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Attorneys for Plaintiff Pesky Porcupine, LLC

If you do not respond to this document within applicable time limits, judgment could be entered against you as requested.

# IN THE THIRD JUDICIAL DISTRICT COURT SUMMIT COUNTY, STATE OF UTAH

PESKY PORCUPINE, LLC, a Utah limited liability company,

Plaintiff.

v.

ERIC R. HERMANN and SUSAN T. FREDSTON-HERMANN, individually and in their capacity as Trustees of the FREDSTON-HERMANN FAMILY TRUST, Dated the 10th Day of October, 2016, and JOHN DOE NOS. 1-20.

Defendants.

#### **COMPLAINT**

Case No. \_\_\_\_\_

Judge \_\_\_\_\_

Tier 2

Plaintiff Pesky Porcupine, LLC ("**Plaintiff**") hereby files this *Complaint* against Defendants Eric R. Hermann and Susan T. Fredston-Hermann (the "**Hermanns**") individually and in their capacity as Trustees of the Fredston-Hermann Family Trust, Dated the 10th Day of

October, 2016 (the "**Trust**"), against the Trust, and against John Does Nos. 1-20 ("**John Doe Nos. 1-20**" and together with the Hermanns and the Trust the "**Defendants**"). Plaintiff hereby complains and alleges as follows:

## PARTIES, JURISDICTION, AND VENUE

- 1. Plaintiff is a Utah limited liability company doing business in Summit County, Utah.
- 2. Upon information and belief, the Hermanns are individuals who reside in Summit County, Utah.
- 3. The Hermanns are trustees of the Trust, which owns property located at 200 King Road, Park City, Utah 84060 (the "200 King Road Property"), and more particularly described as follows:

LOT 1 TREASURE HILL SUBDIVISION PHASE 1; ACCORDING TO THE OFFICIAL PLAT ON FILE IN THE SUMMIT COUNTY RECORDERS OFFICE.

- 4. The Trust also owns the real property located at 16 Sampson Ave., Park City, Utah 84060 (the "**16 Sampson Ave. Property**"), and more particularly described as follows:
  - LOT 1, 16 SAMPSON SUBDIVISION; ACCORDING TO THE OFFICIAL PLAT ON FILE IN THE SUMMIT COUNTY RECORDERS OFFICE.
- 5. The Trust also owns the real property located at 201 Norfolk Ave., Park City, Utah 84060 and 205 Norfolk Ave., Park City, Utah 84060 (collectively, the "Norfolk Ave. Property") and more particularly described respectively as follows:
  - LOT 1, 201 NORFOLK AVENUE SUBDIVISION FIRST AMENDED; ACCORDING TO THE OFFICIAL PLAT ON FILE IN THE SUMMIT COUNTY RECORDERS OFFICE
  - LOT 2, 201 NORFOLK AVENUE SUBDIVISION; ACCORDING TO THE OFFICIAL PLAT ON FILE IN THE SUMMIT COUNTY RECORDERS OFFICE.

- 6. The 200 King Road Property, 16 Sampson Ave. Property, and the Norfolk Ave. Property are all located in Summit County, Utah.
- 7. Plaintiff is the owner of the real property located at 220 King Road, Park City, Utah 84060 (the "**Plaintiff's Property**") more particularly described a follows:
  - LOT 2, TREASURE HILL LOT 2 PHASE 1 SUBDIVISION FIRST AMENDED; ACCORDING TO THE OFFICIAL PLAT ON FILE IN THE SUMMIT COUNTY RECORDERS OFFICE WITH THE ENTRY # 484377.
- 8. Defendants John Doe Nos. 1-20 are persons, whose identifies are unknown to Plaintiff, who unlawfully trespassed and caused a private nuisance upon Plaintiff's Property.
- 9. The Court has personal jurisdiction over the Defendants and this case because the Defendants have ownership interests in the properties and committed the acts at issue in this case in Summit County, Utah.
- 10. The Court has subject-matter jurisdiction over the parties and this case pursuant to Utah Code § 78A-5-102(1).
  - 11. Venue is proper in this Court pursuant to Utah Code § 78B-3-301.
- 12. Pursuant to Utah Rule of Civil Procedure 26(c)(3), the relief sought in this case qualifies as Tier 2 for standard discovery because Plaintiff seeks non-monetary relief in addition to monetary damages less than \$300,000.

## **GENERAL ALLEGATIONS**

### The Trail Easements

13. The Treasure Hill Subdivision Phase 1 Subdivision Plat, recorded April 15, 1996, as Entry No. 452295 in the Summit County Recorder's Office ("**Subdivision Plat**"), a copy of which is attached hereto as <u>Exhibit A</u>, provides for a "non-exclusive ski trail easement, non-motorized bike and pedestrian trail easement" over the Plaintiff's Property for the benefit of the 200 King Road Property in the area depicted on the Subdivision Plat.

- 14. Pursuant to that certain Easement Agreement, recorded June 13, 2002 as Entry No. 00621965, in Book 01454 at Page 01843, with the Summit County Recorder's Office ("**Easement Agreement**"), a copy of which is attached hereto as <u>Exhibit B</u>, the predecessor-in-interest of the Plaintiff's Property granted a non-exclusive easement over the Plaintiff's Property for the benefit of the Norfolk Ave. Property (the "**Trail Easement**").
- 15. The Trail Easement runs with the land of the Plaintiff's Property and the Norfolk Ave. Property.
  - 16. The Trail Easement is:
    - A. For the sole use of the Norfolk Ave. Property's owners, guests, and invitees.
    - B. Limited to the location depicted on Exhibit A to the Easement Agreement;
    - C. Limited to three (3) feet in width on existing grade; and
    - D. Is to be used only to clear, construct, maintain, use, and enjoy a combination of foot path, bike and ski trail uses.
- 17. The Easement Agreement requires that the Norfolk Ave. Property's owners, guests and invitees, obey all signs, respect Park City Mountain Resort's rights and regulation, use proper trail etiquette as customary in the community and not litter, camp or build fires (including smoking) or cause unreasonable noise while using the Trail Easement.
- 18. The Easement Agreement states that "[i]n the event of a determination by a court of competent jurisdiction that [the Norfolk Ave. Property] has willfully and wantonly violated any of the aforementioned trail rules and that such violation has not ceased after written notice . . . of such violation, [the Plaintiff's Property] may terminate the Trail Easement by written notice to [the Norfolk Ave. Property]."
- 19. The Easement Agreement also states that "[e]ach party hereto agrees that should it default in any of the covenants or agreement contained herein, the defaulting party shall pay all costs and expenses, including a reasonable attorney's fee, which may arise or accrue from

