

DECLARATION OF PROTECTIVE COVENANTS

FOR

FASHION POINTE PHASE NO. 3

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07-545-0001-0004 A COMMERCIAL SUBDIVISION

IN

DAVIS COUNTY, UTAH

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LANDSTAR DEVELOPMENT, L.L.C.,  
a Utah limited liability company,

AS DEVELOPER

---

WHEN RECORDED RETURN TO:

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DECLARATION OF PROTECTIVE COVENANTS  
FOR  
FASHION POINTE PHASE NO. 3,  
a commercial subdivision

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DECLARATION OF PROTECTIVE COVENANTS  
FOR  
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a commercial subdivision

THIS DECLARATION OF PROTECTIVE COVENANTS for FASHION POINTE NO. 3, a commercial subdivision, (the "Declaration") is executed by LANDSTAR DEVELOPMENT, L.L.C., a Utah limited liability company, of 1544 North Woodland Park Drive, Suite 300, Layton, Utah 84041 (the "Developer"), with reference to the following:

RECITALS

- A. Developer is the owner of certain real property located in Davis County, Utah described more particularly on Exhibit "A" attached hereto and incorporated herein by this reference (the "Property").
- B. The Property consists of Lots 6, 7 and 8, inclusive, of FASHION POINTE PHASE NO. 3, which is a commercial subdivision.
- C. Lot 8 contains a Detention Pond Area and Easement.
- D. Lot 8 may be subsequently divided into three or more Lots.
- E. Developer desires to provide a general plan for the development of all of the Property and for the establishment of protective covenants to enhance and protect the value and attractiveness of the Property, all in accordance with the provisions of this Declaration.

PROTECTIVE COVENANTS, CONDITIONS AND RESTRICTIONS

NOW, THEREFORE, for the reasons recited above, the Developer hereby covenants, agrees and declares that the Property shall be subject to the following protective covenants, conditions and restrictions:

- 1. Definitions. The following definitions shall apply to this Declaration:
  - a. "Assessment" shall mean an Owner's portion of the Common Expenses or any other amount charged by the Association.
  - b. "Association" shall mean all of the Owners acting as a group.
  - c. "Builder" shall mean an Owner, developer or contractor who obtains a construction or occupancy permit for one or more Lots.

d. "Building" shall mean and refer to any commercial structure, such as an office building or store, built with a foundation, walls and a roof.

e. "Common Elements" shall mean and refer to all of the Property, excluding the Lots, including without limitation the road(s), curbs, gutters, sidewalks, landscaping and Detention Pond.

f. "Common Expense" shall mean and refer to: (1) All sums lawfully assessed against the Owners; (2) Expenses of administration, maintenance, repair or replacement of the Common Elements and improvements constructed or installed thereon; (3) Expenses allocated by the Association among the Owners; (4) Expenses agreed upon as common expenses by the Association; and (5) Expenses declared common expenses by the Declaration.

g. "Committee" shall mean the Management Committee.

h. "Detention Pond" shall mean that portion of Lot 8 designated as the Detention Pond Easement or Area on the Plat.

i. "Lot" or "Lots" shall mean the subdivided and recorded lot or lots within Property and where the context so requires any Building constructed thereon.

j. "Management Committee" shall mean the committee of three (3) Owners elected or appointed to manage the Association and the Common Elements.

k. "Member" shall mean each Owner who, by virtue of accepting a deed or other document of conveyance to a Lot, is deemed to be a shareholder in the Association.

l. "Membership in the Association" shall mean that shareholder interest which is appurtenant to the ownership of a Lot in the Property, which may not be separated or partitioned therefrom and which shall automatically accompany the transfer or conveyance of an ownership interest in the Lot to which it relates.

m. "Owner" shall mean the record owner, whether one or more persons or entities, of a fee simple title to any Lot, excluding those having such interest merely as security for the performance of an obligation.

n. "Plat" shall mean the recorded Plat of the Subdivision prepared by Gary L. Newman, a Registered Professional Land Surveyor with license no. 4778.

o. "Subdivision" shall mean FASHION POINTE PHASE NO. 3, which is a commercial subdivision.

2. **Area of Application.** This Declaration shall apply to all of the Property.

