

RECORDING REQUESTED BY AND
WHEN RECORDED RETURN TO:

AFJS Winnie, LLC
4567 Holladay Blvd.
Salt Lake City, Utah 84117

Parcel Identification No:
01-504-0001 Through 01-504-0053; 01-504-0055
01-509-0054 Through 01-509-0072

(Space above for County Recorder's Use)

EASEMENT AND AMENITY USE AGREEMENT

THIS EASEMENT AND AMENITY USE AGREEMENT ("**Agreement**") is made as of the 1 day of February, 2021, by and among The Winnie Owners Association, Inc., a Utah non-profit corporation (the "**Association**"), CW The Winnie Partnership, L.P., a Delaware limited partnership ("**Declarant**"), and AFJS Winnie, a Utah limited liability company (the "**Phase 2 Unit Owner**").

RECITALS

A. Declarant caused to be recorded a Declaration of Covenants, Conditions, and Restrictions and Reservation of Easements for The Winnie in the Davis County Recorder's Office on June 18, 2019 as Entry No. 3166614, in Book 7286, and beginning on Page 313 (the "**Enabling Declaration**"), which was amended and replaced by that certain Amended and Restated Declaration of Covenants, Conditions, and Restrictions for The Winnie recorded on November 19, 2019 in the official records of Davis County as Entry No. 3204881, in Book 3792, at pages 1663-1772 (the "**Amended and Restated Declaration**"). The Enabling Declaration as amended, superseded, and replaced by the Amended and Restated Declaration is referred to herein as the "**Declaration**."

B. The Declaration was recorded against the real property located in Davis County, State of Utah, as more particularly described in Exhibit A, attached hereto and incorporated herein (the "**Phase 1 and Phase 2 Property**").

C. Declarant filed a plat entitled The Winnie – P.U.D. A Planned Unit Development (the "**Phase 1 Plat**") concerning the real property located in Davis County, State of Utah, as more particularly described in Exhibit B, attached hereto and incorporated herein (the "**Phase 1 Property**"). The Phase 1 Property is composed of fifty-three (53) units, Units 1 through 53 (the "**Phase 1 Units**") and associated common area.

D. Declarant filed a plat entitled The Winnie Phase 2 – P.U.D. A Planned Unit Development (the "**Plat**") concerning the real property located in Davis County, State of Utah, as more particularly described in Exhibit C, attached hereto and incorporated herein (the "**Phase 2 Property**"). The development on the Phase 1 Property and the Phase 2 Property is referred to herein as the "**Project**."

E. The Phase 2 Property is composed of eighteen (18) units, Units 54 through 71 (the “**Phase 2 Units**”) and certain common area. The common area located within the Project is referred to herein as the “**Common Area**.” The Phase 2 Owner is the owner of the Phase 2 Units.

F. The Declaration has been amended whereby the Phase 2 Units were withdrawn from the Phase 1 and Phase 2 Property and is no longer part of the Project.

G. The Association and/or the Declarant is the owner of the common area of the Project. The Common Area of the Project is improved with private roads, shared parking areas, driveways, sidewalks, walkways, a dog park, landscaping, and infrastructure and utilities related thereto and servicing the Project (the “**Project Amenities**”) and pays the costs associated with the ownership, maintenance, and repair of the Project Amenities and the costs of the water and sewer assessed against each of the Units within the Project, including the Phase 2 Units.

H. During the Period of Declarant Control, pursuant to Section 12.3 of the Declaration, Declarant acting without the consent or approval of the Association or any other owner shall have the right to grant easements over the Common Area of the Project for the purposes of enjoyment, use, access and development of other property, including the Phase 2 Units, whether or not such other property is made subject to the Declaration.

I. The Phase 2 Property is subject to a Development Agreement – The Winnie Phase 2 at North Salt Lake dated as of September 3, 2019 (the “**Development Agreement**”), which provides that residents of the Phase 1 Property and the Phase 2 Property have equal access to common area amenities, guest parking, and vehicular access, regardless of rental or ownership status of each unit.

J. In order to comply with the terms and conditions of the Development Agreement, the Declarant, the Association, and the owner of the Phase 2 Units desire to enter into this agreement to grant easements for the benefit of the Phase 2 Units and the owners of the Phase 2 Units and to provide that the Association will maintain the Project Amenities.

NOW, THEREFORE, in light of the above recitals, which are incorporated herein, and other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the parties agree as follows.