enforcing this Agreement, or in pursuing any remedy provided hereunder or by the statutes or other law of the State of Utah, whether such a remedy is pursued by filing a suit or otherwise and whether such costs and expenses are incurred with or without suit or before or after judgment."

- 20. It is customary trail etiquette in Park City to limit travel to the defined trail and to keep all dogs on a leash. *See* Park City Chamber of Commerce, *Trail Etiquette and Safety*, last visited 03/14/2024, available at https://www.visitparkcity.com/outdoors/hiking/trail-etiquette-and-safety/, attached hereto as Exhibit C.
- 21. Park City Municipal Code § 7-3-2.A. prohibits "the owner or person having charge, care, custody or control of any dog to allow such dog at any time to run at large."
- 22. "The owner of any dog found running at large shall be strictly liable for a violation of this section regardless of the precautions taken to prevent the escape of the dog and regardless of whether or not he/she knows that the dog is running at large." *See* Park City Municipal Code § 7-3-2.D.
- 23. Park City Municipal Code § 7-3-8 states that an animal causes a nuisance if it "defecates on any public sidewalk, park, or building, or on any private property without the consent of the owner of such private property, unless the person owning, having a proprietary interest in, harboring or having care, charge, control, custody or possession of such animal shall remove any such defecation to a proper trash receptacle."

## The Menacing Dogs

- 24. Upon information and belief, the Hermanns own two very large dogs that each weigh over 100 pounds named Sasha and Mocha (the "**Large Dogs**").
- 25. For the past several years, the Hermanns, and, on information and belief, some of the Doe Defendants, have walked the Large Dogs on the Trail Easement multiple times a day and most of the time without a leash on either dog.

- 26. The Large Dogs do not stay within the Trail Easement and frequently roam around the backyard of the residence of the Plaintiff's Property.
- 27. On several occasions, the Large Dogs have aggressively approached, chased, and harassed the residents and guests of the Plaintiff's Property. For example, on at least one occasion, one or both of the Large Dogs aggressively chased and cornered one the of the residents of the Plaintiff's Property while the resident was in the backyard.
- 28. The backyard of Plaintiff's Property cannot be fenced to keep the Large Dogs out because such fencing is prohibited by a restriction on the Subdivision Plat.
- 29. The residents of the Plaintiff's Property cannot use and enjoy their property to its fullest extent and as they wish because the Large Dogs are aggressive toward people. All residents and guests, and especially children that on occasion may be at the home, cannot be outside at the Plaintiff's Property out of fear of the roaming Large Dogs.
- 30. Upon information and belief, the Hermanns are senior and frail and unable to control the Large Dogs, even when the Large Dogs are walked separately.
- 31. In addition to being aggressive and failing to stay within the Trail Easement, the Large Dogs bark loudly and create an unreasonable amount of noise.
- 32. Additionally, the Large Dogs defecate and urinate on the Plaintiff's Property and that is also outside the scope of the permissive use of the Trail Easement.
- 33. The Trail Easement, by its terms, does not allow dogs, let alone the roaming Large Dogs, to use the Trail Easement.

#### 16 Sampson Ave. Property's Misuse of the Trail Easement

34. Upon information and belief, the owners, guests, and invitees of the 16 Sampson Ave. Property, including, on information and belief, some of the Doe Defendants, use the Trail Easement.

- 35. The 16 Sampson Ave. Property has no right to utilize the trail through the Plaintiff's Property.
- 36. Neither the 16 Sampson Ave. Property nor its owners, guests, and invitees have permission or any other legal right to enter upon the Plaintiff's Property.

## Driveway Easement

- 37. Pursuant to the Subdivision Plat, the 200 King Road Property granted the Plaintiff's Property a "20" non-exclusive driveway access and underground utilities easement . . . . " (the "**Driveway Easement**").
- 38. The driveway for the residence at the Plaintiff's Property currently has a driveway and utilities constructed within the Driveway Easement.
- 39. The Plaintiff intends to redevelop and upgrade the current driveway ("**New Driveway**"), all within the long existing and described limits of the Driveway Easement, as depicted on the plans attached hereto as <u>Exhibit D</u>.

## FIRST CAUSE OF ACTION

#### **Trespass**

- 40. Plaintiff realleges and incorporates all the preceding paragraphs of this Complaint as if fully set forth herein.
  - 41. Plaintiff lawfully owns and possesses the Plaintiff's Property.
- 42. Defendants and their guests, invitees, and pets did not have permission to enter onto the Plaintiff's Property for any reason, except as permitted by the Trail Easement.
- 43. Defendants and their guests, invitees, and pets interfered with Plaintiff's exclusive right to possession of the Plaintiff's Property by physically entering, encroaching upon, and allowing the Large Dogs to physically enter or encroach upon the Plaintiff's Property.
- 44. Indeed, Defendants and their guests, invitees, and pets have routinely departed from the Trail Easement and entered onto the Plaintiff's Property without permission.

