IN THE UTAH COURT OF APPEALS

UTAH SAGE, INC. a Utah corporation dba HOBBY TRACTORS & EQUIPMENT, LARKIN TIRES, INC. a Utah corporation, GARY LARSON, an individual, FRATERNAL ORDER OF EAGLES #3372, a non-profit organization, Appellees/Cross Appellants v. PLEASANT GROVE CITY, Appellant/Cross Appellee.	**APPELLANT PLEASANT GROVE CITY'S COMBINED REPLY BRIEF AND BRIEF IN OPPOSITION TO CROSS APPEAL** Case No. 20200290-CA District Court Case No. 190300164

Appeal from the Final Judgment in Case No. 190300164, Judge Jared Eldridge Presiding

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LIST OF AND REFERENCES TO PARTIES

The caption herein lists the names of all parties to this action and their counsel of record. The Appellant/Cross Appellee is Pleasant Grove City (the "City"). Appellees/ Cross Appellants are Utah Sage, Inc. dba Hobby Tractors & Equipment, Larkin Tires, Inc., Gary Larson, and Fraternal Order Of Eagles #3372 (collectively the "Companies" herein).

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INTRODUCTION/SUMMARY

In its most recent report card on the condition of America's roads and infrastructure, the American Society of Civil Engineers (ASCE) gave U.S. infrastructure a D+ or "poor" rating. The engineers estimated the cost of bringing America's infrastructure to a state of good repair (a grade of B) by 2025 at $4.6 trillion, of which only about 55 percent has been committed. *See* 2017 Report Card for America's Infrastructure, American Society of Civil Engineers, March 2017, http://www.infrastructurereportcard.org/. ("ASCE Report"). Improving roads and bridges alone would require $1.1 trillion more than states, localities, and the federal government have allocated. *Id.*

Poor road infrastructure is also a problem in this state. "[M]ore than a quarter of the state's [Utah's] roads are in poor condition, the 17th highest share among states and higher than the 21.8% of roads in poor condition across the country." https://www.usatoday.com/story/money/2020/11/11/states-that-are-falling-apart/114708118/. And that's particularly true in the City. *See* City Brief at 4 (quoting a 2015 engineering study noting that "41% of the City's roads are in Fair/Poor condition, which are quickly falling into a 'Very Poor/Failed state.'"

At the same time, and as this case well illustrates, local governments' ability to raise funds through taxes is often limited due to political pressures and citizen initiatives. *See id* at 6-7; *see also* Arthur C. Nelson, *Reforming Infrastructure Financing with 2020 Vision*, 42/43 Urb. Law. 29, 32 (2011) "[R]eliance on general taxes is not sustainable for reasons noted earlier in the case of the gas tax [more fuel-efficient vehicles], but also

more generally with the reluctance of citizens to impose higher taxes on themselves.") (citing Andrew Chamberlain, *New Poll on U.S. Tax Attitudes*, TAX POL'Y BLOG, Apr. 5, 2006, http://www.taxfoundation.org/blog/show/1418.html). And, for many years there has been a dramatic decrease in state and federal funding for road infrastructure. *See, e.g.*, ASCE Report.

There is no doubt, and the Companies don't seriously dispute, that local governments like the City are in desperate need of alternative and innovative funding methods to cover the costs of maintaining their local roads. One of those methods, which experts and commentors have long recommended, is a "utility" or user fee:

> Interest in the TUF is driven by the mismatch between the costs of operating and maintaining transportation systems, and the revenues generated from general taxes made available for that purpose. Insufficient revenue means more potholes, failing signals, crumbling shoulders, and so forth. An enterprise-fund approach could offload road maintenance costs from the general fund to a self-funded, sustainable revenue stream. All development would be assessed on a proportionate-share basis.

Nelson, *Reforming Infrastructure*, at 36; *see also* ASCE Report ("Infrastructure owners and operators must charge, and Americans must be willing to pay, rates and fees that reflect the true cost of using, maintaining, and improving all infrastructure, including our water, waste, transportation, and energy services."); American Road & Transportation Builders Association, https://www.artba.org/government-affairs/policy-statements/highways-policy/ ("ARTBA believes the cost of building and maintaining highway infrastructure should be borne primarily by highway users through the imposition of dedicated fees, excises, and tolls.").

