Party commences the cure within such thirty (30) day period and thereafter diligently pursues the cure to completion; provided, however, that if the Defaulting Party's default causes a material interference in the daily operations of the property owned by the Non-Defaulting Party, the thirty (30) day notice period described above shall be reduced to ten (10) days. If the Defaulting Party fails to cure its default pursuant to the preceding provisions of this Section, the Non-Defaulting Party may perform all acts reasonably necessary to cure the default, provided the Non-Defaulting Party gives five (5) days' written notice to the Defaulting Party prior to the commencement of the cure. Upon completion of the cure, and within fifteen (15) days after receipt of an invoice accompanied by copies of invoices or other reasonable supporting evidence, the Defaulting Party shall reimburse the Non-Defaulting Party for all costs and expenses reasonably incurred in curing the Defaulting Party's default. All amounts owing under this Section will bear interest thereon at the rate of 12% per annum from the date such amount is due until paid. In addition, the Non-Defaulting Party shall be entitled to seek adequate relief by injunction, damages and any other legal or equitable remedy available for any violation or threatened violation of this Agreement. No breach of this Agreement will entitle a Party to terminate this Agreement. The remedies herein shall be cumulative and not exclusive.
7. **Mutuality, Reciprocity Runs with the Land.**

7.1 **Easements Non-Transferrable.** The easements, rights and obligations granted or created under this Agreement are appurtenances to the Subject Property and none of the easements, rights or obligations may be transferred, assigned or encumbered except as an appurtenance to the Subject Parcels. For the purposes of the easements and rights set forth in this Agreement, the Lot benefitted will constitute the dominant estate, and the Lot burdened will constitute the servient estate.

7.2 **Easement Run with Land.** Each of the easements and rights contained in this Agreement (whether affirmative or negative in nature) will (i) constitute covenants running with the land; (ii) bind every party having a fee, leasehold or other interest in any portion of a Subject Parcel at any time or from time to time to the extent that portion is affected or bound by the easement or right in question, or to the extent that easement or right is to be performed on that portion; (iii) inure to the benefit of and be binding upon the Parties and their respective successors and assigns as to their respective Lots, and (iv) create mutual, equitable servitudes upon each Lot in favor of the other Lot.

8. **General Provisions.**

8.1 **Not a Public Dedication.** Nothing contained in this Agreement will be deemed to be a gift or dedication of any portion of the Parcels to or for the general public or for any public purposes whatsoever, it being the intention of the Parties that this Agreement be strictly limited to and for the purposes expressed in this Agreement.

8.2 **Binding on Successors.** This Agreement shall inure to the benefit of and be binding upon the Owners, their heirs, personal representatives, successors and assigns, and upon any party acquiring a Parcel, or any portion thereof, or any interest therein, whether by operation of law or otherwise. Each term, covenant, condition and agreement contained herein respecting any Parcel shall be a burden on that Parcel, shall be appurtenant to and for the benefit of the other Parcels and each part thereof and shall run with the land.

8.3 **Term.** The term of this Agreement shall be for sixty-five (65) years from the date hereof; provided, however, that this Agreement shall terminate if not less than one hundred percent (100%) of Parcel Owners agree to such termination and record a document that terminates the Agreement.

8.4 **Modification or Termination.** This Agreement may not be modified in any respect whatsoever or terminated, in whole or in part, except with the consent of not less than one hundred percent (100%) of Parcel Owners, and then only by written instrument duly executed, acknowledged and recorded in the office of the Weber County Recorder.

8.5 **Severability.** If any term or provision of this Agreement or the application of it to any party or circumstance shall to any extent be invalid or unenforceable, the remainder of this Agreement or the application of such term or provision to parties or circumstances, other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and

shall be enforced to the extent permitted by law.