- 45. Defendants have also allowed their guests and invitees at the 16 Sampson Ave. Property to use the trail within the Trail Easement, despite the fact that the 16 Sampson Ave. Property does not have any right to use the Trail Easement.
- 46. Defendants have failed to control the Large Dogs and have allowed them to roam around the Plaintiff's Property well beyond the limited confines of the Trail Easement, including defecating and urinating on the Plaintiff's Property.
- 47. Plaintiff and its owners, guests and invitees are unable to fully use and enjoy the Plaintiff's Property given the constant trespassing by Defendants, their guests, invitees, and pets. Specifically, no residents or guests of the Plaintiff's Property can be outside for much time due to fear of the Large Dogs.
- 48. The repetition and nature of the conduct of Defendants and their guests, invitees, and pets evinces their intent to encroach upon the Plaintiff's Property.
- 49. Defendants' conduct was also willful and malicious—or at the very least, manifested a knowing and reckless indifference and disregard towards the rights of others—because Defendants had notice of the size and scope of the Trail Easement and knowingly, repeatedly, and egregiously exceeded the scope of the Trail Easement. Likewise, Defendants knew that they did not own the Plaintiff's Property and had no legal right to allow the Large Dogs to roam around the Plaintiff's Property.
- 50. As a direct result of Defendants repeated and ongoing trespasses, Plaintiff has been irreparably injured and damaged in significant ways and is entitled to injunctive relief as well as nominal, compensatory, and/or punitive damages.

#### **SECOND CAUSE OF ACTION**

## Alternatively - Private Nuisance

- 51. Plaintiff realleges and incorporates all the preceding paragraphs of this Complaint as if fully set forth herein.
  - 52. Plaintiff lawfully owns the Plaintiff's Property.

- 53. Defendants are elderly and frail and unable to control the Large Dogs.
- 54. The Large Dogs are large, vicious, and aggressive. The Large Dogs frequently roam the Plaintiff's Property and have charged, harassed, and cornered the Plaintiff's Property's residents and guests.
- 55. The Plaintiff's Property's residents and guests are obstructed from the free use and comfortable enjoyment of the Plaintiff's Property because Defendants allow the Large Dogs to roam the Plaintiff's Property and have created an unsafe and dangerous situation.
- 56. The Large Dogs' frequent barking, roaming, defectaion, and urination is offensive and substantially interferes with the private use and enjoyment of the Plaintiff's Property and is the responsibility of Defendants.
- 57. Defendants have acted intentionally and unreasonably by not keeping control of the Large Dogs and by allowing them to obnoxiously roam, bark, defecate, and urinate cause further disturbances to the Plaintiff's Property.
- 58. As direct result of the foregoing, Plaintiff has been irreparably injured and damaged in significant ways and is entitled to injunctive relief as well as damages.

#### THIRD CAUSE OF ACTION

## Breach of Easement Agreement (Exceeding the Scope of Easement) - Against the Trust

- 59. Plaintiff realleges and incorporates all the preceding paragraphs of this Complaint as if fully set forth herein.
- 60. The Trust and Plaintiff are the successors-in-interest to the Easement Agreement by virtue of their respective ownership of the Norfolk Ave. Property and the Plaintiff's Property.
- 61. The Easement Agreement limits all activities to the easement area—the trail—which is defined in the Easement Agreement and limited to a width of 3 feet.
- 62. The Trust breached the Easement Agreement when Defendants and their guests, invitees, and pets departed from the easement area and entered onto the Plaintiff's Property.

- 63. The scope of the Trail Easement is limited to a "ski trail easement, non-motorized bike and pedestrian trail easement." The Easement Agreement does not allow Defendants and their guests or invitees to bring dogs or other animals on the Trail Easement. Indeed, dogs are not "pedestrians".
- 64. The Easement Agreement required Defendants and their guests and invitees to obey all signs and use proper trail etiquette as is customary in the community. Even the signs on adjacent trails and the customary etiquette in the community required users to stay on the established trail and to leash all dogs.
- 65. The Easement Agreement required the Trust and its guests and invitees to not cause unreasonable noise while using the Trail Easement.
- 66. The Trust breached the Easement Agreement, among other ways, when Defendants and their guests and invitees:
  - A. Brought the Large Dogs on the Trail Easement;
  - B. Repeatedly allowed the Large Dogs to depart from the Trail Easement in the egregious ways detailed above;
  - C. Departed from the established trail and used the Trail Easement with the Large Dogs unleashed; and
  - D. Allowed their dogs to bark loudly while using the Trail Easement, especially where such barking was significantly disruptive to the use and enjoyment of the Plaintiff's Property.
- 67. As a result of the foregoing breaches, Plaintiff has suffered damages in amount to be determined at an appropriate time.

#### FOURTH CAUSE OF ACTION

## Breach of Easement Agreement (Over-Burdening of the Easement) - Against the Trust

68. Plaintiff realleges and incorporates all the preceding paragraphs of this Complaint as if fully set forth herein.

- 69. The Trust and Plaintiff are the successors-in-interest to the Easement Agreement by virtue of their respective ownership of the Norfolk Ave. Property and the Plaintiff's Property.
  - 70. The Trust owns 16 Sampson Ave. Property.
- 71. The Easement Agreement limits the use of the Trail Easement to the Norfolk Ave. Property and does not allow the 16 Sampson Ave. Property to use the Trail Easement.
- 72. Nevertheless, the Trust allowed the guests and invitees of the 16 Sampson Ave. Property, including, on information and belief, some of the Doe Defendants, to use the Trail Easement, despite having no legal right to use the Trail Easement.
- 73. Such unpermitted and unlawful use of the Trail Easement substantially increased the burden on the servient estate beyond that contemplated by Easement Agreement.
- 74. As a result of the Trust's overburdening of the Trail Easement, Plaintiff has suffered damages in an amount to be determined at an appropriate time.

