

Recording requested by:  
Kirt and Beverly Sudweeks  
2244 Oakridge Dr.  
Layton, UT 84040

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RICHARD T. MAUGHAN  
DAVIS COUNTY, UTAH RECORDER  
02/09/2022 09:48 AM  
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DEF RT REC'D FOR LAYTON CITY

For recorder's use only

## SHARED MAINTENANCE AGREEMENT

(Private Drive & Utility Infrastructure)

THIS SHARED MAINTENANCE AGREEMENT ("Agreement") is made and entered into and effective as of the date of the last signature below ("Effective Date") by and between Bentley Lignell ("Lignell"), Eric and Krissee Sorensen ("Sorensens"), Thane and Claudia Packer ("Packers"), and Kirt and Beverly Sudweeks ("Sudweeks"). Each of these parties are collectively referred to in this Agreement as the "Declarants". The Declarants hereby enter into this Agreement to establish a Shared Maintenance Agreement for the Hoth Subdivision (a.k.a. Big Oaks Subdivision), subject to the terms and conditions set forth herein.

A. As depicted on the Hoth Subdivision Plat and Legal Descriptions and accompanying maps, attached hereto as Attachment A ("Plat Map"), the lots are identified as Hoth Lot 2, Hoth Lot 3, Hoth Lot 4, and Sudweeks Lot 2 (hereinafter, the "Subject Lots").

B. Hoth Lot 2 is owned by Lignell, Hoth Lot 3 is owned by Sorensens, Hoth Lot 4 is owned by Packers, and Sudweeks Lot 2 is owned by Sudweeks.

C. As depicted on the Plat Map, vehicular access between Oakridge Drive and each of the Subject Lots is provided by a paved, asphalt road (the "Private Drive").

D. Declarants hereby acknowledge that each of the Subject Lots possesses the right to access and use the Private Drive.

E. As set forth in the Plat Map, the owners of the Subject Lots (the "Subject Lot Owners") collectively share maintenance of the Private Drive, with each Subject Lot Owner sharing equally in the maintenance of the Private Drive.

F. The Subject Lots are individually and/or collectively served by certain water lines, sewer lines, electrical lines, fiber optic lines and other utilities located under the Private Drive (collectively, the "Utility Infrastructure"). The term Utility Infrastructure also collectively refers to any pipes, wires, switches or meters that may be attached to such water, sewer, electrical or fiber optic lines.

09-301-0002, 0003, 0004

09-465-0002

G. Declarants desire to execute and record this Agreement in the Davis County Recorder's Office in order to: (i) establish the manner in which maintenance of the Private Drive will be administered, and the cost of such maintenance will be shared, by and between the Subject Lot Owners, and (ii) establish the manner in which maintenance of the Utility Infrastructure will be administered, and the cost of such maintenance will be shared, by and between the Subject Lot Owners.

NOW, THEREFORE, the Declarants hereby mutually agree and declare as follows:

**A. Private Drive – Permitted and Prohibited Uses**

1. Permitted Uses. The Private Drive may be used by the Permitted Users for vehicular and pedestrian purposes only.

2. Prohibited Uses. The Private Drive may not be used in any manner other than as specifically permitted under this Agreement. The Private Drive may not be used for parking or storing any vehicles or trailers of any kind whatsoever. Except for the Private Drive Improvements, no other improvements whatsoever, including, for example but without limitation, sheds, carports, garages, playground sets, or recreational equipment may be temporarily or permanently constructed, placed, installed or erected upon any portion of the Private Drive.

3. No Expanded Use. Use of the Private Drive shall not be expanded beyond the permitted uses described in this Agreement.

4. No Expanded Size/Changed Location. The size and location of the Private Drive shall not be modified (*i.e.* reduced or expanded) from the boundaries of the Private Drive depicted on the Plat Map.

5. Permitted Users. The Private Drive may be used by any Subject Lot Owner, including each Subject Lot Owner's family members, licensees, invitees, guests, agents and contractors, as well as any future owners or any tenants of each Subject Lot and their respective family members, licensees, invitees, guests, agents, employees and contractors (collectively, the "Permitted Users").

