

After Recording, Return to:

Jonathan G. Brinton
Parr Brown Gee & Loveless
185 S State St, Ste 800
Salt Lake City, UT 84111

Affects Tax Parcel Numbers:

01-099-0006, 02-099-0007,
01-100-0001, 02-100-0002,
And 01-100-0003



W2371304

E# 2371304 PG 1 OF 43
ERNEST D ROWLEY, WEBER COUNTY RECORDER
21-OCT-08 332 PM FEE \$99.00 DEP LF
REC FOR: BOYER CO

Space Above for Recorder's Use

**DECLARATION AND ESTABLISHMENT
OF
PROTECTIVE COVENANTS, CONDITIONS AND RESTRICTIONS
AND
GRANT OF EASEMENTS
FOR
THE JUNCTION CONDOMINIUMS**

01-103-0001 TO 0010-

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Exhibit A Legal Description of the Property
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**DECLARATION AND ESTABLISHMENT OF
PROTECTIVE COVENANTS, CONDITIONS AND RESTRICTIONS AND
GRANT OF EASEMENTS**

This Declaration and Establishment of Protective Covenants, Conditions and Restrictions and Grant of Easements ("**Declaration**") is made as of October 16, 2008, by **Ogden City Redevelopment Agency**, a body politic and political subdivision of the State of Utah ("**Ogden**") and **Boyer Ogden Mall, L.C.**, a Utah limited liability company ("**Boyer**;" and together with Ogden, the "**Declarant**").

RECITALS

A. Ogden is the owner of certain parcels of real property located in the City of Ogden, Weber County, Utah, more particularly described on Exhibit A attached hereto and made a part hereof ("**Property**");

B. Ogden, as landlord, and Boyer, as tenant, entered into a certain Lease Agreement and Grant of Option to Lease Future Development Land dated as of December 13, 2005, as amended by that certain First Amendment to Lease Agreement and Grant of Option to Lease Future Development Land, dated December 1, 2006, and that certain Second Amendment to Lease Agreement and Grant of Option to Lease Future Development Land dated on or after the date of this Declaration (together, as amended, restated, supplemented or otherwise modified from time to time, the "**Phase I Lease**"), which Phase I Lease encumbers the Property;

C. Pursuant to the terms of that certain Development Agreement, dated December 13, 2005, by and between Ogden and Boyer (the "**Development Agreement**"), Boyer intends to develop an integrated retail, commercial, entertainment, residential, office and/or community project on the Property (collectively, the "**Project**").

D. The current site plan depicting various portions of the Project is attached as Exhibit B ("**Site Plan**").

E. Boyer plans to develop and plan for the development of the Project as an integrated retail, commercial, entertainment, residential, office and/or community project for the mutual benefit of all real property in the Project and, for such purposes, Declarant does hereby fix and establish the easements, covenants, conditions, and restrictions subject to which all of the Project, or any part thereof, will be improved, held, leased, sold and/or conveyed. It is the intent of this Declaration that each and all of the easements, covenants, conditions and restrictions set forth in this Declaration are for the mutual benefit of the Parcels (as hereinafter defined) and every portion of each thereof (except to the extent otherwise stated herein). Each and all of the easements, covenants, conditions, restrictions, liens and charges set forth in this Declaration will run with the land of each of the Parcels and every portion of each thereof, and will apply to and bind the respective successors in interest to each of the Parcels and every portion of each thereof, for the benefit of each of the other Parcels and every portion of each thereof (except to the extent otherwise stated herein). Each and all of the easements, covenants, conditions, restrictions, liens and charges set forth in this Declaration are imposed on each portion of and interest in each of the Parcels as mutual equitable servitudes in favor of each and all other portions of and interests

in the Parcels (except to the extent otherwise stated herein) and constitute covenants running with the land pursuant to applicable law.

Article 1
DEFINITIONS

1.1 Assessment Lien.

The lien created by reason of the delinquency described in and upon recordation of a Notice of Assessment Lien .

1.2 Boyer Affiliate.

Any Person who controls, is controlled by, or is under common control with The Boyer Company, L.C., a Utah limited liability company.

1.3 Building.

An Office Building, a Retail Building, and/or a Residential Building, including any appurtenant supports, service areas and other outward extensions of such Buildings.

1.4 Building Area.

The limited areas of the Project within which Buildings may be constructed, placed, or located. Building Areas are designated on the Site Plan.

1.5 City Easement Agreement.

The certain Parking License Agreement dated February 1, 2007, as amended, restated, supplemented or otherwise modified from time to time, as evidenced by that certain Memorandum of Parking License Agreement, dated February 1, 2007, and recorded in the Weber County Recorder's Office on March 1, 2007 as Entry No 244550.

1.6 Common Areas.

All the areas within the exterior boundaries of the Project which are made available for the general use, convenience and benefit of all Permittees of a particular Parcel (or Parcels) and/or the public; provided, however, that except for the easements over the Residential Parking Parcels provided for in the Condominium Declaration, no portion of the Residential Parcels, the Residential Parking Parcels, or Retail Unit A-102, Retail Unit B-102, and Retail Unit F-102 (as depicted on the Condominium Plat and defined in the Condominium Declaration) will constitute Common Areas for purposes of this Declaration. Without limiting the foregoing for each Parcel other than Residential Parcels, Residential Parking Parcels, and the Retail Condominium Parcels, "Common Areas" will include the following areas within the exterior boundaries of the Parcels: (a) all parking areas, multi-level parking decks and underground parking facilities (it being understood, however, that, pursuant to the terms of the City Easement Agreement, certain parking facilities, on the property encumbered by the City Easement Agreement, may not be available for the non-exclusive use of all Permittees of the Project); (b) all roadways and

driveways; (c) all sidewalks and walkways; (d) all landscaped and planted areas, including areas immediately adjacent to the Project such as, but not limited to, landscaped medians; and (e) all lobby and waiting areas (including office building lobbies (exclusive of sections exclusively leased to individual tenants)). The Retail Parking Unit will be considered Common Areas for purposes of this Declaration. Common Areas will specifically include those certain easement areas to which Owners of the Project have rights pursuant to the City Easement Agreement. Notwithstanding anything to the contrary contained in this Declaration or elsewhere, any rights granted pursuant to this Declaration relating to any property that is the subject of the City Easement Agreement will be subject to Declarant's rights, obligations and restrictions, as set forth in the City Easement Agreement.

1.7 Condominium Association.

The Junction Condominium Association, Inc., a Utah nonprofit corporation. "Condominium Association" includes any other association of owners of Condominium Units.

1.8 Condominium Common Area Parcel.

The property consisting of the "Common Elements" within the Condominium Project, as that term is defined in the Condominium Declaration.

1.9 Condominium Declaration.

The Declaration of Condominium for the Junction Condominiums, executed and acknowledged by Declarant, and recorded just after this Declaration. "Condominium Declaration" includes any other declaration of condominium to be filed on any portion of the Property.

1.10 Condominium Plat.

The condominium plat entitled "The Junction Condominiums, a Utah Condominium Project", executed and acknowledged by Declarant, consisting of 16 sheets, and prepared by Mark E. Babbitt, a duly registered Utah Land Surveyor holding Certificate No. 166484, and recorded concurrently with the Condominium Declaration in the office of the Weber County Recorder, as such Plat may be amended or supplemented in accordance with law and the provisions hereof from time to time.

1.11 Condominium Unit.

A condominium unit created pursuant to the Condominium Declaration. "Condominium Unit" includes Residential Unit A-101, Residential Unit B-101, Residential Unit F-101, Retail Unit A-102, Retail Unit B-102, Retail Unit F-102, Residential Parking Unit A, Residential Parking Unit B, and the Retail Parking Unit, all as depicted on the Condominium Plat and defined in the Condominium Declaration.

1.12 Declaration.

This Declaration and Establishment of Protective Covenants, Conditions and Restrictions and Grant of Easements.

1.13 Default Rate.

The annual rate of interest equal to the interest rate per annum published by the *Wall Street Journal* as the prime rate (or in the event the *Wall Street Journal* no longer publishes a prime rate, then the prime rate or reference rate announced by the then largest chartered bank in Utah in terms of deposits) from time to time, plus two percentage points per annum, but in no event more than any maximum rate of interest permitted by law.

1.14 Floor Area.

(a) with respect to a Retail Building, the actual number of gross square feet of space contained on each floor within each separately demised space within a Retail Building, including any mezzanine or basement space (provided that such mezzanine or basement space is taken into account in determining the number of parking spaces required with respect to such Building under applicable governmental laws, codes, ordinances and requirements), as measured from the exterior surfaces of exterior walls (and extensions, in the case of openings) or walls that separate independently demised premises from service corridors or other space that is not intended for the exclusive use of other occupants of the subject Retail Building and from the center of interior demising walls which separate independently demised premises from other premises; provided, however, that the following areas will not be included in such calculations (except to the extent the following areas are taken into account in determining the number of parking spaces required with respect to such Building under applicable governmental laws, codes, ordinances and requirements without benefit of variance or special exception): incidental office space located on other than the main level of any particular premises used by a Permittee for administrative purposes and which is not open or accessible to the general public; mezzanine space used for projector room purposes in a permitted theatre; emergency exit areas (located outside of theatre auditoriums and waiting and concession areas), exit corridors and adjacent stairwells designated for use by a permitted theatre; and space attributable to any multi-deck, platform or structural level used for the storage of merchandise and located vertically above ground floor;

(b) with respect to an Office Building, all Rentable Area as defined and determined in accordance with BOMA standards (Building Owners and Managers Association Method for Measuring Floor Area in Office Buildings, ANSI Z65.1-1996) contained within an Office Building ; and

(c) Notwithstanding anything to the contrary herein, in no event will Floor Area for any Office Building, include space used for Building utilities or mechanical equipment. Within 30 days of a request, the Owner of a Parcel will certify to another requesting Parcel Owner the amount of Floor Area applicable to each Building on its Parcel. If any Parcel Owner causes an as-built survey to be prepared with respect to any portion of the Project, upon request,

such Parcel Owner will furnish a copy of the survey to a requesting Parcel Owner for informational purposes only.

(d) During any period of rebuilding, repairing, replacement or reconstruction of a Building (or any portion thereof), the Floor Area of that Building will be deemed to be the same as existed immediately prior to that period. Upon completion of such rebuilding, repairing, replacement or reconstruction, the Owner upon whose Parcel such Building is located, will cause a new determination of Floor Area for such Building to be made in the manner described above, and such determination will be sent to any Owner requesting the same.

