

AMENDMENT TO  
MUTUAL EASEMENT AGREEMENT

THIS FIRST AMENDMENT TO MUTUAL EASEMENT AGREEMENT is entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2023, by and between Gregory A. Barnes and Carey A. Barnes, P.O. Box 1528, Grand Lake, CO 80447 (hereinafter collectively referred to as the Barnes), and Daven Haven Cabins Owners Association, a Colorado non-profit corporation, P.O. Box 1528, Grand Lake, CO 80447 (hereinafter referred to as the Association).

WHEREAS, Barnes is the owner of property situate in Grand County, Colorado, described as Tract 4, Daven Haven Cabins, Town of Grand Lake, according to the Correction Plat of Daven Haven Cabins, formerly known as Daven Haven Cottages recorded December 21, 2012, at Reception No. 2012009954 of the records of the Clerk and Recorder of Grand County, Colorado, (the Barnes’ Property); and

WHEREAS, the Association is the owner of property situate in Grand County, Colorado, described as all of the property, including, without limitation, Open Space, General Common Elements and Limited Common Elements, and EXCLUDING THE UNITS, described in the Correction Plat for Daven Haven Cabins, formerly known as Daven Haven Cottages recorded December 21, 2012, at Reception No. 2012009954 of the records of the Clerk and Recorder of Grand County, Colorado (the Association’s Property); and

WHEREAS, the Barnes and the Association entered into that certain Mutual Easement Agreement recorded April 30, 2012, at Reception No. 2012003170 of the records of the Clerk and Recorder of Grand County, Colorado, for the use and maintenance of the driveway known as “Daven Haven Lane”; and

WHEREAS, the Barnes now intend to split the Barnes’ Property into two separate parcels to be known as Parcel 4 and Parcel 5 as more fully described in the Daven Haven Cabins 3rd Amended Final Plat recorded \_\_\_\_\_ at Reception No. \_\_\_\_\_ of the real estate records of the Clerk and Recorder of Grand County, Colorado; and

WHEREAS, the parties desire to enter into this First Amendment to include the newly created Parcel 5 in the shared use, maintenance and upkeep of the driveway as hereinbelow provided for; and

NOW, THEREFORE, in consideration of the premises above set forth and for the mutual benefits to be derived by the parties, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. Barnes GRANTS to the Association a perpetual, non-exclusive easement over the existing 18-foot wide driveway over Parcels 4 and 5 owned by them and identified as Daven Haven Lane and over the existing “Emergency Exit” over Parcel 5 from Daven Haven Lane to the alley south of Units 31 and 32 as shown and as more fully described on Exhibit A attached hereto and incorporated herein by reference.

2. The Association GRANTS to Barnes for use by both Parcels 4 and 5 a perpetual, non-exclusive easement over the existing 18-foot wide driveway owned by it and identified as Daven Haven Lane.
3. Daven Haven Lane and the Emergency Exit shall be maintained in a good, clear, safe and attractive manner. Any emergency repairs required to be made may be made by any party, without notice, the reasonable cost thereof to be shared pursuant to this Mutual Easement Agreement.
4. The parties hereto agree to share the cost of maintenance, repair, upkeep and plowing of the entire Daven Haven Lane, including the Emergency Exit, in the following proportion: the Association 75% of the total cost; the Barnes' Parcel 4, 15% of the total cost; and the Barnes' Parcel 5, 10% of the total cost. Each party shall be responsible for the taxes assessed, if any, against its portion of Daven Haven Lane.
5. Each party shall be responsible for any damage to Daven Haven Lane or the Emergency Exit caused by it, or its agents, employees, guests or invitees. No party shall allow any mechanic's lien or any other encumbrance to attach to Daven Haven Lane or the Emergency Exit.
6. The Association and Barnes as owner of Parcel 4 shall maintain a policy of commercial liability insurance coverage which shall include coverage for Daven Haven Lane and the Emergency Exit having limits of liability of at least \$1,000,000 and naming the other parties as additional insureds. Barnes as owner of Parcel 5 shall maintain either a commercial liability insurance policy or a homeowner's policy, as appropriate, having a limit of liability of at least \$1,000,000. Each party shall provide the others with a certificate of insurance or other proof of coverage at least once annually, and from time to time upon reasonable request.
7. This Mutual Easement Agreement shall run with the land and shall inure to the benefit of the parties hereto, their successors and assigns.
8. This Mutual Easement Agreement may be modified only by a writing, signed by all parties, and recorded in the real estate records of Grand County, Colorado.
9. In the event of any dispute arising out of this Mutual Easement Agreement, the parties shall attempt in good faith to resolve such dispute between themselves. Any unresolved disputes shall be submitted to mediation prior to litigation or arbitration. The mediator shall be agreed upon by the parties and the mediator's fees shall be split equally by the disputing parties. Arbitration must be agreed upon by all disputing parties. The prevailing party in any litigation or arbitration shall be entitled to an award of its reasonable attorney's fees and costs.
10. Time is of the essence hereof. In the event any payment required to be made hereunder is not made when due, interest shall accrue thereon at the rate of eighteen percent (18%) per annum until paid.

IN WITNESS WHEREOF, the parties hereto have executed this Mutual Easement Agreement on the dates appearing next to their signatures below.

OWNERS OF PARCEL 4 AND PARCEL 5:

By \_\_\_\_\_  
Gregory A. Barnes

STATE OF COLORADO                    )  
  )ss  
COUNTY OF GRAND                    )

Subscribed and sworn to before me in the County of Grand, State of Colorado this \_\_\_\_\_  
day of \_\_\_\_\_, 2023, by Gregory A. Barnes at \_\_\_\_\_ o'clock \_\_\_\_\_.m.

My Commission Expires: \_\_\_\_\_  
Witness my hand and official seal.

\_\_\_\_\_  
Notary Public

By \_\_\_\_\_  
Carey A. Barnes

STATE OF COLORADO                    )  
  )ss  
COUNTY OF GRAND                    )

Subscribed and sworn to before me in the County of Grand, State of Colorado this \_\_\_\_\_  
day of \_\_\_\_\_, 2023, by Carey A. Barnes at \_\_\_\_\_ o'clock \_\_\_\_\_.m.

My Commission Expires: \_\_\_\_\_  
Witness my hand and official seal.

\_\_\_\_\_  
Notary Public

OWNER OF PARCEL 3:

DAVEN HAVEN CABINS OWNERS’  
ASSOCIATION,  
a Colorado non-profit corporation

By \_\_\_\_\_  
Gregory A. Barnes, President

STATE OF COLORADO            )  
  )ss  
COUNTY OF GRAND             )

Subscribed and sworn to before me in the County of Grand, State of Colorado this \_\_\_\_\_  
day of \_\_\_\_\_, 2023, by Gregory A. Barnes as President of Daven Haven  
Cabins Owners’ Association, a Colorado non-profit corporation at \_\_\_\_\_ o’clock \_\_\_\_ .m.

My Commission Expires: \_\_\_\_\_  
Witness my hand and official seal.

\_\_\_\_\_  
Notary Public