

WHEN RECORDED, RETURN TO:

Summit Mountain Holding Group, L.L.C.
3632 N. Wolf Creek Drive
Eden, Utah 84310

**EASEMENT AGREEMENT
FOR PRIVATE DRIVEWAY**

This EASEMENT AGREEMENT FOR PRIVATE DRIVEWAY (this “Agreement”) is made this ____ day of _____, 2015, by Summit Mountain Holding Group, L.L.C., its successors and assigns (“Master Developer” or “Grantor”), with the joinder and consent of SMHG Phase I LLC, a Delaware limited liability company (“SMHG”) and _____ (“Lot 6R Owner” and together with SMHG, “Grantee”).

RECITALS

A. Master Developer executed that certain Master Declaration of Covenants, Conditions, Easements and Restrictions for Summit Eden, recorded in the Official Records of Weber County on January 27, 2014 as Entry No. 2672941, as amended by that certain First Amendment to Master Declaration of Covenants, Conditions, Easements and Restrictions for Powder Mountain (Formerly known as Summit Eden), recorded in the Official Records of Weber County on October 1, 2014 as Entry No. 2704954, as amended by that certain Second Amendment to Master Declaration of Covenants, Conditions, Easements and Restrictions for Powder Mountain, recorded in the Official Records of Weber County on November 25, 2014 as Entry No. 2712001, as may be further amended from time to time (collectively, the “Master Declaration”), which governs the residential planned community known as Powder Mountain (the “Community”), including the property described herein.

B. SMHG is the owner of certain real property located in Weber County, Utah, including Lots 1, 2, 3, 4, 5R, 7A, 7B, 9, and 10R within the Community (“SMHG Property”).

C. Lot 6R Owner is the owner of Lot 6R within the Community (“Lot 6R,” and together with SMHG Property, the “Burdened Lots”). The Burdened Lots are more particularly described in Exhibit “A” attached hereto and incorporated herein by reference.

D. Pursuant to Section 3.10 of the Master Declaration, Master Developer reserved to itself the right to create easements over private driveways for certain lots and lot owners within the Community.

E. Master Developer has planned a private driveway (the “Driveway”) to be constructed over the Burdened Lots to provide access and utilities to Lots 1, 2, 3, 4, 9, and 10R within the Community (collectively, the “Benefitted Lots”). The Benefitted Lots are more particularly described in Exhibit “B” attached hereto and incorporated herein by reference.

F. Lots 5R, 6R, 7A, and 7B are within the neighborhood known as Mountain Homes at Powder Mountain, and subject to that certain Neighborhood Declaration of Covenants, Conditions, Easement and Restrictions for Summit Eden Mountain Homes, recorded in the Official Records of Weber County on January 27, 2014 as Entry No. 2672947, as amended (“Mountain Homes Declaration”).

G. Lots 1, 2, 3, 4, 9, and 10R are within the neighborhood known as Horizon Run Ranches, and subject to that certain Neighborhood Declaration of Covenants, Conditions, Easements and Restrictions for Horizon Run Ranches, recorded in the Official Records of Weber County on _____ as Entry No. _____, as amended (“Ranches Declaration”). Capitalized terms not otherwise defined herein shall have the meaning set forth in the Master Declaration, Mountain Homes Declaration, or Ranches Declaration, as applicable.

H. SMHG is the Neighborhood Developer under both the Mountain Homes Declaration and Ranches Declaration.

I. Master Developer desires to exercise its rights under the Master Declaration and grant an easement over the Burdened Lots for the purpose of constructing, maintaining, and using the Driveway as further described herein.

J. SMHG and Lot 6R Owner, as the owners of the Burdened Lots, desire to consent to and join with Master Developer in granting the easements described herein.

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

AGREEMENT

1. Grant of Easement. Grantor hereby grants to Grantee and the Benefitted Parties (defined below) a non-exclusive blanket easement (the “Easement”) on, over, and across, the Burdened Lots in the location of the constructed Driveway for pedestrian and vehicular ingress and egress as may be reasonably necessary to access the Benefitted Lots. Grantor reserves to itself a non-exclusive easement on, over, and across the Burdened Lots, excluding the building envelope for each lot as shown on a recorded subdivision plat, as reasonably necessary to construct, use, operate, and maintain the Driveway and related facilities, structures, and improvements (the “Improvements”). The Easement shall be for the use and benefit of the following parties (the “Benefitted Parties”): (a) SMHG and its tenants, guests, employees, agents, licensees, invitees, successors, and assigns; (b) Lot 6R Owner and its tenants, guests, employees, agents, licensees, invitees, successors, and assigns; and (c) all current and future owners of one or more of the Benefitted Lots and their tenants, guests, employees, agents, licensees, invitees, successors, and assigns.

