

**RECORDING REQUESTED BY:**

**WHEN RECORDED, MAIL TO:**

KPB Land, LLC  
126 South 140 West  
Lindon, UT 84042

Attn: Ken Bretschneider

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(Space Above Line For Recorder's Use)

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR THE VOID PLAT A AND THE VOID PLAT B**

Tax ID Numbers: 14-055-0018, 14-055-0022, 14-055-0076, 14-055-0112, 14-055-0173, 14-055-0197, 14-056-0075  
14-056-0087

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR THE VOID PLAT A AND THE VOID PLAT B**

This Declaration of Covenants, Conditions and Restrictions for THE VOID PLAT A AND THE VOID PLAT B (this "**Declaration**") is made as of the 16 day of December 2016, by KPB Land, LLC, a Utah limited liability company ("**Declarant**") and by GBR Investments 5, LLC, a Utah limited liability company, and GBR Investments 6, LLC, a Utah limited liability company, and PG Investments 1, LLC, a Utah limited liability company (collectively "**GBR**"), Elan Real Property Partners, LLC, a Utah limited liability company ("**Elan**") and Sequoia Development, Inc., a Utah corporation ("**Sequoia**").

**PREAMBLE**

A. Declarant is the owner of Lot 1 of Plat A, (as defined below) and Declarant is the owner of Lots 1, 2, 3 and 4 of Plat B (as defined below), located in Pleasant Grove City, Utah County, Utah (sometimes herein individually referred to as a "Parcel" and collectively as the "Parcels"). Such Parcels are shown on The Void Plat A Plat (herein "Plat A") recorded on Dec 20, 2016, as Entry # 127926 : 2016, Book NA, NA, of the records of the Utah County Recorder and on The Void Plat B (herein "Plat B") recorded on Dec 20, 2016, as Entry # 127927 : 2016, Book NA, NA, of the records of the Utah County Recorder. Lot 1 of The Void Plat A and Lots 1, 2, 3, and 4 of The Void Plat B are sometimes collectively referred to herein as the "Project". The Parcels are more particularly described in Exhibit A attached hereto and incorporated herein by this reference.

B. Declarant declares that the Project will be held, sold, conveyed, encumbered, hypothecated, leased, used, occupied and improved subject to the easements, restrictions, reservations, rights, covenants, conditions, obligations and equitable servitudes contained in this Declaration, all of which are for the purpose of enhancing the attractiveness and desirability of the Project, in furtherance of a general plan for the protection, maintenance, subdivision, improvement and sale of the Project. The easements, restrictions, reservations, rights, covenants, conditions, obligations and equitable servitudes in this Declaration will (1) run with and burden the Project and will bind all Persons having any interest in the Project, their heirs, successors in interest and assignees; (2) inure to the benefit of the Project; (3) inure to the benefit of and bind Declarant and its successors in interest and assignees and each Owner (as defined herein) and each Owner's successors in interest and assignees; and (4) may be enforced by Declarant and the Association (as defined herein).

C. Declarant has entered into a purchase agreement with GBR for the purchase and sale of Lot 1 of Plat A and Lot 1 and Lot 2 of Plat B (collectively the "**GBR Property**").

D. Declarant has entered into a purchase agreement with Elan for the purchase and sale of Lot 3 of Plat B (the "**Elan Property**").

E. Declarant has entered into a purchase agreement with Sequoia for the purchase and sale of Lot 4 of Plat B (the "**Sequoia Property**" and also known as the "**Hotel Parcel**").

F. GBR, Elan, Sequoia and any other future owner of a Parcel in the Project are referred to herein as an Owner or collectively as Owners.

**ARTICLE 1**  
**DEFINITIONS**

For the purposes of this Declaration, the following terms shall be defined as follows:

1.1. Assessments: Assessment or Assessments means an Owner's financial obligation as determined by Declarant or the Association with respect to the Project, or the Owner's Parcel, which obligation, constitutes a lien and encumbrance upon the Parcel.

