

# DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

## D M B SUBDIVISION NO. 1

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**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS**

**D M B SUBDIVISION NO. 1**

THIS DECLARATION is made on the date hereinafter set forth by DMB Investments Utah, LLC, an Idaho limited liability company and Don Brandt, an Idaho resident who is a single man acting with respect to his sole and separate property, all collectively hereafter referred to as "Declarant."

**WITNESSETH**

WHEREAS, Declarant is the owner of certain real property in Utah County, State of Utah, hereinafter referred to as "the Properties" or the "D M B Subdivision Property," which is located within the boundary of an irregular shape formed by Pleasant Grove Boulevard, 2000 west, Grove Parkway and Granite Way in the Pleasant Grove City, Utah County, Utah, as more particularly described in Exhibit A hereto, which is incorporated by this reference; and

WHEREAS; Declarant desires to subject the Properties to certain protective covenants, conditions, restrictions, reservations, easements, liens, and charges for the benefit of the Properties and their present and subsequent Owners as hereinafter specified, and convey the Properties subject thereto;

NOW, THEREFORE, Declarant hereby declares that the Properties shall be held, sold and conveyed upon and subject to the easements, conditions, covenants, restrictions and reservations hereinafter set forth, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of, and which shall run with the Properties and be binding on all parties now or hereafter having any right, title or interest therein or to any part hereof, and shall inure to the benefit of each owner thereof.

**ARTICLE I. DEFINITIONS**

The following terms shall have the following meanings:

Section 1. "ASSOCIATION" shall mean and refer to D M B Subdivision Property Owners Association Inc., a non-profit corporation organized under the laws of the State of Utah, its successors and assigns.

Section 2. "PROPERTIES" shall mean and refer to that certain real property hereinabove described, also known as the "D M B Subdivision No. 1 Property."

Section 3. "COMMON AREA" shall mean any areas designated as common areas or private streets on the Plat (as defined in Section 10 below) or any landscape or planter areas within the public or private street right of way areas that are for the benefit of the Association.

Section 4. "LOT" or "LOTS" shall mean and refer to any plot of land, with the exception of the Common Area, which is immediately adjacent to the Common Area as shown upon any recorded subdivision map of the Properties or portion thereof held in separate ownership.

Section 5. "OWNER" shall mean and refer to the record owner, whether one or more persons or entities, of the fee simple title to any Lot which is part of the Properties that is immediately adjacent to the Common Area, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 6. "DECLARANT" shall mean and refer to DMB Investments Utah, 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 such successors, heirs or assigns should acquire more than one undeveloped Lot from Declarant for the purpose of development.

Section 7. "DECLARATION" shall mean and refer to the Declaration of Covenants, Conditions and Restrictions applicable to the Properties recorded in the office of the County Recorder of Utah County, State of Utah.

Section 8. "MORTGAGE" shall, mean any mortgage, deed of trust or other security instrument by which a Lot or any improvement thereon is encumbered.

Section 9. "MORTGAGEE" shall mean any person or any successor to the interest of such person named as the mortgagee, trust beneficiary or creditor under any mortgage, as mortgage is defined in Section 8.

Section 10. "PLAT" shall mean a final subdivision plat covering any real property in the D M B Subdivision No. 1 area, or a recorded metes and bounds description, as recorded in the office of the County Recorder, Utah County, State of Utah, as the same may be amended by duly recorded amendments thereto.

Section 11. "SUBDIVISION" shall mean the subdivision of the Properties as shown on a final Subdivision Plat recorded in the Office of the County Recorder, Utah County, State of Utah.

## ARTICLE II. RECIPROCAL EASEMENT

Each owner shall have an irrevocable non-exclusive right of way easement over the parking areas located within the Properties for vehicular and pedestrian ingress, egress and access to, from and between their Lot and the public streets or private streets adjacent to the Properties, and such easement shall be appurtenant to and shall pass with the title to every Lot, subject, however, to the following provisions:

- A. The right of the Association to levy reasonable assessments as provided in Article III, Section 3, below.
- B. The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to

such conditions as may be agreed to by the members; provided, however, that except as to the Association's right to grant easements for utilities and similar or related purposes, no part of the Common Area and facilities may be alienated, released, transferred, hypothecated or otherwise encumbered without the consent of at least two-thirds of the vote of the members who are voting in person or by proxy at a meeting duly held for this purpose.

