

WHEN RECORDED, RETURN TO:  
Ballard Spahr LLP  
Attn: Steven P. Mehr  
201 S Main Street, Suite 800  
Salt Lake City, UT 84111

APNs: 46-651-0005; 46-651-0006

**AMENDED AND RESTATED  
EASEMENT AGREEMENT**

This AMENDED AND RESTATED EASEMENT AGREEMENT (this “**Agreement**”) is made this 15 day of November, 2021 (the “**Effective Date**”), by and between DERIK T. FLANARY, as an individual, whose address is 195 S 400 E, Provo, Utah (“**Flanary**”), and MICHAEL J. STANKEY as an individual whose address is 177 S 400 E, Provo, Utah (“**Stankey**”). “**Party**” or “**Parties**” shall mean Flanary and/or Stankey.

**RECITALS**

A. Flanary is the owner of a parcel of land located in Provo, Utah County, Utah (“**Lot 6**”), as described on Exhibit A, which is attached hereto and incorporated herein by this reference.

B. Stankey is the owner of a parcel of land located in Provo, Utah County, Utah (“**Lot 5**”), as described on Exhibit B, which is attached hereto and incorporated herein by this reference. Lot 5 and/or Lot 6 are herein sometimes referred to as “**Lot**,” or collectively as the “**Lots**.”

C. Flanary is the successor-in-interest to Bruce G. Jensen and Emma M. Jensen, as joint tenants who entered into a Cross-Easement Agreement effective September 10, 2016 and recorded in the office of the Utah County Recorder as Entry 91152:2016 (“**Original Agreement**”).

D. The Original Agreement related to a portion of the Lots (“**Easement Area**”), as described on Exhibit C, which is attached hereto and incorporated herein by this reference, and granted the Parties a reciprocal easement in the Easement Area for purposes of ingress and egress to the Lots.

E. Parties are entering into this Amendment to amend the Original Agreement, thereby clarifying the terms and conditions of the Original Agreement.

NOW, THEREFORE, in consideration of the above recitals, the mutual covenants set forth below, and other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Parties agree as follows:

## AGREEMENT

1. Grant of Lot 6 Easement. Flanary hereby grants to Stankey a non-exclusive perpetual easement (the “**Lot 6 Easement**”) on, over, and across the Easement Area as a driveway for pedestrian and vehicular ingress and egress as may be reasonably necessary to access the Lots, together with access as may be reasonably necessary to construct, operate, and maintain the Easement Area. The Lot 6 Easement shall be for the use and benefit of Stankey and his guests, licensees, invitees, emergency service providers, successors, and assigns. The Lot 6 Easement is appurtenant to the Lots and may not be transferred, assigned or encumbered except as an appurtenance to the Lots.

2. Grant of Lot 5 Easement. Stankey hereby grant to Flanary a non-exclusive perpetual easement (the “**Lot 5 Easement**”) on, over, and across the Easement Area as a driveway for pedestrian and vehicular ingress and egress as may be reasonably necessary to access the Lots, together with access as may be reasonably necessary to construct, operate, and maintain the Easement Area. The Lot 5 Easement shall be for the use and benefit of Flanary and his guests, licensees, invitees, emergency service providers, successors, and assigns. The Lot 5 Easement is appurtenant to the Lots and may not be transferred, assigned or encumbered except as an appurtenance to the Lots.

3. Maintenance of Easement Area. Flanary agrees to maintain the portion of the Easement Area that is located within Lot 6 (the “**Lot 6 Easement Area**”) in a good state of repair and in a safe and functional condition, which shall include, without limitation, the removal of accumulated snow and ice from the Lot 6 Easement Area and such other maintenance, repair and replacement of the Lot 6 Easement Area as is necessary or desirable from time to time. Flanary shall be responsible for all costs associated with such maintenance, repair or replacement of the Lot 6 Easement Area. Stankey agrees to maintain the portion of the Easement Area that is located within Lot 5 (the “**Lot 5 Easement Area**”) in a good state of repair and in a safe and functional condition, which shall include, without limitation, the removal of accumulated snow and ice from the Lot 5 Easement Area and such other maintenance, repair and replacement of the Lot 5 Easement Area as is necessary or desirable from time to time. Stankey shall be responsible for all costs associated with such maintenance, repair or replacement of the Lot 5 Easement Area.

4. Use of Easement Area. Nothing in the Agreement shall be construed to limit either Party’s rights regarding their respective Lot, including without limitation, such Party’s right to utilize the Easement Area for parking and other related activities, subject to such Party’s obligations not to impair the rights granted by this Agreement.