1.15 Governmental Restrictions.

Any or all laws, statutes, ordinances, codes, decrees, rulings, regulations, writs, injunctions, orders, rules, conditions of approval or authorization of any governmental entity, agency or political subdivision, whether now in force or which may hereafter be in force.

1.16 Index.

The Consumer Price Index published by the United States Department of Labor, Bureau of Labor Statistics (the "Bureau") "All Items" for All Urban Consumers, U.S. City Average (1982-84 = 100). Should the Bureau discontinue the publication of the Index, publish the same less frequently or alter the same in some other manner, the most nearly comparable index or procedure as determined by Declarant will be substituted therefor.

1.17 Manager.

A Person so designated by Declarant to perform the obligations of "Manager" under this Declaration. At any time, without the consent of any Owner or Declarant, Manager will have the right to assign its rights and obligations as "Manager" under this Declaration to any Boyer Affiliate. At any time under this Declaration, Declarant will have the right, without the consent of any Owner, to (a) assume any or all of the rights and obligations of "Manager" under this Declaration, and/or (b) assign any or all of its rights as "Declarant" under this Agreement to Manager.

1.18 Mortgage.

An indenture of mortgage or deed of trust on a Parcel or, a "Sale and Leaseback" (meaning a transaction whereby an Owner conveys its fee or a leasehold estate in such Parcel and such conveyance is followed immediately by a leaseback or sub-leaseback of the entire interest so conveyed or the improvements thereupon to such Owner, or to a party wholly controlled by such Owner).

1.19 Mortgagee.

Any mortgagee under a Mortgage, or trustee or beneficiary under a deed of trust constituting a lien on all or any portion of any of the Parcels or any leasehold interest in the Parcels, or on any ground lessor under any ground lease or master lessor under any master lease with respect to all or any portion of any of the Parcels. The interest held by any Mortgagee in any

Parcel will be subordinate to this Declaration. In addition, a Mortgagee will include any tax credit investor in an Owner.

1.20 Notice of Assessment Lien.

A notice recorded in the office of the Weber County Recorder, and such other place as may be required by law, by any Person to whom is owed any assessment or other sum of money payable by any Owner pursuant to any provision of this Declaration stating that said assessment or sum has not been paid and that the applicable grace period for such payment (if any) has expired.

1.21 Office Building.

The Building labeled "Office Building I" on the Site Plan, used primarily for office purposes, and otherwise in accordance with the terms and provisions of this Declaration applicable to the use of the Office Building, as more particularly set forth in Section 2.2.

1.22 Office Common Areas.

All the areas within an Office Building that are made available for the general use, convenience and benefit of all Permittees of the Office Parcel (or other Parcels) and/or the public, including all lobby and waiting areas, but excluding landscaped areas and other exterior areas located adjacent to the Office Parcel, which will (unless otherwise elected by Declarant, in which event such areas will be included in "Office Common Areas") constitute "Common Areas" generally and will be maintained by Manager pursuant to other matters of record affecting the Office Parcel.

1.23 Owner.

Each Person, who, at any given time, holds fee title to any full Parcel, or a ground lessee or sub-ground lessee of any full Parcel (provided the Owner of such Parcel so designates such party, which designation must be set forth in a written statement recorded in the office of the Weber County Recorder). The Owner of the Condominium Common Area Parcel will be the Condominium Association. An Owner will not include tenants and sublessees of less than an entire Parcel. In the event, at any time, that an interest in the same Parcel is vested in more than one Person, such Persons will designate one of them to act on behalf of all such Persons in the performance of the provisions of this Declaration. Any such designation will be in writing, duly executed and acknowledged by each such Person and a copy of such designation will be given to all other Owners in accordance with the notice provisions of this Declaration. An original of such designation will be recorded in the office of the Weber County Recorder. A majority of such Persons will have the right, from time to time, to change the designation made by executing, acknowledging, delivering and recording a new notice of designation in the same manner set forth above.

1.24 Parcel or Parcels.

Each of Retail/Office Parcel 1, Retail Parcel 2, Retail Parcel 3, as shown on the Site Plan; Residential Unit A-101, Residential Unit B-101, Residential Unit F-101, Retail Unit A-102,

Retail Unit B-102, Retail Unit F-102, Residential Parking Unit A, Residential Parking Unit B, and the Retail Parking Unit, as depicted on the Condominium Plat and defined in the Condominium Declaration; the Condominium Common Area Parcel; and such further subdivision of any such Parcel as approved by Declarant.

1.25 Permitees.

The Owners of any and all portions of the Project and their respective heirs, successors, assigns, grantees, tenants and subtenants and all Persons who now hold, or hereafter hold, portions of real property within the Project, or any leasehold estate, or building space thereon; and respective tenants or subtenants thereof; and the officers, directors, concessionaires, agents, employees, contractors, customers, visitors and licensees and invitees of any of them.

1.26 Person.

Any natural person, partnership, trust, corporation, limited liability company or other legal entity.

1.27 Prohibited Uses.

Any use or operation which is inconsistent with the development or operation of the Project as a first class retail, commercial, entertainment, residential, office and/or community project, as so operated, as reasonably determined by Declarant. Included among the uses or operations which are objectionable are the following uses or operations, or any uses or operations which produce, are accompanied by or involve the following characteristics, which list is not intended to be all-inclusive:

- (a) any use which constitutes a public or private nuisance;
- (b) any use which produces noise or sound which may be heard outside of any Building and is objectionable due to intermittence, beat, frequency, shrillness or loudness;
- (c) any use which produces any noxious odor which may be smelled outside any Building other than such odors as are typically incidental to first class retail operations, including odors typically incidental to beauty and nail salons, restaurants, fast food restaurants or other food service establishments;
- (d) any use which produces any excessive quantity of dust, dirt or ash; provided, however, this prohibition will not preclude the sale of items typically sold as an incident to the operation of a home improvement or other similar store (provided such items are sold in containers);
- (e) any use involving unusual fire, explosive or other damaging or dangerous hazards (including the storage, display or sale of explosives or fireworks); provided, however, this restriction will not prohibit annual or other periodic displays of fireworks in connection with national, regional or other holidays or events of significance in the area of the Project;

- (f) any warehouse, assembly, manufacturing, distillation, refining, smelting, agriculture or mining operation;
- (g) any mobile home or trailer court, mortuary, lot for the sale of new or used vehicles, labor camp, junkyard, stock yard or use involving animal raising; provided, however, first-class pet stores will be permitted within the Project;
- (h) any operation for drilling for and/or removal of subsurface substances;
- (i) any operation involving dumping, disposal, incineration or reduction of garbage or refuse, other than in enclosed receptacles intended for such purposes;
- (j) any commercial laundry or dry cleaning plant, laundromat, veterinary hospital or similar use;
- (k) any use involving the display or distribution of pornographic materials, adult books and magazines or X-rated videos or similar productions; provided, however, the following will be permitted within the Project: (i) the sale of such adult magazines and books as may be carried by a convenience, supermarket, drug, record or full-line book store, and (ii) the sale and/or rental of X-rated videos and similar productions from full-line record and/or video stores, provided such X-rated videos are not shown on screen in any such store, but are kept behind a counter or in a reserved area and are not advertised or placed on display to minors;
- (l) any automobile body and fender repair shop operation; and
- (m) any off-track betting facility.

1.28 Residential Building.

Any residential apartment building or condominium complex building located on a Residential Parcel and otherwise used in accordance with the terms and provisions of this Declaration applicable to the use of Residential Buildings, as more particularly set forth in Section 2.3.

1.29 Residential Parcel.

Each of Residential Unit A-101, Residential Unit B-101, and Residential Unit F-101, as depicted on the Condominium Plat and defined in the Condominium Declaration.

1.30 Residential Parking Parcel.

Each of Residential Parking Unit A and Residential Parking Unit B, as depicted on the Condominium Plat and defined in the Condominium Declaration. "Residential Parking Parcel" will also include any Parcel that is created exclusively for the use of a Residential Building by separate license or ground lease with Ogden, upon which the parking areas, including underground parking facilities, located within a Residential Parking Parcel ("Residential Parking Facilities") are to be located. Notwithstanding anything to the contrary contained in this Declaration, and except with respect to the easements over the Residential Parking Parcels

provided for in the Condominium Declaration, the Residential Parking Parcels will be used exclusively for residential vehicular parking and uses incidental thereto.

1.31 Retail Building.

Each Building labeled "Retail Building" on the Site Plan, used primarily for retail selling, service commercial, restaurant, theatre, and/or other commercial purposes and/or otherwise in accordance with the terms and provisions of this Declaration applicable to the use of Retail Buildings, as more particularly set forth in Section 2.5. "Retail Building" will also include the Building containing Retail Unit A-102, the Building containing Retail Unit B-102, and the Building containing Retail Unit F-102, as depicted on the Condominium Plat and defined in the Condominium Declaration. "Retail Building" will not include those portions of a Building that are used for residential or other nonretail uses.

1.32 Retail Parcel.

Retail Parcel 2 (Lot 10A, Ogden City Entertainment Subdivision – Phase 2 (Amended)) and Retail Parcel 3 (Lot 11C, Ogden City Entertainment Subdivision – Phase 2 (Amended) Lot 11 2nd Amendment, except for the portion of Lot 11C lying within the Condominium Project), as depicted on the Site Plan; and Retail Unit A-102, Retail Unit B-102, and Retail Unit F-102, as depicted on the Condominium Plat and defined in the Condominium Declaration.

1.33 Retail/Office Parcel.

Retail/Office Parcel 1 (Lot 11A, Ogden City Entertainment Subdivision – Phase 2 (Amended) Lot 11 2nd Amendment), as depicted on the Site Plan, on which Office Building I and Retail Building G are located.

Article 2 USE IN GENERAL

2.1 Lawful Use.

Except as otherwise limited pursuant to this Declaration, the Project may be used for any lawful retail, commercial, entertainment, office, cultural and/or community, purpose not specifically prohibited herein. No portion of the Project will be used for a Prohibited Use. Uses of specific portions of the Project may be further restricted according to the terms of the Condominium Declaration and in the event of any conflict between the restrictions in use contained herein or in the Condominium Declaration, the more restrictive terms and conditions will control.

2.2 Use of the Retail/Office Parcel.

(a) The portion of the Retail/Office Parcel consisting of Retail Building G will be subject to Section 2.5 and the other provisions governing Retail Parcels.

(b) Subject to Section 2.7, the portion of the Retail/Office Parcel consisting of Office Building I (the "Office Parcel") will be used only for first class office purposes;

provided, however, the main floor level (meaning the level on which the main building lobby through which pedestrian access to the remainder of the Project is located) of the Office Building may be used, on an incidental basis, for retail uses typical in other first class office buildings in Ogden City such as (but not limited to) newsstand, gift shop, sundry and/or coffee shop (it being understood that no Office Building will contain more than one coffee shop).

