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RECORDER, SALT LAKE COUNTY, UTAH
ASSOCIATED TITLE
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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 (the "Declaration") is made as of the 14th day of December, 1988, by ESTES DEVELOPMENT CO., an Arizona limited partnership ("Declarant").

RECITALS:

A. Declarant is the owner of that certain parcel of land together with (i) that certain road easement (the "Additional Road Easement") and (ii) that certain building setback easement (the "Setback Easement") on and over adjacent property (collectively, the "Shopping Center"), which parcel, Additional Road Easement and Setback Easement are legally described on Exhibits A, B and B-1 respectively. The Shopping Center contains Phase Ia and Phase Ib as described on Exhibits C and D respectively. The Shopping Center is depicted on the site plan (the "Site Plan") which is attached as Exhibit E. In accordance with the provisions of Paragraph 9.3(b), that certain parcel of land described on Exhibit F ("Phase II") and shown on the Site Plan may become a part of the Shopping Center.

B. The Shopping Center is located near the intersection of Redwood Road and 5400 South Street in Salt Lake County, State of Utah.

C. Declarant plans to develop and plan for the development of the Shopping Center as an integrated retail sales area for the mutual benefit of all real property in the Shopping Center and, for such purposes, does hereby fix and establish the Restrictions, upon and subject to which all of the Shopping Center or any part hereof shall be improved, held, leased, sold and conveyed. The Restrictions shall run with the land and inure and pass with such property and shall apply to and bind the respective successors in interest of such property. The Restrictions are imposed upon such property as mutual equitable servitudes in favor of such property and any portion thereof.

AGREEMENT:

NOW, THEREFORE, for the foregoing purposes, Declarant and all other persons who are or may at any time become subject to this Declaration, hereby agree as follows:

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1. Definitions.

1.1 "Additional Road Easement" shall mean that certain easement over the property described on Exhibit B pursuant to that certain "Grant of Additional Road Easement" executed by Elden Kingston, aka Eldon Kingston, Mary Jean Nelson and World Enterprises, a Nevada corporation, dated December 14, 1988, recorded December 16, 1988, as instrument No. 4715100 records of Salt Lake County, Utah for the benefit of Phase Ia and Phase Ib.

1.2 "Assessment Lien" shall mean that lien created by reason of the delinquency described in and upon recordation of the Notice of Assessment Lien.

1.3 "Building Area" shall mean that area of land designated as such on the Site Plan and which shall include the lumber staging area, trash compactor, loading dock and Nursery Area on Parcel 2, but such lumber staging area, trash compactor, loading dock and Nursery Area shall not be considered part of the Building Area of Parcel 2 for the purpose of calculating Common Area Maintenance Expenses unless and until a building is constructed thereon, and then only to the extent of the size of such building.

1.4 "Common Area" shall mean all the area within the Shopping Center to be used in common and which shall be those areas within the Shopping Center other than the Building Area including without limitation the Additional Road Easement. The Common Area shall be developed substantially as shown on the Site Plan and shall not be used for any purposes other than those set forth in Paragraph 4.2 except as otherwise specifically set forth herein.

1.5 "Common Area Maintenance Expenses" shall mean all reasonable costs and expenses of every nature and kind as may be actually paid or incurred by Manager (including appropriate reasonable reserves) in operating, managing, equipping, lighting, repairing, decorating for holidays or special events (except that the Parcel 2 Owner shall not be responsible for any portion of decorating costs), replacing, repairing and maintaining the Common Area, and in providing such security and other protection for the Shopping Center as Manager deems necessary. Such costs shall include, but shall not be limited to, general maintenance and repairs, resurfacing, striping, snow and ice removal and cleaning the Common Area; maintenance and repair of landscaping and irrigation systems; maintenance and repair of Shopping Center pylon signs, center identification signs, directional signs and lighting systems; janitorial services; maintenance and repair of exterior fire protection systems, storm drainage and sanitary sewer systems, trash disposal (excluding the cost of trash disposal of each Owner or Occupant for which each such Owner or Occupant is solely responsible) or other utility systems located in the Common Area; the cost of water service, electricity and other utilities incurred in connection with the Common Area; the wages and related payroll costs of personnel employed by Manager to implement services furnished by Manager (except that the Parcel 2 Owner shall not be responsible for any portion of such wages and related payroll costs of personnel employed by Manager); premiums for public liability insurance and property damage

insurance maintained in connection with the Common Area; fees for required licenses and permits; supplies; depreciation on maintenance and operating machinery and equipment (if owned by Manager) (except that the Parcel 2 Owner shall not be responsible for any portion of such depreciation costs), and rental paid for such machinery and equipment (if rented), provided that no Owner has previously been assessed for the costs and expenses of acquiring such machinery and equipment and only to the extent such machinery and equipment is actually used on the Common Area, such depreciation and rentals to be allocated based upon the actual use of such equipment and machinery in the Shopping Center; and the reasonable costs and expenses incurred by Manager in enforcing this Declaration and in preparing, recording and foreclosing assessment liens to the extent not recovered by an Owner as provided in Paragraph 8.

1.6 "Damaged Owner" shall mean the Owner of any property within the Shopping Center other than the Master Parcel affected by damage to any building within the Shopping Center by fire, the elements, unavoidable accident or other casualty to the extent of more than fifty percent (50%) of the replacement cost thereof occurring after the expiration of forty (40) years following the date of this Declaration.

1.7 "Declaration" shall mean this Declaration and Establishment of Protective Covenants, Conditions and Restrictions and Grant of Easements.

1.8 "Default Rate" shall mean that annual rate of interest equal to the interest rate per annum designated by First Interstate Bank of Utah, N.A. ("First Interstate") (or its successor) as its prime rate, as that rate is announced publicly by First Interstate at its main office in Salt Lake City, Utah (or in the event First Interstate no longer designates a prime rate, then that rate most nearly comparable to what its prime rate would have been, as determined by the Master Parcel Owner) from time to time, plus five percentage (5%) points per annum, but in no event more than any maximum rate of interest permitted by law.

1.9 "Entertainment or Recreational Facility" shall mean, without limitation, a bowling alley, skating rink, off-track betting facility, studio, billiard room, pool hall, massage parlor, amusement arcade (other than a Restaurant containing not more than five (5) electronic, video or pinball games or other amusement devices), bar or tavern (other than as incidental to a Restaurant use which shall mean that neither more than fifty percent (50%) of the floor area nor more than fifty percent (50%) of sales are devoted to or are derived from the sale of alcoholic beverages), nightclub, dance hall, pornographic shop, adult bookstore or place of public amusement.

1.10 "Encrow Agent" shall have the meaning provided in Paragraph 9.10(d).

1.11 "First Year" shall mean the first full calendar year following the Partial Year.

1.12 "Home Club Lease" shall mean that certain Lease dated November 22, 1988 between HomeClub, Inc., as lessee and Bella Vista Group of Florida, Inc. as lessor concerning Parcel 2.

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1.13 "Home Improvement Use" shall mean a store which sells home improvement items, including but not limited to lumber items, hardware items, plumbing supplies, electrical supplies, paint, siding, wallpaper, ceiling fans, garden supplies and patio furniture, except as an incidental part of its business.

1.14 "Manager" shall mean the Master Parcel Owner.

1.15 "Master Parcel" shall mean Parcel 1.

1.16 "Notice" shall mean a written notice that Manager is in default in performing his duties pursuant to this Declaration.

1.17 "Notice of Assessment Lien" shall mean a notice recorded in the Office of the County Recorder, Salt Lake County, Utah by any person to whom any assessment or other sum of money is 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.

1.18 "Offering Notice" shall mean a written notice of an Owner or ground lessee of any portion of the Shopping Center offering to sell, assign, transfer or otherwise dispose of all or any part of its interest in and to a Parcel to the Master Parcel Owner.

1.19 "Owner" shall mean each person, who, at any given time, holds fee title to any Parcel or any portion of the Shopping Center.

1.20 "Parcel" or "Parcels" shall mean those several parcels which together comprise the Shopping Center as shown on the Site Plan and designated as Parcels 1 through 11, inclusive on the Site Plan.

1.21 "Parcel Occupant" shall mean the person at any given time occupying the largest square foot area of a Parcel.

1.22 "Parcel Owner" shall mean the Owner, and its successors and assigns in and to any Parcel.

1.23 "Parcel 2 Affiliate" shall mean a person that directly, or indirectly through one or more intermediaries, controls or is controlled by, or is under common control with the Parcel 2 Owner.

1.24 "Partial Year" shall mean the initial fractional calendar year following the completion of the Common Area.

1.25 "Parties" shall mean the Parcel Owners.

1.26 "Permittees" shall mean any Owner of any portion of the Shopping Center and its heirs, successors, assigns, grantees, mortgagees, tenants and subtenants and all persons who now or hereafter own or hold portions of real

property within the Shopping Center or any leasehold estate or building space thereon, and the tenants and subtenants thereof; and the officers, directors, concessionaires, agents, employees, customers, visitors, licensees and invitees of any of them.

1.27 "Phase Ia" shall mean that real property described on Exhibit C and shown as such on the Site Plan.

1.28 "Phase Ib" shall mean that real property described on Exhibit D and shown as such on the Site Plan.

1.29 "Phase II" shall mean that real property described on Exhibit F and shown as such on the Site Plan.

1.30 "Prime Lessee" shall mean an unaffiliated third party lessee of a Parcel under a lease for said Parcel. Prime Lessee includes the successors and assigns of said Prime Lessee, but does not include the sublessees, licensees or concessionaires of said Prime Lessee.

1.31 "Purchase Price" shall have the meaning set forth in Paragraph 9.18(c).

1.32 "Reconstruction Notice" shall mean a written notice of any Damaged Owner to all other Owners informing such Owners as to whether or not the Damaged Owner will reconstruct any damaged building within the Shopping Center.

1.33 "Restaurant" shall mean a food service facility with a seating capacity of more than fifteen (15) persons. Restaurants may include the incidental sale of alcoholic beverages for on-premises consumption as described in Paragraph 1.9.

1.34 "Restrictions" shall mean those easements, covenants, restrictions, liens and charges fixed and established upon the Shopping Center pursuant to this Declaration.

1.35 "Setback Easement" shall mean that certain easement over the property described on Exhibit B-1 pursuant to that certain "Setback Easement" executed by Eldon Kingston, aka Eldon Kingston, Mary Jean Nelson and World Enterprises, a Nevada corporation, dated December 14, 1988, as Instrument No. 4175101 records of Salt Lake County, Utah for the benefit of Parcel 2.

1.36 "Shopping Center" shall mean Phase Ia, Phase Ib and the Additional Road Easement, and, after its annexation in accordance with the provisions of Paragraph 9.3(b), Phase II.

1.37 "Training or Educational Facility" shall mean a beauty school, barber college, place of instruction, reading room or any operation catering primarily to students or trainees rather than to customers but shall exclude a pre-school or day care center, provided, that any outside play yard used in connection with such pre-school or day care center shall be enclosed within an opaque fence or wall.

2. Use in General.

2.1 The Shopping Center shall be used only for lawful retail and commercial purposes not specifically prohibited herein and uses incidental thereto and no portion thereof shall be used for residential or industrial purposes. Additionally, Parcel 2 may be used for wholesale purposes. With the prior written consent of the Master Parcel Owner, whose consent may be withheld in its sole and absolute discretion, the remainder of the Shopping Center may also be used for wholesale purposes.

2.2 This Declaration and the uses permitted hereunder shall be subject to applicable land use, health, safety and other laws, rules and regulations to which the Shopping Center or Permittees are subject.

2.3 For the purposes of this Declaration, the Shopping Center is divided into two (2) categories which relate to use, each of which is designated on the Site Plan as Building Area and Common Area, respectively.

3. Development.

3.1 No building or structure of any kind shall be erected, placed or maintained on any portion of the Shopping Center except upon those portions designated as Building Area on the Site Plan. Without the prior written consent of the Master Parcel Owner, no building or structure erected in the Shopping Center shall exceed one story in height above ground (which one story may include a mezzanine), nor shall any such building or structure exceed (a) twenty-four (24) feet in height if such building or other structure is located on any portion of Parcel 3, 4, 5, 6, 7, 8, 9, or 10; or (b) thirty (30) feet in height if such building or other structure is located on any portion of Parcel 2 or Parcel 1 or Parcel 11; provided that special architectural treatments on the buildings on Parcel 2, Parcel 1 and Parcel 11 may extend up to forty-six (46) feet in height so long as the width of such special architectural treatment does not exceed twenty-five percent (25%) of the width of the frontage of the building on the Parcel on which such building is located.

3.2 No Owner shall commence or permit the commencement of construction of any building or other structure within the Shopping Center unless the design, architecture, exterior elevations, configuration, height, canopy design, dimensions, landscape design, location and other attributes thereof shall have first been approved in writing by the Master Parcel Owner. No Owner shall make any material alterations to any of the foregoing matters which have been approved without first obtaining a similar approval to such alteration, but in any event, the standards set forth in Paragraph 3.1 shall be maintained.

3.3 In order to maintain the architectural harmony of the Shopping Center, after the initial construction, erection or placement of any building or other structure within the Shopping Center, such building or structure shall not be reconstructed, altered, added to or maintained in such fashion as to alter, in any material respect, the architectural

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appearance is first approved in writing by the Master Parcel Owner and the Parcel 2 Owner. Such approval shall be given or withheld in writing within twenty (20) days after receipt of written request therefor. Failure to respond in writing to a written request for such approval within twenty (20) days of its receipt shall constitute approval of such construction, reconstruction or alteration so long as such notice recites that the notice is being given pursuant to this Paragraph and that a failure to respond shall constitute an approval. Notwithstanding the foregoing, the Master Parcel Owner's consent shall not be required for alterations to the exterior of the building on Parcel 2 which do not alter its architectural harmony with the remainder of the Shopping Center. Ten (10) days prior to the Parcel 2 Owner's commencement of work on an exterior alteration, the Parcel 2 Owner shall deliver to the Master Parcel Owner a complete set of architectural drawings of such work so that the Master Parcel Owner can determine whether any proposed change is architecturally harmonious.