1. Grant of Easement for Benefit of Phase 2 Unit. Declarant and the Association hereby grant to the Phase 2 Owner for the benefit of the Phase 2 Units a permanent and perpetual easement for the use and enjoyment of the Project Amenities located on, within, or servicing the Project for the use of the residents and occupants of the Phase 2 Units.

2. Maintenance and Repair of Common Amenities. The Association will maintain, repair, and replace the Project Amenities in good operational order and condition and in compliance with all applicable laws and the terms and conditions of the Development Agreement, free and clear of any liens and monetary encumbrances. In particular, the Association will maintain (a) the private drives and shared parking areas in good condition, free of pot holes and will be responsible for any slurry sealing, resurfacing, and repaving as needed, and free of snow and ice, (b) the driveways,

sidewalks and walkways located on the Common Area in a good and level condition and free of snow and ice, (c) the dog park and the landscaping in a good condition, properly irrigation and maintained, including, but not limited to, lawn mowing, flower bed maintenance, and general grounds maintenance, and (d) all other infrastructure and common utilities, including, but not limited to, storm drainage and irrigation systems in good and operational condition. The Association will perform a reserve analysis related to the future repairs and maintenance of infrastructure improvements (i.e., the private roads, shared parking areas, and hard surfacing) and will repair and replace such infrastructure improvements pursuant to the reserve analysis. This provision is intended to satisfy the obligations of Section 4(g) of the Development Agreement. If the Association fails to perform its obligations hereunder, and thereafter fails to perform such obligations within thirty (30) days after notice from the Phase 2 Owner, the Phase 2 Owner shall have the right to perform the Association's obligations. In such an event, the Association will reimburse the Phase 2 Owner for the costs incurred by the Phase 2 Owner to perform the Association's obligations within thirty (30) days after receipt of a statement from the Phase 2 Owner. At the option of the Phase 2 Owner, the Use Fee (defined in Section 3 below) may be deducted from the amount owed by the Association.

3. **Services.** The Association will contract for the following services for the Project, including Phase 2: (a) snow and ice removal from the private drives, shared parking areas, driveways, sidewalks, walkways, and other hard surfacing, (b) the trash disposal and recycling services include providing a trash dumpster and the regular emptying of the trash dumpster, (c) payment of water and sewer charges assessed against the units within the Project, including the Phase 2 Unit (collectively, the "Services"). The Phase 2 Unit Owner may elect to pay the water and sewer charged levied or assessed against the Phase 2 Units directly.

4. **Payment of Use Fee.** As consideration for the Association's obligation to maintain and repair the Common Amenities and to provide and pay for the Services as provided herein, the Phase 2 Owner will pay a monthly "Use Fee" of Fifty-two Dollars (\$52.00) per Unit directly to the Association on or before the first day of each month, which amount includes the water and sewer charges per unit. If the Phase 2 Unit Owner desires to pay the water and sewer charges directly the actual monthly water and sewer charges for the Phase 2 Units will be deducted from the monthly Use Fee. If the Association pays the water and sewer charges for the Phase 2 Units, the Phase 2 Unit Owner will provide the water and sewer statements to the Association at least five (5) business days prior to the applicable payment date and the Association will pay the water and sewer charges prior to delinquency. The Use Fee will increase by two percent (2%) per annum as of January 1 of each year, provided that the Use Fee shall not exceed twenty-five percent (25%) of the actual out-of-pocket Maintenance Costs incurred by the Association for any calendar year. Notwithstanding anything herein to the contrary, in the event the Maintenance Costs are reasonably increased by the Services' provider(s) prior to each yearly escalation the Use Fee will automatically increase to offset the increased Maintenance Costs; provided, however, prior to the Phase 2 Owner being obligated to pay the increased Use Fee, the Association shall provide the Phase 2 Owner with an invoice evidencing the increased Maintenance Costs and, thereafter, the Phase 2 Owner shall have five (5) business days to object or accept the increased Maintenance Costs. If the Phase 2 Owner provides a reasonable objection to the increased Maintenance Costs, the Phase 2 Owner and the Association shall meet and use good faith efforts to resolve the Phase 2 Owner's objection. In the event the Phase 2 Owner fails to respond within said timeframe, the