- 8.6 **Notices.** All notices given pursuant to this Agreement shall be in writing and shall be given by personal delivery, by United States mail or by United State express mail, by electronic transmission (email) wherein receipt is verified or acknowledged, or other established express delivery service (such as Federal Express), postage or delivery charge prepaid, return receipt requested, addressed to the party and address designated below or, in the absence of such designation, to the party and address shown on the then current real property tax rolls in the county in which the Subject Property is located.
- 8.7 **Not a Partnership.** The provisions of this Agreement are not intended to create, nor shall they be in any way interpreted or construed to create a joint venture, partnership, or any other similar relationship between the parties.
- 8.8 **Captions and Headings.** The captions and headings in this Agreement are for reference only and shall not be deemed to define or limit the scope or intent of any of the terms, covenants, conditions or agreements contained herein.
- 8.9 **Entire Agreement.** This Agreement contains the entire agreement between the parties hereto and supersedes all prior agreements, oral or written, with respect to the subject matter hereof. The provisions of this Agreement shall be construed as a whole and not strictly for or against any party.
- 8.10 **Construction.** In construing the provisions of this Agreement and whenever the context so requires, the use of a gender shall include all other genders, the use of the singular shall include the plural, and the use of the plural shall include the singular.
- 8.11 **Joint and Several Obligations.** In the event any party hereto is composed of more than one person, the obligations of said party shall be joint and several.
- 8.12 **Recordation.** This Agreement may be recorded in the office of the recorder of the county in which the Subject Property is located.
- 8.13 **Counterparts.** To facilitate the execution of this Agreement, each party hereto agrees that this Agreement may be executed in separate identical counterparts, all of which together shall constitute a single original instrument, and this Agreement shall be effective upon execution of one or more of such counterparts by each of the parties hereto.
- 8.14 **No Waiver.** Any amendment to this Agreement must be in writing and signed by the Parties. Failure of a Party to insist upon strict performance of any provisions of this Agreement will not be construed as a waiver for future purposes with respect to any such provision or option. No provision of this Agreement will be waived unless such waiver is in writing and signed by the Party alleged to have waived its rights.
- 8.15 **Attorney Fees.** In the event it becomes necessary for any Party to employ the service

of an attorney in connection with enforcing the terms of this Agreement or their rights hereunder, either with or without litigation, the losing Party of such controversy will pay to the successful Party reasonable attorney fees and, in addition, such costs and expenses as are incurred in enforcing this Agreement.

[SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first acknowledged by a Notary Public.

Wasatch View Retail, LLC

BY: Dee R. Hansen
Dee Hansen, Manager

State of Utah)

County of saltlake

On this the 13th day of December, 2021, personally appeared before me, Dee Hansen, Manager of the Wasatch View Retail, L.L.C., a Utah limited liability company, who duly acknowledged to me that he executed the same in the capacity stated.

Katie Saichek
Notary Public



EXHIBIT "A"

