



W3333727

WHEN RECORDED, MAIL TO:
Bennett Tueller Johnson & Deere, LLC
3165 East Millrock Drive, Suite 500
Salt Lake City, Utah 84121
Attn: Stephen M. Tumblin

E# 3333727 PG 1 OF 9
Leann H. Kilts, WEBER COUNTY RECORDER
23-Jul-24 1244 PM FEE \$40.00 DEP LC
REC FOR: BENNETT TUELLER JOHNSON AND DEERE
ELECTRONICALLY RECORDED

SW ds

Parcel No.: 17-452-0024, 17-452-0025

PRIVATE ROAD EASEMENT AND MAINTENANCE AGREEMENT

This Private Road Easement and Maintenance Agreement (this “*Agreement*”) is made and entered into effective as of March 1, 2024 by and between SHINY SHELL – PLEASANT VIEW, LLC, a Utah limited liability company (“*Shiny Shell*”), and PLAZA 2700 NORTH OWNERS ASSOCIATION, a Utah non-profit corporation (the “*Association*”).

A. Shiny Shell is the current owner of that certain real property located in Weber County, Utah, more particularly described as follows (“*Lot 1*” and in such capacity is referred to herein as the “*Lot 1 Owner*”):

All of Lot 1, BAILEY’S 2700 NORTH P.U.D., according to the official plat thereof recorded December 9, 2022 as Entry No. 3266399 in Book 94 at Page 82 in the office of the Weber County Recorder.

B. The Association is the current owner of that certain real property located in Weber County, Utah, more particularly described as follows (the “*Common Area Property*,” together with Lot 1, the “*Properties*” and each, a “*Property*,” and in such capacity is referred to herein as the “*Common Area Owner*”):

All of Common Area, BAILEY’S 2700 NORTH P.U.D., according to the official plat thereof recorded December 9, 2022 as Entry No. 3266399 in Book 94 at Page 82 in the office of the Weber County Recorder.

C. The Lot 1 Owner and the Common Area Owner, together with their successors and assigns, are each sometimes referred to herein individually as an “*Owner*” and collectively as the “*Owners*.”

D. Private roads known as 2750 North and 400 West have been constructed, or will be constructed, across the Common Area Property, connecting to, or to be connected to, as applicable, 600 West or 2700 North, respectively, each a public street, as such private roads are shown on Exhibit A attached hereto (collectively, the “*Road*”), for the purpose of providing egress and ingress to and from 2700 North and 600 West, as applicable, and the real property, including the Properties, contemplated in that certain official plat titled Bailey’s 2700 North P.U.D. and recorded December 9, 2022 as Entry No. 3266399 in Book 94 at Page 82 in the office of the Weber County Recorder.

E. Subject to the terms and conditions set forth herein, the Owners desire to establish rights and maintenance obligations for the easements set forth below with respect to the Road for the benefit of each Property.

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Owners agree as follow:

1. Road Easement.

1.1 The Common Area Owner, as the owner of the Common Area Property, hereby grants, conveys, transfers, and assigns, without warranty, to the Lot 1 Owner, for the benefit of Lot 1 and all of its respective owners, employees, tenants, guests, customers, contractors, suppliers, licensees and other invitees thereof ("**Permittees**"), a nonexclusive, perpetual easement and right of way of access, passage and use, both pedestrian and vehicular, on, over, upon and across the Road, if and when completed, for the purpose of (a) obtaining ingress and egress to and from 2700 North and 600 West, as applicable, (b) access to Lot 1, (c) access related to the Lot 1 Owner's business, (d) access necessary for the construction, maintenance, repair and replacement of the improvements located on Lot 1, and (e) uses reasonably ancillary thereto.

1.2 No walls, fences, structures, landscaping, or barriers of any kind shall be constructed or maintained on any portion of the Road, and no person is permitted to make any changes to grade elevations, that would materially limit, prevent or impair the use or exercise of the easement established in this Agreement, or the free access and movement of pedestrian and vehicular traffic on and across the Road, except temporary barriers as may be reasonably necessary during construction on one or more of the Properties so long as access to a public street is made available to the affected Owner. The Common Area Owner may materially modify the course of any portion of the Road that has been constructed without the prior written consent of the Lot 1 Owner, provided that such modification does not materially and adversely affect the Lot 1 Owners rights under Section 1.1.

1.3 Use of the Road by the Lot 1 Owner and its Permittees shall be at the sole risk and hazard of the Lot 1 Owner and its Permittees, and the Common Area Owner shall not have any liability for any liabilities, damages, judgments, costs, expenses, penalties, and/or injuries to persons or property caused by or arising out of (a) any entry by such person upon, the use of, or any work performed on the Road or (b) the maintenance and repair of the Road, except to the extent caused by the Common Area Owner's gross negligence or willful misconduct. The Lot 1 Owner, on behalf of itself and its Permittees, releases the Common Area Owner from any and all claims relating to the condition or use of the Road other than the enforcement of this Agreement.

