

RECORDING REQUESTED BY
AND AFTER RECORDING RETURN TO:

BRC ADG JV Heber, LLC
Attn: Brad Watson
166 East 14000 South, Suite 110
Draper, Utah 84020

Affecting Tax Parcel No.: 00-0021-5172

(space above for Recorder's use)

TRAIL EASEMENT AGREEMENT

THIS TRAIL EASEMENT AGREEMENT (this "**Agreement**") is made and entered into as of this 24th day of NOVEMBER, 2021 (the "**Effective Date**"), by and between BRC ADG JV HEBER, LLC, a Utah limited liability company ("**Grantor**"), and HEBER CITY CORPORATION, a Utah municipal corporation ("**Grantee**"). Grantor and Grantee are sometimes referred to herein individually as a "**Party**," and collectively as the "**Parties**."

RECITALS

- A. Grantor is the owner of certain real property located in Heber City, Wasatch County, Utah, as more particularly described on Exhibit A attached hereto and incorporated herein by this reference (the "**Grantor's Property**").
- B. Grantee desires to obtain a non-exclusive trail easement on, over, under, and across portions of the Grantor's Property for the benefit of the public.
- C. Grantor is willing to grant the forgoing easement to Grantee, subject to the terms and conditions set forth in this Agreement.

TERMS AND CONDITIONS

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and based upon the mutual promises and subject to the conditions set forth below, the Parties agree as follows:

1. **Grant of Trail Easement.** Grantor does hereby convey unto Grantee a non-exclusive trail easement (the "**Easement**") on, over and across those portions of the Grantor's Property (the "**Easement Area**") more particularly described on Exhibit B attached hereto and incorporated herein by this reference, for the purposes of using pedestrian and bike trails located therein from time to time (the "**Trail**") as Grantee and the public shall from time to time elect. Notwithstanding, the foregoing, Grantee shall not be required to initially construct the Trail and the Parties agree that such obligation to initially install the Trail shall remain with Grantor until completion of and acceptance by Grantee of the same.

2. **Access.** Grantee and its successors and assigns, contractors, agents, servants, employees, invitees, and guests, including the public (collectively, "**Grantee's Agents**") will have the right to enter upon the Easement Area for the purposes permitted by this Agreement. Grantee and Grantee's Agents will enter upon the Easement Area from existing roads and at its sole risk and hazard, and Grantee and its

successors and assigns hereby release Grantor from any claims relating to the condition of the Easement Area and the entry upon the Easement Area by Grantee and Grantee's Agents. The public shall have unrestricted access to the Easement for use of the Trail.

3. **Reservation by Grantor.** Grantor hereby reserves the right to use the Easement Area for any use not inconsistent with Grantee's permitted use of the Easement Area. Without limiting the above, Grantor reserves the right: (a) for pedestrian ingress to and egress on and over the Easement Area; (b) for the construction, placement, and maintenance of landscaping, signs, light standards, sidewalks, curbs and gutters, irrigation pipes and related appurtenances, and utilities of any type or nature; (c) to grant other non-exclusive easements, licenses and rights within or on the Easement Area to other parties; and (e) to convey or transfer any or all of its interests in Grantor's Property or the Easement Area to any party at any time.

4. **Maintenance; Repair.** Grantor, at its sole cost and expense, shall maintain and repair the Trail, and any and all related improvements installed by Grantor, in good order and condition. In the event Grantee damages Grantor's property, Grantee shall restore the Grantor's Property and the improvements thereon to the same condition as they existed prior to any entry onto or work performed on the Grantor's Property by Grantee and/or Grantee's Agents.

5. **Insurance.** Grantee shall obtain and maintain a policy or policies of commercial general liability insurance sufficient to insure Grantee against claims for personal injury, bodily injury, death, and property damage occurring on, in or about the Easement Area arising from the exercise of Grantee's rights hereunder. Grantee may obtain such insurance by means of self-insurance.

6. **Indemnification by Grantee.** Grantee hereby agrees to indemnify, save, defend (with counsel reasonably acceptable to Grantor) and hold harmless Grantor, and any entity controlling, controlled by, or under control with Grantor, and its and their Affiliates' officers, directors, employees, managers, members, agents and servants ("Affiliates") from and against any and all liens, encumbrances, costs, demands, claims, judgments, and/or damage that may be incurred by Grantor or its Affiliates as a result of any liabilities, damages, judgments, costs, expenses, penalties, and/or injuries to persons or property caused by or arising out of, either directly or indirectly, (i) the use of the Easement Area by Grantee and/or Grantee's Agents; (ii) any entry onto the Easement Area and/or the Grantor's Property by Grantee and/or Grantee's Agents; and (iii) any work performed on the Easement Area by Grantee and/or Grantee's Agents, except to the extent caused directly by Grantor and/or its Affiliates.

7. **Liens.** Grantee shall keep the Grantor's Property free from any liens arising out of any work performed, materials furnished, or obligations incurred by, through, for or under Grantee.

8. **Termination.** This Agreement and the Easements set forth herein will be automatically terminated upon the earliest to occur of the following: (i) Grantee decides that it will no longer use the Easement and gives Grantor written notice thereof, and (ii) Grantee ceases to use the Easement Area for a consecutive period of two (2) years.