(c) The Office Parcel will be used for no other purposes without the prior written consent of Declarant, which will not be unreasonably withheld; provided, however, Declarant will have the right, in its sole discretion, to refuse to consent to a change in use of the Office Parcel to a retail, commercial, residential, industrial or entertainment use or any other use which is inconsistent with the zoning for the Office Parcel. Notwithstanding anything to the contrary contained in this Declaration, at all times during the term of this Declaration, the Owner of the Office Parcel will cause the tenants, occupants and users of the Office Building to use only those window treatments approved by Declarant for use in the Project, it being the intent of Declarant that substantially the same interior window treatments be used for aesthetic harmony. In addition, any and all balcony areas located within the Office Parcel will be subject to reasonable rules and regulations promulgated by Declarant to maintain a consistent appearance throughout the Project.

2.3 Use of Residential Parcels.

Subject to the provisions of Section 2.7 below, the Residential Parcels will be used only for multi-family apartment and condominium purposes and for no other use without the prior written consent of Declarant, which will not be unreasonably withheld; provided, however, Declarant will have the right, in its sole discretion, to refuse to consent to a change in use of any Residential Parcel to a retail, commercial, office, industrial or entertainment use or any other use which is inconsistent with the zoning for the Residential Parcels. No business operation will be performed or carried out on any Residential Parcel without the prior written consent of Declarant, which consent may be withheld in Declarant's sole but good faith discretion; provided, however this restriction will not prohibit the incidental use of individual residential units on Residential Parcels for the operation of home offices or businesses so long as any such offices and businesses are not open or available to the general public. Notwithstanding anything to the contrary contained in this Declaration, at all times during the term of this Declaration, each Owner of a Residential Parcel will cause the tenants, occupants and users of its Residential Building to utilize substantially the same interior window treatments for aesthetic harmony. In addition, any and all balcony areas located within a Residential Parcel will be subject to reasonable rules and regulations promulgated by Declarant to maintain a consistent appearance throughout the Project.

2.4 Use of Residential Parking Parcels.

Subject to Section 2.7, the Residential Parking Parcels will be used only for the operation of the Residential Parking Facilities (and uses incidental thereto) and for no other use without the prior written consent of Declarant, which will not be unreasonably withheld. Notwithstanding anything in this Declaration to the contrary, and except with respect to the easements over the Residential Parking Parcels provided for in the Condominium Declaration, the Residential

Parking Facilities will be subject to the exclusive use of patrons, occupants and users of the Residential Buildings to which they correspond.

2.5 Use of Retail Parcels.

Subject to Section 2.7, the Retail Parcels will be used for any retail (including entertainment, theater and restaurant), service commercial (meaning banking, travel agency, real estate, escrow, insurance tax preparation and similar types of office uses) and any other purposes permitted under applicable zoning and other laws and not otherwise prohibited under this Declaration.

2.6 Zoning.

This Declaration will be subject to applicable zoning laws.

2.7 Condominium Declaration.

Any Parcel that is also subject to the Condominium Declaration will be governed by both this Declaration and the Condominium Declaration. If there is any conflict between a provision of this Declaration and a provision of the Condominium Declaration, the more restrictive provision will govern.

Article 3 CONSTRUCTION

3.1 Buildings and Improvements Only in Designated Areas.

No Building or other structure of any kind (including parking facilities) will be erected, placed or maintained on any portion of the Project except upon those portions designated by Declarant or identified on the Site Plan as Building Areas or areas for the location of parking facilities. If such Building or improvements are erected, planned or maintained on those portions of the Project designated by Declarant or identified on the Site Plan as Building Areas, any and all easements and other rights granted to Owners pursuant to this Declaration to use such area will be deemed to be withdrawn, except to the extent of Common Areas remaining on such property following completion of construction thereon.

3.2 Initial Building Approval.

No Owner will commence or permit the commencement of construction of any sign, Building or other structure within the Project unless the design, architecture, exterior elevations, configuration, height, dimensions, landscape design, location, exterior finishes, materials, colors and other attributes thereof will have first been approved in writing by the Declarant in its reasonable discretion, which approval (if applicable) will be in the form of approval of such Owner's detailed plans and specifications for such improvements which will be submitted in advance to Declarant. All improvements will be constructed in strict accordance with any such plans and specifications approved by Declarant. Notwithstanding anything in this Declaration to the contrary, and without limitation, it will be reasonable for Declarant to withhold such approval

if any proposed improvements are not consistent with those depicted on the proposed Site Plan attached hereto, or if such improvements are not architecturally, functionally and/or aesthetically harmonious with the other Buildings and improvements then located or approved for construction within the Project. No Owner will make any material alterations to any of the foregoing matters without first obtaining a similar approval from Declarant as to such alteration. Notwithstanding anything to the contrary contained herein, Declarant will have the right to establish standardized construction guidelines for the Project ("Construction Guidelines"), which Construction Guidelines may, as determined by Declarant, include detailed design, engineering and specification requirements, construction rules and designated staging areas. For construction not previously approved and commenced within a reasonable time, Declarant will have the right to change the Construction Guidelines from time to time, in Declarant's sole and absolute but good faith discretion. Any and all construction or other work performed by an Owner pursuant to this Declaration will be subject to and performed in accordance with the Construction Guidelines.

3.3 Alteration Approval.

In order to maintain the architectural and functional harmony of the Project, no Building or structure within the Project will be reconstructed, altered, added to or maintained in such a fashion as to alter, in any material respect, the architectural appearance, character, motif or functional purpose of such item, unless such alteration is first approved in writing by the Declarant in its reasonable discretion and such alteration is made in accordance with the Construction Guidelines, if any. Such approval will be given or withheld in writing within 30 days after receipt of written request and receipt by Declarant of detailed plans and specifications therefor. Failure to respond in writing to a written request for such approval within 30 days of its receipt will constitute disapproval of such construction, reconstruction or alteration. All alterations or improvements will be constructed in strict accordance with the plans and specifications approved by Declarant and the Construction Guidelines (as applicable). No material deviation will be made from such plans and specifications without Declarant's prior written approval.

3.4 Construction Procedures.

(a) All construction activities within the Project will be performed in a good and workmanlike manner, using first-class materials, and in compliance with all laws, rules, regulations, orders, and ordinances of the city, county, state, and federal governments, or any department or agency thereof, having jurisdiction over the Project.

(b) All construction activities within the Parcels will be performed in accordance with the following provisions:

(i) so as not to unreasonably interfere with any construction work being performed on the remainder of the Parcels, or part thereof; and

(ii) so as not to unreasonably interfere with the use, occupancy or enjoyment of the remainder of the Project or part thereof or the business conducted by any other Owner or Permittees.

(c) When an Owner is constructing, reconstructing, repairing, maintaining, remodeling, or enlarging any improvements on its Parcel, such Owner will establish a staging and storage area on its Parcel prior to commencing such work. Notwithstanding anything to the contrary contained herein, such staging and storage areas (i) will not unreasonably interfere with access between the other areas of the Project, with the use of any other Parcel, or with the operation of any business or permitted activity on any other Parcel by the Permittees thereof (such Permittees to have free and unobstructed access to the loading docks, compactors, sidewalks and entrances and exits), and (ii) will be subject to the approval of Declarant, in its reasonable discretion or located in a permitted staging or storage area identified in the Construction Guidelines. If substantial work is to be performed, such Owner, at the request of Declarant or any other Owner of a Parcel which would be materially and adversely affected by such staging or storage area, will fence off such staging and storage area. Upon completion of such work, such staging and storage area will be restored to a condition at least equal to that existing prior to commencement of such work. Except in cases of emergency and except for restoration or repair necessitated by casualty or condemnation, no exterior construction or material exterior maintenance and repair work will be conducted within the Project during the months of July, August, November or December, unless otherwise approved by Declarant, in Declarant's sole and absolute discretion. Correspondingly, no staging and storage areas will be established and maintained within the Project during such restricted months.

(d) Each Owner will diligently complete all construction activities within its Parcel as quickly as possible, will regularly clean the roadways and driveways used by its construction vehicles of mud, dirt and construction debris, and upon completion of all construction activities will promptly restore such affected roadways and driveways to a condition which is equal to or better than the condition which existed prior to the commencement of such work.

(e) Each Owner will indemnify, defend and hold harmless each other Owner from and against any and all claims, losses, damages, liabilities, injuries, costs and expenses, including, without limitation, reasonable attorneys fees, because of personal injury or death of persons or destruction of property arising from or as a result of construction by such Owner on its Parcel, except for claims caused by the negligence or willful act or omission of the indemnified Owner, its licensees, concessionaires, agents, servants, or employees.

3.5 Development Approval.

In the event Declarant enters into a development or similar agreement ("Development Agreement") with an Owner or the Owner's subtenant, which Development Agreement provides for the construction and development of a Building and other improvements upon a Parcel, such Owner's or its subtenant's construction of a Building and other improvements in accordance with the requirements of such Development Agreement will constitute compliance with such Owner's obligations set forth in Sections 3.1, 3.2, and 3.4 of this Declaration and any indemnification obligations contained in such Development Agreement will to the extent of a conflict supersede those contained in this Declaration.

Article 4
PROJECT EASEMENTS

4.1 Grant of Easements.

The Declarant hereby establishes and grants to, and each other Person who becomes an Owner will, immediately upon becoming such an Owner and without further act, be deemed to have established and granted to all other Owners and all tenants, occupants of the Project, their guests, employees, invitees, permittees, licensees, patrons and customers, irrevocable, non-exclusive easements over, across, upon and beneath the Common Area held or owned by such Owner for the purposes set forth in Section 4.2, including, with respect to the Owners of the Retail Parcels, the Retail/Office Parcel, the Condominium Common Area Parcel, Office Common Areas, and other Common Areas located respectively, on each such Parcel (except to the extent otherwise provided in this Declaration); provided, however that the non-exclusive easements granted by the Owner of a Residential Parcel and a Residential Parking Parcel for the benefit of others will be limited to the uses specified in Section 4.2. Notwithstanding the foregoing or any other contrary provision in this Declaration, except as may otherwise be agreed by the Owners of the Residential Parking Parcels, the Residential Parking Facilities will be subject to the exclusive use of the patrons, occupants and users of the particular Buildings to which they relate. Nothing in this Section or elsewhere in this Declaration will be deemed to be or constitute a gift or dedication of any portion of the Project to the general public or for any public use or purpose whatsoever.

