

**PRIVATE ROAD MAINTENANCE AGREEMENT**

An Agreement made this original date of \_\_\_\_\_, 20\_\_\_, applicable to the undersigned parcel owners and users,

**RECITALS**

**WHEREAS**, Durffey Mesa Road is a private road situated in The Town of Boulder, Garfield County, in the State of Utah, and

**WHEREAS**, the undersigned parcel owners are the owners or users of the Roadway Property situated in The Town of Boulder, Garfield County in the State of Utah commonly known as Durffey Mesa Road, and described as follows:

Beginning at Lower Boulder Road approximately 1.78 miles south of the beginning of Lower Boulder Road at the Burr Trail, and continuing from the intersection with Lower Boulder Road, due East, along the property boundary between Garfield County recorded lots B-98-1-2-1 and lots B-98-1-2-2 and terminating at a point on lot B-98-1-2-1, 260 feet west of that western lot boundary.

**WHEREAS**, the parties desire to enter into an Agreement regarding the costs of maintenance and improvements to Durffey Mesa Road; and

**WHEREAS**, it is agreed that future parcel owners or users will add their signatures to this document;

**NOW THEREFORE, IT IS HEREBY AGREED AS FOLLOWS:**

**1. Vehicle and Pedestrian Access Easement.** The Roadway Property shall be subject to a perpetual, nonexclusive easement for ingress and egress granting access to all the parcel owners and their occupants, agents, employees, guests, services and emergency vehicles.

**2. Road Commission Agent.** A Road Commission Agent shall be elected by a majority of the property owners, will serve a term as agreed to by the property owners, and can be replaced or renewed at any time by a simple majority vote of the parcel owners. The Road Commission Agent shall be responsible for monitoring the condition of the road surface and initiating maintenance activities as needed to maintain the minimum road surface standards.

**3. Road Maintenance.** Road maintenance and road improvements will be undertaken and made whenever necessary to maintain the road in good operating condition at all times and to insure the provision of safe access by emergency vehicles. A

majority vote of parcel owners is required for any road improvements and to accept the bid for any road improvement contract. Before authorizing expenditures for future road improvements, parcel owners will be notified by the Road Commission Agent, cost estimates will be provided, and a majority agreement will be required. If any parcel owner performs improvements, maintenance, repairs or replacements without the approval of the other lot owners prior to performing such work, the lot owner performing such work shall become liable for the entire cost thereof, unless such work is deemed an emergency. However, where emergency repairs are necessary as more particularly noted in Paragraph No. 13 below, neither majority vote nor prior approval is necessary before making such improvements or undertaking such maintenance.

**4. Parking.** For the safety of the residents, no machinery, trailers, vehicles or other property may be stored or parked upon the Private Road except parking of vehicles for limited periods of time (not to exceed twelve hours).

**5. Cost Sharing.** Road maintenance, snowplowing and road improvement costs shall be shared on a pro-rata basis between the parcel owners sharing access to the above mentioned road. Each parcel owner's share of costs incurred shall be determined as follows: Pro-rated cost share will be based upon the percentage of roadway extending from the start of the Private Road to the intersection of each driveway where a residence exists, or to the midpoint of a property frontage that is adjacent to the roadway when a residence does not exist. The Road Commission Agent shall provide the owners an updated copy of the cost allocations at any point that changes are made to the cost allocations.

**6. Prepayment.** Prepayment of maintenance, snowplowing and improvement costs will be made to the road maintenance account by each property owner. Annually, on or before a date as specified by the Road Commission Agent, each parcel owner will contribute their pro-rated share of the estimated annual cost for road maintenance, road improvements, and annual snow removal. The Road Commission Agent shall send each parcel owner a two week notice of the annual payments due.

**7. Definition of a Parcel.** A parcel is defined as a land entity having a certified survey map (CSM), a platted subdivision lot number, or a parcel identification number in the case of unplatted lands. Each parcel is assessed and granted (1) vote regardless of the number of owners. If a parcel is owned by more than one person, all of the owners of the parcel will collectively be referred to as the "parcel owner" for purposes of this Agreement, and will be entitled to one collective vote (i.e. each parcel represents one vote in the matters covered by this Agreement).

**8. Future Parcels.** Any additional parcels gaining access to the Private Road by way of splitting existing parcels will be bound by all terms and conditions of this agreement, and will be required to pay that portion of the maintenance, snowplowing and improvement costs incurred after the split as determined using the formula contained in Paragraph No. 6 above. If any additional parcels are created after the original Private Road Maintenance Agreement is signed, the new parcel owners must also sign the

agreement. When a parcel is being sold on a land contract, the land contract vendee shall be deemed the owner of record.

**9. Snow Plowing.** The Private Road shall be snowplowed so as to permit year round access. The cost shall be shared by the parcel owners as indicated in Paragraph No. 6 above. Individual driveway snow plowing, if desired, will be invoiced to the parcel owners directly by the snow plow contractor.

**10. Checking Account.** The Road Commission Agent shall establish and maintain a bank checking account with a local bank, and will prepare and distribute to the herein affected parcel owners an annual income and expense report and a yearend balance sheet, accounting for all funds received and disbursed.

**11. Effective Term.** This Agreement shall be perpetual, and shall encumber and run with the land as long as the road remains private.

**12. Binding Agreement.** This Agreement shall be binding upon the parties hereto, their respective heirs, executors, administrators and assigns.

**13. Amendment.** This Agreement may be amended only by a two-thirds majority consent of all parcel owners.

**14. Enforcement.** This Agreement may be enforced by a majority of parcel owners. If a court action or lawsuit is necessary to enforce this Agreement, the party commencing such action or lawsuit shall be entitled to reasonable attorney fees and costs, if the party prevails.

**15. Disputes.** If a dispute arises over any aspect of the improvements, maintenance, repair or replacement, a third party arbitrator shall be appointed to resolve the dispute. The decision of the arbitrator shall be final and binding on all of the lot owners. Contact information for local arbitrators can be obtained through the American Arbitration Association. In selecting a third party arbitrator, each lot shall be entitled to one vote, and the nominee receiving a majority of the votes shall be the arbitrator. All parties shall share in the cost of any arbitration.

**16. Notices.** Parcel owners under the Agreement shall be notified by mail or in person. If an address of a parcel owner is not known, a certified notice will be mailed to the address to which the parcel owner's property tax bills are sent.

**17. Invalidity.** Should any provision in this Agreement be deemed invalid or unenforceable, the remainder of the Agreement shall not be affected and each term and condition shall be valid and enforceable to the extent permitted by law.

**18. Other Agreements.** This Private Road Maintenance Agreement replaces all previous Private Road Maintenance Agreements regarding the described Private Road.

**19. Disclaimer by Town.** It is understood and agreed that the Town of Boulder, the Town Council, the Planning Commission and the agents of the Town shall not be liable or responsible in any manner to the developer or the property owners along the road, or to their contractors, subcontractors, agents, or any other person, firm or corporation, for any debt, claim, demand, damages, action or causes of action of any kind or character arising out of or by reason of the activities or improvements being required herein.

**20. Recording This Document.** Original and amended copies of this document, including added signatures, shall be recorded and provided to the Town Clerk by the Road Commission Agent.

Signed,

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Anson Fogel and Alexandra Fuller

<date>

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Jay and Susan Kelly

<date>

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Nicolas Vincent

<date> \_\_\_\_\_

(Signatures)