

BILLING SERVICES AGREEMENT

THIS BILLING SERVICES AGREEMENT (“*Agreement*”), is made and entered into effective this 22nd day of August, 2024 (the “*Effective Date*”), by and between WPR UTILITY DISTRICT, a Utah special district (the “*District*”), and WASATCH PEAKS RANCH CLUB, LLC, a Utah limited liability company (the “*Club*”). The District and the Club are sometimes referred to herein individually as a “*Party*” and collectively as the “*Parties*.”

WHEREAS, pursuant to the provisions of Utah Code Annotated Section 17B-1-103(2)(j), the District is authorized to impose fees and charges for services provided by the District and to take such action the board of trustees considers appropriate to assure the collection of all fees and charges the District imposes; and pursuant to the provisions of Utah Code Annotated Section 17B-1-103(2)(l), the District is authorized to enter into a contract that the District board of trustees considers necessary, convenient or desirable to carry out the District’s purposes; and

WHEREAS, the board of trustees of the District has determined that it is convenient, desirable, and in the best interest of the District, as a start-up district, to retain the Club to perform billing services for and on behalf of the District as herein more particularly described, and the Club is willing and duly authorized under its governing documents to provide said services to the District, subject to the terms and provisions of this Agreement;

NOW, THEREFORE, in consideration of the services to be provided to the District by the Club, as hereinafter set forth, the sums to be paid therefore, and the covenants and conditions set forth herein, the Parties hereby mutually agree as follows:

1. SERVICES TO BE PROVIDED. It is acknowledged that the customers of the District, to whom District services are being provided, are also members of the Club. As such, it is agreed that it is in the best interest of the District to appoint the Club to perform billing, collection and remittance services for and on behalf of the District.

(a) Billing services shall be provided by the Club in conformance with the following procedures:

(i) The Club shall bill all customers receiving services from the District through each customer’s membership account with the Club.

(ii) The District shall prepare the invoices applicable to each customer, including any back-up documentation as required with respect thereto, setting forth the particular fees and charges due and owing by each customer which have been imposed by the District in conformance with its duly established rules, regulations and policies, and in conformance with applicable state law. The invoices shall be delivered by the District to the Club within the time frame reasonably required by the Club.

(iii) The Club shall attach the invoices to and the same shall be included as a part of the Club's membership statements sent to its members each month. The Club shall be obligated to collect and receive all funds due and owing to the District as detailed and set forth in the invoices delivered by the District.

(iv) The Club shall receive, properly account for and remit to the District all funds collected within 30 days of receipt of said funds.

(c) In connection with its obligations hereunder, the District appoints the Club as its lawful attorney-in-fact with authority: (i) to enforce collection of monies due and owing to the District, including the initiation of such proceedings under the Club's covenants, conditions and restrictions and other policies and procedures duly established by the Club for the collection of dues, fees and charges, as may be applicable; (ii) to initiate legal proceedings in the name of the District for the collection of any monies owed to the District; (iii) to receive and open any billing related mail addressed to the District; and (iv) to otherwise act as reasonably required in fulfilling its obligations under this Agreement.

(d) The Club shall maintain digital records pertaining to the Club's billing obligations hereunder which are separate from the Club's own financial records, and shall separately account for all District related billings, receipts and remittances. These records shall be retained for a period of 7 years and available for inspection by officials of the District at any time in their sole discretion, during normal business hours.

(e) The Club shall devote such time and effort to the performance of its billing services hereunder as may be reasonably necessary for the good faith performance of its obligations hereunder. The Club shall not be considered in default of this Agreement to the extent such performance by the Club is prevented or delayed by any cause, present or future, which is beyond the reasonable control of the Club.

2. CLUB'S INDEPENDENT CONTRACTOR STATUS.

(a) It is hereby understood and agreed that at all times during the terms of this Agreement the following shall apply: (i) all work and acts of the Club shall be performed as an independent contractor and not as an agent, officer, employee of the District, and that this Agreement is not intended to, and shall not be construed so as to create any partnership, joint venture or relationship other than that of a client and independent contractor; (ii) the Club may provide services to others during the same period service is being provided to the District under this Agreement, subject to the Club's faithful performance of its obligations hereunder; (iii) the Club shall have no claim against the District for employee rights or benefits whatsoever; (iv) the Club is not subject to the direction and control of the District except as to the final result of the services contracted for under this Agreement; (v) the Club shall be obligated to pay all applicable taxes, deductions and other obligation, including, but not limited to, federal and state income taxes, withholding and Social Security taxes, and unemployment, disability and worker's compensation insurance with respect to the fees paid by the District for the Club's services hereunder; (vi) all employees of the Club and any third persons employed by the Club in providing the services hereunder shall be entirely and exclusively under the direction, supervision and control of the Club, and all terms of employment, including hours,

wages, working conditions, discipline, hiring, discharge and any and all other terms of employment or requirements of law pertaining thereto shall be the sole responsibility of and be determined solely by the Club, and not the District.

(b) The Club shall have no obligation with respect to, nor any responsibility whatsoever for, any services provided by the District to its customers, and nothing herein shall be construed to suggest or imply otherwise. The operation of the District and all matter pertaining thereto shall be the sole and separate responsibility of the District.

3. **CONTRACT TERM.** The term of this Agreement shall commence as of the Effective Date and continue until terminated as set forth in Section 6 herein.