1.2. Association: A yet to be formed Utah nonprofit corporation, comprised of the Owners of Parcels in the Project. Notwithstanding the foregoing, until such time as the Association is formed, all references in this Declaration to the Association shall be deemed to refer to Declarant, and all powers, rights and obligations of the Association under this Declaration, shall be held by Declarant.

1.3. Board or Board of Directors: Board or Board of Directors means the Association's Board of Directors.

1.4. Building: Any enclosed structure placed, constructed or located on a Parcel, including any appurtenant canopies, together with any columns or posts supporting same.

1.5. Building Area: Those areas on each Parcel as shown on an approved site plan within which Buildings or other commercial structures or improvements (including but not limited to parking lot structures, parking gates, covered trash receptacles, loading docks, storage facilities, walls, hedges, fences, poles, or lighting facilities, which may, from time to time, be constructed or located on a Parcel.

1.6. City: City means the City of Pleasant Grove, Utah, and its various departments, divisions, employees, and representatives.

1.7. County: County means Utah County, Utah, and its various departments, divisions, employees and representatives.

1.8. Declarant: Declarant means KPB Land, LLC, a Utah limited liability company, its successors and any Person to which it shall have assigned any rights under this Declaration by written assignment. As used in this Section, "successor" in the context of the Declarant means a Person who acquires Declarant or substantially all of its assets, or who merges with Declarant.

1.9. Declaration: Declaration means this instrument, including the Preamble and the Exhibits.

1.10. Default Rate: Shall mean eighteen percent (18%) per annum

1.11. Floor Area: The total number of square feet of floor space in a Building including basement, subterranean, balcony and mezzanine space, irrespective of whether actually occupied.

Floor Area shall be measured from the exterior line of the exterior walls and from the center line of any party or common interior walls without deduction for columns, walls or other structural or non-structural components.

1.12. Hotel Franchisor: shall mean and refer to a national or regional hotel, operator or franchisor of a first class or business suite type hotel (such as such as, for example only, Marriott, Hyatt, IHG, or Hilton).

1.13. Hotel Parcel or Lot 4: Hotel Parcel shall mean Lot 4 as shown on The Void Plat B.

1.14. Governing Documents: Governing Documents means this Declaration, any development agreement entered into between Declarant and Owners with respect to the Project and all amendments thereto, all amendments to the Declaration, the Articles of Incorporation and Bylaws of the Association, if and when it is created, and the Rules and Regulations.

1.15. Governmental Regulations: Any or all laws, statutes, ordinances, codes, decrees, rulings, regulations, writs, injunctions, orders, rules, variances, special and/or conditional use permits, or conditions of approval or authorization of any governmental entity, agency, or political subdivision whether now in force or which may hereafter be in force.

1.16. Improvement: Improvement or Improvements means, without limitation, vegetation and any structure, including buildings, irrigation facilities, drainage facilities, sewer laterals, walkways, roads, driveways, Parking Areas, fences, retaining walls, stairs, decks, antennae, the paint on all exterior surfaces, windbreaks, patio covers, railings, poles, signs, storage areas, exterior air conditioning and water-softening fixtures and equipment, all of which Improvements are to be constructed, installed, maintained and provided by each Owner of a Parcel for their own Parcel. Improvements within a Parcel except those expressly accepted by Local Governmental Agencies, are private, and shall be constructed, installed, maintained and provided respectively by Owner of the Parcel, or except as otherwise specifically contemplated or provided in this Declaration, the Association or the Declarant.

1.17. Late Fee: Late Fee shall be five percent (5%) of an unpaid Assessment, expense, fee, cost, and other sum or amount due pursuant to the terms of this Declaration.

1.18. Local Governmental Agency: Local Governmental Agency means the City, the County, any special assessment district, maintenance district, community facilities district or other governmental agency with jurisdiction over the Project.

1.19. Member: An Owner of a Parcel shall be Member of the Association.

1.20. Mortgage: Mortgage means any recorded mortgage or deed of trust or other conveyance of an interest in one or more Parcels or other portions of the Project to secure the performance of an obligation, which will be reconveyed upon the completion of such performance.