- C. The right of the Association to promulgate reasonable rules and regulations governing such right of use, from time to time, in the interest of securing maximum safe usage of such Common Area by the members of the Association and their invitees.

Declarant may install additional improvements on the Common Area of the type, in the manner and at such time as Declarant deems appropriate; provided, however, all improvements on the Common Area shall be installed in accordance with applicable laws, rules, regulations and ordinances, in a manner such that the Common Area is suitable for use for the purposes herein specified. Declarant shall not erect or cause to be erected any barriers or improvements on the Common Area which would interfere with reasonable access by the owners of the Properties and their permitted users as described herein; provided, however, Declarant, after written notice to the owners of the Properties, may from time to time erect a barrier for such limited period of time as shall be necessary, in Declarant's reasonable opinion, to prevent any acquisition by the public of rights to or ownership of the easement rights created herein.

### ARTICLE III. PROPERTY OWNERS ASSOCIATION

Section 1. Membership: Every Owner of a Lot which is subject to assessment shall be a member of the Association: The foregoing is not intended to include persons or entities who hold an interest merely as security for the payment of an obligation. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment. Such ownership shall be the sole qualification for membership and shall automatically commence upon a person or entity becoming such Owner and shall automatically terminate and lapse when such ownership in said property shall terminate or be transferred.

Section 2. Voting Rights: The Association shall have two classes of voting membership:

Class A: Class A members shall be all Owners, with the exception of the Declarant, and shall be entitled to the number of votes which is equal to the percentage that the number of square feet of area in the Lot or Lots owned by each member bears to the total number of square feet of the area contained in the Lots which are immediately adjacent to the Common Area. By way of example, if a member owns a Lot containing 70,000 square feet and the total Lots which are immediately adjacent to the Common Area consists of a total of 700,000 square feet, that member is entitled to cast ten votes, his Lot containing ten percent of the number of square feet contained in the Lots that are immediately adjacent to the Common Area. When more than one person holds an interest in any Lot, all such persons shall be members. The vote for such Lot shall be exercised as they determine, but in no event shall the vote cast with respect to any Lot be

split. The vote applicable to any said Lot being sold under contract of purchase shall be exercised by the contract seller, unless the contract expressly provides otherwise.

Class B: Class B member(s) shall be Declarant, who shall be entitled to the number of votes which is equal to the percentage that the number of square feet of area in the Lot or Lots owned by Declarant bears to, the total number of square feet of area contained in the Lots which are immediately adjacent to the Common Area, multiplied by seven (7). The Class B membership shall cease only when Declarant no longer owns a lot in the subdivision:

A. This Article III Section 2 may not be revoked or amended without the consent of Declarant.

Section 3. Assessments:

A. Creation of Lien and Personal Obligation of Assessments: Each Owner of any Lot, by acceptance of a deed therefor (whether or not it shall be so expressed in such deed), is deemed to covenant and agree to pay to the Association:

1. Regular annual or other regular periodic assessments or charges as reasonably determined by the Board of Directors of the Association (the "Board of Directors") to properly maintain and repair the Common Area, including snow removal; and
2. Special assessments for major improvements to the common area, such assessments to be fixed, established and collected from time to time as hereinafter provided.

The regular and special assessments, together with interest, costs of collection and reasonable attorney's fees shall be a charge on the Lot and shall be a continuing lien upon the Lot against which such assessment is made. Each such assessment, together with interest, costs of collection and reasonable attorney's fees, shall also be the personal obligation of the Owner of such Lot at the time when the assessment fell due. The obligation shall remain a lien on the Lot until paid or foreclosed, but shall not be a personal obligation of successors in title, unless expressly assumed.

B. Purpose of Assessments: The assessments levied by the Association shall be used exclusively for the purpose of operating the Association, maintaining, improving and repairing the Common Area and improvements thereon.

C. Amount of Annual Assessment: 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 except by consent of a 2/3 of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose.