3. **Right to Expand Application.** The Developer shall have the right to expand the application of this Declaration to other property by written amendment to this Declaration duly recorded.

4. **Use Restrictions and Nature of the Project.** The Lots are subject to the following use restrictions which shall govern both the architecture of the Buildings and the activities therein:

a. **Commercial Purposes.** This is a commercial subdivision and no lot shall be used except for commercial, business, trade and related purposes.

b. **Zoning.** All land use and buildings shall be in compliance with all zoning and land use ordinances as well as all regulations of the municipalities and agencies governing the Subdivision land use and Building(s).

c. **Landscaping.** All landscaping, grading and drainage of the Property, including all of the Lots and the Common Elements, shall be completed so as to comply with and not impair the water detention plan and all flood control requirements of the Subdivision.

d. **Easements.** Easements and rights of way for the installation and maintenance of office signs, monuments, utilities, drainage systems and facilities, and irrigation are reserved, as set forth herein and in the legal descriptions of the Property. Within these easements and rights of way, no structure, planting or other materials shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, or which may change the direction of flow of drainage channels in, on or about the easements and rights of way, or which may obstruct or retard the flow of water through the drainage channels in the easements and rights of way. The easement and right of way area of each Lot and all improvements within said area shall be maintained continuously by their Owners, excepting those improvements for which a public authority or utility company is expressly responsible.

e. **Walls, Fence and Hedges.** Without a written variance from the Management Committee, no fence, wall, hedge, or other similar structure shall be erected in the front of a Lot to a height in excess of three (3) feet, nor shall any such structure be erected in any side or rear portion of a Lot to a height in excess of six (6) feet. The only acceptable fencing materials are wood, masonry, vinyl or wrought iron.

f. **Slope and Drainage Control.** No structure, plant, improvement or other material may be placed or permitted to remain, or other activities undertaken which may damage or interfere with established Lot ratios, create erosion or sliding problems, or which may change the direction or flow of drainage channels, or obstruct or retard the flow of water through the channels. The slope control area of each Lot and all improvements therein shall be maintained continuously by the Owner of the Lot, excepting those improvements for which a public

authority or utility company is expressly responsible. It shall be the responsibility of the Owner to see that his Lot conforms with and continues to conform with any established grading and drainage plan that has previously been designed by the Developer.

g. Nuisances. No noxious or offensive activity shall be carried on, in or about the Property, nor shall anything be done or permitted thereon which may be or may become an annoyance, disturbance, bother or nuisance to the neighborhood, or which might interfere with the right of other Owners to the quiet and peaceful enjoyment of their property. No motor vehicles, automobiles, cars, vans, sport utility vehicles, trucks, campers, motor homes, trailers, boats, watercraft, recreational, commercial, oversized or other vehicles shall be stored on the street(s) or in the parking areas visible to the general public.

h. Garbage and Refuse Disposal. No Lot shall be used or maintained as a dumping ground for rubbish, trash, garbage or other waste (hereinafter referred to collectively as "Trash"). All Trash shall be kept at all times in sanitary containers. All Trash containers shall be kept in sanitary condition. No Trash containers, unsightly material or objects are to be stored on any Lot in view of the general public, except on Trash pick-up days and then for a period not in excess of twenty-four (24) hours.

i. Temporary Structures. Without a written variance from the Management Committee, no structure of a temporary nature or character, including but not limited to any trailer, shack, shed, tent, garage, barn or other out-building shall be constructed, installed, maintained or used on any Lot.

j. Office Signs. Reasonable office signs and monuments in compliance with applicable South Ogden City ordinances are permitted.

5. Mandatory Association of Owners. By virtue of their accepting a deed or other document of conveyance to a Lot, all Owners shall be deemed to belong to and be Members of the Association.

6. Maintenance: Areas of Common and Personal Responsibility. The Owners shall maintain their Lots. The term "maintain" includes the duty to maintain, repair and replace the physical improvements constructed or installed on the Property in accordance with community standards.

