



W3216656

E# 3216656 PG 1 OF 31
Leann H. Kilts, WEBER COUNTY RECORDER
09-Feb-22 1027 AM FEE \$40.00 DEP SLV
REC FOR: MOUNTAIN VIEW TITLE - OGDEN
ELECTRONICALLY RECORDED

When recorded return to:
Riverdale 4200, LLC
c/o The DRH Company
5445 S. Highland Drive
SLC, UT 84117

**GRANT OF EASEMENTS,
DECLARATION OF RESTRICTIONS,
AND
MAINTENANCE AGREEMENT**

RIVERDALE LANDING, PHASES 1 & 2

This Grant of Easements, Declaration of Restrictions, and Maintenance Agreement (“Agreement”) is made as of the date signed below, by DRH Riverdale Cane’s, LLC, Riverdale 4200, LLC (collectively “DRH”), We Know Success Properties, LLC (“We Know”), and Larry H. Miller Management Corporation, a Utah corporation (“Miller”), title owners of the real property described herein. DRH is referred to herein as DRH and Declarant. DRH, Miller and We Know are collectively referred to herein as the “Parties” and individually as a Party.

RECITALS

1. The real property described herein consists of five (5) parcels as indicated on the site plan attached hereto as Exhibit “A”. The five (5) parcels are collectively referred to herein as the “Subject Property” and individually as a “Parcel”. The owners of the Subject Property are referred to herein collectively as the “Owners” and separately as an “Owner.”

2. DRH is the Owner of the following real property (“Lot 201”, “Lot 202”, “Lot 203”):

All of Lots 201, 202 and 203, Riverdale Landing, Phase 2 Subdivision, Ogden City, Weber County, State of Utah, According to the Official Plat Thereof. **

06-341-0001; 0002; 0003

3. Miller is the Owner of the following real property (“Lot 204”):

All of Lot 204, Riverdale Landing, Phase 2 Subdivision, Ogden City, Weber County, State of Utah, According to the Official Plat Thereof.

06-341-0004

4. We Know is the Owner of the following real property (“Lot 1”):

All of Lot 1, Riverdale Landing Phase 1 Subdivision, Riverdale City, Weber County, Utah.

06-332-0001

**LOTS 201 and 202, ARE CURRENTLY VESTED IN THE NAME OF WVC 3279 LLC, A UTAH LIMITED LIABILITY COMPANY and RIVERDALE 4200 LLC, A UTAH LIMITED LIABILITY COMPANY. WVC 3279LLL, HAS REVIEWED THE CONTENTS OF THIS AGREEMENT AND CONSENTS TO THE SAEM. SEE ATTACHED SIGNATURE ACKNOWLEDGEMENT.

5. The Parties intend to develop, lease or sell some or all of the Subject Property and desire to place easements, restrictions and maintenance covenants on the Subject Property in connection with ownership, use and development of the Subject Property.
6. Lot 1 has been developed in accordance with and is subject to a Development Agreement, dated September 29, 2017 (“Development Agreement”), between We Know’s predecessor in interest, Grand Slam Ventures (“GSV”), and the Redevelopment Agency of Riverdale City (“RDA”).
7. The Parties desire that the Subject Property be subject to certain terms, conditions, stipulations and easements which serve to benefit the Subject Property.
8. The Parties desire and agree to share the expenses associated with maintaining certain portions of the Subject Property identified herein and in the Maintenance Addendum as Shared Maintenance Areas (“SMA”).

NOW THEREFORE, the Parties hereby submit the Subject Property to the following easements, covenants, restrictions and maintenance obligations as set forth herein and described below.

Introductory Notes:

- (A) Attached hereto and incorporated herein is a Maintenance Addendum outlining the duties and responsibilities of the Maintenance Director and the process by which Shared Maintenance Expenses (“SMEs”) will be apportioned and collected.
- (B) The words “Lot” and “Parcel” are used interchangeably and shall have the same meaning herein unless the context clearly indicates otherwise.
- (C) The Recitals set forth above are accepted as being accurate and incorporated as part of this Agreement.

1. SHARED DRIVE AISLE (“SDA”) - GRANT OF EASEMENT

(Applicable to: Lot 1, and Lots 201, 202, 203 & Lot 204)

- 1.1 **Extension of the Shared Drive Aisle.** We Know’s predecessor in interest, GSV, in accordance with paragraph 2(b) of the Development Agreement, constructed a shared drive aisle (“SDA”) off 500 West Street providing access to Lot 1. The SDA is a SMA. The owners of Lots 201, 202, 203 & Lot 204 shall extend the SDA by constructing the SDA to the north across portions of the Lots 201, 202 & 203 and Lot 204. The location and placement of the SDA extension is more particularly shown on the site plan attached as Exhibit “A” and described on the legal description attached as Exhibit “B”. The respective Owner(s) of Lots 201, 202, and 203 will develop and construct the street, curb, gutter, parking, landscape, sidewalk, and utility improvements on the SDA located within the Lots at such Owner’s sole cost and expense.

1.2 **Grant of Ingress, Egress and Access Easement.** The Owners of the Subject Property, to wit, Lots 201, 202 & 203, Lot 204 and Lot 1, hereby grant, reserve, declare and create for the benefit of each of the Lots and all Owners of the Subject Property, their successors and assigns, a perpetual, non-exclusive access easement, over, across and through those portions of the SDA identified and described on the attached Exhibits "A" and "B", for the purpose of providing and permitting Owners and their respective successors or assigns, invitees, employees, tenants, licensees, contractors, and guests (collectively, "Permittees"), pedestrian and vehicular ingress, egress and cross-access to the Subject Property.

1.3 **Maintenance and Shared Expenses.**

- (a) **Shared Pro-Rata Assessments.** The Owners of the Subject Property shall be assessed for those SMEs associated with maintaining the SDA, including but not limited to snow removal and asphalt maintenance. The SMEs incurred in connection with the SDA shall be assessed against each Subject Property based on a pro-rata share of the SDA SMEs. Subject to Section 1.3(c) with respect to Lot 204, the amount assessed to each Subject Property shall be calculated based upon the square footage of each Parcel in relation to the total square footage of all Parcels within the Subject Property, or, if additional property owners are granted an easement or access to the SDA, the total square footage of all Parcels having legal access to the SDA.
- (b) **SDA Expansion.** If additional property owners desire use of or an easement or access over, across or to the SDA, the additional property owners may be included in and become subject to the terms of this Agreement upon the consent of not less than seventy-five percent (75%) of Parcel Owners contained in a written amendment to this Agreement. Additional property owners shall be required to pay a pro-rata share of the SDA SMEs based on the square footage of their Parcel as a percentage of all Parcels possessing or sharing access and easement rights in the SDA.
- (c) **Miller Pro-Rata Share; Miller Assessed Upon Development.** Notwithstanding the foregoing, Lot 204 shall not be assessed SDA SMEs until Lot 204 is further developed or subdivided for commercial or residential use and buildings are constructed on Lot 204. Lot 204 shall begin paying a share of the SDA SMEs at such time as construction is completed, as evidenced by the applicable governmental authority's issuance of a certificate of occupancy, on each phase or portion of Lot 204. For all purposes under this Agreement, in calculating the Lot 204 pro-rata share for any SMEs, the portion of Lot 204 not containing improvements or development (i.e., the approximately four acres on the hillside portions of Lot 204) shall be excluded from the calculations of Lot 204's pro-rata share. The Lot 204 SDA assessment shall not include those portions of Lot 204 that are not developed and on which no buildings are constructed. When a portion of Lot 204 is improved with completed construction, as evidenced by the applicable governmental authority's issuance of a certificate of

occupancy, only the square footage of the completed portion of Lot 204 shall be included in the total square footage of all Parcels within the Subject Property for purposes of calculating the SDA SMEs. It is recognized that of the approximately 12 acres within Lot 204, about four (4) acres are located on a hillside that may not be subject to development or improvement. Accordingly, it is anticipated upon full build-out of Lot 204, approximately eight (8) acres of Lot 204 shall be subject to the SDA SMEs assessment.