Turning to such a dedicated use fee is precisely what the City did in this case to resolve the current fiscal constraints on maintaining its road infrastructure. And as the Utah Supreme Court has indicated over the years, "we generally give latitude to local governments in creating solutions to problems, especially in meeting the challenges and needs caused by accelerated urban growth." *Bd. of Ed. of Jordan School District v. Sandy City*, 2004 UT 37, ¶ 31; *see also Murray City v. Board of Ed. of Murray School District*,396 P.2d 628, 630 (Utah 1964) ("Higher standards of sanitation have . . . resulted in the need for a continuing income for the operation of a sewer system and a single assessment against the land served by the facility . . . no longer suffices.").

Nevertheless, by their challenge the Companies ask this Court to further hamstring local governments in Utah by taking this important tool out of their toolbox, and they do so on the basis of a test they concede provides no "bright line guidance." The Court should reject this attempt. It is inconsistent both with the test articulated in *V-1 Oil* and the guidance offered by the Supreme Court in subsequent Utah case law.

ARGUMENT

I. THE DISTRICT COURT ERRED IN CONCLUDING THE CITY'S TUF WAS A TAX, RATHER THAN A USER FEE UNDER UTAH LAW.

As the City pointed out by its opening brief, in *V-1 Oil v. State Tax Comm'n*, the Supreme Court articulated the test for determining whether an exaction was a tax or fee by focusing on its purpose: "[h]ow such exactions should be classified depends upon their purpose. Generally speaking, a tax raises revenue for general governmental purposes, while a fee raises revenue . . . to compensate the government for the provision

of a specific service . . . ."). *V-1 Oil Co. v. State Tax Commission*, 942 P.2d 906, 911 (Utah 1996), vacated on other grounds, 942 P.2d 915, 918 (Utah 1997). *See also id.* (quoting *Weber Basin Home Builders Ass'n v. Roy City*, 487 P.2d 866, 867 (1971) ("If the money collected . . . and the proceeds therefrom are *purposed mainly to service . . . such business or activity*, it is regarded as a license fee. On the other hand, if the factors just stated are minimal, and the money collected is mainly for raising revenue for general municipal purposes, it is properly regarded as the imposition of a tax, and this is so regardless of the terms used to describe it.") (emphasis added).

In this case, the City imposes its TUF specifically to provide road maintenance services, as opposed to providing for other specific services, like sewer service or storm water control, for example; and the revenues collected are dedicated only to the provision of that specific service. Thus the City's imposition of a fee to allow the provision of that specific service is consistent with the *V-1 Oil* requirements.

Rather than focusing on the "specific purpose" of the City's TUF, however, both the District Court and the Companies focus on the Supreme Court's comment when only broadly describing the two categories such fees generally fall into – "there are at least two broad types of fees: (i) a fee for service, i.e., a specific charge in return for a specific benefit to the one paying the fee, and (ii) a regulatory fee, i.e., a specific charge which defrays the government's cost of regulating and monitoring the class of entities paying

the fee." The Companies thus describe the *V-1 Oil* test as containing a "specific-charge-for-specific-benefit" requirement." Opp. Brief, at 7, 9.[1]

But the Utah Supreme Court has never found an exaction to be a tax only because it served a "general" purpose and was not paid by all beneficiaries. On the contrary, in *Jordan Sch. Dist. v. Sandy City Corp.*, the Court found a charge for a storm water utility was a fee, not a tax, although it undeniably benefited the City and other properties generally, far beyond only the payors of the exaction. *See* 2004 UT 37, ¶ 26 ("This [storm drain] service prevents damage to property from excessive accumulations of water and from flooding."). *Compare Dekalb County v. United States*, 108 Fed. Cl. 681, 701 (2013) (concluding stormwater fee was a tax because the benefits of stormwater management—flood prevention and abatement of water pollution—were shared broadly by the general public); and *Jackson Cty. v. City of Jackson*, 836 N.W.2d 903, 910 (Mich. App 2013) concluding storm water fee was a tax because "the city has failed to differentiate any particularized benefits to property owners from the general benefits conferred on the public.").

