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Paul M. Durham
Durham Jones & Pinegar
111 East Broadway, Suite 900
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DECLARATION OF
COVENANTS, CONDITIONS, AND RESTRICTIONS OF GROVE CREEK CENTER
COMMERCIAL SUBDIVISION
A COMMERCIAL DEVELOPMENT

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Declaration of Covenants, Conditions, Restrictions, and Easements for the

GROVE CREEK CENTER COMMERCIAL SUBDIVISION

A COMMERCIAL DEVELOPMENT

PLEASANT GROVE, UTAH

This Declaration of covenants, conditions, restrictions, and easements is made on the date set forth below by B.W., Inc., an Idaho corporation, DMB Investments, LLC, an Idaho limited liability company and Don Brandt, a single man who is a resident of the State of Idaho (collectively referred to herein as "Declarant").

DECLARATION, INTENT, AND BINDING EFFECT

Declarant owns certain real property in Utah County, Utah, which is more particularly described on Exhibit "A," which is attached hereto and incorporated herein by this reference. Declarant desires and intends to protect the value and desirability of the Property as a harmonious and attractive planned development. Therefore, Declarant hereby declares that all of the Property shall be held, sold, conveyed and occupied subject to the following covenants, conditions, restrictions, and easements, and to the Plat recorded concurrently. The covenants, conditions, restrictions, and easements in this Declaration and the Plat shall be construed as covenants of equitable servitude; shall run with the Property and be binding on all parties having any right, title or interest in the Property or any part thereof, their heirs, successors and assigns; and shall inure to the benefit of each Owner thereof. The planned development is not a cooperative.

ARTICLE 1

DEFINITIONS AND CONCEPTS

The following definitions and concepts shall control in this Declaration. Any terms used in this Declaration that are not defined shall have their plain and ordinary meaning.

1.1 "Articles" means and refers to the Articles of Incorporation of the Grove Creek Property Owners Association, Inc. and any amendments or restatements thereto. The purpose of the Articles is to establish the Association as a non-profit corporation under Utah law.

1.2 "Association" means the Grove Creek Property Owners Association, Inc., a Utah non-profit corporation, its successors and assigns.

1.3 **"Bylaws"** means and refers to the Bylaws of the Grove Creek Property Owners Association, Inc. and any amendments or restatements thereto. The purpose of the Bylaws is to govern the Association's internal affairs, such as (for purposes of example but not limitation) voting, elections, meetings, and officers.

1.4 **"City"** means the City of Pleasant Grove, a municipal corporation of the State of Utah.

1.5 **"Common Area"** means the areas designated on the plat (attached Exhibit "B") as water easements, sewer easements, landscape easements, water features, surface water drainage system and facilities, common entry ways, private roads, parking areas, landscaping adjacent to public roads, including the improvements and facilities thereon, that the Association maintains for the common use and enjoyment of the Lot Owners. Common Area may also be designated by Declarant herein or in any supplemental declaration or annexation hereto.

1.6 **"Common Expenses"** means the actual and estimated expenses incurred, or anticipated to be incurred, by the Association for the general benefit of the Owners, including any reasonable reserve, as the Board may find necessary and appropriate pursuant to the Governing Documents. Common Expenses shall not include any expenses incurred by the Declarant during the Declarant Control Period for initial development or other original construction costs. Common Expenses shall include, without limitation, one-third (1/3) of the expenses for maintenance and operation of the water feature located at the intersection of Granite Way and Grove Parkway near the entrance to the Property, including, without limitation, expenses related to the pump, water, landscaping, and sprinkling of the water feature.

1.7 **"Declaration"** means this instrument and any amendments, restatements, supplements, or annexations thereto, which are recorded in the office of the Utah County Recorder.

1.8 **"Declarant"** collectively means B.W., Inc., an Idaho corporation, DMB Investments, LLC, an Idaho limited liability company and Don Brandt, a single man who is a resident of the State of Idaho, and their respective successors, heirs and assigns, if the rights of Declarant hereunder are specifically assigned and assumed in writing by such successors, heirs or assigns.

1.9 **"Declarant Control Period"** means the period of time during which construction is taking place in the Property. The Declarant Control Period shall continue until all shell construction is complete and approved by the City for the last building to be constructed on the Property, or until express surrender of the same by Declarant. If the instrument of surrender does not specify the date of surrender of Declarant rights, the surrender date shall be the date of recording of the instrument. To ensure that the Declarant, as the developer of the Property, has adequate time and flexibility to ensure the

overall success of development of the Property, Declarant has the sole and absolute discretion to determine the date of its surrender.

1.10 **“Directors”, “Board of Directors”, or “Board”** means the governing body of the Association.

1.11 **“Governing Documents”** means, collectively, this Declaration, the Articles, the Bylaws, and any amendments or supplements to the foregoing documents, and includes any rules and regulations established pursuant to the Declaration, Articles, or Bylaws, and any resolutions adopted by the Board, as the same may be amended from time to time.

1.12 **“Lot”** means a separately numbered and individually described plot of land shown on the Plat designated as a Lot for private ownership.

1.13 **“Lot Owner”** means and is synonymous with the term **“Owner”**.

1.14 **“Member”** means and is synonymous with the terms **“Owner”** and **“Lot Owner”** and is used herein and in the Bylaws and Articles as a means to identify the Lot Owners as members of the Association.

1.15 **“Owner”** means the entity, person, or group of persons owning fee simple title to any Lot which is within the Property.

1.16 **“Plat”** means the subdivision Plat recorded herewith prepared and certified by a Utah Registered Land Surveyor and any amendments or replacements thereof, or additions thereto.

1.17 **“Property”** means that certain real property described on **Exhibit “A”** hereto, and such annexations and additions thereto as may hereafter be subjected to this Declaration.

1.18 **“Storm Water Management Plan”** means the management plan adopted by Declarant or the Association for the maintenance, cleaning, repair and replacement of the storm water drainage facilities located on the Property.

ARTICLE 2 GENERAL RESTRICTIONS

2.1. **Owners’ Acknowledgment and Notice to Purchasers.** All Owners are given notice that use of their Lots and any Common Area is limited by the Governing Documents as they may be amended, expanded and otherwise modified hereunder. Each Owner, by acceptance of a deed, acknowledges and agrees that the use and enjoyment and marketability of the Owner’s Lot can be affected by this provision and that the

Governing Documents may change from time to time. All purchasers of Lots are on notice that changes may have been adopted by the Declarant or the Association. Copies of the current Governing Documents may be obtained from the Association.

2.2. **Land Use and Building Type.** All Lots, and the buildings constructed thereon, shall be used only for the purposes allowed herein.

2.3. **Lots.**

2.3.1. Lot Sizes. Lot sizes as described on the Plat are considered minimum Lot sizes and no person shall further subdivide any Lot other than as shown on the Plat or make a lot line adjustment without approval of the Declarant, which shall not be unreasonably withheld. Declarant shall cooperate, as reasonably necessary, to effect any amendment to the plat which may be required by the City. Lots may be combined for construction of a single structure with approval of the Declarant.

2.3.2. Care and Maintenance of Lots. Except as otherwise provided herein, each Owner shall be responsible for maintenance and upkeep of the Owner's Lot, any private utilities serving and benefitting only the Owner's Lot, and the parking area located on an Owner's Lot, and shall keep the same free from rubbish, litter and noxious weeds. All structures, landscaping and improvements located on the Owner's Lot shall be maintained in good condition and repair at all times; provided, however, that the landscaping which is adjacent to public roads shall be maintained by the Association. In the event any Owner fails to perform this maintenance after 48 hours written notice to the Owner, the Association shall have the right but not the obligation to have maintenance performed on the Lot and the cost of said maintenance shall be added to and become part of the assessment to which such Lot is subject.

2.3.3. Safe Condition. Without limiting any other provision of this Declaration, each Owner shall maintain and keep such Owner's Lot at all times in a safe, sound and sanitary condition and repair and shall correct any condition or refrain from any activity which might endanger the health of or interfere with the safety or reasonable enjoyment of other Owners of their respective Lots.

2.4. **Common Area.**

2.4.1. Ownership. Unless otherwise provided on the Plat, Common Area, as defined above, is owned by the Owner on whose Lot it is located, subject to the covenants, conditions and restrictions contained herein and on the Plat and easements and rights-of-way of record.

2.4.2. Rights of Use and Rules and Regulations Concerning the Common Areas. Every Lot Owner shall have a right and easement of use and enjoyment in and to the Common Areas which easement shall be appurtenant to and shall pass with the title to every Lot, subject to the Governing Documents. The Board shall have the right to establish and enforce rules and regulations governing the use of the Common Areas, including but not limited to rights of use, hours of use, and delegation of use. Additional rights to establish rules and regulations governing the Common Areas may be set forth and established elsewhere in the Governing Documents.