3.4 All buildings in the Shopping Center shall be masonry, frame and stucco buildings or concrete tilt-up buildings.

3.5 Following the initial construction on any portion of the Building Area, such Building Area and associated construction immediately surrounding such area, as determined by the Master Parcel Owner, shall be fenced off or otherwise segregated so as not to interfere with the course of business of the remainder of the Shopping Center, and shall be maintained in a neat and dust-free condition.

3.6 Without the prior written consent of the Master Parcel Owner, buildings and other structures constructed and maintained on the following Parcels shall not exceed the building area indicated:

<u>Parcel</u>	<u>Maximum Building Area (in Square Feet)</u>
Parcel 1	13,650
Parcel 2	103,909
Parcel 3	8,500
Parcel 4	2,500
Parcel 5	4,000
Parcel 6	4,200
Parcel 7	4,000
Parcel 8	8,000
Parcel 9	8,000
Parcel 10	7,500
Parcel 11	122,000

In the event more than one (1) person shall own separate portions of a Parcel, and such persons shall not have agreed between or among themselves in a document recorded in the office of the County Recorder, Salt Lake County, Utah, as to the allocation between or among such Owners of the maximum building area assigned to such Parcel, such allocation shall be made in the ratio that the square foot area of the portions of such Parcel separately owned by them bears to the aggregate square foot area of such Parcel.

4. Shopping Center Easements.

4.1 Declarant hereby establishes and grants to, and each other person who becomes an Owner shall, immediately upon becoming such an Owner and without further act, be deemed to have established and granted to all other Owners and Permittees irrevocable, nonexclusive easements over, across, upon and beneath the Common Area owned by Declarant and such Owner for the purposes set forth in Paragraph 4.2. Concurrently with the receipt of fee title to any portion of the Shopping Center, each Owner shall upon the request of Declarant or any Owner confirm the foregoing provisions of this Paragraph by executing and having properly acknowledged and recorded in the real estate records of Salt Lake County, Utah, a Consent and Subordination, in the form attached hereto as Exhibit G, incorporated herein by this reference. Nothing in this Paragraph or elsewhere in this Declaration shall be deemed to be or constitute a gift or dedication of any portion of the Shopping Center or the general public or for any public use or purpose whatsoever.

4.2 The Common Area shall be used for the following purposes:

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

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

(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 Shopping Center, all of which (except hydrants and transformers and other installations as may be requested by the utility company) shall be even with or below the surface of the Common Area. All Owners shall 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 described above. The original location of the facilities described above shall be subject to the approval of the Master Parcel Owner. Each Owner shall have the right to enter upon any portion of the Common Area 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, that each Owner may not unreasonably interfere with the use of the Common Area by Permittees and that no relocation or removal of any such facilities may be made without the prior written consent of the Master Parcel Owner and without the consent of the Parcel 2 Owner if located on Parcel 2.

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

(e) The installation, construction, replacement and reconstruction of parking sites or stalls, shopping cart storage areas, 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, mall or landscaped areas, including planters, planting, edgers, fountains, valves and customer conveniences, such as mail boxes, express courier receptacles, public telephones and benches for the comfort and convenience of Permittees; provided, however, that the Master Parcel Owner (and the Parcel 2 Owner if located on Parcel 2) shall first approve all such facilities and that such facilities may not materially affect the access or traffic flow to, visibility of, or parking for, the property or building of any Owner.

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

(g) The ingress and egress of delivery and service trucks and vehicles to and from the Building Area or any portion thereof and the public streets adjacent to the Shopping Center, for the delivery of goods, wares, merchandise and the tendering of services to all persons who may own portions of the Building Area or hold any leasehold estates therein. Each tenant or other occupant of the Shopping Center shall use its best efforts to have deliveries made to the rear of the building occupied by such person. In the event it is necessary that deliveries be made to the front of the building within the Shopping Center, such deliveries shall be made so as to cause the least amount of interference with the use of the adjacent portions of the Common Area.

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

(i) The temporary use (including erection of ladders, scaffolding and store front barricades and use of construction equipment) during periods of construction, remodeling or repair, and ingress and egress for vehicles transporting construction materials and equipment, upon the condition, however, that all construction, remodeling or repair of buildings and building appurtenances is diligently performed and such ladders, scaffolding and barricades are promptly removed upon completion of such work.

(j) With the prior written consent of the Master Parcel Owner:

(i) The sale of merchandise by an Owner (or the tenant of an Owner when allowed by such Owner) from Common Area sidewalks which are immediately adjacent to the Building Area owned or occupied by the person conducting such sale, and the seasonal or periodic sale by an Owner (or the tenant or other occupant of a Parcel when allowed by the Owner of such Parcel) of merchandise from portions of the Common Area for a period of one (1) week, no more than three (3) times per calendar year, and an additional period of thirty

(30) days once a year, so long as such sales (A) occupy no more than ten (10) Common Area parking spaces; (B) do not materially impair pedestrian access along sidewalks; (C) do not impede vehicular traffic flow within the Shopping Center; (D) include only previously unsold at retail and undamaged merchandise and (E) subject to subparagraph (A), do not encroach upon the sidewalks and parking area directly in front of the Shopping Center. Any person conducting such a sale shall clean and maintain that portion of the Common Area used by such person, repair any damage to that portion of the Common Area used by such person caused by such use and not conduct any auction or going out of business sale. Notwithstanding the foregoing, no such sale of merchandise shall take place from Common area sidewalks or parking spaces which are adjacent to Parcel 2 and in the Protected Area without the prior written consent of the Parcel 2 Owner. Notwithstanding the foregoing, the Parcel 2 Owner will not be required to obtain the consent of the Master Parcel Owner for such sales and may conduct such sales at any time, but shall comply with all other requirements set forth in this Paragraph.

(ii) Promotional, civic or charitable activities for the Shopping Center subject to the approval of the Parcel 2 Owner.

(k) The construction, maintenance, repair, replacement and reconstruction of sign pylons, center identification signs and monument signs (with appropriate underground electrical connections). The costs of constructing, replacing or reconstructing sign pylons within the Shopping Center shall be paid for pro rata by the Owners or Occupants of the Building Area whose name or logo appears on such sign pylons in the ratio of their square footage usage of such sign pylons. The Parcel 2 Owner's share for the sign pylon in Phase Ia shall be sixty-six and seven tenths percent (66.7%). The Parcel 2 Owner shall have the right to sixty-six and seven tenths percent (66.7%) of the available tenant sign space on the sign pylon. As to sign pylons, the location thereof within the Shopping Center shall be as denoted on the Site Plan on Phase Ia. The sign pylons on Phase Ib and Phase II may be placed at locations on such Phases as determined by the Master Parcel Owner. The Parcel 2 Occupant shall have the right to the top business name on the sign pylon located on Phase Ia, and the bottom business name on the sign pylon on Phase Ib. Two (2) Owners or Occupants in addition to the Parcel 2 Owner, may have their business sign on the sign pylon on Phase Ia, with the prior written consent of the Master Parcel Owner. A center identification sign may be installed on Parcel 3 at the location indicated on the Site Plan. The costs and expenses of maintaining or repairing sign pylons and the center identification sign shall constitute part of the Common Area Maintenance Expenses. No change shall be made in such locations without the prior written approval of the Master Parcel Owner. Monument signs located within the Shopping Center shall be located only on the Parcel to which its use is appurtenant and shall not constitute a portion of the Common Area but shall be deemed to be the property of the Owner or occupant of the Building Area within the Shopping Center to which such monument sign pertains and all costs and expenses in connection with the construction, maintenance, repair, replacement or reconstruction of such monument sign shall be paid for by such Owner or Occupant.

(l) The sidewalk directly in front of the Building Area on Parcel 2 may be used by the Owner of Parcel 2 for the sale of food and non-alcoholic beverages from one (1) vending cart not to exceed one hundred twenty (120) square feet in size.

(m) The Master Parcel Owner may use the sidewalk directly in front of the Building Area on any Parcel other than Parcel 2 for the sale of food and non-alcoholic beverages from no more than one (1) vending cart, not to exceed one hundred twenty (120) square feet in size.

(n) The Owner of Parcel 2 may utilize that portion of the Common Area delineated as "Christmas Tree Sales Area" on the Site Plan from the period of September to December 31st of each year, so long as the Parcel 2 Owner shall clean and maintain such portion of the Common Area and repair any damage thereto.

(o) Those portions of the Common Area adjacent to a Building Area may be used for:

(i) The installation, removal, repair, replacement and maintenance of building canopies, which canopies may project from buildings over pedestrian sidewalks and other portions of the Common Area for a horizontal extension not exceeding eighteen (18) feet, together with canopy support columns upon and over such sidewalks and other Common Area; provided, that such building canopies and canopy support columns shall not be deemed to be part of the Common Area;

(ii) Pedestrian sidewalks and flower boxes, planting containers and other decorative and landscaping features on the Common Area;

(iii) Such advertising or identification signs of occupants of the Building Area identifying the business of such occupant as may be desired by such occupant, to be attached to or erected upon the building in the Shopping Center occupied by such occupant, including building canopies; provided, that such signs shall not be deemed to be a part of the Common Area, and shall conform to the sign criteria prepared by a licensed architect and approved by the Master Parcel Owner;

(iv) The installation, removal, replacement, repair, use and maintenance of fire hose connections, downspouts, hose bibbs, standpipes, yard or flood lights, subsurface building foundations and such signs or shadow boxes of occupants of the Building Area as may be attached to or form an integral part of a building at any time situated upon any portion of the Building Area; provided, that such items shall not be deemed to be a part of the Common Area;

(v) The construction and operation of loading ramps and docks as depicted on the Site Plan or as later approved by the Master Parcel Owner for the exclusive use of the occupants of said Parcel; provided, that such loading ramps and docks shall not be deemed to be a part of the Common Area and shall be constructed, operated, maintained and repaired at the sole cost and expense of the Owner of the applicable Parcel;

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(vi) The construction and operation of trash enclosures, as shown on the Site Plan, or as otherwise permitted by the Master Parcel Owner; provided, that any trash bins within any such trash enclosures shall not be deemed to be a part of the Common Area;

(vii) The opening onto the Common Area of doors from contiguous Building Area;

(viii) The temporary erection of ladders, scaffolding and barricades during periods of maintenance, construction, remodeling or repair of buildings and building appurtenances, upon the condition, however, that such maintenance, construction, remodeling or repair shall be diligently prosecuted to completion and such ladders, scaffolding and barricades shall promptly be removed upon such completion;

(ix) During the course of construction of any buildings which may hereafter be constructed upon the Building Area, portions of the Common Area immediately adjacent to such Building Area may be used by the Owner or occupant thereof for the temporary storage of construction materials and equipment used or to be used in connection therewith, provided that no such use shall be allowed on Parcel 2 and such use does not damage existing improvements or unreasonably interfere with the normal use of the Common Area (and, should such damage occur, it shall be repaired by and at the expense of the person causing such damage within ten (10) days after the date of its occurrence). All such construction materials and equipment shall be removed from the Common Area as soon as such construction is completed; and

(x) The location of a propane tank and its accompanying concrete pad on Parcel 2 for the benefit of Parcel 2 at a location to be agreed upon by the Parcel 2 Owner and the Master Parcel Owner.

4.3 No Owner or other person shall alter any parking areas or other improvements located upon the Common Area as shown on the Site Plan or otherwise change the location or configuration of the Common Area depicted thereon, without the prior written consent of the Master Parcel Owner; provided, however, that the prior written consent of the Parcel 2 Owner must also be obtained if they take place on Parcel 2 or to the extent any such alteration or change materially and adversely affects (a) the amount of parking spaces available in the Shopping Center, (b) access to and from the Shopping Center, (c) the visibility of buildings located upon Parcel 2, (d) the Turning Radius where the Additional Road Easement connects with Phase Ib as shown on the Site Plan, (e) the Service Road from the Additional Road Easement to the rear of the building on Parcel 2, or (f) the share of Common Area Maintenance Expenses attributable to Parcel 2. Notwithstanding the foregoing, Manager or any Owner shall have the right to excavate or conduct construction activities upon the Common Area, 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 Paragraph 4.2(c), so long as such excavation or construction activities shall be prosecuted diligently to completion. The person causing such excavation or construction

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activities to be made shall forthwith, upon completion thereof, restore any portion of the Common Area 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. Additionally, no rights given to an Owner in this Paragraph shall apply with respect to any aspect of the Master Parcel Owner's annexation of Phase II, so long as all of the provisions of Paragraph 9.3 are complied with by the Master Parcel Owner.

4.4 Should any building constructed within the Shopping Center inadvertently encroach on any adjacent property and said encroachment does not exceed twenty-four (24) inches, the Owner of the adjacent property shall be deemed to have granted an easement for such encroachment for so long as such encroachment shall exist, and shall, without charge therefor, execute such instruments as may reasonably be required by the encroaching party or its assignees, title insurer or mortgagees confirming such easement.

4.5 All sidewalks adjacent to any Building Area shall be of concrete construction. All areas for vehicular use shall be paved with a suitable base and surfaced with a bituminous or asphaltic wearing surface or, as to portions of the Common Area devoted primarily to loading, unloading and delivery, if the Master Parcel Owner approves, with concrete.

4.6 Except as specifically depicted on the Site Plan or as otherwise set forth herein, no fence, division, rail or obstruction of any type or kind shall ever be placed, kept, permitted or maintained on the Common Area, except:

(a) Such as may be necessary to protect members of the public from construction or excavation activities.

(b) Such as may be required by governmental authorities.

(c) Light standards, parking and traffic control devices and signs, shopping cart storage areas, retaining walls, drainage and utility facilities, fountains, customer conveniences and landscaping, including hedges, walls, planters and planting boxes and edgers.