This is also true of other fees the Utah Supreme Court has upheld against tax challenges. *See Ponderosa One Limited Partnership v. Salt Lake City Suburban Sanitary District*, 738 P.2d 635, 637 (Utah 1987) (holding that "charges for use of a sewer system

[1] But even this formulation is semantical and doesn't disqualify the City's fee. Just as road maintenance is a specific service among others, road maintenance primarily benefits a specific segment of the general public – the owners and operators of motor vehicles utilizing the City's roads. Thus even assuming the test requires a "specific-charge-for-specific-benefit," the City's TUF complies.

were service charges, not taxes or assessments, because they were 'payments for services furnished' and were 'in the nature of tolls or rents paid for services furnished ***or available.***") (per curiam) *(quoting* 11 E. McQuillin, Municipal Corporations § 31.30 (3d revised ed.1983) (emphasis added)). *Compare Berry v. Town of Danvers*, 34. Mass.App.Ct. 507, 510, 613 N.E.2d 108, 110 (1993) (finding sewer fee a tax because a fee "must be a charge for an essentially private rather than public benefit.").

The Companies cite *National Cable Television Ass 'n v. United States*, 415 U.S. 336, 94 S.Ct. 1146 (1974) apparently for the propositions that the City's TUF is not a legitimate fee for service because it is of general, rather than specific, benefit, and is not voluntary, but must be paid. *See* Pls.' Mot. pp. 12-13. Significantly, however, courts reaching the issue have recognized *National Cable* is limited by its particular statutory context:

> As we recently explained, *see San Juan Cellular*, 967 F.2d at 686-87, the *National Cable* Court, which held that "the measure of the authorized fee" is " `value to the recipient,' " *National Cable*, 415 U.S. at 342-43, 94 S.Ct. at 1150 (quoting statute), was interpreting a specific and special statute authorizing agencies to levy a fee. "[T]he courts have read the Supreme Court's language in National Cable as limited to its specific statutory context." *San Juan Cellular*, 967 F.2d at 687; *see, e.g., Union Pac. R.R. Co. v. Public Util. Comm'n*, 899 F.2d 854, 861 (9th Cir.1990).

State of Me. v. Dep't of Navy, 973 F.2d 1007, 1014 (1st Cir. 1992). *See also Hawaii Insurers Council v. Lingle*, 201 P.3d 564, 575-77 (Haw 2008) ("The Supreme Court has subsequently explained that *National Cable* "st[oo]d only for the proposition that Congress must indicate clearly its intention to delegate to the Executive the discretionary authority to recover administrative costs not inuring directly to the benefit of regulated parties by

imposing additional financial burdens, whether characterized as 'fees' or 'taxes,' on those parties.") (citations omitted).

And whether the exaction at issue is paid voluntarily or not has never been part of the test applied by the Utah Supreme Court. *See V-1 Oil, Jordan Bd of Ed v. Sandy*, and *Ponderosa One v. Murray*. This distinguishes Utah law from Kansas law and the *Heartland Apartment Association, Inc. v. City of Mission*, case which the Companies cite. . In *Heartland*, for example, the Court was bound by precedent holding that a "'fee . . . is incident to a voluntary act . . . which, presumably, bestows a benefit on the applicant, not shared by other members of society.'" 392 P.3d at 106 (quoting *Executive Aircraft Consulting, Inc. v. City of Newton*, 845 P.2d 57 (1993) and *National Cable Television Assn. v. United States*, 415 U.S. 336, 340-41, 94 S.Ct. 1146 (1974)). That is not the law in this state as set forth above.

Ultimately, the state supreme court decision applying standards most like *V-1Oil* to determine whether a TUF was a tax or fee is *Bloom v. City of Fort Collins*, 784 P.2d 304 (Colo. 1989), which upheld a similar TUF. In *Bloom*, for example, the Colorado court noted: "Unlike a tax, a special fee is not designed to raise revenues to defray the general expenses of government, but rather is a charge imposed upon persons or property for the purpose of defraying the cost of a particular governmental service." 784 P.2d at 308 *citing* 1 T. Cooley, *The Law of Taxation §* 33 (4th ed. 1924) and O. Reynolds, Jr. *Local Government Law §* 105. *Compare V-1 Oil*, 942 P.2d at 911 ("Generally speaking, a tax raises revenue for general governmental purposes, while a fee raises revenue either to

compensate the government for the provision of a specific service or benefit to the one paying the fee . . . .") (citations omitted).

In *Bloom*, the Colorado court went on to note: "An ordinance creating a special service fee, therefore, generally will be upheld as long as the ordinance is reasonably designed to defray the cost of the particular service rendered by the municipality. A special fee, however, might be subject to invalidation as a tax when the principal purpose of the fee is to raise revenues for general municipal purposes rather than to defray the expenses of the particular service for which the fee is imposed." *Bloom*, 784 P.2d at 308 (citations omitted).

