



**FIFTH AMENDMENT TO AND RESTATEMENT OF THE
DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF
FORT PIERCE INDUSTRIAL PARK PHASES II, III & IV**

THIS AMENDMENT TO AND RESTATEMENT OF THE DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS OF FORT PIERCE INDUSTRIAL PARK PHASES II, III & IV is made as of the 14TH day of MAY, 2015, by Declarant, State of Utah, acting through the School and Institutional Trust Lands Administration, with regard to all that real property located in Washington County, Utah, described in Exhibit A, attached hereto and made a part hereof. This Amendment is made pursuant to Section 75 of the Fourth Amendment to and Restatement of the Declaration of Covenants, Conditions and Restrictions of Fort Pierce Industrial Park Phases II, III & IV, recorded on May 2, 2006, as DOC # 20060017587, and amends and restates, in their entirety, the following documents of record in Washington County:

(a) THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF Fort Pierce Industrial Park Phases II, III & IV, recorded May 11, 1999, as Entry No. 646930, in Book 1333, at Pages 1234-1244;

(b) THE DECLARATION OF ANNEXATION OF ADDITIONAL PROPERTY FOR FORT PIERCE INDUSTRIAL PARK PHASES II, III & IV, recorded December 28, 1999, as Entry No. 671704, in Book 1355, at Pages 2295-2296;

(c) THE AMENDMENT TO DECLARATION OF COVENANTS CONDITIONS AND RESTRICTIONS OF FORT PIERCE INDUSTRIAL PARK PHASES II, III & IV, recorded on April 5, 2002, as Entry No. 760033, in Book 1459, at Pages 2588-2593;

(d) The SECOND AMENDMENT TO DECLARATION OF COVENANTS CONDITIONS AND RESTRICTIONS OF FORT PIERCE INDUSTRIAL PARK PHASES II, III & IV, recorded on June 3, 2002, as Entry No. 767360, in Book 1468, at Pages 1358-1370;

(e) The THIRD AMENDMENT TO AND RESTATEMENT OF THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF FORT PIERCE INDUSTRIAL PARK PHASES II, III & IV, recorded on June 10, 2005, as Entry No. 950528, in Book 1753, at Pages 1497-1518;

(f) The FOURTH AMENDMENT TO AND RESTATEMENT OF THE DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS OF FORT PIERCE INDUSTRIAL PARK PHASES II, III & IV, recorded on May 2, 2006, as DOC # 20060017587; and

(g) The DECLARATION OF ANNEXATION FOR FORT PIERCE INDUSTRIAL PARK PHASES II, III & IV, recorded June 15, 2010, as DOC ID 20100019528;

which affect that property described in Exhibit A attached hereto (the "Property").

To establish a general plan for the improvement and development of the Property; to insure adherence thereto so as to avoid improper development and use of the Property; and to provide adequately for consistent quality of improvement and use, Declarant desires to subject the Property (for the benefit of all Lots within the Property), to these covenants, conditions and restrictions. Declarant intends for the Property to be held, improved and conveyed subject to these covenants, conditions and restrictions.

NOW, THEREFORE, Declarant hereby declares that the Property is now held, and shall be transferred, sold, leased, conveyed and occupied subject to the covenants, conditions, and restrictions herein set forth, each and all of which is and are for and shall inure to the benefit of and pass with each and every Lot of the Property and apply to and bind the heirs, assigns and successors in interest of each and every Owner of a Lot(s) of the Property.

ARTICLE 1
DEFINITIONS AND CONCEPTS

The following definitions and concepts shall control in this Declaration:

1.1. **"Additional Property"** means and refers to any real property which is subsequently annexed to the Property as described in Section 9.2

1.2. **"Articles"** means the Articles of Incorporation of Fort Pierce Industrial Park Phases II, III & IV Owners Association.

1.3. **"Association"** Association means the Fort Pierce Industrial Park Phases II, III & IV Owners Association.

1.4. **"Bylaws"** means and refers to the Bylaws of the Fort Pierce Industrial Park Phases II, III & IV Owners Association.

1.5. **"Common Property"** means all real property (including the improvements thereto and facilities thereon) owned or hereafter acquired by the Association for the common use and enjoyment of the Owners and includes that portion of Property owned by the Association shown on a Plat as Common Property. Common Property is dedicated to the common use and enjoyment of the Owners, and is not dedicated for the use of the general public, except as specifically determined by the Directors. Specifically exempted from Common Property are Lots and dedicated public streets, if any, that are identified a Plat. Common Property shall also include all land in which the Association has an easement right.

1.6. **"Common Expense"** means the actual and estimated expenses incurred, or anticipated to be incurred, by the Association for the general benefit of the Owners, including any reasonable reserve, as the Board may find necessary and appropriate pursuant to the Governing Documents. Common Expenses shall not include any expenses incurred by the Declarant during the Development Phase for initial development or other original construction costs, unless approved by a majority vote of the Members.

1.7. **"Declarant"** means the State of Utah, acting through the School and Institutional Trust Lands Administration, its heirs, successors, and assigns. All powers and authority reserved by, or given to, Declarant under this Declaration may be exercised on behalf of Declarant by Fort Pierce Business Park, L.C., which shall be agent for Declarant in the exercise of these powers and authority.

1.8. **"Declaration"** means this instrument and any amendments, restatements, supplements, or annexations thereto, which are recorded in the office of the Washington County Recorder.

1.9. **"Development Phase"** shall be the time from the date of this Declaration until such time as Declarant transfers legal title to more than ninety percent (90%) of the total acreage to bona fide purchasers.

1.10. **"Directors", "Board of Directors", or "Board"** means the governing body of the Association.

1.11. **"Governing Documents"** means, collectively, this Declaration, the Articles, the Bylaws, and any amendments or supplements to the foregoing documents, and includes any rules and regulations established pursuant to the Declaration, Articles, or Bylaws, and any resolutions adopted by the Board, as the same may be amended from time to time.

1.12. **"Lot"** means a separately numbered and individually described plot of land shown on a Plat designated as a Lot for private ownership, but specifically excludes the Common Property. Until such time as a subdivision plat is recorded, the term "Lot" shall mean and refer to any parcel of property within the Property owned by someone other than Declarant.

1.13. **"Lot No. 20"** means that Lot described on Exhibit B, attached hereto and made a part hereof.

1.14. **"Lot Owner"** means and is synonymous with the term "Owner".

1.15. **"Member"** means and is synonymous with the terms "Owner" and "Lot Owner" and is used herein and in the Bylaws and Articles as a means to identify the Lot Owners as members of the Association.

1.16. **"Mortgage"** includes "deed of trust" and "mortgagee" includes "trust deed beneficiary."

1.17. **"Owner"** means the entity, person, or group of persons or entities owning fee simple title to any Lot or parcel of real property in the Property. The term "Owner" includes contract purchasers but does not include persons who hold an interest merely as security for the performance of an obligation unless and until title is acquired by foreclosure or similar proceedings.

1.18. **"Plat"** means a subdivision plat, survey, or plan that describes the Property and

has been recorded with the Washington County Recorder or any replacements thereof, or alterations, amendments, or additions thereto. Declarant may prepare and record one or more plats designating ownership of the various Lots of the Property. Upon request, each Owner shall give written consent to the preparation and recording of said plat(s).

1.19. **"Property"** means that certain real property described on Exhibit A hereto, and such annexations and additions thereto as may hereafter be subjected to this Declaration.

1.20. **"Rules" or "Regulations"** means and refers to any rules or regulations created by the Board, pursuant to its authority under the Governing Documents, to govern the Association.

ARTICLE 2 DECLARATION

2.1. **Declaration.** Declarant hereby declares that the Property is now held, and shall be transferred, sold, leased, conveyed and occupied subject to the covenants, conditions and restrictions herein set forth, each and all of which shall run with the land and remain in full force and effect and apply to and bind the heirs, grantees, assigns and successors in interest of each and every Owner of a Lot of the Property. Each Owner of any Lot or parcel in the Property covenants and agrees to use the Property only in accordance with the provisions hereof and to refrain from using the Property in any way inconsistent with, or prohibited by, the provisions of this Declaration. It is the intent and purpose of this Declaration to create mutual and equitable servitudes upon the Property in favor of all other Lots located therein, creating reciprocal rights and obligations between the respective Owners of Lots of the Property, and creating a privity of contract and estate between the Owners of said Lots.

2.2. **Purpose and Intent.** It is the intent of this Declaration to allow general industrial manufacturing, warehousing and marketing activities to be carried out within a building or buildings on the Property. Such activities shall not contribute excessive noise, dust, smoke or vibration to the surrounding environment and shall not contain a high hazard potential due to the nature of the products, materials or processes involved. It is the further intent and purpose of this Declaration to control the user-occupant density on the Property, to expressly prohibit certain uses of the Property, and to protect the character of the Property.

2.3. Lots.

(a) Structures may be constructed as permitted herein, subject to approval of the Board or the Architectural Control Committee as set forth herein, and in accordance with and subject to the ordinances and building regulations of the City of St. George, including the Hillside Ordinance, and other applicable rules and regulations.