#### FIFTH CAUSE OF ACTION

## Declaratory Judgment (Trail Easement)

- 75. Plaintiff realleges and incorporates all the preceding paragraphs of this Complaint as if fully set forth herein.
- 76. An actual controversy has risen and now exists in this matter with respect to Defendant's use and the scope of the Trail Easement.
- 77. Plaintiff and the Defendant are adverse parties to the Trail Easement because Plaintiff owns the servient estate upon which the trail is located, while the Trust owns the dominant estate with the Trail Easement.
- 78. Ownership of the Plaintiff's Property and the Trail Easement are estates in land and as such are legally protectable.
  - 79. This matter is ripe for a declaratory judgment because of Defendants' actions.
- 80. Plaintiff respectfully requests a judgment from the Court declaring that: (i) Defendants past use of the Trail Easement, as set forth herein, violates the Easement Agreement;

(ii) no dogs or other animals are allowed on the Trail Easement; and (iii) the 16 Sampson Ave. Property and its associated persons have no right to use the Trail Easement.

## SIXTH CAUSE OF ACTION

## Declaratory Judgment (Driveway Easement)

- 81. Plaintiff realleges and incorporates all the preceding paragraphs of this Complaint as if fully set forth herein.
- 82. An actual controversy has risen and now exists in this matter because the Trust's representatives have asserted that the New Driveway is inconsistent with the Driveway Easement.
- 83. Plaintiff and the Trust are adverse parties to the Driveway Easement because Plaintiff owns the dominant estate seeking to construct the New Driveway, while the Trust owns the servient estate upon which the New Driveway will be constructed.
  - 84. The Driveway Easement is an estate in land and as such is legally protectable.
- 85. This matter is ripe for a declaratory judgment because Defendants dispute the propriety of the New Driveway.
- 86. Plaintiff respectfully requests a judgment from the Court declaring that the New Driveway does not violate the Driveway Easement.

## **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff prays for judgment against Defendants as follows:

- 1. An award of damages against Defendants for their trespasses and private nuisance in an amount to be proved at an appropriate time;
- 2. An award of damages against the Trust for breach of the Easement Agreement in an amount to be proved at an appropriate time;
- 3. A declaratory judgment stating that: (i) Defendants' past use of the Trail Easement, as set forth herein, violates the Easement Agreement; (ii) no dogs or other animals are allowed on the Trail Easement; and (iii) the 16 Sampson Ave. Property and its associated persons have no right to use the Trail Easement.

4. A declaratory judgment stating that the New Driveway does not violate the

Driveway Easement.

5. Injunctive relief prohibiting Defendants and their guests and invitees from: (i)

bringing dogs or other animals onto the Trail Easement, (ii) entering onto the Plaintiff's Property

beyond the Trail Easement; (iii) creating substantial interferences and nuisance to the Plaintiff's

Property; (iv) acquiescing in the use of the Trail Easement by any persons residing at the 16

Sampson Ave. Property; and (v) otherwise using the Trail Easement inconsistent with the express

terms of the Easement Agreement.

6. An award of Plaintiff's costs and reasonable attorney fees as contemplated by the

Easement Agreement and further allowed by law; and

7. An award of such other relief the Court deems appropriate.

DATED: March 18, 2024.

BRUCE R. BAIRD PLLC

/s/ Bruce R. Baird

Bruce R. Baird

SNELL & WILMER L.L.P.