Again, compare this with *V-1 Oil*, 942 P.2d at 911 ("To be a legitimate fee for service, the amount charged must bear a reasonable relationship to the services provided, the benefits received, or a need created by those who must actually pay the fee. This requirement is intended to prevent a fee from being used to generate excessive revenues and becoming indistinguishable from a tax.").

Finally, in *Bloom* as under Utah law, the Court granted substantial deference to local legislators in determining the amount of the fee. *See Bloom* 784 P.2d at 308 ("The amount of a special fee must be reasonably related to the overall cost of the service. Mathematical exactitude, however, is not required, and the particular mode adopted by a city in assessing the fee is generally a matter of legislative discretion.") (citations omitted). *Compare V-1 Oil* 942 P.2d at 911-12 ("The nature of the service or benefit provided may also make it difficult or impossible to distribute the services or benefits equally to all who pay the fee. For such a fee to be reasonable, we have directed that it should be fixed so as to be equitable

in light of the relative benefits conferred as well as the relative burdens imposed."). *See also Homebuilders Ass'n v.American Fork*, 1999 UT 7, ¶ 18 ("The fact that 'no mathematical formulae' were employed in calculating the fees is not dispositive. The law does not make reasonableness turn on a formula, given the variety of factual circumstances in each case and the necessary elasticity of such words as 'reasonable' and `equitable.'); *Tooele Assocs. Ltd. P'ship v. Tooele City Corp.*, 2011 UT 04, ¶ 24 ("As was the case in *City of American Fork*, the fact that the City did not employ any mathematical formula in setting its inspection fee is not dispositive.").

Consistent with *Bloom* and these Utah cases, the City carefully considered the amount and implementation of the TUF pursuant to a usage study provided by qualified municipal financial consultants based upon the International Traffic Engineers Manual. The study set the fees in tiers based on intensity of use. As the City Administrator explained, "we feel the transportation utility fee is more fair to the businesses and the residents because they're being charged based on use, as opposed to the value of their home or business [as with a tax]." R129. To the extent the City deviated from that study, it did so based upon common sense usage determinations and after multiple opportunities for public input over many open and public meetings.

In short, in *Bloom* the Colorado Supreme Court applied the standards most similar to those articulated by the Utah Supreme Court and upheld the validity of the City of Fort Collins' TUF as a fee, rather than a tax. For this reason *Bloom* is the most persuasive authority. This Court should similarly apply the standards articulated in *V-1 Oil* and find

the City's TUF is a legitimate fee, the actual amount of which the Companies have failed to challenge.

In this last regard, the Companies argue that they did challenge the amount or reasonableness of the City's TUF, and so, if the Court determines the TUF is a legitimate fee for services, the Court should remand the case for a determination on this issue. *See* Opp. Brief, p 10, n. 3. But this argument is unsupported.

Pursuant to Utah R. Civ. P. 26, the parties were to exchange disclosures and complete all fact discovery on or before May 8, 2019. *See* R106-07. Consistent with those deadlines, the City served Initial Disclosures in November 2018, and responded to the Companies' document requests in February 2019, providing all the evidence on which it relies in this case. *See id.* R108-13. The Companies failed to make any disclosures. *See generally* Dkt.

Once those deadlines passed, on June 28, 2019, the City moved for Summary Judgment on all the Companies' claims, supported with a detailed description and evidence establishing exactly how the amount of the fee was calculated and determined. *See id.* R119-568. In doing so, the City pointed out that "Plaintiffs have not submitted evidence contradicting the analysis on which the City relied." R129. The Companies then responded with their own cross Motion for Summary Judgment, a portion of which they cite to support their preservation argument. *See* Opp. Brief, at 10 (citing R580-81).

But the portion of their motion the Companies cite is simply legal argument. *See* R580-81. At no point did the Companies disclose any evidence or opinion disputing the factual basis for the City's decision to adopt the TUF or challenge the reasonableness of

the fee in response to the City's comprehensive motion for summary judgment. The district court acknowledged as much. *See* R670 ("There are no material issues of fact. Both parties agree the only questions remaining are legal and as such this matter can be resolved one way or the other by the Court determining the applicable law and applying it to the undisputed facts.").