**B. Private Drive Maintenance**

1. Materials. The Private Drive must be maintained, repaired and/or replaced in like manner, and using quality materials, as similar roadways located in the City of Layton, such as Oakridge Drive.

2. Private Drive Work. The Subject Lot Owners shall be solely responsible for causing, and for paying all costs and expenses associated with, the reasonable maintenance, repair and/or replacement of the Private Drive including, for example, asphalt, concrete, curbs, gutters, sidewalks and any other similar improvements (collectively, the "Private Drive Improvements").

Maintenance, repair and/or replacement of the Private Drive Improvements must be undertaken and made whenever reasonably necessary in order to maintain the Private Drive in good operating condition and to ensure safe access by emergency vehicles. Any Subject Lot Owner(s) may request maintenance, repair and/or replacement of any Private Drive Improvements (collectively, "Private Drive Work") by delivering written notice to the other Subject Lot Owner(s).

Except as provided under Subsection C.4, no Private Drive Work may be performed unless at least three (3) of the Subject Lot Owners ("**Majority of the Subject Lot Owners**") have signed a written acknowledgement that the Private Drive Work is reasonably necessary ("**Work Acknowledgement**"). The Subject Lot Owners who sign the Work Acknowledgement must make a reasonable effort to obtain no less than three (3) bids from reputable licensed and insured contractors for the performance of any Private Drive Work. The Subject Lot Owners may choose to accept any one of the bids based upon multiple factors, including total cost, the contractor's level of experience, quality of contractor's work on similar projects, the contractor's timeline for performance of the work, and any warranty the contractor may offer. In other words, the Subject Lot Owners requesting any Private Drive Work are not necessarily required to accept the lowest bid.

3. Shared Costs. The cost of any and all Private Drive Improvements, Private Drive Work, Sweeping and Snow Removal Costs, Emergency Work, or Shared Utility Infrastructure Work, shall be equally shared by the Subject Lot Owners ("**Shared Costs**"). However, if any Subject Lot Owner, or any such Subject Lot Owner's family member, agent, contractor or invitee negligently or intentionally damages or destroys any portion of the Private Drive Improvements, the Subject Lot Owner shall be solely required to arrange and pay for any and all reasonable costs associated with the repair of such damage or destruction. For example, if the Private Drive is damaged or destroyed by the construction or renovation of a Subject Lot Owner's home, that Subject Lot Owner will be solely required to arrange and pay for any and all reasonable costs associated with the repair of such damage or destruction. As used in this Subsection C.3, the term "damage" refers to significant or substantial damage to the Private Drive, and does not refer to any reasonable wear and tear of the Private Drive.

If any Subject Lot Owner causes the performance of any Private Drive Work without first meeting the above requirements, the Subject Lot Owner causing such Private Drive Work to be performed shall be liable for the entire cost of such Private Drive Work, unless the Private Drive Work is deemed an emergency as provided under Subsection C.5.

4. Sweeping and Snow Removal. The Subject Lot Owners shall also be solely responsible for causing, and paying the costs associated with, periodic Private Drive sweeping and snow removal ("**Sweeping and Snow Removal Costs**"). A reasonable effort shall be made to obtain at least two (2) bids from experienced, insured and bonded contractors for the performance of any sweeping or snow removal. All five (5) of the Subject Lot Owners must pay their pro-rata share of the total cost of any such sweeping and snow removal. Any Subject Lot Owner may collect the cost of sweeping and snow removal from the other Subject Lot Owners, provided the Subject Lot Owner collecting such payments delivers to the other Subject Lot Owners a written statement describing the services that were or will be provided, including the cost of each service, and the total cost of the services described. In the event that a Subject Lot Owner elects to perform any of the Sweeping and Snow Removal work itself, it shall first obtain written permission from the other four (4) Subject Lot Owners prior to performing any work.

5. Emergency Work. If any Subject Lot Owner reasonably determines that any portion of the Private Drive Improvements require emergency repairs or replacement ("**Emergency Work**"), that Subject Lot Owner may cause the performance of such Emergency Work without obtaining the approval of any other Subject Lot Owner. The cost of any and all Emergency Work shall be equally shared by the Subject Lot Owners.