7. Operations. The Association shall have the duty to interpret and enforce this Declaration.

8. Management Committee. The Association shall be operated and controlled by a Management Committee, subject to the following:

a. Members of the Management Committee. The Management Committee shall



be comprised of three (3) Owners who shall be duly qualified, elected or appointed in the manner set forth below.

b. Voting. Each Owner shall have one (1) vote.

c. Voting Restrictions. The following restrictions apply to voting on Association issues, including but not limited to the election of Committee Members: (1) No vote shall be cast or counted for any Lot not subject to assessment; (2) When more than one person or entity owns or holds an ownership interest in a Lot, the vote for such Lot shall be exercised as those persons or entities themselves determine and advise the Secretary of the Association prior to any meeting. In the absence of such advice, the vote of the Lot shall be suspended in the event more than one person or entity seeks to exercise it; (3) If an Owner has leased his Building, then he may, in the lease or other written instrument, assign the voting right appurtenant to that Lot to his tenant, provided that a copy of such instrument is furnished to the Secretary of the Association prior to any meeting; and (4) The right of the Management Committee to suspend an Owner's right to vote if he is not current on the payment of his Assessments or is in material violation of any of the terms, covenants or provisions set forth herein.

d. Composition of Management Committee. The Developer shall have the exclusive right to appoint all of the members of the Management Committee until the occurrence of the earlier of the following events (hereinafter referred to as the "Event" or "Events") at which time control of the Management Committee (subject to the perpetual right of the Developer to appoint one (1) member of the Committee) shall be transferred by Developer to the Owners:

1) Within forty-five (45) days after the date by which One Hundred Percent (100%) of the Lots, on which a Building has been constructed and a certificate of permanent occupancy has been issued, have been sold or rented; or

2) At such time as the Developer elects in writing to transfer management and control of the Association.

The initial members of the Management Committee shall be Gary Wright, Wayne A. Belleau and Julia Belleau. Anything to the contrary notwithstanding, one (1) person designated by the Developer shall always remain a member of the Committee if Developer so desires.

e. Terms. Committee Members shall be elected or appointed to serve two (2) year terms.

f. Qualify. To qualify to serve on the Management Committee, a person must be appointed by the Developer or an individual Owner or the legal representative of an organizational Owner in good standing.

g. Vacancies. Any vacant seat on the Management Committee shall be filled

with an Owner duly qualified, elected or appointed.

h. Dismissal. Any member of the Management Committee who fails on three (3) successive occasions to attend Committee meetings (whether regular or special) or who has failed to attend at least twenty-five percent (25%) of all Committee meetings (whether regular or special) held during any twelve (12) month period shall automatically forfeit his seat. In such cases, the remaining Committee Members shall elect a replacement to sit on the Committee until the next meeting of the Association.

i. Removal of a Member of the Management Committee. Except for members of the Management Committee appointed by the Developer prior to the occurrence of the Events, members of the Committee may be removed at any time by the affirmative vote of at least a majority of the Owners.

j. Replacement. Unless a member of the Management Committee is removed by the affirmative vote of a majority of the Owners, he shall be replaced by an appointment of the remaining Members of the Committee. A member of the Committee removed by the affirmative majority vote of the Owners shall be replaced by the majority vote of those Owners present in person or by proxy at a special meeting called for that purpose. Anything to the contrary notwithstanding, the Developer shall be entitled to replace all Members of the Committee appointed by it.

k. Completion of Term. Unless he forfeits or otherwise loses his seat as herein provided, a Member shall serve on the Management Committee until his successor qualifies and is properly elected by the Owners or appointed by the Developer.

l. No Compensation. Members of the Management Committee shall not be compensated for their services but shall be reimbursed for all expenses reasonably incurred in connection with Committee business and approved by the Committee.

8. Officers and Agents of the Association. The Management Committee is the agent of the Association and it shall perform its functions through those members of the Committee elected as officers. All officers shall be elected by the members of the Committee. The Committee may also perform its duties through such agents or employees as the Committee may employ or appoint. Any Committee officer, agent, or employee may at any time be removed, with or without cause, by the affirmative vote of a majority of the members of the Committee; provided, however, any "officer" so removed shall continue to be member-at-large of the Committee. One (1) member may hold more than one (1) office at the same time, except that of President and Secretary. The officers of the Committee, and their respective powers and functions, shall be as follows:

a. President. The President shall be the chief executive of the Association and shall exercise general supervision over the property and affairs of the Association. The President shall preside over all meetings of both the Management Committee and the Association. The President shall execute all instruments on behalf of the Committee, unless s/he chooses to

delegate that authority to another Committee member.