increased Use Fee shall be deemed approved by the Phase 2 Owner. The “**Maintenance Costs**” shall solely mean the costs and expenses actually incurred by the Association to maintain and repair the Common Amenities and a reasonable reserve fee as determined by a reserve study related to the future repairs of the infrastructure improvements (i.e., the private roads, shared parking areas, and hard surfacing) and the costs incurred by the Association associated with the Services. The Maintenance Costs shall not include any other costs or expenses incurred by the Association related to the Project, including, without limitation, any management fee, any insurance costs, the costs associated with the maintenance and repair of any units within the Project and the improvements located thereon, the costs associated with the improvement, construction, maintenance, or repair of any new improvements or amenities, the costs to enforce the Declaration, etc. The Use Fee is not an assessment. The Phase 2 Units are not part of the Project subject to the Declaration, and the Phase 2 Owner is not a member of the Association. Failure to pay the Use Fee or any other action or inaction by the Phase 2 Owner shall not terminate or give the Association the right to terminate the easements and rights granted herein or limit the Phase 2 Owner’s rights hereunder, which are permanent and perpetual and run with the land and are appurtenant to the Phase 2 Units, provided that the Association may pursue a cause of action against the Phase 2 Owner for breach of contract and monetary damages.

5. Rules and Regulations. The Association may adopt the reasonable rules and regulations to govern (i) the use of the dog park and (ii) exterior maintenance of the Phase 1 Units and Phase 2 Units, including, without limitation, those exterior items for which the HOA is obligated to maintain pursuant to Sections 7.3 and 7.4 of the Declaration, in a uniform and non-discriminatory manner. The owners and residents of the Phase 1 Units and the Phase 2 Units will abide by such rules and regulations. If any particular person does not abide by the rules and regulations, the Association may pursue enforcement of the rules and regulations, provided, however, that the easement and right granted herein shall not be terminated or rescinded.

6. Liens. Neither the Phase 2 Owner nor the Association will cause or allow any liens to encumber or be filed against the other party’s property and, if such liens are filed, will cause any such lien to be canceled and discharged of record within fifteen (15) days after demand.

7. Notices. Any notice to be given by any party to another party with respect to this Agreement shall be in writing and shall be deemed effective: (a) upon personal delivery to the other party at the address set forth below (or upon the refusal of any such attempted personal delivery), or (b) one (1) day after deposit with a nationally recognized air courier service for overnight delivery, addressed as set forth below, with delivery charges prepaid, or (c) three (3) days after deposit in the United States mail, certified, return receipt requested, postage prepaid (or as of any earlier date evidenced by a receipt from the United States Postal Service). Notices shall be addressed as follows:

If to Declarant: CW The Winnie Partnership, L.P.
1222 W. Legacy Crossing Blvd., STE 6
Centerville, UT 84014
Attn: Darlene Carter and Tony Hill
darlene@cw.land and tony@cw.land

If to Association: The Winnie Owners Association, Inc.
1222 W. LEGACY CROSSING BLVD
STE 6
CENTERVILLE, UT 84014

If to Phase 2 Owner: AFJS Winnie, LLC
4567 Holladay Blvd.
Salt Lake City, Utah 84117

Any party may designate a different address for itself by giving written notice in the manner required by this paragraph.

8. Miscellaneous.

8.1 Entire Agreement. This Agreement contains the entire agreement among the parties. All previous agreements, communications, discussions and negotiations relating to the subject matter hereof have been merged and set forth herein. This Agreement may only be modified or amended in writing by all parties hereto.

8.2 Run with Land; Successors and Assigns. This Agreement shall run with the land. The easement granted herein shall benefit and be appurtenant to the Phase 2 Units and shall burden the Project. The terms and conditions of this Agreement are binding upon the parties hereto and their respective successors and assigns.

8.3 Interpretation. This Agreement shall be interpreted and construed only by the contents hereof, and there shall be no presumption or standard of construction in favor of or against any party.

8.4 Captions. The captions in this Agreement are for convenience only and do not constitute a part of the provisions hereof.

8.5 Severability. If any term or provision of this Agreement or the application of it to any person, entity or circumstance shall to any extent be invalid and unenforceable, the remainder of this Agreement or the application of such term or provision to persons 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 Applicable Law. This Agreement, and the interpretation, validity, effect and performance hereof, shall be governed by the laws of Utah without regard to conflicts of law principles. Each party agrees to the personal jurisdiction of the state of Utah. The venue for any such action or proceeding shall be in Salt Lake County or Davis County, Utah.

8.7 Attorneys' Fees and Costs. If any action at law or in equity, or any special proceeding (including bankruptcy proceedings and appeals from lower court rulings), be instituted by any party against another party to enforce this Agreement or any rights arising hereunder, or in

connection with the subject matter hereof, the prevailing party shall be entitled to recover all costs of suit and reasonable attorneys' fees. For purposes of this Paragraph, the term "**prevailing party**" shall, in the case of a claimant, be the party who is successful in obtaining substantially all of the relief sought, and in the case of the defendant or respondent, the party who is successful in denying substantially all of the relief sought by the claimant.