2. Maintenance of the Road. The Common Area Owner accepts the primary responsibility for the design and construction, and regular maintenance, repair, and replacement of the Road, subject to reimbursement from the Lot 1 Owner as provided below. The Common Area Owner hereby covenants to keep and maintain the Road in good order, condition, and repair as determined in the Common Area Owner's reasonable discretion. The Common Area Owner shall be obligated to: (a) reasonably maintain and repair the surface of the roadway area; (b) remove all trash, debris and other refuse from and periodically sweep the road area to the extent necessary to maintain the same in a clean, safe and orderly condition; (c) maintain appropriate lighting fixtures for the roadway; (d) maintain striping and signage as reasonably needed; (e) arrange for reasonably prompt removal of snow, ice, and other weather-related hazards; and (e) perform any and all such other duties, whether specifically listed herein or not, as are necessary to maintain Road in a reasonably clean, safe and orderly condition.

3. Failure to Maintain Road. In the event that the Common Area Owner does not maintain, repair, or refurbish the Road, then the Lot 1 Owner may provide written notice to the Common Area Owner of its failure to meet the requirements in Section 2. The Common Area Owner must then act to cure such failure within thirty (30) days after receiving such notice. If the required repair, reconstruction, or maintenance cannot be reasonably performed within the thirty (30) day cure period, but the Common Area Owner initiates the work within such cure period, and diligently pursues such work to completion, then the Common Area Owner may have such time beyond the cure period as is reasonably required to perform such maintenance, repair, or replacement. If the Common Area Owner does not act to cure its failure within the thirty (30) day cure period (or such longer period as permitted above), then the Lot 1 Owner has the right, without obligation, and without liability for trespass or otherwise, to cause such work to be performed as is reasonably required to maintain the Road in good order, condition, and repair. Additionally, the Lot 1 Owner has a right to request reimbursement, and the Common Area Owner shall have the obligation to pay such reimbursement, for any and all expenses resulting from the work so performed. The process for requesting reimbursement, the timeline for payment of such reimbursement, and the remedies for failure to timely pay such reimbursement are the same as those detailed in Section 4 below with the Lot 1 Owner performing the work as the party requesting reimbursement (in lieu of the Common Area Owner) and the Common Area Owner as the party paying reimbursement.

4. Expense Allocation.

4.1 The Lot 1 Owner shall bear 100% of all costs associated with damage caused by the Lot 1 Owner and its Permittees, including damage caused by the maintenance, repair or replacement of utilities or other facilities or improvements for Lot 1, but excluding ordinary wear and tear.

4.2 The Owners agree to allocate all other expenses related to the Road as follows:

(a) Each Owner shall bear a pro rata share of the expenses arising from the ownership, maintenance, repair and replacement of the Road, which shall include snow removal, asphalt and a reasonable reserve (the “**Road Expenses**”). The Owners agree that the Common Area Owner’s pro rata share for expense allocation purposes is 80%, and that the Lot 1 Owner’s pro rata share for expense allocation purposes is 20%. Notwithstanding the foregoing, the Common Area Owner shall be solely responsible for the initial design and construction of the Road, with no rights of reimbursement from the Lot 1 Owner.

(b) The Lot 1 Owner shall pay one-twelfth (1/12th) of the Common Area Owner’s estimate of the Lot 1 Owner’s pro rata share of annual Road Expenses (the “**Estimated Road Expenses**”) each month, which amounts shall be due on the first (1st) day of each month. The Common Area Owner’s determination of Estimated Road Expenses shall be made in writing and will include sufficient proof of such reasonable estimated costs. Within ninety (90) days following the end of each calendar year, the Common Area Owner will reconcile the Lot 1 Owner’s payments of Estimated Road Expenses with the Lot 1 Owner’s pro rata share of actual Road Expenses for the particular calendar year, and shall either (i) credit any overpayment to future payments of Estimated Road Expenses, or (ii) invoice the Lot 1 Owner for any underpayment, which invoice shall be paid by the Lot 1 Owner on or prior to the next payment of monthly Estimated Road Expenses.

(c) If the Lot 1 Owner fails to pay any duly requested reimbursement within the thirty (30) day period, the unpaid amount will bear interest at the rate of twelve percent (12%) per annum from the date the reimbursement request was received until the date such amount is paid in full. Any overdue amounts requested for reimbursement, and the interest, together with all costs of collection, may be secured by the filing of a lien upon the Lot 1 Owner's Property. In the event the Lot 1 Owner fails to pay such duly requested reimbursement for more than ninety (90) days after receipt of the reimbursement request, then the Common Area Owner is entitled to file an action in equity to foreclose its lien after the Common Area Owner has given the Lot 1 Owner another thirty (30) day written reimbursement request. The Common Area Owner may also file an action at law to collect the unpaid reimbursement, interest, and other collection costs without waiving any lien rights or rights of foreclosure.