(d) The sign pylon and monument signs referred to in Paragraph 4.2.(1).

(e) Temporary barriers or fences erected in connection with permitted construction or permitted commercial activities in the Common Area which are necessary or appropriate to provide security or to ensure the safety of persons and property within the Shopping Center.

4.7 Except for the payment of Common Area maintenance expenses as hereinafter set forth, no charge, fee, toll, levy or expense shall ever be required, assessed or made of or received from any person for the use of the Common Area as set forth herein.

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4.8 The improvement or use of any portion of the Building Area for parking or service shall not be construed as an inclusion of such portion within the Common Area, and such portions may, at any time thereafter, be improved with buildings and appurtenances as herein contemplated.

4.9 No Owner, employee of any Owner, tenant or other occupant or employee of any tenant or other occupant of any part of the Shopping Center shall use any portion of the Common Area for motor vehicle parking purposes except such portions as may be designated from time to time by the Master Parcel Owner. The area for employee parking shall initially be as set forth on the Site Plan. Changes to the employee parking area may be made with the consent of the Master Parcel Owner. Notwithstanding the foregoing, the employees of the Parcel 2 Owner or its tenant may park anywhere on Parcel 2.

5. Operation and Maintenance of Building Area and Common Area.

5.1 All Owners shall pay, prior to delinquency, all taxes and assessments on the property within the Shopping Center owned by them. If any such Owner shall fail to pay such taxes and assessments prior to delinquency, any other Owner or the tenant of any other Owner may pay such taxes and assessments and the curing Owner or tenant may then bill the defaulting Owner for the expense incurred. If the defaulting Owner shall not pay such bill within fifteen (15) days (thirty (30) days in the case of the Parcel 2 Owner), the curing Owner or tenant shall have a lien on the property within the Shopping Center of the defaulting Owner for the amount of such bill, which amount shall bear interest equal to the Default Rate until paid. Such lien may be foreclosed by such Owner or tenant as provided in Paragraph 8. Notwithstanding the foregoing:

(a) Until such time as separate tax bills are obtained for each of the Parcels, each Owner shall pay or cause to be paid his proportionate share of real estate taxes and assessments levied against the Shopping Center in accordance with the percentages set forth in Paragraph 5.9.

(b) An 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 or assessments) shall have the right, in good faith, to contest the amount of taxes or assessments owing with respect to its property; provided, that such Owner, tenant or occupant shall take all such action as may be necessary to prevent any assessment or tax lien from being foreclosed with respect to any property within the Shopping Center.

5.2 Any assessment for public improvements levied against the entire Shopping Center, rather than against individual Parcels, shall be paid by all Owners in accordance with the percentages set forth in Paragraph 5.9.

5.3 Each Owner shall maintain or cause to be maintained in a safe, clean, attractive and tenantable condition, all buildings located upon the property within the Shopping Center owned by such Owner. If any building within the

Shopping Center shall be damaged by fire, the elements, unavoidable accident or other casualty to the extent of fifty percent (50%) or less of the replacement cost thereof, the Owner of the affected property shall, at its own expense, cause such damage to be repaired. In the event that any building within the Shopping Center shall be damaged by fire, the elements, unavoidable accident or other casualty to the extent of more than fifty percent (50%) of the replacement cost thereof, the Owner of the affected property shall proceed as follows:

(a) If such damage occurs prior to the expiration of forty (40) years following the date of this Declaration, the Owner thereof shall have the duty to cause the reconstruction in its entirety of such building to substantially the same condition that existed prior to such damage to the extent reasonably practicable (allowing for changes required by governmental codes and regulations), unless otherwise agreed to in writing by the Master Parcel Owner. The foregoing shall apply only to the exterior appearance of a damaged building, and no prior approval by the Master Parcel Owner shall be required for interior changes.

(b) If such damage occurs after the expiration of forty (40) years following the date of this Declaration, the Damaged Owner may, at its option, reconstruct or cause the reconstruction of such building in its entirety. The Damaged Owner shall deliver to all other Owners a Reconstruction Notice no later than sixty (60) days after the date of such damage, setting forth whether or not the Damaged Owner will reconstruct such building. The Reconstruction Notice shall be given to all Owners at the same time. In the event a Reconstruction Notice shall provide that the Damaged Owner will reconstruct such building, the Damaged Owner shall commence such reconstruction within one hundred eighty (180) days after the date of such damage. In the event a Reconstruction Notice provides that such Damaged Owner will not reconstruct such building, the other Owners, or any of them, shall have the right to purchase for cash such building and the Parcel on which such building is located at its then fair market value, by delivering a written notice to that effect to the Damaged Owner within sixty (60) days after the date upon which the Reconstruction Notice is delivered by the Damaged Owner to the other Owners. In the event that more than one (1) Owner wishes to purchase the Parcel of the Damaged Owner, the first Owner delivering notice of its desire to purchase said Parcel to the Damaged Owner following the Reconstruction Notice shall have the right to purchase said Parcel as provided herein. If the parties fail to reach an agreement as to the fair market value of such building and Parcel, such fair market value shall be determined in accordance with the provisions of Paragraph 9.18(b)(1). In the event the Damaged Owner shall fail to deliver a Reconstruction Notice to the other Owners within sixty (60) days after the date of such damage, the Damaged Owner shall be deemed to have elected not to reconstruct such building and the other Owners shall have the right to purchase such building and Parcel on which such building is located, as provided above, except that, in the event any such other Owners shall so elect to purchase such building and Parcel, the Damaged Owner shall have the right, within thirty (30) days after the date upon which the electing Owner(s) so elect to purchase such building and Parcel, to deliver a Reconstruction

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Notice to such electing Owner(s) stating that the Damaged Owner will reconstruct the damaged building and, in such event:

(i) The election of the electing Owner(s) to so purchase such building and Parcel shall be deemed to be of no force and effect; and

(ii) The Damaged Owner shall cause reconstruction of the damaged building to commence within sixty (60) days after the date upon which the Damaged Owner's Reconstruction Notice was delivered to the electing Owner(s).

(c) If the Owner of a damaged building is not required to reconstruct it pursuant to this Paragraph 5.3 and does not otherwise choose to do so, and none of the other Owners exercise their option to purchase in regard thereto as set forth above, the Owner of the Parcel upon which the damaged building is located shall promptly raze and landscape the Building Area thereof.

(d) Any rebuilding, repair or restoration undertaken pursuant to this Paragraph 5.3 shall be completed as soon as reasonably practicable but, in any event, within twelve (12) months from the time when such rebuilding, repair or restoration is commenced, subject, however, to delays caused by insurance adjustment disputes, strikes, labor difficulties, governmental restrictions on building activity, fire, war, acts of God or other causes (other than financial inability) beyond the reasonable control of the Owner responsible for such rebuilding, repair or restoration. Notwithstanding the provisions of this Paragraph 5.3, in the event that the provisions of a particular lease between an Owner and its tenant are different from the provisions of this Paragraph 5.3, (i) as between such Owner and its tenant or mortgagee, the lease or mortgagee provisions, respectively, shall prevail; and (ii) as among the Owners, this Declaration shall prevail.

5.4 Except as otherwise provided herein, Manager shall operate and maintain or cause to be operated and maintained the Common Area, and shall perform such duties with respect thereto as are reasonably required for such operation and maintenance, including, without limitation, the following:

(a) Resurfacing of walks, drives and parking areas.

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

(c) Cleaning, painting, striping, disposing of rubbish and debris (to the extent the Owner is not responsible for its own rubbish removal), removing soil and stone washed into the Common Area drainage facilities, snow and ice removal and all other tasks necessary to maintain the parking and Common Area in a clean, safe and orderly condition. At the Parcel 2 Owner's option, manager shall remove snow and ice from the loading dock of Parcel 2, but the cost of such removal shall not be a Common Area Maintenance Expense but rather shall be paid entirely by the Parcel 2 Owner.

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(d) Maintaining 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 shall be reasonably required.

(f) Maintaining 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) Subject to the provisions of Paragraph 5.19, illuminating the Common Area during hours of darkness for one hour after the Parcel 2 Owner or its Parcel Occupant closes for business. The illumination level in the main portion of the parking lot of the Common Area shall be an average of 3.83 foot candles and at the main entrance to the Shopping Center an average of 5 foot candles.

(h) Maintaining all utility lines within the Shopping Center that are not the responsibility of the utility company.

5.5 As part of the operation of the Common Area, Manager shall obtain and maintain general public liability insurance insuring all Owners (and naming the Parcel 2 Owner and the Parcel 2 Occupant as an additional insured and the Parcel 2 Owner's mortgagee as a mortgagee) and such other persons who now or hereafter own or hold portions of the Shopping Center or any leasehold estate or other interest therein, as their respective interests may appear, against all claims for personal injury, death or property damage occurring in, upon or about the Common Area. Such insurance shall be written with an insurer licensed to do business in the State of Utah. The limit of liability of such insurance shall be at least One Million Dollars (\$1,000,000.00) combined single limit, and may be increased by Manager in its reasonable discretion from time to time taking into account insurance coverage typically obtained for shopping centers in Salt Lake County, Utah similar to the Shopping Center. Manager shall cause to be issued certificates of insurance to each of the Owners, the Parcel 2 Occupant and the Parcel 2 mortgagee and have such certificates provide that such insurance shall not be cancelled or amended within thirty (30) days prior written notice to each of the Owners, the Parcel 2 Occupant and the Parcel 2 mortgagee. In the event the operation of a pre-school in the Shopping Center causes an increase in premiums over what the premiums would have been but for the pre-school use, the Owner of the Parcel on which the pre-school use is located shall be solely responsible for the increase.

5.6 Manager shall expend only the monies reasonably necessary for the operation of the Common Area and for the maintenance thereof in order to keep the Common Area in good repair and clean condition; provided, however, that Manager shall first obtain the written consent of the Master Parcel Owner and the Parcel 2 Owner prior to incurring any

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single expenditure which exceeds Ten Thousand Dollars (\$10,000.00). Each Owner shall pay to Manager its proportionate share (determined pursuant to Paragraph 5.9) of Common Area Maintenance Expenses. For the Partial Year and during the First Year, until the month following the delivery of the Statement referred to in Paragraph 5.7, each Owner shall pay to Manager, on or before the first day of each calendar month, its proportionate share of an estimate of the Common Area Maintenance Expenses for the Partial Year, which estimate shall be reasonably established by Manager.

5.7 On or before April 15 of the First Year, Manager shall furnish each Owner with a statement (a "Statement") showing in reasonable detail (including invoices) the total Common Area Maintenance Expenses for the Partial Year and evidence of the payment thereof in full. Commencing with the first day of the calendar month in the First Year immediately following the calendar month in which a Statement is furnished, as provided above, each Owner shall pay to Manager on or before the first day of each calendar month an amount equal to such Owner's proportionate share of the quotient obtained by dividing the total Common Area Maintenance Expenses paid by Manager for the Partial Year by the number of calendar months (including as a fraction any initial fractional calendar month) in such Partial Year. On or before April 15 of each calendar year thereafter, Manager shall furnish each Owner with a Statement showing in reasonable detail (including invoices) the total actual Common Area Maintenance Expenses for the preceding calendar year and evidence of the payment thereof in full. Commencing with the first day of the calendar month immediately following the calendar month in which a Statement is furnished, each Owner shall pay to Manager on or before the first day of each calendar month an amount equal to such Owner's proportionate share of the quotient obtained by dividing the actual Common Area Maintenance Expenses paid by Manager for the preceding calendar year by twelve (12). The failure of Manager to furnish a Statement setting forth Common Area Maintenance Expenses within the time periods set forth above shall not constitute a default hereunder by Manager or a waiver of Manager's right to receive payment of an Owner's proportionate share thereof.

5.8 Following the end of the Partial Year and each subsequent full calendar year of the term hereof and each Owner's receipt of a Statement of the total Common Area Maintenance Expenses for such year, the amounts due from each Owner as its proportionate share of the Common Area Maintenance Expenses for the Partial Year or full calendar year shall be adjusted between Manager and each Owner. If any Owner's proportionate share of the total Common Area Maintenance Expenses for the Partial Year or full calendar year exceeds the amount prepaid by such Owner, such Owner shall pay to Manager such excess within thirty (30) days following such Owner's receipt of Manager's Statement. If any Owner's proportionate share of the total Common Area Maintenance Expenses for the Partial Year or full calendar year is less than the amount prepaid by such Owner, the amount of excess prepayment by such Owner shall be credited against such Owner's future prepayment obligation, cumulative from month-to-month until such excess is exhausted (except that the Parcel 2 Owner shall be entitled to a refund of its excess prepayment within thirty (30) days). The Owners

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shall each have the right once each calendar year to audit the Statement delivered to the auditing Owner. The Parcel 2 Owner's audit may be for the current year and the two immediately preceding years. All other Owners may audit only the current year's records. Such audit shall be at the auditing Owner's expense, except as hereafter provided, shall not be made more often than once in each calendar year, and shall take place during reasonable business hours at Manager's principal place of business in the Phoenix metropolitan area, or at such other location where Manager keeps its records, upon three (3) days' written notice of an audit request delivered by the auditing Owner to Manager. If such audit discloses that Manager has underestimated the auditing Owner's proportionate share of Common Area Maintenance Expenses the auditing Owner shall promptly pay to Manager the amount of the understatement. If such audit discloses that Manager has overstated the auditing Owner's proportionate share of the Common Area Maintenance Expenses by more than three percent (3%), Manager shall within twenty (20) days pay the auditing Owner the amount of such overstatement and in addition, shall also pay the cost of the audit.