SITE PLAN

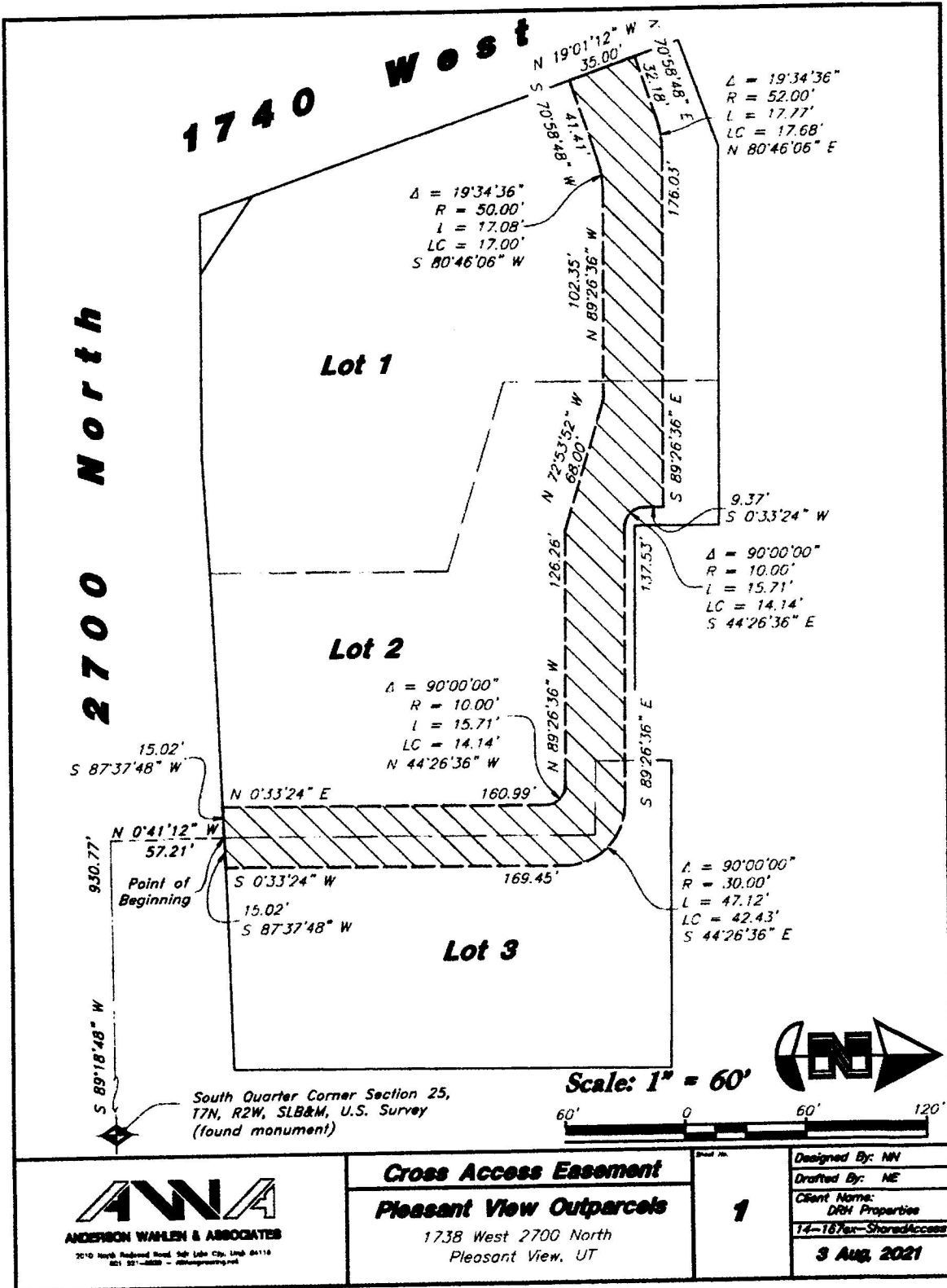


EXHIBIT "B"

SHARED DRIVE AISLE LEGAL DESCRIPTION

**Wasatch View North Commercial Subdivision
Access Easement**

August 2, 2021

A cross access easement being a part of the forthcoming Wasatch View North Commercial Subdivision, located in the Southwest Quarter of Section 25, Township 7 North, Range 2 West, Salt Lake Base and Meridian, U.S. Survey in Weber County, Utah:

Beginning at the Southwest Corner of Lot 3 of the forthcoming Wasatch View North Commercial, Amended Subdivision, on the North Line of 2700 North Street as it exists at varied width, located 930.77 feet South 89°18'48" West along the Section Line and 57.21 feet North 0°41'12" West from the South Quarter Corner of said Section 25; and running thence South 87°37'48" West 15.02 feet along said North Line of 2700 North Street; thence North 0°33'24" East 160.99 feet to a point of curvature; thence Northwesterly along the arc of a 10.00 foot radius curve to the left a distance of 15.71 feet (Central Angle equals 90°00'00" and Long Chord bears North 44°26'36" West 14.14 feet) to a point of tangency; thence North 89°26'36" West 126.26 feet; thence North 72°53'52" West 68.00 feet; thence North 89°26'36" West 102.35 feet to a point of curvature; thence Southwesterly along the arc of a 50.00 foot radius curve to the left a distance of 17.08 feet (Central Angle equals 19°34'36" and Long Chord bears South 80°46'06" West 17.00 feet) to a point of curvature; thence South 70°58'48" West 41.41 feet to a point on the Northeasterly Line of a conveyance to Pleasant View City recorded as Entry No. 3026070, also being the Northeasterly Line of 1740 West Street; thence North 19°01'12" West 35.00 feet along said Northeasterly Line; thence North 70°58'48" East 32.18 feet to a point of curvature; thence Northeasterly along the arc of a 52.00 foot radius curve to the right a distance of 17.77 feet (Central Angle equals 19°34'36" and Long Chord bears North 80°46'06" East 17.68 feet) to a point of tangency; thence South 89°26'36" East 176.03 feet; thence South 0°33'24" West 9.37 feet to a point of curvature; thence Southeasterly along the arc of a 10.00 foot radius curve to the left a distance of 15.71 feet (Central Angle equals 90°00'00" and Long Chord bears South 44°26'36" East 14.14 feet) to a point of tangency; thence South 89°26'36" East 137.53 feet to a point of curvature; thence Southeasterly along the arc of a 30.00 foot radius curve to the right a distance of 47.12 feet (Central Angle equals 90°00'00" and Long Chord bears South 44°26'36" East 42.43 feet) to a point of tangency; thence South 0°33'24" West 169.45 feet to said North Line of 2700 North Street; thence South 87°37'48" West 15.02 feet to said Southwest Corner of future Lot 3 and the point of beginning.

Contains 17,539 sq. ft.

MAINTENANCE ADDENDUM

This Maintenance Addendum (“Addendum”) is incorporated in and made part of the Grant of Easements, Declaration of Restrictions, and Maintenance Agreement (“Agreement”) to which it is attached. If there is any conflict between the provisions of this Addendum and the Agreement, the terms of the Agreement shall prevail. Terms used in the Agreement shall have the same meaning when used in this Addendum.

1. MAINTENANCE DIRECTOR

- 1.1 **Appointment of Maintenance Director by Declarant.** Declarant appoints the Lot 1 Parcel Owner as Maintenance Director for the Subject Property. The Maintenance Director may also contract with an independent person or entity to fulfill the role and perform the duties of the Maintenance Director.
- 1.2 **Appointment of Maintenance Director by Lot Owners.** A majority of the Parcel Owners within the Subject Property may vote to change the Maintenance Director. Each of the Subject Properties shall have one vote.
- 1.3 **Resignation.** The Lot 1 Maintenance Director shall have the right, upon ninety (90) days prior written notice to the Owners of the Subject Property, to resign as Maintenance Director, in which event the Owners shall vote and appoint another Maintenance Director.

2. SHARED MAINTENANCE AREAS

- 2.1 **Description of Shared Maintenance Areas.** The Shared Maintenance Areas (“SMA”) include the following areas as well as those areas described in the Agreement to which this Addendum is attached:
 - (a) Shared Drive Aisle (“SDA”)
 - (b) Those easements, areas, utilities or Parcels described or identified in the Agreement as being used or shared by two or more Parties, including but not limited to shared water lines, sewer lines, storm drains and land drain.
- 2.2 **Shared Maintenance Expenses.** SMEs incurred in connection with the SMA shall be divided, apportioned, collected and paid as set forth herein and in the Agreement.

3. MAINTENANCE STANDARDS

3.1 **Duties of Maintenance Director.** The Maintenance Director shall, except as hereinafter provided, maintain the SMA at all times in good and clean condition and repair, said maintenance to include, without limitation, the following:

- (a) Maintaining, repairing and resurfacing when necessary, all the SMA paved surfaces in a good quality condition with the type of surfacing material originally installed or such substitute as shall in all respects be equal or superior in quality, use and durability; including restriping, when necessary;
- (b) Removing all snow, papers, debris, filth and refuse on the SMA and thoroughly sweeping the area to the extent reasonably necessary to keep the area in a clean and orderly condition;
- (c) Maintaining, repairing and replacing when necessary, all traffic directional signs, markers and lines on the SMA;
- (d) Operating, maintaining, repairing and replacing when necessary, such artificial lighting facilities as shall be reasonably required on the SMA;
- (e) Maintaining all landscaped areas; maintaining, repairing and replacing when necessary, automatic sprinkler systems and water lines; and replacing shrubs and other landscaping as is necessary;
- (f) Performing itself or contracting with a third party or parties to perform any of the services described herein; provided, however, that the Maintenance Director shall remain responsible and liable for the performance of all of said services in accordance with the terms of this Addendum and for the performance of any such third party or parties under any such contract or contracts.

