

RECORDING REQUESTED BY,
AND WHEN RECORDED MAIL TO:

Parr Brown Gee & Loveless
101 South 200 East, Suite 700
Salt Lake City, Utah 84111
Attention: Thomas E. Goodwin



ENT 189718:2021 PG 1 of 15
ANDREA ALLEN
UTAH COUNTY RECORDER
2021 Nov 09 4:08 pm FEE 40.00 BY JR
RECORDED FOR PETERSON, COLE

CROSS ACCESS AND PARKING EASEMENT AGREEMENT

This CROSS ACCESS AND PARKING EASEMENT AGREEMENT (this “**Agreement**”) is made this ____ day of November, 2021, by URBAN GROVE, LLC, a Utah limited liability company, having an address at 201 South Main Street, Suite 2000, Salt Lake City, Utah 84111 (“**Urban Grove**”), EVANS CREEK, L.L.C., a Nevada limited liability company, having an address at 6800 Evans Creek Dr, Reno, NV 89519 (“**Evans Creek**”), and KOKOPELLI ENTERPRISES, LP, a Utah limited partnership, having an address at 1446 West Pleasant Grove Boulevard, Pleasant Grove, Utah 84062 (“**Kokopelli**”). Urban Grove, Evans Creek, and Kokopelli may be referred to herein individually as a “**Party**” and collectively as the “**Parties.**”

RECITALS

A. Urban Grove is the owner of certain real property more particularly described on **Exhibit “A”** attached hereto and made a part hereof (the “**Urban Grove Parcel**”).

B. Evans Creek is the owner of certain real property more particularly described on **Exhibit “B”** attached hereto and made a part hereof (the “**Evans Creek Parcel**”).

C. Kokopelli is the owner of certain real property more particularly described on **Exhibit “C”** attached hereto and made a part hereof, which includes Units 1, 2 and 3 (being all of the units) of the Proctor Corner Condominiums Plat A, and all of the common areas identified on such plat (collectively, the “**Kokopelli Parcel**”). The Urban Grove Parcel, the Evans Creek Parcel, and the Kokopelli Parcel are referred to herein individually as a “**Parcel**” and collectively as the “**Parcels.**”

D. The Parties desire to enter into this Agreement for the purposes of establish certain cross parking and access rights.

NOW, THEREFORE, for the foregoing purposes, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties make the following declarations, creates the following easements and establishes the following covenants and restrictions, all of which apply to, bind, affect and run with title to each Parcel:

AGREEMENT

1. Recitals; Definitions. The above Recitals are expressly made a part of this Agreement. Certain terms which are used in this Agreement are defined in this Agreement prior

to this Section. In addition to those previously defined terms, the following terms shall have the meanings indicated.

(a) **“Access Areas”** means all areas within the Evans Creek Parcel and Kokopelli Parcel (but excluding the Urban Grove Parcel) intended to be used at any time and from time to time as traffic lanes, driveways, sidewalks, walkways or similar areas for ingress and egress of vehicles and pedestrians, but does not include any portion of such Parcels on which a Building or Related Improvement is located at any time or from time to time.

(b) **“Benefitted Parties”** means, with respect to a Parcel, the Owners and Occupants of that Parcel, and their respective employees, customers, guests, invitees and licensees.

(c) **“Building or Related Improvement”** means a building or other principal structure on a Parcel (including, without limitation, all extensions or projections thereof, all structures or facilities accessory or integral thereto, and any garages, platforms or docks, storage tanks, canopies or overhangs, porches, enclosed malls, and similar items).

(d) **“Mortgage”** means a recorded mortgage, deed of trust or other security agreement creating a lien on an Owner’s interest in a Parcel or a portion of a Parcel as security for the payment of indebtedness.

(e) **“Mortgagee”** means the mortgagee, beneficiary or other secured party under a Mortgage.

(f) **“Occupant”** means any Person that, by virtue of a contract to purchase, a lease, a rental arrangement, a license or any other instrument, agreement, contract, document, understanding or arrangement is entitled to or does occupy, possess or use any Parcel or portion of any Parcel.