5.9 Each Owner shall pay, as its initial proportionate share of Common Area Maintenance Expenses, that amount determined by multiplying the amount of such Common Area Maintenance Expenses by the percentage set forth below:

<u>Parcel</u>	<u>Building Sq. Ft.</u>	<u>Percentage</u>
Parcel 1	13,650	10.70%
Parcel 2	103,909	89.30%
Parcel 3	-	-
Parcel 4	-	-
Parcel 5	-	-
Parcel 6	-	-
Parcel 7	-	-
Parcel 8	-	-
Parcel 9	-	-
Parcel 10	-	-
Parcel 11	-	-
Total	117,559	100.0 %

In the event separate portions of any Parcel enumerated above shall be owned by different Owners, the proportionate share of Common Area Maintenance expenses payable with respect to such Parcel as provided above shall be apportioned on a pro rata basis between and among such Owners based upon the ratio that the square foot area of such Parcel owned by such Owner bears to the total square foot area of such Parcel. The above percentages are based on the ratio that the square foot area of the building on each Parcel bears to the total square foot area of the buildings initially to be constructed in Shopping Center. As new buildings are completed within the Shopping Center or as buildings are expanded, the above percentages shall be adjusted in accordance with such ratio, provided that, notwithstanding whether a building has been constructed on any of Parcels 3, 4, or 5, the Owner of each of such Parcels shall be responsible for its pro rata share (based upon the building square footage set forth in Paragraph 3.6) of that portion of Common Area Expenses attributable to landscaping and insurance,

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and until the Common Areas of any of Parcels 3, 4 or 5 are paved and striped, the Owners of such Parcels shall be responsible for their full share of Common Area Maintenance Expenses based upon the building square footage set forth in Paragraph 3.6 whether or not a building has been constructed thereon.

5.10 In the event Manager shall be in default in performing its duties hereunder, Owners of not less than ninety percent (90%) in land area of the Shopping Center (excluding any portion thereof owned by Manager) or the Parcel 2 Owner, acting alone, shall have the right to give Manager notice of such default, specifying the particulars thereof. Manager shall thereupon have a period of thirty (30) days in which to cure such default, or, if the nature of such default is such that it reasonably cannot be cured within thirty (30) days after the date of such notice, Manager shall be required to commence the cure of such default within such thirty (30) day period and diligently pursue the curing of such default to completion. Except as hereinafter provided, if Manager shall not cure such default within such thirty (30) day period or, if applicable, commence to cure such default within such thirty (30) day period and diligently pursue the curing of such default to completion, the Owners and/or the Parcel 2 Owner, giving such notice shall have the right to remove Manager effective on the first day of the next succeeding calendar month by giving written notice to that effect to Manager and, if the notifying Owners and/or the Parcel 2 Owner remove Manager, the notifying Owners and/or the Parcel 2 Owner shall appoint a new person to act as Manager and such person shall assume the duties and obligations of Manager on the first day of such month. In the event that a person acting as Manager is removed as such, the removed Manager shall, prior to the effective date of its termination as Manager, provide all Owners a written statement of all Common Area Maintenance Expenses (including invoices) which are to be reimbursed to the removed Manager pursuant to the terms hereof and each Owner shall pay its proportionate share thereof to the removed Manager within fifteen (15) days (thirty (30) days in the case of the Parcel 2 Owner) after delivery of such statement. Any new Manager shall, after its appointment in accordance with the terms hereof, perform the maintenance, management and operation obligations of Manager set forth in this Declaration throughout the remainder of the term hereof or until its removal in accordance with the terms of hereof. Any provision contained herein to the contrary notwithstanding, Manager's time period set forth above for curing a default or, if applicable, for commencing to cure a default and diligently pursuing the curing of such default to completion, shall be extended by a number of days equal to the number of days that Manager is prevented from curing such default or, if applicable, from commencing to cure such default and diligently pursuing the curing of such default to completion by reason of strikes, material or labor shortages, acts of God or other causes (other than financial inability of Manager) beyond the reasonable control of Manager. Notwithstanding any provisions of this Paragraph to the contrary:

(a) Each new Manager shall have and hold harmless all preceding Managers from and against any and all claims, demands, costs, fees, expenses, liabilities and damages

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arising or occurring in connection with the performance of the duties hereunder of Manager subsequent to the date such new Manager assumes its duties as such. Each such preceding Manager shall save and hold harmless each new Manager from and against any and all claims, demands, costs, fees, expenses, liabilities and damages arising or occurring in connection with the performance of the duties hereunder of Manager prior to the date such new Manager assumes its duties as such. The Owners hereby grant to each new Manager during the respective period of service as Manager all rights of Manager provided for under this Declaration.

(b) At such time as any person ceases to have an obligation to perform the duties and obligations of Manager described herein, such person shall cease to have any liability or responsibility for any acts, events or circumstances occurring subsequent to, and not as a result of, its performance or nonperformance of its duties and obligations while acting as Manager.

(c) The Parcel 2 Owner shall have the right to perform emergency repairs or maintenance to the Common Area if (i) the Parcel 2 Owner gives to the Manager (but if there is no Manager, then to the Owner on whose Parcel the work will be performed) such notice, if any, that is reasonable under the circumstances (which shall include telephone or similar communication method); (ii) the cost of such repair does not exceed Five Thousand Dollars (\$5,000.00); and (iii) the cost of such repairs is reasonable. Manager shall reimburse the Parcel 2 Owner for that portion of the cost of such repair which is within the definition of Common Area Maintenance Expense, and such amount shall constitute a Common Area Maintenance Expense.

5.11 During any period of time when no person is performing the duties of Manager, each Owner shall have the obligation to maintain the Parcel(s) (or portion thereof) owned by such Owner in a manner consistent with the provisions of this Declaration. If any such Owner shall fail to so maintain its own Parcel, then any other Owner shall have the right to give the defaulting Owner written notice of such default, specifying the particulars thereof. The Owner receiving such notice shall have a period of thirty (30) days in which to cure such default or, if the nature of the default is such that it cannot reasonably be cured within such thirty (30) day period, the Owner shall commence to cure said default within such thirty (30) day period and diligently pursue the curing of such default to completion. If the defaulting Owner does not cure such default within said thirty (30) day period or, if applicable, commence to cure such default within said thirty (30) day period and diligently pursue the curing of such default to completion, the Owner giving the notice of default may do so and the curing Owner may then bill the defaulting Owner for the expense incurred. If the defaulting Owner shall not pay such bill within fifteen (15) days, the curing Owner shall have a lien on the property of the defaulting Owner for the amount of such bill, which amount shall bear interest at the Default Rate and which lien may be foreclosed as provided in Paragraph 8.

5.12 Manager, with the prior written consent of the Master Parcel Owner and the Parcel 2 Owner may promul-

gate reasonable rules and regulations of general application for the supervision, control and use of the Common Area, in which event Manager shall make and use its best efforts to enforce the same or cause the same to be enforced.

5.13 In the event of damage to or destruction of the Common Area, Manager shall restore, repair and rebuild the Common Area to its former condition to the extent reasonably practicable, and shall assess any Owner, or the tenant or occupant of any Owner, for the entire uninsured cost thereof if such Owner, tenant or occupant shall have been the cause of the damage or destruction. In the event an Owner or tenant or occupant of an Owner shall not be the cause of such damage or destruction, then all costs and expenses of such restoration, repair and rebuilding, after applying thereto all insurance proceeds paid by reason of such damage, if any, shall be shared by all Owners in the proportion and in the same manner as Common Area Maintenance Expenses are shares pursuant to Paragraph 5.9 and payment thereof shall be in addition to the payment of Common Area Maintenance Expenses.

5.14 Except as hereinafter provided, an Owner's proportionate share of restoration, repair or rebuilding costs shall be paid to Manager within thirty (30) days after delivery by Manager of a statement therefor, which statement shall be accompanied by evidence supporting the amounts claimed to be due in the form of copies of paid invoices, cancelled checks and receipts, certified by Manager to be true and correct. In the event an Owner shall fail to pay such amount within thirty (30) days after billing, such amount shall bear interest thereafter at the Default Rate.

5.15 In performing the duties of Manager hereunder, Manager may utilize such qualified agents and independent contractors (including management companies) as Manager may designate.

5.16 In the event an Owner shall be delinquent for more than sixty (60) days in paying any of such Owner's proportionate share of Common Area Maintenance Expenses as provided in Paragraph 5.6, or costs of restoration repair or rebuilding as provided in Paragraph 5.14, provided Manager has used reasonable efforts to collect such delinquent amounts (which reasonable efforts shall not require that Manager initiate any judicial proceedings in order to collect such delinquent amounts), Manager may assess such delinquent amounts against the nondelinquent Owners by delivering a written notice to that effect to such nondelinquent Owners. Each nondelinquent Owner shall pay to Manager, within ten (10) days after delivery of such written notice, an amount determined by multiplying the amount of such delinquency by a fraction, the numerator of which is the square foot area of the property within the Shopping Center owned by such nondelinquent Owner and the denominator of which is the aggregate square foot area of the property within the Shopping Center owned by all such nondelinquent Owners. The amount of such delinquency paid by such other Owners shall be reimbursed to such other Owners when and as they are recovered from the defaulting Owner pursuant to Paragraph 8 or otherwise.

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5.17 Each Owner other than the Parcel 2 Owner shall pay to Manager a fee for each calendar year equal to fifteen percent (15%) of the total dollar amount of such Owner's proportionate share of Common Area Maintenance Expenses for such calendar year (so that, for example, in the event an Owner's proportionate share of Common Area Maintenance Expenses for a calendar year is Ten Thousand Dollars (\$10,000.00), the fee payable by such Owner to Manager for such calendar year shall be One Thousand Five Hundred and 00/100 Dollars (\$1,500.00).

5.18 Until such time as buildings are constructed on any Building Area, Manager shall take such measures as may be necessary to control weeds and the erosion of dirt and sand by wind or water with respect to the undeveloped portion thereof and shall bill the Owner of such undeveloped portion for its expenses in connection therewith. The Owner of such property shall pay the amount thereof within thirty (30) days after delivery of such bill and, in the event such Owner shall fail to do so, the amount thereof shall bear interest thereafter at the Default Rate.

5.19 Any provision contained herein to the contrary notwithstanding:

(a) In the event utility charges for illumination of the Common Area located upon a Parcel are separately metered to the Owner of that Parcel, (i) such utility charges shall be paid by such Owner and shall not constitute a portion of Common Area Maintenance Expenses; and (ii) the Owner of such Parcel shall not be required to pay its proportionate share of that portion of Common Area Maintenance Expenses that consists of utility charges for illuminating the Common Area.

(b) In the event any occupant of the Shopping Center remains open for business after 11:00 p.m., the Owner of the Parcel so occupied shall pay to Manager the cost of illuminating the portion of the Common Area required by such occupant to be illuminated after 11:00 p.m. until such lights are turned off (unless such charges are separately metered to such Owner or occupant), and in the event that the occupants of more than one Parcel remain open for business after 11:00 p.m., to determine the costs of illumination of the Common Area after 11:00 p.m. for which the Owners of such Parcels shall be required to pay Manager, such costs shall be multiplied by a fraction, the numerator of which shall be the number of hours the occupant of such Parcel shall be open for business beyond 11:00 p.m. until such lights are turned off and the denominator of which shall be the total number of hours all occupants of the Shopping Center shall be open for business after 11:00 p.m. until such lights are turned off.

5.20 Upon written request of any Owner, in conjunction with a sale, lease or financing of its Parcel, the Manager shall furnish to such Owner or its designee, upon thirty (30) days written request, a statement setting forth the payment status of such Owner's Common Area Maintenance Expenses.

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6. Restrictions on Use.

6.1 Without the prior written consent of the Master Parcel Owner and the Parcel 2 Owner during the term of this Declaration, no portion of the Shopping Center shall be occupied or used, directly or indirectly, for the purposes of a flea market (including a flea market selling new merchandise, as well as used merchandise), second-hand store, industrial use, Entertainment or Recreational Facility, Training or Educational Facility, auction, the sale or display of motor vehicles or any other obnoxious activities which produce noise, fumes, dust or odors and which may constitute a public or private nuisance (the normal operation of the Parcel 2 Owner's delivery trucks in and around the Additional Road Easement, the Service Road and the Parcel 2 loading dock shall not be deemed a public or private nuisance); provided, however, that the foregoing restriction shall not prohibit the operation of a health club outside the Protected Area shown on the Site Plan, nor shall a health club or theatre be prohibited on Phase II.

6.2 Subject to the exceptions set forth in Paragraph 6.3 below, no portion of the Shopping Center, other than that portion of the Building Area located upon Parcel 2 shall be occupied or used, directly or indirectly, for Home Improvement Use. The foregoing restriction shall continue only so long as the Building Area on Parcel 2 shall continue to be used for Home Improvement Use and for a period of twelve (12) months thereafter. At the election of the Master Parcel Owner made any time after the cessation of such use and the expiration of the twelve (12) month time period, the restriction set forth in this Paragraph 6.2 shall terminate; provided, however, that the temporary failure to use the Building Area on Parcel 2 for a Home Improvement Use (1) as a result of fire, casualty, strife, lack of or labor disputes, suspension of licenses (provided reasonable efforts have theretofore been made to prevent such suspension of licenses) or other governmental order or regulation, war or Act of God, or any other cause outside the reasonable control of the Parcel 2 Owner; or (2) which occurs during any period in which the Building Area devoted to a Home Improvement Use is being built, rebuilt, repaired or remodeled upon its respective Building Area, or a portion thereof, shall not cause the foregoing restrictions to terminate; provided that, if such building, rebuilding, repair or remodeling shall result in the failure to use such Building Area for a Home Improvement Use for a period in excess of twelve (12) months, the foregoing restrictions shall terminate as to such Building Area at the end of such period unless such building, rebuilding, repair or remodeling is delayed or prevented by reason of any strikes, lockouts or other labor disputes, governmental restrictions upon building activity or delays caused by or resulting from fire, casualty, war or Act of God, or any other cause beyond the control of the Parcel 2 Owner in which event such twelve (12) month period shall be extended by the period of such delay.

