

## **ANNUAL KEY USE AND INDEMNIFICATION AGREEMENT (2018-2019)**

Brighton Estates Property Owners Association, Inc. (BEPOA) and the undersigned Owner enter into this Annual Key Use and Indemnification Agreement ("this Agreement") effective on the date of the last signature, below.

### **Recitals**

The Utah Department of Transportation ("UDOT") issued a permit ("the Permit") granting BEPOA the right to plow and remove snow during the 2018–2019 winter season ("the Winter Season") from a portion of Utah State Road 224 ("SR 224"). The Permit contemplates:

- A. UDOT's closing and locking its winter gate ("the Winter Gate") on SR 224 at the top of the current winter parking, vehicle and trailer turnaround, recreation and snowmobile staging area on and adjacent to SR 224 above Deer Valley's Empire Lodge in Summit County ("the Empire Staging Area") during the Winter Season.
- B. The BEPOA's issuance and regulation of numbered non-duplicable keys to the Winter Gate to UDOT, Wasatch County, local law enforcement, emergency medical and fire department agencies, and Deer Valley/Wells Fargo.
- C. BEPOA's plowing and removal of snow from SR 224 beginning at the Empire Staging Area and continuing to the Wasatch County line.

Wasatch County has also authorized BEPOA to similarly plow and remove snow during the Winter Season. Wasatch County's authorization contemplates:

- D. BEPOA's plowing and removal of snow from Guardsman Pass beginning at the Summit County line and continuing through the intersection of Guardsman Pass and Pine Canyon Road and beyond if deemed necessary by BEPOA and permitted by Wasatch County.
- E. BEPOA's plowing and removal of snow throughout the intersection of Guardsman Pass and Pine Canyon Road for an additional parking, vehicle turnaround, recreation and snowmobile staging area (the "Girl Scout Camp Staging Area") for BEPOA and BEPOA Members consistent with the nature of the staging area previously used by them at the Girl Scout Camp Staging Area.

BEPOA obtained the permit from UDOT and the authorization from Wasatch County in order to maintain the historic winter access on (and easements adjacent to) SR 224 that have been enjoyed by BEPOA and BEPOA Members for decades, including at the intersection of SR 224 and the Guardsman Pass Connector Road that leads to Royal Street. Accordingly, BEPOA intends to accomplish the following:

- F. The regulation and issuance of numbered non-duplicable keys according to the terms and conditions stated in the below, as modified annually.
- G. The maintenance of the Winter Gate's lock, the numbered non-duplicable keys, and UDOT and/or Wasatch County-approved and required signs during the Winter Season on the Winter Gate, along SR 224, Guardsman Pass or around the Girl Scout Camp Staging Area.

### **Agreement**

Based on the foregoing, and for valuable consideration, the receipt and sufficiency of which are acknowledged, the parties agree as follows:

1. The foregoing Recitals are incorporated and made a part of this Agreement.
2. The Owner will receive one numbered, non-duplicable key to the Winter Gate located above the Empire Staging Area for the Winter Season upon signing and delivery of this Agreement and approval by BEPOA. The Winter Gate is re-keyed annually.
3. In the event of a lost or stolen key, the Owner may obtain a replacement numbered non-duplicable key for the Winter Season for \$600.00. Additional numbered non-duplicable keys may be obtained by the Owner for \$600.00. This Agreement extends to and governs the Owner's use of any replacement or additional keys. The Owner may also be required to sign additional Agreements for replacement or additional keys.