2. BRANZ WAY- GRANT OF EASEMENT

(Applicable to: Lot 1, and Lots 201, 202, 203 & Lot 204)

- 2.1 **Branz Way Access- Shared Drive.** “Branz Way” is a private shared drive connecting the SDA with Riverdale Road. Branz Way is a SMA. The location and placement of Branz Way is more particularly shown on the site plan attached as Exhibit “A”, and described by the legal description attached as Exhibit “C”. The respective Owner(s) of Lots 201, 202, and 203 will develop and construct the street, curb, gutter, parking, landscape, sidewalk, and utility improvements on Branz Way located within the Lots at such Owner’s sole cost and expense.
- 2.2 **Grant of Ingress, Egress and Access Easement.** DRH and Miller hereby grant, reserve, declare and create for the benefit of each of the Lots and all Owners of the Subject Property, their successors and assigns, a perpetual, non-exclusive access easement, over, across and through those portions of Branz Way identified and described on the attached Exhibits “A” and “C”, for the purposes of providing and permitting Owners and their respective Permittees pedestrian and vehicular ingress, egress and cross-access to the Subject Property.
- 2.3 **Maintenance and Shared Expenses.**
- (a) **Shared Pro-Rata Assessments.** Lot 1, Lots 201, 202 & 203 and Lot 204 shall be assessed for all SMEs associated with maintaining Branz Way, including but not limited to snow removal and asphalt maintenance. The Branz Way SMEs shall be assessed against each Parcel within the Subject Property based on a pro-rata share of the Branz Way SMEs. Subject to Section 2.3(c) with respect to Lot 204, the amount assessed to each Subject Property shall be calculated based upon the square footage of each Parcel in relation to the total square footage of all Parcels within the Subject Property, or, if additional property owners are granted an easement or access to the SDA, the total square footage of all Parcels having legal access to the SDA.
- (b) **Branz Way Expansion.** If additional property owners are granted an easement or access over, across or to Branz Way, the additional property owners may be included in and become subject to the terms of this Agreement with the consent of not less than seventy-five percent (75%) of Parcel Owners contained in a written amendment to this Agreement. Additional property owners shall be required to pay a pro-rata share of the

Branz Way SMEs based on the square footage of their Parcel as a percentage of all Parcels possessing or sharing access and easement rights in Branz Way.

- (c) **Miller Assessed Upon Development.** Lot 204 shall not be assessed for Branz Way SMEs until Lot 204 is further developed or subdivided for commercial or residential use and buildings are constructed on Lot 204. Lot 204 shall begin paying a share of the Branz Way SMEs at such time as construction is completed, as evidenced by the applicable governmental authority's issuance of a certificate of occupancy, on each phase or portion of Lot 204. Lot 204 Branz Way SMEs assessments shall not include those portions of Lot 204 that have not been developed and on which no buildings have been constructed. When a portion of Lot 204 is improved with completed construction, as evidenced by the applicable governmental authority's issuance of a certificate of occupancy, only the square footage of the completed portion of Lot 204 shall be included in the total square footage of all Parcels within the Subject Property for purposes of calculating the Branz Way SMEs. It is recognized that of the approximately 12 acres within Lot 204, about four (4) acres are located on a hillside that may not be subject to development or improvement. Accordingly, it is anticipated upon full build-out of Lot 204, approximately eight (8) acres of Lot 204 shall be subject to the Branz Way SMEs assessment.
- (d) **Insurance.** Because Branz Way is located largely within Lot 204, the Maintenance Director shall obtain and maintain commercial general liability insurance pursuant to the terms of Section 8 below and apportion the Branz Way liability insurance coverage among the Subject Property Owners as a Branz Way SME in accordance with this Section 2.3.

3. MASTER PROJECT SIGN

(Applicable to: Lot 1, Lots 201, 202, 203 and Lot 204)

- 3.1 **Grant of Easement.** We Know hereby grants to Lots 201, 202, 203 and Lot 204, and their Owners, successors and assigns, a 4-foot by 16-foot easement ("Easement Area") along with an appropriate utility easement for electrical power and a reasonable access easement, on, over and across the Lot 1 for the purpose of constructing, installing, replacing, repairing and maintaining a Master Project Sign. The Master Project Sign is a SMA. The Easement Area is labeled on the Site Plan (attached as Exhibit "A") as the "Master Project Sign". The Master Project Sign will be professionally prepared and maintained in a neat manner and will comply with all applicable laws.
- 3.2 **Shared Expense.** The Subject Property Owners have the collective right to install and maintain one (1) shared Pylon Master Project Sign within the Easement Area, along with required or desired electrical power. The electric power for the sign shall

be separately metered if possible and reasonable. If electric power is provided by Lot 1's meter, Lot 1 shall be reimbursed for a share of the electric power expenses as reasonably be determined by the Owner of Lot 1. The Maintenance Director shall maintain the Master Project Sign as a SME with each Subject Property Owner paying an equal share of the Master Project Sign's construction, use and maintenance expense, and the Owner(s) of Lots 201, 202, and 203 shall cause the construction and completion of the Master Project Sign. In the event that the total cost to construct the Master Project Sign exceeds \$50,000, We Know's portion of the shared expense to construct the Master Project Sign shall be calculated using no more than \$50,000 as the total cost for construction of the Master Project Sign. Each Subject Property Owner shall be entitled to install and use, at each Owner's sole expense, one panel of equal size with the other panels on the Master Project Sign. Each Owner shall be responsible for the cost to design and install its individual panel.

- 3.3 **Lot 204 Signage.** When Lot 204 is subdivided or developed into additional parcels or building sites, the owners of the Lot 204's newly subdivided parcels or business sites (the "Lot 204 Parcels") shall be permitted use all remaining panels in the Master Project Sign not being used by Lots 1, 201, 202 and 203. Lot 204 Parcels' Owners shall pay all costs and expenses incurred in connection with the installation of additional panels. Additional Lot 204 Parcels' panels may be added to the Master Project Sign if done without reducing the number or size of panels available to the existing Lot Owners. Should Lot 204 Parcels' Owners desire more panels on the Master Project Sign than are available for their needs, they may, at their sole expense and without reducing the size of the existing panels, make those changes to the Master Project Sign needed to add additional panels.
- 3.4 **Sign Panel Placement.** Lot 204's signage panel shall have the top placement on the Master Project Sign followed by Lot 1 in the next highest position then followed by Lot 203. In the event that Lot 204 does not take the top panel on the Master Project Sign, Lot 1 shall have the top placement followed by Lot 203 in the next highest position; however, Lot 204 shall have the right to change its election to take the top panel on the Master Project Sign at any time. All other sign placement shall be determined by DRH.

4. **LOT 201, 202 & 203 TENANT SIGN**

(Applicable to: Lots 201, 202, & 203)

- 4.1 **Grant of Easement.** DRH hereby grants, for the benefit of Lots 201, 202 & 203, and their Owners, successors and assigns, collectively referred to in this Section 4 as the "Tenant Property Owners", a 4-foot by 12-foot easement ("Tenant Sign Easement Area"), along with an appropriate utility easement for electrical power and a reasonable access easement, on, over and across Lot 203, for the purpose of constructing, installing, replacing, repairing and maintaining a "Tenant Sign." The Tenant Sign is a SMA for Lots 201, 202 & 203. The Tenant Sign Easement Area is labeled on the Site Plan (attached as Exhibit "A") as the "Tenant Sign". The Tenant Sign will be professionally prepared and maintained in a neat manner and will

comply with all applicable laws.

- 4.2 **Shared Expense.** The Tenant Property Owners have the collective right to install and maintain the Tenant Sign within the Tenant Sign Easement Area, along with required or desired electrical power. The electric power for the sign shall be separately metered. The Maintenance Director shall maintain the Tenant Sign as a SME applicable to the Tenant Property Owners only, with each of the Tenant Property Owners paying an equal share of the Tenant Sign's construction and maintenance expense. Each Tenant Property Owner shall be entitled to install and use, at each Tenant Property Owner's sole expense, one panel of equal size with the other panels on the Tenant Project Sign. Each Owner shall be responsible for the cost to design and install its individual panel. Lot 203 shall have the top placement on the Tenant Sign.

5. RECIPROCAL EASEMENT FOR ACCESS

(Applicable to: Lot 1, Lots 201, 202, 203 and Lot 204)

- 5.1 **Grant of Ingress, Egress and Access Easement.** DRH, Miller and We Know each hereby grant, reserve, declare and create, as applicable, for the benefit of the Lots and their respective Owners, a perpetual, non-exclusive reciprocal access easement, over, across, and through Lot 1, Lots 201, 202, 203 and Lot 204 for the purpose of providing and permitting Owners and their respective Permittees pedestrian and vehicular ingress egress and cross-access on the roadways, driveways, and walkways located from time to time upon and within Lot 1, Lots 201, 202, 203 and Lot 204.