1.21. Mortgagee, Mortgagor: Mortgagee means a Person for whose benefit a Mortgage is made and includes the Beneficiary of a Deed of Trust. Mortgagor means the maker of a

Mortgage, and includes the Trustor of a Deed of Trust. The term "**Trustor**" is synonymous with the term "**Mortgagor**" and the term "**Beneficiary**" is synonymous with the term "**Mortgagee**."

1.22. **Notice and Hearing**: Prior to formation of the Association, Notice and Hearing means written notice of a breach of this Declaration from Declarant and failure of the party to whom such notice is given to cure such breach within ten (10) days, provided that such ten (10) day cure period shall be extended so long as such party commences cure within such ten (10) day period and thereafter diligently pursues such cure to completion. Following formation of the Association, Notice and Hearing means written notice and a hearing before the Board as provided in the Governing Documents.

1.23. **Occupant**: Any Person or lessee from time to time entitled to the use and occupancy of any portion of a Building in the Project under an ownership right or any lease, sublease, assignment, license, concession, or other similar agreement.

1.24. **Owner**: Owner means the Person or Persons, including Declarant, holding fee simple interest of record to any Parcel or holding a ground leasehold interest in and to a Parcel under a lease having a term of five years or more. The term Owner includes a purchaser under an executory contract of sale but excludes Mortgagees. The term Owner is sometimes referred to herein as Parcel Owner, which shall have the same meaning. The term "successor" in the context of an Owner means a Person who acquires the Owner or who acquires an Owner's interest in a Parcel.

1.25. **Parking and Landscape Area**: The term Parking Area or Parking Areas shall mean that portion of any Parcel (i) improved for use for parking of motor vehicles (but excluding appurtenant building service areas and Service Facilities), including, without limitation, incidental and interior roadways, access areas, driveways, walkways, curbs, signage and landscaping within areas used for such parking, traffic lanes, aisles, vehicle parking stalls, gutters, grade separations, berms and retaining walls, lighting standards, traffic and directional signs, traffic striping and markings and all other improvements located thereon for the purpose of accommodating the foregoing uses and (ii) improved with landscaping, grass, plants, xeriscaping, irrigation systems and facilities located on a Parcel, and including any park strip areas abutting a Parcel and within the public right of way. Parking Areas shall be managed, maintained, secured, operated, kept clean and free from debris by the Owner. Each Owner, as applicable, shall contract for all snow removal and surface maintenance services for all Parking Areas within its Parcel. In addition each Owner shall contract for commercial liability insurance coverage as contemplated in Article 8 of this Declaration with respect to its respective Parking Areas, in amounts and with coverages as contemplated therein. Declarant or the Association, as applicable, shall have the power to levy Assessments on the Owner and the Parcel, and collect from Owner any Assessments related to snow removal, surface maintenance services and insurance not provided by Owner as required by this Declaration.

1.26. **Permittee**: All tenants, and all occupants their respective officers, directors, successors, heirs, assigns grantees, franchisees, subtenants, employees, agents, contractors, customers, vendors, suppliers, visitors, invitees, licensees, of Owners thereof insofar as their activities relate to the intended use of the Project. Among others, persons engaging in the following activities on the Common Area will not, to the extent permitted by law, be considered

to be Permittees: (i) exhibiting any placard, sign, or notice; (ii) distributing any circular, handbill, placard, or booklet; (iii) soliciting memberships or contributions; (iv) parading, picketing, or demonstrating; and (v) failing to follow regulations relating to the use of the Project.

1.27. Person: Individuals, partnerships, firms, associations, corporations, limited liability companies, trusts, governmental agencies, administrative tribunals or any other form of business or legal entity.

1.28. Project: The Void Plat A and The Void Plat B, comprised of five Parcels as the same may be modified or amended.

1.29. Record, File, Recordation: Record, File, or Recordation means recording or filing a document in the office of the Utah County Recorder.

1.30. Roundabout: The area of the Project where the water feature is located.

1.31. Rules and Regulations: Rules and Regulations mean current rules and regulations as adopted by the Declarant or the Board.

1.32. Signs: Signs mean all advertising, placards, signs, names, billboards, insignia, numerals, addresses, and descriptive words of any type affixed, inscribed, constructed, or maintained on the Project.