(b) Except as otherwise provided herein, each Owner shall be responsible for maintenance and upkeep of the Owner's Lot and shall keep the same free from rubbish, litter and noxious weeds. All structures, landscaping and improvements located on the Owner's Lot shall be maintained in good condition and repair at all times. The Owner's maintenance and upkeep obligation under this Declaration shall include the area of public right-of-way land between the Lot line and any street curb. In the event any Owner fails to perform this maintenance, the

Association shall, in addition to having the right to exercise all other rights and remedies contained herein, have the right to have maintenance performed on the Lot and the adjacent public right-of-way land and the cost of said maintenance shall be added to and become part of the assessment to which such Lot is subject.

(c) Without limiting any other provision of this Declaration, each Owner shall maintain and keep such Owner's Lot at all times in a safe, sound and sanitary condition and repair and shall correct any condition, and refrain from any activity, which might endanger health of anyone or interfere with the safety or reasonable enjoyment of other Owners of their respective Lots.

2.4. Consent to Recording Plat; Subdivision into Lots. This Declaration is executed in contemplation of subdivision of the Property into Lots. Therefore, it is contemplated that a subdivision plat describing the Lots and including dedicated streets and required utility and drainage easements may be recorded by the Declarant. Each Owner agrees to provide his consent, as may be necessary to record, alter or amend any such Plat; *provided*, however, that no Owner may further subdivide any part or parcel of the Property or its Lot without first getting written approval by the Architectural Control Committee, any necessary governmental approvals, and the prior written consent of Declarant; and, *provided further*, that no commercial condominium may be developed, created or established on the Property.

2.5. Common Property.

(a) Ownership; Conveyance. By recording a Plat, Declarant will convey title to the Common Property shown on the Plat to the Association, subject to this Declaration, and easements and rights-of-way of record. The Association shall accept the conveyance of the Common Property.

(b) Rights of Use and Rules and Regulations Concerning the Common Property. Every Lot Owner shall have a right and easement of use and enjoyment in and to the Common Property, which easement shall be appurtenant to and shall pass with the title to every Lot, subject to the Governing Documents. The Board shall have the right to establish and enforce rules and regulations governing the use of the Common Property, including rights of use, hours of use, and delegation of use. Additional rights to establish rules and regulations governing the Common Property may be set forth and established elsewhere in the Governing Documents.

(c) Board Rights in Common Property. The Board shall have the right, for and on behalf of the Association, to: (a) insure, maintain, care for, repair and replace the Common Property; (b) with the approval of at least seventy-five percent (75%) of Lot Owners, to sell, exchange, hypothecate, alienate, mortgage, encumber, dedicate, release or transfer all or part of the Common Property to any private individual, corporate entity, public agency, authority, or utility; (c) grant easements for public utilities or other public purposes not inconsistent with the intended use of the Common Property; (d) take such steps as are reasonably necessary or desirable to protect the Common Property against foreclosure; and (e) take such other actions with respect to the Common Property which are authorized by or otherwise consistent with the Governing Documents.

(d) **Damage.** If any damage is caused to the Common Property by any Lot Owner or the Lot Owner's tenants, agents, guests, employees, contractors, licensees or invitees, the Lot Owner shall, upon demand, reimburse the Association for the cost of repairing the damage, but only to the extent that the cost exceeds insurance proceeds, if any, received by the Association.

(e) **Maintenance.** The Association shall maintain the Common Property at all times in good and clean condition and repair.

ARTICLE 3 MEMBERSHIP AND VOTING RIGHTS

3.1. **Membership.** Each Lot Owner shall be a Member of the Association. Membership in the Association automatically transfers upon conveyance of title to a Lot by the record Owner thereof to another person or entity.

3.2. **Voting Rights.** The Association shall have one class of voting membership. Members are entitled to one vote for each acre of land owned. Fractional votes shall be allocated for fractions of acres owned. Regardless of the number of parties participating in ownership of any Lot, the group of those parties shall be treated as one Owner. The vote for such Lot shall be exercised as they among themselves determine, but in no event shall they be entitled to more votes than the total allocated to that Lot. Membership in the Association is appurtenant to and may not be separated from Lot or parcel ownership.

3.3. **Change of Corporate Status.** The Association has been set up and established as a non-profit corporation under Utah law. However, the continuing existence and viability of the Association is not vested in its corporate status. During any period in which the Association is not incorporated or otherwise has a change of corporate status (for example, involuntary dissolution under the Utah Nonprofit Corporation Act for failure to file for corporate renewal), the Governing Documents shall nevertheless continue to be effective as the Governing Documents of the Association, and the Association, the Board, and all officers and committees operating under the authority of the Governing Documents shall have all rights, power, and authority granted therein, and no Lot Owner may escape or avoid any assessment, charge, lien, rule or other matter contained in the Governing Documents by virtue of such change of corporate of status. In the case of non-incorporation, the Board is authorized, to the extent it deems necessary, and without approval of the Members, to re-incorporate under a same or similar name and such corporation shall be deemed the successor to the Association. In the event the Board does not reincorporate, the Association shall continue to operate and function under the Governing Documents as an unincorporated association. Upon reincorporation the Board shall readopt Bylaws for the Association that are the same as the Bylaws that were in existence at the time of termination of dissolution.

3.4 **Validity of Votes and Consents.** Any consent or vote given by a Lot Owner on any Association matter requiring a vote shall be valid for a period of 90 days. For example, if an Owner votes, and subsequently sells his Lot within 90 days of the vote, the vote of the prior Owner shall be binding on any subsequent Owner who takes title of the Lot during that 90-day period.

3.5. Rulemaking Authority. The Board may, from time to time, subject to the provisions of the Governing Documents and Utah law, adopt, amend and repeal rules and regulations governing, among other things, use of any Common Property, parking restrictions and limitations, limitations upon vehicular travel within the Property, and restrictions on other activities or improvements on the Property which, in the opinion of the Board, create a hazard, nuisance, unsightly appearance, excessive noise, or offensive smell.

3.6. Notice; Promulgation of Rules. A copy of the Rules and Regulations, as they may from time to time be adopted, amended or repealed, shall be mailed or otherwise delivered to each Lot Owner within 15 days after the date of the Board meeting where the changes were made and may, but need not be, recorded. Upon such mailing or other delivery, said Rules and Regulations shall have the same force and effect as if they were set forth in and were a part of this Declaration. In addition to or in lieu of providing notice by mail, the Board may provide notice by electronic means such as electronic mail (e-mail) to Lot Owners and may require that Lot Owners, in addition to keeping the Board informed as to their current mailing address, maintain a current e-mail address with the Board for such purpose.

3.7. Management Agreement; Property Manager. The Board may engage for the Association the services of a property manager to perform such duties and services as the Board shall authorize. The Board may delegate to and otherwise authorize the property manager to perform those services which the Board itself may perform under the Governing Documents. Any contract or agreement for services entered into by the Board for and on behalf of the Association shall not exceed a term of two (2) years. Fees, costs, and other charges of the property manager shall be Common Expenses.

ARTICLE 4 FINANCES AND OPERATIONS

4.1. Authority to Assess Owners. The Association is hereby authorized to levy assessments as provided for in this Article and elsewhere in the Governing Documents.

4.2. Creation of Lien and Personal Obligation of Assessment. Each Owner of any Lot by acceptance of a deed or conveyance therefor, whether or not it shall be so expressed in any such deed or other conveyance, covenants and agrees to pay to the Association, assessments or charges as authorized in the Governing Documents including: (1) annual assessments or charges; (2) special assessments for capital improvements, such assessments to be fixed, established, and collected from time to time as hereinafter provided; (3) additional assessments; (4) emergency assessments; (5) any other amount or assessment levied or charged by the Association or Board pursuant to this Declaration; and (6) interest, costs of collection and reasonable attorney fees, as hereinafter provided. All such amounts shall be a charge on the land and shall be a continuing lien upon the property against which each such assessment or amount is charged. Such assessments and other amounts shall be the personal obligation of (a) the person who was the Owner of such property at the time when the assessment fell due and (b) successors-in-title who took title when assessments were delinquent. The Declarant shall not be subject to assessments or the lien for assessments.

4.3. Purpose of Assessments. The assessments levied by the Association shall be used (a) for the purpose of promoting the health, safety, and welfare of Owners of the Property; and (b) for the improvement and maintenance of any property, services, and facilities devoted to this purpose. The assessments must provide for, but are not limited to, the payment of taxes on Association property and insurance maintained by the Association; the payment of the cost of repairing, replacing, maintaining and constructing, or acquiring additions to, the Common Property; the payment of administrative expenses of the Association; the payment of insurance deductible amounts; the establishment of a reserve account for repair, maintenance and replacement of Common Property which must be replaced on a periodic basis; the payment of any professional services deemed necessary and desirable by the Board; and other amounts required by this Declaration or that the Board shall determine to be necessary to meet the primary purposes of the Association. The assessments may provide, at the discretion of the Board, for the payment of other charges including maintenance, management, trash collection, sewer and water charges.

4.4. Rate of Assessment. Assessments must be fixed at a pro rata rate for all Lots that have been sold or conveyed by the Declarant, based on the size of the Lots. The Board may cause the Association to levy assessments that do not exceed One Hundred Dollars (\$100.00) per acre per calendar year. Except as otherwise provided in Section 4.7, assessments in excess of that amount may only be levied if approved by members having at least sixty-six per cent (66%) of the total number of votes in the Association.