2.4.3. Board Rights in Common Areas. The Board shall have the right, for and on behalf of the Association, to: (a) insure, maintain, and care for the Common Area; (b) except as otherwise authorized in Section 9.6, with the approval of at least seventy-five percent (75%) of Lot Owners to dedicate, release or transfer all or part of the Common Areas to any public agency, authority, or utility; (c) grant easements for public utilities or other public purposes consistent with the intended use of the Common Areas; (d) take such steps as are reasonably necessary or desirable to protect the Common Areas against foreclosure; and (e) take such other actions with respect to the Common Areas which are authorized by or otherwise consistent with the Governing Documents.

2.4.4. Damage. Any damage caused to the Common Area by any Lot Owner or the Lot Owner's agents, guests, or invitees must be repaired by the Lot Owner as soon as possible after such damage is discovered, and in the event of failure of the Owner to make such repairs, the Association may make such repairs after notifying Lot Owner in writing of repairs to be made and the expense of such repair shall be borne by the Lot Owner and shall become part of the assessment to which such Owner's Lot is subject.

2.4.5. Maintenance. The Association shall maintain the Common Area (and general common area improvements) at all times in good and clean condition and repair, said maintenance to include, without limitation, the following:

(a) Maintaining, repairing, resurfacing, and re-striping, when necessary, all paved surfaces in a level, smooth and evenly covered condition;

(b) Removing all snow, papers, debris, filth and refuse 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;

(d) Operating, maintaining, repairing and replacing, when necessary, artificial lighting facilities as shall be reasonably required including, but not

limited to, poles, pole bases, wiring, lamps, ballasts, lenses, photocells, time clocks, and contactors. The Association shall not be responsible for maintaining or providing electricity to any lighting fixtures attached to any building or soffit in the Property, including "canopy" or "soffit" lighting, and the maintenance and electricity for the same shall not be included as a Common Expense. Each Owner shall maintain and provide electricity to all lighting fixtures attached to its respective building(s), at its sole cost and expense;

(e) Maintaining and watering all landscaped areas within designated landscape easements;

(f) Maintaining, repairing and replacing, when necessary, all Common Area walls (including, without limitation, all fences, screen walls, retaining walls or barricades in the Property);

(g) Maintaining, repairing, replacing, and cleaning when necessary, all storm drains, detention pond and drainage facilities and sewers in accordance with the Storm Water Management Plan, including without limitation, proper spill containment, operation and management of all facilities which are components of the Storm Management System, and regular parking lot sweeping to prevent surface materials from entering the storm drain facilities;

(h) Maintaining, repairing and replacing, when necessary, all sewers and other utility lines and facilities not directly serving a single Lot or building in the Property, not dedicated to the public or conveyed to any public or private utility which are necessary for the operation of the improvements located in the Property (with the cost of all such items being allocated between the Owners of all buildings and improvements serviced or to be serviced by said facilities on the basis of their respective building areas);

(i) Keeping any common sign lighted;

(j) Maintaining, repairing and replacing, when necessary, any common sign structure (excepting individual sign panels which shall be supplied and maintained by the businesses designated thereon). Notwithstanding the other provisions of this Declaration, the cost of maintaining, repairing and replacing any common sign structure shall be paid by the Owners of all Parcels entitled to display designations thereon in the proportion that the total square footage of each Owner's designation or designations bears to the total square footage of all designations entitled to be displayed thereon;

(k) Participate with other associations and contribute up to one-third of the cost of maintenance, upkeep, repair, and replacement of the common

entryway water feature that is located in the public road, including the cost of water and utilities used for the water feature;

(l) Performing itself or contracting with a third party or parties to perform any of the services described herein;

ARTICLE 3
USE REGULATIONS

3.1. **Permitted Uses.** The Property is restricted to selected commercial activities and marketing enterprises that are compatible with the development, and as allowed by the zoning applicable to the Property at any given time, including retail purposes.

3.2. **Prohibited Uses.** No part of the Property shall be used for any purpose or business that is prohibited by the zoning applicable to the Property at any given time. Further, the following uses or any use substantially similar to any of the following are expressly prohibited within the Property:

3.2.1. Any use that is in violation of any applicable federal, state, or local law, ordinance, or regulation.

3.2.2. Residential purposes, except for the dwelling of watchmen or other employees whose residence on the Property forms an integral part of the operation;

3.2.3. The manufacture, storage, distribution or sale of explosives;

3.2.4. The salvage, wrecking or stripping of wrecked vehicles, or the storage in bulk of junk, secondhand or unsightly materials of any type;

3.2.5. Stock and feed yards;

3.2.6. Food processing which involves the slaughter of animals or the use of animal carcasses; and

3.2.7. Recreational activities including courses for vehicular racing, the use of specialized recreational equipment, spectator sports, performance arenas, and entertainment establishments of a commercial nature.

3.2.8. Any other uses that are determined by the Board to be incompatible and out of harmony with the intent of permitted uses and this Declaration.

Nothing herein shall prevent inclusion of other prohibited uses in the future.

3.3. **Board Approval.** Prior to any use being made of any Lot within the Property, the Owner thereof shall submit a written application to the Board describing the proposed use in reasonable detail. The Board shall act upon such application to determine whether the proposed use is permitted as set forth above. Potential purchasers of any Lot may submit an application to the Board to ensure to obtain Board approval of the potential purchaser's proposed use prior to purchasing a Lot. The Board shall have 15 days to act upon an application by approving the proposed use, denying the proposed use, or requesting more detail. If the Board fails to act within 15 days, then the proposed use shall be deemed approved unless it is a prohibited use in which case it shall be deemed denied. The existing office buildings located on Lot 3 and Lot 5 are approved uses as office buildings and the planned improvements for Lot 4 as an office building, as more particularly described in the Grove Creek Building 2 Construction Drawings – prepared by Beecher Walker & Associates Project No 338.1201 Dated 6/1/2015 is an approved use and will not require any further approval from the Board.

3.4. **Hazardous Activities.** No activities shall be conducted on the Property and no improvements shall be constructed on the Property which are or might be unsafe or hazardous to any person or property.

3.5. **Pest Control.** No Lot Owner shall permit any condition to exist upon his Lot which would induce, breed, or harbor infectious plant diseases or noxious insects. Each Owner shall perform such pest control activities on his Lot as may be necessary to prevent insects, rodents, and other pests from being present on his Lot.

3.6. **Oil and Mining Operations.** No oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any Lot, part or portion of the Property, nor shall any oil well, gas well, tank, tunnel, mineral excavation or shaft be permitted upon or in any such Lot or portion of the Property.

3.7. **Garbage and Refuse Disposal.** No Lot or part or portion of the Property shall be used or maintained as a dumping ground for rubbish, rubble, trash, garbage or other waste. Such trash, rubbish, rubble, garbage or other waste as produced within the Property shall be kept in sanitary containers inside a structure except when placed for collection. No rubbish, trash, papers, junk or debris shall be burned upon the Property.

3.8. **Parking.** Each Owner shall be responsible to provide such parking areas on its Lot as are required to comply with the parking requirements of any governmental authority with jurisdiction thereof. In addition, each Owner shall require in any lease of improvements on its Lot that each tenant covenant and agree that it and its employees, agents and invitees will park vehicles on such Lot whenever reasonably possible and no lease of any portion of a Lot or any improvement thereon shall extend parking rights to a tenant beyond what the Owner of such Lot can provide on such Lot or pursuant to separate parking agreements or arrangements with the Owner of another Lot.

Notwithstanding anything to the contrary, Owners shall be permitted to enter into separate parking agreements or arrangements that vary or modify the provisions of this Section 3.8 but only between themselves and affecting only their Lots and no other Lots within the Property.

3.9. **Signs** No exterior building sign shall be erected or maintained on the Property except in conformity with (a) the provisions of applicable City ordinances, and (b) with the prior written approval of Declarant in accordance with the sign criteria established by Declarant, or as otherwise approved in writing by Declarant, such approval not to be unreasonably withheld. The Declarant shall have 15 days to act upon an application by approving the proposed use, denying the proposed use, or requesting more detail. If the Declarant fails to act within 15 days, then the proposed use shall be deemed approved. After the Declarant Control Period, the foregoing approvals shall be made by the Architectural Control Committee, subject to the same time period and qualifications as provided above. All signage shall be subject to such reasonable rules and regulations and amendments thereto as the Architectural Control Committee may impose from time to time.