6. RECIPROCAL EASEMENTS FOR PARKING, ACCESS & DRAINAGE

(Applicable to: Lots 201 & 202)

- 6.1 **Grant of Parking, Ingress, Egress and Access Easement.** DRH hereby grants, reserves, declares and creates for the benefit of the Lots 201 and 202, and their respective Owners, invitees, employees and guests, a perpetual non-exclusive reciprocal access and parking easement, over, across and through Lots 201, and 202 for the purpose of providing and permitting pedestrian and vehicular parking, ingress egress and cross-access on Lots 201 and 202.
- 6.2 **Limited Reserved Parking.** Lot 201 and Lot 202 Owners, invitees, employees, customers and guests shall be entitled to park in the parking areas on Lots 201 and 202. The Lot 201 and 202 Owners agree to cooperate with each other in the use of the parking areas. Lot 201 and Lot 202 Owners reserve the right, in their separate, reasonable, and sole discretion, to determine whether the parking area on their Lot is becoming crowded and, in such event, to reserve a limited number of customer parking spaces on their Lot solely for their Lot's customers. However, Lots 201 and 202 shall not be allowed to install signs that create more than twelve (12) reserved parking stalls per Lot.

- 6.3 **Maintenance and Shared Expenses.** Lot 201 and Lot 202 only shall each be assessed by the Maintenance Director for all SMEs applicable to Lot 201 and Lot 202 and associated with maintaining asphalt areas located on Lots 201 and 202, including but not limited to cleaning, snow removal and asphalt maintenance. The Lot 201 and Lot 202 SMEs shall be assessed against each of Lot 201 and Lot 202 based on a pro-rata share of the Lot 201 and Lot 202 maintenance costs. Lot 201 and Lot 202 SME assessments shall be based upon the square footage of asphalt within each of Lot 201 and Lot 202 in relation to the total square footage of asphalt in the two Lots 201 and 202.
- 6.4 **Grant of Drainage Easement.** DRH hereby grants, reserves, declares and creates for the benefit of the Lots 201 and 202, and their respective Owners, invitees, employees and guests, a perpetual non-exclusive reciprocal drainage easement, over and across Lots 201 and 202 for the purpose of providing and permitting ground water to freely flow from Lot 201 onto Lot 202 and from Lot 202 onto Lot 201. The Lot Owners shall not construct, reconstruct, repair, maintain or grade the identified drainage easements in a way that will obstruct the free flow of surface water.
- 6.5 **Garbage Dumpster.** As shown on the site plan, a garbage dumpster pad (“GDP”) has been constructed on Lot 201, which GDP has been constructed for the benefit and use of both Lot 201 and Lot 202. Lot 201 recognizes and grants to Lot 202 the right to access and use the GDP on completely equal terms with Lot 201’s right to access and use the GDP. Lot 201 and Lot 202 only shall equally share in the payment of all SMEs associated with the use, maintenance and repair of the GDP, including but not limited to garage collection fees, maintenance of the GDP and any structure associated with the GDP, and the asphalt on which the GDP is located. All such SMEs shall be apportioned, collected from Lot 201 and Lot 202 only, and paid by the Maintenance Director.

7. UTILITY EASEMENTS.

(Applicable to: Lots 201, 202, 203 and Lot 204).

- 7.1 **Grant of Utility Easement.** DRH hereby grants, reserves, declares and creates for the benefit of the Lots 201, 202 and 203, and their respective Owners, invitees, employees and guests, a perpetual non-exclusive reciprocal utility easement, under, across and through Lots 201, 202 and 203 for the installation, operation, maintenance, repair and replacement of water drainage systems or structures, water mains, sewers, water sprinkler system lines, telephone lines, electrical conduits or systems, gas mains and other public or private utilities. All such systems, structures, mains, sewers, conduits, lines and other utilities shall be installed and maintained below the ground level or surface within the easements, except for ground mounted electrical transformers and such other facilities as are required to be above ground by the utility providing such service (including temporary service required during the construction, maintenance, repair, replacement, alteration or expansion of any buildings or improvements). The installation, operation, maintenance, repair and replacement of such easement facilities shall not unreasonably interfere with the use of the Lot or

with the normal operation of any business on the Lot. The grantee shall bear all costs related to the installation, operation, maintenance, repair and replacement of such easement facilities, shall repair to the original specifications any damage to the Lot resulting from such use and shall provide as-built plans for all such facilities to the Owners of all Lots upon which such utility lines and facilities are located within thirty (30) days after the date of completion of construction of same.

- 7.2 **Relocation of a Lots 201, 202 and 203 Utility.** At any time and from time to time the Owner(s) of Lots 201, 202 or 203 shall have the right to relocate on its Lot any utility line or facility installed pursuant to the grant of easement in Section 7.1 which is then located on another Lot, provided that any such relocation (i) shall be performed only after sixty (60) days' notice of the Owner's intention to undertake the relocation shall have been given to the Owner of each Lot served by the utility line or facility, (ii) shall not unreasonably interfere with or diminish the utility, service to the Lots 201, 202 and 203 served by the utility line or facility, (iii) shall not reduce or unreasonably, impair the usefulness or function of the utility line or facility, (iv) shall be performed without cost or expense to the Owner or occupant of any other of Lots 201, 202 and 203, and (v) shall provide for the original and relocated area to be restored to the original specifications. The Owner performing such relocation shall provide as-built plans for all such relocated utility lines and facilities to the Owners of Lots 201, 202 and 203 served by such utility lines and facilities within thirty (30) days after the date of completion of such relocation.
- 7.3 **Future Utilities.** Each Owner agrees to grant such additional easements as are reasonably required by any public or private utility for the purpose of providing the utility lines and facilities described herein provided such easements are not otherwise inconsistent with the provisions of this Agreement.
- 7.4 **Allocation of Expenses.** SMEs associated with the use, maintenance, repair or replacement of certain utilities outlined in this Section 7.4 shall be apportioned by and paid to the Maintenance Director as set forth below.
- (a) **Water Line.** A private culinary water line ("Water Line") is or will be located in Branz Way and will provide service to Lots 201, 202 & 203, and Lot 204. The Lot Owners using the shared Water Line shall pay a pro-rata portion of the expenses associated with the maintenance, repair and replacement of that portion of the Water Line located in Branz Way that is shared or used in common with other Lot Owners. Each Lot using a shared Water Line shall be separately metered for water usage and each Lot shall be responsible for connection, impact, and users' fees incurred with such Lot and utility. Subject to Section 2.3(c) with respect to Lot 204, the pro-rata portion of the Water Line maintenance, repair and replacement expenses shall be assessed to each Lot Owner based upon the square footage of each Lot using the Water Line in relation to the total square footage of all Lots which are sharing the Water Line in common with other Lot Owners or user(s); provided, however, each Lot shall be responsible for the installation, construction, maintenance, repair, and replacement of its own

lateral service line connecting to the Water Line, even though the lateral service line may be located on another Lot Owner's Lot. Lot 204 shall not be assessed expenses in connection with the maintenance, repair and replacement of the Water Line until Lot 204 is developed and buildings are constructed thereon, and its assessments shall be pro-rated in the same manner as set forth in paragraph 2.3(c) above.

- (b) **Sewer Line.** A private sanitary sewer line ("Sewer Line") is or will be located in Branz Way, crossing Lot 203, and will provide service to Lots 201 and 202 only. Expenses and uses associated with the maintenance, repair and replacement of the Sewer Line shall be apportioned in the same manner described in the paragraph (a) above between Lots 201 and 202 only. Sewer Line SMEs shall be divided only between Lot 201 and Lot 202.
- (c) **Storm Drain.** Lots 201 and 202 share the use of a storm drain. All SMEs and uses associated with the maintenance, repair and replacement of the storm drain serving Lots 201 and 202 shall be apportioned equally between Lot 201 and Lot 202 only.
- (d) **Land Drain.** A land drain located in Branz Way ("Land Drain") benefits Lots 201, 202 & 203 and Lot 204. Subject to Section 2.3(c) with respect to Lot 204, all parties shall pay a pro-rata portion of the SMEs associated with the maintenance, repair and replacement of the portion of the Land Drain located in Branz Way. Subject to Section 2.3(c) with respect to Lot 204, the pro-rata portion of the Land Drain maintenance, repair and repayment SMEs shall be assessed to each Lot Owner based upon the square footage of each of the four (4) Lots using the Land Drain in relation to the total square footage of all Lots which are sharing a portion of the Land Drain in common with other user(s). Lot 204 shall not be assessed SMEs in connection with the maintenance, repair and replacement of the Land Drain until Lot 204 is developed and buildings are constructed thereon, and its assessments shall be pro-rated in the same manner as set forth in paragraph 2.3(c) above.

