

# 148433-BHF

WHEN RECORDED MAIL TO:  
Barry E. Clarkson, Esq.  
P.O. Box 1630  
St. George, Utah 84771

ENT 119134:2022 PG 1 of 9  
Andrea Allen  
Utah County Recorder  
2022 Nov 21 09:22 AM FEE 40.00 BY CS  
RECORDED FOR Cottonwood Title Insurance Agency, In  
ELECTRONICALLY RECORDED

A.P.N.: 54-431-0012, 54-431-0013,  
54-431-0014, and 54-431-0015

## DECLARATION OF RESTRICTIVE COVENANTS AND PERPETUAL CROSS EASEMENT AGREEMENT

KNOW ALL PEOPLE BY THESE PRESENTS that on November 16<sup>th</sup>, 2022, BROKERS INVESTMENTS, LC, a Utah limited liability company ("Declarant") whose address is 243 E St. George Blvd., Ste. 200, St George, UT 84770, as the owner of each of the parcels of real property located on the north side of Pleasant Grove Boulevard within the city of Pleasant Grove, Utah County, State of Utah, as more particularly described on Exhibit "A" hereof (collectively the "Property" or individually a "Parcel"), which is incorporated herein by this reference, hereby expressly dedicates and subjects each of the foregoing Parcels of real property to this Declaration of Restrictive Covenants and Perpetual Easement Agreement (the "Agreement") intending for this Agreement to run with the land and also intending to be bound, and to bind all heirs, successors and/or assigns, to the terms hereof.

Declarant hereby declares that all of the Property and each of the Parcels described above is held and shall be held, conveyed, hypothecated, or encumbered, leased, rented, used, occupied and improved subject to the following limitations, restrictions and covenants. The acceptance of any deed or conveyance thereof by any grantee or grantees, as well as their respective heirs, executors, administrators, successors and assigns, shall constitute their covenant and agreement with the Declarant and with the owners of each Parcel to accept and hold the Property or any of the Parcels described or conveyed in or by such deed or conveyance, subject to the terms and conditions of this Declaration as follows:

1. Access Easement. The owner of each parcel shall assure and grant a drivable and uninhibited vehicle access from and across each Parcel of at least 24 feet in width from and to each other adjacent parcel. For the purposes of this Agreement, when referencing vehicular and pedestrian access, the "Easement Area" shall be those areas of each Parcel that provide vehicular and pedestrian access across the parcel but shall not include any area occupied by a building or buildings (for within ten (10) feet thereof), landscape, pre-stripped parking areas, dedicated drive thru pickup lanes, outdoor seating areas, or other improvements (not including walkways or driveways) following the development and construction of buildings upon each Parcel.

2. Utility Easement. The Easement Area may also be used at the expense of the Parcel benefitting therefrom, for the installation and maintenance of underground utilities such as water, power, gas, storm drain, detention, and sewer. For Purposes of this Agreement when referencing underground utilities and drainage, the "Easement Area" shall include all those areas of each Parcel that are not occupied by a building or buildings (for within ten (10) feet thereof), including, but

ACCOMMODATING RECORDING ONLY.  
COTTONWOOD TITLE INSURANCE AGENCY,  
INC. MAKES NO REPRESENTATION AS TO  
CORRECTNESS OF FILE NOR DOES IT ASSUME  
ANY RESPONSIBILITY FOR VALIDITY,  
SUFFICIENCY OR EFFECT OF INSTRUMENTS.

not limited to driveways, landscape, and pre-stripped parking areas. However, neither in the installation, maintenance nor location of the utilities shall materially adversely affect the reasonable use of the Parcel by its owner or occupant.

3. Use of Easement. By signing below, and/or by accepting any deed to any Parcel or other portion of the Property, the owner of each Parcel, hereby grants to the owners of all other Parcels or portion of the Property, for the benefit of said other owners, their customers, invitees and employees, a perpetual and nonexclusive easement and right to drive or walk upon, across or through any Easement Area on each respective Parcel, including, but not being limited to roadways, walkways, entrances or exits located upon the Parcel or Parcels of said owner. Said grant specifically includes continual, open and unrestricted access onto both Pleasant Grove Boulevard and the private or public roadway immediately adjacent to and East of the Property from and across each of the Parcels. Notwithstanding any provision herein to the contrary, in no event shall the Easement Area on any particular Parcel provide less than twenty-five (24) feet of travel width in a continuous driveway from one side of each Parcel to the other side, thus allowing continuous and unrestricted travel between all Parcels.

