

AFTER RECORDING  
PLEASE RETURN TO:

Bridgette Server  
358 Steep Mountain Drive  
Draper Utah 84020

ENT 53664:2007 PG 1 of 11  
RANDALL A. COVINGTON  
UTAH COUNTY RECORDER  
2007 Apr 12 1:49 pm FEE 31.00 BY VM  
RECORDED FOR SERVER, BRIT

SPACE ABOVE THIS LINE FOR RECORDER'S USE

## GRANT OF EASEMENT

THIS GRANT OF EASEMENT (this "Easement") dated this \_\_\_ day of April 2007, is executed by BBS FAMILY LLC, a Utah limited liability company ("Grantor"), 358 Steep Mountain Drive, Draper, Utah 84020, and BRIT W. SERVER and BRIDGETTE B. SERVER (collectively "Grantee"), 358 Steep Mountain Drive, Draper Utah 84020.

### RECITALS:

A. Grantor is the owner of that certain real property located at 1359 N. Moyle Drive, Alpine, Utah County, Utah, and more particularly described in Exhibit "A" attached hereto and incorporated herein by reference (the "Moyle Lot").

B. Grantee is owner of that certain real property located at located at 1390 Grove Drive, Alpine, Utah County, Utah, and more particularly described in Exhibit "B" attached hereto and incorporated herein by reference (the "Grove Lot").

C. Since the Moyle Lot and the Grove Lot share a common rear boundary line and both of the Lots have high scenic, esthetic, conservation and natural values (the "Conservation Values"), Grantor, as owner of the Moyle Lot, intends to convey to Grantee the right to preserve the Conservation Values of the Moyle Lot in perpetuity for the benefit of the Grove Lot, subject to Grantor's, its successors and assigns continued right to use the Moyle Lot for single-family residential purposes as stated in this Easement.

NOW, THEREFORE, in consideration of the mutual covenants, terms, conditions, and restrictions contained herein, Grantor hereby voluntarily grants and conveys to Grantee an Easement in perpetuity over the Moyle Lot of the nature and character and to the extent hereinafter set forth.

## ARTICLE I

### PURPOSE OF THE EASEMENT AND GENERAL RESTRICTIONS ON USE

1. General Purpose. The general purpose of this Easement is to provide for the preservation of the Conservation Values on the Moyle Lot, permit Grantor's single-family residential use of the Moyle Lot subject to the restrictions set forth in this Easement, and encumber the Moyle Lot with this Easement created by Grantor's and Grantee's signatures to this Easement, subject to the terms and conditions set forth herein. The restrictions set forth in this Easement shall not be construed so as to unreasonably interfere with or prevent Grantor's normal use and enjoyment of the Moyle Lot and the residence and appurtenant structures and improvements located thereon for single-family residential use, provided that said use conforms to the restrictions set forth herein.
2. Residential Use and No Further Subdivision. The Moyle Lot shall be used for single-family residential purposes in harmony with the Conservation Values. The Moyle Lot shall not be further subdivided.
3. Natural Habitat. No portion of the natural habitat on the Moyle Lot shall be disturbed, modified or changed in, nor shall any Improvements other than the rear perimeter fence be constructed or placed on that area

of the Moyle Lot located between the rear boundary line of the Moyle Lot and thirty (30) feet back from the rear boundary line of the Moyle Lot.