b. Vice-President. The Vice-President shall have all the powers of the President in the event of the latter's absence or inability to act.

c. Secretary. The Secretary shall keep minutes of all of the meetings of both the Management Committee and the Association as well as all other books and records which are required or made necessary.

d. Treasurer. The Treasurer shall have custody and control of the funds available to the Committee. The Treasurer shall cause to be prepared an annual financial statement for each fiscal year of Project operation. The financial books and records of the Association shall be kept in accordance with generally accepted accounting practices. The offices of Secretary and Treasurer may be held by the same Committee member.

9. Committee Meetings. A regular meeting of the Management Committee shall be held immediately after the adjournment of each annual Owner's meeting or at such other time as the members of the Committee may decide. Other regular meetings shall be held at periodic intervals at such time and place as the Committee may determine, but no less than one (1) time per quarter. No notice need be given of regular Committee meetings. Special Committee meetings shall be held whenever called by the President or by any two (2) members of the Committee. Written notice of all special meetings shall be delivered to each member of the Committee at least twenty-four (24) hours before the time fixed for the meeting. The propriety of holding any meeting which is attended by all members of the Committee may not be challenged on grounds of inadequate notice. A quorum for the transaction of business at any Committee meeting shall consist of a majority of all the Committee Members then in office.

10. Status and General Authority of Committee. Any instrument executed by an officer of the Association or the Management Committee that recites facts which, if true, would establish the power and authority to accomplish through such instrument what is purported to be accomplished thereby, shall conclusively establish said power and authority in favor of any person who in good faith and for value relies upon said instrument. The Association shall constitute a legal entity capable of dealing in its own name or in the name of the Management Committee. The Management Committee shall have, and is hereby granted, the following authority and powers:

a. To Enter. The power and authority to enter into or upon any Lot to make repairs and to do other work necessary for the proper maintenance and operation of any easement, right of way, utility or the Detention Pond. Except in the case of an emergency, Owners shall be given at least twenty-four (24) hours prior notice before the Committee or its representative shall exercise this power. In the event of an emergency entry without notice, the party entering the property shall leave in a conspicuous place written notice stating his name and title as well as the day, date, time and purpose of the entry.

b. Grant Easements. The authority, without the vote or consent of any other person, to grant or create, on such terms as it deems advisable, reasonable permits, licenses, and non-exclusive easements over, under, across, and through the Property as reasonably necessary or useful for the proper maintenance, operation or regulation of the easements, rights of way, utilities and Detention Pond.

c. Execute Documents. The authority to execute and record, on behalf of all Owners, any amendment to the Declaration which has been approved by the vote or consent necessary to authorize such amendment.

d. Standing. The power to sue and be sued.

e. Enter Into Contracts. The authority to enter into contracts which in any way concern the Association, easements, rights of way, utilities or the Detention Pond.

f. Promulgate Rules. The authority to promulgate such reasonable rules and regulations as may be necessary or desirable to aid the Management Committee in carrying out any of its functions or to insure that the easements, rights of way, utilities and Detention Pond are maintained and used in a manner consistent with their original design and construction.

g. Delegation of Authority. The power and authority to delegate its duties, in whole or in part, to a manager or management company.

h. Dedication of Road(s). The power and authority to dedicate any road or roads within the Subdivision to any city, county or other municipality.

i. All other Acts. The power and authority to perform any and all other acts, and to enter into any other transactions which may be reasonably necessary for the Management Committee to perform its functions for and in behalf of the Owners.