1.33. Service Facilities: Loading docks, truck ramps, trash enclosures, storage areas and other similar outward extensions.

1.34. Utility Lines: Those facilities and systems for the transmission of utility services, including, but not limited to: water, sewer and storm drainage systems or structures, water mains, sewers, irrigation and water sprinkler system lines, telephones, electrical lines, conduits or systems, natural gas lines, fiber optic communications lines, telecommunications lines, and other public or private utilities, as the same may exist, including stubbed lines or laterals. Anything to the contrary notwithstanding, the power, electrical, fiber optic and telecommunication utilities to be installed by or on behalf of an Owner shall be located within a public utility easement as shown on either Plat A or Plat B. Nothing in the foregoing description of Utility Lines shall be construed as requiring Declarant to install any such Utility Lines for the benefit of any Parcel, except to the extent agreed pursuant to separate agreement between Declarant and such Parcel Owner.

**ARTICLE 2**  
**USE RESTRICTIONS**

2.1. Permitted Uses. The Parcels in the Project may be used for all uses not limited or prohibited in this Declaration to the extent the same is also permitted by law. Declarant may authorize any use which is not prohibited by law or by this Declaration.

2.2. Intentionally Blank.

2.3. Additional Use Restrictions.

2.3.1. General Use Restrictions. No portion of the Common Area and no portion of any Parcel outside of Buildings shall be used for the sale, storage or display of merchandise or other materials. No exterior marketing promotions or signs shall be held or placed in the Common Area or on a Parcel without the prior written consent of Declarant. Anything to the contrary in this Section 2.3 notwithstanding, Section 4.1.3 below shall govern monument signage on each Parcel.

(a) Intentionally Blank.

(b) The Parcels other than the Hotel Parcel shall be used only for restaurant, service, office, commercial, fitness center, entertainment centers, gardens, and any other purposes permitted under applicable zoning and other laws, and not otherwise prohibited under this Declaration. Notwithstanding anything to the contrary in the foregoing, no Parcel other than the Hotel Parcel shall be used for any hotel, motel or similar use.

(c) No portion of the Project shall be used for a business or use which: (i) creates strong, unusual or offensive odors, fumes, dust or vapors which are objectionable; (ii) is a public or private nuisance; (iii) emits noises or sounds which are objectionable due to intermittence, beat, frequency, shrillness or loudness; or (iv) creates unusual fire, explosive or other hazards.

(d) No portion of the Project shall be used for any of the following purposes: a flea market or a business selling so-called "second hand" goods; bookstore or establishment engaged in the business of selling, exhibiting or delivering pornographic or obscene materials; a so-called "head shop"; sexually oriented business; cigarette and cigar shop including electronic cigarettes, ; betting parlor; junk yard; recycling facility or stockyard; vehicle repair and service shop (including lubrication and/or service center), body and fender shop, car wash facility or gasoline station, or; a laundromat or dry-cleaning facility; pawn shop, title lending business, discotheque, dance hall, comedy club, night club or adult entertainment facility.

(e) To the extent permitted, the Owner of a Parcel where a restaurant is located, at its sole cost and expense, shall keep the parking and Common Project Improvements serving such restaurant clean and free of all debris and rubbish caused by such use and such costs shall not be chargeable to Declarant or to the Association.

(f) Each Parcel Owner shall provide Declarant with written notification of any proposed change in use (and each subsequent change in use) from the initial use of any business operation located on its Parcel, and any such change shall be subject to the prior written approval of Declarant, which approval shall not be unreasonably withheld or delayed. It shall be reasonable for Declarant to withhold its consent for the following reasons, which are set forth here as examples and are not meant to be an exhaustive list: (i), if the use violates zoning or other governmental laws, rules

and/or regulations; or (ii) if the use can be expected to materially decrease property values of the applicable parcel or of other parcels in the Project or in the surrounding business area.