4. Architectural Control. One single-family residence, adjacent garage facilities, related underground utilities, and one swimming pool have been constructed on the Moyle Lot. No exterior addition, change or alteration shall be made to any existing structure or improvement on the Moyle Lot, nor shall any additional structures or appurtenances thereto be constructed or placed on or under the Moyle Lot, including, but not limited to, buildings, outbuildings, garages, carports, roads, driveways, parking areas, fences, screening walls, retaining walls, stairs, decks, landscaping, hedges, windbreaks, plantings, planted trees and shrubs, poles, signs, exterior air conditioning and water softening fixtures or equipment (collectively the "Improvements"), unless and until the plans and specifications for the proposed Improvements (the "Plans and Specifications") showing the nature, kind, shape, height, materials, and location of the same shall have been submitted to and approved in writing by Grantee as to harmony with the Conservation Values and compatibility with existing structures on the Moyle Lot and the Grove Lot in terms of quality, external design, location, topography, materials, construction and appearance of the proposed Improvements. No Improvements of any kind shall be erected, placed, altered, added to, reconstructed or permitted to remain on or under the surface of the Moyle Lot, and no construction activities or removal of trees, shrubs or other similar vegetation shall be commenced, until written approval therefore has been given by the Grantee specifically authorizing such Improvements or activities. The residence and all other Improvements on the Moyle Lot shall each have a wood shake shingle roof and any replacement or repair thereof shall be with wood shake shingles. Any Improvements constructed or placed on the Moyle Lot shall be more than six feet in height.

5. Commercial & Rental Use. No part of the Moyle Lot shall be used or caused to be used for any business, commercial, manufacturing, mercantile, storing, vending, or other such nonresidential purposes without, in each instance, the written approval of Grantee. At no time may the Moyle Lot be leased without, in each instance, the written consent of the Grantee, which approval shall not be unreasonably withheld. Notwithstanding the foregoing, the provisions and restrictions on leasing contained in this Section 1 5 shall not apply to occupancy of the Moyle Lot by an immediate family member of Grantor. "Immediate family member" shall mean and include the spouse, parents, children and grandchildren of Grantor. All leases of the Moyle Lot shall be subject in all respects to the provisions of this Easement and failure of the lessee to comply with the terms of this Easement shall be a default under the lease and shall be enforceable against the lessee directly by Grantee.

6. Signs. No sign or billboard of any kind shall be displayed to the public view on the Moyle Lot except for a single sign advertising the sale of the Moyle Lot so long as such sign is no larger than 2' x 3' in size.

7. Fences. The perimeter fences between the Moyle Lot and the Grove Lot shall not be removed and the fences shall be maintained in good condition and replaced when necessary by Grantor and Grantee, the cost of which will be shared equally between the Parties. No additional fences shall be located on the Moyle Lot without the approval of Grantee. All fences shall be solid, wood fences, no taller than 6 feet in height, and of such colors, styles and characteristics, as shall be approved by the Grantee, with the intent to assure that all fences on the Moyle Lot are constructed of similar materials and are harmonious with the other fences on the Moyle Lot and the Grove Lot in terms of materials, color and aesthetics. The Grantor will repair or replace any fence on the Moyle Lot that is damaged or destroyed within 90 days of such damage or destruction.

8. Nuisance. No noxious, hazardous or illegal trade or activity shall be carried on upon the Moyle Lot, or which shall, in any way constitute a nuisance or interfere with the quiet enjoyment of the Grove Lot. No lights to any tennis courts, sport courts, swimming pools or other outdoor facilities on the Moyle Lot shall be illuminated between 10:00 p.m. and 8:00 a.m.

9. Temporary Structures. No used or second-hand structure, no building of a temporary character, and no mobile home, trailer, camper, recreational vehicle, basement, tent, shack, garage, barn or other outbuilding shall be placed or used on the Moyle Lot at any time, either temporarily or permanently, unless placed or maintained within an enclosed garage or storage shed.

10. Vehicles. Except for temporary parking of (a) vehicles belonging to the guests and invitees of

Grantor, (b) delivery trucks, service vehicles and other commercial vehicles delivering goods or used in the furnishing of services to Grantor, and (c) vehicles belonging to or being used by Grantor for loading and unloading purposes, no automobile, truck, pickup, motorbike, motorcycle, tractor, golf cart, mobile home, trailer, camper, recreational vehicle, snowmobile, all-terrain vehicle, boat or similar equipment shall be parked or permitted to remain upon the Moyle Lot, unless placed or maintained within an enclosed garage or storage shed.

11. Animals. No animals, livestock or poultry of any kind, shall be raised, bred or kept on the Moyle Lot, except that horses, dogs, cats or other household pets may be kept on the Moyle Lot, provided they are not kept, bred or maintained for any commercial purpose, or in numbers deemed unreasonable by Grantee. Notwithstanding the foregoing, no animals may be kept on the Moyle Lot that in the good faith judgment of Grantee results in an annoyance or are obnoxious to Grantee.