6.3 The restrictions set forth in Paragraph 6.1 above shall not apply to:

(a) Any store in excess of fifty thousand (50,000) square feet of Building Area which may sell any one or more items which are included within the definition

of Home Improvement Use so long as such Building Area is used for a general merchandise store and, when considered as a whole, does not constitute a Home Improvement Use; and

(b) One store which may sell wallpaper, ceiling fans, one store which may sell garden supplies and one store which may sell patio furniture so long as no more than five thousand (5,000) square feet is devoted to any single such use.

6.4 Master Parcel Owner shall have the right to grant exclusives to other Owners and Tenants of the Shopping Center, but not such exclusives shall not be binding against Parcel 2.

6.5 In addition to the foregoing (except as an incidental use to a permitted use), the total area of the Building Area of the Shopping Center used for office purposes shall not exceed twenty thousand (20,000) square feet in the aggregate, but financial institutions and travel agencies shall not be deemed to be offices for the purpose of this restriction.

7. Insurance.

7.1 Each Owner shall, 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, on all property within the Shopping Center owned by such Owner, a policy or policies of bodily injury and property damage liability insurance with combined single limits of at least \$1,000,000.00, in which Manager and all other Owners shall be named as additional insureds, insuring against all liability arising out of the maintenance, use and occupants of the building(s) located on the property within the Shopping Center owned by such Owner; provided, however, that such policy need not provide coverage pertaining to the Common Area. Each Owner shall also maintain or cause to be maintained fire and extended insurance coverage on all buildings and improvements located upon that portion of the Shopping Center owned by such Owner, including loss or damage by fire and such other risks as are from time to time included in the extended coverage insurance policies customarily issued in Utah in an amount not less than one hundred percent (100%) of the full replacement cost of such buildings and improvements, exclusive of foundations and excavation costs. The Parcel 2 Owner or its tenant shall have the right to self-insure its insurance obligations hereunder, so long as it or its tenant who has assumed the insurance liability hereunder has a net worth of Seventy-Five Million Dollars (\$75,000,000.00) based upon financial statements prepared in accordance with generally accepted accounting principles. During any such period of self-insurance, the Master Parcel Owner shall have the right to request from time to time audited financial statements evidencing such net worth requirement.

7.2 Each Owner shall, upon request from Manager or any other Owner, furnish to the party making such request certificates of insurance evidencing the existence of

the insurance required to be carried pursuant to this Paragraph. To the extent that the same shall 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 Paragraph 7. Said mutual waivers shall be in addition to, and not in limitation or degradation of, any other waiver or release regarding any loss of or any damage to the said property of any Owner. Inasmuch as 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, firm or corporation) each Owner shall give to each insurance company which has issued to it policies of fire and extended coverage insurance, written notice of the terms of said mutual waivers, and shall have said insurance policies properly endorsed, if necessary, to prevent invalidation of said insurance coverages by reason of said waiver.

8. Assessment Lien.

8.1 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, the person to whom such sums are owing shall have the right to record, in the office of the County Recorder, Salt Lake County, Utah, a Notice of Assessment Lien which shall set forth the then delinquent amount owed by such Owner (including default interest, if applicable) and a legal description of the property within the Shopping Center owned by such defaulting Owner. Upon recordation of such Notice of Assessment Lien, the then delinquent amount owing by such Owner, together with interest thereon, shall constitute an Assessment Lien upon the property within the Shopping Center described in the Notice of Assessment Lien. In the event the amount secured by such Assessment Lien is not paid in full within (10) 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 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 shall not prejudice or waive his right to exercise the other remedy or such additional remedies as may be available under applicable law):

(a) Bringing an action at law against the Owner obligated to pay the assessment or other sum of money.

(b) Foreclosing the Assessment Lien against the property of such Owner in accordance with the then prevailing Utah law relating to the foreclosure of realty mortgages (including the right to recover any deficiency).

8.2 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, shall be the obligation of such defaulting Owner, but such obligation of such Owner shall not be deemed to discharge or limit the lien on the land of any Assessment Lien encumbering the

property of such Owner within the Shopping Center, regardless of a subsequent conveyance of that property. No Owner shall escape liability for payment of any amount due hereunder which fell due while he was the Owner by nonuse of the Common Area or by transfer or abandonment of such Owner's property. In the event any property within the Shopping Center as to which a Notice of Assessment Lien has been recorded pursuant to Paragraph 8.1 is sold, conveyed or otherwise transferred, in whole or in part, by the Owner thereof, such property shall remain subject and subordinate to the Assessment Lien created by reason of the delinquency described in the Notice of Assessment Lien.

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

(a) Liens for taxes and other public charges which by applicable law are expressly made superior thereto.

(b) Any mortgages, deeds of trust or security instruments of any kind recorded in the office of the County Recorder, Salt Lake County, Utah, prior to the date of recordation of a Notice of Assessment Lien. All liens recorded subsequent to the recordation of a Notice of Assessment Lien shall be junior and subordinate to the Assessment Lien created by reason of the delinquency described in the recorded Notice of Assessment Lien.

(c) The rights of any and all tenants occupying any portion of the Shopping Center under written leases, regardless of the dates of such leases entered into after the recording hereof or any amendments thereto.

In the event an Owner shall be delinquent in paying any amounts due hereunder and, as a result thereof, a Notice of Assessment Lien shall 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 shall 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.

8.4 Upon the curing of any default for which a Notice of Assessment Lien was recorded, the person recording such Notice of Assessment Lien shall record an appropriate release of any Notice of Assessment Lien upon payment by the defaulting Owner of a reasonable fee, to be determined by the person recording such Notice of Assessment Lien, to cover the costs of preparing and recording such release, together with the payment of such other costs, including, without limitation,

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legal fees and court costs, interest and fees, as such person shall have incurred in connection therewith.

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

9. General Provisions.

9.1 Each easement, restriction and covenant contained herein shall be appurtenant to, shall burden and shall be for the benefit of all portions of the Shopping Center, and shall run with the land. This Declaration and the restrictions, easements, covenants, benefits and obligations created hereby shall inure to the benefit of and be binding upon Declarant and its successors, transferees and assigns; provided, however, that if any Owner sells all of its interest in the Shopping Center, the purchaser thereof shall automatically be deemed to have assumed and agreed to be bound by the covenants and agreements herein contained, and the seller shall thereupon be released and discharged from any and all obligations under this Declaration accruing after the date of sale, except that the seller shall not be released from any obligation evidenced by a Notice of Assessment Lien of record against its interests at the time of such sale.

9.2 The covenants, conditions and restrictions contained in this Declaration shall run with the land and be binding upon each and all of the parties hereto (and upon all persons claiming under them) for a period of fifty (50) years after the date hereof. From and after such time, this Declaration, as amended from time to time, shall automatically be extended for successive periods of ten (10) years each, unless cancelled or terminated pursuant to Paragraph 9.3. Any provision contained herein to the contrary notwithstanding, and notwithstanding the fact that this Declaration may be cancelled or terminated pursuant to Paragraph 9.3, the easements granted pursuant to Paragraph 4.1 shall be perpetual and shall survive any such cancellation or termination.

9.3 (a) This Declaration may be modified in any respect whatsoever with the consent of the Master Parcel Owner and the Parcel 2 Owner (which consents shall not be unreasonably withheld) without the necessity of obtaining the consent of any other Owner; provided, however, that if such modification may directly, materially and adversely affect the use restrictions, parking, visibility or access of any other Owner under this Declaration, then such Owner, in addition to the Master Parcel Owner and the Parcel 2 Owner (which consents shall not be unreasonably withheld) must also consent in order for any modification to be effective; and, provided further, that if this Declaration is rescinded, all Owners of any portion of the Shopping Center 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 County Recorder of Salt Lake County, Utah. In the event an Owner sells its Parcel and becomes a Prime Lessee thereon, said Prime Lessee is hereby appointed the entity to cast the vote or give the consent for said Parcel on behalf of the Owner thereof, and is hereby granted all the rights and remedies granted to the Owner of said Parcel, so long as it is a Prime Lessee of said Parcel anything in this Declaration to the contrary notwithstanding. Notwithstanding the foregoing, an Owner shall continue to be obligated for all charges, obligations and covenants of an Owner set forth herein notwithstanding any lease to a Prime Lessee.

(b) The Master Parcel Owner hereby expressly reserves the right to annex and subject to this Declaration, without the consent of any Owner, all or any portion of Phase II. The annexation of all or any portion of Phase II shall be accomplished by the Declarant recording with the County Recorder of Salt Lake County, Utah, a Declaration of Annexation which shall include (i) a legal description of that portion of Phase II being annexed, (ii) the maximum Building Area permitted thereon, (iii) a Site Plan designating that portion of Phase II which shall be Building Area and that portion of Phase II which shall be Common Area, and (iv) the initial proportionate share of Common Area Maintenance Expenses pertaining to that portion of Phase II being annexed and an adjustment to all other Owners' proportionate shares of Common Area Maintenance Expenses. Upon the recording of the Declaration of Annexation, that portion of Phase II being annexed shall become one or more Parcels and all of the restrictions, easements, covenants, benefits and obligations created hereby with respect to the Shopping Center shall be a burden on and be binding upon, and inure to the benefit of that portion of Phase II being annexed and the owner thereof and its successors, transferees and assigns. Notwithstanding such annexation and completion of construction of drives and access points on Phase II providing access to Parcel 2 and the remainder of the Shopping Center, the Additional Road Easement shall not be merged or terminated and shall stay in full force and effect unless terminated and abandoned by a written instrument duly executed by the Master Parcel Owner and the Parcel 2 Owner, acknowledged and recorded. Furthermore, notwithstanding the easements and other provisions contained herein, without the Parcel 2 Owner's written consent, which consent may be withheld in its sole discretion, no vehicular access points shall be permitted at any point on the boundary line between Parcel 2 and Phase II.

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

9.5 No breach of this Declaration shall entitle any Owner to cancel, rescind or otherwise terminate this Declaration, but such limitation shall 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 If any clause, sentence or other portion of this Declaration shall become illegal, null or void for any reason, or shall be held by any court of competent jurisdiction to be so, the remaining portions hereof shall remain in full force and effect.

9.7 The ownership of the entire Shopping Center by the same party shall not cause the termination of this Declaration.

9.8 Breach of any of the covenants or restrictions contained in this Declaration shall not defeat or render invalid the lien of any mortgage or deed of trust made in good faith and for value as to the Shopping Center, or in any part thereof, but all of the foregoing provisions, restrictions and covenants shall 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 Any Owner, any tenant of any portion of the Shopping Center and 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, prevent such person from so doing and 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, shall be assessed against the losing party and shall constitute a lien against the real property or the interest therein in the Shopping Center belonging to such party as provided in Paragraph 8, which the prevailing party may foreclose in the manner provided in such Paragraph 8. All remedies set forth herein or otherwise available at law or equity shall be cumulative.

9.10 Except as specifically provided in this Declaration, no rights, privileges or immunities set forth herein shall inure to the benefit of any customer, employee, guest, licensee or invitee of any Owner, tenant or occupant of any portion of the Shopping Center, nor shall 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 In the event of condemnation (or sale under threat of condemnation) by any duly constituted authority for a public quasi-public use of all or any part of the Shopping Center, that portion of the award attributable to the value of the land and improvements so taken shall be payable only to the Owner(s) thereof and no claim thereon shall be made by any other Owner of any part of the Shopping Center; provided, however, that the other Owners may file collateral claims with the condemning authority over and above the value of the land and improvements of the area to be taken, if any such collateral claim does not conflict with any mortgage of record against the land and improvements so taken; provided further, however, that the Owner of any portion of the Shopping Center to be condemned shall promptly repair and restore (or cause its lessee to repair or restore) the remaining portion of the area owned by such Owner as nearly as practicable to its condition immediately prior to the condemnation without contribution from any other Owner.

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9.12 The captions heading the various Paragraphs of this Declaration are for convenience and identification only, and shall not be deemed to limit or define the contents of their respective Paragraphs.

9.13 Unless otherwise specified herein, any approval or consent required to be obtained hereunder by an Owner shall be given or withheld within thirty (30) days after delivery of the request therefor. In the event an Owner whose approval or consent is sought fails to respond within the applicable time period and such notice contains a statement that a failure to respond within thirty (30) days shall be deemed an approval, such Owner shall be deemed to have approved of or consented to the matter in question. Unless otherwise expressly set forth herein, no consent or approval required to be given hereunder by any Owner shall unreasonably be withheld.

9.14 Except as otherwise expressly set forth herein, no Owner shall 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 ownership interest in property within the Shopping Center; provided, that any conveyance made by deed of trust, mortgage or other security instrument as security for any obligation or indebtedness shall not be deemed to be a transfer or conveyance within the meaning of the foregoing; and further provided that the Parcel 2 Owner may assign its rights, benefits, duties and obligations hereunder to the Parcel 2 Occupant. Such assignment shall not relieve the Parcel 2 Owner of its obligations hereunder unless the Parcel 2 Owner has received a written release from the Master Parcel Owner, which release may be granted or withheld in the Master Parcel Owner's sole and absolute discretion. In the event, at any time, title to the same portion of property within the Shopping Center shall be vested in more than one person, such persons shall designate one of them to act on behalf of all such persons in the performance of the provisions of this Declaration. Any such designation shall be in writing, duly executed and acknowledged by each such person and a copy of such designation shall be given to all other Owners in accordance with the notice provisions of this Declaration. An original of such designation shall be recorded in the office of the County Recorder of Salt Lake County, Utah. A majority of such persons shall 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.