- 7.5 **Maintenance and Repair.** Except for the maintenance, repair, and replacement obligations expressly set forth in this Agreement, each Owner shall be responsible for the procurement, construction, maintenance, repair, and replacement of the improvements and facilities within such Owner's respective Lot, including, without limitation, parking areas, roadways, walkways, and utilities. Each Party, at such Party's sole cost and expense, shall maintain and repair those utilities that serve solely that Lot, and are located on the Party's Lot, in reasonably good condition. Such Party shall do so without payment to or direction from the Maintenance Director. Notwithstanding the foregoing, any damage to the Subject Property, the utility and/or Lot improvements thereto shall be promptly repaired and/or replaced at the sole cost and expense of the Lot Owner or its Permittees causing the damage, and such expenses shall not be a SME. Except during reasonable periods of construction, each Party will keep the utility easements free from structures, debris and large vegetation that could impede vehicular ingress and egress and take such

other actions in connection therewith as are reasonable under the circumstances.

8. Insurance and Indemnification.

8.1 Each Owner shall carry and maintain commercial general liability insurance insuring against claims for personal injury, bodily injury or death, and property damage or destruction, with respect to its respective portion of the Subject Property, and the SDA, Branz Way, and the respective easements and easement areas granted with which such Owner is granted rights under this Agreement (as applicable), and the effect of this Agreement. The limits of liability of each insurance policy required under the preceding sentence shall be not less than \$1,000,000 for personal injury or bodily injury or death of any one person and \$2,000,000 for personal injury or bodily injury or death in the aggregate. The insurance policy required under this Section shall insure the performance of such Owner's indemnity agreements and obligations contained herein and shall be written with an insurer licensed to do business in the State of Utah and shall name each Owner as an additional insured. Within thirty (30) days after written request, each Owner shall provide each other Owner with a certificate of insurance which shall indicate all insurance coverage required by the provisions herein. Such insurance policy shall contain a clause stating that there shall be no reduction, modification, cancellation, or non-renewal of coverage without giving the Owners thirty (30) days' prior written notice. Such insurance shall also be issued by insurers having an A.M. Best rating of at least A-VII, be endorsed to provide that the insurance shall be primary to and not contributory to any similar insurance carried by the other Owners, and shall contain a severability of interest clause. The Maintenance Director shall also purchase, as a SME apportioned pro-rata among all Parties to this Agreement, commercial general liability insurance covering risks created by utilities not otherwise covered by the Lot Owners' policies.

8.2 Each Owner shall indemnify, defend, and hold harmless the other Owner(s) burdened by an easement identified herein and their affiliates, members, managers, agents, tenants, and representatives for, from, and against all claims, damages, expenses (including, without limitation, reasonable attorneys' fees and reasonable investigative and discovery costs), liabilities, and judgments on account of injury to persons, loss of life, or damage to property resulting from the negligent or willful act or omission of the indemnifying Owner or its Permittees, the indemnifying Owner's or its Permittees' default in any of the obligations set forth in this Agreement, the indemnifying Owner's or its Permittees' use of the easements or easement areas with which such Owner is granted rights under this Agreement, except to the extent such claims are due solely to the gross negligence or willful act or omission of another Owner or its Permittees.

9. **No Interference.** Except as specifically provided for in this Agreement or to the extent necessary for reasonable construction, repair and maintenance, or to prevent a public dedication, no fence, wall, barricade or any other obstruction, whether temporary or permanent in nature, which materially limits or impairs the free and unimpeded access to, from or across an easement, will be constructed or erected, nor will any Party in any other

manner obstruct or interfere with the flow of pedestrian or vehicular traffic to or over any portion of an easement.

10. **Enforcement.** If a Party (the “Defaulting Party”) fails to observe or perform any of the provisions of this Agreement, and such failure continues for a period of thirty (30) days after receipt of written notice from a non-defaulting party (the “Non-Defaulting Party”), then the Defaulting Party shall be in default hereof, provided that if the default reasonably cannot be cured within thirty (30) days, the Defaulting Party shall have such additional time as may be reasonably necessary to cure the default, provided that the Defaulting Party commences the cure within such thirty (30) day period and thereafter diligently pursues the cure to completion; provided, however, that if the Defaulting Party’s default causes a material interference in the daily operations of the property owned by the Non-Defaulting Party, the thirty (30) day notice period described above shall be reduced to ten (10) days. If the Defaulting Party fails to cure its default pursuant to the preceding provisions of this Section, the Non-Defaulting Party may perform all acts reasonably necessary to cure the default, provided the Non-Defaulting Party gives five (5) days’ written notice to the Defaulting Party prior to the commencement of the cure. Upon completion of the cure, and within fifteen (15) days after receipt of an invoice accompanied by copies of invoices or other reasonable supporting evidence, the Defaulting Party shall reimburse the Non-Defaulting Party for all costs and expenses reasonably incurred in curing the Defaulting Party’s default. All amounts owing under this Section will bear interest thereon at the rate of 12% per annum from the date such amount is due until paid. In addition, the Non-Defaulting Party shall be entitled to seek adequate relief by injunction, damages and any other legal or equitable remedy available for any violation or threatened violation of this Agreement. No breach of this Agreement will entitle a Party to terminate this Agreement. The remedies herein shall be cumulative and not exclusive.

11. Mutuality, Reciprocity Runs with the Land.

11.1 **Easements Non-Transferrable.** The easements, rights and obligations granted or created under this Agreement are appurtenances to the Subject Property and none of the easements, rights or obligations may be transferred, assigned or encumbered except as an appurtenance to the Subject Property. For the purposes of the easements and rights set forth in this Agreement, the Lot benefitted will constitute the dominant estate, and the Lot burdened will constitute the servient estate.

11.2 **Easement Run with Land.** Each of the easements and rights contained in this Agreement (whether affirmative or negative in nature) will (i) constitute covenants running with the land; (ii) bind every party having a fee, leasehold or other interest in any portion of a Subject Property at any time or from time to time to the extent that portion is affected or bound by the easement or right in question, or to the extent that easement or right is to be performed on that portion; (iii) inure to the benefit of and be binding upon the Parties and their respective successors and assigns as to their respective Lots, and (iv) create mutual, equitable servitudes upon each Lot in favor of the other Lot.

12. General Provisions.

12.1 **Not a Public Dedication.** Nothing contained in this Agreement will be deemed to

be a gift or dedication of any portion of the Parcels to or for the general public or for any public purposes whatsoever, it being the intention of the Parties that this Agreement be strictly limited to and for the purposes expressed in this Agreement.

- 12.2 **Binding on Successors.** This Agreement shall inure to the benefit of and be binding upon the Owners, their heirs, personal representatives, successors and assigns, and upon any party acquiring a Parcel, or any portion thereof, or any interest therein, whether by operation of law or otherwise. Each term, covenant, condition and agreement contained herein respecting any Parcel shall be a burden on that Parcel, shall be appurtenant to and for the benefit of the other Parcels and each part thereof and shall run with the land.
- 12.3 **Term.** The term of this Agreement shall be for sixty-five (65) years from the date hereof; provided, however, that this Agreement shall terminate if not less than seventy-five percent (75%) of Parcel Owners agree to such termination and record a document that terminates the Agreement.
- 12.4 **Modification or Termination.** This Agreement may not be modified in any respect whatsoever or terminated, in whole or in part, except with the consent of not less than seventy-five percent (75%) of Parcel Owners, and then only by written instrument duly executed, acknowledged and recorded by the required consenting Owners in the office of the Weber County Recorder.
- 12.5 **Severability.** If any term or provision of this Agreement or the application of it to any party or circumstance shall to any extent be invalid or unenforceable, the remainder of this Agreement or the application of such term or provision to parties or circumstances, other than those as to which it is invalid or unenforceable, shall not be affected thereby, and each term and provision of this Agreement shall be valid and shall be enforced to the extent permitted by law.
- 12.6 **Notices.** All notices given pursuant to this Agreement shall be in writing and shall be given by personal delivery, by United States mail or by United State express mail, by electronic transmission (email) wherein receipt is verified or acknowledged, or other established express delivery service (such as Federal Express), postage or delivery charge prepaid, return receipt requested, addressed to the party and address designated below or, in the absence of such designation, to the party and address shown on the then current real property tax rolls for the respective Lot in the county in which the Subject Property is located.
- 12.7 **Not a Partnership.** The provisions of this Agreement are not intended to create, nor shall they be in any way interpreted or construed to create a joint venture, partnership, or any other similar relationship between the parties.
- 12.8 **Captions and Headings.** The captions and headings in this Agreement are for reference only and shall not be deemed to define or limit the scope or intent of any of the terms, covenants, conditions or agreements contained herein.