12. Maintenance. The Moyle Lot and all Improvements thereon shall be maintained in a clean, safe and sightly condition. All weeds, rubbish, debris, trash, grass, shrub or tree clippings or other unsightly materials or objects of any kind shall be regularly removed from the Moyle Lot and shall not be allowed to accumulate thereon. No lumber, metals, bulk materials, scraps or refuse shall be kept, stored or allowed to accumulate on the Moyle Lot. All clothes lines, refuse containers, woodpiles, construction supplies and materials, landscaping supplies and materials, snow removal equipment, garden or maintenance tools and equipment, and all other machinery, equipment, tools and supplies shall be prohibited upon the Moyle Lot unless placed or maintained within an enclosed garage or storage shed. Any compost pile shall be no larger than 3' x 3' x 3' in size and appropriately screened from view.

13. Antennae. No television, radio, or other electronic antenna, satellite dish or device of any type shall, hereafter be erected, constructed, placed or permitted to remain on the Moyle Lot, or upon any of the Improvements constructed on the Moyle Lot unless and until the same shall have been approved in writing by Grantee, or unless the same be contained within a house or building.

14. Utility Lines Underground. All utility lines, pipes and conduits within the Moyle Lot shall be installed underground and no such utility lines, pipes or conduits or supporting apparatus shall be permitted above ground, except to the extent reasonably necessary to support such underground utilities.

15. Drainage and Runoff. The site grading and drainage on the Moyle Lot shall (a) provide immediate diversion of water away from the residence and any adjoining Lot or Lots, (b) avoid any drainage or runoff onto the Grove Lot, and (c) minimize erosion.

## ARTICLE II

### REVIEW & APPROVAL OF PROPOSED IMPROVEMENTS

1. Review of Proposed Construction. The Grantee shall consider and act upon any and all Plans and Specifications for any Improvement submitted for Grantee's approval pursuant to the terms of this Easement and inspect construction progress on the Improvement to verify its conformance with the Plans and Specifications submitted and approved by Grantee. Grantee shall approve Plans and Specifications for Improvements submitted for approval only if Grantee deems that the construction, alterations, or additions contemplated thereby in the locations indicated will not be detrimental to the Conservation Values of the Moyle Lot and the Grove Lot, and that the appearance of any Improvement affected thereby will be, in the discretion of Grantee, in harmony with the surrounding Improvements, aesthetically attractive, and architecturally well designed. Grantee shall not approve any Plans and Specifications which contemplate visible construction with blocks of cement, cinder, pumice or similar materials unless the same is faced on the outside with wood, stone, brick or similar materials and approved by Grantee. All exterior siding must be of quality materials. The Grantee shall not approve mansard roofs or zero roof overhands. Wood shake shingles shall be used for all exterior roof surfaces. The Grantee shall not approve any extreme, bizarre or eccentric designs or construction styles such as, without limitation, A-frame construction, mine shaft design, round or oval style, Bauhouse style, or extreme contemporary design. The Grantee shall have authority to maintain a list of approved construction materials and to add or subtract therefrom from time to time. Grantee

may condition its approval of proposals or Plans and Specifications on such changes therein as Grantee deems appropriate, and may require submission of additional and supplemental Plans and Specifications or other information prior to approving or disapproving material submitted. Grantee may also issue rules or guidelines setting forth procedures for the submission of plans for approval, and any additional factors which it will take into consideration in reviewing submissions. Grantee shall require such detail in Plans and Specifications submitted for its review as it deems appropriate, including without limitation, floor plans, site plans, drainage plans, elevation drawings, complete landscaping plans, including size and type of plant and tree material, and description or samples of exterior material and colors. Duplicate sets of Plans and Specifications for any proposed Improvement or alteration shall be submitted to Grantee. Grantee may assess a reasonable fee for the submission of any Plans and Specifications. A submission of Plans and Specifications will not be deemed complete or technically submitted until the rules and requirements set forth in this Easement have been complied with and the applicable fee submitted. Grantee shall respond to any plans and specifications submitted pursuant to this Easement within 30 days of submission. Any Plans and Specifications that are not specifically approved in writing by the Grantee within said 30 day period shall be deemed to be rejected and not approved by Grantee. Grantee shall be fully entitled to regulate such design, construction and landscaping.