## C. **Utility Infrastructure**

1. Utility Infrastructure. As depicted on the Plat Map, the Subject Lots are individually

and/or collectively served by the Utility Infrastructure.

2. **Shared vs. Individual Utility Infrastructure.** Any portion of any Utility Infrastructure that serves two or three Subject Lots is referred to as "**Shared Utility Infrastructure**," while any portion of any Utility Infrastructure that serves only one Subject Lot is referred to as "**Individual Utility Infrastructure**."

3. **Shared Utility Infrastructure Work.** The maintenance, repair and/or replacement of any Shared Utility Infrastructure is referred to as the "**Shared Utility Infrastructure Work**." Except as provided under Subsection D.5, the cost of any Shared Utility Infrastructure Work will be equally shared by the owners of the Subject Lots that are served by the Shared Utility Infrastructure.

4. **Individual Utility Infrastructure Work.** The maintenance, repair and/or replacement of any Individual Utility Infrastructure is referred to as the "**Individual Utility Infrastructure Work**." Except as provided under Subsection D.5, the cost of any Individual Utility Infrastructure Work shall be solely paid by the owner of the Subject Lot that is served by the Individual Utility Infrastructure.

5. **Negligent/Intentional Damage or Destruction.** If any Subject Lot Owner, or any such Subject Lot Owner's family member, agent, contractor or invitee negligently or intentionally damages or destroys any portion of the Utility Infrastructure (including any Shared Utility Infrastructure Work or any Individual Utility Infrastructure Work) the Subject Lot Owner shall be solely required to arrange and pay for any and all reasonable costs associated with the repair of such Utility Infrastructure.

#### **D. Treasurer, Monthly Assessments, and Payments**

1. **Treasurer.** The Subject Lot Owners shall elect a treasurer, who will be responsible for collecting, dispersing and managing any and all monies collected by the Subject Lot Owners, which are necessary for covering the Shared Costs, as set forth in Section C (hereinafter, "**Treasurer**"). The Treasurer shall serve without compensation and shall serve indefinitely subject to the terms in Section E.2.
2. **Election.** At the request of any Subject Lot Owner, an election will be held on the last day of the year, or a different day agreed upon by the Subject Lot Owners, to appoint a new Treasurer for the upcoming calendar year ("**Election**"). The Election shall be conducted by the current Treasurer, or, at the request of a Subject Lot Owner, the Election shall be conducted by an independent third party agreed upon by the other Subject Lot Owners. The purpose of the Election is to collect the votes of each Subject Lot Owner and count the votes to determine, by simple majority, who will serve as Treasurer for the upcoming calendar year. Each Treasurer will serve for one (1) calendar year ("**Initial Term**"). Upon expiration of the Initial Term, and if no request for an Election is made, the Treasurer will automatically serve for a subsequent one (1) calendar year period of time (each a "**Renewal Term**") and will continue to serve until a request for an Election is made.
3. **Appointment of Treasurer.** The Subject Lot Owners hereby acknowledge that the \_\_\_\_\_ has been appointed to serve as Treasurer for the remainder of the 2021 calendar year, and thereafter until a request for an Election is made subject to the terms of Section E.2.

4. **Monthly Assessments and Payments.** The Treasurer shall maintain a bank account, currently located at America First Credit Union, with an account number ending in 8690, for purposes of collecting Monthly Assessments defined herein (the "**Bank Account**"). The Treasurer shall closely track and manage the funds in the Bank Account to ensure that the funds are spent properly. Beginning on the first month of each year, or as soon as practicably possible, the Treasurer shall determine what work, if any, is needed for the remainder of the then current calendar year to keep the Private Drive in optimal, working condition, as set forth in Section C. Based on this assessment and the Bank Account balance at the beginning of the year, the Treasurer shall determine the amount of funds needed to cover the Shared Costs for the remainder of the then current calendar year and shall divide this amount into monthly payments and shall evenly distribute this amount amongst each of the Subject Lot Owners ("**Monthly Assessments**"), which shall be paid on a monthly basis by each of the Subject Lot Owners. Currently, the Monthly Assessments are \$25. Upon request by any of the Subject Lot Owners, the Treasurer shall provide a detailed accounting of the Bank Account with all accompanying receipts, spreadsheets, ledgers, or other financial records to account for and validate any monies collected and expended.