4.5. Special Assessments. In addition to the annual assessments, the Board may levy in any assessment year a special assessment, applicable to that year only to cover unbudgeted expenses or expenses in excess of those budgeted, including defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of Common Property and any structures, fixtures and personal property related thereto. Except as otherwise provided in this Declaration, any special assessment must be approved by a majority vote of all Members. Special assessments shall be payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the fiscal years in which the special assessment is approved.

4.6. Specific Assessments. Notwithstanding anything contained in this Declaration, the Board, without Member approval, may levy specific assessments against particular Lots to: (a) cover costs incurred in bringing such Lots into compliance with the Governing Documents; (b) cover costs incurred to provide any services to any particular Lots, including overhead and administrative costs; and (c) cover any costs incurred as a consequence of the conduct of the Owner or occupants of any Lot, their tenants, agents, contractors, employees, licensees, invitees, or guests.

4.7. Emergency Assessments. Notwithstanding anything contained in this Declaration, the Board, without Member approval, may levy emergency assessments in response to an emergency situation. Prior to the imposition or collection of any assessment due to an emergency situation, the Board shall pass a resolution containing the written findings as to the necessity of such expenditure and why the expenditure was not, or could not have been reasonably foreseen or accurately predicted in the budgeting process and the resolution shall be distributed to the Members with the notice of the emergency assessment. If such expenditure

was created by an unbudgeted utility, maintenance or similar expense or increase, the assessment created thereby shall be discontinued by the Board by a similar resolution if such expense is subsequently reduced, or to the extent the next succeeding annual budget incorporates said increase into the annual assessment. An emergency situation is one in which the Board finds, in its discretion, (a) an expenditure required by an order of a court, to defend the Association in litigation, or to settle litigation; (b) an expenditure necessary to repair or maintain the Property or any part of it for which the Association is responsible where a threat to personal safety on the Property is discovered; (c) an expenditure necessary to repair, maintain, or cover actual Association expenses for the Property or any part of it that could not have been reasonably foreseen by the Board in preparing and distributing the pro forma operating budget (for example: increases in utility rates, landscape or maintenance contract services, attorney fees incurred in the defense of litigation, etc.); or (d) such other situations in which the Board reasonably finds that immediate action is necessary and in the best interests of the Association.

4.8. Date of Commencement of Assessments; Due Dates.

(a) The assessments provided for herein shall commence to accrue on the date of conveyance of a Lot to a bona fide purchaser. The first assessment shall be payable by the purchaser on the date of conveyance. There shall be no proration for partial years.

(b) With the exception of emergency assessments which shall be due and payable when levied as provided in Section 4.7, the Board shall establish each year the annual assessment due date on which the assessment for that year shall be payable.

(c) The Board shall prepare a roster of Lot Owners in the Property and the assessments applicable thereto at the same time that it shall fix the amount of the assessment. This roster shall be kept by the Secretary of the Association, who shall record payments of assessments and shall allow inspection of the roster by any Lot Owner at reasonable times

(d) The Board shall, upon demand, and for a reasonable charge not to exceed any monetary limitations imposed by law, furnish a certificate signed by an officer of the Association setting forth whether the assessment on a specified Lot has been paid. Such certificates, when properly issued, shall be conclusive evidence of the payment of any assessment or fractional part thereof which is therein shown to have been paid.

4.9. Effect of Non-Payment of Assessment; Remedies of the Association.

(a) Interest, Late, and Other Fees. Any assessment not paid within 30 days after the due date therefore shall be delinquent and shall bear interest from the due date at the rate of 18% per annum (or such lesser rate as the Directors shall set by resolution) until paid. In addition, the Board may assess a late fee for each delinquent assessment payment that shall not exceed 20% of the assessment. This late fee shall be calculated to compensate the Association for the accounting and other administrative costs of dealing with the delinquent assessment. In addition, there shall be added to the amount of any delinquent assessment the costs and expenses of any action, sale or foreclosure, and reasonable attorney fees incurred in enforcing and collecting said delinquent assessment. In the event these percentages are deemed to exceed those amounts allowed by law, then the maximum percentage amounts allowed by law shall be used.

(b) Remedies. To enforce this Article, the Board may, in the name of the Association:

(i) bring an action at law against the Owner personally obligated to pay any such delinquent assessment without waiving Association's lien for the assessment;

(ii) foreclose the lien against the Lot in accordance with the laws of the State of Utah applicable to the exercise of powers of sale in deeds of trust or to the foreclosure of mortgages, or in any other manner permitted by law, to the same extent as though the Association lien was a trust deed;

(iii) restrict, limit, or totally terminate any or all services performed by the Association on behalf of the delinquent Owner;

(iv) if the Owner is leasing or renting the Owner's Lot, the Board may demand that the Owner's tenant pay to the Association all future lease payments due from the Owner, beginning with the next monthly or other periodic payment, until the amount due to the Association is paid;

(v) suspend the voting rights of the Owner for any period during which any assessment or portion thereof against the Owner's Lot remains unpaid; and

(vi) record a lien against the Owner's Lot on any payment more than sixty (60) days past due with cost of such being added to the Owner's account.

4.10 Power of Sale. A power of sale is hereby conferred upon the Association that it may exercise. Under the power of sale the Lot of an Owner may be sold in the manner provided by Utah law pertaining to deeds of trust as if said Association were beneficiary under a deed of trust. The Association may designate any person or entity qualified by law to serve as Trustee for purposes of power of sale foreclosure. The trustee shall have the power of sale of the Property including the Lots and all improvements to the Lots for the purpose of securing payment of assessments and other sums due under the terms of this Declaration. The Board may change the trustee at any time by recording a substitution of trustee with the Washington County recorder.

4.11 Subordination of the Lien to Mortgages. The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage held by an institutional lender. Sale or transfer of any Lot shall not affect the assessment lien. The sale or transfer of any Lot pursuant to foreclosure of any such first mortgage, or any proceeding in lieu thereof, shall extinguish the assessment lien as to payments which became due prior to such sale or transfer. No sale or transfer, however, shall relieve a Lot or Owner from personal liability for assessments coming due after the Owner takes title or from the lien of such later assessments.

ARTICLE 5

ARCHITECTURAL REGULATIONS, STANDARDS, AND GUIDELINES

5.1. Architectural Control Committee. There is hereby created an Architectural Control Committee ("**ACC**") to administer to the provisions of this Article 5.

(a) Appointment and Membership. The ACC shall consist of a minimum of three (3) persons. During the Development Phase, the Declarant shall be entitled to appoint all members of the ACC. Thereafter, the ACC shall consist of the Board or of at least three (3) persons appointed by the Board.

(b) Procedural Rules and Regulations. The ACC may adopt reasonable rules and regulations for the conduct of its proceedings and to carry out its duties. The ACC may carry out its duties by conducting meetings which are open to other Lot Owners or may perform its reviews and carry its duties and functions on a less formal basis, provided that it adheres to the requirements of this Article. In the event the ACC holds meetings, it may fix the time and place for its regular meetings and such extraordinary meetings as may be necessary, and shall keep written minutes of its meetings, which shall be open for review and inspection upon request. The ACC shall, by majority vote, elect one of its members as chairman and one of its members as secretary and the duties of each will be such as usually appertain to such offices. Notice of meetings shall be given to Owners who have made application to the ACC for approval of plans.

5.2. General Requirements; ACC Approval Required. No structure or thing shall be placed, erected, or installed upon any Lot; no improvements or other work (including staking, clearing, excavation, grading and other site work, exterior alterations of existing improvements, or planting or removal of landscaping) shall take place within the Property or upon any Lot; and no exterior apparatus shall be affixed to any structure existing upon any Lot without the prior approval of the ACC.

5.3. New Construction; Modifications. Except as otherwise expressly provided for herein, the provisions of this Article are applicable to all new construction as well as any modifications, remodeling, or rebuilding of any existing, destroyed, or damaged structures within the Property.

5.4. Exemptions from ACC Approval. No approval shall be required to repaint the exterior of a structure in accordance with the originally approved color scheme or to rebuild in accordance with originally approved plans and specifications; *provided however*, that any deviation or change from the originally approved color scheme or plans and specifications shall require ACC approval.

5.5. Submission of Plans and Materials. Prior to the commencement of any construction, the following shall be submitted to the ACC for consideration: (a) one complete set of building plans and specifications in electronic format, with two complete hardcopy sets; (b) a site or plot plan in electronic format showing setbacks, grading, drainage patterns, floor elevations, landscaping, utilities and utility easements, illumination and lighting plans, roads, parking areas, loading and maneuvering areas, floor plans including cross section and elevations

of all sides of the building structures or improvements, location and detail of signage, together with an architect's rendering or scale model of the property; (c) completed application form; (d) application fee, if any is set by the ACC; (e) plan review fee; and (f) samples of colors and other exterior materials including stucco, rock, roof, tile, etc., and such other supporting material as the ACC deems necessary. The amount of the plan review fee shall be set by the ACC based on its estimate of the cost in time and money to complete the review process. The above submission will be deemed complete only when the ACC shall acknowledge receipt thereof to the applicant in writing. However, no work shall commence unless and until the ACC shall endorse on one set of such plans its written approval that such plans are in compliance with this Article and any rules, regulations, or guidelines established pursuant to the authority of this Article. The second set of such plans shall be filed as a permanent record with the ACC.