5. Compliance with Laws. The Owners agree to comply with all present or future laws, ordinances, orders, judgments, regulations, permits, licenses, authorizations, directions and requirements of and agreements with all governments, agency affecting their respective Property, including, without limitation, any building, zoning and land use laws, to the extent related to the construction, use or maintenance of the Road.

6. Insurance. Each Owner agrees to maintain a commercial general liability insurance policy insuring against claims for personal injury, bodily injury, death, property damage occurring on, in or about the Road with a "Combined Single Limit" covering personal injury liability, bodily injury liability and property damage liability of not less than Two Million Dollars (\$2,000,000.00), covering each of the other Owners and all of such other Owners' Permittees. Such insurance may be carried under a "blanket" policy or "blanket" policies covering other properties of such Owner. Upon request, each Owner shall provide certificates to the other Owners evidencing such insurance in a form reasonably acceptable to such other Owners.

7. Indemnification. Each Owner agrees to indemnify, save, defend (with counsel reasonably acceptable to the Indemnified Party (as defined below)) and hold harmless each other Owner, and any affiliate of such other Owner, and its and their officers, directors, employees, managers, members, agents and servants (collectively, the "**Indemnified Party**") from and against any and all liens, encumbrances, costs, demands, claims, judgments, and/or damage that may be incurred by the such Indemnified Party as a result of any action of the indemnifying Owner or its Permittees to the extent caused by or arising out of, either directly or indirectly, any action of the indemnifying Owner or its Permittees upon, the use of, or any work performed on the Road, except to the extent caused by the Indemnified Party's negligence, willful misconduct, or breach of this Agreement. Notwithstanding the foregoing, each Owner, on behalf of itself and its Permittees hereby releases any such claims to the extent covered by insurance of any Owner. Nothing in this section is intended to limit the release provided in Section 1, or the ability to enforce this Agreement including as provided in Section 3.

8. Duration. The easements and each covenant and restriction set forth in this Agreement shall be perpetual.

9. Covenants Run with Land. Each right and obligation in this Agreement (whether affirmative or negative in nature) (a) shall constitute a covenant running with the land; (b) shall benefit and bind every person having any fee, leasehold or other interest in any portion of a Property; and (c) shall benefit and be binding upon any person whose title is acquired by conveyance, judicial foreclosure, trustee's sale, deed in lieu of foreclosure or otherwise. Every person who owns, occupies or acquires any right, title, estate or interest in any portion of a Property shall be conclusively deemed to have consented and agreed to the obligations and restrictions contained herein, whether or not any reference to this Agreement is contained in the instrument by which such person acquired an interest in such Property.

10. Third-Party Beneficiaries. This Agreement is not intended, nor shall it be construed, to create any third-party beneficiary rights in or for the benefit of any person who is not an Owner, including any tenants of the Owners, except as otherwise expressly provided to the contrary in this Agreement; provided that the provisions of Section 1.3 shall apply to all Permittees.

11. Miscellaneous.

11.1 Should any Owner default in any of the covenants or restrictions herein contained, such defaulting Owner shall pay all costs and expenses, including reasonable attorney fees, which may arise or accrue from enforcing this Agreement or in pursuing any remedy provided hereunder or by applicable law, whether such remedy is pursued by filing suit or otherwise. This obligation of the defaulting Owner to pay costs and expenses includes, without limitation, all costs and expenses, including reasonable attorney fees, incurred on appeal and in bankruptcy proceedings.

11.2 Subject to Section 11.4, below, in the event of a default by an Owner hereunder, the non-defaulting Owner shall have the right to prosecute any proceedings at law or in equity against the defaulting Owner, and to recover damages for any such violation or default. Such proceeding shall include the right to restrain by injunction any violation or threatened violation of any of the terms, covenants, or conditions of this Agreement, or to obtain a decree to compel performance of any such terms, covenants, or conditions, it being agreed that the remedy at law for a breach of any such term, covenant, or condition (except those, if any, requiring the payment of a liquidated sum) is not adequate. Subject to Section 11.4, below, all of the remedies permitted or available to an Owner under this Agreement or at law or in equity shall be cumulative and not alternative, and invocation of any such right or remedy shall not constitute a waiver or election of remedies with respect to any other permitted or available right or remedy.

11.3 No waiver by any Owner of any default under this Agreement shall be effective or binding on such Owner unless made in writing by such Owner, and no such waiver shall be implied from any omission by an Owner to take action in respect to such default. No express written waiver of any default shall affect any other default or cover any other period of time other than any default and/or period of time specified in such express waiver. One or more written waivers or any default under any provision of this Agreement shall not be deemed to be a waiver of any subsequent default in the performance or the same provision or any other term or provision contained in this Agreement.