4.2 Permitted Common Area Uses.

The Common Area will be used for the purposes set forth in this Section Notwithstanding anything to the contrary contained in this Declaration, any rights granted under this Declaration relating to portions of the Common Areas covered by the City Easement Agreement, will be subject to the terms and provisions set forth in the City Easement Agreement. No Owner will have any right to perform work within or affect an area which is the subject of the City Easement Agreement, unless (and then only to the extent) permitted under the City Easement Agreement.

(a) the parking of passenger vehicles and the pedestrian and vehicular traffic of Permittees.

(b) the ingress and egress of any Permittees and the vehicles thereof to and from any portion of the Common Areas and the public streets adjacent to the Common Areas.

(c) the installation, operation, maintenance, repair, replacement, relocation and removal of sanitary sewers, storm drains, water and gas mains, electric power lines and conduits, telephone lines and conduits, television cables, vaults, manholes, meters, pipelines, valves, hydrants, sprinkler controls and related utility and service facilities serving any part of the Project, all of which (except hydrants and transformers and other installations as may be requested by the utility company) will be even with or below the surface of the Common Area or within Common Area walls or as otherwise directed by Declarant. All Owners will cooperate in the granting of appropriate and proper easements to each other or to utility companies and governmental authorities for the installation, operation, maintenance, repair, replacement,

relocation and removal of the facilities set forth above. The original location of the facilities set forth above will be subject to the approval of the Declarant. Each Owner will have the right to enter upon any portion of the Common Areas as may be necessary or appropriate in order to accomplish the installation, operation, maintenance, repair, replacement, relocation and removal of the facilities referred to above; provided, however, each Owner does not unreasonably interfere with the use of the Common Areas by Permittees and that no relocation or removal of any such facilities will be made without the prior written consent of the Declarant.

(d) pedestrian and vehicular movement by Permittees to and from adjacent streets and between businesses and occupants located or to be located within the Project.

(e) the construction, replacement and reconstruction of parking sites or stalls, flag poles, sidewalks, ramps (excluding loading ramps), driveways, lanes, curbs, directional and other signs, gutters, traffic control areas, traffic islands, traffic and parking lighting facilities, perimeter walls, pedestrian walkway or landscaped areas, including planters, planting boxes, edgers, fountains, valves and customer conveniences, such as mail boxes, public telephones and benches for the comfort and convenience of Permittees; provided, however, that the Declarant will first approve of all such facilities and that such facilities do not materially affect the access, visibility or parking of the property or Building of any Owner.

(f) the maintenance and repair of any of the items referred to in Section 4.2(e).

(g) the ingress and egress of delivery and service trucks and vehicles to and from the Building Areas or any portion thereof and the public streets adjacent to the Project, for the delivery of goods, wares, merchandise and the rendering of services to all Persons or other entities who may lease portions of the Building Areas. Each tenant or other occupant of the Project will use commercially reasonable efforts to have deliveries made within the areas designated for such purposes by Declarant. In the event it is necessary that deliveries be made other than in the areas designated by Declarant, such deliveries will be made so as to cause the least amount of interference with the use of adjacent portions of the Common Area.

(h) trash, refuse and garbage container storage areas if indicated as Common Area on the Site Plan or the Condominium Plat and areas for the parking of the automobiles of employees of an Owner or occupant of any Building and other incidental and related facilities.

(i) subject to the prior written approval of Declarant, which will not be unreasonably withheld, the temporary use of construction equipment and materials (including erection of ladders, scaffolding and store front barricades) during periods of construction, remodeling or repair, and ingress and egress for vehicles transporting construction materials and equipment and use thereof by construction equipment, upon the condition, however, that all construction, remodeling or repair of buildings, other improvements and appurtenances is diligently performed and such ladders, scaffolding and barricades are promptly removed upon completion of such work.

(j) the construction, maintenance, repair, replacement and reconstruction of sign pylons and/or monument signs (with appropriate underground electrical connections in

locations reasonably designated by Declarant); provided, however the location, construction, design and replacement of any such signage will be subject to the prior written approval of Declarant (which approval may be given in Declarant's sole but good faith discretion). The costs of designing, constructing, maintaining, repairing, replacing or reconstructing sign pylons and/or monument signs which serve the Project will be paid for pro rata by the Owners or occupants of the Buildings whose names or logos appear on such signs in the ratio of their square footage usage of such sign pylons. Participation on such signage will be as determined by Declarant, in Declarant's sole and absolute discretion, or as set forth in the Sign Program, if any, implemented pursuant to the following provisions of this Paragraph. No changes will be made to such signage, including the locations of same, without the prior written approval of the Declarant. Notwithstanding anything to the contrary contained herein, Declarant will have the right to establish a sign program for the Project ("Sign Program"), which Sign Program may, as determined by Declarant, include, among other things, detailed design, engineering and specification requirements relating to signage. Declarant will have the right to change the Sign Program from time to time, in Declarant's sole and absolute but good faith discretion. Any and all signage installed at the Project will be subject to and erected in accordance with the Sign Program.

4.3 Common Area Alteration.

No Owner or other Person will alter any parking areas or other improvements located upon the Common Area, without the prior written consent of the Declarant. Notwithstanding the foregoing: (a) an Owner (or the Manager or Declarant) will have the right to excavate or conduct construction activities upon the Common Areas, if necessary, in connection with the installation, operation, maintenance, repair, replacement, relocation and removal of any utility or service facilities, subject, however, to the provisions of Section 4.2(c), so long as such excavation or construction activities will be prosecuted diligently to completion; and further provided that the consent of the Owner on whose Parcel such activity is to take place will also be obtained, which consent will not be unreasonably withheld. The Person causing such excavation or construction activities to be made will forthwith, upon completion thereof, restore any portion of the Common Areas affected thereby to the same condition as existed prior to the commencement of such installation or construction activities using the same type and quality of materials as previously used; and (b) Declarant may make alterations in the Common Area as it will deem appropriate or necessary. Any work performed in the Project pursuant to this subparagraph will be performed so as to minimize the disruption of business operations conducted anywhere within the Project. Notwithstanding the foregoing, however, no such activity will occur (unless otherwise approved by Declarant) during the months of July, August, November or December, except (i) in the event of an emergency or in connection with restoration or repairs necessitated by casualty or condemnation, or (ii) to the extent necessary to prevent a breach or default under this Declaration.

4.4 Encroachment Easement.

Should any Building or improvement constructed within the Project inadvertently encroach on any adjacent property and said encroachment does not exceed 24 inches and/or otherwise materially, adversely affect the use of the property being encroached upon, the Owner of the adjacent property will be deemed to have granted an easement effective as of the recording

date hereof for such encroachment for so long as such encroachment will exist, and will execute such instruments as may reasonably be required by the encroaching party, or its assignees, title insurer or Mortgagees confirming such easement.

4.5 Parking.

The Residential Parking Facilities will be operated and maintained by the Owner thereof, at such Owner's sole cost and expense, in a first class manner and otherwise in accordance with the customary standards for parking facilities in residential complexes similar to the Residential Buildings located within the vicinity of the Project. As set forth in this Declaration above, and notwithstanding anything to the contrary contained herein, except to the extent otherwise agreed by an Owner of a Residential Parking Parcel, and except with respect to the easements over the Residential Parking Parcels provided for in the Condominium Declaration, the Residential Parking Facilities will be available only for the exclusive use of occupants or other users of the Residential Buildings. With respect to the remainder of the parking areas within the Common Areas, Declarant will have the right, in Declarant's sole and absolute discretion, to establish a parking program for the Project ("Parking Program"), which Parking Program may, as determined by Declarant, provide for, among other things, parking rules and regulations, parking charges, valet and validation programs or systems, Declarant's authority for the reservation or designation of particular parking spaces and other items as Declarant determines in Declarant's sole and absolute but good faith discretion. Declarant will have the right to change the Parking Program from time to time, in Declarant's sole and absolute but good faith discretion. No Permittee will use or permit the use of the parking area portions of the Common Areas for any purpose other than parking, loading/unloading (in the areas designated for the same by Declarant or Manager) and passage of pedestrians and motor vehicles unless specifically provided otherwise in this Declaration. Each Owner agrees to use reasonable efforts to enforce the provisions hereof. Each Owner will require its Permittees to park their vehicles only in the parking areas from time to time designated for that purpose by Declarant or Manager. Without limiting the generality of the foregoing, if Declarant or Manager implements any program related to parking, parking facilities or transportation facilities including, but not limited to, any program for off-site parking, parking validation, employee shuttle transportation during peak traffic periods or other program to limit, control, enhance, regulate or assist parking by customers or Permittees of the Project, each Owner which has rights to use the parking area governed by the Parking Program will participate in the Parking Program and pay its proportionate share of the costs of the program (based on the proportionate share of Floor Area owned by such Owner in the Project) under reasonable and nondiscriminatory rules and regulations from time to time established by Declarant or Manager.

4.6 Underground Supports.

In order to accommodate the construction, reconstruction or repair of any Building or other improvement which may be constructed or reconstructed immediately adjacent to the common boundary lines of any of the Parcels, each Owner, as to its respective Parcel, hereby grants, establishes and creates for the benefit of, and as appurtenances to, each other Parcel and for the benefit of the Owner of each of the other Parcels from time to time and their respective Permittees, with respect to, and as a burden upon, such granting Owner's Parcel, non-exclusive easements for lateral support for improvements constructed on or near such common boundary

lines, together with the right and easement to install, maintain, repair, and replace footings and underground supports for such improvements in space not theretofore occupied by any then existing structure, provided that the location of such footings will be subject to the consent and approval of the Owner of the Parcel encumbered by such easement, such approval not to be unreasonably withheld, and provided that such footings will in no event extend more than 5 feet onto the servient Parcel from the applicable common boundary line. This easement will continue in effect for the term of this Declaration and thereafter so long as the improvements utilizing the easement exists, including a reasonable period to permit reconstruction or replacement of such improvements or to permit the construction of new improvements, and will include the reasonable right of access necessary to exercise and enjoy such grant, provided no damage is caused to the Buildings or other improvements located on the Parcel encumbered by such easement or the operation of business thereon. Each Owner of a Parcel using a common footing will construct its wall upon its Parcel, and no load, force or pressure will be exerted by the wall of one Owner upon the wall of the other Owner. When an Owner of a Parcel constructs its improvements along a common boundary line, it will do so in a manner that does not result in damage or injury to the Buildings or other improvements previously placed by another Owner of a Parcel along such common boundary line. If a common footing is used by two Owners, each will assume and pay its reasonable share of the cost and expense of the initial construction and, so long as both Owners are benefiting therefrom, any subsequent maintenance, repair, and replacement thereof. If any Building or structure utilizing a common subterranean element is destroyed and not replaced or is removed, the common subterranean construction element will be left in place for the benefit of any improvements utilizing the same located on the adjoining Parcel. Nothing herein will be deemed to require any Owner to use or to consent to the use of common subterranean construction elements, but if such consent is granted then the foregoing provisions of this Section will apply.