Anything to the contrary notwithstanding, while Developer controls the Association and before the occurrence of the Events described herein, any amendments to the Declaration must be approved in writing and in advance by the Developer

11. Owner's Meetings. The members of the Association shall meet as follows:

a. Annual Meeting. The annual meeting of the Owners shall be held at 7:00 p.m. on the second Thursday of October of each year unless otherwise determined by the Management Committee. Whenever such day is a legal holiday, the meeting shall occur on the first business day thereafter. At least ten (10) but not more than thirty (30) days before the date of the annual meeting, a written notice thereof shall be delivered in person or mailed by regular U.S. Mail, postage prepaid, to each person who appears as an Owner at his last known address as shown on the books and records of the Association. The notice shall state the day, date, time, place, and

general purpose of the meeting.

b. **Special Meetings.** Special meetings of the Association may be called at any time by the Management Committee or by Owners who collectively hold at least thirty (30%) of the total vote. Such meeting shall be held at such place as the Committee may specify and the notice thereof, which must be sent by the Committee, shall state the day, date, time, place and matters to be considered at the meeting. No items other than those expressly set forth in the notice may be addressed at the special meeting.

c. **Waiver of Notice.** No notice of any Owners meeting shall be required if a waiver of such notice is signed by all of the Owners. Whenever all of the Owners meet in person or by proxy such meeting may not be challenged on grounds of inadequate notice.

d. **Quorum.** The presence of at least two-thirds (2/3rds) of the Owners entitled to cast a vote shall constitute a quorum for the transaction of business at any Owner's meeting.

(1) **Quorum Not Present.** If a quorum is not present at any Owner's meeting, whether regular or special, the meeting may be adjourned and rescheduled for a time no earlier than 48 hours and no later than 30 days, after the time set for the original meeting.

(2) **Quorum at Rescheduled Meeting.** Those Owners present at the rescheduled meeting shall constitute a quorum.

(3) **Percentage Approval Requirement.** Anything to the contrary notwithstanding, in any instance in which this Declaration requires the affirmative vote of a certain number of Owners for authorization or approval of a matter, their written consent, in person or by proxy, is required for authorization or approval of the item, regardless of the quorum requirements.

12. **Common Profits, Expenses and Voting Rights.** The common profits of the Association shall be distributed among, the Common Expenses shall be charged and the voting rights shall be allocated to the Owners equally. Each Owner, upon receipt of a deed or other document of conveyance or transfer to a Lot, agrees to and shall pay his portion of the Common Expenses or any other Assessment levied against him or his Lot, including any fines resulting from a violation of the Declaration or any rule or regulation adopted by the Management Committee.

a. **Developer.** Anything to the contrary notwithstanding, the Developer shall not be obligated to pay Assessments on any Lots owned by it until such time as the occurrence of the earlier of the following:

1) the physical Building structure on the Lot has been substantially completed, a certificates of permanent occupancy has been issued and the Lot has been sold or

rented; or

2) Developer elects in writing to pay the Assessment.

b. Purpose of Common Expenses. The Assessments provided for herein shall be used for the general purpose of operating the Association as well as maintaining, repairing and replacing the easements, rights of way, and the Detention Pond or improvements thereon.

c. Budget. At least thirty (30) days prior to the annual meeting of the Owners, the Management Committee shall prepare and deliver to the Owners a proposed Budget which:

1) Itemization. Shall set forth an itemization of the anticipated Common Expenses for the twelve (12) month calendar year, commencing with the following January 1.

2) Basis. Shall be based upon advance estimates of cash requirements by the Committee to provide for the payment of all estimated expenses growing out of or connected with the operation, maintenance, repair and replacement of the easements, rights of way and the Detention Pond as well as the management of the Association.

d. Approval of Budget and Assessments. The proposed Budget and the Assessments shall become effective unless disapproved at the annual Owner's meeting by the affirmative vote of a majority of the Owners. Notwithstanding the foregoing, however, if the Owners disapprove the proposed Budget and Assessments or the Committee fails for any reason to establish the Budget and Assessments for the succeeding year, then and until such time as a new Budget and Assessment schedule shall have been established, the Budget and Assessment schedule in effect for the then current year shall continue for the succeeding year.

e. Method of Payment of Assessments. The Committee has the sole authority and discretion to determine how and when any Assessment is to be paid.

f. Personal Obligation of Owner. Each Owner is personally liable to pay all any Assessment levied by the Management Committee against him or his Lot; provided, however, no first mortgagee or beneficiary under a first deed of trust who obtains title to a Lot pursuant to the remedies provided in the mortgage or trust deed shall be liable for unpaid Assessments which accrued prior to the acquisition of title.

g. Equitable Changes. If the aggregate of all monthly payments on all of the Lots is too large or too small as a result of unanticipated income or expenses, the Committee may from time to time effect an equitable change in the amount of said payments. Owners shall be given at least thirty (30) days prior written notice of any increase in the amount of the Assessment.