3.2 **Insurance.** In addition to the foregoing, the Maintenance Director shall provide and maintain commercial general liability insurance with broad form coverage endorsement (including broad form property damage endorsement) insuring the Maintenance Director against claims for personal injury, bodily injury or death, and property damage or destruction, occurring in, on or about the SMA. Such insurance shall be written with an insurer licensed to do business in the state of Utah and all Owners (provided that the Maintenance Director is notified in writing of such interest) shall be named on the policy as additional insureds. The limits of liability of all such insurance shall be not less than \$2,000,000 for personal injury or bodily injury or death of any one person, \$2,000,000 for personal injury or bodily injury or death of more than one person in one occurrence and \$500,000 with respect to damage to or destruction of property; or, in lieu of such coverage, a combined single limit (covering personal injury, bodily injury or death and property damage or destruction) with a limit of not less than \$3,000,000 per occurrence. The Maintenance Director shall furnish all Owners with certificates evidencing such insurance. The policies of such insurance shall provide that the insurance represented by such certificates shall not be canceled, materially changed or non-renewed without the giving of thirty (30) days prior written notice to the holders of such insurance and the additional insureds.

- 3.3 **Indemnity.** The Maintenance Director agrees to indemnify, defend and hold harmless the Owners and occupants of all Parcels from and against any and all liability, claims, damages, expenses (including reasonable attorney fees and reasonable attorney fees on appeal), judgments, proceedings and causes of action, for injury to or death of any person or damage to or destruction of any property occurring in, on or about the SMA and arising out of the performance or nonperformance of any of the obligations of the Maintenance Director set forth in this Addendum, unless caused by the negligent or willful act or omission of the identified person, its agents, contractors or employees.
4. **TAXES.** Each Owner shall pay directly to the tax collector when due the real property taxes and other special taxes and assessments assessed against the Owner's Parcel, including the portion of the SMA on such Owner's Parcel.
5. **PAYMENTS TO MAINTENANCE DIRECTOR**
- 5.1 **Payment of Shared Expenses.** The Maintenance Director shall contract for, pay for, and collect from each Parcel Owner their pro-rata share of all items enumerated as SMEs herein. All SMEs shall be bid, contracted, billed and paid as provided for in Section 5.2 below.
- 5.2 **Annual Budget.** At least sixty (60) days prior to the initial commencement of each calendar year, the Maintenance Director shall submit to all Owners a proposed budget that lists all anticipated costs associated with maintaining the SMA for the upcoming year. The budget may include a reasonable reserve to cover unanticipated expenses. Before preparing the initial budget required by this addendum, the Maintenance Director shall obtain at least three (3) bids from companies or individuals who are competent to properly complete the anticipated work associated with maintaining the SMA. The Maintenance Director shall also submit copies of all bids, proposals and other supporting documents to the Owners at the same time the budget is submitted to the Owners. The requirement to obtain three (3) bids may be waived (but not for more than two (2) consecutive years) if, in the determination of the Maintenance Director, an existing supplier of services is providing quality services at a competitive price.
- 5.3 **Objection to Budget.** In the event an Owner objects to the proposed budget, such Owner shall provide written notice of said objection to the Maintenance Director within fifteen (15) days after such Owner's receipt of the proposed budget. The objection shall identify which specific budgeted costs the objecting Owner does not approve. After receiving an objection, the Maintenance Director shall promptly meet with all the Owners (which meeting may be held electronically or in written form) for the purpose of establishing a final approved budget for the following calendar year. In the event that a majority of the Owners are unable to reach an agreement on any specific budgeted cost at least thirty (30) days before the end of the year, the Maintenance Director shall obtain and submit to the Owners at least three bids to

complete maintenance items related to any objections received by the Maintenance Director. Any other Owner shall also be entitled to obtain and submit at least one such bid. The Maintenance Director, and any other Owner who obtains a bid, shall provide the bids to all Owners at least ten (10) days before the end of the year. The lowest submitted bid shall be used in the final budget for the upcoming year. Notwithstanding any other language herein, no Owner shall be permitted to submit any bid from any company that is owned, in full or in part, by said Owner or that is owned in full or in part by a family member of said Owner.