5. Covenants to Run with the Land. The Lot 6 Easement and the Lot 5 Easement and all rights and interests granted herein, including the benefits and burdens thereof, shall be appurtenant to the Lots, shall constitute covenants running with the land, and shall be binding

upon the Parties and their respective successors, transferees, assigns, heirs, and personal representatives.

6. Enforcement. In the event a Party fails to comply with the provisions of this Agreement, the other Party shall provide written notice of such default to the defaulting Party. If the defaulting Party does not commence a cure within thirty (30) days of such notice and diligently pursue it to completion, then the non-defaulting Party may seek remedies at law or equity. Notwithstanding any provision in this Agreement to the contrary, in no event shall any Party be liable to any other Party for indirect, special, punitive, or consequential damages. 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.

7. Attorneys Fees. If any action is brought because of a default under or to enforce or interpret this Agreement, in addition to the relief to which such Party is entitled, the Party prevailing in such action shall be awarded and the non-prevailing Party shall pay reasonable attorneys' fees, court costs, and other litigation expenses (including, without limitation, costs of investigation, settlement, expert witnesses, or any additional costs incurred in enforcing this Agreement, and those incurred in connection with any appeal), the amount of which shall be fixed by the court and made a part of any judgment rendered.

8. General Provisions.

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

8.2 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.

8.3 Amendment. This Agreement may only be amended by a written instrument, executed by the Parties, and recorded in the office of the Utah County Recorder.

8.4 No Merger. Notwithstanding that all or any portion of the Lots and/or the Easement Area may now or hereafter be owned by the same individual or entity, the easements and rights granted, and the covenants imposed, by this Agreement upon the Lots and the Easement Area shall not be deemed to be extinguished by merger, change of ownership or use, or otherwise and the same shall be perpetual and shall not be extinguished, except by an instrument duly executed by the Parties.

8.5 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.

8.6 Final Agreement; Counterparts. This Agreement constitutes the entire agreement between the parties with respect to the subject matter thereof, and supersedes all prior agreements, written and oral. This Agreement may be executed in any number of duplicate originals or counterparts, each of which when so executed shall constitute in the aggregate but one and the same document.

*[Signatures on Following Pages]*

IN WITNESS WHEREOF, Derik T. Flanary has executed this Agreement as the Effective Date.

DERIK T. FLANARY

*Derik T. Flanary*

STATE OF Utah )  
: ss.  
COUNTY OF Utah )

On the 13 day of October in the year 2021 before me, the undersigned, a Notary Public in and for said State, personally appeared Derik T. Flanary, proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to this instrument, and acknowledged he executed the same.

*Tina White*  
NOTARY PUBLIC

Residing at Spanish Fork, UT

My Commission Expires:  
11-26-2022





**EXHIBIT A**

**Legal Description of Lot 6**

Lot 6, Plat "A", Maeser Block Subdivision, Provo, Utah, according to the official plat thereof on file and of record in the office of the Utah County Recorder.

Parcel No.: 46-651-0006

**EXHIBIT B**

**Legal Description of Lot 5**

Lot 5, Plat "A", Maeser Block Subdivision, Provo, Utah, according to the official plat thereof on file and of record in the office of the Utah County Recorder.

Parcel No.: 46-651-0005



## EXHIBIT C

## Legal Description of Easement Area

Beginning at the Southwest corner of Lot 5, Plat "A", Maeser Block Subdivision, Provo, Utah, according to the official plat thereof on file in the office of the Utah County Recorder; thence North 0° 20' 22" East along the west line of said Lot 5 and the east line of 400 East Street, Provo, Utah, 12.85 ft., more or less, to the north edge of said driveway; thence along the limits of said joint driveway, (and the extensions thereof to the adjoining garages), by the following twelve (12) courses and distances: (1) South 89° 29' 40" East 57.2 ft; thence (2) North 0° 25' 30" East 4.7 ft; thence (3) South 88° 54' 20" East 22.0 ft; thence (4) North 0° 25' 30" East 0.8 ft; thence (5) South 89° 03' 40" East 10.8 ft; thence (6) South 0° 22' 20" West 37.5 ft; thence (7) North 89° 39' 10" West 32.7 ft; thence (8) North 0° 30' 30" West 14.9 ft; thence (9) North 89° 29' 30" West 35.6 ft; (10) South 0° 30' 30" East 8.92 ft; thence (11) South 89° 40' 10" West 20.6 ft., more or less, to the west line of Lot 5 of said subdivision and the east line of said 400 East Street; thence (12) North 0° 20' 22" East 13.75 ft., more or less, to the point of beginning.

(Note: the distances as measured have been rounded to the nearest 1/10th of a foot.)