- D. Initiation Assessment: 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. This provision is retroactive to the purchaser of any land that is contained within the boundary of the Subdivision.
- E. Special Assessments for Capital Improvements: In addition to the regular assessments authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any repair or replacement of any Common Area facilities in or on the Properties, including private streets or landscape easements,, provided that any such assessment shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose. Any such special assessment shall be allocated among the Lots in the same manner as regular assessments (i.e., based upon the number of square feet of area contained in each Lot) and shall be payable over such a period as the Board of Directors shall determine.
- F. Notice and Quorum for Any Action Authorized Under Section 3.E.: Written notice of any meeting called for the purpose of taking any action authorized under Section 3.E., above, shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of members or of proxies entitled to cast fifty percent (50%) of all the votes of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.
- G. Date of Commencement of Annual Assessments: Due Dates: The annual assessments provided for herein shall commence as to a Lot sold on the first day of the month following the initial conveyance of the said Lot. The first annual assessment shall be adjusted according to the number of months remaining in the calendar year. The Board of Directors shall fix the amount of the annual assessment against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board of Directors. The Association shall, upon demand, and for a reasonable charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments on a specified Lot have been paid. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance. Notwithstanding the foregoing, and with the exception of the initial assessment, assessments shall not commence until



the first day of the month after the Declarant completes the initial improvements to the Common Area, including but not limited to the private roadways, curb, gutter and sidewalks in accordance with the requirements of Pleasant Grove City.

- H. Effect of Nonpayment of Assessments: Remedies of Association: Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of twelve percent (12%) per annum. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area or abandonment of his Lot.
  
- I. Subordination of the Lien to Mortgages: The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, the sale or transfer of any Lot pursuant to mortgage foreclosure or any proceeding in lieu thereof shall extinguish the lien of such assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such Lot from liability for any assessments thereafter becoming due or from the lien thereof.
  
- J. Exempt Property: The following property, subject to this Declaration, shall be exempt from the assessments created herein:
  1. All property expressly dedicated to and accepted by a local public authority;
  2. The Common Area, including private streets
  3. All other properties owned by Declarant and the Association; and
  4. All Lots owned by Declarant, until title is transferred to another party, or until occupancy.

This Article III Section 3 may not be revoked or amended without the consent of Declarant.;

Section 4. Dissolution: The Association may not be dissolved nor may it be relieved of its maintenance responsibilities and obligations as contained herein without the prior approval of the City of Pleasant Grove.

#### ARTICLE IV. EASEMENTS

Section 1. Future Easements: The Association shall have the future right to provide for such easements across, upon and under the surface of its Common Area as may be reasonably necessary to serve the interests and convenience of the Owners of the Properties for public or private ways, sidewalks, public utilities (including cable television), drainage, access, subterranean irrigation lines.

Section 2. Easement for Maintenance: Declarant and the Association shall have a permanent easement to go upon the Common Area to perform, including, but not limited to, snow removal, private or common landscape maintenance (if any), utility service and drainage system maintenance, subterranean irrigation water system maintenance, roadway maintenance, and pathway maintenance, together with all rights of ingress and egress necessary for the full and complete use, occupation and enjoyment of the easements hereby reserved, and all rights and privileges incident thereto, including the right from time to time to cut, trim and remove trees, brush, overhanging branches and other obstructions which may injure or interfere with the use, occupation or enjoyment of the reserved easement and the operation, maintenance and repair of utility service connections and drainage systems.

Section 3. Access Easement: Declarant hereby reserves for the benefit of the Association, the Owners and their invitees, a non-exclusive easement for pedestrian and vehicular access, ingress and egress across the Common Area. The perpetual right of ingress and egress over and across the Common Area may not be terminated or extinguished without the written consent of all Owners, the Association, any and all parties having an interest in any Lot in the Properties, and the City of Pleasant Grove. Declarant reserves to itself and the Association the right to install, maintain, replace, and restore such street, sidewalk, and private or common landscaping improvements (if any) as may be deemed appropriate by the Declarant or the Association. Any such landscaping and street improvements shall be owned and maintained by the Association in accordance with the provisions of Article VI, below.

#### ARTICLE V. MAINTENANCE RESPONSIBILITY

Section 1. Association Responsibility: The Association shall provide maintenance to and be responsible for the Common Area and improvements thereon, private streets and landscape easements. In the event the need for maintenance or repair is caused through the willful or negligent act of an Owner or his invitees, the costs of such maintenance or repairs shall be added to and become part of the assessment to which such Owner's Lot is subject.