#### **Miscellaneous**

1. **Effect of Agreement.** This Agreement shall be effective as of the date of recording, and shall be binding upon the owners of each of the five Lots depicted on the Plat Map, and their respective successors and assigns. The subsequent conveyance of any Lot should include a reference to this Agreement; however this Agreement shall automatically be effective with or without any such reference and with or without any further grant or reservation in any deed.
2. **Acceptance.** Each grantee or purchaser of any Lot shall, by acceptance of a deed conveying title thereto, or the execution of a contract for the purchase hereof, whether from either of the Declarants or from a subsequent owner of such Lot, accept such deed or contract upon and subject to the entirety of this Agreement. By such acceptance such grantee or purchaser shall for themselves, their heirs, personal representatives, successors and assignees, covenant, consent, and agree to keep, observe, comply with, and perform all of the provisions of this Agreement.
3. **Term.** The provisions of this Agreement shall exist and be forever binding upon the owners of each of the five Lots depicted on the Plat Map, and their respective successors and assigns.
4. **No Public Use.** This Agreement is not intended to, and shall not, dedicate or allow any portion of the Private Drive to be allowed or dedicated for public use.
5. **Successors and Assigns.** Each and every one of the benefits and burdens of this Agreement shall inure to and be binding upon the respective legal representatives, heirs, executors, administrators, successors and assigns of each owner of each of the five Lots depicted on the Plat Map. Upon any owner's conveyance of his or her or its interest in any Lot, such owner shall no longer have any rights, obligations, liabilities or responsibilities whatsoever in connection with this Agreement, and all such rights, obligations, liabilities or responsibilities shall be assumed by the individual or entity to whom the owner has conveyed his or her or its interest.



6. No Waiver. The waiver by any party of the performance of any covenant, condition, or promise hereunder shall not invalidate this Agreement nor shall it be considered a waiver by such party of any other covenant, condition, or promise. The waiver by any party of the time for performing any act shall not constitute a waiver of the time for performing any other act or an identical act required to be performed at the later time. The exercise of any remedy shall not exclude the exercise of any other remedy.

7. Severability. Every provision of this Agreement is hereby declared to be independent of and severable from every other provision hereof. If any provision of this Agreement shall be held by a court of competent jurisdiction to be invalid, or unenforceable, all remaining provisions of this Agreement shall continue unimpaired and in full force and effect.

8. Captions. Paragraph captions in this Agreement are for convenience only and do not in any way limit or amplify the terms of provisions hereof.

9. Amendment. Any provision of this Agreement that impacts the rights, obligations, liabilities or responsibilities of the owners of all five of the Lots depicted on the Plat Map may only be amended by a written instrument that has been executed by the owners of all five Lots. Any provision of this Agreement that only impacts the rights, obligations, liabilities or responsibilities of the Subject Lot Owners may only be amended by a written instrument that has been executed by each of the Subject Lot Owners.

10. Enforcement. Each party may proceed at law or in equity to prevent the occurrence, continuation or violation of any provision of this Agreement.

11. Delivery of Payments. In the event any party is required to deliver any payment(s) under this Agreement, the due date of such payments(s) shall be no less than thirty (30) days after written notice of such payment has been received.

12. Cumulative Rights. Remedies specified herein are cumulative and any specifications of them shall not be taken to preclude an aggrieved party's resort to any other remedy at law or in equity. No delay or failure on the part of an aggrieved party to invoke an available remedy with respect to any violation of any provision of this Agreement shall be held to be a waiver by that party of any legal or equitable right otherwise available to such party.

13. Governing Law/Venue. This Agreement shall be construed in accordance with and governed by the substantive and procedural laws of the State of Utah. Venue for any and all claims or disputes shall be Davis County, Utah.