h. Reserve Account. The Committee shall establish and maintain a reserve account to pay for unexpected operating expenses and capital improvements.

i. **Statement of Common Area Assessments Due.** Upon written request, the Committee shall furnish to any Owner a statement of Assessments due, if any, on his Lot. Failure to provide the certificate within 10 days after a written request, shall be deemed conclusive evidence that all Assessments are paid current. The Committee may require the advance payment of a processing charge not to exceed Fifteen and no/100ths Dollars (\$15.00) for the issuance of such certificate.

j. **Superiority of Common Area Assessments.** All Assessments and liens created to secure the obligation to pay an Owner's share of the Common Expenses are superior to any homestead exemptions to which an Owner may be entitled, which exemptions an Owner, by accepting a deed or other document of conveyance or transfer to a Lot, expressly subordinates or waives.

k. **Suspension of Right to Vote for Non-Payment.** At the discretion of the Management Committee, the right of an Owner to vote on issues concerning the Association may be suspended if the Owner is delinquent in the payment of his Assessments and has failed within 10 days after delivery of written notice of the default to cure or make satisfactory arrangements to cure the default.

13. **Special Assessments.** The Committee, with the affirmative consent or approval of at least a majority of the Owners, may levy a Special Assessment to pay for unanticipated expenses, an operation's budget shortfall or any capital improvement.

14. **Fines and Individual Assessments.** The Committee may fine Owners for the failure to comply with the Declaration or any rules and regulations adopted from time to time. In addition, individual assessments may be levied by the Committee against a Lot or its Owner to compensate or reimburse the Association for: (a) costs incurred in enforcing or construing the Declaration; (b) costs associated with the maintenance, repair or replacement of any portion of the easements, rights of way and the Detention Pond or any improvements constructed or installed thereon damaged by an Owner; (c) any other charge, fee or expense designated by the Management Committee as an individual assessment; and (d) attorney's fees, late fees, default interest and collection costs. Provided, however, no fine or individual assessment shall be final until after the Owner shall have received written notice thereof and a reasonable opportunity to be heard. After notice and hearing, the decision of the Management Committee shall be binding, final and conclusive.

15. **Collections.** Assessments, fines and other monetary charges shall be collected as follows:

a. **Apportionment and Collection of Assessments.** The amount of Common Expenses assessed against each Lot is a debt of the Owner at the time the Assessment is made and is collectible as such. Suit to recover a money judgment for unpaid Common Expenses is maintainable without foreclosing or waiving the lien securing it. If any Owner fails or refuses to make any payment of the Common Expenses when due, that amount constitutes a lien on the interest

of the Owner in the Property, and upon the recording of notice of lien, it is a lien upon the Owner's interest in the Property prior to all other liens and encumbrances, recorded or unrecorded, except:

1) tax and special assessment liens on the Lot in favor of any assessing unit or special improvement district; and

2) encumbrances on the interest of the Owner recorded prior to the date such notice is recorded which by law would be a lien prior to subsequently recorded encumbrances.

b. Late Fees and Accruing Interest. A late fee in the amount of twenty five and no/100ths dollars (\$25.00) or five percent (5%) of the delinquent amount, whichever is greater, shall be assessed on payments received more than 10 days after their due date. Simple interest at the rate of one and ½ percent (1.5%) per month shall accrue on all delinquent accounts. The Committee may, in its sole discretion and under circumstances it deems fair and just, elect to waive late fees and accruing interest but is not required to do so.

c. Foreclosure of Lien and/or Personal Judgment. The Committee may elect to institute a lawsuit, foreclose the lien or both in order to collect past due obligations.

d. No Waiver. No Owner may waive or otherwise exempt himself or herself from liability for his portion of the Common Expenses or the payment of any Assessment, fine or other monetary charge provided for herein by the abandonment of his Lot.

e. Duty to Pay Independent. No reduction or abatement of Assessments shall be claimed or allowed by reason of any alleged failure of the Committee to take some action or perform some function required to be taken or performed by the Association or Committee under this Declaration, or for inconvenience or discomfort arising from the operation, maintenance, repair or replacement of the easements, rights of way or the Detention Pond, or any improvement constructed or installed thereon, or from any action taken to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority, since the obligation to pay Common Expenses and Assessments is a separate and independent covenant on the part of each Owner.