5.6. Expedited Application and Approval. The Declarant shall have the right to allow for an expedited approval process for any builder or contractor within the Property, which allowance shall be in Declarant's sole and absolute discretion.

5.7. Changes after Approval. If an Owner desires to make any changes to the plans after approval by the ACC, the Owner shall be required to submit any such changes to the ACC for approval in the same manner as approval of the original plans hereunder. The Owner may not proceed with such changes until approved by the ACC.

5.8. Rights of Approval. The ACC shall have the right to refuse or approve any plans and specifications and shall have the right, in so doing, to take into consideration the suitability of any proposed building, the materials of which it is to be built, the site upon which it is proposed to be erected, the harmony thereof with the surroundings, the effect of said building, or other structure so planned, on the outlook from adjacent or neighboring property and such other factors as the ACC shall deem appropriate to help maintain consistent, quality development on the Property. The ACC may restrict the use of metal in construction of any proposed improvement, fence, structure or building. These restrictions against metal, if imposed, are intended to enhance the appearance of buildings and other improvements on the Property for the mutual benefit of the Lot Owners.

5.9. Time Frame for Action. The ACC shall make a determination on each application within ninety (90) days after it acknowledges receipt of the complete submission as provided in Section 5.5. To facilitate the application review process, the ACC may require the applicant to meet with the ACC. The ACC may (i) approve the application, with or without conditions; (ii) approve a portion of the application and disapprove other portions; or (iii) disapprove the application. In the event the ACC fails to take action within the time frame provided herein, approval shall be deemed to have been given. However, no approval, whether expressly granted or deemed granted, shall be inconsistent with the standards and guidelines set forth herein unless a written variance has been granted.

5.10. Time Limitation on Construction. Each Owner, other than the Declarant, shall be required to obtain a building permit and begin construction of an acceptable building within two years from the date of purchase of a Lot. The Board has the right to extend this two year period on terms and conditions agreeable to it. If an Owner fails to adhere to this time limitation, the Declarant, at its option, may repurchase the Owner's Lot by notifying the Owner, in writing, of

its intention to repurchase, and tendering to the Owner the purchase price paid by the Owner for the Lot, less the amount, if any, required to satisfy any taxes, assessments, liens, charges or encumbrances accruing or encumbering said Lot after conveyance of the same to the Owner.

5.11. No Waiver of Future Approvals. Each Owner acknowledges that the persons reviewing applications for ACC approval may change from time to time and that opinions on aesthetic matters, as well as interpretation and application of the applicable regulations, standards, and guidelines, may vary accordingly. In addition, each Owner acknowledges that it may not always be possible to identify objectionable features until work is completed, in which case it may be unreasonable to require changes to the improvements involved, but the ACC may refuse to approve similar proposals in the future. Approval of applications or plans, or in connection with any other matter requiring approval, shall not be deemed to constitute a waiver of the right to withhold approval as to any similar applications, plans, or other matters subsequently or additionally submitted for approval.

5.12. Architectural Standards. In addition to the design standards, restrictions, and guidelines established in this Article, the ACC may promulgate and maintain a list of standards for guidance in approving or disapproving plans and specifications pursuant to this Article.

5.13. Inspection. The ACC, or its designated representatives, may make periodic inspections to ensure that construction is proceeding in accordance with the submissions approved by the ACC. Each Owner hereby grants to the ACC, or its designated representative, an easement of access upon the Owner's Lot for this purpose. If an inspection reveals that any construction or improvement is not being performed in accordance with approved plans, the ACC shall have the authority to order such work cease and otherwise conform to the approved plans, and may take such other enforcement action as it deems necessary.

5.14. Variances. The ACC may authorize variances from compliance with any of its guidelines and procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require. No variance shall (a) be effective unless in writing; (b) be contrary to the intent of this Declaration or any standards or guidelines established pursuant to the authority of this Declaration; or (c) preclude the ACC from denying a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any governmental agency, the terms for the issuance of any permit, or the terms of any financing shall not be considered a hardship warranting a variance.

5.15. Certificate of Compliance. Any Owner may request that the ACC issue a certificate of architectural compliance certifying that there are no known violations of these design standards, restrictions, and guidelines. The ACC shall either grant or deny such request within 30 days after receipt of a written request and may charge a reasonable administrative fee, not to exceed any monetary limitations imposed by law, for issuing such certificates. Issuance of such a certificate shall preclude the ACC from taking enforcement action with respect to any condition as to which the ACC had notice as of the date of such certificate.

5.16. Non-Liability; Waiver; Indemnification. Rules, regulations, standards, guidelines, and procedures established by the ACC are intended as a mechanism for maintaining and enhancing the overall aesthetics of the Property; they do not create any duty to any person or entity. When the ACC undertakes its review it is not doing so for the purpose of ensuring the

structural or mechanical integrity or soundness of approved construction or modifications; ensuring compliance with building codes and other governmental requirements; or ensuring that all dwellings are of comparable quality, value or size, of similar design, or aesthetically pleasing or otherwise acceptable to any Owner, wherever situated within the Property, or to any neighboring property owners. Accordingly, the ACC shall bear no responsibility for ensuring any of the foregoing. The Declarant, the ACC, the Association, the Board, any committee, or member of any of the foregoing and each of their respective officers, directors, partners, members, predecessors, successors, assigns, parents, affiliates, subsidiaries, and the agents and employees of any of them shall not be held liable for, and each Lot Owner, for him or herself and his or her successors, heirs, and assigns, hereby agrees to hold the foregoing harmless for: any soil conditions, drainage or other general site work; any defects in plans revised or approved hereunder; any loss or damage arising out of the action, inaction, integrity, financial condition or quality of work of any contractor or its subcontractors, employees or agents, whether or not Declarant has approved or featured such contractor as a builder within Property; or any injury, damages, or loss arising out of the manner or quality or other circumstances of approved construction on or modifications to any structure.

5.17. Compliance with Law; Governmental Permit Required. No structure or building shall be constructed or maintained, and no grading or removal of natural vegetation or change in natural or approved drainage patterns or installation of fencing or landscaping elements shall occur on a Lot until any required permit or required approval therefore is obtained from the appropriate governmental entity following submission to the appropriate governmental entity of such information as it may require. The granting of a permit or approval by any governmental entity with respect to any matter shall not bind or otherwise affect the power of the ACC to refuse to approve any such matter.

5.18. Compensation. Unless authorized by resolution of the Board, the members of the ACC shall not receive any compensation for services rendered. Members shall be entitled to reimbursement for reasonable expenses incurred by them in connection with the performance of any Committee function or duty. Professional consultants retained by the ACC may be paid such compensation as the ACC determines. The funds for such compensation may be paid as a Common Expense of the Association, from application or plan review fees, or funded by Declarant in its sole discretion.

5.19. ACC Enforcement. In the event that any Owner violates these design standards, restrictions and guidelines or any rule of the ACC, such violation may cause irreparable harm to the Property. Accordingly, in order to help insure compliance with these design standards, restrictions, guidelines and rules and to at least partially compensate for any harm that may be done by noncompliance, the ACC may levy a violation assessment of up to Five Hundred Dollars (\$500.00) per day against any Owner who violates these design standards, restrictions, and guidelines or any rule of the ACC. The ACC shall provide fifteen (15) days written notice and opportunity for the Owner to cure the violation prior to levying such violation assessment. The ACC shall be entitled to all attorney fees and costs incurred in enforcing this Article. All violation assessments and all attorney fees, expenses, and costs incurred in collecting such violation assessments shall constitute a lien on the Owner's Lot, and shall also be a personal obligation of the Owner, enforceable at law, until such payment therefore is made. Enforcement

under this provision shall be in addition to any mechanism of enforcement provided in this Declaration or by applicable law.

5.20. Declarant Exemption. Declarant shall be exempt from the provisions, restrictions, and requirements of this Article, as the same exists or as it may be amended, supplemented, or replaced in accordance with other provisions of the Declaration.

ARTICLE 6
USE RESTRICTIONS AND REQUIREMENTS

6.1. Permitted Uses. The Property is restricted to selected industrial, manufacturing, warehousing and marketing enterprises that are compatible with the development. The Property is also restricted to aesthetically attractive and harmonious structures and improvements including landscaping as approved by the ACC.