9.15 Any notice, demand, request or other communication required or permitted to be given by an Owner, occupant or tenant of the Shopping Center to another Owner, occupant or tenant hereunder shall be in writing, signed by the party giving the notice, and shall be given by personal delivery (which shall include delivery by private express carrier) or by delivering the same in person or by depositing the same in the United States mail, registered or certified, return receipt requested, first class postage, postage prepaid. All notices shall be sent to the respective mailing addresses of the parties hereto at the following addresses, until such addresses are changed as hereinafter provided:

Master Parcel Owner: Estes Development Co.
349 South 200 East
Suite 420
Salt Lake City, Utah 84111
Attention: Michael Stevens

With a copy to: Commercial Property Manager
P. O. Box 37886
Phoenix, Arizona 85069

Parcel 2 Owner: 351 South U.S. Route One
Jupiter, Florida 33477

To any other Owner: At such address as such Owner shall designate in writing to Manager, or at such Owner's address in the Shopping Center if such Owner shall fail to designate in writing another address to Manager.

Manager shall make all addresses furnished by any Owner pursuant to this Paragraph 9.15 available to any Owner, occupant or tenant of the Shopping Center who shall so request such addresses. Any Owner hereto may change its mailing address at any time by giving written notice of such change to Manager in the manner provided herein at least ten (10) days prior to the date such change is effective. Personal service will be deemed to be complete upon receipt and service by mail will be deemed complete four (4) days after proper deposit of said notice in the United States mail.

9.16 Each Owner shall deliver to any other Owner or its designee, within fifteen (15) days after written 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 the best of such Owner's knowledge and belief, there are not outstanding Assessment Liens against the requesting Owner's Parcel or stating the amount of any such Assessment Lien(s).

9.17 If any Owner or ground lessee of any portion of the Shopping Center (other than (a) the Master Parcel; (b) the Parcel 2 Owner in connection with a sale (i) to Home Club, Inc., a Delaware corporation; or (ii) to a Parcel 2 Affiliate or (iii) which is the first sale of Parcel 2 (after the conveyance of Parcel 2 by Declarant) and which is consummated within one (1) year from the date of the recording hereof) (for purposes of Paragraphs 9.17 and 9.18 only, such Owner or ground lessee of any such Parcel is referred to as a "Transferor") desires to sell, assign, transfer or otherwise dispose of all or any part of its interest in and to a Parcel pursuant to a bona fide third party offer, the Transferor shall first offer such interest to the Master Parcel Owner by delivering to the Master Parcel Owner an Offering Notice in accordance with this Paragraph. The Offering Notice shall be given in writing addressed to the Master Parcel Owner and shall be deemed to have been given as provided in Paragraph 9.15. The Offering Notice shall contain the name and address of the proposed purchaser, shall contain an exact copy of the offer of

the proposed purchaser and shall contain an offer to sell the interest involved in the Offering Notice to the Master Parcel Owner, in preference to the proposed purchaser, upon the terms and conditions set forth in the Offering Notice. Within thirty (30) days after the giving of the Offering Notice, the Master Parcel Owner, by notice to the Transferor, may elect to purchase all, but not less than all, of the interest set forth in the Offering Notice, whereupon a closing shall take place between the Transferor and the Master Parcel Owner in accordance with the terms of the Offering Notice. If the offer to sell is not accepted by the Master Parcel Owner in accordance with the provisions of this Paragraph, the Transferor shall be permitted to make a bona fide sale, assignment, transfer or other disposition to the proposed purchaser, strictly in accordance with the terms of the Offering Notice. If the Transferor shall fail to close escrow with the proposed purchaser on such sale or other disposition within twenty (20) days after the time period set forth in the Offering Notice for close of escrow, or within one hundred twenty (120) days following the date of the Offering Notice, whichever time is earlier, the Transferor's interest shall again be subject to all the restrictions set forth in this Paragraph.

9.18(a) The Master Parcel Owner shall have the right, in its sole and absolute discretion, to purchase the interest of any Transferor in and to any Parcel, in the event that no business activity has been conducted upon such Parcel for a period of one hundred eighty (180) consecutive days (and in the case of Parcel 2, four hundred fifty-five (455) days), or for any one hundred eighty (180) days (and in the case of Parcel 2, four hundred fifty-five (455) days) within any five hundred forty (540) consecutive day period. For purposes of this Paragraph 9.18, no business activity shall have been deemed to have been conducted upon such Parcel if, for the applicable time period, the buildings and other improvements constructed upon the Parcel have not been open to the public as permitted in accordance with this Declaration. A Transferor shall provide written notice to the Master Parcel Owner, in the event no business activity has been conducted upon such Transferor's Parcel for any consecutive seven (7) day period, and shall thereafter provide written notice to the Master Parcel Owner upon the recommencement of business activity upon such Parcel.

(b) In the event that the Master Parcel Owner elects to exercise its right under Paragraph 9.18(a), the Master Parcel Owner shall give the Transferor written notice of such election at any time after the required time period set forth in such Paragraph 9.18(a). The amount of the purchase price of Transferor's interest in the Parcel shall be determined as follows:

(1) Within ten (10) days after the Master Parcel Owner has elected its right under Paragraph 9.18(a), the Master Parcel Owner and the Transferor shall, in good faith, endeavor to agree on the fair market value of the Transferor's interest in the Parcel as of such date. If they are unable to so agree within a period of ten (10) days after the Master Parcel Owner's exercise of its rights under Paragraph 9.18(a), each party shall, within seven (7) days after the expiration of such ten (10) day period, select and design-

nate to the other party in writing an appraiser who shall be a member of the American Institute of Real Estate Appraisers (or its successor organization, or such other appraising organization which is designated by the Master Parcel Owner), and the two (2) appraisers so selected shall determine the fair market value of the Transferor's interest in the Parcel, based upon the use of such Parcel as a portion of the Shopping Center, as such use is limited and governed by the provisions of this Declaration. If the Master Parcel Owner or the Transferor shall fail to select an appraiser within such seven (7) day period, then the appraiser that has been selected shall alone determine the fair market value of the Transferor's interest in the Parcel. Any appraiser shall: (A) be independent of the Master Parcel Owner and the Transferor; (B) be qualified to appraise property similar to the Parcel; and (C) have been a member for at least seven (7) years of the Utah Chapter of the American Institute of Real Estate Appraisers. If the appraisers cannot agree on such value within twenty (20) days, they shall appoint a third independent appraiser within ten (10) days after the expiration of such twenty (20) day period and the three (3) appraisers shall independently appraise and determine the fair market value of the Transferor's interest in the Parcel. If the two (2) appraisers cannot agree on the selection of a third appraiser, they shall seek appointment of a third appraiser by any court of applicable jurisdiction. The cost of such appraisals shall be shared equally by the parties.

(ii) The fair market value of the Transferor's interest in the Parcel shall be the mathematical average of the two (2) closest appraisals; however, in the event that the dollar variance between the lowest appraisal and the highest appraisal and the middle appraisal, the fair market value of the Transferor's interest in the Parcel shall be determined by the mathematical average of all three appraisals.

(c) The purchase price (the "Purchase Price") for the Transferor's interest in the Parcel shall be equal to eighty percent (80%) (except the Purchase Price for Parcel 2 shall be one hundred percent (100%)) of the appraised fair market value as determined above; (i) Less the Transferor's obligations owing under any other indebtedness secured by an encumbrance on the Transferor's interest in the Parcel which by its terms may be assumed without penalty or charge; (ii) Less all expenses of sale chargeable to the Transferor, as provided for hereinbelow; and (iii) Shall be adjusted to reflect any credit owed to or obligation owed by the Transferor for payments, costs, expenses or other sums required by this Declaration. The Transferor shall be responsible for all assumption, transfer and prepayment penalties charged by a lender, except that the Parcel 2 Owner shall not be responsible for assumption or transfer fees.

(d) In order to consummate the sale of the Transferor's interest in the Parcel, the Master Parcel Owner and the Transferor shall establish an escrow with Associated Title Company, a Utah corporation, or such other title company in Salt Lake County, Utah, as shall be acceptable to the Master Parcel Owner (the "Escrow Agent"). Close of escrow shall be within thirty (30) days after the final determination of the appraised fair market value of the Transferor's interest in the Parcel. The parties shall execute and deliver to the

Escrow Agent escrow instructions in a form customarily used by the Escrow Agent, together with such addenda or amendments thereto as are necessary to implement and carry out the agreement of the parties. The agreement shall provide for payment in cash at close of escrow of the Purchase Price (as adjusted for any obligations assumed and as otherwise required) by the Master Parcel Owner to the Transferor, and the assumption by the Master Parcel Owner of any other outstanding monetary obligations secured by an encumbrance on the Parcel which, by their terms, may be assumed by the Master Parcel Owner. Real estate taxes, assessments and accrued and unpaid interest on any outstanding monetary obligations shall be prorated to and as of the close of escrow. The Transferor shall, at its own cost and expense, provide the Master Parcel Owner with an owner's extended coverage title insurance policy, in an amount equal to the Purchase Price, insuring the Master Parcel Owner that it has acquired good and marketable title to the interest so acquired, subject only to any indebtedness incurred by or consented to by the Master Parcel Owner secured by a mortgage or deed of reservations or restrictions to which the Master Parcel Owner has approved or consented. Prior to or upon closing, the Transferor shall execute and deliver to Escrow Agent a special warranty deed conveying its interest in the Parcel to the Master Parcel Owner, subject only to those matters referred to above. The parties shall also execute and deliver such other instruments as are necessary and reasonable to carry out and consummate the sale, as contemplated hereby.

9.19 The term "person" as used herein shall mean any natural person, partnership, trust, corporation or other entity.

10. Environmental Matters.

10.1 All activities engaged in by Permittees of the Shopping Center shall be undertaken in compliance with all applicable federal, state, and local environmental statutes, regulations and ordinances.

10.2 No Owner or Permittee of the Shopping Center shall use or permit any other person to use any portion of the Shopping Center for the storage, use, treatment or disposal of any hazardous substances (as defined in 42 U.S.C. § 9601(14)) or petroleum products, except for those:

(a) Used in the construction, repair or maintenance of the Shopping Center;

(b) Used in normal commercial and retail applications; or

(c) Sold as retail consumer products.

10.3 No Owner or Permittee shall introduce, or permit any other person to introduce any friable asbestos, urea formaldehyde foam insulation or devices containing polychlorinated biphenyls (PCBs) in concentrations in excess of fifty parts per million (50 PPM) into the Shopping Center.

10.4 In addition to the foregoing covenants, the following covenants are specifically applicable to Parcel

3:

(a) Only underground storage tanks for petroleum products which are designed, manufactured, installed, maintained and monitored in full compliance with the requirements of 42 U.S.C. § 9003 shall be permitted on such Parcel.

(b) Until final regulations under 42 U.S.C. § 9003 are adopted, the Parcel 3 Owner and its Permittees of Parcel 3 shall comply with the requirements set forth in rules proposed by the United States Environmental Protection Agency at 52 Federal Register 12770-12796 on April 17, 1987.

(c) The Parcel 3 Owner and its Permittees of Parcel 3 shall comply with any final form of the rules identified in subparagraph (b) above (and any amendments thereto), and rules which may be adopted in the future by any Utah authority with jurisdiction.

(d) In addition to the reporting requirements of the proposed 40 C.F.R. Part 280.50, the Parcel 3 Owner and its Permittees of Parcel 3 shall report any suspected release or spill from any underground storage tank to the Master Parcel Owner and the Parcel 2 Owner within four (4) business hours following discovery.

(e) The Parcel 3 Owner shall be solely liable for any costs, expenses, liabilities or penalties which may arise out of the operation of the underground storage tanks, including costs of corrective action and liabilities to third parties. The Parcel 3 Owner shall indemnify, defend, protect and hold harmless the other Owners of the Shopping Center for, from and against any loss, liability, damage, costs, and expenses (including reasonable attorneys' fees) incurred or sustained by such other Parcel Owners as a result of the operation of the underground storage tanks on the Service Station Parcel. The foregoing obligations shall be secured by the Assessment Lien. At such time as final rules are adopted under Subpart I of 40 C.F.R. Part 280 (regarding financial responsibility), the Parcel 3 Owner shall fully comply with the requirements thereof in a timely manner.

10.5 If any Owner or Permittee shall breach the covenants contained in this Section 10, then as between the Owners the Owner of such Parcel shall be solely responsible for and shall pay all costs incurred in connection with the removal of any such equipment and/or substances. The foregoing obligation shall be secured by the Assessment Lien.

IN WITNESS WHEREOF, the parties hereto have executed
this Declaration the day and year first above written.

ESTES DEVELOPMENT CO., an Arizona
limited partnership,

By: The Estes Co., a Delaware
corporation, its sole General
Partner

By: *Paul Kahl*

Its: *Vice President*

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STATE OF UTAH)
) ss.
County of Salt Lake)

The foregoing instrument was acknowledged before me
this 13th day of December, 1988, by Rich. Kulle,
as Vice President, of The Estes Co., a Delaware
corporation, as sole General Partner of Estes Development Co., an
Arizona limited partnership, on behalf of the partnership.