(g) **“Owner”** means the Person that, at the time concerned, is the owner of record in the office of the Recorder of Utah County of a fee interest in any Parcel or portion of any Parcel. In the event that, at any time, more than one Person owns the fee interest in a Parcel, they shall constitute one (1) Owner, and liability of each such Person for performance or compliance with the applicable provisions of this Agreement shall be joint and several. Notwithstanding any applicable theory relating to a mortgage, deed of trust, or like instrument, the term “Owner” shall not mean or include a Mortgagee unless and until such Person has acquired fee title to the Parcel encumbered by a Mortgage pursuant to foreclosure, trustee’s sale or any arrangement or proceeding in lieu thereof.

(h) **“Parking Areas”** means, with respect to the Urban Grove Parcel, the Urban Grove Parking Area, and with respect to the Evans Creek Parcel, the Evens Creek Parking Area.

(i) **“Person”** means a natural person or a legal entity.

(j) **“Evans Creek Parking Area”** means the area depicted on Exhibit “E” attached hereto and made a part hereof, consisting of ten (10) parking stalls.

(k) **“Urban Grove Parking Area”** means the area depicted on Exhibit “D” attached hereto and made a part hereof, consisting of twenty-two (22) parking stalls.

2. Grant of Easements. The Parties hereby create the following easements appurtenant to each Parcel for the benefit of the Benefitted Parties of each other Parcel, which easements shall be appurtenant to each of the Parcels:

(a) A reciprocal, non-exclusive, perpetual easement for ingress and egress, upon, over and across the Access Areas and Parking Areas for pedestrian use by the Benefitted Parties of each other Parcel.

(b) A reciprocal, non-exclusive, perpetual easement for ingress and egress, upon, over and across the Access Areas and Parking Areas for the purpose of furnishing access and the right of access for the vehicles of the Benefitted Parties of each other Parcel.

(c) A reciprocal, non-exclusive, perpetual easement for vehicular parking upon, over and across the Parking Areas.

3. Modification of Access Areas and Parking Areas. The Owner of a Parcel shall be permitted to alter, relocate or change the configuration of the Access Areas and the Parking Areas on the Parcel which it owns at any time and from time to time but only upon strict compliance with the provisions of this Section.

(a) Any proposed alteration, relocation or other change shall comply with all applicable laws, rules regulations and ordinances.

(b) Any proposed alteration, relocation or other change shall not, without the prior written consent of all Owners: (i) permanently reduce the number of parking stalls located in the Parking Areas; or (ii) modify or unreasonably obstruct any direct access areas or drive isles between the Evans Creek Parcel and the Kokopelli Parcel or either such Parcel and the current public roadways to which such Parcels have access on the date hereof.

(c) The Owner proposing to make any alteration, relocation or other change shall pay the entire cost of such alteration, relocation or change.

(d) The Owner proposing to make such alteration, relocation or change may not perform any work on, or stage any work from, any other Parcel without the consent of the Owner of the other Parcel. In connection with obtaining such consent, to the extent such consent is required under the terms of this Section 3, the Owner proposing to make sure alteration, relocation or change shall provide copies of its preliminary plans to the Owner of the other Parcel prior to commencing such work for review and approval by the Owner of the other Parcel, which consent shall not be unreasonably withheld, conditioned or delayed. In the event an Owner (the **“Submitting Owner”**) submits a preliminary plan to the Owner of the other Parcel (the **“Consenting Owner”**) for its consent as required by this subsection (d), such preliminary plan shall be approved or disapproved in writing within twenty (20) days of the delivery of the preliminary plans to the Consenting Owner. In the event a Consenting Owner disapproves of such preliminary plans, the Consenting Owner shall, within such twenty (20) day period, deliver to the Submitting Owner the Consenting Owner’s written objections to the preliminary plans

which objections shall include a reasonably detailed description of what changes, if made, would cause the Consenting Owner to give its approval of the preliminary plans. The Submitting Owner shall, to the extent the Submitting Owner agrees with the Consenting Owner's requested changes, revise the preliminary plans and resubmit them to the Consenting Owner for its approval in accordance with the procedures set forth above in this subsection (d). Notwithstanding the foregoing to the contrary, an Owner shall not be required to obtain the consent of the other Owners to make any alteration, relocation or modification on such Owner's Parcel if such alteration, relocation or modification is required by applicable law, provided, the Owner making such alteration, relocation or modification as required by applicable law shall give each of the other Owners at least thirty (30) days prior written notice of such change.