6.2. Prohibited Uses. No part of the Property shall be used for any purpose or business that is prohibited by the zoning laws applicable to the Property at any given time. Further, the following uses, or any use substantially similar to any of the following, is **expressly prohibited** in the Property:

- (a) Any use that is in violation of any applicable federal, state, or local law, ordinance, or regulation;
- (b) Residential uses of any kind, except for the dwelling of watchmen or other employees whose residence on the Property forms an integral part of the operation as approved by the Board;
- (c) The manufacture, storage, distribution or sale of explosives;
- (d) The storage or parking of any vehicle outside of a building or other covered structure for more than 60 consecutive days, especially in the case of a metal recycling facility;
- (e) The storage of loose construction or building materials (such as rock, gravel or sand) outside of a contained storage bunker;
- (f) The storage of used construction or building materials or other used personal property outside of a building or other coverage structure for more than 60 consecutive days;
- (g) The storage of materials of any type in an unsightly or unkempt manner;
- (h) Temporary structures or facilities such as trailers and containers, unless a permanent structure has been approved for a Lot, in which event a temporary structure, as approved by the ACC, may be used during the period of active construction, but in no case longer than twelve (12) months.
- (i) Shipping containers and unlicensed trailers, except as provided in (h)

above;

- (j) Stock and feed yards;
- (k) Food processing which involves the slaughter of animals or the use of animal carcasses;
- (l) Retail sales of goods or services;
- (m) Recreational or entertainment activities, including vehicular racing, spectator sports, performance events, exercise activities and any other similar activity or event inconsistent with traditional activities at an industrial park;
- (n) The storage, treatment, disposal or other use of Hazardous Substances; provided, however, that the storage, treatment, disposal or other use of Hazardous Substances as an incidental part of a manufacturing, food processing, transportation, or other business use shall not be prohibited so long as each such business conducted on the Property is in compliance with applicable Environmental Laws. As used herein, the term "Environmental Law" means any federal, state or local law, statute, ordinance or regulation pertaining to health, industrial hygiene or environmental conditions, including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C. § 9601, *et seq.* ("CERCLA"); the Resource Conservation and Recovery Act of 1976, 42 U.S.C. § 6901, *et seq.* ("RCRA"); the Toxic Substances Control Act of 1976, 15 U.S.C. § 2601, *et seq.* ("TSCA"); the Superfund Amendments and Reauthorization Act of 1986, Title III, 42 U.S.C. § 11001, *et seq.*; the Clean Air Act, 42 U.S.C. § 7401, *et seq.*; the Federal Water Pollution Control Act, 33 U.S.C. § 1251, *et seq.*; the Safe Drinking Water Act, 42 U.S.C. § 300f, *et seq.*; and the Solid Waste Disposal Act, 42 U.S.C. § 3251, *et seq.* As used herein, the term "Hazardous Substance" means any material, waste, pollutant or contaminant which may or could pose a risk of injury or threat to health of the environment, including, without limitation: (1) those substances included within the definitions of "hazardous substance", "hazardous waste", "hazardous material", "toxic substance", "solid waste", or "pollutant or contaminant" in, or otherwise regulated by, CERCLA, RCRA, TSCA, the Hazardous Materials Transportation Act, 49 U.S.C. § 1801, *et seq.*, or the regulations promulgated pursuant to said laws; (2) those substances listed in the United States Department of Transportation Hazardous Materials Table (49 C.F.R. Part 302 and amendments thereto); (3) such other substances, materials, or wastes which are or become regulated or classified as hazardous or toxic under federal, state, or local laws or regulations; and (4) any material, waste, or substance which is (a) petroleum or refined petroleum products; (b) asbestos in any form; (c) polychlorinated biphenyls; (d) flammable explosives; (e) radio-active materials; or (f) radon;
- (o) Except as otherwise set forth herein, the manufacturing, storage, or sale of milk products or milk substitutes, including without limitation, milk, cheese, ice cream or yogurt products. Notwithstanding the above, this section shall not prohibit the manufacture, storage, or sale of milk products or milk substitutes, which is either an incidental part of a permitted use or which is not a primary part of a permitted use. In addition, the real property described in Exhibit C attached hereto and incorporated herein by this reference ("the Premises") may be principally devoted to, or primarily used for the manufacturing, storage, or sale of milk products or milk substitutes, including without limitation, milk, cheese, ice cream or yogurt products; provided, however, that if such operation ceases for twenty four (24) consecutive months, except, as a

result of force majeure, labor disputes, damage, destruction, construction or reconstruction activities, or reasons otherwise beyond the reasonable control of the occupant of the Premises, then this prohibition shall no longer be in force and effect and the then record owner of the Premises shall be required to file in the Official Records of Washington County, Utah, a certificate confirming the occurrence of such events and the nullification and termination of this prohibition; and

(p) Nursing homes, hospitals or other overnight care facilities, or hotels, motels, or other similar facilities providing overnight accommodations; and

(q) Any other uses that are determined by the Board to be incompatible and out of harmony with the intent of the permitted uses and this Declaration.

6.3. Board Approval. Prior to any use being made of any Lot within the Property, the Owner thereof shall submit a written application to the Board describing the proposed use in reasonable detail. In addition, the Owner shall submit an application fee in an amount determined by the Board. The amount of the application fee shall be set by the Board based on its estimate of the cost in time and money to review and consider the application. The Board shall act upon such application to determine whether the proposed use is permitted as set forth above. Potential purchasers of any Lot may submit an application, with application fee, to the Secretary of the Association to obtain Board approval of the potential purchaser's proposed use prior to purchasing a Lot. The Board shall have sixty (60) days following receipt of the application and the application fee to act upon an application by approving the proposed use, denying the proposed use, or requesting more detail. If the Board fails to act within sixty (60) days, then the proposed use shall be deemed approved, unless it is a prohibited use as described above, in which case it shall be deemed denied.

6.4. Hazardous Activities. No activities shall be conducted on the Property and no improvements shall be constructed on the Property which are or might be unsafe or hazardous to any person or property.

6.5. Pest Control. No Lot Owner shall permit any condition to exist upon his Lot which would induce, breed, or harbor infectious plant diseases or noxious insects. Each Owner shall perform such pest control activities on his Lot as may be necessary to prevent insects, rodents, and other pests from being present on the Owner's Lot.

6.6. Oil and Mining Operations. Without the express prior written consent of State of Utah, acting through the School and Institutional Trust Lands Administration, no oil drilling, oil development operations, oil refining, quarrying or mining operations of any kind shall be permitted upon or in any Lot or portion of the Property, nor shall any oil well, gas well, tank, tunnel, mineral excavation or shaft be permitted upon or in any such Lot or portion of the Property.

6.7. Performance Guidelines and Requirements. In order to further the intent of the covenants, conditions and restrictions contained in this Declaration, the Owner of each Lot shall at all times keep the premises, buildings, improvements and appurtenances in a safe, clean and wholesome condition. In addition, the Owner must comply in all respects with all government, health, fire and police requirements and regulations; the Owner will remove at its own expense

any rubbish of any character whatsoever which may accumulate on such site or Lot. Specifically, all uses permitted hereunder shall operate in conformance with the limitations set forth in each subsection below:

(a) Vibration. No vibration shall be produced which is transmitted through the ground and is discernible without the aid of instruments at the Lot line or at any point beyond the Lot line.

(b) Noise. All noise shall be muffled so as not to be objectionable due to intermittence, beat frequency or shrillness. In no event shall any person operate or permit to be operated any stationary source of sound in such a manner as to create a ninetieth percentile sound pressure level (L90) of any measurement period (which shall not be less than ten minutes) which exceeds 75 dB(A) during the hours of 9:00 p.m. to 7:00 a.m., or 80 dB(A) during the hours of 7:00 a.m. to 9:00 p.m., when measured at the Lot line or at any point within the Property affected by the noise. Sound level measurements shall be made with a sound level meter using the "A" weighting scale, in accordance with standards promulgated by the American National Standards Institute.

(c) Air Pollution. No visible emissions shall be discharged into the atmosphere from any source where the opacity is sufficient to obscure an observer's view to a degree equal or greater than No. 1 on the Ringelmann Chart, except upon demonstration that the emission contains less than one-tenth pound (1/10 lb.) of particulate matter per thousand pounds (1,000 lbs.) of dry gases, adjusted to twelve percent (12%) carbon dioxide or fifty percent (50%) excess air. Visible emissions of any kind at ground level past the Lot line of the Property on which the source of the emissions is located are prohibited. There shall not be discharged into the atmosphere any contaminate for which threshold limit values are listed for working atmosphere by the American Conference of Governmental Industrial Hygienists in such quantity that the concentration of the contaminant at ground level at any point beyond the boundary of the Property shall at any time exceed the threshold limit.

(d) Odors. No condition or operation will be allowed which results in the creation of odors of such intensity and character as to be detrimental to the health and welfare of the public or which interferes unreasonably with the comfort of the public.

(e) Electromagnetic Radiation. It shall be unlawful to operate, or cause to be operated, any planned or intentional source of electromagnetic radiation for any purpose which does not comply with the then current applicable law. Further, it shall be unlawful to operate or to cause to be operated any source of electromagnetic interference, the radiation or transmission from which exceeds reasonable standards, employing standard field strength measuring techniques.

(f) Radioactive Materials. The handling of radioactive materials, the discharge of such materials into air and water, and the disposing of radioactive wastes, shall be in conformance with the regulations of the Nuclear Regulatory Commission as set forth in Title 10, Chapter One, Part 20--Standards for Protection Against Radiation, as amended.

(g) Glare and Heat. No direct or sky-reflected glare, whether from floodlights or from high temperature processes such as combustion or welding or otherwise, so as to be

visible at the Lot line, shall be permitted. These regulations shall not apply to signs or floodlighting of parking areas otherwise permitted by this Declaration. There shall be no emission or transmission of heat or heated air so as to be discernible at the Lot line.

(h) Liquid or Solid Waste. There shall be no discharge at any point into any public or private sewage disposal system or stream or into the ground of any liquid or solid materials except in accordance with the regulations and standards established by the City of St. George, Utah, and other applicable state and federal laws.