9. **Notices.** Except as otherwise required by law, any notice, demand or request given in connection with this Agreement shall be in writing and shall be given by (i) personal delivery, (ii) recognized, national overnight courier service, or (iii) United States certified mail, return receipt requested, postage or other delivery charge prepaid. In all events, notice shall only be deemed given if properly addressed to Grantor or Grantee as applicable, at the following addresses (or at such other address as Grantor or Grantee or the person receiving copies may designate in writing given in accordance with this Section):

If to Grantor: BRC ADG JV Heber, LLC

Attn: Brad Watson
166 East 14000 South, Suite 110
Draper, Utah 84020

With a copy to: Kirton McConkie
Attn: Bryce K. Dalton
50 E. South Temple, 4th Floor
Salt Lake City, Utah 84111

If to Grantee: Heber City Corporation
Attn: City Manager
75 N. Main Street
Heber City, UT 84032

10. **Miscellaneous.**

10.1 Entire Agreement. This Agreement contains the entire agreement between the Parties. All previous agreements, communications, discussions and negotiations relating to the subject matter hereof have been merged and finalized. This Agreement may only be modified or amended in writing by both Parties hereto.

10.2 Successors and Assigns. The provisions of this Agreement shall extend to and be binding upon the heirs, executors, administrators, personal representatives, successors and assigns of the Parties hereto.

10.3 Governing Law; Jurisdiction. To the fullest extent possible, this Agreement shall be governed by, and construed and enforced in accordance with, the laws of the State of Utah, without regard to any conflicts of law issues.

10.4 Attorneys' Fees and Costs. In any action arising out of this Agreement, the prevailing Party shall be entitled to costs and reasonable attorneys' fees.

10.5 Authority. The individuals executing this Agreement represent and warrant that they have the power and authority to do so and to bind the entities for which they are executing this Agreement.

10.6 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 Section. Both Parties acknowledge that: (i) Grantee has only entered into this Agreement to facilitate the construction of religious facilities; and (ii) Grantee is not a developer.

10.7 Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original, and all of which when taken together shall constitute one and the same document and agreement. A copy or electronic transmission of any part of this Agreement, including the signature page, shall have the same force and effect as an original.

IN WITNESS WHEREOF, Grantor and Grantee have executed this Agreement to be effective as of the ___ day of _____, 2021.

[Signatures and Acknowledgments Follow]

SIGNATURE AND ACKNOWLEDGEMENT
OF
GRANTOR

GRANTOR:

BRC ADG JV HEBER, LLC,
a Utah limited liability company

By: Alpha-Heber GP, LLC,
a Utah limited liability company
Its: Manager

By: Wadsworth dbUrban Heber, LLC,
a Utah limited liability company
Its: Manager

By: Wadsworth Heber, LLC,
a Utah limited liability company
Its: Manager

By: Wadsworth & Sons II, LLC,
a Utah limited liability company
Its: Manager

By: _____
Name: Kip L. Wadsworth
Its: Executive Manager

STATE OF UTAH)
: ss.
COUNTY OF SALT LAKE)

On this 15th day of October, 2021, personally appeared before me Kip L. Wadsworth, Executive Manager of Wadsworth & Sons II, LLC, a Utah limited liability company, Manager of Wadsworth Heber, LLC, a Utah limited liability company, Manager of Wadsworth dbUrban Heber, LLC, a Utah limited liability company, Manager of Alpha-Heber GP, LLC, a Utah limited liability, Manager of BRC ADG JV Heber, LLC, a Utah limited liability company, who duly acknowledged to me that said company executed the same.

NOTARY PUBLIC

SIGNATURE AND ACKNOWLEDGEMENT
OF
GRANTEE

GRANTEE:

HEBER CITY CORPORATION,
a Utah municipal corporation

By: Kelleen Potter
Name: Kelleen Potter
Its: Mayor



STATE OF UTAH)
 : ss.
COUNTY OF WASATCH)

On this 24th day of November, 2021, personally appeared before me Kelleen Potter, Mayor of Heber City Corporation, a Utah municipal corporation, who duly acknowledged to me that said municipality executed the same.

Trina McCoole
NOTARY PUBLIC



EXHIBIT A

(Legal Description of Grantor's Property)

Lot 1, TURNER MILL MASTER SUBDIVISION PLAT, according to the official plat thereof, as filed in the office of the Wasatch County Recorder, State of Utah, recorded August 28, 2020 as Entry No. 483557 in Book 1309 at Page 807.

EXHIBIT B

(Legal Description of Easement Area; Depiction of Easement Area)

Legal Description of Easement Area

An access easement being a strip of land 10.00 – feet wide within Lot 1, Turner Mill Master Subdivision Plat recorded August 28, 2020 as Entry No. 483557 in Book 1309, at Page 807 in the Office of the Wasatch County Recorder and located in the Northwest Quarter of Section 8, Township 4 South, Range 5 East, Salt Lake Base and Meridian. Said 10.00 – foot wide strip of land lies 10.00 feet to the right of the following described centerline:

Beginning at the northeasterly corner of said Lot 1; thence along said Lot 1 the following two (2) courses: 1) S. 00°06'31" W. 430.00 feet; 2) S. 89°51'14" W 171.57 feet to the **Point of Terminus**.

The above-described easement contains 5,916 square feet or 0.135 acre, more or less.

The sidelines of said 10.00 wide strip of land shall be lengthened or shortened to begin on the northerly line of said Lot 1 and terminate at right angles to said centerline.

EXHIBIT "B": By this reference, made a part hereof.

BASIS OF BEARING is N. 00°03'25" W. per said Turner Mill Master Subdivision Plat along the Section line between the West Quarter Corner and the Northwest Corner of said Section 8, Township 4 South, Range 5 East, Salt Lake Base and Meridian.

EXHIBIT B (Cont.)

Depiction of Easement Area