- 12.9 **Entire Agreement.** This Agreement contains the entire agreement between the parties hereto and supersedes all prior agreements, oral or written, with respect to the subject matter hereof. The provisions of this Agreement shall be construed as a whole and not strictly for or against any party.
- 12.10 **Construction.** In construing the provisions of this Agreement and whenever the context so requires, the use of a gender shall include all other genders, the use of the singular shall include the plural, and the use of the plural shall include the singular.
- 12.11 **Recordation.** This Agreement may be recorded in the office of the recorder of the county in which the Subject Property is located.
- 12.12 **Counterparts.** To facilitate the execution of this Agreement, each party hereto agrees that this Agreement may be executed in separate identical counterparts, all of which together shall constitute a single original instrument, and this Agreement shall be effective upon execution of one or more of such counterparts by each of the parties hereto.
- 12.13 **No Waiver.** Any amendment to this Agreement must be in writing and signed by the Parties. Failure of a Party to insist upon strict performance of any provisions of this Agreement will not be construed as a waiver for future purposes with respect to any such provision or option. No provision of this Agreement will be waived unless such waiver is in writing and signed by the Party alleged to have waived its rights.
- 12.14 **Attorney Fees.** In the event it becomes necessary for any Party to employ the service of an attorney in connection with enforcing the terms of this Agreement or their rights hereunder, either with or without litigation, the losing Party of such controversy will pay to the successful Party reasonable attorney fees and, in addition, such costs and expenses as are incurred in enforcing this Agreement.

13. Restricted Uses.

(Applicable to: Lot 1, Lots 201, 202, and 203)

- 13.1 **Restricted Uses on Lots 201, 202, and 203.** DRH hereby grants, reserves, declares and creates, as applicable, a restrictive covenant for the benefit of We Know and Lot 1, providing that no portion of Lots 201, 202, or 203 shall be used for offering of sale of more than an incidental amount of either (i) coffee, or (ii) donuts, without the express prior written consent of the Owner of Lot 1, which may be withheld in such Owner's sole and absolute discretion. For purposes of this Section 13.1, with respect to each of Lots 201, 202, or 203, individually, the term "incidental amount" shall mean ten percent (10%) or less of such Lot's total gross sales at such Lot. For avoidance of doubt and for illustrative purposes only, the following operators would be considered in violation of this Restricted Use: Tim Hortons, Dunkin' Donuts, Honey Dew Donuts, Daylight Donuts Winchell's Donuts, Shipley Do-Nuts, Lamar's Donuts, Top Pot Doughnuts, and Voodoo Donuts.

[SIGNATURE PAGE FOLLOWS]

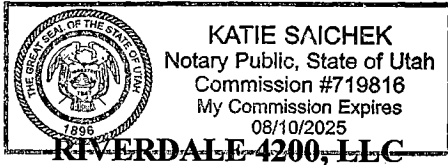
IN WITNESS WHEREOF, the Parties have executed this Agreement as of the day and year first acknowledged by a Notary Public.

DRH RIVERDALE CANE'S, LLC

BY: Dee Hansen
Dee Hansen, Member

State of Utah)
:
County of Salt Lake)

On this the 1st day of February, 2022, personally appeared before me, Dee Hansen, Member of DRH Riverdale Cane's, LLC, a Utah limited liability company, who duly acknowledged to me that he executed the same in the capacity stated.

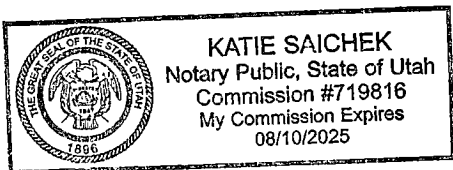


Katie Saichek
Notary Public

BY: Dee Hansen
Dee Hansen, Member


State of Utah)
:
County of Salt Lake)

On this the 1st day of February, 2022, personally appeared before me, Dee Hansen, Member of DRH Properties, LLC, a Utah limited liability company, who duly acknowledged to me that he executed the same in the capacity stated.



Katie Saichek
Notary Public

WE KNOW SUCCESS PROPERTIES, LLC

BY: 
ITS: PAUL TANNER, MANAGER

State of _____)

County of _____)

On this the ___ day of _____, 2022, personally appeared before me, _____, of We Know Success Properties, LLC, a California limited liability company, who duly acknowledged to me that (s)he executed the same in the capacity stated.

Notary Public

SEE ATTACHED

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT

CIVIL CODE § 1189

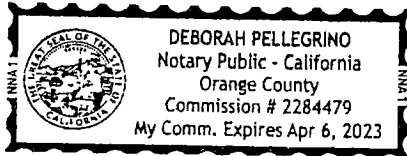
A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

State of California)
County of ORANGE)
On 6 JANUARY 2022 before me, DEBORAH PELLEGRINO, NOTARY PUBLIC
Date Here Insert Name and Title of the Officer
personally appeared PAUL TANNER
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.



Signature [Handwritten Signature]
Signature of Notary Public

Place Notary Seal Above

OPTIONAL

Though this section is optional, completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document

Title or Type of Document: _____ Document Date: _____
Number of Pages: _____ Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: PAUL TANNER
 Corporate Officer — Title(s): _____
 Partner — Limited General
 Individual Attorney in Fact
 Trustee Guardian or Conservator
 Other: MANAGER

Signer's Name: _____
 Corporate Officer — Title(s): _____
 Partner — Limited General
 Individual Attorney in Fact
 Trustee Guardian or Conservator
 Other: _____

Signer Is Representing: WE KNOW SUCCESS PROPERTIES, LLC

Signer Is Representing: _____

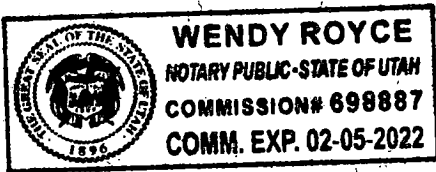
Miller:

Larry H. Miller Management Corporation,
a Utah corporation

BY: *Steve Starks*
NAME: Steve Starks
ITS: Chief Executive Officer

State of Utah)
 :
County of Salt Lake__)

On this the 18th day of January, 2021, personally appeared before me Steve Starks, the Chief Executive Officer of Larry H. Miller Management Corporation, a Utah corporation, who duly acknowledged to me that (s)he executed the same in the capacity stated.



Wendy Royce
Notary Public

The undersigned has reviewed the contents of this agreement, consents and approves the same.

WVC 3279 LLC, a Utah Limited Liability Company

By: Dee R. Hansen 2/8/2022
Dee R. Hansen—Manager Date

State of Utah
County of Weber

On this the 8th day of February 2022, Dee R. Hansen as Manager of WVC 3279 LLC, a Utah Limited Liability Company, acknowledged to me, a Notary Public in the State of Utah, that this document was executed by the same, in the capacity stated and was done in accordance with the terms of the operating agreement of said limited liability company.

[Signature]
Notary Public

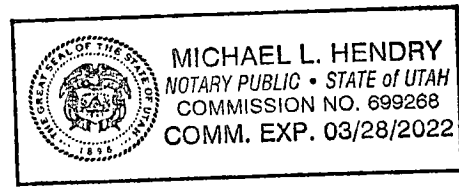


EXHIBIT "A"

SITE PLAN

A

Sheet No.