14. Attorney Fees. If any controversy, claim or dispute between the parties arising out of or relating to this Agreement results in arbitration or litigation, the prevailing party in such proceedings shall be entitled to recover from the other party reasonable legal expenses, including attorney fees and costs.

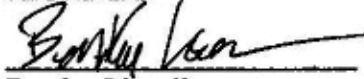
15. Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be determined to be an original, and which shall constitute one and the same Agreement.

17. Effective Upon Recording. This Agreement shall become effective and enforceable immediately upon the recording of this Agreement in the Davis County Recorder's Office.

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IN WITNESS WHEREOF, the Declarants have executed this Agreement as of the date indicated and verified by the notary who shall notarize each party's signature.

**LIGNELL:**

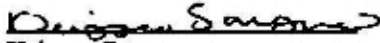


Bentley Lignell

**SORENSENS:**



Eric Sorensen

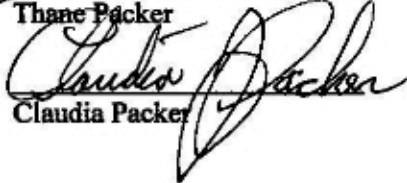


Krissee Sorensen

**PACKERS:**



Thane Packer



Claudia Packer

**SUDWEEKS:**



Kirt Sudweeks



Beverly Sudweeks





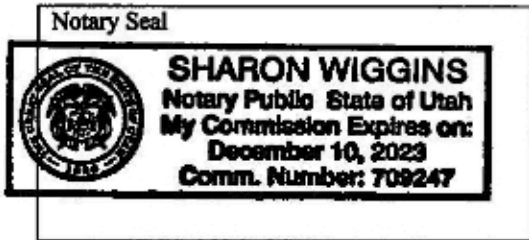
**ACKNOWLEDGEMENT**  
(Declarant's Signature – Beverly and Kirt Sudweeks)

STATE OF UTAH )  
 )ss.  
COUNTY OF Davis )

On this 28<sup>th</sup> day of December, in the year 2021, before me  
Sharon Wiggins, a notary public, personally appeared  
Notary Public Name

Beverly and Kirt Sudweeks, proved on the basis of satisfactory evidence  
Name of Document Signer

to be the person(s) whose name(s) (is/are) subscribed to this instrument, and acknowledged  
(he/she/they) executed the same. Witness my hand and official seal



Sharon Wiggins  
(Signature of Notary)

My Commission Expires: December 10, 2023

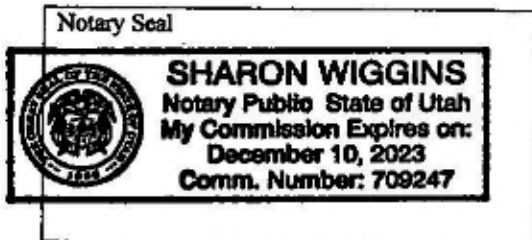
**ACKNOWLEDGEMENT**  
(Declarant's Signature - Bentley Lignell)

STATE OF UTAH )  
COUNTY OF Davis )ss.  
)

On this 28<sup>th</sup> day of December, in the year 2021, before me  
Sharon Wiggins, a notary public, personally appeared  
Notary Public Name

Bentley Lignell, proved on the basis of satisfactory evidence  
Name of Document Signer

to be the person(s) whose name(s) (is/are) subscribed to this instrument, and acknowledged  
(he/she/they) executed the same. Witness my hand and official seal



Sharon Wiggins  
(Signature of Notary)

My Commission Expires: December 10, 2023



ATTACHMENT A

HOTH SUBDIVISION PLAT AND LEGAL DESCRIPTIONS

All of Lot 2, Hoth Subdivision  
All of Lot 3, Hoth Subdivision  
All of Lot 4, Hoth Subdivision  
All of Lot 2, Sudweeks Subdivision

09-301-0002,  
0003, 0004  
09-465-0002

All of the above lots and parcel of property, as recorded in the Office of the Davis County Recorder,  
Davis County, Utah.

Notary Acknowledgement

3455752  
BK 7943 PG 313

**HOTH SUBDIVISION MAPS**

**Notary Acknowledgement**