Under the circumstances, the Companies have failed to carry their burden of demonstrating the fee was unreasonable and there is no need to remand for additional findings. *See, e.g.*, *Home Builders Ass'n v. City of North Logan*, 1999 UT 63, ¶ 14 ("With respect to the water connection fee and the sewer connection fee, Home Builders cites no evidence in the body of its brief showing that either fee was in fact unreasonable. . . . The record reveals that Home Builders did not rebut [the City's assertions], nor did it articulate an alternative basis of calculating the fees."); *see also id.* ¶ 20 ("The district court correctly granted [the City] summary judgment.").

II. THE DISTRICT COURT CORRECTLY FOUND THE CITY HAD AUTHORITY TO ADOPT THE TUF.

The Companies acknowledge that in *State v. Hutchinson*, the Utah Supreme Court expressly abandoned the *Dillon's* rule which strictly construes municipal authority, but argue that because the legislature has specifically granted cities the power to establish certain utilities listed in Section 10-6-106 and related statutes, the City's authority to adopt a TUF under Section 10-8-84 is necessarily limited to those listed. *See* Opp. Brief at 11-12. But this argument misconstrues *Hutchinson.*

In *Hutchinson* the Court addressed a party's argument similar to the Companies' here, that "because Salt Lake County did not have specific, delegated authority to enact the ordinance in issue, the ordinance is invalid." *State v. Hutchinson*, 624 P.2d 1116, 1118. But the Court rejected that argument, holding as follows:

> When the State has granted general welfare power to local governments, those governments have independent authority apart from, ***and in addition to, specific grants of authority*** to pass ordinances which are reasonably and appropriately related to the objectives of that power, *i.e.*, providing for the public safety, health, morals, and welfare. . . . Specific grants of authority may serve to limit the means available under the general welfare clause, for some limitation may be imposed on the exercise of power by directing the use of power in a particular manner. ***But specific grants should generally be construed*** with reasonable latitude in light of the broad language of the general welfare clause ***which may supplement the power found in a specific delegation***.

Id. at 1126 (emphasis added). *See also Dairy Prod. Servs., Inc. v. City of Wellsville*, 2000 UT 81, ¶ 37 ("[T]he general authority of section 10-8-84 may be limited by a specific grant of power, but the specific grant should be generally construed. Furthermore, under section 10-8-84, cities have independent authority, apart from the specific grants of authority, to pass ordinances reasonably related to the objectives of the granted authority.").

Consistent with these principles, the Utah Supreme Court has expressly approved the establishment of a utility and its associated revenue that is not mentioned or defined in §§ 10-8-14, § 10-6-106(24) or 54-2-1(22) or any of the other statutes the Companies cite and rely on. In *Jordan Sch. Dist. v. Sandy*, 2004 UT 37, the Court reviewed a challenge to Sandy City's authority to adopt a "storm sewer drainage utility ordinance." 2004 UT 37, ¶ 4. The Court rejected the challenge to the City's authority, holding as follows:

> We hold that Sandy City's decisions regarding the structure, operation, and funding of its storm sewer system are entitled to deference. We generally give latitude to local governments in creating solutions to problems, especially in meeting the challenges and needs caused by accelerated urban growth. *See Price Dev. Co. v. Orem City*, 2000 UT 26, ¶ 19, 995 P.2d 1237; *State v. Hutchinson*, 624 P.2d 1116, 1126 (Utah 1980). Accordingly, we decline to substitute our judgment for that of the Sandy City Council in the resolution of this municipal problem.

2004 UT 37, ¶ 31.

The case the Companies cite, *Harding v. Alpine City*, (*see* Opp. Brief at 12), is easily distinguished because in that case there was a statute that specifically limited the City's authority with respect to sewer connections:

> We find that the statute limits the City's powers, for, as plaintiff points out, if the City were permitted to reach beyond 300 feet the words "300 feet" in the statute would have no meaning. The enactment of an ordinance requiring sewer hookups from all properties lying within 500 feet of a sewer line is clearly beyond the City's powers, and the judgment of the district court is affirmed.