The Declarant may, upon an affirmative vote of 66-2/3% of all eligible votes in the Association, construct free standing pylon or monument signs at the locations in the Property indicated on the Site Plan. The cost of construction and maintenance of such sign shall be borne by the Owners on a pro rata basis according to the square footage owned.

Each Owner shall have the right to maintain such signs on the interior of buildings located on its Lot, provided such signs are not visible from the exterior. As permitted by applicable governmental regulations and the sign criteria established by Declarant, each Owner shall have the right to erect, maintain and replace signs on the exterior of the buildings located on its Lot. Temporary signs including "For-Sale" or "For-Lease" as customarily used in the ownership and management of commercial buildings shall not require Declarant approval.

ARTICLE 4

ARCHITECTURAL REGULATIONS, STANDARDS, AND GUIDELINES

4.1. **Architectural Control Committee** So long as the Declarant owns any Lot in the subdivision, Declarant shall act as the Architectural Control Committee. At such time as Declarant no longer owns any Lot, in order to protect the quality and value of the Properties, and for the continued protection of the Owners thereof, an Architectural Control Committee will be established consisting of three or more Members or representatives affiliated with Members, to be appointed by the Board of Directors. The Board of Directors shall appoint Members to the Architectural Control Committee at each

annual meeting of the Board of Directors. Alternatively, the Board of Directors may determine, in its sole discretion, to act as the Architectural Control Committee.

4.2. Approvals Required No building or other structure (including but not limited to fences, walls, signs, and parking areas) or landscaping improvements of any type shall be commenced, built, constructed, placed, or maintained upon any Lot, Common Area or other property, nor shall any exterior addition, change or alteration of existing improvements be made, until the plans and specifications showing the nature, kind, shape, configuration, height, materials, color, location and such other detail as the Architectural Control Committee may reasonably require, shall have been submitted to and approved in writing by the Architectural Control Committee as to harmony of, external design and location in relation to surrounding structures and topography and as to conformity with requirements of this Declaration. In the event the Architectural Control Committee fails to approve, disapprove, or specify the deficiency in such plans, specifications and location within thirty (30) days after submission to the Architectural Control Committee in such form as they may require, it shall be deemed approved.

The Architectural Control Committee shall have the right to refuse to approve any design, plan or color for such improvements, construction or alterations which, in its reasonable opinion, are not suitable or desirable for any reason, aesthetic or otherwise, provided that it shall issue a written statement specifying the reasons for such refusal within fifteen (15) days of such refusal. In so passing on such design, the Committee shall have the privilege, in the exercise of its reasonable discretion to take into consideration the suitability of the proposed structure or alteration, the materials of which it is to be built, and the exterior color scheme in relation to the site upon which it is proposed to be erected. The Architectural Control Committee may also consider whether the design of the proposed structure or alteration is in harmony with the surroundings, the effect of the structure or alteration when viewed from adjacent or neighboring property, and any and all other facts which, in the Architectural Control Committee's opinion, shall affect the desirability of such proposed improvement, structure or alteration. Actual construction shall comply substantially with the plans and specifications approved.

Notwithstanding the foregoing, the Declarant and the Architectural Control Committee have expressly approved the design, plans, specifications, location, and construction of (a) the planned improvements for Lot 4, more particularly described as Grove Creek Building 2 Construction Drawings – Completed by Beecher Walker & Associates Project No 338.1201 Dated 6/1/2015, and (b) the improvements constructed and existing on Lot 5 as of the date hereof. No additional approval of the Declaration or the Architectural Control Committee shall be required for such improvements.

4.3. Submissions Requests for approval of the Architectural Control Committee shall consist of such documents and other materials as may be reasonably

requested by the Architectural Control Committee including, without limitation, the following:

4.3.1. Site Plan. A site plan showing the location of buildings and all other structures and improvements, including parking areas, sidewalks, fences, and walls on the Lot, Lot drainage and all setbacks or other pertinent information related to the improvements.

4.3.2. Building Plan. A building plan shall consist of preliminary or final blueprints, elevation drawings of the north, south, east, and west sides, detailed exterior specifications for each building which shall indicated, by sample, if required by the Architectural Control Committee, all exterior colors, material and finishes, including roof, to be used.

4.3.3. Landscape Plan. A landscape plan for that portion: of the Lot to be landscaped which shall show the location, type, and size of trees, plants, ground cover, shrubs, berms and mounding, grading, drainage, sprinkler system, fences, freestanding exterior lights, driveways, parking areas, and walkways.

4.3.4. Sign Plan. A signage plan showing the location, design, size, color, and material proposed for all exterior signs.

4.4. **Rules and Regulations** The Architectural Control Committee is hereby authorized to adopt rules and regulations to govern its procedures and the requirements for making submissions and obtaining approval as the Committee deems appropriate and in keeping with the, spirit of due process of law. The Architectural Control Committee is further hereby empowered to adopt such rules and regulations as it shall deem appropriate, consistent with the provisions of this Declaration, pertaining to matters of design, materials, colors, and aesthetic interests. Any such rules and regulations may be amended from time to time, in the sole discretion of the Architectural Control Committee. The failure of the Architectural Control Committee to adopt any such rules and regulations shall not form the basis for an attack upon the exercise of Architectural Control Committee's discretion, it being the intent of this Declaration to provide the Architectural Control Committee with as broad discretion as is permissible under the law.

4.5. **Fees** The Architectural Control Committee may establish, by its adopted rules, a reasonable fee schedule for an architectural review fee to be paid by each owner submitting plans and specifications for approval. No submission for approval will be considered complete until such fee has been paid. Such fee shall not exceed such reasonable amount as may be required to reimburse the Architectural Control Committee for the costs of professional review of submittals and the services of a consultant to administer the matter to completion, including inspections which may be required, but in no event shall such fee exceed the sum of \$2,500.00. In the event the plans and

specifications are submitted and require no amendments, as determined by the Architectural Control Committee, one-half of the architectural review fee shall be refunded to the owner who submitted the plans and specifications.

4.6. **Waivers** The approval of any plans, drawings or specifications for any structure, improvement, or alteration, or for any matter requiring the approval of the Architectural Control Committee, shall not be deemed a waiver of any right to withhold approval of any similar plan, drawing, specifications, or matters subsequently submitted for approval.

4.7. **Liability** Neither the Architectural Control Committee nor any member thereof shall be liable to the Association, any Owner, or any other party, for any damage suffered or claimed on account of any act, action or lack thereof, or conduct of the Architectural Control Committee or any members thereof, so long as the Architectural Control Committee, or the respective members thereof, acted in good faith on the basis of information they then possessed.

4.8. **Certification by Secretary** The records of the Secretary of the Association shall be conclusive evidence as to all matters shown by such records and the issuance of a certificate of completion and compliance by the Secretary or Assistant Secretary of the Association showing that the plans and specifications for the improvement or other matters therein provided for have been approved and that said improvements have been made in accordance therewith, or a certificate as to any matters relating to and within the jurisdiction of the Association by the Secretary thereof, shall be conclusive evidence that shall fully justify and protect any title company certifying, guaranteeing or insuring title to said property, or any portion thereof or any lien thereon and/or any interest therein as to any matters referred to in said certificate, and shall fully protect any purchaser or encumbrancer from any action or suit under this Declaration. After the expiration of one (1) year following the issuance of a building permit therefor by municipal or other governmental authority, any structure, work, improvement or alteration shall, as to any purchaser or encumbrancer in good faith and for value and as to any title company which shall have insured the title thereof, be deemed to be in compliance with all the provisions hereof unless a notice of noncompliance executed by the Association shall have appeared of record in the office of the County Recorder of Utah County, State of Utah, or unless legal proceedings shall have been instituted to enforce completion or compliance.

4.9. **Construction and Sales Period Exception** During the course of construction of any permitted structures or improvements and during the initial sales period, the restrictions (including sign restrictions) contained in this Declaration or in any Supplemental Declaration shall be deemed waived to the extent necessary to permit such construction and the sale of all Lots; provided that, during the course of such construction and sales, nothing shall, be done which will result in a violation of these restrictions upon completion of construction and sale.

4.10. **Dispute Resolution:** In the event the Architectural Control Committee disapproves an Owner’s designs or plans for any improvements, construction or alterations, the disapproved Owner shall be required to appeal such determination to the Board of Directors of the Association (unless the Board is then acting as the Architectural Control Committee), which shall consider such appeal at a special meeting of the Board scheduled within ten (10) business days after the date such appeal is filed. After the Board renders its decision in writing, any Owner may then elect to have such dispute regarding its disapproved request for its Lot resolved by alternative dispute resolution by notifying the Association of such election with thirty (30) days after the Board’s decision. If an Owner makes such election, the Owner and the Association shall submit such dispute to arbitration under the Utah Uniform Arbitration Act, Utah Code Section 78B-11-101 et. seq.