8.8 Time is of the Essence. Time is expressly made of the essence of each and every provision of this Agreement.

8.9 Authority. The parties represent and warrant that the individuals executing this Agreement on behalf of such party have the power and authority to do so and to bind the entities for which they are executing this Agreement.

8.10 Non-Fiduciary or Agency Relationship. The parties hereto expressly disclaim and disavow any partnership, joint venture, fiduciary, agency or employment status or relationship between them and expressly affirm that they have entered into this Agreement as part of an "arms-length" transaction. No party hereto has the authority to make any representation or warranty or incur any obligation or liability on behalf of any other party hereto, nor shall they make any representation to any third party inconsistent with this provision.

8.11 No Third Party Beneficiaries. No person or entity, including without limitation the general public, other than the owners, tenants and occupants of the Phase 1 Units and the Phase 2 Units or their respective permitted successors and assigns, shall be a third party beneficiary of any rights, obligations, remedies or provisions contained herein.

8.12 Waiver. No waiver by any party of a breach of any of the terms, covenants or conditions of this Agreement by another party shall be construed or held to be a waiver of any succeeding or preceding breach of the same or any other term, covenant or conditions herein contained. No waiver of any default by a party hereunder shall be implied from any omission by another party to take any action on account of such default if such default persists or is repeated, and no express waiver shall affect default other than as specified in such waiver.

8.13 Miscellaneous. The parties, and each of them, acknowledge, declare, and agree, that: (i) they have consulted legal counsel about this Agreement, including the meaning and effect of waiving any legal rights, or have had the opportunity to do so and have voluntarily chosen not to do so; (ii) they have had adequate time and opportunity to review the terms of this Agreement and have carefully read it; (iii) they are sophisticated parties that have negotiated this Agreement at arm's length, and accordingly, expressly waive any rule of law or any legal decision that would require interpretation of any ambiguities in this Agreement against the party that has drafted it; and (iv) they intend to be legally bound to the provisions of this Agreement, which shall be interpreted in a reasonable manner to effect the purposes of this Agreement and intent of the parties as outlined herein.

8.14 Counterparts. This Agreement may be executed in any number of duplicate counterparts, each of which shall be deemed an original, and when taken together shall constitute

one and the same original Agreement, which shall be fully binding upon each party who executes the same.

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first above-written.

The Winnie Owners Association, Inc.,
a Utah non-profit corporation

By: Dale Carter
DARLENE CARTER, President

CW The Winnie Partnership, L.P.,
a Delaware limited partnership

By: Dale Carter
Name (Print): DARLENE CARTER
Title: AUTHORIZED REPRESENTATIVE

AFJS Winnie, LLC,
a Utah limited liability company

By: _____
J.J. Sorensen, Manager

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed as of the day and year first above-written.

The Winnie Owners Association, Inc.,
a Utah non-profit corporation

By: _____
_____, President

CW The Winnie Partnership, L.P.,
a Delaware limited partnership

By: _____
Name (Print): _____
Title: _____

AFJS Winnie, LLC,
a Utah limited liability company

By: _____
J.J. Sorensen, Manager

STATE OF UTAH)
 : ss.
COUNTY OF DAVIS)

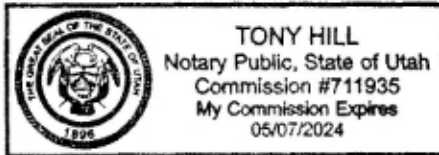
On this 25 day of JANUARY, 2021, before me
TONY HILL, a notary public, personally appeared
DARLENE CARTER, proved on the basis of satisfactory evidence to be
the person whose name is subscribed to in this document, and acknowledged that he executed the
same in his capacity as President of The Winnie Owners Association, Inc., a Utah nonprofit
corporation.

WITNESS my hand and official seal.



Notary Public


My Commission Expires: 5/7/24



STATE OF UTAH)
 : ss.
COUNTY OF DAVIS)

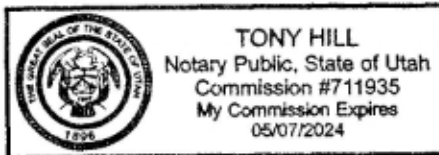
On this 25 day of JANUARY, 2021, before me
TONY HILL, a notary public, personally appeared
DARLENE CARTER, proved on the basis of satisfactory evidence to be the
person whose name is subscribed to in this document, and acknowledged that he executed the same
in his capacity as AUTHORIZED REPRESENTATIVE of CW The Winnie Partnership, L.P., a Delaware
limited partnership.