(e) Except as otherwise agreed in writing, each Owner of a Parcel shall be responsible to maintain the Parking Areas and the Access Area and the improvements within the Parking Areas and the Access Areas on its Parcel in good condition and repair, or cause the Parking Areas and the Access Area to be maintained and kept in good condition and repair. Notwithstanding the foregoing, and subject to reasonable wear and tear from normal use, in the event the Parking Areas and the Access Area or any improvements within the Parking Areas and the Access Area are damaged by an owner of a Parcel or its Benefitted Parties, or any other person claiming by through or under such Owner, such Owner shall be solely responsible for the repair of any such damage. The obligation to maintain and repair the Parking Areas and the Access Area and the improvements within the Parking Areas and the Access Area shall, without limiting the generality thereof, include: (i) maintaining and repairing the surfaces in a level, smooth and evenly-covered condition with the type of surfacing material originally installed or of similar quality, use and durability; (ii) removing all papers, debris, snow, ice, filth and refuse and thoroughly sweeping the areas to the extent reasonably necessary to keep these areas in a neat, clean and orderly condition; (iii) replacing the Parking Areas and the Access Area if necessary, and (iv) causing the Parking Areas and the Access Areas to comply with all applicable laws.

4. Indemnity. Each Owner of a Parcel ("**Indemnitor**") covenants and agrees to defend, protect, indemnify and hold harmless each other Owner of a Parcel ("**Indemnitee**") from and against all claims, including any action or proceedings brought thereon, and all costs, losses, expenses and liability (including reasonable attorney's fees actually incurred and cost of suit) (collectively, "**Losses**") arising from or as a result of the negligent acts or omissions or willful misconduct of the Indemnitor or its Benefitted Parties in exercise of the easements or other rights granted by this Agreement or the negligence or willful misconduct by Indemnitor or its Benefitted Parties in the use of any such easements or rights, except to the extent such Losses result from the negligence or willful act or omission of the Indemnitees or their Benefitted Parties. The provisions of this Section shall survive the expiration or sooner termination of this Agreement with respect to any claims or liability arising in connection with any event occurring prior to such expiration or termination

5. Property Taxes and Assessments. Each Owner shall pay, or cause to be paid, directly to the appropriate governmental agencies, prior to delinquency, all assessments and/or charges, if any, which may be levied or assessed against such Owner's Parcel, but shall nonetheless have the right to contest such assessments in any manner provided by law.

6. Title and Mortgage Protection.

(a) No amendment to this Agreement shall in any way affect the rights of any Mortgagee pursuant to a Mortgage that is recorded at the time of the recordation of the amendment, or the rights of any successor in interest or title to such Mortgagee, either before or after such Mortgagee or its successor enters into possession or acquires title pursuant to foreclosure, trustee's sale or any arrangement or proceeding in lieu thereof, unless such Mortgagee consents in writing to such amendment.

(b) A breach of any of the covenants, provisions, or requirements of this Agreement shall not result in any forfeiture or reversion of title or of any other interest in a Parcel. A breach of any of the covenants, provisions, or requirements of this Agreement shall not defeat, impair or render invalid the lien of or other rights under any Mortgage; provided, a lien arising under this Agreement shall have priority over the Mortgage if a notice of such lien is recorded prior to the date of recordation of a Mortgage. Unless and until it enters into possession or acquires title pursuant to foreclosure, trustee's sale or any arrangement or proceeding in lieu thereof, a Mortgagee shall have no obligation to take any action to comply with, and may not be compelled to take any action to comply with, any of the covenants, provisions, or requirements of this Agreement.

7. Further Assurances. Each Owner shall execute any such further documentation reasonably required to confirm the rights and obligations of the Owners under this Agreement.

8. Entire Document. This Agreement contains the entire understanding of the Parties with respect to the matters set forth herein and supersedes and terminates all prior oral or written understandings relating to the subject matter set forth herein, whether recorded or unrecorded, including that certain unrecorded Shared Use Agreement for Parking Facilities dated May 9, 2014.

9. Counterpart Signatures. This Agreement may be executed in counterparts each of which shall be deemed an original. An executed counterpart of this Agreement transmitted by facsimile shall be equally as effective as a manually executed counterpart.

10. Recording. Upon execution of this Agreement, this Agreement shall be recorded by the Parties hereto in the appropriate real estate recorders office.