ARTICLE 5
ASSOCIATION MEMBERSHIP AND VOTING RIGHTS

5.1. **Membership.** Each Lot Owner shall be a Member of the Association. Membership in the Association automatically transfers upon conveyance of title to a Lot by the record Owner thereof to another person or entity.

5.2. **Voting Rights.** The Association has one class of voting membership. Members are entitled to votes based on the square footage of their Lot, according to the following table:

Lot #	Square Footage	Number of Votes
1	79,766	13
2	115,970	19
3	183,423	30
4	96,630	16
5	129,824	22
TOTAL	605,613	100

When more than one person holds an ownership interest in fee title to any Lot, the group of such persons shall be a Member. The votes for such Lot shall be exercised as they among themselves determine, but in no event shall more than the total number of votes for a specific Lot be cast with respect to any Lot. A vote cast at any Association meeting by any of such co-Owners, whether in person or by proxy, is conclusively presumed to be the vote attributable to the Lot concerned unless written objection is made prior to that meeting, or verbal objection is made at that meeting, by another co-Owner of the same Lot. In the event an objection is made, the vote involved shall not be counted for any purpose except to determine whether a quorum exists.

5.3. Change of Corporate Status The Association has been set up and established as a non-profit corporation under Utah law. However, the continuing existence and viability of the Association is not vested in its corporate status. During any period in which the Association is not incorporated or otherwise has a change of corporate status (for example, involuntary dissolution under the Utah Nonprofit Corporation Act for failure to file for corporate renewal), the Governing Documents shall nevertheless continue to be effective as the Governing Documents of the Association, and the Association, the Board, and all officers and committees operating under the authority of the Governing Documents shall have all rights, power, and authority granted therein, and no Lot Owner may escape or avoid any assessment, charge, lien, rule or other matter contained in the Governing Documents by virtue of such change of corporate of status. In the case of non-incorporation, the Board is authorized, to the extent it deems necessary, and without approval of the Members, to re-incorporate under a same or similar name and such corporation shall be deemed the successor to the Association. In the event the Board does not reincorporate, the Association shall continue to operate and function under the Governing Documents as an unincorporated association. Upon reincorporation the Board shall readopt Bylaws for the Association that are the same as the Bylaws that were in existence at the time of termination of dissolution. **Validity of Votes and Consents.** Any consent or vote given by a Lot Owner on any matter in the Governing Documents shall be valid for a period of 90 days, and shall be binding on any subsequent Owner who takes title of the Lot during that period of time.

ARTICLE 6 FINANCES AND OPERATIONS

6.1. Authority to Assess Owners. The Association is hereby authorized to levy assessments as provided for in this Article and elsewhere in the Articles and Bylaws.

6.2. Creation of Lien and Personal Obligation of Assessments. Each Owner of any Lot by acceptance of a deed therefore, whether or not it shall be so expressed in any such deed or other conveyance, covenants and agrees to pay to the Association all assessments authorized in the Governing Documents, including but not limited to: (1) annual assessments or charges; (2) special assessments for capital improvements, such assessments to be fixed, established, and collected from time to time as hereinafter provided; (3) additional assessments; (4) emergency assessments; (5) any other amount or assessment levied or charged by the Association or Board of Directors pursuant to this Declaration; and (6) interest, costs of collection and reasonable attorney fees, as hereinafter provided.

All such amounts shall be a charge on the Owner's Lot and shall be a continuing lien upon the Lot against which each such assessment or amount is charged. Such assessments and other amounts shall also be the obligation of the Lot Owner who was the Owner of such Lot at the time when the assessment became due. No Owner may exempt

themselves from liability for assessments by non-use of Common Area, abandonment of his Unit, or any other means. The obligation to pay assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the Association or Board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making or repairs or improvements, or from any other action it takes.

6.3. Purpose of Assessments. The assessments levied by the Association shall be used (a) for the purpose of promoting the health, safety, and welfare of the Owners, tenants and invitees of the Property; and (b) for the improvement and maintenance of any property, services, and facilities devoted to this purpose. The assessments must provide for, but are not limited to, the payment of taxes on Association property and insurance maintained by the Association; the payment of the cost of repairing, replacing, maintaining and constructing or acquiring additions to the Common Area; the payment of administrative expenses of the Association; the payment of insurance deductible amounts; the establishment of a reserve account for repair, maintenance and replacement of Common Area which must be replaced on a periodic basis, as required by UCA §57-8a-211; the payment of any professional services deemed necessary and desirable by the Board; and other amounts required by this Declaration or that the Directors shall determine to be necessary to meet the primary purposes of the Association. The assessments may provide, at the discretion of the Directors, for the payment of other charges including (without limitation) maintenance, management, utility, trash collection, sewer and water charges that are common to all Owners.

6.4. Maximum Annual Assessment.

6.4.1. Annual assessments shall be levied against each Lot in the Subdivision in accordance with the number of square feet contained in the said Lot compared to the entire square footage of all Properties. The Board of Directors may fix the annual assessment for the Properties at such an amount as it deems reasonably necessary in the exercise of the best business judgment of the Board of Directors to cover the anticipated expenses of the Association, including a reserve for contingencies; and said assessments shall be payable to the Association in regular monthly or quarterly installments as may be determined by the Board of Directors. The Annual Assessment shall increase by no more than 5% over the prior year provided any such change shall have the assent of sixty-six and two-thirds percent (66-2/3%) of the votes of all Lot Owners, voting in person or by proxy, at a meeting duly called for this purpose.

6.4.2. The actual annual assessment need not increase annually. The Board shall set the actual annual assessment on an annual basis. Notice shall be

given to each owner. The Board must set the actual annual assessment to be an amount at or less than the maximum annual assessment.

6.4.3. Upon the initial conveyance of each lot, the purchaser thereof shall pay an initiation assessment in the amount of \$0.01 per square foot of area contained in each lot.

6.5. **Special Assessments.** In addition to the annual assessments, the Board may levy in any assessment year a special assessment, applicable to that year only to cover unbudgeted expenses or expenses in excess of those budgeted, including but not limited to defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of Common Area and any structures, fixtures and personal property related thereto. Any such special assessment may be levied against all Members if such special assessment is for Common Expenses. Except as otherwise provided in this Declaration, any special assessment shall require the affirmative vote or written consent of a majority of all Members, if a Common Expense. Special assessments shall be payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the fiscal years in which the special assessment is approved.

6.6. **Specific Assessments.** The Association shall have the power to levy specific assessments against a particular Lot to: (a) cover costs incurred in bringing such Lot into compliance with the Governing Documents; (b) cover costs incurred which are specific to cover the costs, including overhead and administrative costs, of providing any services to any particular Lots; and (c) to cover any costs incurred as a consequence of the conduct of the Owner or occupants of the Lot, their agents, contractors, employees, licensees, invitees, or guests.

6.7. **Emergency Assessments.** Notwithstanding anything contained in this Declaration, the Board, without Member approval, may levy emergency assessments in response to an emergency situation. Prior to the imposition or collection of any assessment due to an emergency situation, the Board shall pass a resolution containing the written findings as to the necessity of such expenditure and why the expenditure was not or could not have been reasonably foreseen or accurately predicted in the budgeting process and the resolution shall be distributed to the Members with the notice of the emergency assessment. If such expenditure was created by an unbudgeted utility maintenance or similar expense or increase, the assessment created thereby shall be discontinued by the Board by a similar resolution, if such expense is subsequently reduced, or to the extent the next succeeding annual budget incorporates said increase into the annual assessment. An emergency situation is one in which the Board find (a) an expenditure, in its discretion, required by an order of a court, to defend the Association in litigation, or to settle litigation; (b) an expenditure necessary to repair or maintain the Property or any part of it for which the Association is responsible where a threat to

personal safety on the Property is discovered; (c) an expenditure necessary to repair, maintain, or cover actual Association expenses for the Property or any part of it that could not have been reasonably foreseen by the Board in preparing and distributing the pro forma operating budget (for example: increases in utility rates, landscape or maintenance contract services, attorney fees incurred in the defense of litigation, etc.); or (d) such other situations in which the Board finds that immediate action is necessary and in the best interests of the Association.

6.8. Exempt Property. The following property subject to this Declaration is exempt from the assessments created herein: (a) all property dedicated to and accepted by any local public authority; (b) all Common Area; (c) all other real property owned by Declarant outside of the Property; and (d) any other property declared exempt as set forth in this Declaration or within any Plat.