11.4 It is expressly agreed that no breach of or event of default under this Agreement shall: (a) entitle any Owner to cancel, rescind, or otherwise terminate this Agreement; or

(b) defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value as to any part of a Property. This limitation shall not affect in any manner any other rights or remedies that an Owner may have hereunder by reason of any such breach or default.

11.5 The section and other headings contained in this Agreement are for reference purposes only and shall not in any way affect the meaning or interpretation of this Agreement.

11.6 This Agreement shall apply to, inure to the benefit of and bind each Owner and all successors and assigns of each Owner's interest in such Owner's Property or any portion thereof. The rights and obligations conferred or imposed upon the Owners pursuant to this Agreement shall not be transferred or assigned to any other person, including a tenant of any Owner, except together with the transfer or conveyance of such Owner's respective Property subject to the easements and the terms and conditions of this Agreement. Any Owner transferring its interest in such Owner's Property shall be released from all further obligations under this Agreement arising from and after the effective date of such transfer or conveyance. Nothing contained herein shall, however, be construed to release any Owner from obligations accruing prior to the date of such transfer or conveyance, including obligations relating to any maintenance or repairs performed prior to such transfer. Nothing contained in this Agreement shall be deemed a gift or dedication of any portion of the Properties to the general public or for the public, or for any public purpose.

11.7 This Agreement, together with all exhibits hereto, contains the entire agreement of the parties with respect to the subject matter hereof.

11.8 Upon execution, this Agreement, and any amendment hereto, any Owner may cause the Agreement and/or amendment to be recorded in the Official Records of the Recorder's Office of Weber County, Utah. No amendment of this Agreement shall be effective unless such amendment has been executed and notarized by the Owners of the Properties and further provided that any such amendment is recorded in the Official Records of the Recorder's Office of Weber County, Utah.

11.9 All notices, consents, approvals and other communications provided for herein or given in connection herewith shall be validly given, made, delivered or served, if in writing, addressed to the Owner of record of the applicable Property or its registered agent, and (a) delivered by any means if actually received; (b) delivered personally; or (c) sent by registered, certified mail, or receipted overnight service (by a reputable overnight company), postage prepaid addressed to such Owner at the address shown for tax notices in the records of Weber County.

11.10 The Owners acknowledge their mutual intent and desire that the easements shall be and remain at all times senior and superior in title and priority to any mortgage, deed of trust or similar lien at any time encumbering any of the Properties.

11.11 This Agreement may be executed in one or more counterparts, each of which shall be deemed to be an original, but all of which shall together constitute one and the same document, with the same effect as if all parties had signed the same signature page. Any signature page of this Agreement may be detached from any counterpart of this Agreement and reattached to any other counterpart hereof.

[Remainder of page intentionally left blank. Signature page follows immediately.]

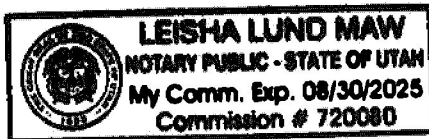
IN WITNESS WHEREOF, the Owners have executed this Private Road Easement and Maintenance Agreement the day and year first above written.

PLAZA 2700 NORTH OWNERS ASSOCIATION,
a Utah non-profit corporation

By: [Signature]
Name: Brent Bailey
Title: Manager

STATE OF UTAH)
 :SS.
COUNTY OF Weber)

On this 3 day of July, 2024, personally appeared before me Brent Bailey, the manager of Plaza 2700 North Owners Association, a Utah non-profit corporation, the signer of the foregoing instrument, who known to me (or proved on the basis of sufficient identification), acknowledged to me that he executed the same.



Leisha Maw Leisha Lund Maw
Notary Public

My Commission Expires: 8/30/2025

IN WITNESS WHEREOF, the Owners have executed this Private Road Easement and Maintenance Agreement the day and year first above written.

SHINY SHELL – PLEASANT VIEW, LLC,
a Utah limited liability company

Byz

Name:

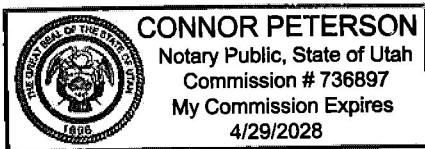
Title:

Jared Richards

Maya

STATE OF UTAH)
COUNTY OF Salt Lake City)
:SS.

On this 9th day of July, 2024, personally appeared before me Jared Richards, the manager of Shiny Shell – Pleasant View, LLC, a Utah limited liability company, the signer of the foregoing instrument, who known to me (or proved on the basis of sufficient identification), acknowledged to me that he executed the same.



Notary Public

My Commission Expires:

4/29/2028

EXHIBIT A

(Depiction of the Road)

-Shaded Area outlined in red constitutes the "Road"-