(i) Garbage and Refuse Disposal. No Lot shall be used or maintained as a dumping ground for rubbish, trash, garbage or any other waste. Such trash, rubbish, garbage or other waste shall not be kept except in sanitary containers. All dumpsters and other waste receptacles for the storage or disposal of such material shall be kept in a clean and sanitary condition, shall be screened as provided in Section 6.9 and shall be regularly emptied. No rubbish, trash, papers, junk or debris shall be burned upon any Lot.

(j) Water Supply. No individual water supply system shall be used or permitted on any Lot or group of Lots unless such system is located, constructed and equipped in accordance with the requirements, standards and recommendations of the State Health Department. Approval of such system as installed shall be obtained from such authority.

(k) Fencing. Fencing for an industrial site shall be at least six feet (6') high. The Board shall determine whether chain link fencing will be adequate, or whether opaque fencing such as masonry or chain link fencing with opaque slats is a necessity. The materials to be used for fencing will be subject to approval of the Board; however, wooden fencing is prohibited.

6.8. Minimum Area and Yard Spaces. No building may be erected or located in the Property:

- (a) less than sixty feet (60') from any public street property line;
- (b) less than ten feet (10') from any side property line;
- (c) less than twenty feet (20') from any other building on an adjacent site.

Provided, however, the minimum setback distance from 3950 South Street for the presently-existing building on Lot No. 20 is reduced from sixty feet (60') to forty-five feet (45'). All future construction on Lot No. 20 shall be subject to the sixty-foot setback.

The maximum ratio of building coverage to the total Lot area shall not exceed forty percent (40%). The actual ratio of building coverage to the total Lot area will be subject to the approval of the Board. The front yard spaces required by the setbacks provided in this section shall contain only paved walks, paved driveways, parking lots, lawns and landscaping.

6.9. External Appearance. All significantly exposed and noticeable projections outside of any building, including mechanical and electrical equipment, cooling towers, transformers, ducts, vents, etc., but excluding communications equipment, and all dumpsters and

other waste receptacles shall, to the extent reasonably possible, be screened from public view by appropriate enclosures. All plans submitted to the Board for approval shall show such projections and enclosures. If subsequent changes or additions are made to such projections or waste receptacles, the Board may require additional screening to be installed. The Board may allow an exception to the screening requirement for a Lot Owner where the installation of such screening is impractical for that Lot Owner's particular type of business and would work an unreasonable and unwarranted hardship on the Lot Owner, provided, however, that the lack of screening does not unreasonably detract from the general appearance of the Property.

6.10. Loading Docks. No loading dock shall be constructed facing on any public street unless such loading dock and every part thereof is at least seventy five (75') inside the right-of-way line of the street on which such loading dock fronts.

6.11. Landscaping.

(a) Declarant shall install entryway landscaping along the boundary of the Property with River Road. Said landscaping shall be within the City of St. George right of way and shall be maintained by the City of St. George. Any such landscaping shall comply with any requirements imposed by the City of St. George. No Owner shall in any way interfere with this entryway landscaping, except as necessary for ingress and egress as may be set forth in approved plans.

(b) Not less than five percent (5%) of the total Lot area (Lot area does not include any land outside of the boundaries of the Lot) shall be landscaped, with the majority of the landscaping being located in the front and side areas of the Lot. Landscaping shall mean decorative plazas, pools, or the planting of grass, shrubs, or trees, or other comparable surface cover, such as rock mulch, chat or decorative rock. Plain gravel areas of road base or common rock are not considered as acceptable ground cover. At least fifty percent (50%) of the landscaping shall be covered, at maturity, with green grass, shrubs or trees, which shall be adequately watered with an automatic watering system. The landscaping plans shall be subject to approval by the ACC. Such landscaped areas, as approved, shall be maintained at all times by the Owner, and shall at all times be kept adequately watered, mowed, trimmed and planted. All parking and landscaped areas shall be kept safe, clean and attractive.

(c) All grounds and exterior areas shall be improved and maintained according to the following standards:

(i) Landscape, irrigation, drainage, and planting shall be an integral part of the project design and construction plans submitted to the ACC for approval;

(ii) All grounds and exterior areas shall be clean, neat and properly maintained at regular intervals; and

(iii) All fencing material shall be permanent and properly maintained.

(d) In order to provide for an overall aesthetic project, Lots that face River Road or other major arterial road may be subject to additional specific landscaping and/or fencing standards that will coordinate the Lot landscaping with the entryway landscaping

referenced in 6.11(a).

6.12. Parking. Each Lot Owner shall provide adequate off-street parking to accommodate all parking needs for the Lot. Without limiting the generality of the foregoing, and subject to different parking requirements and limitations determined by the Board, parking shall be provided on the basis of one square foot (1 sq. ft.) of parking area for every square foot of building area, with provision for one (1) parking space for every vehicle used in conducting the business, and four (4) parking spaces for every five (5) employees working on the largest shift, together with adequate visitor parking. Owners shall not permit their employees or tenants to regularly park during business hours on public streets within the boundaries of the Property. All parking and storage areas shall be covered with a hard, dust-free, paved surface (properly maintained concrete or hot-mixed asphalt surfaces, only). Vehicular access to a parking area shall be permitted only by paved access roadways. Parking structures shall not be calculated as building area. Any parking in the front of buildings (public street side) shall be limited to visitor's and short-term (less than twenty-four (24) consecutive hours) employee parking only.

6.13. Signs. No sign shall be erected or maintained on the Property except in conformity with the provisions of the St. George City ordinances. In addition to the requirements of said ordinances, the following shall be required:

(a) Only one (1) single-faced or double-faced sign shall be permitted per street frontage. All signs must be monument or ground signs not to exceed fifteen feet (15') in height. The base of each sign must be at least as wide as the remaining upper portion of the sign. The portion of the sign containing text, drawings, pictures, diagrams or logos may not exceed one hundred twenty (120) square feet measured as a rectangle outside the extreme dimensions of the text, drawings, pictures, diagrams and logos.

(b) A single sign shall be allowed on the front of each facility, and of a size not to exceed one square foot (1 sq. ft.) for each horizontal linear foot of building wall facing the street on which the sign faces.

(c) Signs shall be designed as a part of the architectural design of the primary building on the Lot so as to add to the aesthetic appearance of the building and Property. To the extent possible, the same materials used in the construction of the face of the building shall be used in the construction of the sign. Electronic display and message signs shall be permitted, while signs which have visible mechanical moving parts or signs which have animation or flashing lights shall not be allowed.

(d) Special purpose signs, relating to construction of improvements on the Property, future tenant identification signs, or signs intended to give special directions or instructions for a limited period of time may be permitted for limited periods of time provided they are in conformity with applicable zoning ordinances and regulations.

(e) These sign restrictions shall not apply to the commercial activities, signs and billboards of the Declarant while the Declarant is marketing the Property.

In the event of any conflict between the terms of this Section 6.13 and the St. George City ordinances, the more limiting or restrictive provision shall prevail.

6.14. Number of Tenants or Users Per Lot. In order to more effectively maintain quality and consistency on the Property as an industrial development, it is the intention of this Declaration that no Lot be occupied or used for more than two occupants, businesses, users or tenants, unless exceptional conditions warrant it. Accordingly, no Lot shall be occupied or used simultaneously by more than two occupants, businesses, users or tenants without the specific written consent of the Board for each instance. The decision of the Board in each case shall be based on its evaluation and determination that the proposed occupancy, businesses or uses are consistent with the Property as an industrial development and do not detract from the industrial character of the Property.

ARTICLE 7
INSURANCE

7.1. Liability Insurance. In addition to fire and casualty insurance on the Common Property as provided in Section 2.5(c), the Board shall obtain a comprehensive policy of public liability insurance covering all of the Common Property for personal or bodily injury and property damage that results from the operation, maintenance or use of the Common Property. Liability insurance policies obtained by the Association shall contain a "severability of interest" clause or endorsement which shall preclude the insurer from denying the claim of an Owner because of negligent acts of the Association or other Owners.

7.2. Fidelity Insurance. The Board may elect to obtain fidelity coverage against dishonest acts on the part of managers, Directors, officers, employees, volunteers, management agents or others responsible for handling funds held and collected for the benefit of the Owners. In procuring fidelity insurance the Directors shall seek a policy which shall (1) name the Association as obligee or beneficiary, (2) be written in an amount not less than the sum of (i) three months' operating expenses and (ii) the maximum reserves of the Association which may be on deposit at any time, and (3) contain waivers of any defense based on the exclusion of persons who serve without compensation from any definition of "employee."

7.3. Directors and Officers Liability Insurance. The Board may elect to obtain directors and officers liability insurance to protect them against damages resulting from alleged or actual wrongful acts they may have commit in their positions, including any actual or alleged error, misstatement, omission, misleading statement, or breach of duty.

7.4. Annual Review of Policies. The Board shall review all insurance policies at least annually in order to ascertain whether the coverage contained in the policies is adequate. The Board may, to the extent it deems necessary to more fully protect and insure the Association and its property, or to otherwise comply with evolving laws and insurance standards, modify the coverage standards set forth in this Article without the necessity of amending this Declaration.