Michael B. Hutchings

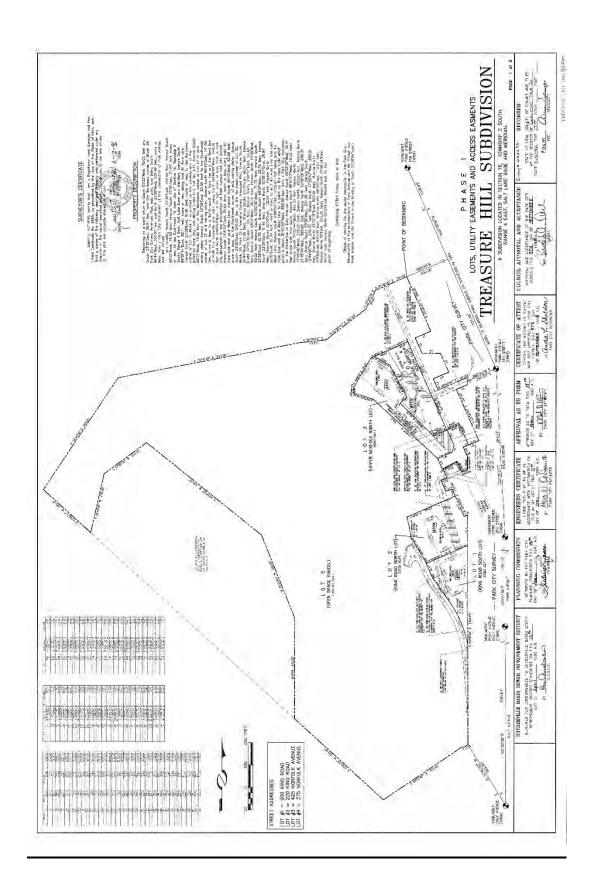
Benjamin J. Mills

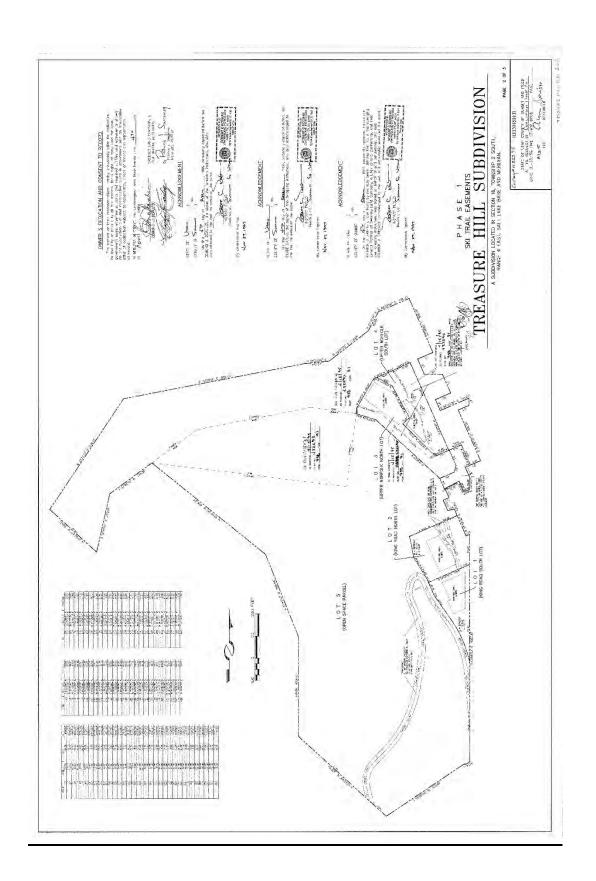
Attorneys for Plaintiff

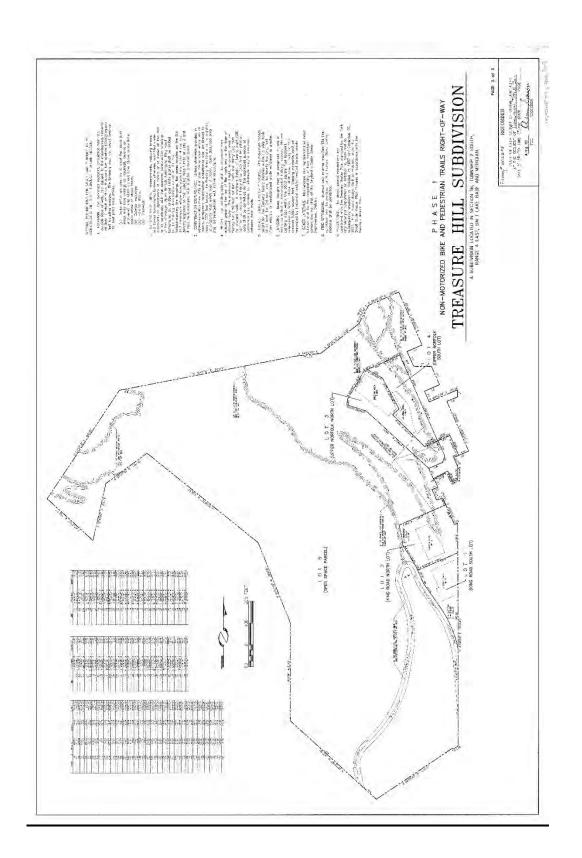
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## **EXHIBIT A**

Subdivision Plat







## **EXHIBIT B**

Easement Agreement

00621965 BK01456 P601843-01850

ALAN SPRIGGS, SUMMIT CO RECORDER 2002 JUN 13 16:21 PM FEE \$25.00 BY DM REQUEST: COALITION TITLE

OK1-

When recorded mail to: Yoram Jerry Fiat 918 Sheridan Road Glencoe, Illinois 60022

## EASEMENT AGREEMENT

IN CONSIDERATION of the covenants and conditions hereinafter contained, YORY L.L.C., and the limited liability company, G.M. TRUST COMPANY, LTD., as trustee of foreign interests, and VENTURE RIDGE DEVELOPMENT GROUP L.L.C., at Utah limited liability company, as tenants in common (collectively, "Fiat") and ROBERT R. SERE AND M. CONSTANCE SERE, husband and wife (collectively, "Sfire"), hereby agree as follows:

Representations.

1.1 Fiat owns certain real estate property ("Fiat Property") in Park City, Utah described as follows (the dominant property)

201 and 205 Norfolk Avenue, according to the official Plat thereof on file and of record in the Summit County Recorder's Office, Summit County, Utah and described as follows?

Lot 1 and Lot 2 of the 201 Norfolk Avenue Subdivision located in Section 16, Township 2 South, Range 4 East, Salt Lake Base and Meridian recorded as Entry No. 573573, September 26,2000, at the Summit County Recorder 3 Office, Summit County, Utah.

1.2 Sfire owns certain real property ("Sfire Property") in Park City, Utah located to the northwest of the Fiat Property and described as follows (also the servicent property)

Lot 2 (King Road North Lot), as platted in the Treasure Hill Subdivision. Phase I, a subdivision located in Section 16, Township 2 South, Range 4 East, Salt Lake Base and Meridian, recorded as Entry No. 452295, April 15, 1996, active Summit County Recorder's Office, Summit County, Utah.

Said Sfire Property is also part of the Sweeney Master Plan. The Sweeney Master Plan Trails cross the northeasterly portion of the Sfire Property and are located in the Public Non-Motorized Bike and Pedestrian Trails Right-of-way as shown on Page 3 of the Treasure Hill Subdivision, Phase L Plat, recorded as Entry No. 452295, April 15, 1996 at the Summit County Recorder's Office, Summit County Utah. The Sweeney Master Plan Trails connect to the Town Ski Trails. Easements for said Town Ski Trails are also referenced on said Plat.

1.3 Fiat desires a year round easement to access the Sweeney Master Plan Trails located northwest of the Fiat Property and to access thereby the Town Ski Trails.