4. Walls, Fences, and Barriers. No walls, fences, or barriers of any kind shall be constructed or maintained on the Easement Areas, or any portion thereof, by any party which shall prevent or impair the use of exercise of any of the easements granted herein or the access and movement, including without limitation, pedestrians and vehicular traffic between the various Parcels; provided however, landscaping and reasonable traffic controls as may be necessary to guide and control an orderly flow of traffic may be installed so long as access driveways to the parking areas in the Easement Areas are not closed or blocked. The only exception to this provision shall be (1) for changes to the Easement Areas permitted by this Agreement, and (2) for incidental encroachments upon the Easement Areas which may occur as a result of the use of ladders, scaffolding, storefront barricade and similar facilities resulting in temporary obstruction of portions of the Easement Areas, all of which are permitted hereunder so long as their use is kept within reasonable requirements of construction work being expeditiously pursued. Notwithstanding the foregoing, trash enclosures and a fence or wall along the northern-most boundary of the Property is specifically permitted.

5. Parking. Except as otherwise agreed in writing between the owners of each of the Parcels, all parking for each Parcel shall be, and shall remain upon that Parcel. In other words, the owner of each Parcel shall assure that its employees, clients, tenants, users, occupants, and agents shall restrict all parking to said owner's Parcel and to none of the other Parcels.

6. Use Restrictions. With the exception of the site identified as Site Three, the eastern most site on the attached Site Plan, no owner shall lease (or use) any portion of the Property, including all inline and out lot spaces, existing and future development, to any tenant or for any business, regardless of retail or restaurant designation, who derives more than 10% of its gross sales from smoothies (pre-made or made to order) or fresh-squeezed juice drinks. Also, with the exception of the site identified as Site One, the northern most site on the attached Site Plan, no owner shall lease (or use) any portion of the Property, including inline and out lot spaces, existing and future development to any tenant or for any business engaged in the business of real estate brokerage services or property management services.

7. Visibility and Height Restrictions. With the exception of the site identified as Site One, the northern most site on the attached Site Plan, which shall remain unrestricted as to overall height, all other parcels or sites shall be limited to single story construction unless approved in writing by Declarant. Furthermore direct vehicular access and visibility shall be maintained from Pleasant Grove Boulevard to the front of the site identified as Site One, the northern most site on the attached Site Plan so that no more than 40% of said Site One and the building constructed thereon is obstructed from view from Pleasant Grove Boulevard by any building on any other parcel or site within the Property.

8. Construction of Improvements. The parties hereto acknowledge that an improved driveway and access are mutually beneficial to all Parcels. Therefore, when any building or improvement is constructed on a Parcel or Parcels, the Easement Areas on that parcel shall be developed at the expense of the owner of said Parcel. If any of such improvements, or a portion thereof, are damaged or destroyed, within a reasonable time after such occurrence the owner of the Parcel upon which such damage occurs shall cause such improvements to be replaced or restored and cause all debris to be removed.

9. Maintenance. Following completion of the improvements of the Easement Areas, the owner of each Parcel shall maintain the Easement Areas on their own Parcel in good condition and repair and at their own expense. The Maintenance is to include, without limiting the generality of the foregoing, the following:

9.1. Maintaining the surfaces in a level, smooth and evenly covered condition with the type of surfacing material originally installed or such substitute as shall in all respects be equal in quality, use and durability. In no event shall the parking and drive isles surfacing materials be anything other than concrete or asphalt.

9.2. Removing all papers, debris, filth and refuse and thoroughly sweeping the area to the extent reasonably necessary to keep the area in a clean and orderly condition, and free of snow and ice.