7.5. Insurance by Owner. Each Owner shall carry such insurance as it deems appropriate with respect to the Owner's Lot, personal property, and any easement areas.

ARTICLE 8
ENFORCEMENT

8.1. **Violations Deemed a Nuisance.** Every violation of this Declaration or any rule or regulation established pursuant to the authority of this Declaration is deemed a nuisance and is subject to all the remedies provided for the abatement or correction of the violation provided for in this Declaration or by law or equity.

8.2. **Legal Action Authorized.** The Association, through the Board, the Declarant, or any Lot Owner, shall have the right to enforce, by any proceeding at law or in equity, all provisions of this Declaration or any rule or regulation established pursuant to the authority of this Declaration, including all charges and liens now or hereafter imposed pursuant to the authority of this Declaration, against any persons or entities violating or attempting to violate any provision of this Declaration or any rule or regulation established pursuant to the authority of this Declaration, to restrain or abate or otherwise recover damages for the violation, and against the land to enforce any charge or lien created by this Declaration. In addition to taking legal action, the Declarant and the Board shall have the right to grant variances and stay enforcement proceedings against any Lot Owner, on a case-by-case basis, when they determine such action is in the best interests of the Association. Notwithstanding the foregoing, no Lot Owner is authorized to initiate legal action over any plan approved by the ACC in accordance with the provisions of Article 5.

8.3. **Fines and Penalties.** The Board may levy a fine or penalty against any Lot Owner who fails to refrain from violating this Declaration or any rule or regulation established pursuant to the authority of this Declaration. Such fine or penalty shall be in an amount that is specifically provided for in a fine schedule adopted and amended from time to time, by the Board. The Board may establish time frames and requirements for written notice, hearings, and cure periods, for Owners in violation prior to levying such fine or penalty, which notice shall be at least 48 hours. Any fine or penalty levied by the Directors that is not paid within 15 days (such time period shall be stayed should the Governing Documents provide for any period to cure or for appeal) shall be recoverable by the Association in the same manner as an assessment under Article 4, and shall create a lien in favor of the Association against the Owner's Lot in the same manner as an assessment.

8.4. **Attorney Fees and Costs.** The prevailing party in any action to enforce this Declaration or any rule or regulation established pursuant to the authority of this Declaration shall be entitled to an award of reasonable attorney fees and costs incurred in such action.

8.5. **Nonexclusive Remedies.** All the remedies set forth in this Declaration are cumulative and not exclusive to any others provided in the Governing Documents or by law.

ARTICLE 9
GENERAL PROVISIONS

9.1. **Constructive Notice and Acceptance.** Every person who now or hereafter owns or acquires any right, title or interest in or to any portion of the Property is and shall be conclusively deemed to have consented and agreed to every covenant, condition and restriction contained

herein, whether or not any reference to this Declaration is contained in the instrument by which such person acquired an interest in the Property.

9.2. Additional Property. Additional Property may be subjected to these covenants, conditions and restrictions by the Declarant. Declarant shall indicate its intent to have such property bound by these covenants, conditions and restrictions on the plat of such property, or by recording an additional set of covenants, conditions and restrictions, and thereafter such additional property shall be deemed annexed to, and considered as part of, the Property in all respects. This right of the Declarant shall be assignable to one or more assignees.

9.3. Duration of Restrictions. The covenants, conditions and restrictions contained herein shall run with and bind the land for a period of twenty (20) years from the date this document is recorded, after which time said covenants, conditions and restrictions shall be automatically extended for successive periods of ten (10) years each, subject to amendment as herein set forth.

9.4. Construction and Amendment. The provisions of these covenants, conditions, and restrictions shall be liberally construed to effect all of their intended purposes. During the Development Phase, this Declaration may be modified, amended or repealed in whole or in part at any time and from time to time by the Declarant or its successor or assigns by recorded instrument. After the Development Phase, this Declaration may be modified or amended, as to the whole of said Property or any portion thereof, with the written consent of Owners having sixty-five percent (65%) of the votes in the Association, *provided* however that so long as Declarant owns a Lot, no such modification shall be effective without Declarant's written consent. Any other terms or provisions in this Declaration to the contrary notwithstanding, this Declaration may not be modified or amended in any manner that adversely affects the use or enjoyment of the real property described in Exhibit D ("Lot 160"), which is attached hereto and incorporated herein by this reference, as a facility for glass fabrication in any material respect without the prior written consent of the Owner of Lot 160, which consent the Owner may withhold in the Owner's sole discretion. For purposes of this paragraph, "glass fabrication" uses shall include, but shall not necessarily be limited to, cutting, heat treating, coating, laminating and insulating glass, as well as related and ancillary warehouse, inside and outside storage and office uses and purposes.

9.5. Interpretive Conflicts. In the event of any conflict between the provisions of this Declaration, the Articles, and/or the Bylaws, the provisions of this Declaration shall control. In all cases of conflict between any Association or committee rule and/or regulation and this Declaration, the Articles, or Bylaws, this Declaration, the Articles, and Bylaws shall control.

9.6. Notices. Any notice required to be sent under the provisions of this Declaration shall be deemed to have been properly sent when deposited in the U.S. Mail, postpaid, to the last known address of the person who is entitled to receive it.

9.7. Interpretation. The singular, wherever used herein, shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to entities or individuals, men or women, shall in all cases be assumed as though in each case fully expressed. The terms "include" and "including" when used in this Declaration shall not be limiting whether or not followed by the words "without limitation."

EXHIBIT A

[Legal Description of Property]

[see two pages attached]

L.R. POPE ENGINEERING INC
1240 E.100 S, STE 15B
ST. GEORGE, UTAH 84790
435-628-1676

**DESCRIPTION OF TOTAL AREA OF
FORT PIERCE BUSINESS PARK INCLUDING PARK AREA**

Beginning at the West ¼ Corner of Section 21, Township 43 South, Range 15 West, Salt Lake Base and Meridian and running thence South 88°46'43" East 2639.40 feet along the Center Section Line to the Center ¼ Corner of said Section 21; thence South 01°10'30" West along the Center Section Line 2367.95 feet to the South ¼ Corner of said Section 21; thence North 88°43'16" West 689.52 feet along the Section Line; thence South 69°27'26" West 5250.57 feet; thence North 74°35'33" West 2406.94 feet to a point on a 2940.00 foot radius curve to the left (bearing to radius point is N 76°18'52" W) thence Northwesterly through a central angle of 40°15'23" and 2065.66 feet along the arc of said curve; thence North 0°00'00" West 973.97 feet; thence North 90°00'00 West 823.90 feet; thence South 88°51'09" West 180.00 feet to the point of a 730.00 foot radius curve to the left; thence Southwesterly through a central angle of 36°24'07" and along the arc of said curve 463.79 feet; thence North 03°01'15" West 553.72 feet; thence South 89°00'17" West 495.29 feet; thence North 72°26'14" West 566.345 feet; thence North 38°27'30" West 726.46 feet; thence North 21°03'22" West 756.68 feet; thence North 58°22'01" East 1616.065 feet; thence North 55°38'13" East 210.18 feet; thence North 43°57'59" East 653.25 feet; thence South 45°07'03" East 430.38 feet; thence South 82°57'28" East 500.45 feet; thence North 54°35'35" East 528.51 feet; thence North 61°03'35" East 582.54 feet; thence North 6°54'20" West 345.90 feet; thence North 41°26'40" East 200.93 feet; thence North 66°09'47" East 499.37 feet; thence North 51°04'03" East 510.64 feet; thence South 63°57'53" East 107.50 feet; thence South 84°50'13" East 438.77 feet; thence North 89°45'50" East 325.83 feet; thence South 70°07'51" East 436.36 feet; thence North 46°02'58" East 480.21 feet; thence North 24°22'05" East 187.74 feet; thence North 1°16'52" East 835.98 feet; thence South 88°23'24" East 372.86 feet; thence North 15°59'54" East 548.37 feet; thence North 0°26'19" West 214.21 feet; thence North 88°43'08" West 248.57 feet; thence North 0°14'53" East 237.71 feet; thence North 40°21'58" East 380.67 feet; thence South 88°03'39" East 189.45 feet to a point on the West Right of Way Line of River Road; thence South 1°49'25" East 470.54 feet along said Right of way to the point of a 7340.53 foot radius curve to the right; thence Southeasterly through a central angle of 1°52'16" and along the arc of said curve 239.72 feet to the point of a 2820.00 foot radius compound curve to the right; thence Southwesterly through a central angle of 24°53'23" and along the arc of said curve 1225.03 feet; thence leaving the West side of River Road and running thence South 65°03'46" East 100.00 feet to a point on the East Right of Way Line for River Road, said point also being on a 25.00 foot radius curve to the left (bearing to radius point is S 65°03'46" E); thence southeasterly through a central angle of 113°43'42" and along the arc of said curve 49.62 feet to a point of tangency on the North Right of Way Line for 3950 South Street; thence South 88°47'28" East 1891.63 feet along said Right of Way Line to the Northeast Corner of 1630 East Street; thence South 1°10'40" West 1320.62 feet along East Right of Way Line for 1630 East Street to the Southeast Corner of Section 17, Township 43 South, Range 15 West, Salt Lake Base and Meridian and running thence South 1°10'52" West 2639.38 feet along the Section Line to the point of beginning.