Article 5
OPERATION AND MAINTENANCE
OF BUILDING AREA AND COMMON AREA

5.1 Taxes and Assessments.

(a) Each Owner will pay directly to the taxing authority(ies), prior to delinquency, the Taxes attributable to their respective Parcels including any Common Areas located upon such Parcel. For purposes of this Declaration, "Taxes" will mean any and all taxes, assessments, impositions or levies of any kind (in all cases, whether general or special, anticipated or unanticipated) imposed by any governmental authority upon the land within the Project and/or any improvements therein or thereon.

(b) If any Owner fails to pay its share of Taxes prior to delinquency, any other Owner or the tenant of any other Owner may pay such Taxes and the curing Owner or tenant may then bill the defaulting Owner for the expense incurred. If the defaulting Owner does not pay such bill within 30 days, the curing Owner or tenant will have a lien on the property within the Project of the defaulting Owner for the amount of such bill, which amount will bear interest at a rate equal to the Default Rate until paid. Such lien may be foreclosed by such Owner or tenant as provided in Article 7.

(c) Each Owner (or the tenant or occupant of an Owner if such tenant or occupant has the right under its lease or occupancy agreement to contest Taxes) will have the right, in good faith, to contest the amount of Taxes owing with respect to its property; provided that such Owner (or tenant or occupant) will take all such action as may be necessary to prevent any assessment or tax lien from being foreclosed or enforced with respect to any property within the Project, including, immediately following the request of Declarant, recording an adequate bond to remove such lien as a matter of record or to otherwise secure the payment of such lien.

5.2 Building and Improvement Maintenance.

Each Owner will maintain, or cause to be maintained, in a safe, clean, attractive, tenantable first-class condition, all Buildings and other improvements located upon its Parcel or Parcels, including screening from view the garbage receptacle areas; provided, however, in the event that the Condominium Declaration or other instrument of record applies to any Parcel, the more restrictive terms and conditions will control.

5.3 Utilities.

Each Owner will be solely responsible for obtaining and paying for all utilities and services required and used on its Parcel. Notwithstanding the foregoing, any such utility costs which are attributable to the Common Areas will be paid by the Owner of the Parcel containing the same.

5.4 Rules and Regulations.

The Declarant may promulgate reasonable rules and regulations of general application for the supervision, control and use of the Common Areas, in which event, the Manager will make and use its reasonable efforts to enforce the same or cause the same to be enforced uniformly.

5.5 Maintenance of Residential Parking Parcels.

Notwithstanding anything to the contrary contained in this Declaration, each Owner of a Residential Parking Parcel will be responsible, at its sole cost and expense, for the operation, management, equipping, lighting, repair, replacement and maintenance of its Residential Parking Parcel and on any Residential Parking Parcel owned or leased by such Owner (provided, however, if such obligation is that of the Condominium Association under the Condominium Declaration, each Owner will cause the Condominium Association to comply with the obligations contained in this Section) in a first-class condition and otherwise in accordance with the customary standards for residential complexes similar to the residential buildings located within the vicinity of the Project, all at such Owner's sole cost and expense; provided, however that in the event obligations for operation, management, equipping, lighting, repair, replacement and maintenance of the Residential Parking Parcels are defined in whole or in part in the Condominium Declaration, the more restrictive provisions will control. Such obligations, if applicable, will include (but will not be limited to) the following:

- (a) resurfacing of walks, drives and parking areas;

(b) keeping the surface of the Parcel in a smooth and evenly covered condition with the type of surfacing material originally installed or such substitute as will, in all respects, be equal in quality, use and durability;

(c) cleaning, sweeping, snow and debris removal, painting, striping, disposal of rubbish and debris, removal of soil and stone washed into the Residential Parking Parcel drainage facilities and all other tasks necessary to maintain the Residential Parking Parcel in a clean, safe and orderly condition;

(d) maintenance of all curbs, parking dividers, landscape enclosures, fences and retaining walls in good condition and repair;

(e) placing, keeping in repair and replacing any necessary and appropriate directional signs, markers and lines and keeping in repair and replacing when necessary such artificial lighting facilities and lighting fixtures as will be reasonably required;

(f) maintenance of all landscaped areas, making such replacements of shrubs and other landscaping as is necessary, and keeping such landscaped areas at all times adequately weeded, fertilized and watered;

(g) security service, to the extent Declarant or Manager (without any liability therefor) reasonably deems the same to be necessary or advisable, and in all events at least to the extent required under the City Easement Agreement;

(h) illumination of the subject Residential Parking Parcel until such time as the Manager or Declarant reasonably determines; and

(i) maintenance of all utility lines within the subject Residential Parking Parcel that are not the responsibility of the utility company or the responsibility of another party pursuant to applicable matters of record.

5.6 Maintenance of Common Areas.

Except with respect to the portion of the Common Areas being maintained pursuant to the Condominium Declaration, the Owner of the Parcel upon which Commons Areas are located will be responsible for the operation, management, equipping, lighting, repair, replacement and maintenance of the Common Areas located on such Parcel in a first class condition. Such obligations will include (but will not be limited to) the following:

(a) resurfacing of walks, drives and parking areas;

(b) keeping the surface of such Common Areas in a smooth and evenly covered condition with the type of surfacing material originally installed or such substitute as will, in all respects, be equal in quality, use and durability;

(c) cleaning, sweeping, snow and debris removal, painting, striping, disposal of rubbish and debris, removal of soil and stone washed into such Common Area drainage

facilities and all other tasks necessary to maintain such Common Areas in a clean, safe and orderly condition;

(d) maintenance of all curbs, parking dividers, landscape enclosures, fences and retaining walls in good condition and repair;

(e) placing, keeping in repair and replacing any necessary and appropriate directional signs, markers and lines and keeping in repair and replacing when necessary such artificial lighting facilities and lighting fixtures as will be reasonably required;

(f) maintenance of all landscaped areas, making such replacements of shrubs and other landscaping as is necessary, and keeping such landscaped areas at all times adequately weeded, fertilized and watered;

(g) security service, to the extent Declarant or Manager (without any liability therefor) reasonably deems the same to be necessary or advisable, and in all events at least to the extent required under the City Easement Agreement;

(h) illumination of the subject Common Areas until such time as the Manager or Declarant reasonably determines; and

(i) maintenance of all utility lines within the subject Common Areas that are not the responsibility of the utility company or the responsibility of another party pursuant to applicable matters of record.

5.7 Maintenance of Office Common Areas.

The Owner of the Office Parcel will maintain the Office Common Areas in accordance with the standards set forth in Section 5.6.

5.8 Takeover of Maintenance.

Except as set forth below, if an Owner fails to operate, manage, equip, light, repair, replace and/or maintain the Common Areas (or Office Common Areas, as the case may be) within its Parcel as required under Sections 5.6 or 5.7, as applicable, or otherwise fails to operate such Common Areas (including any relevant parking facility located on its Parcel, as applicable) pursuant to the other requirements and standards set forth in this Declaration (including Section 4.5 above), then Manager or Declarant will have the right (but not the obligation), by giving such Owner at least 90 days' prior written notice, to assume, or cause to be assumed, responsibility for the operation, maintenance, repair and replacement of such Common Areas (or portions thereof), as the case may be; provided, however, in the event such Owner performs such remedial actions or cures the relevant breach (or, if such remedial actions cannot be cured within such 90-day period, such Owner promptly undertakes such remedial actions and diligently pursues such remedial actions to completion), Manager or Declarant (as the case may be) will not have the right to take over, or cause to be taken over, the operation, maintenance, repair and replacement of the subject Common Areas on account of such breach. If Manager or Declarant so exercises such option to assume, or causes to be assumed, the responsibilities for the operation, maintenance, repair and replacement of the relevant Common Areas (or portions thereof),

Manager, Declarant or a designee appointed by either such party, will thereafter so operate, maintain, repair, replace and otherwise perform such Owner's obligations with respect to the subject Common Areas (or relevant portions thereof) in the same manner and subject to the same standards as required of such Owner under this Declaration. In such event, such Owner will be responsible for any and all costs incurred by Manager, Declarant or such designee (as the case may be) with respect to such operation, maintenance, repair, replacement and satisfaction of other obligations of such Owner with respect to such Common Areas, which costs will be paid by such Owner to Manager, Declarant or such designee (as the case may be) periodically, as billed by such party, within 30 days following such billing. If such Owner does not pay such bill within such 30 days, then Manager or Declarant (as the case may be) will have a lien on the property of such Owner for the amount of such bill, which amount will bear interest at the Default Rate and which lien may be foreclosed as provided in Article 7. Notwithstanding the foregoing provisions, this Section 5.8 will have no application in the event that such Parcel is subject to the terms and conditions of the Condominium Declaration. The Declarant and Owners of Parcels subject to the Condominium Declaration will look solely to the terms and conditions of such applicable Condominium Declaration regarding an Owner's obligation to maintain the Common Areas or Residential Parking Parcels, and the remedies that may be available against an Owner for failure to do so.

5.9 City Easement Agreement.

In connection with the right granted under the City Easement Agreement, each Owner, other than the Owner of a Residential Parcel or a Residential Parking Parcel will reimburse Manager for such Owner's share of the amounts paid under the City Easement Agreement (the "Common Areas Costs"). An Owner's share of the Common Areas Costs will be determined by multiplying all of the Common Areas Costs by a fraction, the numerator of which will be the Floor Area contained on such Owner's Parcel and the denominator of which will be the total Floor Area in the Project.