4. The Owner may elect to open the Winter Gate only for the Owner's personal motor vehicle (and trailer) use between the Empire Staging Area and the Girl Scout Camp Staging Area. The Owner shall immediately close and lock the Winter Gate after the Owner's use of the Winter Gate and shall not allow any other person access through the Winter Gate, unless the other person is accompanying the Owner as a guest or is a known holder of a key.
5. The Owner may elect to open the Winter Gate and may elect to drive on SR 224, Guardsman Pass, Pine Canyon Road and the Girl Scout Camp Staging Area to or from the Winter Gate only when weather, traffic and road conditions allow the Owner to safely drive on SR 224, Guardsman Pass, Pine Canyon Road and the Girl Scout Camp Staging Area. By electing to enter upon and make use of SR 224, Guardsman Pass, Pine Canyon Road or the Girl Scout Camp Staging Area, the Owner is deemed to have approved and accepted the weather, traffic and road conditions and fully assumed all associated risks.
6. The Owner understands and acknowledges that although BEPOA has the right to plow and remove snow, it may not plow or remove snow from SR 224, Guardsman Pass, Pine Canyon Road or the Girl Scout Camp Staging Area promptly or adequately after or during each snow fall or drift. Thus, the Owner agrees not to use SR 224, Guardsman Pass, Pine Canyon Road or the Girl Scout Camp Staging Area for motor vehicles (or trailers) until the snow is adequately removed, ice has adequately melted, and the road is safe for travel.
7. The Owner understands and acknowledges that BEPOA is planning to plow on a schedule during a snow storm (early morning, evening) but not necessarily continuously before, after or during a storm.
8. The Owner understands that BEPOA may not plow from the crest of Empire Pass down to the Girl Scout Staging Area for extended periods for weather, cost, regulatory or other reasons.
9. The Owner understands that if he or she gets stuck while using the plowed road, BEPOA will attempt to assist in freeing the vehicle and/or trailer but has no obligation to do so. If BEPOA does assist in freeing a vehicle and/or trailer, the Owner agrees to pay \$150.00 per occurrence to defer the cost of the service.
10. The Owner understands and acknowledges that BEPOA may terminate or suspend snow plowing and removal with or without notice should it determine, in its sole discretion, that costs, weather conditions, equipment limitations or other reasons make snow plowing or removal infeasible, impractical or prohibitive.
11. The Owner understands and acknowledges that when BEPOA plows or removes snow from the surface of SR 224, Guardsman Pass or Pine Canyon Road, it will endeavor to leave two or more inches of packed snow on all travel surfaces to accommodate snowmobile use of SR 224, Guardsman Pass, Pine Canyon Road and the Girl Scout Camp Staging Area.
12. The Owner agrees that in the event any person leaves a motor vehicle (or trailer) unattended on SR 224, Guardsman Pass or Pine Canyon Road, BEPOA may immediately remove or otherwise push the motor vehicle (and trailer) out of the way and any cost for doing so or damage to the motor vehicle (or trailer) or other property shall be the sole responsibility of the Owner whose numbered non-duplicable key provided the motor vehicle (and trailer) access through the Winter Gate, regardless of weather, traffic and road conditions and regardless of whether the Owner's key may have been lent, lost or stolen.
13. The Owner agrees to indemnify, defend, save and hold harmless BEPOA, its officers, directors, employees, plowing contractors and equipment operators, UDOT and Wasatch County from and against each and every claim, demand, or cause of action (including attorney's fees and costs incurred in defending the same), for any loss, damage, injury, death, loss of consortium or other casualty whatsoever arising or alleged to have arisen from any use of the Winter Gate by the Owner or other person who opened the Winter Gate or otherwise accessed SR 224, Guardsman Pass, Pine Canyon Road or the Girl Scout Camp Staging Area through the Winter Gate as a driver or a passenger in a motor vehicle with, or as a result of, the Owner's numbered non-duplicable key, regardless of weather, traffic and road conditions and regardless of whether the key may have been lent, lost or stolen.
14. The Owner understands and acknowledges that conditions during the Winter Season may make use of the Winter Gate, SR 224, Guardsman Pass, Pine Canyon Road and the Girl Scout Camp Staging Area inherently dangerous for motor vehicles, and that driving on those roads or otherwise electing to access the Winter Gate for motor vehicle use is a decision for which BEPOA cannot and shall not be responsible.
15. The Owner understands and acknowledges that BEPOA cannot control whether the Owner or its guest will elect to use the Winter Gate to operate motor vehicles or snowmobiles on SR 224, Guardsman Pass or the Girl Scout Camp Staging Area, and therefore, the Owner agrees for itself and any guest to assume all risk of using the Winter Gate for motor vehicle use during the Winter Season, including the risk of property

damage, personal injury and death. The Owner, for itself and any guest, waives and releases all claims, including, but not limited to claims for property damage, personal injury and death arising from any negligence or other fault of UDOT, Wasatch County, or BEPOA and their respective officers, directors, employees, plowing contractors or equipment operators and agrees not to sue UDOT, Wasatch County, BEPOA or their respective officers, directors, employees, plowing contractors or equipment operators as the result of any property damage, personal injury or death.