WITNESS my hand and official seal.



Notary Public

My Commission Expires: 5/7/24



STATE OF UTAH)
 : ss.
COUNTY OF Salt Lake)

On this 1 day of February, 2021, before me
BONNIE BARRETT, a notary public, personally appeared J.J. Sorensen,
proved on the basis of satisfactory evidence to be the person whose name is subscribed to in this
document, and acknowledged that he executed the same in his capacity as Manager of AFJS
Winnie, LLC, a Utah limited liability company.

WITNESS my hand and official seal.



Notary Public

My Commission Expires: 7/15/2024

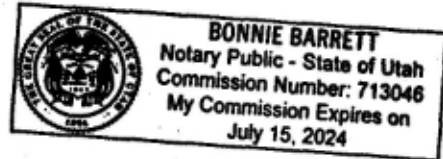


EXHIBIT "A"
TO EASEMENT AND AMENITY USE AGREEMENT

(Description of Phase 1 Development)

All of THE WINNIE – P.U.D., according to the official plat on file in the office of the Davis County Recorder.

Including Lots 1 – 53

Parcel Numbers 01-504-0001 through 01-504-0053; 01-504-0055

More particularly described as:

Beginning at a point on the southeasterly right-of-way line of Orchard Drive; said point being South 00°16'44" East along the section line, 915.78 feet and South 89°43'16" West, 869.11 feet from the Northeast corner of Section 1, Township 1 North, Range 1 West, Salt Lake Base and Meridian; and running thence South 49°51'00" East, 158.30 feet; thence North 89°23'41" East, 69.02 feet to a point on the Plum Tree Condominium Phase 1 and Phase 2 westerly boundary line; thence South 00°36'19" East, along said westerly boundary line, 153.68 feet; thence South 89°46'05" West, 34.51 feet; thence South 00°36'19" East, 295.86 feet to a point on a 20.00 foot radius curve to the right; thence 31.55 feet along said curve through a central angle of 90°23'19" (chord bears South 44°34'53" West, 28.38 feet) to a point of tangency on the northerly right-of-way line of 3400 South Street; thence South 89°46'05" West, along said northerly right-of-way line, 236.72 feet to a point on the easterly edge of an existing building and the projection thereof; thence along said existing building easterly edge and projection thereof the following three (3) courses; North 00°25'15" East, 74.00 feet; thence North 89°48'37" West, 0.74 feet; thence North 00°14'28" East, 192.09 feet; thence North 89°54'58" West, 158.35 feet to a point on the southeasterly right-of-way line of Orchard Drive; thence along said southeasterly right-of-way line the following two (2) courses: said point also being on a 583.52 foot radius curve to the right; thence 9.53 feet along said curve through a central angle of 00°56'09" (chord bears North 39°15'57" East, 9.53 feet); thence North 39°44'01" East, 388.11 feet to the point of beginning.

Contains 3.44 Acres

EXHIBIT "B"
TO EASEMENT AND AMENITY USE AGREEMENT
(Description of Phase 2 Property)

All of THE WINNIE PHASE 2 - P.U.D., according to the official plat on file in the office of the Davis County Recorder.

Including Lots 54 - 71

Parcel Numbers 01-509-0054 Through 01-509-0072

More particularly described as:

All of Lot 54 of The Winnie-P.U.D. a Planned Unit Development, according to the official plat thereof, as recorded in the office of the Davis County Recorder, Entry No. 3166613, in Book 7286 at Page 312; being more particular described as follows:

Beginning at a point on the southeasterly right-of-way line of Orchard Drive; said point being South 00°16'44" East along the section line, 915.78 feet and South 89°43'16" West, 869.11 feet from the Northeast corner of Section 1, Township 1 North, Range 1 West, Salt Lake Base and Meridian; and running thence South 49°51'00" East, 92.16 feet; thence South 40°09'00" West, 49.80 feet; thence South 00°13'46" East, 158.00 feet; thence South 89°46'14" West, 175.95 feet to a point on a 21.00 foot radius curve to the right; thence 16.16 feet along said curve through a central angle of 44°04'51" (chord bears North 68°11'20" West, 15.76 feet); thence North 46°08'54" West, 43.53 feet to a point the southeasterly right-of-way line of Orchard Drive; thence North 39°44'01" East, along said southeasterly right-of-way line, 286.31 feet to the point of beginning.

Contains: 36,290 Sq. Ft. (or 0.83 Acres)