Article 6 INSURANCE

6.1 Liability Insurance.

Except as set forth in Section 6.4, each Owner will (or if applicable, will cause the Condominium Association to), during the term of this Declaration, except as otherwise expressly set forth herein, maintain, or cause to be maintained, at its sole expense, in full force and effect, with good and solvent insurance companies authorized to do business in the State of Utah and having a rating by Best's Insurance Reports of not less than A-VII, on all property within the Project owned or leased by such Owner and all Buildings and other improvements (including Common Area improvements) owned or leased by such Owner, a policy or policies of commercial general liability insurance with combined single limits of at least \$5,000,000 (which such limit will be increased on January 1, 2010, and on every fifth anniversary of such date (each an "Adjustment Date") throughout the duration of this Declaration, by the percentage increase in the Index (calculated by multiplying the then applicable insurance limit by a fraction, the numerator of which will be the Index for the month which is three months before the subject Adjustment Date and the denominator of which will be the Index for the month which is 63

months before such Adjustment Date)), in which all other Owners, the Manager, Declarant, any Mortgagee of Declarant and any property manager of Manager or Declarant will be named as additional insureds, insuring against any and all liability arising out of the maintenance, use and occupancy of the Building(s) and other improvements (including the Office Common Areas located on the property within the Project owned or leased by such Owner. Each Owner will also maintain special form insurance coverage on all Buildings and improvements (including Common Area improvements, except as set forth below) located upon that portion of the Project leased or owned by such Owner including loss or damage by fire and such other risks as are from time to time included in the special form insurance policies customarily issued in Utah in an amount not less than 100% of the full replacement cost of such Buildings and improvements. In addition, and notwithstanding anything to the contrary contained herein, the Owner of the Office Common Areas will maintain such special form insurance on the Office Common Areas. Such special form insurance policies will be maintained with good and solvent insurance companies authorized to do business in the State of Utah and having a rating by Best's Insurance Reports of not less than A-VII. Manager and Declarant will be named as loss payees on all such special form insurance policies.

6.2 Certificates.

(a) Each Owner will, upon request thereof from the Manager, Declarant or any other Owner, furnish, or cause to be furnished, to the party making such request certificates of insurance evidencing the existence of the insurance required to be carried pursuant to this Article. To the extent that the same does not invalidate any insurance coverage obtained by an Owner, each Owner hereby waives any claim that it might have against any other Owner for damages which would be covered by any of the insurance required to be carried under this Article. Said mutual waivers will be in addition to, and not in limitation or derogation of, any other waiver or release regarding any loss of, or any damage to the said property of any Owner. Inasmuch as the said mutual waivers will preclude the assignment of any such claim by way of subrogation (or otherwise) to an insurance company (or any other Person) each Owner will give to each insurance company which has issued to it policies of special form insurance, written notice of the terms of said mutual waivers, and will have said insurance policies properly endorsed, if necessary, to prevent invalidation of said insurance coverages by reason of said waiver. All such insurance maintained pursuant to this Article will provide that such insurance will not be canceled or amended without ten days' prior written notice to Manager and Declarant.

(b) If any Owner fails to maintain any of the insurance required to be maintained by such Owner pursuant to this Declaration, then any other Owner or tenant of an Owner will have the right to give the defaulting Owner written notice of such default specifying the particulars thereof. The Owner receiving such a notice will have a period of ten days in which to cure such default. If the defaulting Owner does not cure such default within the ten-day period, the Owner(s) and/or tenant(s) giving the notice of default may do so and the curing Owner or tenant may then bill the defaulting Owner for the expense incurred. If the defaulting Owner does not pay the bill within ten days, then the curing Owner or tenant will have a lien on the property of the defaulting Owner for the amount of such bill, which amount will bear interest at the Default Rate and which lien may be foreclosed as provided in Article 7.

6.3 Indemnification.

Each Owner ("Indemnitor") covenants and agrees to defend, protect, indemnify and hold harmless each other Owner ("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) arising from or as a result of the injury to or death of any Person, or damage to the property of any Person located on the Parcel owned or leased by each Indemnitor, except for claims caused by the negligence or willful act or omission of such Indemnitees, its agents, servants, partners or employees.

6.4 Conflict with Condominium Declaration.

In the event of any conflict in the insurance requirements of this Article 6 and the insurance requirements contained within the Condominium Declaration, the Condominium Declaration will control.

Article 7 ASSESSMENT LIEN

7.1 Assessment Lien Procedure.

In the event any assessment or other sum of money payable by any Owner pursuant to any provision of this Declaration to any Person is not paid when due and after expiration of any applicable grace period set forth herein, then the Person to whom such sums are owing will have the right to record, in the office of the Weber County Recorder, a Notice of Assessment Lien which will set forth the then delinquent amount owed by such Owner (including default interest, if applicable) and a legal description of the property within the Project owned or leased by such defaulting Owner. Upon recordation of such Notice of Assessment Lien, the then delinquent amount owing by such Owner, together with interest thereon, will constitute an Assessment Lien upon the property within the Project described in the Notice of Assessment Lien. In the event the amount secured by such Assessment Lien is not paid in full within 30 days after such Notice of Assessment Lien has been recorded, the Person to whom such amounts are owing may enforce payment of the assessment or other amount due, or enforce the Assessment Lien against the property and interest of the delinquent Owner by taking either or both of the following actions, concurrently or separately (and, by exercising either of the remedies set forth below, such Person will not prejudice or waive its right to exercise the other remedy or such additional remedies as may be available under its lease or under applicable law):

- (a) bringing an action at law against the Owner personally obligated to pay the assessment or other sum of money;
- (b) foreclosing the Assessment Lien against the property of the Owner in accordance with the then prevailing applicable law relating to the foreclosure of Mortgages (including the right to recover any deficiency); or
- (c) pursuing any other remedy at law or in equity.

Notwithstanding the foregoing, a Mortgagee having priority to an Assessment Lien according to the provisions of Section 7.3(a)(ii) that acquires title to the property of an Owner by foreclosure or deed in lieu of foreclosure will only be responsible for the payment of assessments assessed against the subject property from and after the date such Mortgagee acquired title to such property.

7.2 Personal Obligation.

Each assessment or amount due pursuant to any provision of this Declaration by an Owner, together with interest at the Default Rate, costs and attorneys' fees, will be the personal obligation of such defaulting Owner, but such personal obligation of such Owner will not be deemed to discharge or limit the charge on the land of any Assessment Lien encumbering the property of such Owner within the Project, regardless of a subsequent conveyance of that property. No Owner will escape liability for payment of any amount due hereunder which fell due while he was the Owner by nonuse of the Common Areas or by transfer or abandonment of such Owner's property. In the event any property within the Project as to which a Notice of Assessment Lien has been recorded, pursuant to Section 7.1 above, is sold, conveyed or otherwise transferred, in whole or in part, by the Owner thereof, such property will remain subject and subordinate to the Assessment Lien created by reason of the delinquency described in the Notice of Assessment Lien.

7.3 Priority.

(a) The Assessment Lien provided for above will be superior to any and all other charges, liens or encumbrances which hereafter in any manner may arise or be imposed upon any portion of the Project; provided, however, that such Assessment Lien will be subject and subordinate to:

(i) Liens for taxes and other public charges which by applicable law are expressly made superior;

(ii) Any Mortgages recorded in the office of the Weber County Recorder (and such other place as may be required or permitted by law), prior to the date of recordation of a Notice of Assessment Lien. All liens recorded subsequent to the recordation of a Notice of Assessment Liens will be junior and subordinate to the Assessment Lien created by reason of the delinquency described in the recorded Notice of Assessment Lien; and

(iii) The rights of any and all tenants occupying any portion of the Project under written leases.

(b) In the event an Owner will be delinquent in paying any amounts due hereunder and, as a result thereof, a Notice of Assessment Lien will be recorded as provided herein, the Person recording such Notice of Assessment Lien may record subsequent Notices of Assessment Lien as to any amounts owing by such Owner to such Person which become delinquent after the recordation of the first such Notice of Assessment Lien, and the priority of the Assessment Lien as to any such amounts thereafter becoming delinquent will be fixed as of the date of recordation of the first such Notice of Assessment Lien. A Person may prosecute a single Assessment Lien foreclosure action as to amounts delinquent at the time a Notice of

Assessment Lien is recorded and as to amounts thereafter becoming delinquent, up to and including the time a final judgment is rendered in such action.

7.4 Cure.

Upon the curing of any default for which a Notice of Assessment Lien was recorded, the Person recording such Notice of Assessment Lien will record an appropriate release of any Notice of Assessment Lien upon payment by the defaulting Owner of a reasonable fee, to be determined by such Person, to cover the costs of preparing and recording such release, together with the payment of such other costs, including, without limitation, legal fees and court costs, interest or fees, as such Person will have incurred.

7.5 Contest.

Any provision contained herein to the contrary notwithstanding, any Owner will have the right to contest, in a court of competent jurisdiction, the recordation of any Notice of Assessment Lien against the property within the Project owned or leased by such Owner on the basis that the recordation of such Notice of Assessment Lien or the amounts claimed to be delinquent therein is or are incorrect or improper under the provisions of this Declaration. The prevailing party in such action will be entitled to recover from the other party or parties its reasonable attorneys' fees incurred in connection with such action.

Article 8 CASUALTY

8.1 Damage to Buildings and Other Improvements.

If any Building or other improvement (including the Residential Parking Facilities and the Office Common Area improvements) on a Parcel is damaged or destroyed by any casualty, the Owner upon whose Parcel such Building and/or improvement is/was located will (or, if applicable, will cause the Condominium Association to) promptly (a) repair and/or reconstruct such Building or improvement in accordance with the applicable provisions of this Declaration (or, if applicable, the Condominium Declaration), or (b) remove the debris from the Parcel and keep the affected portions of the Parcel neat, orderly, and well maintained and covered with material reasonably required by Declarant, until subsequently improved or constructed upon.

8.2 Damage to Common Areas.

Upon any damage or destruction to the Common Area on a Parcel (exclusive of Office Common Area improvements, (which improvements will be governed by Section 8.1 above) during the term of this Declaration, Declarant will have the right, at Declarant's sole election (which election will be made in writing and delivered to each Owner within 30 days following the subject casualty), to restore, repair or rebuild such damaged or destroyed Common Areas (or any portion thereof). Notwithstanding anything to the contrary contained herein, in the event Declarant does not elect to so restore, repair or rebuild such damaged or destroyed Common Areas, then (i) if such damage or destruction results from any cause insured under a special form insurance policy maintained by Manager or Declarant or the subject Owner, or (ii) if not so