16. The Owner understands and acknowledges that by endeavoring to plow or remove snow during the Winter Season, BEPOA is engaging in a private, not a public, service for its members and that it makes no representation or warranty as to whether it will be able to plow or remove snow from SR 224, Guardsman Pass, Pine Canyon Road or the Girl Scout Camp Staging Area in a manner that will allow at all times for the safe use of motor vehicles by the Owner or anyone else.
17. The Owner shall while in or with a motor vehicle identify him or herself and the number of his or her numbered non-duplicable key to any other BEPOA member who produces his or her numbered non-duplicable key and asks for identification. Any person in or with a motor vehicle who refuses or fails to identify him or herself or who fails to produce a numbered non-duplicable key shall be informed that they will be reported to law enforcement and BEPOA. In all such cases, the member shall endeavor to record the motor vehicle's (and trailer's) license plate number(s) and include such information in the report.
18. By accepting the numbered key provided under this Agreement, the Owner understands and acknowledges that they must adhere to the designated parking areas and guidelines in keeping with BEPOA's prior agreements with Wasatch County and Park City Municipal. Thus, Owner agrees to park only in the designated areas located at the Pine Canyon Y-Intersection and the Wasatch County right-of-way easement or off the SR-224 switchback and Guardsman Pass road parking within the UDOT right-of-way easement. The right-of-way easements are designated and restricted by bamboo and rope boundaries with signage. Seasonal, long-term trailer and long-term vehicle parking is ONLY allowed in the designated area adjacent to the Wasatch County gate installed on Pine Canyon road. Brighton Estates Plow Program will clear snow up to the Wasatch County gate to allow for reasonable access to long-term trailers and long-term vehicles.
19. The Owner understands and acknowledges that all motor vehicles must be moved to allow for plowing actions for each storm equal to or greater than 12 inches of snow, or a combined accumulation of 12 inches. Long-term vehicle parking must adhere to moving vehicles to facilitate snow removal. It will be each key holder's responsibility to stay up to date on road and parking conditions to facilitate prompt removal of snow from community parking areas. The Groupme app is the primary source for road condition updates.
20. The Owner understands and acknowledges that all Snowmobile/OSV/ATV and Snowcats must be parked in the designated parking areas only in the right-of way easements along Pine Canyon Road or SR224 and Guardsman Pass road as designated and restricted by bamboo and rope boundaries with signage. Snowmobile parking is NOT allowed behind the historic cable area of Bonanza Flats. Snowmobile, OSV, and ATV parking is NOT allowed in the Pine Canyon Road "Island Area" beyond the area designated and restricted by bamboo and rope boundaries with signage.
21. Any Owner or guest who experiences mechanical Issues with vehicles or snow machines must immediately communicate the issue to the BE Plow Program. Timely actions must occur to comply with the above guidelines.
22. Those portions of this Agreement governing provision of a key to the Owner shall be effective only during the Winter Season. All other portions of this Agreement will survive the Winter Season.
23. The Owner shall have no right or authority to assign or otherwise transfer or convey his or her rights and responsibilities under this Agreement without the prior written consent of BEPOA, which consent may be withheld for any reason.
24. The terms and conditions contained in this Agreement shall inure to the benefit of, and be binding upon, the successors, heirs and assigns of the parties.
25. This Agreement represents the entire understanding and agreement of the parties, supersedes any prior oral or written understandings, agreements and representations between the parties, and can only be amended or modified by a written agreement duly executed by the parties.

26. The Owner's obligations and duties under this Agreement may be enforced by BEPOA in its sole discretion. The parties agree that, in the event of any breach by the Owner (other than a failure to pay amounts due), damages will be difficult or impossible to calculate and temporary and permanent injunctive relief is an appropriate remedy available to BEPOA, who may secure such remedy without the need to post a bond or other security.
27. In the event any party commences or uses any legal action to enforce this Agreement, the prevailing party shall be entitled to an award of all attorney fees and costs reasonably incurred in enforcing this Agreement.
28. In the event that any condition, covenant, or other provision of this Agreement is held to be invalid or void by any court of competent jurisdiction, it shall be deemed severable from the remainder of this Agreement and shall in no way affect any other condition, covenant, or other provision of this Agreement. If a condition, covenant or other provision of this Agreement is held to be invalid, it is agreed that it shall be deemed to remain valid to the extent permitted by law.
29. THE OWNER SHALL HAVE NO RIGHT TO USE AND WILL NOT USE THE WINTER GATE TO ACCESS SR 224 OR GUARDSMAN PASS BETWEEN THE EMPIRE STAGING AREA AND THE GIRL SCOUT CAMP STAGING AREA UNTIL THIS AGREEMENT IS SIGNED, COMPLETED AND APPROVED BY BEPOA. TO MAINTAIN BEPOA'S HISTORICAL PARKING, ALL GATE KEY HOLDERS AND GUESTS MUST ADHERE TO THESE GUIDELINES. NONCOMPLIANCE WITH GUIDELINES WILL NEGATIVELY IMPACT OUR FUTURE PARKING AND ACCESS.
30. THE OWNER HAS CAREFULLY READ THIS AGREEMENT, FULLY UNDERSTANDS HIS OR HER RESPONSIBILITIES UNDER THIS AGREEMENT AND KNOWINGLY ACCEPTS THEM AS EVIDENCED BY HIS OR HER SIGNATURE BELOW.

Owner's LOT NUMBER \_\_\_\_\_ PLAT NUMBER \_\_\_\_\_ KEY NUMBER \_\_\_\_\_.

**Owner ACCEPTANCE:**

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

\_\_\_\_\_  
Print Name

\_\_\_\_\_

Telephone number(s):

Work: \_\_\_\_\_

Home: \_\_\_\_\_

Cell: \_\_\_\_\_

E-Mail(s)

\_\_\_\_\_  
Vehicle(s) description(s):

Make \_\_\_\_\_ Model \_\_\_\_\_ Color \_\_\_\_\_

Make \_\_\_\_\_ Model \_\_\_\_\_ Color \_\_\_\_\_

**Brighton Estates Property Owners Association, Inc.**

By: \_\_\_\_\_