6.9. Declarant's Option to Fund Budget Deficits. During the Declarant Control Period, Declarant may but is not obligated to fund any budget deficit of the Association, including, without limitation, funding any initial capital or operational reserve fund. In the event Declarant funds any budget deficit, it shall not establish any obligation by Declarant to continue to fund any future deficits.

6.10. Rate of Assessment. Except as otherwise authorized in the Governing Documents, assessments must be calculated at a uniform rate, but based on the square footage contained in each Lot.

6.11. Date of Commencement of Annual Assessments; Due Dates.

6.11.1. The assessments provided for herein shall commence to accrue on the first day of the month following conveyance of a Lot to a bona fide purchaser. The first assessment shall be adjusted according to the number of months remaining in the calendar year.

6.11.2. The Board shall establish the assessment due dates under which assessment shall be paid on a monthly, quarterly, or annual basis.

6.11.3. The Board shall prepare a roster of Lot Owners in the Property and the assessments applicable thereto at the same time that it shall fix the amount of the assessment. This roster shall be kept by the Secretary of the Association, who shall record payments of assessments and shall allow inspection of the roster by any Lot Owner at reasonable times.

6.11.4. The Board shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessment on a specified Lot has been paid. Such certificates, when properly

issued, shall be conclusive evidence of the payment of any assessment or fractional part thereof which is therein shown to have been paid.

6.12. Effect of Nonpayment of Assessment. Any assessment or installment thereof not paid within 30 days after the due date therefore shall be delinquent and shall bear interest from the due date at the rate of 12% per annum (or such lesser rate as the Directors shall set by resolution) until paid. In addition, a late fee for each delinquent installment that shall not exceed 20% of the delinquent installment. There shall be added to the amount of any delinquent assessment the costs and expenses of any action, sale or foreclosure, and reasonable attorney fees incurred in enforcing and collecting said delinquent assessment.

6.13. Subordination of Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage held by an institutional lender. Sale or transfer of any Lot shall not affect the assessment lien.

6.14. Termination of Lien. However, the sale or transfer of any Lot pursuant to foreclosure of a first mortgage or any proceeding in lieu thereof shall extinguish the assessment lien as to payments which became due prior to such sale or transfer. No sale or transfer, however, shall relieve an Owner from personal liability for assessments coming due after taking title or from the lien of such later assessments.

ARTICLE 7 INSURANCE

The Association may obtain and keep in full force and effect at all times the following insurance coverage provided by companies duly authorized to do business in Utah. The provisions of this Article shall not be construed to limit the power or authority of the Association to obtain and maintain insurance coverage in addition to any insurance coverage required hereunder in such amounts and in such forms as the Association may deem appropriate from time to time including, without limitation, public liability insurance covering all of the common areas in the Property, liability insurance affording coverage for the acts, errors and omissions of its trustees and officers, workmen's compensation and employer's liability insurance and all other similar insurance with respect to employees of the Association in the amounts and in the forms now or hereafter required by law, and any other insurance that the Board of Directors deems prudent. The mere recitation of possible types of insurance coverage shall not be deemed to mean that the officers or Board of Directors shall be obligated to obtain any such insurance unless the Board of Directors, in its sole discretion determines it would be prudent to obtain such coverage.

The Board shall review all insurance policies at least annually in order to ascertain whether the coverage contained in the policies is sufficient to make any necessary repairs or replacements of the property which may be damaged or destroyed

The Board may, to the extent it deems necessary to more fully protect and insure the Association and its property, or to otherwise comply with evolving laws and insurance standards, modify the coverage standards set forth in this Article without the necessity of amending this Declaration.

Each Owner shall carry such insurance as it deems appropriate with respect to its Lot and any easement areas

ARTICLE 8 ENFORCEMENT

8.1. **Violations Deemed a Nuisance.** Every violation of this Declaration or any rule or regulation established pursuant to the authority of this Declaration is deemed a nuisance and is subject to all the remedies provided for the abatement or correction of the violation provided for in this Declaration or by law or equity.

8.2. **Legal Action Authorized.** The Association, through the Board, the Declarant or any Lot Owner, shall have the right to enforce, by any proceeding at law or in equity, all provisions of this Declaration or any rule or regulation established pursuant to the authority of this Declaration, including all charges and liens now or hereafter imposed pursuant to the authority of this Declaration, against any person, persons, or entities violating or attempting to violate any provision of this Declaration or any rule or regulation established pursuant to the authority of this Declaration, to restrain or abate or otherwise recover damages for the violation, and against the land to enforce any charge or lien created by this Declaration. In addition to taking legal action, the Declarant and the Board shall have the right to grant variances and stay enforcement proceedings against any Lot Owner on a case-by-case basis when they determine such action is in the best interests of the Association. Notwithstanding the foregoing, no Lot Owner is authorized to initiate legal action over any plan, application, design, or other matter approved by the Architectural Control Committee.

8.3. **Fines and Penalties.** The Board may levy a fine or penalty against any Lot Owner who fails to refrain from violating this Declaration or any rule or regulation established pursuant to the authority of this Declaration. Such fine or penalty shall be in an amount that is specifically provided for in a fine schedule adopted, and amended from time to time, by the Board. The Board may establish time frames and requirements for written notice, hearings, and cure periods for Owners in violation prior to levying such fine or penalty, which notice shall be at least 48 hours. Any fine or penalty levied by the Directors that is not paid within 15 days (such time period shall be stayed should the Governing Documents require any period to cure or for notice and hearing) shall be recoverable by the Association in the same manner as an assessment under **Article 6**, and shall create a lien in favor of the Association against the Owner's Unit in the same manner as an assessment.

8.4. **Attorney Fees and Costs.** The prevailing party in any action to enforce this Declaration or any rule or regulation established pursuant to the authority of this Declaration shall be entitled to an award of reasonable attorney fees and costs incurred in such action.

8.5. **Nonexclusive Remedies.** All the remedies set forth in this Declaration are cumulative and not exclusive to any others provided in the Governing Documents or by law.

ARTICLE 9 SPECIAL DEVELOPMENT RIGHTS

9.1. **Intent and Purpose of Special Development Rights.** In addition to any other rights granted or reserved to the Declarant in this Declaration and the other Governing Documents, and notwithstanding any covenants, conditions, restrictions, or other provisions of limitation within this Declaration, the Declarant, as the developer of the Property, is granted special development rights. These combinations of rights maximize the flexibility of the Declarant to adjust the size and mix of the Property to the demands of the marketplace, both before and after creation of the planned development.

9.2. **Municipal Zoning and Subdivision Approvals.** The Declarant, during the Declarant Control Period, shall have the unilateral right to further subdivide the Property and to apply for any zoning or subdivision approvals or permits from the City or any other applicable governmental authority with respect to the Property or any adjacent property owned by Declarant, whether or not such adjacent property is annexed into the Property. This right includes but is not limited to applying for and obtaining zoning permits, development approvals, plat approvals, or approvals to amend the Plat or any plats. Further, to the extent the approval and consent of any Lot Owner is required under State or local law to apply for or obtain any such approval, each Lot Owner hereby waives his or her right to object to any such approval sought by Declarant and shall sign the application or other documents required for such action except for any such approval that would (a) affect title to the Owner's Lot or (b) alter the boundaries of an Owner's Lot.

9.3. **Declarant Business, Marketing, and Sales.** Notwithstanding any provisions to the contrary contained in this Declaration or any other Governing Documents, it shall be expressly permissible for Declarant, or its written designee, to maintain such facilities and conduct such activities as in the sole opinion of Declarant may be reasonably required, convenient or incidental to the construction of structures and/or sale of Lots during the Declarant Control Period, and upon such portion of the Property including lots or Common Area, if any, as Declarant deems necessary.

9.4. **Additional Development Rights.** The Declarant shall have the unilateral right to (a) dedicate any access roads and streets serving the Property for and to public use, to grant road easements with respect thereto and to allow such street or road to be

used by owners of adjacent land; and (b) create or designate additional Common Area within the Property.

9.5. **Assignment of Declarant's Rights.** Any and all rights and powers of the Declarant contained in this Declaration and other Governing Documents may be delegated, transferred or assigned, in whole or in part, by the Declarant. To be effective, any such delegation, transfer, or assignment must be in writing, signed by Declarant, indicate the extent and nature of such assignment, and be recorded in the Office of the Utah County Recorder.

ARTICLE 10 EASEMENTS

The following easements are in addition to those created elsewhere in this Declaration, on the Plat, by any other recorded instrument, or otherwise by law.