insured, the cost of repair of which (including applicable governmental fees and exactions) does not exceed 20% of the then full replacement cost of all of the Common Area on such Parcel, the Owner upon whose Parcel such damage or destruction occurred, at its sole cost and expense, will promptly after the occurrence of the event of damage or destruction, restore, repair or rebuild such damaged or destroyed Common Areas. Notwithstanding the foregoing or any other contrary provision in this Declaration, in the event an Owner other than Declarant restores, repairs or rebuilds the damaged or destroyed Common Areas, Declarant will assign to such Owner any insurance proceeds actually received by Declarant on account of such damage, and such proceeds will be disbursed periodically to such Owner as such restoration, repair and/or rebuilding work progresses, in a manner reasonably determined by Declarant. If the cost of repair under clause (ii) above exceeds 20% of the then full replacement cost of all of the Common Areas on the subject Parcel and the Owner of the affected Parcel elects (which such election will be made, if at all, within 30 days following such damage or destruction) not to restore, repair or rebuild the damaged or destroyed Common Areas, and if the damaged or destroyed Common Areas include or affect any entrances to the Project, accessways within the Project, or common utilities or signs, then any other Owner will have the right, by written notice to the Owner upon whose Parcel such damage or destruction occurred, to elect to effect restoration, repair or rebuilding of all or any part of such damaged or destroyed Common Areas, in which event the electing Owner or Owners will effect such restoration, repair or rebuilding in accordance with the applicable provisions of this Declaration, and the Owner of the Parcel upon which such damage and destruction occurred will bear the first of the costs incurred to restore, repair and rebuild the affected Common Areas to the extent not in excess of 20% of the then full replacement cost of all of the Common Areas on the subject Parcel and the electing Owner or Owners will bear all such costs exceeding 20% of the then full replacement cost of such Common Areas. If an affected Owner is not obligated to repair damaged or destroyed Common Areas pursuant to clause (ii) above, and no other Owner elects to effect such repair within 30 days after the date the affected Owner determines not to proceed with such repairs, then the affected Owner will promptly remove any debris from its Parcel and keep the affected portions of the Parcel neat, orderly, and well maintained and covered with material reasonably required by Declarant, until subsequently improved or constructed upon. Unless the work of restoration, repair, rebuilding or improvement is carried out pursuant to the original plans and specifications for the construction of the Common Areas, the plans or specifications for such work will be subject to the prior written approval of Declarant as otherwise required pursuant to this Declaration. Each affected Owner will use all due diligence to complete such restoration and repair of the Common Areas as expeditiously as possible so that the same may be available for use as part of the Project with as little delay and as little disruption as circumstances permit.

Article 9 GENERAL PROVISIONS

9.1 Successors and Assigns.

Each easement, restriction and covenant contained herein will be appurtenant to and for the benefit of all portions of the Project and will be a burden thereon, for the benefit of all portions of the Project. This Declaration and the restrictions, easements, covenants, benefits and obligations created hereby will inure to the benefit of and be binding upon Declarant, Manager,

Owners and their successors, transferees and assigns; provided, however, that, if any Owner transfers all of its interest in the Project, the transferee thereof will automatically be deemed to have assumed and agreed to be bound by the covenants and agreements herein contained, and the transferor will thereupon be released and discharged from any and all obligations under this Declaration accruing after the date of sale.

9.2 Run With the Land.

The covenants, conditions and restrictions contained in this Declaration will run with the land and be binding upon each of the parties to this Declaration (and upon all Persons claiming under them) unless Declarant (if Declarant is still Boyer or a Boyer Affiliate) otherwise elects in a writing recorded with the Weber County Recorder, or, if Declarant is any party other than Boyer or a Boyer Affiliate, unless Owners owning at least 51% of the land area within the Project otherwise elect in a writing recorded with the Weber County Recorder.

9.3 Modification.

This Declaration may be modified in any respect whatsoever with the consent of the Declarant and without the necessity of obtaining the consent of any other Owner; provided, however if such a modification (a) directly and materially affects the access to, visibility of or parking on a Parcel; or (b) would result in restricting the use or enjoyment of a Residential Parcel or a Residential Parking Parcel or a material increase in financial obligations for an Owner; then the Owner of any such affected Parcel must also consent to such modification. If this Declaration is rescinded, all Owners of any portion of the Project must consent to such rescission. Such modification or rescission may only be accomplished by a written instrument duly executed and acknowledged by the requisite parties, and duly recorded in the office of the Weber County Recorder and at such other place as may be necessary.

9.4 No Dedication to Public.

Nothing herein contained will be deemed to be a gift or dedication of any portion of the Project to the general public or for the general public or for any public purposes whatsoever, it being the intention of Declarant that this Declaration will be strictly limited to and for the purposes herein expressed.

9.5 No Cancellation.

No breach of this Declaration will entitle any Owner to cancel, rescind or otherwise terminate this Declaration, but such limitation will not affect in any manner any other rights or remedies which such Owner may have hereunder by reason of any breach of this Declaration.

9.6 Survival.

If any clause, sentence or other portion of this Declaration will become illegal, null or void for any reason, or will be held by any court of competent jurisdiction to be so, the remaining portions hereof will remain in full force and effect.

9.7 No Merger.

The ownership of the entire Project by the same party will not effect the termination of this Declaration.

9.8 Mortgagee Protection.

Breach of any of the covenants or restrictions contained in this Declaration will not defeat or render invalid the lien of any Mortgage made in good faith and for value as to the Project or any part thereof, but all of the foregoing provisions, restrictions and covenants will be binding upon and effective against any Owner whose title thereto is acquired by foreclosure, trustee's sale, deed in lieu of foreclosure or otherwise.

9.9 Remedies.

Any Owner, any tenant of any portion of the Project, the Declarant and/or the Manager may prosecute any proceedings at law or in equity against any Person violating or attempting to violate any of the agreements, covenants, conditions and restrictions herein, to prevent it from so doing and/or to recover damages from or on account of such violation. All costs and expenses of any such suit or proceedings, including attorneys' fees, as well as any judgment thereof, will be assessed against the losing party and will constitute a lien against the real property or the interest therein in the Project belonging to such party as provided in Article 7 above, which the prevailing party may foreclose in the manner provided in such Article 7. All remedies set forth herein or otherwise available at law or equity will be cumulative.

9.10 No Third-Party Beneficiary.

Except as herein specifically provided, no rights, privileges or immunities set forth herein will inure to the benefit of any customer, employee, guest, licensee or invitee of any Owner, tenant or occupant of any portion of the Project, nor will any customer, employee, guest, licensee or invitee of such Owner, tenant or occupant be deemed to be a third-party beneficiary of any of the provisions contained herein.

9.11 Condemnation.

In the event of condemnation (or sale under threat of condemnation) by any duly constituted authority for a public or quasi-public use of all or any part of the Project, that portion of the award attributable to the value of the interest in the Parcel so taken will be payable to the Owner of such Parcel and no claim thereon will be made by any other Owner of any part of the Project; provided, however, that the other Owners may file collateral claims with the condemning authority over and above the value of the interest to be taken, provided no such collateral claim will reduce the award to the Owner of the condemned Parcel; provided further, however, that the Owner of any portion of the Project to be taken will, unless otherwise directed by Declarant (in Declarant's sole and absolute discretion), properly repair and restore the remaining portion of the Parcel owned by such Owner as nearly as practicable to its condition immediately prior to the condemnation without contribution from any other Owner. Notwithstanding the foregoing, Declarant will have the right, at Declarant's sole election (which election will be made in writing and delivered to the subject Owner whose property was taken

within 60 days following the subject taking), to restore or repair affected Common Area improvements (or any portion thereof), in which event, the affected Owner will immediately assign or pay to Declarant any award received on account of the taken Common Area property or on account of the subject restoration or repair.

9.12 Captions.

The captions heading the various Articles and Sections of this Declaration are for convenience and identification only, and will not be deemed to limit or define the contents of their respective sections.

9.13 Consent.

Unless otherwise set forth herein, any approval or consent required or requested of the Declarant or Manager may be withheld in its sole and absolute discretion. Unless otherwise specified herein, any approval or consent required to be obtained hereunder by any Owner, other than the Declarant or Manager, will not be unreasonably withheld and will be given or withheld within 30 days after delivery of the request therefor. In the event an Owner whose approval or consent is sought pursuant to the immediately preceding sentence fails to respond within the applicable time period, such Owner will be deemed to have approved of, or consented to, the matter in question.

9.14 Assignment.

Except as otherwise expressly set forth herein, no Owner will have the right to assign all or any portion of its rights, benefits, duties or obligations under this Declaration except in connection with a transfer or conveyance by such Owner of its interest in property within the Project (and any conveyance made by deed of trust, Mortgage or other security instrument as security for any obligation or indebtedness will not be deemed to be a transfer or conveyance within the meaning of the foregoing).

9.15 Notices.

(a) Any notice, demand, request or other communication required or permitted to be given by an Owner, occupant or tenant of the Project to another Owner, occupant or tenant hereunder will be in writing, signed by the party giving the notice, and will be given by delivering the same in person, by a recognized overnight courier service which maintains delivery records (such as Federal Express) or by depositing the same in the United States mail, registered or certified, return receipt requested, first class postage, and postage prepaid. All notices will be sent to the respective mailing addresses of the parties hereto at the following addresses, until such addresses are changed as hereinafter provided:

Declarant:

Ogden City Redevelopment Agency
 2484 Washington Blvd, Ste 900
 Ogden, UT 84401
 Attention: Executive Director
 And

Boyer Ogden Mall, L.C.
 c/o The Boyer Company, L.C.
 90 S 400 W, Ste 200
 Salt Lake City, UT 84101-1365
 Attn: H. Roger Boyer

Boyer/Manager:

Boyer Ogden Mall, L.C.
 c/o The Boyer Company, L.C.
 90 S 400 W, Ste 200
 Salt Lake City, UT 84101-1365
 Attn: H. Roger Boyer

Residential Parcel Owner:

Wachovia Affordable Housing
 Community Development Corporation
 Wachovia Bank, National Association
 301 South College St, TW 17
 Charlotte, NC 28288-0173

(b) To any other Owner or its Mortgagee: At such address as such Owner or Mortgagee will designate in writing to the Manager, or at such Owner's address in the Project if such Owner will fail to designate in writing another address to the Manager.

(c) The Manager will make all addresses furnished by any Owner pursuant to this Section 9.15 available to any Owner, occupant or tenant of the Project who will so request such addresses. Any Owner may change its mailing address at any time by giving written notice of such change to the Declarant and Manager in the manner provided herein at least ten days prior to the date such change is effective. Personal service and service by recognized overnight courier service will be deemed to be complete upon receipt and service by mail will be deemed complete on deposit of said notice in the United States mail.

9.16 Estoppel Certificates.

Each Owner will deliver to any other Owner, without charge, within 15 days after request therefor, a written statement setting forth that, to the best of such Owner's knowledge, the requesting Owner is not in default in the performance of any of its obligations under this Declaration (or, if in default, setting forth the nature of such default), and that, to such Owner's actual knowledge and belief, there are no outstanding Assessment Liens against the requesting Owner's Parcel or stating the amount of any such Assessment Lien(s).

9.17 Subdivision.

Declarant will have the right to subdivide any Parcel. Upon such subdivision, each portion of such subdivided Parcel will be a separate Parcel. No other Owner will have the right to subdivide any Parcel.

9.18 Jurisdiction.

Any matter arising between the Owners will be governed by and determined in accordance with the laws of the State of Utah.