11. Covenants to Run with Land. This Agreement and the easements and covenants created by this Agreement are intended by the Parties to be and shall constitute covenants running with the land as to each of the Parcels, and shall be binding upon and shall inure to the benefit of each Owner and any Person who acquires or comes to have any interest in any Parcel, and their respective grantees, transferees, lessees, heirs, devisees, personal representatives, successors, and assigns. This Agreement and all of the easements, covenants, provisions, and requirements hereof shall also inure to the benefit of each and each Person owning any interest in or occupying any portion of a Parcel. Each Owner shall comply with, and all interests in all Parcels shall be subject to, the terms of this Agreement. By acquiring, in any way coming to have an interest in, or occupying a Parcel, the Person so acquiring, coming to have such interest

in, or occupying a Parcel, shall be deemed to have consented to, and shall be bound by, each and every provision of this Agreement.

12. Enforcement. The Owner of a Parcel or any portion of a Parcel shall have the right to enforce, through any permitted proceeding at law or in equity, the terms, provisions, restrictions and requirements of this Agreement. Any failure to insist upon the strict performance of or compliance with any of the terms, provisions, covenants and requirements of this Agreement shall not result in or be construed to be an abandonment or termination of this Agreement or any waiver of the right to insist upon such performance or compliance with the terms of this Agreement in the future. If any action or proceeding is brought because of a default under, or to enforce or interpret any of the covenants, provisions, or requirements of, this Agreement, the party prevailing in such action shall be entitled to recover from the unsuccessful party reasonable attorneys' fees (including those incurred in connection with any appeal), the amount of which shall be fixed by the court or the arbitrator and made a part of any judgment rendered.

13. Miscellaneous.

(a) Termination of Liability. Whenever a conveyance of a Parcel takes place, the transferor shall not be liable for breaches of this Agreement occurring after the conveyance.

(b) Notices. All notices, demands or other communications shall be in writing, and shall be sent by certified mail, return receipt requested, postage prepaid and addressed to the parties at the address set forth in the first paragraph of this Agreement. Any party may change its address for notices by a written notice to the other parties given pursuant to this Section.

(c) No Third-Party Beneficiaries. No person (including any member of the public) or entity shall have any enforceable rights under this Agreement other than the parties hereto and their respective successors, assigns and successors-in-interest.

(d) Estoppel Certificates. Each party covenants that within fifteen (15) days after request of the other party, it shall deliver an estoppel certificate stating: (i) whether the party to whom the request has been directed knows of any default under this Agreement, and if there are known defaults, specifying the nature thereof; (ii) whether to its knowledge this Agreement has been assigned, modified or amended in any way (and if it has, then stating the nature thereof); (iii) that to such party's knowledge, this Agreement, as of the date of the estoppel certificate, is in full force and effect; and (d) any other information relating to this Agreement as may be reasonably required by the requesting party.

(e) Negation of Partnership. None of the terms or provisions hereof shall be deemed to create a partnership between or among Evans Creek, Kokopelli and Urban Grove, nor shall it cause them to be considered joint venturers, or members of any joint enterprise, in the operation of parking areas or otherwise.

(f) Severability. Invalidation of any covenant, condition, or restriction or any other provision contained herein or the application thereof to any person or entity by judgment or court order shall in no way affect any of the other covenants, conditions, restrictions, or

provisions hereof, or the application thereof to any other person or entity, and the same shall remain in full force and effect.

(g) Time of Essence. Time is of the essence of every provision hereof in which time is a factor.

(h) No public dedication. Nothing contained herein shall be construed or deemed to constitute a dedication, express or implied, of any real property to or for any public use or purpose whatsoever.

[SIGNATURE PAGE IMMEDIATELY FOLLOWS]

IN WITNESS WHEREOF, intending to be legally bound, the parties hereto, execute this Agreement as of the date and year first above written.