2. No Waiver of Future Approvals. The approval of Grantee to any Plans and Specifications or drawings for any work done or proposed to be done on the Moyle Lot, shall not be deemed to constitute a waiver of any right to withhold approval or consent as to any similar proposals, plans and specifications, drawings or matter whatever subsequently or additionally submitted for approval or consent.

3. Inspection of Work. Grantee shall have the right to inspect the completion of the Improvements at all reasonable times during their construction or following their completion upon the Moyle Lot. Upon the completion of any work for which approved Plans and Specifications are required hereunder, Grantor shall give written notice of completion to Grantee. Within 15 days thereafter, Grantee, or its duly authorized representative, may inspect such Improvement. If Grantee finds that such work was not done in substantial compliance with the approved Plans and Specifications, it shall notify Grantor in writing of such noncompliance within such 30-day period, specifying the particulars of noncompliance, and requiring Grantor to remedy the same. If upon the expiration of 30 days from the date of such notification, Grantor shall have failed to remedy such noncompliance, Grantee, at its option, may either remove the non-complying Improvement or remedy the noncompliance, and Grantor shall reimburse Grantee, upon demand, for all expenses incurred in connection therewith. All such inspection, removal, remediation, and compliance costs and expenses incurred by Grantee shall constitute a lien in favor of the Grantee against the Moyle Lot. If for any reason Grantee fails to notify Grantor of any noncompliance within 30 days after receipt of said written notice of completion from Grantor, the Improvement shall be deemed to be completed in accordance with the approved Plans and Specifications.

4. Professional Assistance & Reimbursement of Costs. Grantee may hire an architect, engineer, contractor, or building inspector to assist Grantee in approving any Plans and Specifications of any Improvements proposed to be constructed or completed on the Moyle Lot and to inspect the completion of the Improvements. Grantee may charge the cost thereof to Grantor. All such inspection, removal, remediation, and compliance costs and expenses incurred by Grantee shall constitute a lien in favor of Grantee against the Moyle Lot.

5. Non-Liability of Grantee Members. Grantee shall not be liable to Grantor for any loss, damage or injury arising out of or in any way connected with the performance of Grantee's duties hereunder, unless due to the willful misconduct or bad faith of Grantee.

6. Variances. Grantee may authorize variances from compliance with any of the provisions of this Easement. No such variance granted shall violate the Alpine City development code or other governmental restrictions regarding such matters. Any such variance shall be in writing signed by Grantee. If any such variance is granted, no violation of the covenants, conditions and restrictions contained in this Easement shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of such a variance shall

not operate to waive any of the terms and provisions of this Easement for any purpose except as to the particular Improvement covered by the variance.

### ARTICLE III

#### MAINTENANCE, DAMAGE & DESTRUCTION, EASEMENT, ENFORCEMENT, AMENDMENT & NOTICE

1. Construction and Maintenance. Grantor shall have the right, subject to this Easement and any required governmental approvals, to construct, improve, reconstruct, repair and replace the Improvements on the Moyle Lot. Grantor shall keep the Improvements on the Moyle Lot in a clean and sanitary condition and in a good state of repair, maintenance and replacement. If any trees, bushes or other landscaping dies on the Moyle Lot, Grantor shall replace it with compatible plants within one growing season. If Grantee determines that Grantor has failed or refused to discharge properly his obligation with regard to the maintenance, repair, or replacement of any Improvement on the Moyle Lot, then Grantee may, but is not obligated to, provide such maintenance, repair or replacement at Grantor's sole cost and expense, and Grantee shall not be liable for trespass for any such work or the entry on the Moyle Lot to perform such work. Such costs shall constitute a lien in favor of Grantee against the Moyle Lot. Except in an emergency situation, Grantee shall give Grantor ten (10) days written notice of Grantee's intent to provide necessary maintenance, repair, or replacement at Grantor's cost and expense. The notice shall set forth with reasonable particularity the maintenance, repair, or replacement deemed necessary by Grantee.