10.1. **Grant of Reciprocal Easements.** Declarant hereby grants, establishes, covenants and agrees that the Lots, and all Owners of the Lots, shall be benefited and burdened by the following nonexclusive, perpetual and reciprocal easements which are hereby imposed upon the Lots and all present and future Owners of the Lots:

10.1.1. Access Easement. An easement for reasonable access, ingress and egress over all paved driveways, parking areas, roadways and walkways as presently or hereafter constructed on the Property including, without limitation, driveways, so as to provide for the passage of motor vehicles and pedestrians between all portions of the Property intended for such purposes, and to and from all abutting streets or rights of way furnishing access to such Lots;

10.1.2. Parking Easement. An easement for the parking of vehicles in the designated parking areas indicated on the Site Plan and as the same may be modified or removed from time to time by the Owner of the Lot upon which the parking areas are located (the "Parking Easement"), provided that such modifications or removal do not violate any of the other provisions of this Agreement. The Parking Easement is for customer parking in connection only with the businesses operated from time to time on the Lots. In no event shall the Parking Easement be used for delivery or truck parking, overnight parking, storage or other similar parking purposes that shall constitute an unreasonably prolonged use of the Parking Easement.

10.1.3. Water Distribution and Drainage Easement. Declarant and Owners hereby reserve and grant for the benefit of the Association and each other Owner and its Lot a non-exclusive easement for the discharge, drainage, use, detention and retention of storm water runoff appurtenant to the Lot owned by the grantee, under, through and across the Owner's Lot, and to install, maintain,

repair and replace storm water collection, retention, detention and distribution lines, conduits, pipes and other apparatus, including, without limitation, cleaning of storm drain facilities, in accordance with the Storm Water Management Plan and the Utah and Federal Environmental Protection Agency pollution discharge eliminations system requirements. Maintenance shall include regular cleaning of silts and debris from all storm drain pipes, boxes, detention and retention areas, keeping lids, pipes and boxes in good repair. The Association shall carry appropriate insurance, including coverage for damages from flooding of the storm water drainage facilities. The easement granted herein shall include the right of reasonable ingress and egress with respect to the Water Detention and Drainage Facilities as may be required to maintain and operate the same. Once constructed (i) the Water Detention and Drainage Facilities shall not be modified, altered, relocated or otherwise changed, without the prior written consent of all Owners and each Owner shall be responsible for the drainage and retention for its Lot as may be required by the City.

10.1.4. Utility Easement. An easement under and across those parts of the Common Areas that are not within any Building Envelope (or building footprint) shown on the Site Plan, for the installation, maintenance, repair and replacement of water mains, storm drains, sewers, water sprinkler system lines, telephone or electrical conduits or systems, cable, gas mains and other utility facilities necessary for the orderly development and operation of the Common Areas and each building from time to time located within the Lots; provided that (i) the rights granted pursuant to such easements shall at all times be exercised in such a manner as not to interfere materially with the normal operation of a Lot and the businesses conducted therein, (ii) the exact location of any utilities shall be subject to the approval of the Owner(s) of the burdened Lot(s), and (iii) except in an emergency, the right of any Owner to enter upon the Lot of another Owner for the exercise of any right pursuant to such easements shall be conditioned upon providing reasonable prior advance written notice to the other Owner as to the time and manner of entry. All such systems, structures, mains, sewers, conduits, lines and other public utilities shall be installed and maintained below the ground level or surface of the Lot (except for such parts thereof that cannot and are not intended to be placed below the surface, such as transformers and control panels, which shall be placed in such location as approved by the Owner of the affected Lot.

10.1.5. Signage Easement. Each Owner, with respect to its Lot, as grantor, hereby grants to each other Owner as grantee, easements under, through and across the Common Area of the Property for the purpose of installing and/or maintaining utility lines to service their signs as necessary.

10.1.6. Landscape Easement.

(a) Description and Purpose. The purpose of the Landscape Easement is to create a stretch of uniformly landscaped open space along the main entry within the Property, and along areas of the Property that are adjacent to public roadways.

(b) Regulation. The Landscape Easement shall be subject to the restrictions and regulations of the Governing Documents and the regulation of the Association as set forth in the Governing Documents.

(c) Care and Maintenance. The Declarant shall initially landscape the Landscape Easement with rocks, gravel, and appropriate vegetation. The landscaping initially installed and planted by Declarant shall establish the uniform standard of landscaping insofar as color, placement, and types and species of plants, trees, and other vegetation, as well as color and type of rock and other ground cover. The duty of care and maintenance shall be performed by the Association. This duty of care and maintenance includes, but is not limited to, watering of vegetation, replacing deceased plants and vegetation in a timely manner, keeping the Landscape Easement free of litter and trash, keeping all irrigation, watering, and drip systems in good repair and working order, and keeping any walls in the Landscape Easement free of deterioration and graffiti. The cost of such care and maintenance shall be paid by the Association as a Common Expense.

(d) Insurance. The Association shall maintain appropriate liability insurance on the Landscape Easement to protect the burdened Lot Owners from any injuries, damages, and claims that might arise or occur within the Landscape Easement.

(e) No Partition. No Lot Owner, person, or entity shall bring any action for the partition of any portion of the Landscape Easement without the written consent of a majority of Lot Owners, the Board of Directors, and Pleasant Grove City.

(f) Damage by other Lot Owners. Any damage caused to the Landscape Easement by any Lot Owner and/or their agents, guests, lessees, or invitees must be repaired by that Lot Owner as soon as possible after such damage is discovered. In the event of failure of that Lot Owner to make such repairs, the Association or the burdened Lot Owner on whose Lot the damage occurred, may make such repairs and the expense of such repair shall be borne by the Lot Owner who caused or whose agents, guests, lessees, or invitees caused the damage.

10.2. **Utilities.** Utility easements are shown on the Plat. By virtue of such easements, it shall be expressly permissible for all public utilities serving the Property to lay, construct, renew, operate and maintain conduits, cables, pipes, mains, ducts, wires and other necessary equipment on the Property, provided that all such services shall be placed underground, except that said utilities may affix and maintain electrical and/or telephone wires, pipes, circuits and conduits on, above, across and under roofs and exterior walls. Should any utility furnishing a service covered by said easements request a specific easement by separate recordable document, Declarant or the Association shall have the right to grant such easement on said Property without conflicting with the terms hereof. Within these easements, no structure, planting or other material shall be placed or permitted to remain which may damage or interfere with the installation, maintenance or replacement of utilities. Declarant reserves the right to convey to itself and to other adjoining landowners, easements for roadway and utility use in the Common Area, if any, and the right to connect to and use roadways and utilities owned or controlled by the Association or serving the Property.

10.3. **Encroachments.** Each Lot and all Common Area within the Property shall be subject to an easement for encroachments created by construction, settling and overhangs, including but not limited to any fences or walls, or the paving of any streets, sidewalks, or roadways that are designed or constructed by the Declarant or on the Declarant's behalf. Any easement of encroachment shall be to a distance of not more than three feet, as measured from any point on the common boundary along a line perpendicular to such boundary. However, in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of, or with the knowledge and consent of, the person or entity claiming the benefit of such easement.

10.4. **Easement for Maintenance of Common Area.** An easement is hereby granted to the Association, its officers, agents, and employees and to any maintenance company selected by the Association for the purpose of maintaining the Common Area, including without limitation to perform maintenance in accordance with the Storm Water Management Plan.

10.5. **Easement for City of Pleasant Grove** An easement is hereby granted to the City to enter upon all or any portion of the Common Area for the purpose of maintaining, protecting, and/or preserving any Common Area which the City deems necessary, in its discretion, to maintain, protect, and/or otherwise preserve. The City of shall have the authority to charge and assess the Association for the costs incurred by the City in its performance of such actions.

10.6. **Police, Fire and Ambulance Service.** An easement is hereby granted to all police, fire protection, ambulance services and all similar persons to enter upon the Common Area in the performance of their duties.

10.7. **Easement for Declarant.** The Declarant hereby reserves to itself and its successors and assigns easements over, beneath, and through the Property, including over the Common Area, for the purpose of making improvements to and developing the Property, including but not limited to construction, marketing, installation and upkeep of landscaping features, entrance features, project signage, street lights, paths, trails or sidewalks or other facilities or things benefiting the Property. The Declarant reserves to itself the right to make any dedications and to reserve, grant, vacate, or terminate any easements, rights-of-ways and licenses as may be reasonably required by any governmental authority or to carry out the intent and design of the Declarant's plan for development of the Property, without compensation therefore.

10.8. **Reservation for Construction.** Declarant hereby reserves for itself and its successors and assigns and for the Association a perpetual easement and right-of-way over, upon, and across the Property for construction, utilities, drainage, and ingress and egress. The location of these easements and rights-of-way may be made certain by Declarant or the Association by instruments recorded in the office of the Utah County Recorder. Declarant further reserves the right to establish from time to time, by dedication or otherwise, utility and other easements, reservations, exceptions and exclusions necessary or convenient for the development, use and operation of any other property of Declarant, as long as such action does not interfere with the occupancy, use, enjoyment, or access to the Property by the Lot Owners.