URBAN GROVE:

URBAN GROVE, LLC,
a Utah limited liability company,
by its Managers

KC Gardner Company, L.C.,
a Utah limited liability company

By: [Signature]
Name: Christian Owen
Its: manager

Grove Creek Capital, LLC, a Utah limited liability company

By: [Signature]
Name: KEVIN BRADBURN
Its: MANAGER

EVANS CREEK:

EVANS CREEK, L.L.C., a Nevada limited liability company

By: [Signature]
Name: Russell Foltz
Its: operating manager

KOKOPELLI:

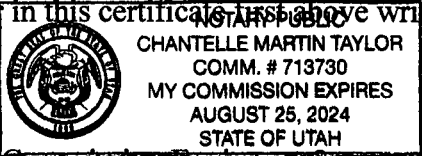
KOKOPELLI ENTERPRISES, LP, a Utah limited partnership

By: [Signature]
Name: Russell Foltz
Its: director

STATE OF UTAH)
 : ss.
COUNTY OF SALT LAKE)

On this 8th day of November, 2021, before me, the undersigned, personally appeared Christina Gardner, known or identified to me to be a manager of KC Gardner Company, L.C., a Utah limited liability company, which is a manager of Urban Grove, LLC, a Utah limited liability company, who executed the instrument on behalf of said limited liability company, and acknowledged to me that the limited liability company executed the same.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



My Commission Expires: 08-25-2024

Chantelle Martin Taylor
NOTARY PUBLIC
Residing at: Lehi UT

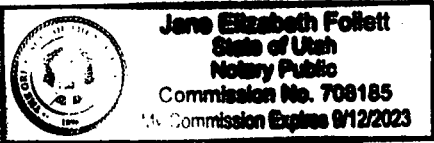
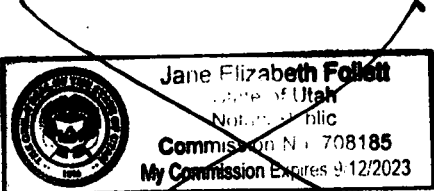
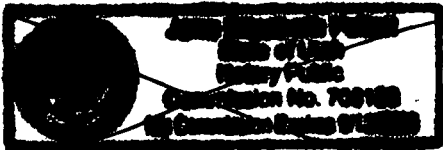
STATE OF UTAH)
 : ss.
COUNTY OF Utah)

On this 8th day of November, 2021, before me, the undersigned, personally appeared Kevin Bradburn, known or identified to me to be a manager of Grove Creek Capital, LLC, a Utah limited liability company, which is a manager of Urban Grove, LLC, a Utah limited liability company, who executed the instrument on behalf of said limited liability company, and acknowledged to me that the limited liability company executed the same.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Jane Elizabeth Follett
NOTARY PUBLIC
Residing at: Utah, Pleasant Grove

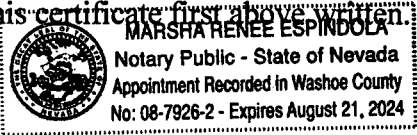
My Commission Expires:



STATE OF ~~UTAH~~ Nevada)
 : ss.
COUNTY OF Washoe)

On this 4 day of November, 2021, before me, the undersigned, personally appeared Russell Fouk, the operating manager of Evans Creek, L.L.C., a Nevada limited liability company, who executed the instrument on behalf of said limited liability company, and acknowledged to me that the limited liability company executed the same.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.



Marsha Renee Espindola
NOTARY PUBLIC
Residing at: Reno, Nevada

My Commission Expires:

STATE OF ~~UTAH~~ Nevada)
 : ss.
COUNTY OF Washoe)

On this 4th day of November, 2021, before me, the undersigned, personally appeared Russell Fouk, the Director of Kokopelli Enterprises, LP, a Utah limited partnership, who executed the instrument on behalf of said limited liability company, and acknowledged to me that the limited partnership executed the same.

In witness whereof I have hereunto set my hand and affixed my official seal the day and year in this certificate first above written.

Marsha Renee Espindola
NOTARY PUBLIC
Residing at: Reno, Nevada

My Commission Expires:



EXHIBIT "A"

(Legal Description of Urban Grove Parcel)

Lot 9, The Void, Plat "D", according to the official plat thereof recorded January 26, 2018, as Entry No. 8256:2018 in the official records of the Utah County Recorder's Office, State of Utah.

Tax Parcel Id No. 54-356-0009

EXHIBIT "B"

(Legal Description of Evans Creek Parcel)

Lot 1, Plat "A", Proctor Corner Subdivision, according to the official plat thereof recorded January 18, 2013, as Entry No. 5942:2013 in the official records of the Utah County Recorder's Office, State of Utah.