2. Damage & Destruction. Grantor is solely responsible for any damage, destruction, obsolescence, condemnation or abandonment of any Improvements on the Moyle Lot, and for repair and reconstruction of the Moyle Lot and all Improvements thereon.

3. Easement. There is hereby established a general easement over the Moyle Lot in favor of Grantee for such access as may be reasonably necessary for emergencies or to provide necessary maintenance, repair or replacement permitted by this Easement.

4. Cooperation of the Parties: Grantor and Grantee agree to work in cooperation with each other to monitor, preserve, and enforce the covenants, conditions and restrictions contained in this Easement and to maintain the Conservation Values. Grantor and Grantee agree to mutually monitor the Moyle Lot and notify the other in the event activities are being conducted on the Moyle Lot or any Improvements constructed thereon that are inconsistent with the purpose of this Easement or the covenants, conditions and restrictions contained herein. Should said inconsistent activities or Improvements occur or exist on the Moyle Lot, Grantor shall promptly work to remedy the inconsistent activity and remove or correct the inconsistent Improvements at Grantor's sole cost and expense.

5. Enforcement. Grantor shall strictly comply with the provisions of this Easement. Failure to so comply shall be grounds for an action to recover sums due for damages or injunctive relief or both, or any other remedy allowed by the statutes or common law, maintainable by Grantee or its designee on behalf of Grantee. Any violation of the provisions of this Easement or any related rules and regulations is declared to be and shall constitute a nuisance and may be abated by Grantee. Such remedy shall be deemed cumulative and not exclusive of others, provided that only Grantee shall have the rights set forth herein, and no other person or entities shall be entitled to enforce the provisions hereof as third party beneficiaries or otherwise. Grantee shall be entitled to payment of all attorneys' fees incurred by Grantee, payable by Grantor in violation of this Easement. Utah law shall govern the enforcement and application of this Easement.

6. Amendment. The provisions of this Easement may be amended by the written agreement of Grantor and Grantee.

7. Notice. Grantor shall notify Grantee in writing before exercising any right under this Easement, expressly or impliedly, with respect to the Moyle Lot, except as expressly permitted herein. Said notice shall inform Grantee of all aspects of the proposed activity including, but not limited to, the nature, siting, magnitude, and anticipated effect of the proposed activity or use with respect to the purpose of the Easement. Any notice required to be sent by either Party shall be authorized and permitted to be sent by registered or certified mail, return receipt requested to the last address delivered in writing by the other Party.

Any notice required to be sent by Grantor to Grantee shall be authorized and permitted to be sent to the following individual for and in behalf of Grantee by registered or certified mail, return receipt requested, to the following address:

Brit W. Server  
358 Steep Mountain Drive  
Draper, Utah 84020

Any notice required to be sent by Grantee to Grantor shall be authorized and permitted to be sent to the following individual for and in behalf of Grantor by registered or certified mail, return receipt requested, to the following address:

BBS Family LLC  
Attn: Bridgette Server  
358 Steep Mountain Drive  
Draper, Utah 84020

#### ARTICLE IV GENERAL PROVISIONS.

1. Baseline Documentation. Baseline documentation depicting and locating the Moyle Lot and the Grove Lot, and inventorying the relevant features thereof is attached hereto as Exhibit "C". This baseline consists of maps, photographs, and other documentation that Grantor and Grantee agree collectively provide a representation of the Moyle Lot and the Grove Lot at the time of this Easement and which is intended to serve as an objective information baseline for monitoring compliance with the terms of this Easement.

2. Execution. Grantor and Grantee shall not be bound nor liable to perform until this Agreement has been fully executed by all persons required by law to execute it.