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fre desires quiet enjoyment of the Sfire Property and other considerations Grant of Trail Easement. Sfire hereby grants to Fiat, Fiat's tenants and their respective guests and 2.1 invitees, for Ten Dollars (\$10.00) and other good and sufficient consideration, a perpetual (subject, however to the last sentence of this Section 2.1), non-exclusive easement (the "Trail Easement") in the location shown on Exhibit "A" attached hereto and made a part hereof, to clear construct, maintain, use and enjoy a combination of foot path, bike and ski trail not to exceed three (3) feet in width on existing grade to access the Sweeney Master Plan Trails and thereby also the Town Ski Trails. Fiat shall have the right to clear existing growth where reasonably necessary in order to utilize the Trail Easement for its intended purpose, including minor changes in grade level to the extent necessary. Fiat agrees to hold Sfire harmless for injury or death that might result from his use of the use of his invitees and guests of the Trail Easement. Fiat agrees to obey all signs, respect Park City Mountain Resort rights and regulations, use proper trail etiquette as customary in the community and, furthermore, to be considerate of adjacent residences and other trail users and not to litter, camp or build fires (including smoking) of cause unreasonable noise while using the Trail Easement. Fiat agrees not to use any type of motorized vehicle on the Trail Easement or Sweeney Master Plan Trails. In the event of a determination by a court of competent jurisdiction that Fiat has willfully and wantonly violated any of the aforementioned trail rules and that such violation has not ceased after written notice to Fiat of such violation, Sfire may terminate the Trail Easement by written notice to Fiat. Fiat agrees that his rights under the Trail Easement shall be subordinate to (a) the right of the Park City Mountain Resort™ to change for and regulate the use of the Town Ski Trails for the purpose of commercial skiing, (b) the right of the Park City Mountain Resort TM to improve, modify or after (including the location of) the Town Ski Trails, and (c) the right of Sfire and others of record to modify the location of the Sweeney Master Plan Trails as may be required by Park City Municipal Corporation or desired by Sfire or other of record in connection with amendments to or modifications of the Sweeney Master Plan, provided, however, that in the event of any such modification Stire and Fiat shall relocate the Trail Easement so as to provide a trail connection as set forth in Section 2.1 herein. The Trail Easement shall be for the specific purpose of benefiting and serving the Fiat Property. 2.4 The Trail Easement shall extend from the northwest corner of the Fiat property and the southeast corner of the Sfire Property, and then along the easterly portion of the Stire Property to the nearest portion of the Sweeney Master Plan Trails and hence follow and lie within the Non-exclusive Ski Trail Easement, Non-motorized Bike and Pedestrian Trail Easement for the Benefit of Lot 1, located on the Sfire Property and as shown on Page 2 of the Treasure Hill Subdivision, Phase I, Plat recorded as Entry No. 542295, April 15, 1996, at the Summit County Recorders Office, Summit County, Utah. 00621965 BK01454 PG01844

- 2.5 First shall have the right to construct a trail connection within the Trail Easement and to contour said trail connection in order to create a usable doot, bike and ski route. Sfire shall have the right to approve trail location and such location and such approval shall not be unreasonably withheld. Fiat agrees to minimize vegetation disturbance and construct improvements in a workmanlike and timely manner and to clean up and properly dispose of any debris. Organic debris shall be scattered in the surrounding brush in a way as to decay naturally and not create a nuisance or be unsightly.
- 2.6 This Trail Easement Agreement is restricted to serve the Fiat Property. If Piat wishes to extend the benefits of the Trail Easement to the occupants of 221 Norfolk, the owners of 221 Norfolk shall execute an instrument confirming their agreement to comply with the terms of this Agreement, and neither Fiat nor the owners of 221 Norfolk shall have any liability for the actions of the other.
- 3. All notices, demands and other communications hereunder shall be in writing and shall be sufficient if mailed by United States registered or certified mail, return receipt requested and postage prepaid, or deposited with a prepaid Courier service (e.g. Federal Express, UPS, etc.) to the parties of their assignees; or hand-delivered, at the following addresses:

#### Fiat:

Yoram Jerry Fiat 918 Sheridan Road Glencoe, Illinois 60022

#### Sfire:

Robert R. Sfire 28409 Jefferson Avenue St. Clair Shores, Michigan 48080

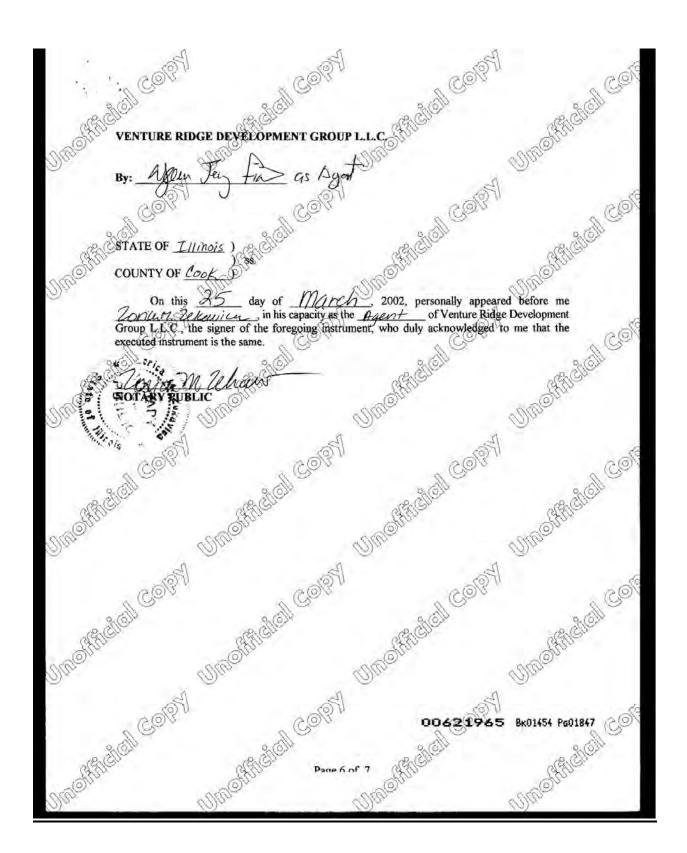
Any party hereto may give written notice to the other parties hereto to designate any address in substitution of the foregoing address.