2. Easement Boundaries. The actual boundaries of the Easement shall be fixed upon completion of construction of the Driveway and Improvements. The initial proposed location of the Driveway is depicted on Exhibit “C” attached hereto and incorporated herein, but such proposed location may be modified at any time in Grantor’s sole and absolute discretion. At such time as the Driveway and Improvements are completed, the Easement shall be fixed in a location that is twenty-five feet on either side of the center-line of the as-constructed Driveway.

Upon completion of construction Grantor shall record a unilateral amendment to this Agreement identifying the as-constructed location of the Driveway and boundaries of the Easement ("Easement Boundaries"). Grantor reserves the right, for itself, its successors and assigns, to relocate, adjust, widen, narrow, or otherwise modify the Driveway at any time in its sole discretion anywhere within the Easement Boundaries.

3. Construction and Maintenance. Grantor shall have the sole authority and responsibility to construct, maintain, repair, and replace the Driveway and Improvements; provided, however, that Grantor may delegate and assign the authority and responsibility to maintain, repair, and replace to the Community Association, in which event the Community Association shall have an easement over the Driveway for the purpose of performing such obligations. No construction, maintenance, repair, replacement or operation of the Driveway or Improvements shall require the consent of Grantee, subsequent owners of the Burdened Lots, or their successors, assigns, or lenders.

4. Expenses for Improvements. The cost of initial construction of the Driveway and Improvements shall be at Grantor's expense, but all expenses for future maintenance, repair, replacement, and upkeep shall be at the expense of the owners of the Benefitted Lots. To the extent the Improvements are maintained by the Community Association, the expenses thereof may be charged to the owners of the Benefitted Lots as an Assessment, and shall be secured by the Assessment Lien as described in the Master Declaration. Expenses for maintenance, repair, replacement, and upkeep of the Driveway and Improvements shall be allocated equally among the owners of the Benefitted Lots. **[Client input: should expenses be allocated equally or a different percentage? One option would be to determine what portion of the Driveway is used by each owner, and charge expenses accordingly.]**

5. Reservation of Rights. Grantor hereby reserves to itself, its successors and assigns, all rights of the Master Developer pursuant to the Declaration, and further reserves the right to grant additional easements over the Easement Boundaries and Driveway for the purpose of access to and from any of the lots within the Community as Grantor determines, in its sole and exclusive discretion, to be reasonably necessary or desirable for the development of the Community.

6. Easement for Utilities. Grantor hereby grants to all utility providers an easement on, over, under, and across the Easement Boundaries, for the purpose of installing, maintaining and operating equipment and facilities above and below ground as may be necessary or desirable in providing utility services within and without the Burdened Lots and Benefitted Lots, including the right of access to such facilities and the right to require removal of any obstructions including structures, trees, and vegetation that may have been placed within the easements.

7. Joinder and Consent. Grantor has the unilateral right under the Master Declaration to grant easements, and the Easement and other rights contained herein are granted pursuant to such right. However, for the avoidance of doubt, Lot 6R Owner, as the owner of Lot 6R, one of the Burdened Lots, hereby expressly joins in the grant of the Easement and consents to all of the provisions of this Agreement. Additionally, SMHG, as the owner of the SMHG Property, which includes the remainder of the Burdened Lots and all of the Benefitted Lots,

hereby expressly joins in the grant of the Easement and consents to all of the provisions of this Agreement.

8. Covenants to Run with the Land. The Easement, rights and interests granted herein shall constitute covenants running with the land, and shall burden the Burdened Lots as the servient estate to the extent the Easement, Driveway and Improvements cross over such Burdened Lots, and benefit the Benefitted Lots as the dominant estate to the extent access to and from such Benefitted Lots is by way of the Easement and Driveway, and shall be binding upon Grantor, Grantee, their successors and assigns, and any person acquiring, leasing or otherwise owning an interest in one or more of the Burdened Lots, and shall inure to the benefit of the Benefitted Parties.

9. Enforcement. In the event either party fails to cure any violation of the terms of this Agreement within ten (10) days after written notice from the other, the non-defaulting party shall have the right to injunctive relief, to require specific performance of this Agreement, to collect damages from the defaulting party, and to take such actions as may be necessary in the non-defaulting party's discretion to cure such violation and charge the defaulting party with all reasonable costs and expenses incurred by the non-defaulting party as a result of such violation (including, without limitation, the non-defaulting party's reasonable attorneys' fees and related costs). All rights and remedies provided under this Agreement are cumulative and may be pursued singularly, in any combination, and in any order. The failure to enforce any of the terms and provisions contained herein shall in no event be deemed to be a waiver of the right to thereafter strictly enforce the terms and provisions hereof.