9.3. Placing, keeping in repair and replacing any necessary appropriate directional signs, markers and lines.

9.4. Operating, keeping in repair and replacing, where necessary, such artificial lighting facilities as shall be reasonably required.

9.5. Maintaining all landscaped areas and making such replacements of shrubs and other landscaping as is necessary.

10. Installation and Maintenance Expenses. The owner of each Parcel shall pay the initial installation costs and all maintenance expenses for all improvements located on each of their respective Parcels, including maintenance expenses for Easement Area. Each party intended to be served by any utilities constructed or placed within, on, over, or under the easement shall pay the cost involved with such construction at such party's sole cost. Each utility pipe, line, wire, conduit and related facility located within the easements granted herein shall be located underground. Any party may give the other written notice to commence the installation of improvements. The parties

shall thereafter begin construction of their respective improvements within thirty (30) days of the date of delivery of such written notice and shall proceed to completion in a timely manner.

11. Property Manager. Subject to the revocable mutual agreement of each owner hereunder, a third party may be appointed as an agent of the parties to maintain the Easement Areas in the manner as above outlined. Said third party may receive for such agency a fee that is mutually acceptable to all parties to cover supervision, management, accounting and similar fees which sums are to be included in the general maintenance expense paid by the respective owners of the Easement Areas.

12. Taxes. Each owner of a Parcel or portion of the Property expressly agrees to pay or cause to be paid, prior to delinquency, directly to the appropriate taxing authorities all real property taxes, SID's and assessments which are levied against any part or portion of the Easement Areas owned by said party.

13. Insurance. Each Parcel owner shall maintain commercial general liability insurance providing coverage against bodily injury, death and property damage occurring, or by reason of activities, on or about the Easement Area located on the Parcel of such owner. Such insurance shall be carried with a financially responsible company licensed to issue insurance in Utah, shall afford at least the coverage provided by a "combined single limit" of not less than \$100,000 per occurrence, and not less than \$300,000 in the aggregate, for bodily injury, death and property damage. Any party may comply with this insurance requirement by the purchase of blanket coverage, and may elect such deductible provisions as are consistent with good business practices. Each party shall, upon request, furnish the other owners with a certificate issued by its insurer evidencing that insurance is in force which complies with these insurance requirements.

14. Installation, maintenance and repair of utilities. The installation, maintenance and repair of utilities shall be done upon reasonable notice. Repairs to all landscaping, sidewalks, parking lots, roadways and other improvements shall be made expeditiously and all such landscaping, sidewalks, parking lots, roadways and other improvements shall be restored to the same condition as existed prior to said maintenance and repair of utilities.

15. Default. If any party fails to perform any obligation under this Agreement and such failure continues for a period of thirty (30) days after written notice of such failure is given to such party by the other party, or if the performance of such obligation would reasonably require more than thirty (30) days, if such party fails to commence such performance within such thirty (30) day period thereafter, diligently prosecute such performance to completion, the other party may, on written notice to the defaulting party, perform such obligation in the stead of such defaulting party. The performing party shall be reimbursed by such defaulting party on demand for all costs and expenses (including attorney's fees) incurred in connection with such performance, with interest on such costs and expenses, both before and after judgment, at the rate of eighteen percent (18%) per annum.

16. Indemnification. Each owner of any Parcel or portion of the Property shall indemnify, defend and hold harmless the other parties from and against all losses, damages, claims, causes of action, demands, obligations, suits, controversies, costs, expenses (including, without limitation, litigation expenses and attorney's fees, whether incurred with or without the filing of suit, on

appeal or otherwise), liabilities, judgments and liens, of whatever kind or character, which are caused by such party, including, without limitation, those caused by the use, deposit, storage, disposal, transportation or release of any hazardous substances, hazardous wastes, pollutants or contaminants on any property by (a) the indemnifying party, (b) any person leasing or occupying the Parcel owned by such indemnifying party, or (c) any agent, employee, contractor, invitee, or licensee of either the indemnifying party or any person leasing or occupying the Parcel or portion of the Property owned by such indemnifying party.