Section 2. Owner Responsibility: Each Owner shall be responsible for maintaining and keeping in good order and repair all improvements located on his Lot including, but not limited to, all buildings, landscaping improvements, parking areas, sidewalks and drainage facilities associated with his Lot, except those which are specifically identified herein to be maintained by the Association in the Common Area. Each owner or occupant shall remove, at his own expense, any rubbish or trash of any character which may accumulate on his Lot.

Section 3. Failure of Owner to Maintain: If the Owner fails to perform his maintenance responsibilities as set forth herein, the Association shall, upon fifteen (15) days prior written notice to the Owner, have the right to correct such condition, and to enter upon the Owner's Lot for the purpose of doing so, and seek reimbursement of the cost thereof in accordance with the provisions of Article III Section 3, above.

ARTICLE VI. PROPERTY USE RESTRICTIONS

The following restrictions shall be applicable to the Properties and shall be for the benefit of, and be limitations upon, all present and future Owners of any property located within the Properties, or of any interest therein:

- A. Lot Use: No Lot shall be used except for such uses as are permitted pursuant to the ordinances of the city of Pleasant Grove and have been approved by the Board of Directors. All Lots and improvements constructed thereon must comply with all applicable governmental rules, ordinances, laws, statutes and regulations.
- B. Garbage and Refuse Disposal: No part of said property shall be used or maintained as a dumping ground for rubbish, trash or other waste. No garbage, trash or other waste shall be kept or maintained on any part of said property except in a sanitary container. Any incinerators or other equipment for the storage or disposal of such material must not violate setback restrictions, must be enclosed with an aesthetic screen or fence, as may be approved by the Architectural Control Committee and shall be kept in a clean and sanitary condition.
- C. Nuisance: No noxious or offensive or unsightly conditions shall be permitted upon any part of said property, nor shall anything be done thereon which may be or become an annoyance or nuisance to the other Owners.
- D. Sight Distance at Intersections: No fence, wall, hedge or shrub planting which obstructs sight lines at elevations between three feet (3') and eight feet (8') above the roadways shall be placed or permitted to remain on any corner Lot within the triangular area formed by the street property lines and a line connecting them at points 30 feet from the intersection of the street lines, or in the case of a rounded property corner, from the intersection of the street property lines extended. The same sightline limitations shall apply on any Lot within ten feet (10') from the intersection of a street property line with the edge of a driveway or alley pavement.
- E. Leasing Restrictions: Any lease between an Owner and his tenant shall provide that the terms of the lease shall be subject in all respects to the provisions contained in this Declaration, the Association's Articles of Incorporation and its Bylaws, and that any failure by said tenant to comply with the terms of such documents shall be a default under such lease.
- F. Parking: Each Owner shall be responsible to provide such parking areas as are required by any governmental authority with jurisdiction thereof.
- G. Antennas/Satellite Dishes: No exposed radio or television antenna or satellite dishes shall be erected on the Properties without the prior approval of the Architectural Control Committee, which approval may be withheld in its sole discretion.

- H. Parking: Parking on the Common Area (i.e., the private roads) shall at all time be prohibited unless approved by the Board of Directors for temporary purposes due to repair of an Owner's parking lot or for a special event, etc.

#### ARTICLE VII. BUILDING RESTRICTIONS

Section 1. Building Restrictions: No buildings shall be erected, altered, placed or permitted to remain on any Lot other than those which have been approved pursuant to the ordinances of the city of Pleasant Grove and which have been further approved by the Architectural Control Committee as provided for hereinbelow.

Section 2. Setbacks: No improvements may be constructed or maintained on a Lot within the minimum building setback lines as provided for by the Zoning Ordinance of the City of Pleasant Grove.

Section 3. Permits: Each Owner shall be responsible to obtain, at his sole expense, such permits as may be required by any governmental authority having jurisdiction thereof for the Owner's proposed use. In addition, each Owner shall be responsible for all fees and charges of any description whatsoever imposed by any governmental authority as a result of the proposed use for the Owner's Lot.

#### ARTICLE VIII. ARCHITECTURAL CONTROL

Section 1. Architectural Control Committee: So long as 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 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.