Containing 1,333.95 acres

Together with the following 50 foot wide described construction easement area:

Beginning at the South ¼ Corner of Section 21, Township 43 South, Range 15 West, Salt Lake Base and Meridian and running thence North 88°43'16" West 689.52 feet along the Section Line; thence South 69°27'26" West 5250.57 feet; thence South 74°35'33" West 1414.44 feet to a point on the East Right of Way Line for River Road; thence South 15°24'27" West 50.00 feet; thence leaving the East Right of Way Line for River Road and running South 74°35'33" East 1430.66 feet; thence North 69°27'26" East 5257.15 feet; thence South 88°43'16" East 679.98 feet; thence North 1°10'30" East 50.00 feet to the point of beginning.

REVISED 3-25-15
prepared by L. Ried Pope PE, PLS

SG-5-3-17-130-ED1
SG-5-3-17-323-ED1
SG-5-3-20-416
SG-5-3-20-435
SG-5-3-19-126
SG-5-3-19-133
SG-5-3-19-138
SG-5-3-19-142
SG-5-3-20-451
SG-5-3-20-452
SG-5-3-20-4311
SG-5-3-17-332-ED2
SG-5-3-17-235-ED1
SG-5-3-17-331-ED2
SG-5-3-19-127
SG-5-3-19-129
SG-5-3-19-128
SG-5-3-19-112
SG-5-3-17-236-ED1
SG-5-3-19-137
SG-5-3-19-240
SG-5-3-19-139
SG-5-3-17-233-ED1
SG-5-3-19-134
SG-5-3-17-230-ED1
SG-5-3-19-141
SG-5-3-19-140
SG-5-3-19-130
SG-5-3-19-136
SG-5-3-20-424-CD
SG-5-3-20-240-CD
SG-5-3-17-232-ED1
SG-5-3-20-212-CD
SG-5-3-20-314-CD
SG-5-3-20-3141-CD
SG-5-3-20-310-CD
SG-5-3-20-311-CD
SG-5-3-20-425-CD
SG-5-3-21-3401-CD
SG-5-3-20-312-CD
SG-5-3-20-313-CD
SG-5-3-17-222
SG-5-3-17-221
SG-5-3-19-135
SG-5-3-17-131-ED1
SG-5-3-17-225
SG-5-3-17-224

SG-5-3-17-229
SG-5-3-17-2241
SG-5-3-17-228
SG-5-3-17-223
SG-5-3-17-227
SG-5-3-17-226-ED1
SG-5-3-17-2204-ED3
SG-5-3-17-2203-ED3
SG-5-3-17-2201-ED1
SG-5-3-17-244-ED1
SG-5-3-17-2381-ED1
SG-5-3-17-2202-ED1
SG-5-3-20-411-ED2
SG-5-3-20-110-ED3
SG-5-3-17-320-ED2
SG-5-3-17-322-ED2
SG-5-3-20-413-ED2
SG-5-3-17-245-ED1
SG-5-3-20-414
SG-5-3-20-415
SG-5-3-20-413
SG-5-3-20-410-ED2
SG-5-3-20-143-ED2
SG-5-3-20-412-ED2
SG-5-3-20-414-ED2
SG-5-3-20-419-CD
SG-5-3-20-422-CD
SG-5-3-17-2461-ED1
SG-5-3-20-141-ED2
SG-5-3-20-111-ED3
SG-5-3-20-113-ED3
SG-5-3-20-112-ED3
SG-5-3-20-124-ED3
SG-5-3-20-213-ED3
SG-5-3-20-210-ED3
SG-5-3-20-120-CD
SG-5-3-20-211-ED3
SG-5-3-20-130-ED3
SG-5-3-20-423
SG-5-3-17-247-ED1
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SG-5-3-20-432
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SG-5-3-20-433
SG-5-3-20-440
SG-5-3-20-418

SG-5-3-17-234-ED1
SG-5-3-20-441
SG-5-3-20-417
SG-5-3-20-442
SG-5-3-20-450
SG-5-3-19-111
SG-5-3-19-110
SG-5-3-19-1102
SG-5-3-19-120
SG-5-3-19-131
SG-5-3-19-132
SG-5-3-19-121
SG-5-3-17-231-ED1
SG-5-3-19-124
SG-5-3-20-448
SG-5-3-19-123
SG-5-3-20-445
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SG-5-3-20-446
SG-5-3-20-4410
SG-5-3-20-443
SG-5-3-20-444
SG-5-3-20-4411
SG-5-3-20-449
SG-5-3-17-321-ED1
SG-5-3-20-431
SG-5-3-20-439
SG-5-3-20-4392
SG-5-3-19-122
SG-5-3-19-125
SG-5-3-20-434
SG-5-3-20-430
SG-5-3-20-437
SG-5-3-20-436

SG-PL

EXHIBIT B

[Legal Description of Lot No. 20]

[see one page attached]



ALPHA ENGINEERING COMPANY

148 East Tabernacle, St. George, UT 84770 • (435) 628-6500 • Fax: (435) 628-6553

LEGAL DESCRIPTION FORT PIERCE BUSINESS PARK

September 20, 2002
(Revised November 7, 2002)

A parcel of land located in the Southeast $\frac{1}{4}$ of Section 17, Township 43 South, Range 15 West, Salt Lake Base & Meridian, being more particularly described as follow:

Commencing at the East $\frac{1}{4}$ Corner of said Section 17;
Thence South $01^{\circ}10'40''$ West, 1,368.75 feet along the section line;
Thence West, 849.06 feet to the Point of Beginning, said point being on the south line of 3950 South Street;
Thence South $88^{\circ}47'28''$ East, 230.00 feet along said south line to the point of a 30.00 foot radius curve to the right;
Thence Southeasterly, 47.12 feet along the arc of said curve through a central angle of $90^{\circ}00'00''$;
Thence South $01^{\circ}12'32''$ West, 138.28 feet;
Thence North $88^{\circ}47'28''$ West, 260.00 feet;
Thence North $01^{\circ}12'32''$ East, 168.28 feet to the Point of Beginning.

Contains 1.00 acres more or less.

Subject to a 15 foot public utility and drainage easement over the Northerly and Easterly 15 feet thereof.

Serial Number: SG-5-3-17-225

EXHIBIT C

[Legal Description of Wells Dairy Premises]

[see one page attached]

**LEGAL DESCRIPTION
LOT 12
FORT PIERCE BUSINESS PARK**

(Revised April 23, 2002)

(Revised May 7, 2002)

(Revised May 29, 2002)

Serial Number: SG-5-3-20-141-EB2

A parcel of land located in the North $\frac{1}{2}$ of Section 20, Township 43 South, Range 15 West, Salt Lake Base & Meridian, being more particularly described as follows:

Commencing at the North $\frac{1}{4}$ Corner of said Section 20;
Thence South $88^{\circ}44'49''$ East, 373.24 feet along the Section Line;
Thence South 55.77 feet to a point on the south line of Commerce Drive and the **POINT OF BEGINNING**; said point also being South $66^{\circ}01'20''$ East, 428.00 feet from the city monument at the intersection of River Road and Commerce Drive, said point also being on a 1,640.00 foot radius curve to the left, of which the radius point lies North $11^{\circ}06'58''$ East;
Thence Easterly, 282.32 feet along the arc of said curve and the south line of said Commerce Drive, through a central angle of $09^{\circ}51'47''$;
Thence South $88^{\circ}44'49''$ East, 1,097.52 feet along the south line of Commerce Drive;
Thence South $01^{\circ}15'09''$ West, 1,247.01 feet;
Thence North $88^{\circ}44'51''$ West, 1,921.07 feet to the point of curve of a 1,167.00 foot radius curve to the right;
Thence Westerly, 170.56 feet along the arc, through a central angle of $08^{\circ}22'26''$;
Thence North $30^{\circ}45'56''$ East, 1,446.49 feet to the **POINT OF BEGINNING**.

Containing 50.000 acres, more or less.

EXHIBIT D

[Legal Description of Lot 160]

[see one page attached]

**DESCRIPTION OF 22.000 ACRE PARCEL
FOR PROPOSED LOT 160
FORT PIERCE BUSINESS PARK**

Serial I.D. No.: SG-5-3-20-212-CD

Beginning at a point North 88°45'10" West 1021.98 feet along the Center Section Line and South 1°10'52" West 33.00 feet from the East 1/4 Corner of Section 20, Township 43 South, Range 15 West, Salt Lake Base and Meridian and running thence South 88°45'10" East 211.04 feet to the point of a 45.00 foot radius curve to the right; thence Southeasterly through a central angle of 89°56'02" and along the arc of said curve 70.63 feet to a point of tangency; thence South 1°10'52" West 650.28 feet to the point of a 1966.10 foot radius curve to the left; thence Southeasterly through a central angle of 8°54'45" and along the arc of said curve 305.84 feet; thence North 88°49'08" West 979.72 feet; thence North 1°10'52" East 1000.93 feet to the point of beginning.

Containing 22.000 acres

SUBJECT TO: a 15.00 foot wide public utilities and drainage easement along the East and North Boundary lines and 10.00 foot wide public utilities and drainage easement along the West Boundary line.

By L. Ried Pope, PE, PLS