4. **PAYMENT FOR BILLING SERVICES.** The Club will invoice the District a flat fee, to be mutually agreed upon by the Parties, at the beginning of each calendar month for the billing services provided during the previous month (the "*Fee*"). The Fee will be reviewed, and if needed, adjusted, at the beginning of each financial year, or at such other times as are agreeable to the Parties. Payment shall be due and payable by the District on each invoice by the Club within thirty (30) days of receipt. In the event the District becomes more than 90 days past due in payments to the Club, the Club may, in its sole option terminate this Agreement and immediately cease to provide billing services under this Agreement.

5. **INDEMNIFICATION; LIMITATIONS OF LIABILITY.** Each Party agrees to indemnify, defend and save the other Party harmless from and against all claims, suits and costs, including attorneys' fees for injury or damage of any kind, arising out of the negligent acts, errors or omissions of its officers, agents, contractors or employees in any way related to the Party's obligations under this Agreement. In the event any claims are caused by the joint or concurrent negligence of the Parties, each Party shall indemnify the other only in proportion to that Party's own negligence. Neither Party shall be responsible for warranties, guarantees, fitness for a particular purpose or breach of fiduciary duty. The terms of this Section shall survive the termination hereof. IN NO EVENT SHALL EITHER PARTY BE LIABLE TO THE OTHER PARTY FOR ANY INDIRECT, SPECIAL, OR CONSEQUENTIAL DAMAGES OR LOST PROFITS ARISING OUT OF OR RELATED TO THIS AGREEMENT OR THE PERFORMANCE OR BREACH THEREOF.

6. **TERMINATION.** Either Party may terminate this Agreement without cause at any time upon written notice to the other Party. Upon termination, neither Party shall have any further obligation under this Agreement except for: (i) obligations accruing before the Effective Date of the termination of this Agreement and any obligation that this Agreement expressly provides is to survive termination. The Parties shall undertake in good faith all matters reasonably necessary to wind up their activities under this Agreement in an orderly manner.

7. **DEFAULT AND BREACH; REMEDIES.** The failure by the Club to observe and perform any of the terms, covenants and conditions of this Agreement, where the failure to perform shall continue for a period of ten (10) days after written notice from the District, shall constitute a material default and be a breach of this Agreement by the Club; however, in the event the default is such that it cannot be cured within said ten day period, there shall be no event of default if the Club shall commence to cure the default

within the ten day period and proceeds thereafter to cure the default with all possible diligence, and the default is cured within a reasonable period. The District shall have available to it all rights and remedies afforded at law or in equity in the event of a breach of this Agreement by the Club, including, without limitation, termination of this Agreement, upon ten (10) day's written notice.

8. **ASSIGNMENT PROHIBITED.** The Club may not assign any right or delegate any duties hereunder to be performed in connection with the billing services to be provided by it without the express, prior written consent of the District, and any attempted or purported assignment without such consent shall null and void.

9. **WAIVER.** Unless otherwise set forth in writing, a waiver by either Party of any breach or a waiver of any right or remedy available at law or in equity in the event of a breach, shall not constitute or be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition or of any continued or subsequent right to same right or remedy.

10. **COMPLETENESS.** This Agreement contains the entire agreement of the Parties with respect to the subject matter hereof, and supersedes all other prior agreements, understandings, statements, representations and warranties, oral or written, express or implied, by and among the Parties and their respective affiliates, representatives and agents in respect of the subject matter hereof.

11. **AMENDMENT; MODIFICATION.** This Agreement cannot be amended or modified except pursuant to an instrument in writing executed by the Parties.

12. **FURTHER ACTION.** The Parties hereby agree to execute and deliver such additional documents and to take such further action as may become necessary or desirable to fully carry out the provisions and intent of this Agreement.

13. **ATTORNEY'S FEES.** If either Party commences a legal proceeding to enforce any of the terms of this Agreement, the prevailing Party in such action shall have the right to recover reasonable attorneys' fees and costs from the other Party, in an amount to be fixed by the court in the same action. The term "legal proceedings" as used above shall be deemed to include appeals from a lower court judgment and it shall include proceedings in the federal bankruptcy court, whether or not they are adversary proceedings or contested matters.

14. **BINDING EFFECT.** This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors and permitted assigns.

15. **INCORPORATION OF RECITALS.** The Recitals first set forth above are hereby incorporated into and made a part of this Agreement.

16. **GOVERNING LAW.** This Agreement shall be governed and construed in accordance with the substantive and procedural laws of the State of Utah.

17. **AUTHORITY.** The individuals executing this Agreement on behalf of the Parties hereby warrant that they have the requisite authority to execute this Agreement on behalf of the respective Parties and that the respective Parties have agreed to be and are bound hereby.

IN WITNESS WHEREOF, the Parties have executed this Agreement effective the date first set forth above.

WASATCH PEAKS RANCH CLUB, LLC

By: Wasatch Peaks Ranch Management, LLC, its Manager

By:  Jenny Robinson (Sep 9, 2024 10:17 MDT)
Name: Jenny Robinson
Title: CFO

WPR UTILITY DISTRICT

By: *Vance Bostock*
Vance Bostock, Chair, Board of Trustees

Billing Services Agreement - WPR Utility District - 08.22.24

Final Audit Report

2024-09-11

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