Section 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 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 opinion, are not

suitable or desirable for any reason, aesthetic or otherwise. In so passing on such design, the Committee shall have the privilege, in the exercise of its 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.

Section 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:

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

Section 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.

Section 5. Fees: The Architectural Control Committee may establish, by its adopted rules, a 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. 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.

Section 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.

Section 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.

Section 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:

Section 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.

## ARTICLE IX. INSURANCE AND BOND

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 Properties, 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.

## ARTICLE X. CONDEMNATION

Section 1. Consequences of Condemnation: If at any time or times, all or any part of the Common Area shall be taken or condemned by any public authority or sold or otherwise disposed of in lieu of or in avoidance thereof, the following provisions shall apply.

Section 2. Proceeds: All compensation, damages, or other proceeds therefrom, the sum of which is hereinafter called the "condemnation award," shall be payable to the Association.

Section 3. Apportionment: The condemnation award shall be apportioned among the Owners having an interest in the condemned Common Area equally on a per-Lot basis. The Association shall, as soon as practicable, determine the share of the condemnation award to which each Owner is entitled. Such shares shall be paid into separate accounts, one account for each Lot. Each such account shall remain in the name of the Association and shall be further identified by Lot number and the name of the Owner thereof. From each separate account, the Association, as attorney-in-fact, shall use and disburse the total amount of such accounts, without contribution from one account to the other, first to Mortgagees and other lienors in the order of priority of their Mortgages and other liens (unless waived) and the balance remaining to each respective Owner.

## ARTICLE XI. GENERAL PROVISIONS

Section 1. Enforcement: The Association or any Owner or the owner of any recorded Mortgage upon any part of said property, shall have the right to enforce, by any proceedings at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association, or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 2. Severability: Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect.


Section 3. Amendment: The covenants and restrictions of this Declaration shall run with the land and shall inure to the benefit of and be enforceable by the Association or the legal Owner of any Lot subject to this Declaration, their respective legal representatives, heirs, successors and assigns, for a term of twenty-five (25) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years. Except for Article III Section 2, Article III Section 3 and Article VIII Section 1 which cannot be amended without the consent of Declarant, any of the covenants and restrictions of this Declaration, except the easements herein granted, may be amended by an instrument signed by members entitled to cast not less than sixty-six and-two-thirds percent (66-2/3 %) of the votes of membership. Any amendment must be recorded:


Section 4. Assignment by Declarant: Any or all rights, powers and reservations of Declarant herein contained may be assigned to the Association or to any other corporation or association which is now organized or which may hereafter be organized and which will assume the duties of Declarant hereunder pertaining to the particular rights, powers and reservations assigned, and upon any such corporation or association evidencing its intent in writing to accept such assignment, have the same rights and powers and be subject to the same obligations and duties as are given to and assumed by Declarant herein. All rights of Declarant hereunder reserved or created shall be held and exercised by Declarant alone, so long as it owns any interest in any portion of said property.

IN WITNESS WHEREOF, Declarant has caused its corporate name to be hereunto subscribed and its corporate seal affixed this 13th day of March, 2009.

DECLARANT:

DMB INVESTMENTS UTAH, LLC,  
an Idaho limited liability company

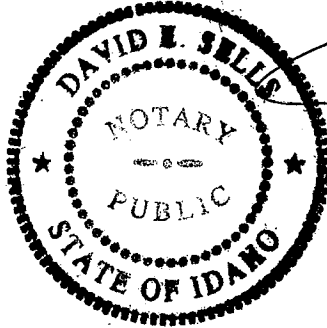
By:   
Dennis M. Baker, Managing Member

  
DON BRANDT, a resident of the State of Idaho



STATE OF IDAHO )  
 )  
:SS  
County of ADA )

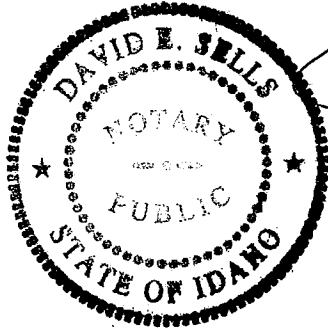
On this 13~~th~~ day of March, 2009, before me, the undersigned Notary Public in and for said State, personally appeared DENNIS M. BAKER, known or identified to me to be the Managing Member of DMB Investments, LLC, the Idaho limited liability company that executed the within instrument, and acknowledged to me that such limited liability company executed the same.