10. Costs, Expenses and Remedies Upon Breach. In the event of a breach in any of the covenants or agreements contained herein, the breaching party shall pay all costs and expenses, including reasonable attorneys' fees and experts' fees, which may arise or accrue from enforcing this Agreement or in pursuing any remedy provided by the laws of the State of Utah, whether such remedies are pursued by filing suit or otherwise. Grantor, SMHG, and Lot 6R Owner acknowledge that in the event of any breach or default hereunder, it would be difficult to ascertain the exact money damages suffered by the non-defaulting party. Accordingly, and without limiting the remedies of either party, the parties agree that such non-breaching party is entitled to appropriate injunctive and other equitable remedies in the event of any such breach or default.

11. General Provisions.

11.1 Recitals Incorporated. The Recitals set forth above are true and correct and are incorporated herein by this reference.

11.2 Construction. This instrument shall be construed in accordance with the laws of the State of Utah without giving effect to its conflict of laws principles.

11.3 Amendment. So long as the rights of SMHG or Lot 6R Owner are not materially adversely affected, Master Developer may unilaterally amend this Agreement by a written instrument recorded in the Office of the Weber County Recorder.

11.4 Partial Invalidity. If any provision of this Agreement or the application thereof to any person or circumstance shall to any extent be invalid, the remainder of this Agreement or the application of such provision to persons or circumstances other than those as to which it is held invalid shall not be affected thereby and each provision of this Agreement shall be valid and enforced to the fullest extent permitted by law.

11.5 Counterparts. This instrument may be executed in any number of counterparts, each of which shall be an original, but all of which shall constitute one and the same instrument.

[Signatures on Following Pages]

IN WITNESS WHEREOF, Master Developer has executed this Easement Agreement for Private Driveway as of the date first indicated above.

SUMMIT MOUNTAIN HOLDING GROUP,
L.L.C., a Utah limited liability company

By: _____
Name: Paul Strange
Its: Authorized Signatory

STATE OF _____)
 :ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2015, by Paul Strange as Authorized Signatory of Summit Mountain Holding Group, L.L.C.

NOTARY PUBLIC
Residing at: _____
My Commission Expires: _____

IN WITNESS WHEREOF, SMHG has executed this Easement Agreement for Private Driveway as of the date first indicated above.

SMHG Phase I LLC, a Delaware limited liability company

By: _____
Name: Paul Strange
Its: Authorized Signatory

STATE OF _____)
 :ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2015, by Paul Strange, Authorized Signatory of SMHG Phase I LLC.

NOTARY PUBLIC
Residing at: _____
My Commission Expires: _____

IN WITNESS WHEREOF, Lot 6R Owner has executed this Easement Agreement for Private Driveway as of the date first indicated above.

By: _____
Name: _____
Its: _____

STATE OF _____)
 :ss.
COUNTY OF _____)

The foregoing instrument was acknowledged before me this ____ day of _____, 2015, by _____.

NOTARY PUBLIC
Residing at: _____
My Commission Expires: _____

EXHIBIT "A"

Description of Burdened Lots

Lots 5R, 6R, 7A, and 7B, according to the Summit Eden Phase 1A subdivision plat recorded in the Official Records of Weber County, Utah on January 27, 2014 as Entry No. 2672943.

Lot 9 according to the Summit Eden Phase 1E subdivision plat recorded in the Official Records of Weber County, Utah on _____ as Entry No. _____.

Los 1 and 10R according to the Summit Eden Phase 1F subdivision plat recorded in the Official Records of Weber County, Utah on _____ as Entry No. _____.

Lots 2, 3, and 4 according to the Summit Eden Phase 1G subdivision plat recorded in the Official Records of Weber County, Utah on _____ as Entry No. _____.

EXHIBIT "B"

Description of Benefitted Lots

Lot 9 according to the Summit Eden Phase 1E subdivision plat recorded in the Official Records of Weber County, Utah on _____ as Entry No. _____.

Los 1 and 10R according to the Summit Eden Phase 1F subdivision plat recorded in the Official Records of Weber County, Utah on _____ as Entry No. _____.

Lots 2, 3, and 4 according to the Summit Eden Phase 1G subdivision plat recorded in the Official Records of Weber County, Utah on _____ as Entry No. _____.

EXHIBIT “C”

Visual Depiction of Driveway



DATE: 10/6/15 TIME: 10:33:54 AM
 NETWORK: NONE
 PATH: N:\SLB0793\CADD\PHASE 1\PI-E
 DWG NAME: ETO1 - MAP.DWG
 LAYOUT: Layout1
 DESIGNER: ### MGR: ###

PREPARED FOR: SUMMIT

DATE SUBMITTED: 10/01/2015

SHEET NUMBER
1
 OF 1 SHEETS
 JOB NUMBER
SLB0793