f. Foreclosure of Lien as Mortgage or Trust Deed. The lien for nonpayment of Assessments may be enforced by sale or foreclosure of the Owner's interest in the Property. The sale or foreclosure shall be conducted in the same manner as foreclosures in deeds of trust or mortgages or in any other manner permitted by law. In any foreclosure or sale, the Owner shall pay the costs and expenses of such proceedings, including but not limited to the cost of recording notice of lien, certified mailings or personal service, foreclosure report, reasonable attorney's and trustee's fees, and a reasonable rental for the Building during the pendency of the foreclosure action. The Association in the foreclosure action may require the appointment of a receiver to collect the rental without regard to the value of the mortgage security. The Committee may bid for the Lot at foreclosure or other sale and hold, lease, mortgage, or convey the same.



g. Appointment of Trustee. If the Management Committee elects to foreclose the lien in the same manner as foreclosures in deeds of trust, then the Owner by accepting a deed or other document of conveyance or transfer to the Lot hereby irrevocably appoints the attorney of the Association, provided he is a member of the Utah State Bar, as Trustee, and hereby confers upon said Trustee the power of sale set forth with particularity in Utah Code Annotated, Section 57-1-23 (1953), as amended. In addition, Owner hereby transfers in trust to said Trustee all of his right, title and interest in and to the real property for the purpose of securing his performance of the obligations set forth herein.

h. Attorney in Fact. Each Owner by accepting a deed or other document of conveyance or transfer to a Lot hereby irrevocably appoints the Association as his attorney in fact to collect rent from any person renting his Building, if the Building is rented and Owner is delinquent in the payment of his portion of the Common Expenses or any Assessment or fine. Rent due shall be paid directly to the Association, upon written demand, until such time as the Owner is current on his obligations to the Association. The Owner shall credit his renter, against rent due, an amount equal to the amount of money paid by the renter to the Association.

16. Insurance. The Committee should purchase and maintain the following insurance coverages, if reasonably available:

- property
- public liability
- directors and officers or errors and omissions
- fidelity bond (covering those persons handling and responsible for monies of the Association)

17. Interpretation. To the extent Utah law is consistent with this Declaration, such provisions shall supplement the terms hereof and are incorporated herein. The captions which precede the Articles and Sections of this Declaration are for convenience only and shall in no way affect the manner in which any provision hereof is construed. Whenever the context so requires, the singular shall include the plural, the plural shall include the singular, the whole shall include any part thereof, and any gender shall include both other genders. The invalidity or unenforceability of any portion of this Declaration shall not affect the validity or enforceability of the remainder hereof.

18. Covenants to Run with Land. This Declaration and all the provisions hereof shall constitute covenants to run with the land or equitable servitudes, as the case may be, and shall be binding upon and shall inure to the benefit of Association, all other signatories hereto, all parties who hereafter acquire any interest in a Lot, the Subdivision or the Property, and their respective grantees, transferees, heirs, devisees, personal representative, successors, and assigns. Each Owner or occupant of a Lot shall comply with, and all interests in all Lots shall be subject to, the terms of this Declaration and the provisions of any rules, regulations, agreements, instruments, supplements, amendments, and determinations contemplated by this Declaration. By acquiring

any interest in a Lot in the Project, the party acquiring such interest consents to, and agrees to be bound by, each and every provision of this Declaration.

19. Enforcement and Right to Recover Attorney's Fees. Should the Association, Committee or an aggrieved Owner be required to take action to enforce or construe the Declaration or any rules and regulations adopted from time to time, or to pursue any remedy provided hereunder or by applicable law, including a claim for injunctive relief or damages, whether such remedy is pursued by filing suit or otherwise, the non-defaulting party shall be entitled to recover his reasonable attorney's fees, costs and expenses which may arise or accrue.