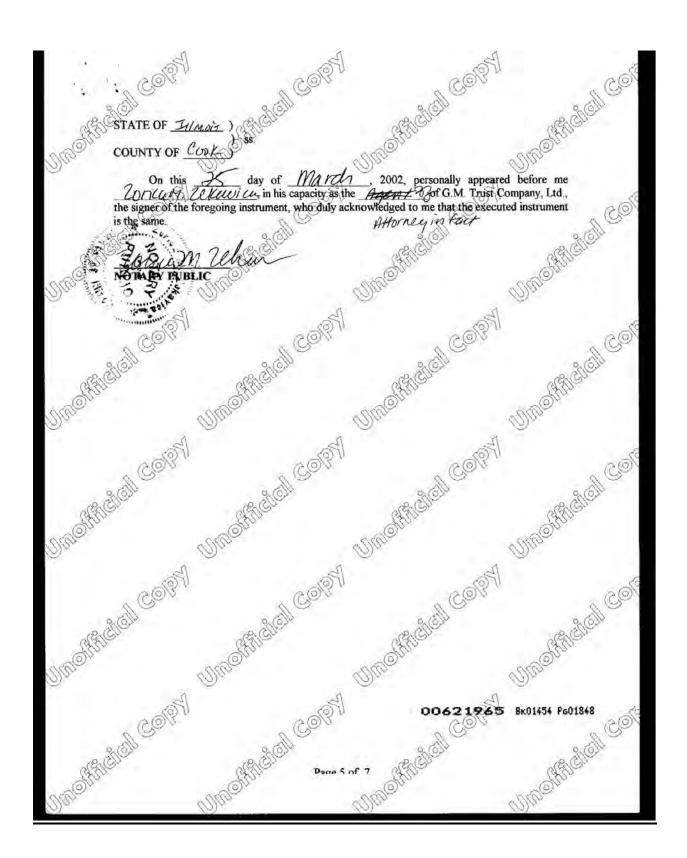
- 4. This Agreement embodies and constitutes the entire understanding among the parties with respect to the transactions contemplated herein.
- 5. This Agreement shall be binding upon and shall intere to the benefit of the parties hereto and their personal representatives, successors and assigns.
- 6. This Agreement may be executed in any number of counterparts. Each such counterpart hereof shall be deemed to be an original instrument, but all such counterparts together shall constitute but one agreement.

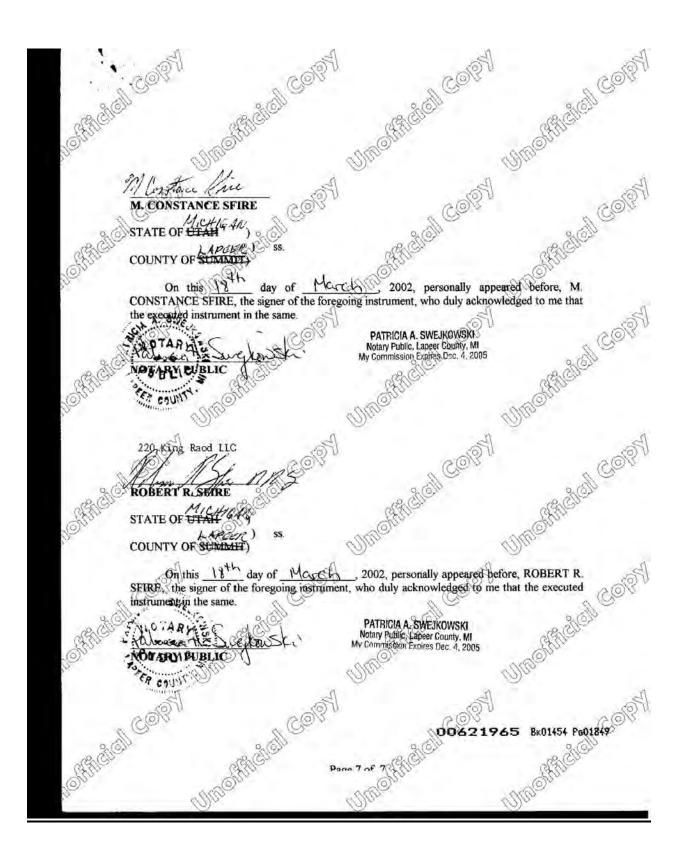
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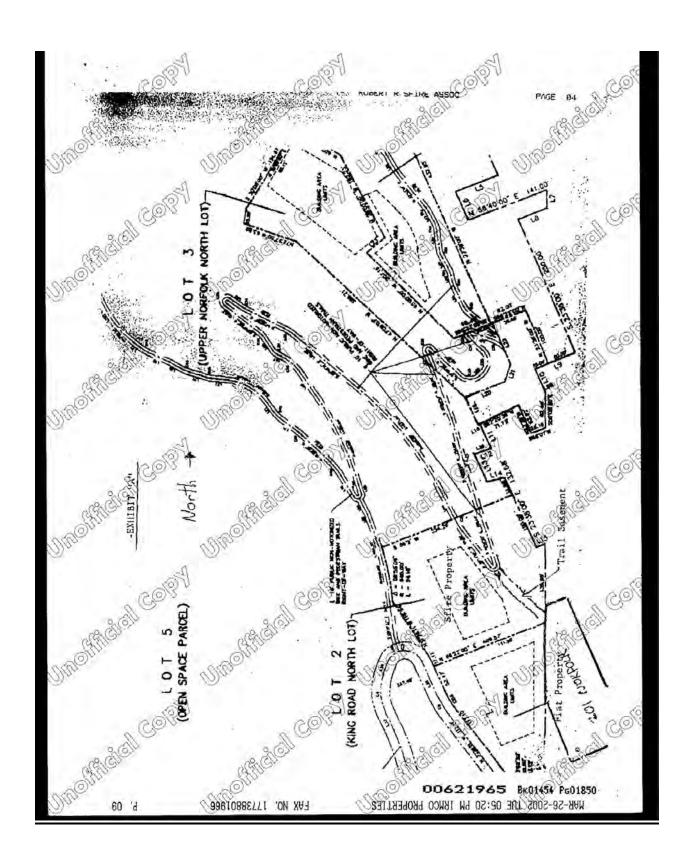
7. This Agreement shall be deemed effective as of the date hereof and upon the execution of this Agreement by all of the parties hereto.