9.19 Other Agreements.

Nothing contained in this Declaration will be construed as a limitation on Declarant's right to enter into any supplemental agreement with the grantee or lessee of any Parcel (or portion thereof) on terms and conditions more favorable to Declarant or otherwise different than those contained herein; provided, however, except as provided to the contrary in this Declaration (i.e. where specified with respect to the Condominium Declaration or other instrument of record), any such agreement will be subordinate to this Declaration.

9.20 Non-Discrimination.

There will be no discrimination against or segregation of any person, or group of persons on account of sex, marital status, race, color, religion, creed, national origin or ancestry in the sale, lease, sublease, transfer, use, occupancy, tenure or enjoyment of the land of the Parcels, nor will the transferee of any interest in the Parcels or any person claiming under or through such transferee, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sublessees or vendees of the land of the Parcels.

9.21 Declarant.

Notwithstanding anything in this Declaration to the contrary:

(a) So long as Boyer is the Owner of any Parcel within the Project, Boyer will be deemed to be the "Declarant" for purposes of this Declaration (unless Boyer elects otherwise), and Ogden hereby assigns and delegates all of Ogden's rights and obligations as a Declarant under this Declaration to Boyer.

(b) If at any time (i) Boyer is no longer the Owner of any Parcel within the Project or (ii) Boyer elects to no longer be the Declarant under this Declaration, then so long as a Boyer Affiliate is the Owner of any Parcel, the Boyer Affiliate will be deemed to be the Declarant for purposes of this Declaration (unless the Boyer Affiliate elects otherwise), and the Boyer Affiliate will succeed to all of Boyer's rights and obligations as a Declarant under this Declaration.

(c) If at any time (i) neither Boyer nor any Boyer Affiliate is the Owner of any Parcel within the Project, (ii) Boyer is the Owner of a Parcel within the Project but elects not to be the Declarant under this Declaration, or (iii) a Boyer Affiliate is the Owner of a Parcel within the Project but elects not to be the Declarant under this Declaration, then the lessee under the Phase I Lease will be the Declarant for purposes of this Declaration (unless such lessee elects otherwise).

(d) If at any time (i) the Phase I Lease has been terminated and no party is entitled to a successor lease in accordance with the provisions of the Phase I Lease, or (ii) the Phase I Lease has not been terminated (or a party is entitled to a successor lease in accordance with the provisions of the Phase I Lease), but the lessee under the Phase I Lease (or the party entitled to be the lessee under a successor Phase I Lease) has elected not to be the Declarant under this Declaration, then Owners of a majority of the Floor Area of the Retail Buildings will then elect an Owner to be the Declarant hereunder.

(e) If the Owners of a majority of the Floor Area within the Retail Parcels fail to select an Owner to be the Declarant hereunder, then the Owners of a majority of the buildable area (meaning the area upon which may be built Buildings, parking areas or other improvements) of the Project will then elect another Owner to be the Declarant hereunder.

(f) Notwithstanding anything herein to the contrary, at any such time that the subject Owners are unable to elect a Declarant pursuant to the foregoing provisions, or the elected Declarant elects to no longer be the Declarant hereunder and another Declarant is not appointed pursuant to the foregoing provisions, then the Owner of the Retail Parcels will be the Declarant hereunder. If more than one Person owns the Retail Parcels, each such Owner will constitute Declarant.

Signatures, Acknowledgments, and Exhibits Follow

IN WITNESS WHEREOF, Declarant has executed this Declaration the day and year first above written.

DECLARANT:

Ogden:

Ogden City Redevelopment Agency
a body politic and political subdivision of the State of Utah

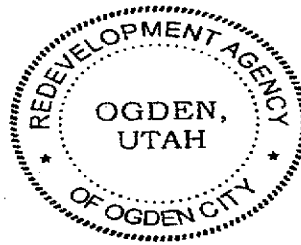
By: Matthew R. Godfrey

Name: Matthew R. Godfrey

Title: Executive Director

Attest:

Lee Ann Peterson
City Recorder - Acting



Approved as to Form:

Mark Stults
City Attorney

Boyer Ogden Mall, L.C.
a Utah limited liability company
by its manager:

The Boyer Company, L.C.
a Utah limited liability company

By: Jacob L. Boyer
Name: Jacob L. Boyer
Title: Manager

State of Utah)
) ss.
County of Weber)

The foregoing instrument was acknowledged before me on , 2008, by , of Ogden
Redevelopment Agency.

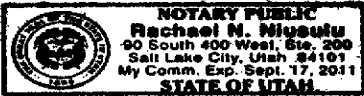
Matthew L. Godfrey
Executive Director

Tracy Hansen
Notary Public



State of Utah)
) ss.
County of Salt Lake)

The foregoing instrument was acknowledged before me on ^{September 10,} 2008, by ^{Jacob L. Boyer} , a manager of The
Boyer Company, L.C., manager of Boyer Ogden Mall, L.C.



Rachael Nivens
Notary Public

CONSENT OF LIENHOLDER

Wells Fargo Bank, N.A., as the holder of a lien encumbering the Property arising under that certain Fee and Leasehold Construction Deed of Trust with Absolute Assignment of Leases and Rents, Security Agreement and Fixture Filing recorded March 1, 2007, as Entry Number 2245552 in the official records of Weber County, Utah, as amended, consents to the recording of this Declaration and subordinates its lien to this Declaration.

Wells Fargo Bank, N.A.

By: Ben Bliss

Name: Ben Bliss

Title: AVP

State of Utah)
County of Salt Lake) ss.

The foregoing instrument was acknowledged before me on September 16, 2008, by Ben Bliss, AVP of Wells Fargo Bank, National Association.



Beth A. Jepsen
Notary Public

Exhibit A

Legal Description of Property

Lots 10A and 10B, Ogden City Entertainment Subdivision – Phase 2 (Amended), according to the official plat thereof, filed at Page 78 in Book 64 of Plats in the official records of Weber County, Utah.

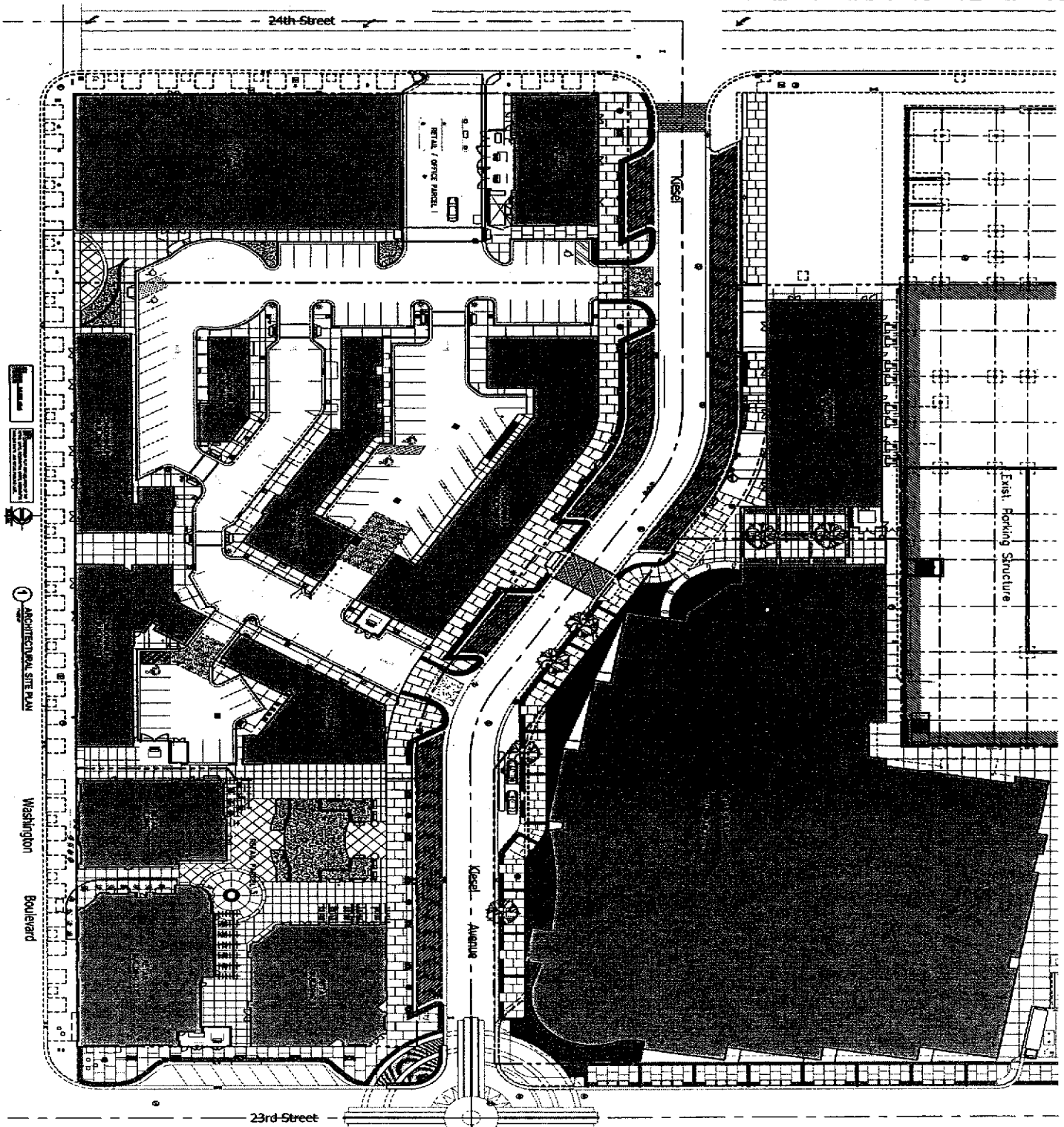
[For Reference Only: Assessor's Parcel Numbers 01-099-0006 and 01-099-0007] *da*

Lots 11A, 11B, and 11C, Ogden City Entertainment Subdivision – Phase 2 (Amended) Lot 11 2nd Amendment, according to the official plat thereof, filed at Page 56 in Book 65 of Plats in the official records of Weber County, Utah.

[For Reference Only: Assessor's Parcel Numbers 01-100-0001, 01-100-0002, and 01-100-0003] *da*

Exhibit B
Site Plan
(attached)

*Exhibit B to Declaration and Establishment of Protective Covenants,
Conditions and Restrictions and Grant of Easements (Boyer/Ogden RDA)*



A101

ARCHITECTURAL SITE PLAN

NO.	DESCRIPTION	DATE
1	ISSUED FOR PERMIT	11/15/11
2	REVISED PER COMMENTS	11/15/11
3	REVISED PER COMMENTS	11/15/11
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ARCHITECTS