656 P.2d at 986. The Companies point to no similar statute here, and thus *Harding* is unhelpful.

In fact, the legislature has addressed a City's authority to impose a TUF, but in doing so only saw fit to prohibit a City from imposing a TUF on other local governments. *See* Utah Code Ann. § 11-26-301. Principles of statutory construction require the Court to give effect to the legislature's omission. *See Marion Energy, Inc. v. KFJ Ranch P'ship*, 2011 UT 50, ¶ 14 ("We therefore seek to give effect to omissions in statutory language by presuming all omissions to be purposeful."); *In re Adoption of Baby E.Z.*, 2011 UT 38, ¶ 35 ("Had Congress intended to strip state courts of subject matter jurisdiction over certain

adoption cases, it could have clearly expressed its intent to do so. But it did not. . . . In short, although the [statute], when properly raised, may limit the circumstances under which a state court may exercise its jurisdiction, it does not divest a court of its underlying subject matter jurisdiction."). The fact the legislature recognized the possibility a City might impose a TUF, but did not prohibit it except in a narrow circumstance not applicable here, signals its intent that such a utility is authorized. *See id.*

Finally, the Companies argue that the City shouldn't be allowed to utilize a TUF because it could instead impose "special taxes." *See* Opp. Brief at 13-14. But this argument ignores both the undisputed difficulty associated with raising taxes and the Supreme Court's rationale in *Hutchinson.*

As set forth above, for example, reliance on taxes alone for road and associated infrastructure needs is "not sustainable" for a number of reasons. *See* Nelson, *Reforming Infrastructure Financing with 2020 Vision*, 42/43 Urb. Law. 29, 32 (2011). And assisting municipalities in resolving evolving challenges like the loss of tax income is precisely the rationale for the *Hutchinson* decision:

> Broad construction of the powers of counties and cities is consistent with the current needs of local governments. . . . The complexities confronting local governments, and the degree to which the nature of those problems varies from county to county and city to city, has changed since the Dillon Rule was formulated. Several counties in this State, for example, currently confront large and serious problems caused by accelerated urban growth. The same problems however, are not so acute in many other counties. Some counties are experiencing, and others may soon be experiencing, explosive economic growth as the result of the development of natural resources. The problems that must be solved by these counties are to some extent unique to them. According a plain meaning to the legislative grant of general welfare power to local governmental units allows each local government to be responsive to the particular problems facing it.

> Local power should not be paralyzed and critical problems should not remain unsolved while officials await a biennial session of the Legislature in the hope of obtaining passage of a special grant of authority. Furthermore, passage of legislation needed or appropriate for some counties may fail because of the press of other legislative business or the disinterest of legislators from other parts of the State whose constituencies experience other, and to them more pressing, problems. In granting cities and counties the power to enact ordinances to further the general welfare, the Legislature no doubt took such political realities into consideration.

624 P.2d at 1126.

In sum, the district court correctly determined that the City has the authority to impose a transportation utility.

CONCLUSION

For the reasons stated above, the City respectfully requests this Court's order and judgment reversing the district court's decision misapplying Utah law, and remanding the case with directions that the City's TUF is a fee for service, not a tax.

RESPECTFULLY submitted, this 11th day of January, 2021.

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CERTIFICATE OF COMPLIANCE / TYPE-VOLUME

Pursuant to Rule 26(f)(1)(c), Utah Rules of Appellate Procedure, I hereby certify that this **APPELLANT PLEASANT GROVE CITY'S COMBINED REPLY BRIEF AND BRIEF IN OPPOSITION TO CROSS APPEAL** complies with the type-volume limitation provided by Rule 26(f)(1)(a) of the Utah Rules of Appellate Procedure. The undersigned relied on Microsoft Word to determine that this brief contains 5,267 words, including headings, quotations, footnotes and certificates, and inclusive of the Table of Contents and Table of Authorities.

Dated this 11th day of January, 2021.

SNOW CHRISTENSEN & MARTINEAU

/s/ Robert C. Keller
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CERTIFICATE OF COMPLIANCE / RULE 21(H)

Pursuant to Rule 24(a)(11)(B), Utah Rules of Appellate Procedure, I hereby certify that this **APPELLANT PLEASANT GROVE CITY'S COMBINED REPLY BRIEF AND BRIEF IN OPPOSITION TO CROSS APPEAL** complies with Rule 21(h) in that it contains no non-public information classified as private, controlled, protected, safeguarded, sealed, juvenile court legal, or juvenile court social, or any other information to which the right of public access is restricted by statute, rule, order, or case law.

Dated this 11th day of January, 2021.

SNOW CHRISTENSEN & MARTINEAU

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CERTIFICATE OF SERVICE

I hereby certify that on the 11th day of January, 2021, two (2) true and correct copies of the foregoing **APPELLANT PLEASANT GROVE CITY'S COMBINED REPLY BRIEF AND BRIEF IN OPPOSITION TO CROSS APPEAL** and a courtesy copy of the brief e-mailed in place of a CD in searchable PDF format were e-mailed and sent U.S. Mail to the following:

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