	8. Each party hereto agrees that should it default in an		. 11 July Color 1
in Afficia	8. Each party hereto agrees that should it default in ar herein, the defaulting party shall pay all costs and expe which may arise or accrue from enforcing this Agreer hereunder or by the statutes or other law of the State of filing a suit or otherwise and whether such costs and ex before or after judgment. A waiver by any party of Agreement shall not constitute a waiver of any further by	nses, including a reasonable attorney, ment, or in pursuing any remedy pro f Utah, whether such remedy is pursu penses are incurred with or without so a breach of any term or condition of	ained s fee, vided ed by uit or
200	9. The parties agree to do such further acts as may	e all Co	e this
in Africa	Agreement and to cooperate with each other in the in referenced herein.		
	Dated this 4 day of 10, 2002.	Sale Market	· ALCOPA
	YORY L.L.C.	of the state of th	inclicit
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## **EXHIBIT C**

Trail Etiquette and Safety

## Trail Etiquette and Safety

With more than 450 miles of non-motorized trails, Park City is a mecca for outdoor enthusiasts around the globe. Whether you're a visitor or a local, you can help protect our natural resources by understanding these etiquette and safety recommendations before you head out and when you're on the trail. By working together as good stewards, we can help preserve our land, reduce demand on local emergency services and ensure we all have great experiences on the trail for years to come.

## Before You Head Out

There's a lot of factors to consider before you head out on the trail. Park City is uniquely beautiful but like any place in the wilderness, it's important to understand the terrain. Here's some things to remember before your next adventure.

## Elevation is Everything

It's important to consider if a trail is within your abilities. Remember, Park City's elevation ranges from 7,000 ft (Main Street) to 10,000 ft (Jupiter Peak) above sea level. If you're visiting from a lower elevation, you'll notice your body works harder, your respiration rate increases, and your body loses water faster at higher elevations. Take it easy the first few times out.

#### Watch the Weather

Check the weather before each excursion but also remember that mountain conditions change very quickly. Always bring an extra layer of clothing in your backpack.

## Changing Trail Conditions

Changing weather can dramatically impact the trail. Always check trail conditions before you leave. <u>Mountain Trails Foundation</u> and <u>Basin Recreation</u> offer daily updates on trail conditions in their areas.

#### No Cell Service

Cell service may be intermittent throughout your hike, so don't rely on connectivity for critical trail information. Download a map of the area prior to departing, and be sure you know and understand trail landmarks.

## Hydrate and Refuel

Carry a minimum of 1 liter of water per person for a 2-hour hike. Remember, your body works harder at higher elevations, so be sure to pack plenty of healthy snacks in your backpacks so you can truly enjoy the trail energized and happy.

## Transportation

Keep it simple and reduce the demand on parking lots by taking the bus or shuttle directly to your favorite trailhead.

## On the Trail

One of the best things about getting outside is the amazing people you can meet on the trail. Remember to be friendly to those you pass on the trail and above all else, be kind. Here's more to create a sense of community and well-being with others on the trail.

## Respect the Right of Way

Most trails in Park City are multi-use. This means the trail is open to equestrians, mountain bikers, and hikers.

Most trailheads will have the yield triangle signposted highlighting which user has the right of way. Here's a right of way primer.

#### Remember:

- Both hikers and mountain bikers ALWAYS yield to horses.
- Mountain bikers ALWAYS yield to hikers.
- Downhill hikers and mountain bikers ALWAYS yield to uphill hikers.



The only time the above does not apply is when using directional mountain bike trails and in this case, the trails will have signage stating that it is an uphill or downhill only mountain.

## Share the Love More Broadly

Using social media responsibly also applies to the trail. Consider that when you tag a location on social media, you're actually driving more visitors towards a specific environmentally sensitive site. Consider making your tags in more generic natural areas. Remember, there's so much of the trail to love!

## Stay on Trail

Prevent erosion by staying on the trail. If the ground is wet and you are leaving deep footprints in the trail, choose a dryer path on the trail. Or, simply turn around and save the trail for everyone to enjoy another day.

#### Pack it in. Pack it out

That means everything. Even biodegradable materials such as orange peels and food scraps can take years to break down.

#### Leave Nature as You Found It

It's human nature. You see a field of blossoms and what's the first thing you want to do? Pick them. Don't. Resist the urge and let your fellow hikers enjoy their beauty as well. And please, never, ever carve into trees or deface rocks.

## Be Responsible for Dogs

Most Park City trails require that dogs be on a leash, but there are a few areas specifically designated for off-leash adventures. These specific areas, like Round Valley and Run-A-Muck, will be indicated with signage at the trailhead. Remember, dog owners are ALWAYS responsible for picking up and packing out their dogs' poop. Most trailheads will have poop-bag stations, but always bring your own bags just in case.

## Respect Wildlife

We all share the trail with our local wildlife. Remember that moose, deer, elk, and snakes all may appear on the trail. Always observe wildlife from a distance. Review our <u>wildlife and plant</u> encounter guidelines to keep yourself and our wildlife safe.

## **EXHIBIT D**

Driveway Engineering Plans