Tax Parcel Id No. 49-741-0001

EXHIBIT "C"

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(Legal Description of Kokopelli Parcel)

All of Proctor Corner Condominiums Plat "A", according to the official plat thereof recorded July 17, 2019, as Entry No. 66355:2019 in the official records of the Utah County Recorder's Office, State of Utah.

Tax Parcel Id Nos. 49-910-0001, 49-910-0002, 49-910-0003 and 49-910-0004

EXHIBIT "D"

(Depiction of Urban Grove Parking Area)

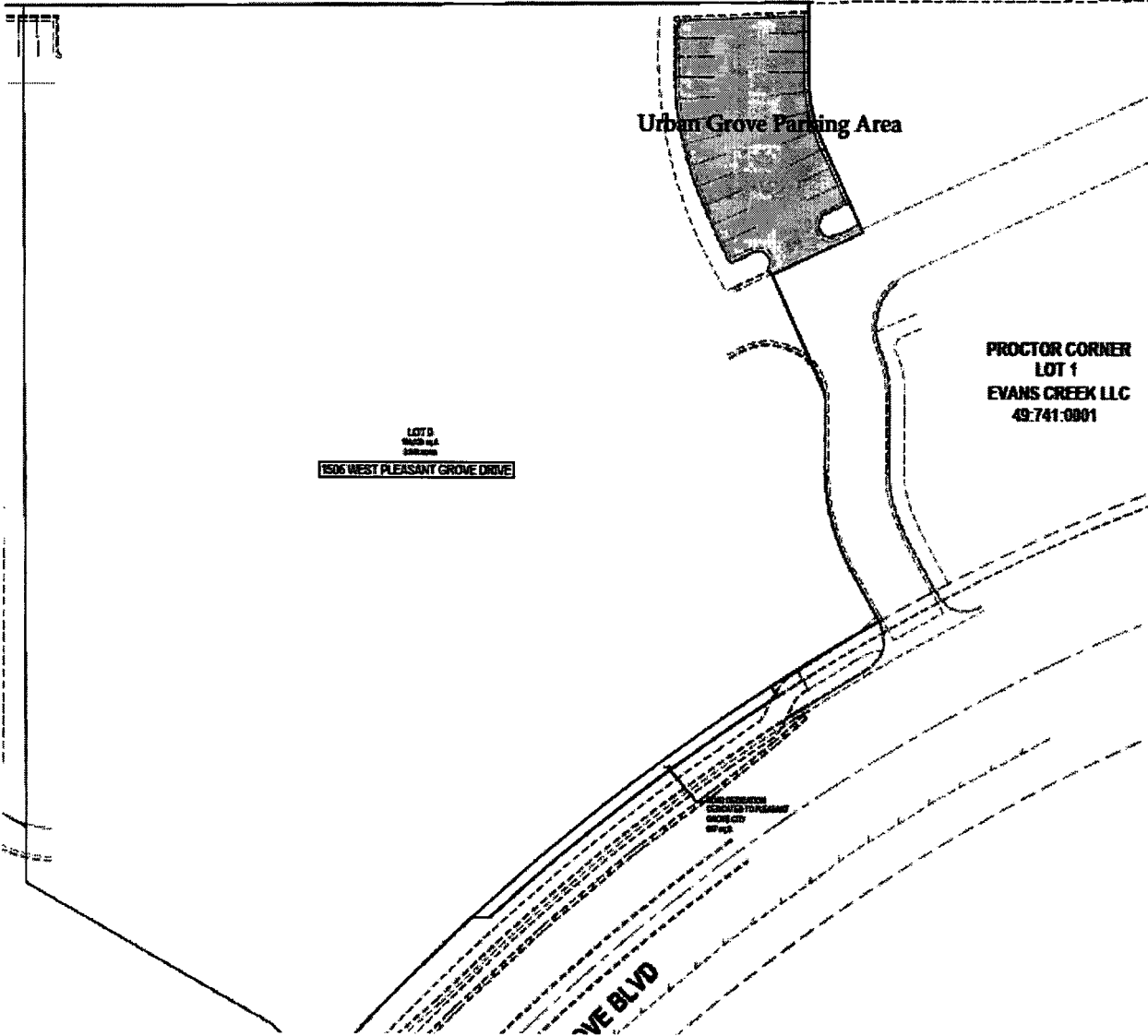


EXHIBIT "D"

(Depiction of Evans Creek Parking Area)