2.4. Continuous Use. All Owners are required to operate their businesses, or cause the operation of their tenants or occupant's businesses on their respective Parcels during normal business hours for the applicable business industry and at all times, except, at such Owner's option, federal holidays, and during reasonable closures for remodeling and repairs, and in the event of damage or destruction arising from natural disasters, governmental action, wars, strikes and other interference beyond the control of such Owner. In the event that any Owner shall fail to continuously operate its business or cause the continuous operation of its tenant or Occupants' businesses on an unreasonable or extended basis and after a Notice and Hearing, Declarant or the Association shall have the right but not the obligation, to take any action for the benefit of itself and/or other Owners, occupants, tenants, and business owners in the Project, to maintain vitality of business activities in the Project and the safety and integrity of any structure within any Parcel, including undertaking property management, making necessary repairs to any structures on the non-operational Parcel, the cost and expense of which may be charged to the Parcel Owner which has failed to maintain continuous operations thereon.

### ARTICLE 3

#### PROJECT GOVERNANCE: THE ASSOCIATION

3.1. Creation of Association. Declarant may, at its option and at any time, create an Association to manage and enforce such of Declarant's rights and obligations under this Declaration as Declarant shall delegate to it. The Association shall have the purposes, powers and basic structure set forth in this Article, together with such additional powers, rights, and obligations as are set forth in Articles of Incorporation and Bylaws to be adopted by Declarant.

3.2. Purposes and Permitted Functions. The Association shall have the general and implied powers of a corporation, generally to do all things that a corporation organized under the laws of the State of Utah may lawfully do for its Members, subject only to the limitations on the exercise of such powers in the Governing Documents. The Association, if formed, shall be formed exclusively for those activities directly related to (a) the duties and powers enumerated in this Declaration ; (b) maintaining and insuring any Parking Areas as contemplated in Section 1.255; (c) collecting Assessments to finance the maintenance and use of the Roundabout or for other services or activities carried out by the Declarant or the Association as contemplated by this Declaration; and (d) administering and enforcing the Governing Documents.

3.3. Specific Duties and Powers. In addition to its general powers and duties, Declarant and the Association shall have the following specific powers and duties:

3.3.1. To accept, maintain, repair and manage the Roundabout, and to maintain, repair and manage the Parking Areas and other areas within the Project, as contemplated by and in accordance with the Governing Documents to the extent not properly maintained by the Owner thereof.



3.3.2. To reserve and obtain easements and licenses across and for the benefit of the Project.

3.3.3. To maintain insurance with respect to the Project and the Parking Areas and the Declarant and the representatives, directors, officers and agents of the Association.

3.3.4. To enter on any Parcel to perform the Association's duties and exercise the powers granted to the Association under this Declaration and to inspect the Project.

3.3.5. To establish and modify Rules and Regulations for the Project.

3.3.6. To enter into contracts.

3.3.7. To adopt and modify restrictions on vehicles within the Project.

3.3.8. To approve the design of improvements to the Project.

3.3.9. To impose and collect Assessments and enforce the provisions of the Declaration.

Unless and until such time as the Association has been formed, Declarant shall have and hold all of the specific powers and duties set forth in this Section 3.3.

3.4. Owners Membership and Voting Rights. Every Owner, upon close of escrow for its acquisition of a Parcel, shall automatically become a Member of the Association (following the formation thereof) and shall remain a Member until ownership ceases. Each Parcel shall be entitled to one vote, as contemplated under Article 9.5. Memberships in the Association are not assignable, except to the Person to which title to the Parcel is transferred. Every membership in the Association is appurtenant to and may not be separated from the fee ownership of a Parcel or lot. Ownership of a Parcel or lot is the sole qualification for membership in the Association.

3.5. Voting Membership. The Association shall have the following voting membership:

3.5.1. Owner Class Members. Owner Class Members shall be all Owners including Declarant. The lessee of a Parcel under a ground lease with an initial term of more than five (5) years shall be a Member during the term of such ground lease. Members shall be entitled to exercise voting power in the Association in the same ratio as costs for maintenance are allocated in Section 8.5 except that until a lot has been sold, Declarant shall be entitled to vote for all lots owned by Declarant. If a Parcel is further subdivided in accordance with this Declaration, then the voting power allocated to the Parcel shall be reallocated by Declarant in the Supplemental Declaration, or shall be allocated in the same ratio as common assessments if the voting power is not specifically allocated by Declarant. When more than one Person holds an interest in any Parcel, all such Persons shall be Members, although only one co-owner shall be entitled to exercise the vote to which the Parcel is entitled.