17. Covenants to Run with Land. Each provision of this Agreement shall constitute a covenant running with the land and shall be binding on and shall insure to the benefit of the owners of each of the Parcels as parties hereto and their respective successors and assigns, all of which persons may enforce any obligation created by this Agreement.

18. Attorney's Fees. If any action is brought because of a default under or to enforce this Agreement, in addition to the relief to which such party is entitled, the party prevailing in such action shall be entitled to recover from the unsuccessful party, reasonable attorney's fees (including those incurred in connection with any appeal), the amount of which shall be fixed by the court and made a part of any judgment rendered.

19. No Merger. The easements, covenants, restrictions and other provisions contained in this Agreement shall remain in full force and effect despite the fact that all or a part of the Property subject hereto may be owned by the same person from time to time, it being the intention of the parties to create a perpetual easement which will not be terminated by the doctrine of merger or otherwise, unless this Agreement is terminated by Agreement of the parties in writing.

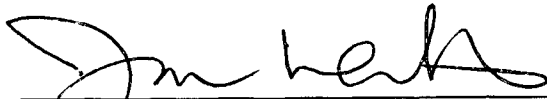
20. Notices. Any notice or demand to be given by any party to any other party shall be given in writing by personal service, express mail, Federal Express, DHL or any other similar form of courier or delivery service, or mailing in the United States mail, postage prepaid, certified and return receipt requested, and addressed to such party at the address set forth for such party in the Utah County taxing records or, if different, at another address provided by such party. Any party may change the address at which it desires to receive notice on written notice of such change to the other party. Any such notice shall be deemed to have been given, and shall be effective, on delivery to the notice address then applicable for the party to which the notice is directed; provided, however, that refusal to accept delivery of a notice or the inability to deliver a notice because of an address change which was not properly communicated shall not defeat or delay the giving of a notice.

21. Interpretation. This Agreement shall inure to the benefit of, and shall be binding on, the parties and their respective successors and assigns. Titles and headings of paragraphs of this Agreement are for convenience of reference only and shall not affect the construction of any provisions of this Agreement. This Agreement shall be governed by, and constructed and interpreted in accordance with, the laws (excluding the choice of laws rules) of the State of Utah. Whenever possible, each provision of this Agreement shall be interpreted in such manner as to be valid under applicable law; but, if any provision of this Agreement shall be invalid or prohibited under applicable law, such provision shall be ineffective to the extent of such invalidity or prohibition without invalidating the remainder of such provisions or the remaining provisions of this Agreement. Except as otherwise provided in this Agreement, no remedy provided in this

Agreement shall be exclusive of any other remedy at law or in equity (whether existing on or created after the date of this Agreement), and all remedies under this Agreement may be exercised concurrently, independently or successively from time to time. The failure on the part of any person to promptly enforce any right under this Agreement shall not operate as a waiver of such right, and the waiver of any default shall not constitute a waiver of any subsequent or other default.

In witness whereof, the Declarant hereby executes this Declaration on the date first set forth above.

BROKERS INVESTMENTS, LC,  
a Utah limited liability company

  
\_\_\_\_\_  
Jon Walter, Manager

STATE OF UTAH            )  
                                      :SS  
WASHINGTON COUNTY )

On November 16<sup>th</sup>, 2022, personally appeared before me Jon Walter, the duly authorized Manager of Brokers Investments, LLC, a Utah limited liability company, and acknowledged before me that he did execute the foregoing Declaration of Restrictive Covenant and Perpetual Cross Easement Agreement for the purposes set forth herein.

  
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NOTARY PUBLIC

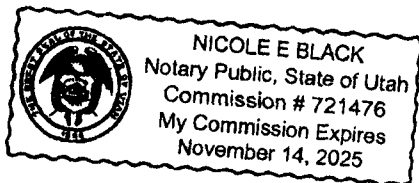


EXHIBIT "A"

Lots 12, 13, 14 & 15, THE VOID PLAT "H", according to the official plat thereof, as filed in the office of the Utah County Recorder, State of Utah.

Tax ID Nos: 54:431:0012, 54:431:0013, 54:431:0014 & 54:431:0015

Site Plan

*See attached*