[Signature]  
Notary Public  
Commission Expires: 10-28-2011

STATE OF IDAHO )  
 )  
:SS  
County of Canyon )

On this 13~~th~~ day of March, 2009, before me, the undersigned Notary Public in and for said State, personally appeared DON BRANDT, known or identified to me to be the person who executed the within instrument, who acknowledged to me that he executed the same.



[Signature]  
Notary Public  
My Commission Expires: 10-28-2011

**EXHIBIT A**

(Legal Description of D M B Subdivision No. 1 )

**BOUNDARY DESCRIPTION**  
**DMB Subdivision**

A parcel of land, situate in the Southwest Quarter of Section 30, Township 5 South, Range 2 East, Salt Lake Base and Meridian, more particularly described as follows:

Beginning at a point on the east line of Grove Parkway, which is located North  $89^{\circ}37'36''$  East 1247.85 feet along the Quarter Section line and South 649.00 feet from the West Quarter Corner of Section 30, Township 5 South, Range 2 East, Salt Lake Base and Meridian, and running:

thence North  $45^{\circ}42'39''$  East 408.21 feet along said east line;  
 thence Northeasterly 202.22 feet along the arc of an 329.89-foot radius tangent curve to the left (center bears North  $44^{\circ}17'21''$  West and the long chord bears North  $28^{\circ}08'57''$  East 199.07 feet, through a central angle of  $35^{\circ}07'23''$ ) along said east line;  
 thence Northeasterly 218.02 feet along the arc of an 309.00-foot radius tangent reverse curve to the right (center bears South  $79^{\circ}24'44''$  East and the long chord bears North  $30^{\circ}48'04''$  East 213.53 feet, through a central angle of  $40^{\circ}25'35''$ ) along said east line;  
 thence Southeasterly 37.95 feet along the arc of a 25.00-foot radius tangent compound curve to the right (center bears South  $38^{\circ}59'09''$  East and the long chord bears South  $85^{\circ}29'39''$  East 34.41 feet, through a central angle of  $86^{\circ}58'59''$ ) to the west line of 2000 West Street;  
 thence Southeasterly 405.32 feet along the arc of a 2056.00-foot radius tangent reverse curve to the left (center bears North  $47^{\circ}59'50''$  East and the long chord bears South  $47^{\circ}39'01''$  East 404.67 feet, through a central angle of  $11^{\circ}17'43''$ ) along said west line;  
 thence South  $53^{\circ}17'53''$  East 257.17 feet along said south line;  
 thence South  $8^{\circ}17'53''$  East 45.52 feet to the west line of Pleasant Grove Blvd.;  
 thence South  $36^{\circ}41'47''$  West 513.30 feet along said west line;  
 thence South  $37^{\circ}20'59''$  West 221.50 feet along said west line;  
 thence South  $83^{\circ}21'16''$  West 42.42 feet to the north line of Granite Way;  
 thence North  $51^{\circ}36'51''$  West 73.93 feet along said north line;  
 thence Northwesterly 209.06 feet along the arc of a 851.38-foot radius tangent curve to the left (center bears South  $38^{\circ}23'09''$  West and the long chord bears North  $58^{\circ}38'56''$  West 208.54 feet, through a central angle of  $14^{\circ}04'10''$ ), along said north line;  
 thence North  $65^{\circ}41'01''$  West 141.70 feet;  
 thence Northwesterly 188.93 feet along the arc of a 769.38-foot radius tangent curve to the right (center bears North  $24^{\circ}18'59''$  East and the long chord bears North  $58^{\circ}38'56''$  West 188.45 feet, through a central angle of  $14^{\circ}04'10''$ ), along said north line;  
 thence North  $51^{\circ}36'51''$  West 35.19 feet;  
 thence Northwesterly 101.92 feet along the arc of a 60.00-foot radius tangent curve to the right (center bears North  $38^{\circ}23'09''$  East and the long chord bears North  $2^{\circ}57'06''$  West 90.10 feet, through a central angle of  $97^{\circ}19'30''$ ), along said north line to the east line of said Grove Parkway, to the Point of Beginning.

Parcel contains: 584,145 square feet or 13.410 acres.