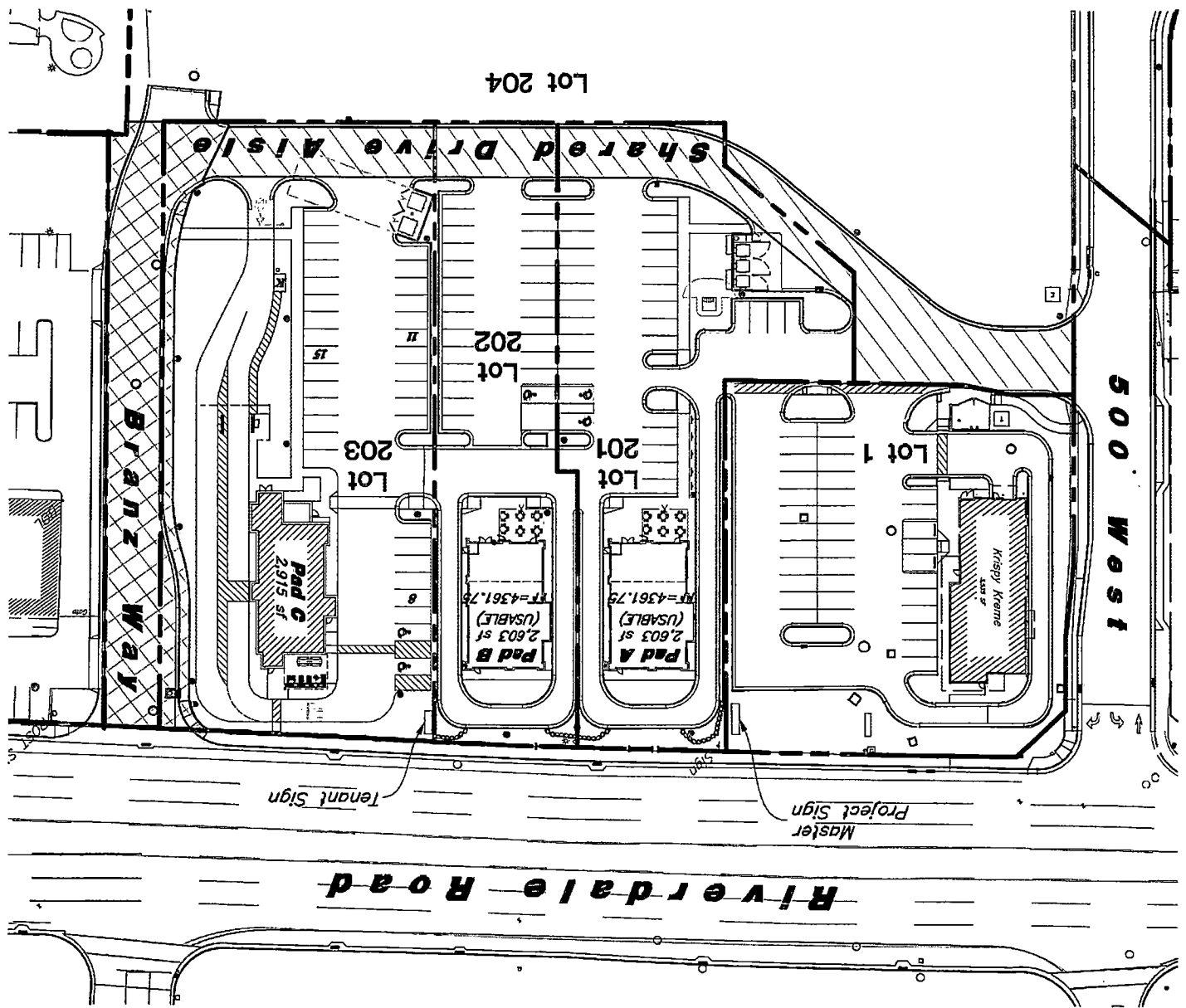
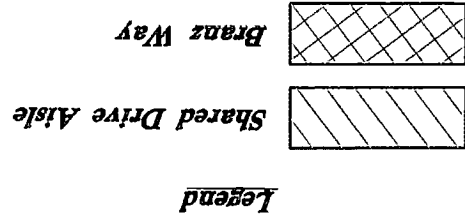


EXHIBIT "B"**SHARED DRIVE AISLE LEGAL DESCRIPTION**

A part of the Northwest Quarter of Section 8, Township 5 North, Range 1 West, Salt Lake Base and Meridian, U.S. Survey in Weber County, Utah:

Beginning at the Most Southerly Corner of Lot 1, Riverdale Landing, Phase 1 Subdivision at a point on the Northeasterly Line of 500 West Street as dedicated to 25.00 foot half-width located 731.30 feet South $89^{\circ}26'02''$ East along the Section Line; and 1633.20 feet South $0^{\circ}33'58''$ West from the Northwest Corner of said Section 8; and running thence along the Common Subdivision Boundary the following three courses: North $36^{\circ}50'23''$ East 31.49 feet; North $47^{\circ}50'52''$ East 26.28 feet; and North $38^{\circ}00'51''$ East 55.98 feet; thence South $53^{\circ}04'05''$ East 40.61 feet; thence North $77^{\circ}03'36''$ East 76.83 feet to a point of curvature; thence Northeasterly along the arc of a 72.00 foot radius to the left a distance of 50.43 feet (Central Angle equals $40^{\circ}07'41''$ and Long Chord bears North $56^{\circ}59'46''$ East 49.40 feet) to a point of tangency; thence North $36^{\circ}55'55''$ East 223.09 feet to a point of curvature; thence Northeasterly along the arc of a 17.00 foot radius curve to the left a distance of 8.14 feet (Central Angle equals $27^{\circ}25'30''$ and Long Chord bears North $23^{\circ}13'10''$ East 8.06 feet); thence South $27^{\circ}49'34''$ East 30.86 feet; thence South $36^{\circ}55'55''$ West 217.76 feet to a point of curvature; thence Southwesterly along the arc of a 98.00 foot radius curve to the right a distance 68.64 feet (Central Angle equals $40^{\circ}07'41''$ and Long Chord bears South $56^{\circ}59'46''$ West 67.24 feet) to a point of tangency; thence South $77^{\circ}03'36''$ West 104.86 feet to a point of curvature; thence Southwesterly along the arc of a 62.00 foot radius curve to the left a distance of 42.55 feet (Central Angle equals $39^{\circ}19'13''$ and Long Chord bears South $57^{\circ}23'59''$ West 41.72 feet) to a point of tangency; thence South $37^{\circ}44'23''$ West 18.83 feet to a point of curvature; thence Southwesterly along the arc of a 25.50 foot radius curve to the left a distance of 18.61 feet (Central Angle equals $41^{\circ}48'43''$ and Long Chord bears South $16^{\circ}50'01''$ West 18.20 feet) to the Northeasterly Line of said 500 West Street; thence North $53^{\circ}09'37''$ West 39.80 feet along said Line to the point of beginning.

Contains 13,929 sq ft

EXHIBIT "C"**BRANZ WAY LEGAL DESCRIPTION**

A part of the Northwest Quarter of Section 8, Township 5 North, Range 1 West, Salt Lake Base and Meridian, U.S. Survey in Weber County, Utah:

Beginning at a point on the Southeasterly Line Riverdale Road at the Most Northerly Corner of Grantor's Property located 887.06 feet South $89^{\circ}26'02''$ East along the Section Line; and 1128.11 feet South $0^{\circ}33'58''$ West from the Northwest Corner of said Section 8; and running thence South $52^{\circ}43'27''$ East 309.06 feet; thence South $38^{\circ}36'32''$ West 9.08 feet; thence South $51^{\circ}19'32''$ East 6.83 feet; thence South $36^{\circ}55'55''$ West 51.77 feet; thence North $53^{\circ}04'05''$ West 2.50 feet; thence North $27^{\circ}49'34''$ West 30.86 feet; thence North $80^{\circ}29'35''$ West 2.00 feet; thence Northeasterly along the arc of a 59.00 foot radius curve to the left a distance of 7.27 feet (Center bears North $80^{\circ}29'35''$ West, Central Angle equals $7^{\circ}03'42''$ and Long Chord bears North $5^{\circ}58'34''$ East 7.27 feet); thence Northwesterly along the arc of a 158.00 foot radius curve to the left a distance of 52.86 feet (Center bears South $56^{\circ}26'44''$ West, Central Angle equals $19^{\circ}10'11''$ and Long Chord bears North $43^{\circ}08'22''$ West 52.62 feet) to a point of tangency; thence North $52^{\circ}43'27''$ West 106.69 feet to a point of curvature; thence Northwesterly along the arc of a 95.00 foot radius curve to the left a distance of 28.61 feet (Central Angle equals $17^{\circ}15'14''$ and Long Chord bears North $61^{\circ}21'04''$ West 28.50 feet) to a point of reverse curvature; thence Northwesterly along the arc of a 105.00 foot radius curve to the right a distance of 31.62 feet (Central Angle equals $17^{\circ}15'14''$ and Long Chord bears North $61^{\circ}21'04''$ West 31.50 feet) to a point of tangency; thence North $52^{\circ}43'27''$ West 46.81 feet to a point of curvature; thence Northwesterly along the arc of a 20.00 foot radius curve to the left a distance of 20.91 feet (Central Angle equals $59^{\circ}54'29''$ and Long Chord bears North $82^{\circ}40'42''$ West 19.97 feet); thence North $50^{\circ}20'46''$ West 0.15 feet to the Southeasterly Line of Riverdale Road; thence along said Southeasterly Line of Road the following two courses: North $39^{\circ}39'14''$ East 50.12 feet; and North $39^{\circ}39'07''$ East 2.89 feet to the point of beginning.

Contains 12,450 sq ft

MAINTENANCE ADDENDUM

This Maintenance Addendum (“Addendum”) is incorporated in and made part of the Grant of Easements, Declaration of Restrictions, and Maintenance Agreement (“Agreement”) to which it is attached. If there is any conflict between the provisions of this Addendum and the Agreement, the terms of the Agreement shall prevail. Terms used in the Agreement shall have the same meaning when used in this Addendum.

1. MAINTENANCE DIRECTOR

- 1.1 **Appointment of Maintenance Director by Declarant.** The Parties appoint the Lot 201 Parcel Owner as Maintenance Director for the Subject Property. The Maintenance Director may also contract with an independent person or entity to fulfill the role and perform the duties of the Maintenance Director.
- 1.2 **Appointment of Maintenance Director by Lot Owners.** The Parcel Owners within the Subject Property may vote to change the Maintenance Director appointed by the Lot 201 Owner by majority voting to retain a separate Maintenance Director/Property Manager. Each of the Subject Properties shall have one vote.
- 1.3 **Resignation.** The Lot 201 Maintenance Director shall have the right, upon ninety (90) days’ prior written notice to the Owners of the Subject Property, to resign as Maintenance Director, in which event the Owners shall vote and appoint another Maintenance Director.

2. SHARED MAINTENANCE AREAS

- 2.1 **Description of Shared Maintenance Areas.** The Shared Maintenance Areas (“SMA”) include the following areas as well as those areas described in the Agreement to which this Addendum is attached:
 - (a) Shared Drive Aisle (“SDA”)
 - (b) Branz Way
 - (c) Master Project Sign
 - (d) Tenant Sign for Lots 201, 202 & 203
 - (e) Those easements, areas, utilities or Parcels described or identified in the Agreement as being used or shared by two or more Parties, including but not limited to shared water lines, sewer lines, storm drains and land drain.
- 2.2 **Shared Maintenance Expenses.** SMEs incurred in connection with the SMA shall be divided, apportioned, collected and paid as set forth herein and in the Agreement.

3. MAINTENANCE STANDARDS

- 3.1 **Duties of Maintenance Director.** The Maintenance Director shall, except as hereinafter provided, maintain the SMA at all times in good and clean condition and repair, said maintenance to include, without limitation, the following:
- (a) Maintaining, repairing and resurfacing when necessary, all the SMA paved surfaces in a good quality condition with the type of surfacing material originally installed or such substitute as shall in all respects be equal or superior in quality, use and durability; including restriping, when necessary;
 - (b) Removing all snow, papers, debris, filth and refuse on the SMA and thoroughly sweeping the area to the extent reasonably necessary to keep the area in a clean and orderly condition;
 - (c) Maintaining, repairing and replacing when necessary, all traffic directional signs, markers and lines on the SMA;
 - (d) Operating, maintaining, repairing and replacing when necessary, such artificial lighting facilities as shall be reasonably required on the SMA;
 - (e) Maintaining all landscaped areas; maintaining, repairing and replacing when necessary, automatic sprinkler systems and water lines; and replacing shrubs and other landscaping as is necessary;
 - (f) Performing itself or contracting with a third party or parties to perform any of the services described herein; provided, however, that the Maintenance Director shall remain responsible and liable for the performance of all of said services in accordance with the terms of this Addendum and for the performance of any such third party or parties under any such contract or contracts.
- 3.2 **Insurance.** In addition to the foregoing, the Maintenance Director shall provide and maintain commercial general liability insurance with broad form coverage endorsement (including broad form property damage endorsement) insuring the Maintenance Director against claims for personal injury, bodily injury or death, and property damage or destruction, occurring in, on or about the SMA. Such insurance shall be written with an insurer licensed to do business in the state of Utah and all Owners (provided that the Maintenance Director is notified in writing of such interest) shall be named on the policy as additional insureds. The limits of liability of all such insurance shall be not less than \$2,000,000 for personal injury or bodily injury or death of any one person, \$2,000,000 for personal injury or bodily injury or death of more than one person in one occurrence and \$500,000 with respect to damage to or destruction of property; or, in lieu of such coverage, a combined single limit (covering personal injury, bodily injury or death and property damage or destruction) with a limit of not less than \$3,000,000 per occurrence. The Maintenance Director shall furnish all Owners with certificates evidencing such insurance. The policies of such insurance shall provide that the insurance represented by such certificates shall not be canceled, materially changed or non-renewed without the giving of thirty (30) days prior written notice to the holders of such insurance and the additional insureds.

- 3.3 **Indemnity.** The Maintenance Director agrees to indemnify, defend and hold harmless the Owners and occupants of all Parcels from and against any and all liability, claims, damages, expenses (including reasonable attorney fees and reasonable attorney fees on appeal), judgments, proceedings and causes of action, for injury to or death of any person or damage to or destruction of any property occurring in, on or about the SMA and arising out of the performance or nonperformance of any of the obligations of the Maintenance Director set forth in this Addendum, unless caused by the negligent or willful act or omission of the identified person, its agents, contractors or employees.
4. **TAXES.** Each Owner shall pay directly to the tax collector when due the real property taxes and other special taxes and assessments assessed against the Owner's Parcel, including the portion of the SMA on such Owner's Parcel.
5. **PAYMENTS TO MAINTENANCE DIRECTOR**
- 5.1 **Payment of Shared Expenses.** The Maintenance Director shall contract for, pay for, and collect from each Parcel Owner their pro-rata share of all items enumerated as SMEs herein. All SMEs shall be bid, contracted, billed and paid as provided for in this Section 5.
- 5.2 **Annual Budget.** At least sixty (60) days prior to the initial commencement of each calendar year, the Maintenance Director shall submit to all Owners a proposed budget that lists all anticipated costs associated with maintaining the SMA for the upcoming year. The budget may include a reasonable reserve to cover unanticipated expenses. Before preparing the initial budget required by this addendum, the Maintenance Director shall obtain at least three (3) bids from companies or individuals who are competent to properly complete the anticipated work associated with maintaining the SMA. The Maintenance Director shall also submit copies of all bids, proposals and other supporting documents to the Owners at the same time the budget is submitted to the Owners. The requirement to obtain three (3) bids may be waived (but not for more than two (2) consecutive years) if, in the determination of the Maintenance Director, an existing supplier of services is providing quality services at a competitive price.
- 5.3 **Objection to Budget.** In the event an Owner objects to the proposed budget, such Owner shall provide written notice of said objection to the Maintenance Director within fifteen (15) days after such Owner's receipt of the proposed budget. The objection shall identify which specific budgeted costs the objecting Owner does not approve. After receiving an objection, the Maintenance Director shall promptly meet with all the Owners (which meeting may be held electronically or in written form) for the purpose of establishing a final approved budget for the following calendar year. In the event that a majority of the Owners are unable to reach an agreement on any specific budgeted cost at least thirty (30) days before the end of the year, the Maintenance Director shall obtain and submit to the Owners at least three bids to

complete maintenance items related to any objections received by the Maintenance Director. Any other Owner shall also be entitled to obtain and submit at least one such bid. The Maintenance Director, and any other Owner who obtains a bid, shall provide the bids to all Owners at least ten (10) days before the end of the year. The lowest submitted bid shall be used in the final budget for the upcoming year. Notwithstanding any other language herein, no Owner shall be permitted to submit any bid from any company that is owned, in full or in part, by said Owner or that is owned in full or in part by a family member of said Owner.