## ARTICLE 4

**CONSTRUCTION ON THE PARCELS; SIGNAGE**

4.1. Buildings and Improvements. All Buildings and Improvements, and all related Parking Areas shall be designed and constructed in accordance with individual agreements with the developer. Prior to construction, expansion, reconstruction, replacement or modification (collectively referred to herein as "**Construction**") of any Building or other Improvements within any Parcel, the Owner shall deliver to the Association and the Declarant or Declarant's designated representative one (1) complete set of its schematic site plans and other plans showing, among other things, the location of all intended facilities and improvements to the Parcel, including automobile ingress and egress, curb cuts and traffic flow, signalization and exterior signage to and within the Parcel, schematic architectural and engineering plans, landscaping drawings, grading and drainage plans, utility lines, floor plans and plans and specifications for exterior signs, which plans, drawings and specifications shall show, among other things, exterior architectural design and decor, elevations, aesthetic treatment and other like pertinent data, and shall outline specifications for all such facilities and improvements to the Parcel, all of which are hereinafter called "**Plans and Specifications**". The Plans and Specifications need only include interior drawings and site plans if requested by Declarant. All Utility Lines within and serving a Parcel shall be installed and maintained by such Parcel Owner in accordance with Section 5.

4.1.1. Intentionally Omitted.

4.1.2. No Liability. No approval shall be considered an approval of the plans, drawings and/or specifications from an engineering perspective or a determination that the plans, drawings and/or specifications are suitable to meet building, environmental, architectural or engineering design standards, or that any Buildings or improvements comply with any applicable Governmental Regulations, or that any Buildings or improvements have been built in accordance with such plans, drawings and/or specifications, or the Plans and/or Specifications do not cause Declarant to be in violation of any Governmental Regulation. Any approval by Declarant is subject to approvals by the City, County and other required governmental entities

4.1.3. Monument Signs/Project Sign. Each Parcel may have, subject to applicable Governmental Regulations one freestanding monument sign on and with respect to said Parcel. The cost of constructing, installing, maintaining, operating, repairing and replacing such monument sign structure and sign fascia shall be paid by the Owner. With the prior consent or approval of any Parcel Owner, Declarant or the Association shall have the right to install, pay for and maintain one or more Project Signs with the name of the Project facing on Pleasant Grove Blvd. All exterior building signs shall be restricted to identification of the businesses or services located or provided on the Parcel and shall conform to any applicable Governmental Regulations.

#### 4.2. General Construction Requirements.

4.2.1. Manner of Performance. In connection with the development, construction and installation of the Improvements on a Parcel such work shall be accomplished in such a manner as not to unreasonably interfere, obstruct or delay (a) access to or from any other Parcel or any part thereof, or to or from any public or private right-of-way; (b) construction work being performed on any other Parcel; or (c) the use, enjoyment or occupancy of any other Parcel. All work performed on a Parcel by an Owner in connection with the construction, maintenance and repair of any building, landscape, sign or other improvements located on a Parcel shall be effected as expeditiously as possible and in such a manner as not to unreasonably interfere, obstruct or delay (a) access to or from any other Parcel or any part thereof, or to or from any public or private right-of-way; (b) construction work being performed on any other Parcel; or (c) the use, enjoyment or occupancy of any other Parcel. Unless otherwise specifically stated herein, each Owner shall, at its sole cost and expense (i) maintain all buildings and improvements located on their Parcel, including without limitation parking strip landscape areas within the public right of way abutting a Parcel; (ii) maintain all Improvements located on their respective Parcel; and (iii) promptly repair and restore all buildings, signs and Improvements on such Owner's Parcel damaged or destroyed by Owner or its Permittees, unless Declarant or the Association determine to perform the work, in which case Owner shall be responsible for the cost and expense of such repair and restoration. In the event the Declarant or the Association fails to maintain the Parking Areas as contemplated in Section 1.255 an Owner may send Declarant or the Association, as applicable written notice of intent to maintain such Parking Areas, and if Declarant or the Association fails to commence maintenance of the same within thirty (30) business days, Owner may perform reasonable maintenance of such Parking Areas as contemplated in Section 1.255 and thereafter Declarant or the Association, as applicable, shall assess to each Parcel Owner its proportionate share of the reasonable cost of such work in accordance with Section 8.5. The Parcel Owner seeking reimbursement shall submit all requested documentation in support of the amount requested for reimbursement. Upon Declarant or Association's receipt of the requested amounts from the other Parcel Owners, Declarant (or Association, if applicable) shall reimburse the Parcel Owner for amounts reasonably incurred and supported by appropriate documentation.