3. Binding Agreement. The covenants agreed to and the restrictions imposed as aforesaid shall not only be binding upon Grantor, but also upon Grantor's successors and assigns, and all other successors to these in interest, and shall continue as a servitude running in perpetuity with the Moyle Lot and shall survive any termination of the existence of Grantor. All rights reserved herein to Grantor and Grantee shall run for the benefit of and may be exercised by their respective successors or assigns, or by their designees duly authorized in a deed, appointment, or other instrument.

4. Legal Interpretation. This Easement will be interpreted under the laws of the State of Utah.

5. Independent Provisions. If any provision herein is held invalid or unenforceable, such a finding shall not affect the validity of the remainder of this Easement, Grantor and Grantee hereby stipulates that all provisions are deemed severable and independent.



EXHIBIT "A"**LEGAL DESCRIPTION OF MOYLE LOT**

That certain real property with a street address of 1359 N. Moyle Drive, Alpine, Utah County, Utah, and more particularly described as follows:

A portion of Lot 27, Alpine Estates, a subdivision situate in the Southwest Quarter, Section 18, Township 4 South, Range 2 East, Salt Lake Base and Meridian, in Utah County, Utah, and more particularly described as follows:

Beginning at the Southeast corner of said Lot and running thence South  $81^{\circ}00'00''$  West 181.79 feet to the point of curvature of a 202.00 foot radius curve to the left; thence Southwesterly 23.99 feet along the arc of said curve (Note: Chord bears South  $77^{\circ}35'50''$  West for a distance of 23.98 feet) to the new lot corner between Lot 27 and Lot 28; thence North  $07^{\circ}04'04''$  West 103.62 feet; thence North  $08^{\circ}00'06''$  West 63.79 feet; thence North  $01^{\circ}48'48''$  West 28.60 feet; thence North  $38^{\circ}21'32''$  East 43.67 feet; thence North  $01^{\circ}41'23''$  West 18.44 feet; thence North  $37^{\circ}16'49''$  East 41.39 feet; thence North  $76^{\circ}08'43''$  East 43.80 feet; thence South  $81^{\circ}14'11''$  East 31.92 feet; thence North  $59^{\circ}59'11''$  East 77.57 feet; thence South  $27^{\circ}45'09''$  East 70.07 feet to the east boundary line of said Lot 27; thence South  $00^{\circ}00'$  East 229.03 feet along said east boundary line to the point of beginning.



**EXHIBIT "B"****LEGAL DESCRIPTION OF GROVE LOT**

That certain real property with a street address of 1390 Grove Drive, Alpine, Utah County, Utah, and more particularly described as follows:

Beginning at the Northwest corner of the Southeast Quarter of Section 18, Township 4 South, Range 2 East, Salt Lake Base and Meridian, in Utah County, Utah; running thence N.89°42'21" E. 1145.79 feet along the north line of said Quarter Section; thence S. 0°00'00" E. 85.58 feet to a point on the west boundary line of the Alpine Estates Plat "A" subdivision; thence N. 27°45'09" W. 70.07 feet; thence S. 59°59'11" W. 77.57 feet; thence N. 81°14'11" W. 31.92 feet; thence S. 76°08'43" W. 43.80 feet; thence S. 37°16'49" W. 41.39 feet; thence S. 1°41'23" East 18.44 feet; thence S. 38°21'32" W. 43.67 feet; thence S. 1°48'48" E. 28.60 feet; thence S. 8°00'06" E. 8.73 feet to the new line of Lot 28; thence S. 89°00'12" W. 220.87 feet along said new lot line; thence S. 36°00'00" W. 107.30 feet along said new lot line to the north line of Lot 26; thence N. 54°00'00" W. 154.47 feet to the west boundary of the Alpine Estates Plat "A"; thence S. 49°19'25" W. 123.18 feet along said subdivision boundary; thence N. 57°48'55" W. 88.05 feet; thence S. 89°41'52" W. 344.44 feet; thence N. 61°40'03" W. 92.55 feet to the east right-of-way line of Grove Drive; thence N. 28°19'58" E. 169.50 feet along said right-of-way; thence N. 00°18'08" W. 26.86 feet along said right-of-way to the point of beginning.

EXHIBIT "C"

MAP OF MOYLE LOT & GROVE LOT