10.9. **Association's Right to Grant Easements** The Association, through the Board, shall have the right to grant such easements over and on the Common Area for use by any property manager, management company, security or courtesy patrol, or other individuals or companies with whom the Board contracts to perform services for the Association.

10.10. **Repair Easements.** Each Lot shall be subject to an easement for access to make repairs upon adjoining Lots and structures; provided however, that: (a) any damage caused by such entry shall be repaired at the expense of the Owner whose Lot was the subject of the repair work which caused the same; (b) any such entry shall be made only at reasonable times and with as little inconvenience as possible to the Owner of the entered Lot; and (c) in no event shall said easement be deemed to permit entry into the interior portion of any structure.

10.11. **Limitation on Easements.** In no event shall any easement granted or reserved herein be construed to or have the effect of permitting entry into the interior portion of any structure on any Lot within the Property. Nor shall any easement granted or reserved herein be construed to or have the effect of changing the boundaries or lot lines of any Lot.

10.12. **Easements of Record.** The easements provided for in this Article and elsewhere in this Declaration shall in no way affect any other recorded easement.

ARTICLE 11
CONDEMNATION; PARTITION

11.1. **Condemnation.** Whenever all or any part of the Common Area shall be taken (or conveyed in lieu of and under threat of condemnation by the Board and the Declarant during the Declarant Control Period) by any authority having the power of condemnation or eminent domain, each Lot Owner shall be entitled to notice thereof. The award made for such taking shall be payable to the Association as trustee for all Lot Owners to be disbursed as follows:

11.1.1. If the taking involves a portion of the Common Area on which improvements have been constructed, then, unless within 60 days after such taking the Declarant, during the Declarant Control Period, and Members representing at least 75% of the total vote of the Association shall otherwise agree, the Association shall restore or replace such improvements so taken on the remaining land included in the Common Area to the extent lands are available therefore, in accordance with plans approved by the Board.

11.1.2. If the taking does not involve any improvements on the Common Area, or if there is a decision made not to repair or restore, or if there are net funds remaining after any such restoration or replacement is completed, then such award or net funds shall be disbursed to the Association and used for such purposes as the Board shall determine.

11.2. **No Partition.** Except as otherwise permitted in this Declaration, the Common Area shall remain undivided and no person or entity shall bring any action for the partition of any portion of the Common Area without the written consent of all Lot Owners.

ARTICLE 12
AMENDMENT

12.1. **Amendment by Declarant.** Declarant may unilaterally amend this Declaration if such amendment is necessary (a) to bring any provision into compliance with any applicable governmental statute, rule, regulation, or judicial determination; (b) to enable any reputable title insurance company to issue title insurance coverage on any Lot; (c) to enable any institutional or governmental lender, purchaser, insurer, or guarantor of mortgage loans to make, purchase, insure, or guarantee mortgage loans on any Lot; (d) to satisfy the requirements of any local, state, or federal governmental agency; or (e) to correct any scrivener's error. However, any such amendment shall not adversely affect the title to any Lot unless the Owner shall consent in writing.

12.2. **Amendment by Owners.** Except as otherwise specifically provided above and elsewhere in this Declaration, this Declaration may be amended only by the affirmative vote or written consent, obtained by written ballot or otherwise, or any combination thereof, of Owners representing at least 66-2/3% of the total eligible votes in the Association. Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

12.3. **Amendment by Owners During Declarant Control Period.** No amendment made by the Lot Owners during the Declarant Control Period shall be effective unless the Declarant provides its prior express written consent to such amendment, which consent is within Declarant's sole and absolute discretion. Declarant's consent, to be effective, must be provided on the amendment and recorded in the Office of the Utah County Recorder.

12.4. **Effective Date.** Unless a later effective date is specified in the amendment, any amendment shall be immediately effective upon recording in the office of the Utah County Recorder a copy of such amendment accompanied by a verified certificate of the Secretary of the Association stating that the required number of consents or votes were obtained and that such consents will be placed on file in the Association's office. In the case of unilateral amendment by Declarant as provided for herein, such amendment shall be immediately effective upon recording in the office of the Utah County Recorder a copy of such amendment signed and verified by the Declarant.

12.5. **Validity.** If an Owner consents to any amendment to this Declaration, it will be conclusively presumed that such Owner has the authority to consent, and no contrary provision in any mortgage or contract between the Owner and a third party will affect the validity of such amendment. Any procedural challenge to an amendment must be made within six months of its recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of this Declaration.

ARTICLE 13 GENERAL PROVISIONS

13.1. **Duration of Covenants.** The covenants, conditions, and restrictions contained herein shall run with and bind the land for a period of 20 years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of 10 years each, subject to amendment as herein set forth.

13.2. **Notices.** Any notice required under the provisions of this Declaration to be sent to any Lot Owner shall be deemed to have been properly sent when mailed, postage prepaid, to the last known address of such Owner. Lot Owners shall be responsible for providing their addresses to the Board, and, unless otherwise indicated by a Lot Owner,

the address for notice to Lot Owners shall be the mailing address designated for the Owner's Lot. The Board may, by resolution, adopt a policy for notification via electronic communication or transmission (such as e-mail) to Lot Owners in lieu of notice by mail. In addition, the Board may require that Lot Owners maintain a current e-mail address with the Board for such purpose.

13.3. Dates and Times. In computing any period of time prescribed or allowed by the Governing Documents, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday, or a legal holiday (either federal or Utah state), in which event the period runs until the end of the next day that is not a Saturday, a Sunday, or a legal holiday. The deadline of the last day of the period so computed shall be 5:00 P.M., Mountain Time.

13.4. Construction and Severability. All of the terms, provisions, covenants, conditions, and restrictions contained in this Declaration shall be construed together. Invalidation of any one of said terms, provisions, covenants, conditions, or restrictions, or any part thereof, shall not affect the enforceability or applicability any of the remaining terms, provisions, covenants, conditions, and restrictions, or parts thereof.

13.5. Interpretive Conflicts. In the event of any conflict between the provisions of any of the Governing Documents, the documents shall control in the following order of authority: (1) the Declaration; (2) the Articles; (3) the Bylaws; and (4) any rule, regulation, or resolution passed pursuant to the authority of the foregoing documents.

13.6. Gender and Grammar. The singular, wherever used herein, shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations or individuals, men or women, shall in all cases be assumed as though in each case fully expressed.

13.7. Waivers. No provision contained herein shall be deemed to have been waived by reason of any failure to enforce it, irrespective of the number of violations that may occur.

13.8. Topical Headings. The topical headings contained herein are for convenience only and do not define, limit, or construe the contents of these covenants.


IN WITNESS WHEREOF, the undersigned has hereunto executed this Declaration
this ~~3/17~~ day of ~~September, 2015~~.


May, 2017

DECLARANT:

B.W., Inc.
An Idaho corporation

DMB Investments, LLC
An Idaho limited liability company

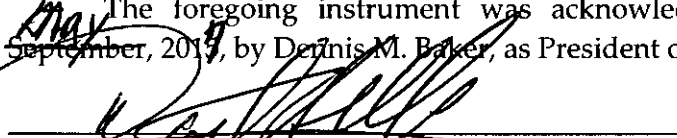
By 
Its: President

By 
Its: manager

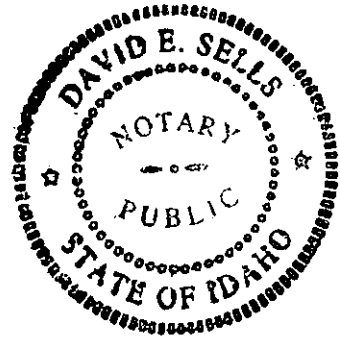

Don Brandt

STATE OF IDAHO)
) :SS
COUNTY OF ADA)

The foregoing instrument was acknowledged before me this 31st day of ~~September~~, 2017, by Dennis M. Baker, as President of B.W., Inc., an Idaho corporation.

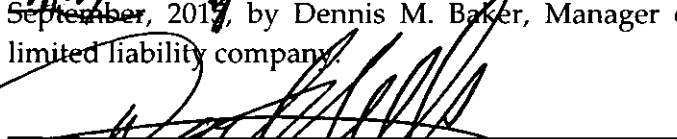
May 9


NOTARY PUBLIC

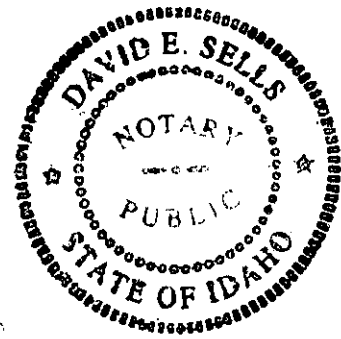


STATE OF IDAHO)
) :SS
COUNTY OF ADA)

The foregoing instrument was acknowledged before me this 31st day of ~~September~~, 2017, by Dennis M. Baker, Manager of DMB Investments, LLC, an Idaho limited liability company.