- 5.4 **Payment to Maintenance Director.** Each Owner shall cause the Maintenance Director to be reimbursed for the Owner's share of all SMEs incurred by the Maintenance Director's in providing or performing services on the SMA. In addition, if the Maintenance Director hires a person or an entity to fulfill the roles and duties of the Maintenance Director, the Maintenance Director shall be permitted to pay that person or entity a maximum service charge of not more than ten percent (10%) of the total annual SMEs. In the event the Maintenance Director does not hire a separate person or entity to perform the duties of the Maintenance Director, the Maintenance Director shall be paid a service charge of not more than ten percent (10%) of the total annual SMEs.

6. BILLING AND COLLECTION PROCEDURES

- 6.1 **Monthly Payments.** Each Parcel Owner (or its respective tenant or agent, as it may direct) shall be invoiced monthly in advance for one-twelfth (1/12th) of its pro rata share of all budgeted SMEs (including the ten percent (10%) service charge described in Article 5.4 above). Invoices shall be due and payable within thirty (30) days of billing. All SMEs not included in the final approved budget shall be invoiced quarterly in arrears and shall be due and payable within thirty (30) days after receipt of a statement and copies of all invoices or other documents supporting same.
- 6.2 **Share of Expenses Contained in Agreement.** Each Owner's pro-rata SME shall also be assessed as set forth in those sections of the Agreement dealing with maintenance and use of a Parcel's easements.
- 6.3 **Year-End Summary.** Within sixty (60) days after the end of each calendar year, the Maintenance Director shall provide each Owner with a statement certified by an officer or authorized representative of the Maintenance Director, together with supporting invoices or other reasonable detail or materials, setting forth the actual reimbursable SMEs (including the ten percent service charge described in Article 5.4 above) paid during the previous year and indicating each Owner's share of the aggregate thereof. If the amount paid by an Owner for such calendar year shall have exceeded its share, the Maintenance Director shall refund the excess to such Owner at the time the certified statement is delivered or apply such over-payment to any existing charge or balance. If the amount paid by the Owner for such calendar year is less than its share, such Owner shall pay the balance of its share to the Maintenance Director within thirty (30) days after receipt of such statement. The

Maintenance Director waives any and all right to collect all or any portion of an Owner's pro rata share of any SMEs or insurance expense (including the ten percent service charge described in Article 5.4 above) for which an invoice is not submitted to said Owner (or its tenants or agents, as it may direct) within one hundred eighty (180) days after the end of the calendar year in which said expense is incurred.

6.4 **Budget Shortfalls.** It is anticipated that the budgeted funds will typically be adequate to pay for all SMEs. If unanticipated repair costs arise that will result in the total SMEs for the year being higher than five percent (5%) of the budgeted SMEs, then the Maintenance Director shall submit an amended budget to the Owners and the Owners shall have fifteen (15) days to object, as described in Section 5.3 above. If an objection is received, the process described in Section 5.3 above shall be followed. Notwithstanding the forgoing, on some occasions an emergency may require the Maintenance Director to quickly make certain repairs without first obtaining approval from the Owners. In those emergency situations, the Maintenance Director is authorized to retain the services and spend the funds necessary to make the required repairs. If the Maintenance Director is required to make emergency repairs, each Owner shall be responsible for their share of the costs associated with those repairs as described in the Agreement and this Addendum. The Maintenance Director shall send invoices to each Owner within thirty (30) days after an emergency repair is made, and each Owner shall pay the required expenses within thirty (30) days of receiving an invoice. If an Owner fails to make a payment as described in this paragraph, the Maintenance Director shall be entitled to collect the delinquent amount as described in Sections 8 and 9 below.