- 5.4 **Payment to Maintenance Director.** Each Owner shall cause the Maintenance Director to be reimbursed for the Owner's share of all SMEs incurred by the Maintenance Director in providing or performing services on the SMA. In addition, if the Maintenance Director hires a person or an entity to fulfill the roles and duties of the Maintenance Director, the Maintenance Director shall be permitted to pay that person or entity a maximum service charge of not more than ten percent (10 %) of the total annual SMEs. In the event the Maintenance Director does not hire a separate person or entity to perform the duties of the Maintenance Director, the Maintenance Director shall be paid a service charge of not more than ten percent (10%) of the total annual SMEs, which shall not be duplicative of any fee charged by a separate person or entity performing some or all of the duties of the Maintenance Director.

6. BILLING AND COLLECTION PROCEDURES

- 6.1 **Monthly Payments.** Each Parcel Owner (or its respective tenant or agent, as it may direct) shall be invoiced monthly in advance for one-twelfth (1/12th) of its respective share of the budgeted SMEs, subject to the limitations, terms, and conditions of the Owner's responsibility or non-responsibility for such SMEs as outlined and limited in the Agreement, (including the ten percent (10%) service charge described in Article 5.4 above). Invoices shall be due and payable within thirty (30) days of billing. All SMEs not included in the final approved budget shall be invoiced quarterly in arrears and shall be due and payable within thirty (30) days after receipt of a statement and copies of all invoices or other documents supporting same.
- 6.2 **Share of Expenses Contained in Agreement.** Each Owner's pro-rata SME shall also be assessed as set forth in those sections of the Agreement dealing with maintenance and use of a Parcel's easements.
- 6.3 **Year-End Summary.** Within sixty (60) days after the end of each calendar year, the Maintenance Director shall provide each Owner with a statement certified by an officer or authorized representative of the Maintenance Director, together with supporting invoices or other reasonable detail or materials, setting forth the actual reimbursable SMEs (including the ten percent service charge described in Article 5.4 above) paid during the previous year and indicating each Owner's share of the aggregate thereof. If the amount paid by an Owner for such calendar year shall have exceeded its share, the Maintenance Director shall refund the excess to such Owner at the time the certified statement is delivered or apply such over-payment to any

existing charge or balance. If the amount paid by the Owner for such calendar year is less than its share, such Owner shall pay the balance of its share to the Maintenance Director within thirty (30) days after receipt of such statement. The Maintenance Director waives any and all right to collect all or any portion of an Owner's pro rata share of any SMEs or insurance expense (including the ten percent service charge described in Article 5.4 above) for which an invoice is not submitted to said Owner (or its tenants or agents, as it may direct) within one hundred eighty (180) days after the end of the calendar year in which said expense is incurred.

6.4 **Budget Shortfalls.** It is anticipated that the budgeted funds will typically be adequate to pay for all SMEs. If unanticipated repair costs arise that will result in the total SMEs for the year being higher than five percent (5%) of the budgeted SMEs, then the Maintenance Director shall submit an amended budget to the Owners and the Owners shall have fifteen (15) days to object, as described in Section 5.3 above. If an objection is received, the process described in Section 5.3 above shall be followed. Notwithstanding the forgoing, on some occasions an emergency may require the Maintenance Director to quickly make certain repairs without first obtaining approval from the Owners. In those emergency situations, the Maintenance Director is authorized to retain the services and spend the funds necessary to make the required repairs. If the Maintenance Director is required to make emergency repairs, each Owner shall be responsible for their share of the costs associated with those repairs as described in the Agreement and this Addendum. The Maintenance Director shall send invoices to each Owner within thirty (30) days after an emergency repair is made, and each Owner shall pay the required expenses within thirty (30) days of receiving an invoice. If an Owner fails to make a payment as described in this paragraph, the Maintenance Director shall be entitled to collect the delinquent amount as described in Sections 8 and 9 below.

7. **EFFECT OF SALE BY OWNER.** In the event an Owner sells all, or any portion of its interest in its Parcel, such Owner shall thereupon be released and discharged from any and all obligations as Owner in connection with the property sold by it arising under the Agreement and this Addendum after the sale and conveyance of title, but shall remain liable for all obligations arising under the Agreement prior to the sale and conveyance of title. The new Owner of any such Parcel or any portion thereof (including, without limitation, any Owner who acquires its interest by foreclosure, trustee's sale or otherwise) shall be liable for all obligations arising under the Agreement with respect to such Parcel or portion thereof that arose either before or after the date of sale and conveyance of title.

8. **DEFAULT.**

8.1 **Failure to Pay; Remedies.** In the event any Owner fails or refuses to pay when due its share of any invoice for SMEs and insurance expenses described above (including the ten percent service charge described in Article 5 above), which failure continues for a period of ten (10) days after receipt of written notice thereof, such failure shall constitute a default and legal action may thereafter be instituted against the defaulting Owner by the Maintenance Director or other person paying the maintenance or insurance expenses (including the ten percent service charge described in Article 5

above) of the defaulting Owner (“Curing Party”) for reimbursement plus interest from and after the date said invoice was due and payable to and including the date said invoice is paid at a rate of twelve percent (12%) (the “Default Rate”). Furthermore, the Curing Party shall have a lien on the Parcel of the defaulting Owner for the amount of said expenses (including the ten percent service charge described in Article 5 above) plus accrued interest as set forth above; provided, however, that if there be a bona fide dispute as to the existence of such default or of the amount due and all disputed amounts are paid, there shall be no right to place a lien on such Owner’s Parcel until such dispute is settled by court decree or mutual agreement.

- 8.2 **Legal Proceedings.** In the event the Maintenance Director fails to perform any of the provisions of this Addendum, which failure continues for a period of thirty (30) days (ten (10) days in the event of failure to pay money) after receipt of written notice from any Owner specifying the particulars of such failure, such failure shall constitute a default and any Owner may thereafter institute legal action against the Maintenance Director for specific performance, declaratory or injunctive relief, monetary damages or any other remedy provided by law and/or may perform the obligations of the Maintenance Director specified in said notice of default and offset the cost thereof from amounts due the Maintenance Director; provided, however, that the Maintenance Director shall not be deemed to be in default if such failure to perform (excluding the payment of money) cannot be rectified within said thirty (30) day period and the Maintenance Director is diligently proceeding to rectify the particulars of such failure.
- 8.3 **Attorney Fees.** In addition to the foregoing, in the event any party initiates or defends any legal action or proceeding to enforce or interpret this Addendum or the Agreement, the prevailing party in any such action or proceeding shall be entitled to recover from the losing party in any such action or proceeding its reasonable costs and attorney fees (including its reasonable costs and attorney fees on any appeal) as determined by the court in the same or a separate proceeding.
- 8.4 **Non Waiver.** The failure of a party to insist upon strict performance of any of the terms, covenants, conditions or agreements contained herein shall not be deemed a waiver of any rights or remedies that said party may have, and shall not be deemed a waiver of any subsequent breach or default in the performance of any of the terms, covenants, conditions or agreements contained herein by the same or any other party.

9. LIEN FOR EXPENSES.

- 9.1 **Filing of Lien.** The lien provided for in Article 8 above shall only be effective when filed for record by the Curing Owner or Curing Party as a claim of lien against the defaulting Owner in the office of the recorder of the county in which the Subject Property is located, which shall contain at least:
- (a) A statement of amounts due and payable pursuant hereto;
 - (b) A description of the real property of the defaulting Owner which is the

- subject of the lien;
- (c) The name of the Owner or reputed Owner of the property which is the subject of the lien; and
 - (d) The name and address of the Curing Owner or Curing Party.

9.2 **Lien Priority.** The lien, when so established against the real property described in the lien, shall be prior and superior to any right, title, interest, lien or claim which may be or has been acquired or attached to such real property after the time of filing the lien. The lien shall be for the use and benefit of the party curing the default of the defaulting Owner and may be enforced and foreclosed in a suit or action brought in any court of competent jurisdiction.

[End of Addendum]