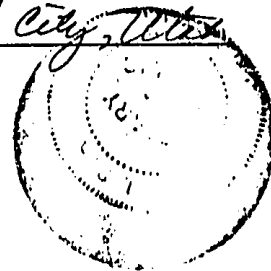
Carma J. Stringer
Notary Public

My Commission Expires:

11/25/91

Residing at:

Salt Lake City, Utah



FORM 60389 REV. 2/90

**LIST OF EXHIBITS TO
DECLARATION AND ESTABLISHMENT OF
PROTECTIVE COVENANTS, CONDITIONS AND RESTRICTIONS
AND GRANT OF EASLMENTS**

- "A" - Legal Description of Phase Ia and Phase Ib
- "B" - Legal Description of Additional Road Easement
- "B-1" - Legal Description of Setback Easement
- "C" - Legal Description of Phase Ia
- "D" - Legal Description of Phase Ib
- "E" - Site Plan
- "F" - Legal Description of Phase II
- "G" - Form of Consent and Subordination

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EXHIBIT "A"

PHASE 1a AND 1b

A parcel of land located in the Northeast quarter of Section 15, Township 2 South, Range 1 West, Salt Lake Meridian, being further described as follows:

BEGINNING at a point on the South right-of-way line of 5400 South Street, said point being South 79.851 feet and East 78.068 feet from the North Quarter Corner of said Section 15, said point also lying 100 feet South of the center line of 5400 South; thence along said right-of-way line North 89°53'30" East 272.000 feet to the beginning of a 11359.000 foot radius curve to the right (bearing to radius point being South 00°06'30" East); thence along the arc of said curve 507.997 feet through a central angle of 02°33'45"; thence South 1244.921 feet to the North right-of-way line of 5600 South Street; thence along said North right-of-way line South 89°53'13" West 413.473 feet; thence continuing along said right-of-way line North 87°49'22" West 175.140 feet and South 89°53'13" East 184.941 feet to the beginning of a 30.000 foot radius curve to the right (bearing to radius point being North 00°06'47" West); thence along the arc of said curve 47.150 feet through a central angle of 90°03'00" to a point on the Easterly right-of-way line of Redwood Road; thence along said Easterly right-of-way line North 00°03'47" West 1194.339 feet to the beginning of 25.000 foot radius curve to the right, (bearing to radius point being North 89°56'13" East); thence along the arc of said curve 39.250 feet through a central angle of 89°57'17" to the point of beginning. Containing 23.091 acres more or less. Basis of bearings being the North line of the Northeast quarter of said Section 15, which has a bearing of North 89°53'30" East.

LEGAL/ESTEES_CERT

09/30/00

BOOK 1089 PAGE 2905

EXHIBIT "B"

Additional Road Easement

BEGINNING at a point that is South 311.734 feet and East 857.916 feet from the North Quarter Corner of Section 15, Township 2 South, Range 1 West, Salt Lake Base and Meridian; thence East 436.188 feet to the West right-of-way line of 1500 West Street; thence along said 1500 West Street South $01^{\circ}38'12''$ East 40.016 feet; thence leaving said West right-of-way line West 437.331 feet; thence North 40.000 feet to the point of beginning. Contains 17,470.4 square feet or 0.401 acres. Basis of bearing is from the North Quarter Corner to the Center of Section 15, which is South $00^{\circ}03'47''$ East.

LEGAL/CROSSTOWNE

REV (089) REV 2906

EXHIBIT "B-1"

15 FOOT EASEMENT

BEGINNING at a point that is East 857.916 feet and South 700.502 feet from the North Quarter Corner of Section 15, Township 2 South, Range 1 West Salt Lake Base and Meridian; thence East 15.000 feet; thence South 624.123 feet to the North right-of-way line of 5600 South Street; thence South 89°53'12" West 15.00 feet; thence North 634.153 feet to the point of beginning. Contains 9,512 square feet or 0.218 acres.

LEGAL/ESTES
11/08/88

FOR COPY
CA. RECORDED

EX 6089 REC 2907

EXHIBIT "C"

PHASE 1a

BEGINNING at a point that is South 00°03'47" East 619.373 feet and North 89°56'13" East 53.00 feet to the East right-of-way line of Redwood Road from the North Quarter Corner of Section 15, Township 2 South, Range 1 West, Salt Lake Base and Meridian; thence East 585.627 feet; thence South 61.187 feet; thence East 218.585 feet; thence South 634.153 feet to the North line of 5600 South Street; thence along said right-of-way South 89°53'13" West 413.473 feet; thence North 87°49'22" West 175.140 feet; thence South 89°53'13" West 184.941 feet to a point of a 30.00 foot radius curve to the right (bearing to the center of curve bears North 00°06'47" West); thence along the arc of said curve 47.150 feet to the East right-of-way line of Redwood Road; thence North 00°03'47" West 659.903 feet to the point of beginning. Contains 543,888.3 square feet equal to 12.486 acres. Basis of bearing is from the North Quarter Corner to the Center of Section 15, which is South 00°03'47" East.

1997 6089 REG 2908

EXHIBIT "D"

PHASE 1b

BEGINNING at a point that is South 79.851 feet and East 78.068 feet to the South right-of-way line of 5400 South Street from the North Quarter Corner of Section 15, Township 2 South, Range 1 West, Salt Lake Base and Meridian; thence North 89°53'30" East 272.00 feet to a point on a 11,359.00 foot radius curve to the right (bearing to the center of curve bears South 00°06'30" East); thence southeasterly 507.997 feet along the arc of said curve; thence South 610.768 feet; thence West 218.585 feet; thence North 61.187 feet; thence West 585.627 feet to the East line of Redwood Road; thence North 00°03'47" West 534.436 feet to a point 25.00 foot radius curve to the right (bearing to the center of curve bears North 89°56'13" East); thence northeasterly 39.250 feet to the point of beginning. Contains 461,992.5 square feet equal to 10.606 acres. Basis of bearing is from the North Quarter Corner to the Center of Section 15, which is South 00°03'47" East.

LEGAL/CROSSTOWNE

REV 10/29/2019

CROSSPOINTE CONDOMINIUMS

2024 6089 2310

SOUTH 202.46' S.01°38'12"E. 175.071'

S.01°38'12"E. 40.016'

EAST 436.188'

(EASEMENT) ACCESS ROAD

WEST 437.331'

ACCESS OPENING

EXISTING - UNIMPROVED

PHASE II

PARCEL NO. 12

$\Delta=00^{\circ}21'17''$
 $R=23,018.30'$
 $L=142.526'$
 $C=142.526'$

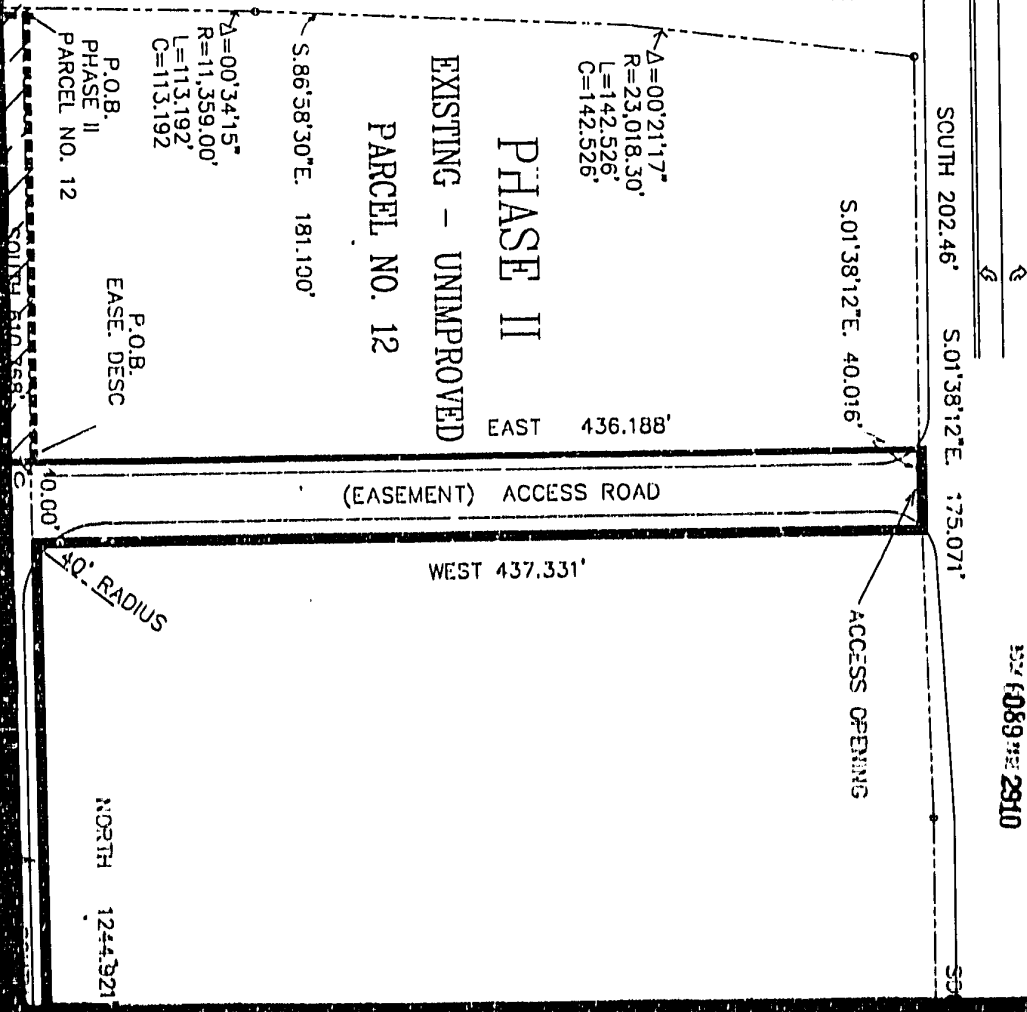
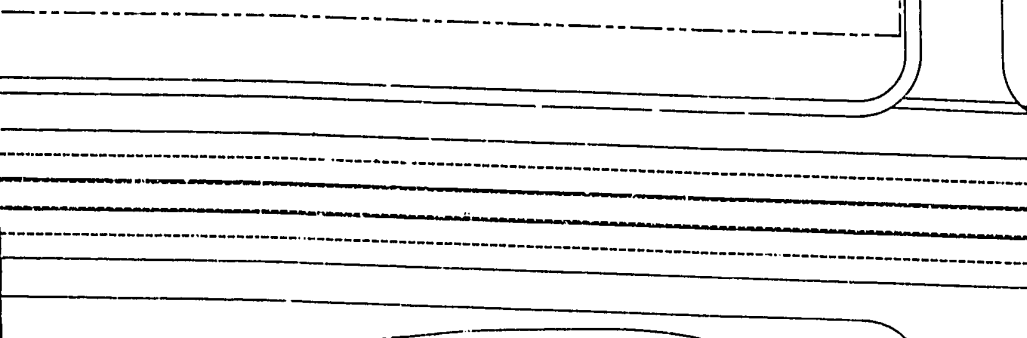
S.86°38'30"E. 181.100'

$\Delta=00^{\circ}34'15''$
 $R=11,359.00'$
 $L=113.192'$
 $C=113.192'$

P.O.B.
PHASE II
PARCEL NO. 12

P.O.B.
EASE. DESC

SCHOOL



10.00'

40' RADIUS

NORTH 1244.321'

CROSSPOINTE SUBDIVISION (SINGL

1500 West

BOOK 1089 PAGE 2811

RT 819-590'

$\Delta = 89^{\circ}53'12''$
 $R = 25.00'$
 $L = 39.22'$
 $C = 35.32'$

PHASE II
EXISTING - UNIMPROVED
PARCEL NO. 12

5.89'53"12"W. 416.311'

829.704'

15' EASEMENT

EAST 15.00'

PROTECTED AREA

SOUTH

634.153'

SOUTH 634.123'

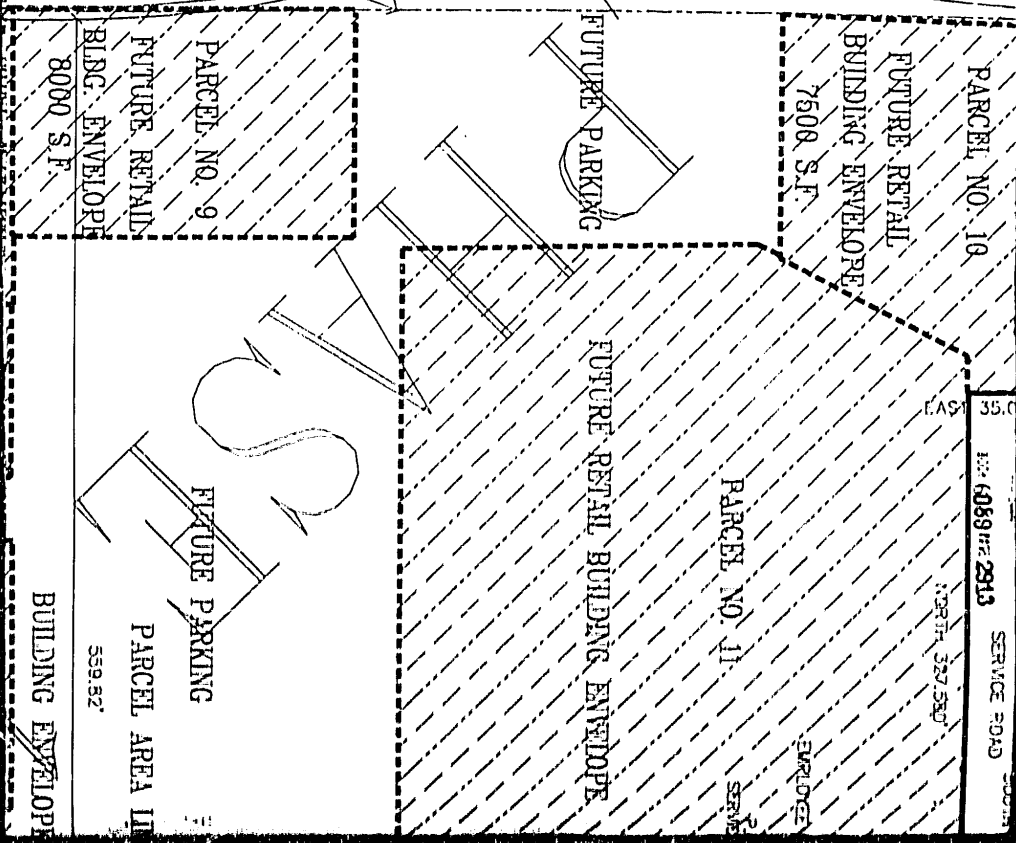
S 0° 00' 00" E
15.00'

TAYLORSVILLE HIGH S

5400 South Street

A=0108.001
R=11,359.00
L=621.189'
C=821.12'

A=02133.45
R=11,359.00
L=507.997'
C=507.955'