7. **EFFECT OF SALE BY OWNER.** In the event an Owner sells all, or any portion of its interest in its Parcel, such Owner shall thereupon be released and discharged from any and all obligations as Owner in connection with the property sold by it arising under the Agreement and this Addendum after the sale and conveyance of title, but shall remain liable for all obligations arising under the Agreement prior to the sale and conveyance of title. The new Owner of any such Parcel or any portion thereof (including, without limitation, any Owner who acquires its interest by foreclosure, trustee's sale or otherwise) shall be liable for all obligations arising under the Agreement with respect to such Parcel or portion thereof that arose either before or after the date of sale and conveyance of title.

8. **DEFAULT.**

8.1 **Failure to Pay; Remedies.** In the event any Owner fails or refuses to pay when due its share of any invoice for SMEs and insurance expenses described above (including the ten percent service charge described in Article 5 above), which failure continues for a period of ten (10) days after receipt of written notice thereof, such failure shall constitute a default and legal action may thereafter be instituted against the defaulting Owner by the Maintenance Director or other person paying the maintenance or insurance expenses (including the ten percent service charge described in Article 5 above) of the defaulting Owner ("Curing Party") for reimbursement plus interest from and after the date said invoice was due and payable to and including the date

said invoice is paid at a rate of twelve percent (12%) (the "Default Rate"). Furthermore, the Curing Party shall have a lien on the Parcel of the defaulting Owner for the amount of said expenses (including the ten percent service charge described in Article 5 above) plus accrued interest as set forth above; provided, however, that if there be a bona fide dispute as to the existence of such default or of the amount due and all disputed amounts are paid, there shall be no right to place a lien on such Owner's Parcel until such dispute is settled by court decree or mutual agreement.

8.2 **Legal Proceedings.** In the event the Maintenance Director fails to perform any of the provisions of this Addendum, which failure continues for a period of thirty (30) days (ten (10) days in the event of failure to pay money) after receipt of written notice from any Owner specifying the particulars of such failure, such failure shall constitute a default and any Owner may thereafter institute legal action against the Maintenance Director for specific performance, declaratory or injunctive relief, monetary damages or any other remedy provided by law and/or may perform the obligations of the Maintenance Director specified in said notice of default and offset the cost thereof from amounts due the Maintenance Director; provided, however, that the Maintenance Director shall not be deemed to be in default if such failure to perform (excluding the payment of money) cannot be rectified within said thirty (30) day period and the Maintenance Director is diligently proceeding to rectify the particulars of such failure.

8.3 **Attorney Fees.** In addition to the foregoing, in the event any party initiates or defends any legal action or proceeding to enforce or interpret this Addendum or the Agreement, the prevailing party in any such action or proceeding shall be entitled to recover from the losing party in any such action or proceeding its reasonable costs and attorney fees (including its reasonable costs and attorney fees on any appeal) as determined by the court in the same or a separate proceeding.

8.4 **Non Waiver.** The failure of a party to insist upon strict performance of any of the terms, covenants, conditions or agreements contained herein shall not be deemed a waiver of any rights or remedies that said party may have, and shall not be deemed a waiver of any subsequent breach or default in the performance of any of the terms, covenants, conditions or agreements contained herein by the same or any other party.

9. LIEN FOR EXPENSES.

9.1 **Filing of Lien.** The lien provided for in Article 8 above shall only be effective when filed for record by the Curing Owner or Curing Party as a claim of lien against the defaulting Owner in the office of the recorder of the county in which the Subject Property is located, which shall contain at least:

- (a) A statement of amounts due and payable pursuant hereto;
- (b) A description of the real property of the defaulting Owner which is the subject of the lien;

- (c) The name of the Owner or reputed Owner of the property which is the subject of the lien; and
- (d) The name and address of the Curing Owner or Curing Party.

9.2 **Lien Priority.** The lien, when so established against the real property described in the lien, shall be prior and superior to any right, title, interest, lien or claim which may be or has been acquired or attached to such real property after the time of filing the lien. The lien shall be for the use and benefit of the party curing the default of the defaulting Owner and may be enforced and foreclosed in a suit or action brought in any court of competent jurisdiction.