May 9


NOTARY PUBLIC

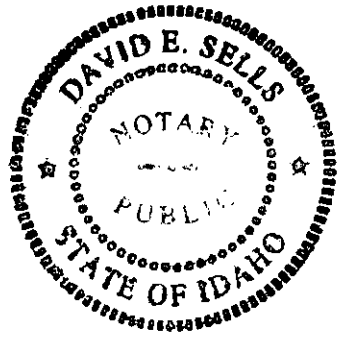


STATE OF IDAHO)
) :SS
COUNTY OF ADA)

The foregoing instrument was acknowledged before me this 31st day of ~~September~~, 2017, by Don Brandt.

May 9


NOTARY PUBLIC



GROVE CREEK CENTER COMMERCIAL SUBDIVISION

CONSENT OF OWNER

The undersigned, being the Owner of Lot 4, Grove Creek Center Commercial Subdivision hereby consents to recording of the Plat for Grove Creek Center Commercial Subdivision Plat A, and to the foregoing Declaration of Covenants, Conditions, and Restrictions of Grove Creek Center Commercial Subdivision.

By signing below the undersigned Owner agrees to the provisions and effect thereof.

2180 West Grove Parkway, LLC
A Delaware limited liability company

By: Nearon Enterprises, a California corporation
Its: Designated Manager

By: [Signature]
Its: President

Notary Certificate

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 the document.

State of California)
County of Contra Costa)

On June 12, 2017, before me, Stacy Wieland, Notary Public, personally appeared Anthony Perino who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or entity upon behalf of which the person 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 [Signature] (Seal)
Notary Public



GROVE CREEK CENTER COMMERCIAL SUBDIVISION

CONSENT OF OWNER

The undersigned, being the Owner of Lot 5, Grove Creek Center Commercial Subdivision hereby consents to recording of the Plat for Grove Creek Center Commercial Subdivision Plat A, and to the foregoing Declaration of Covenants, Conditions, and Restrictions of Grove Creek Center Commercial Subdivision.

By signing below the undersigned Owner agree to the provisions and effect thereof.

2174 West Grove Parkway, LLC
A Delaware limited liability company

By: Nearon Enterprises, a California corporation
Its: Designated Manager

By: [Signature]
Its: President

Notary Certificate

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 the document.

State of California)
County of Contra Costa)

On June 12, 2017, before me, Stacy Wieland, Notary Public, personally appeared Anthony Perino who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or entity upon behalf of which the person 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 [Signature] (Seal)
Notary Public



GROVE CREEK CENTER COMMERCIAL SUBDIVISION

MORTGAGEE CONSENT TO RECORD

The undersigned mortgagee hereby consents to the recording of the Plat for Grove Creek Center Commercial Subdivision Plat A, the Owner's Dedication contained therein, and to the recording of the foregoing Declaration of Covenants, Conditions, Restrictions of Grove Creek Center Commercial Subdivision. The mortgagee joins in all dedications.

Dated June 6, 2017

WELLS FARGO BANK, N.A.
A national banking association

By: Duig J. Mahoney
Its Senior Vice President

Notary Certificate

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 the document.

State of California)
County of Contra Costa)

On _____ before me, _____, personally appeared _____ who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that (s)he executed the same in his or her authorized capacity, and that by his or her signature on the instrument the person, or entity upon behalf of which the person 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 _____
Notary Public

See attached certificate

ACKNOWLEDGMENT

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 San Francisco)

On June 6, 2017 before me, Janis Eskesen-Kawai, Notary Public
(insert name and title of the officer)

personally appeared Dwight T. Mahoney
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 Janis Eskesen-Kawai (Seal)

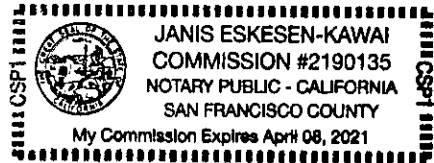


EXHIBIT "A"

That certain real property and the improvement thereon situated in Utah County, State of Utah, more particularly described as follows:

All of Lot 1, Lot 2, Lot 3, Lot 4 and Lot 5 of the Grove Creek Center Commercial Subdivision, according to the official plat thereof recorded in the office of the County Recorder of Utah County, State of Utah.

EXHIBIT "B"
[Map of Common Areas]

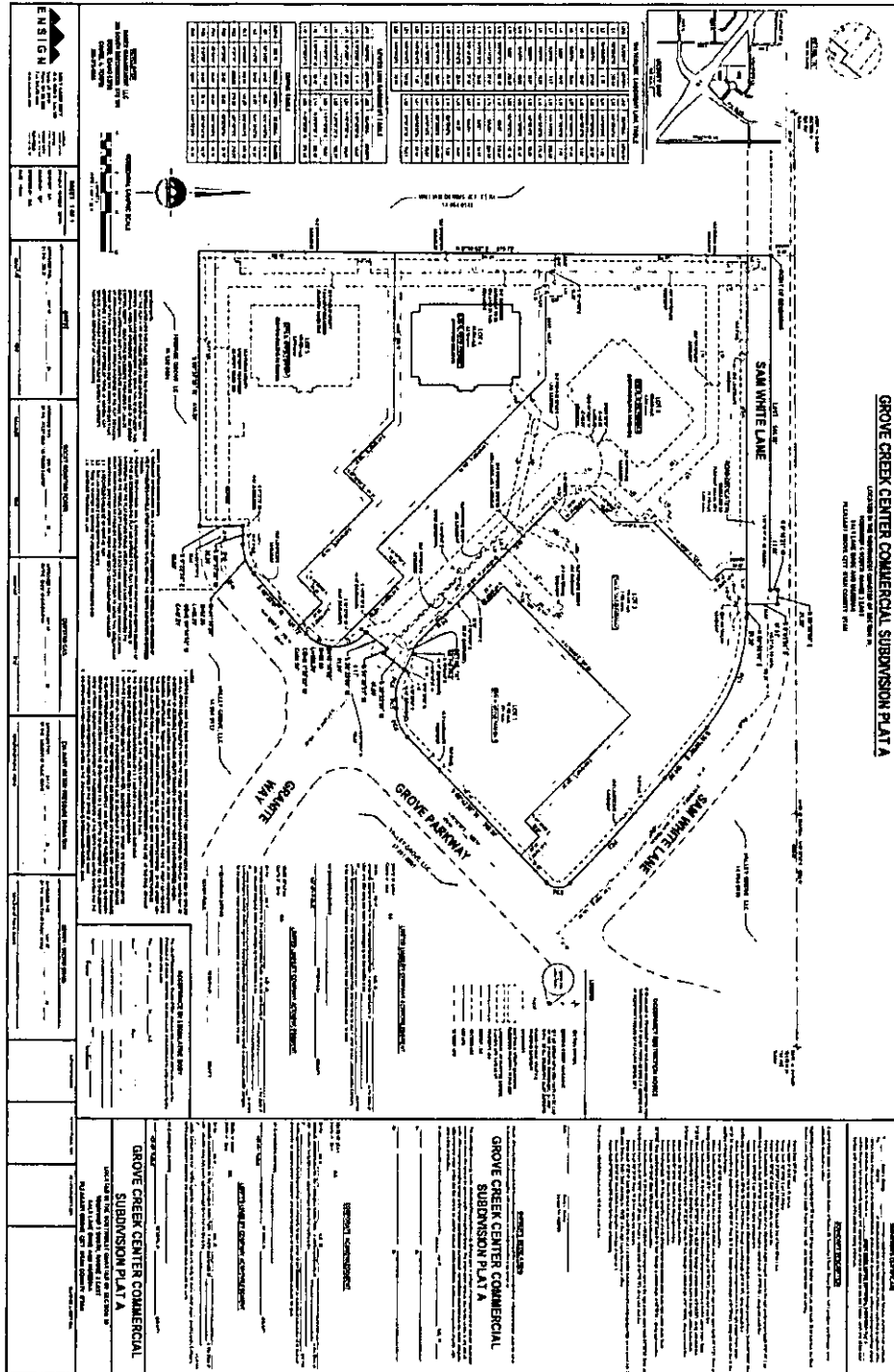


EXHIBIT "C"
[Consents]