PARCEL NO. 10

FUTURE RETAIL BUILDING ENVELOPE

7500 S.F.

FUTURE PARKING

PARCEL NO. 9

FUTURE RETAIL BUILDING ENVELOPE

8000 S.F.

355
100' 089#2 2913

SERVICE ROAD

NORTH 327.500

PARCEL NO. 11

FUTURE RETAIL BUILDING ENVELOPE

FUTURE PARKING

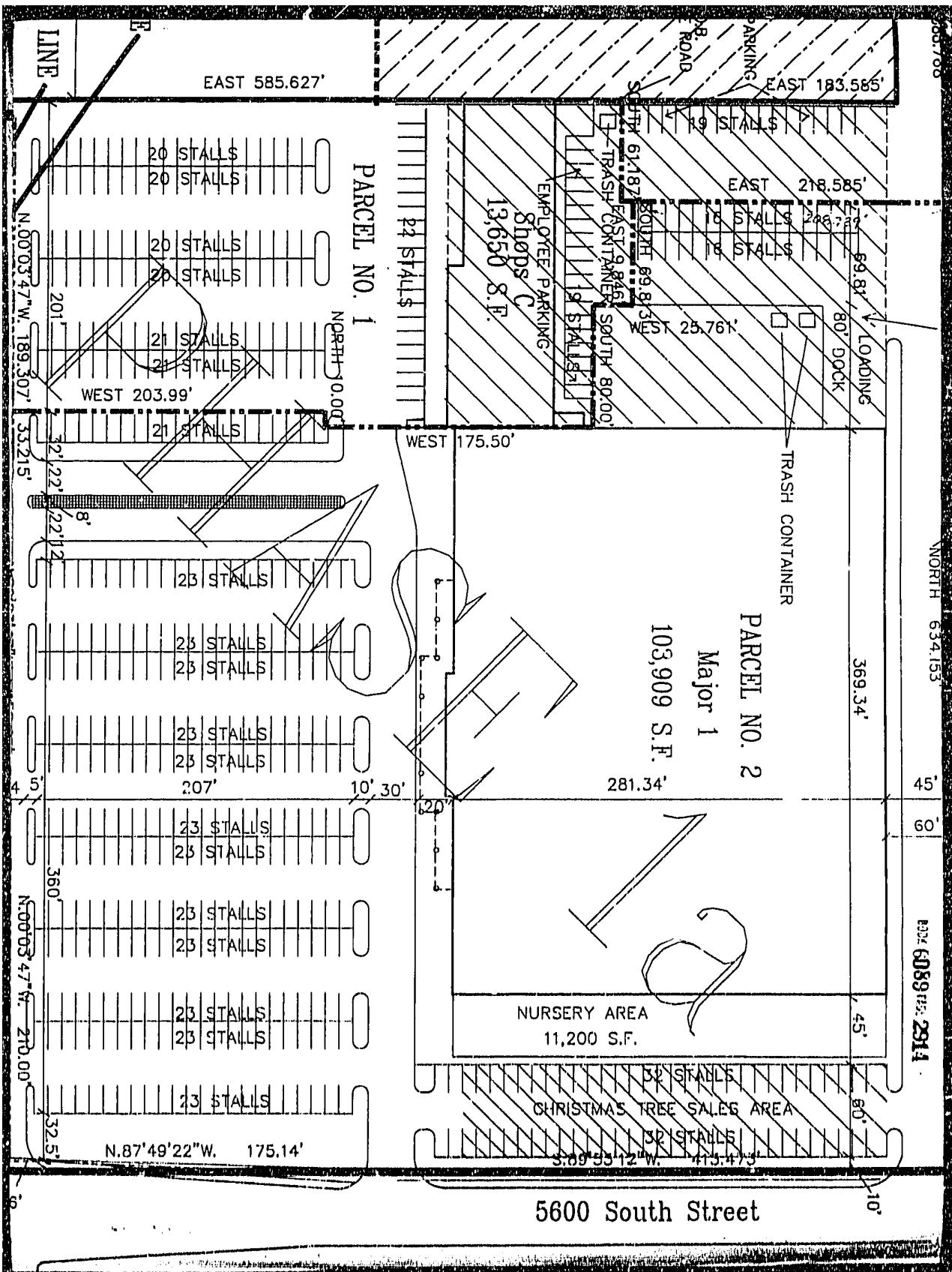
PARCEL AREA III

559.82'

BUILDING ENVELOPE

ENVELOPE

SERVICE



LINE

EAST 585.627'

EAST 183.585'

20 STALLS
20 STALLS

20 STALLS
20 STALLS

21 STALLS
21 STALLS

WEST 203.99'

21 STALLS

23 STALLS

23 STALLS
23 STALLS

23 STALLS
23 STALLS

23 STALLS
23 STALLS

23 STALLS
23 STALLS

23 STALLS
23 STALLS

23 STALLS

N.87°49'22"W. 175.14'

PARCEL NO. 1

NORTH 10.00'

Shops C
13,650 S.F.

EMPLOYEE PARKING

WEST 175.50'

19 STALLS

EAST 218.585'

WEST 25.761'

80' DOCK

LOADING

TRASH CONTAINER

PARCEL NO. 2
Major 1
103,909 S.F.

281.34'

NURSERY AREA
11,200 S.F.

CHRISTMAS TREE SALES AREA

S.09°35'12"W. 415.47'

5600 South Street

NORTH 634.153

6089 RES. 2914

369.34'

45'

60'

10'

N.00°03'47"W. 189.307'

33.215'

32' 22"

8'

22' 12"

4 5'

10' 30'

207'

360'

N.00°03'47"W. 210.00'

32.5'

6'

688.700

PARKING

ROAD

SOUTH 61.187'

EAST 9.866'

SOUTH 69.833'

EAST 80.000'

TRASH CONTAINER

TRASH CONTAINER

TRASH CONTAINER

TRASH CONTAINER

TRASH CONTAINER

TRASH CONTAINER

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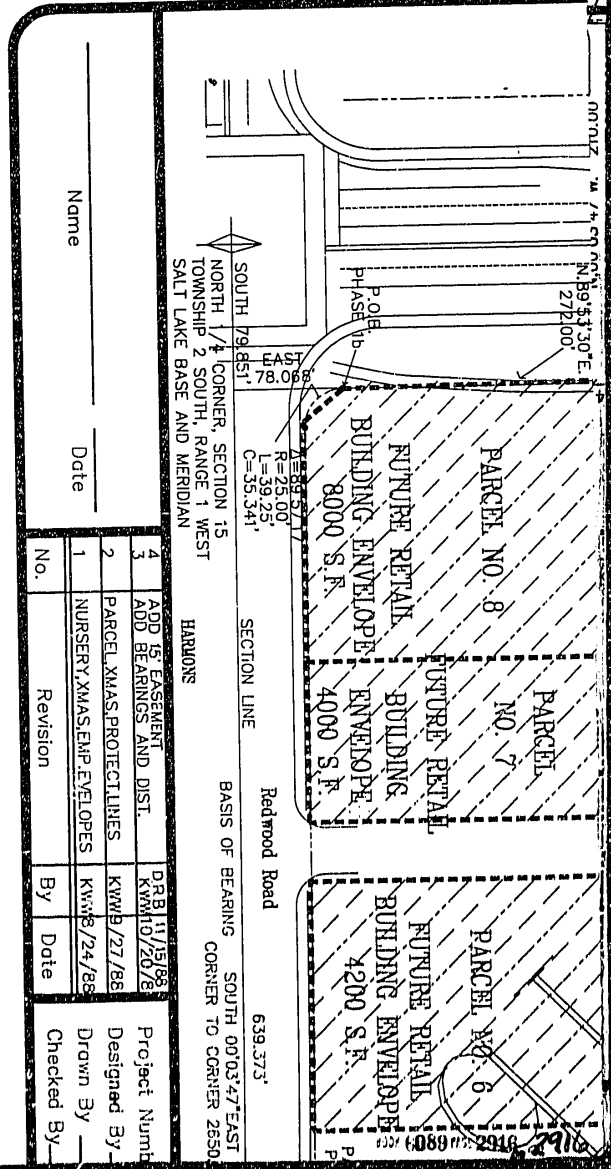
TRASH CONTAINER

TRASH CONTAINER

TRASH CONTAINER

TRASH CONTAINER

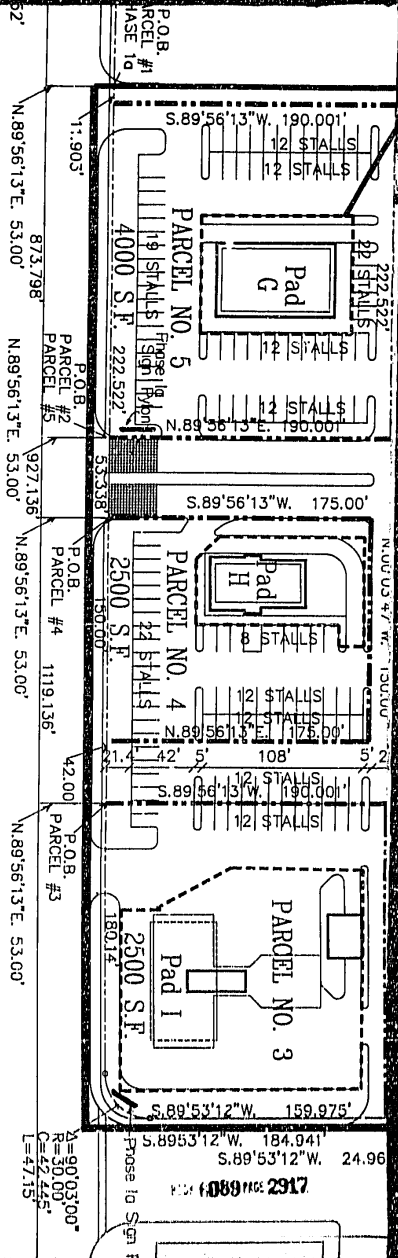
TRASH CONTAINER



Name _____ Date _____

No.	Revision	By	Date
4	ADD 15' EASEMENT ADD BEARINGS AND DIST.	DRB/11/15/88	
3		KWMB/10/20/78	
2	PARCEL XMAS PROTECT LINES	KWMB/27/86	
1	NURSERY XMAS EMP ENVELOPES	KWMB/24/88	

Project Numbr _____
 Designed By _____
 Drawn By _____
 Checked By _____



ST. EE140788
 ROE
 AC
 ROE Date 8-2-88

EWP
ECKHOFF WATSON AND PREATOR ENGINEERING
 ENGINEERS PLANNERS SURVEYORS
 SALT LAKE CITY

MD VALLEY PLANNING CENTER

NO. 6089 PAGE 2917

A=90°03'00"
 R=30.00'
 C=42.425'
 L=47.15'

6089#2918

CROSSTOWNE

CENTRE

5400 SOUTH REDWOOD ROAD



1" = 60'

Pylon

CENTER OF SECTION 15
T.2 S., R.1 W.
S.L.B. AND M.

126,650	TOTAL BUILDING SQUARE FOOTAGE
12.48	ACRES
23.37	BUILDING COVERAGE
742	TOTAL PARKING STALLS
633	PARKING STALLS REQUIRED (5/1000 S.F.)

DEVELOPER ESTES DEVELOPMENT CO.
349 SOUTH 290 EAST, SUITE 420
SALT LAKE CITY, UTAH (TEL: 521-2121)

DATE: OCTOBER 4, 1988

CROSSTOWNE CENTER

SITE PLAN

Sheet Number
C-1A
of

EXHIBIT "F"

PHASE II

Parcel No. 12

Legal Description for a Parcel of land
located in the Southeast corner of
5400 South and Redwood Road

A parcel of land located in the Northeast Quarter of
Section 15, Township 2 South, Range 1 West, Salt Lake
Meridian, being further described as follows:

BEGINNING at a point on the South right-of-way line of 5400
South Street, said point of beginning being 100.000 feet
South of the Center Line of said 5400 South Street, said
point also being South 89.734 feet and East 857.916 feet,
said point also lying on a 11359.000 foot radius curve to
the right, bearing to radius point being South 02°27'15"
West; thence along the arc of said curve 113.192 feet
through a central angle of 00°34'15"; thence South
86°58'30" East 181.100 feet to the beginning of a 23018.300
foot radius curve to the right, bearing to radius point
being South 01°01'30" West; thence along the arc of said
curve 142.526 feet through a central angle of 00°21'17" to
the West right-of-way line of 1500 West Street; thence
South 202.460 feet; thence South 01°38'12" East 175.071
feet; thence South 819.590 feet to the beginning of a
25.000 radius curve to the right, bearing to radius point
being due West; thence along the arc of said curve 39.220
feet through a central angle of 89°53'12" to a point on the
Northerly right-of-way line of 5600 South Street; thence
along said Northerly right-of-way line South 89°53'13" West
416.311 feet; thence North 1244.921 feet more or less to
the point of beginning. Containing 12.458 acres, more or
less. Basis of bearing being the North line of the
Northeast quarter of said Section 15, which has a bearing
of North 89°53'30" East.

100-60891-2519

EXHIBIT "G"

CONSENT AND SUBORDINATION

The undersigned is the Owner of Parcel _____ of the Shopping Center. The undersigned hereby approves of and consents to the foregoing Declaration and Establishment of Protective Covenants, Conditions and Restrictions and Grant of Easements (the "Declaration") and each and every provision thereof and hereby specifically subordinates all of the undersigned's right, title and interest in and to Parcel _____ to the provisions of the Declaration, all of which shall be fully applicable to such Parcel. Without limiting the generality of the foregoing, the undersigned hereby establishes and grants to all Owners and all occupants of the Shopping Center, their guests, employees, invitees, licensees, patrons and customers, irrevocable, nonexclusive easements over, across, upon and beneath the Common Area owned by the undersigned for the purposes set forth in Paragraph 4.2 of the Declaration.

[Add proper acknowledgment(s)]

REV 6/89 REV 2820