20. Limitation of Liability. The protective covenants, conditions and restrictions set forth in this Declaration, together with any rules and regulations adopted by the Committee, are established for the benefit of the Property and the Owners. Any damage, loss, claim or liability which might arise due to any decision, act, or failure to act of Developer or the Committee or any of its members shall be exempt from any civil claim or action, including negligence, brought by any person owning or having an interest in any Lot. The Committee and its members shall be indemnified, saved and held harmless from any such action or failure to act, and exempt from any civil claim or action resulting from any act or failure to act (whether intended or implied) while functioning as a member of the Committee, or for decisions that they may render during the course of their service, unless said party is guilty of gross negligence.

21. Amendments. This Declaration may be amended upon the affirmative written approval of at least a majority of the Owners of the Lots and shall be valid immediately upon recording of the document amending the Declaration in the office of the County Recorder of Davis County, Utah; provided, however, so long as the Developer shall own at least one (1) Lot in the Subdivision, no amendment shall be valid or enforceable without Developer's prior written consent.

22. Duration. The covenants and restrictions of this Declaration shall endure for a term of twenty (20) years from the date this Declaration is recorded, after which time said covenants shall be automatically extended for successive periods of ten (10) years.

Dated the 10th day of November, 1999.


DECLARANT:  
LANDSTAR DEVELOPMENT, L.L.C.  
a Utah limited liability company

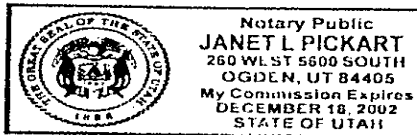
By: Gary M. Wright  
Title: Gary M. Wright, Manager

By: Wayne A. Belleau  
Title: Wayne A. Belleau, Manager

STATE OF UTAH            )  
  ss.  
COUNTY OF DAVIS        )

On the 17<sup>th</sup> day of November, 1999 personally appeared before me Gary M. Wright and Wayne A. Belleau, who by me being duly sworn, did say that they are the managers of LANDSTAR DEVELOPMENT, L.L.C., a Utah limited liability company, and that the within and foregoing instrument was signed in behalf of said company pursuant to its Articles of Organization or a resolution of its members, and said Gary M. Wright and Wayne A. Belleau, duly acknowledged to me that LANDSTAR DEVELOPMENT, L.L.C., a Utah limited liability company, executed the same.

  
\_\_\_\_\_  
NOTARY PUBLIC  
Residing at: Wheeler  
My Commission Expires: 12-18-2002



*Handwritten initials*

EXHIBIT "A"  
LEGAL DESCRIPTION

The Property referred to in the foregoing document is located in <sup>Weber</sup> ~~Davis~~ County, Utah and is described more particularly as follows:

*A part of the East Half of Section 22, Township 5 North, Range 1 West, Salt Lake Base and Meridian, U.S. Survey;*

*Beginning at the most Northerly corner of Fashion Point Phase No. 1, South Ogden City, Weber County, Utah; said point being 132.98 feet South 0°20'51" East along the Quarter Section line; 512.02 feet East and 280.99 feet North 47°46'25" East from the Northwest corner of the Southeast Quarter of said Section 22; running thence North 47°46'25" East 146.79 feet; thence North 0°24'42" East 297.05 feet; thence South 89°01'23" East 491.41 feet; thence North 0°38'27" East 29.98 feet to the Westerly right-of-way line of Skyline Drive; thence South 31°06'22" East 1026.81 feet along said Westerly right-of-way line to the boundary of said Fashion Pointe Phase No. 1; thence eight (8) courses along the boundary of said Phase No. 1 as follows: South 62°11'03" West 132.87 feet; Southwesterly along the arc of a 533.00 foot radius curve to the right a distance of 283.96 feet (Long Chord bears North 77°26'47" West 280.61 feet); Southwesterly along the arc of a 613.00 foot radius curve to the left a distance of 202.14 feet (Long Chord bears South 83°15'44" West 201.23 feet); North 18°59'24" West 20.74 feet; Northwesterly along the arc of a 471.43 foot radius curve to the left a distance of 279.83 feet; (Long Chord bears North 35°59'42" West 275.74 feet); North 53°00'00" West 65.00 feet; Northwesterly along the arc of a 1030.50 foot radius curve to the right a distance of 193.77 feet (Long Chord bears North 47°36'48" West 193.48 feet) and North 42°13'35" West 265.00 feet to the point of beginning.  
Contains 15.357 Acres*

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