4.2.2. Staging. No staging on any Parcel shall be allowed by persons other than the Owner of such Parcel, except as may be approved by such Owner in writing. Staging for the construction, maintenance and repair of any building, sign or other improvements located on a Parcel, including, without limitation, the location of any temporary buildings or construction sheds, the storage of building materials, and the parking of construction vehicles and equipment, shall be limited to and take place only on the Parcel. An Owner shall fence off such staging and storage areas. Unless otherwise specifically stated herein, the Owner shall, at its sole cost and expense, promptly repair and restore or cause to be promptly repaired and restored to its prior condition all buildings, signs and Improvements damaged or destroyed in the performance of such work. To the extent any Owner seeks access to any adjacent Parcel for the staging of construction equipment or materials, such Owner must make the request for such temporary license in writing, clearly identifying the proposed location, scope, manner, and duration of the proposed use/staging, which the Owner of the servient Parcel and Declarant may in its reasonable discretion, approve or disapprove. Such request must be delivered to the Owner of the servient Parcel at least fifteen (15) days prior to the date such license is proposed to commence.

4.2.3. Standard of Work. All work performed in the construction, maintenance and repair of any building, sign or other improvements located on a Parcel shall be done in a good and workmanlike manner and in accordance with good engineering standards. Improvements work by Declarant shall meet or exceed the minimum general design standards for the Improvements including, without limitation, the minimum maintained lighting intensity at grade at all points in the Project, the slope of the Parking Areas, and the surface materials used for the Parking Areas. All work by any Owner shall meet or exceed the minimum general design standards for the Project including, without limitation, with regard to the minimum maintained lighting intensity at grade at all points in the Project, the slope of the parking areas, and the surface materials used for the parking areas.

4.2.4. Safety Standards. Declarant or the Association and its agents, with respect to the services provided and each Owner and its respective agents with respect to the work of improving the Owner's respective Parcel, or their respective agents, shall at all times take any and all safety measures required under the applicable laws, in conformity with good construction practices (meeting or exceeding the Utah construction community's minimum safety standards) with the intent to protect the Declarant, other Owners, occupants, Permittees, guests, visitors, licensees, persons performing work, and members of the public on or at the Project from injury or property damage caused by or related to the performance of such work.

4.2.5. Mechanics' Liens. If any mechanics', materialmen's, architects', or other design or construction liens shall be filed against any Parcel not owned by the Owner as a result of actions of another Parcel Owner who does not own such encumbered Parcel, the Owner whose actions were the cause of such lien shall cause the lien to be satisfied and released of record. Such Owner shall, within thirty (30) days after the filing of such lien, either (i) cause any such outstanding lien or claim of lien to be released of record or insured over by bond or other means in accordance with applicable law; or (ii) give such assurances as would enable a title insurance company to insure over said outstanding lien or claim of lien, failing both of which the Declarant shall have the right, at the Owner's expense, to bond over said lien. The Owner shall indemnify, defend, protect and hold Declarant and its respective officers, directors, shareholders, employees and agents harmless for, from and against any and all causes of action, claims, liabilities, losses, damages, costs, expenses (including reasonable attorneys' fees and court costs), liens and claims of lien arising out of or in any way connected with the performance of such work.

4.2.6. Indemnity. In addition to the indemnification set forth in Section 8.9, each Owner shall indemnify, defend, protect and hold Declarant, the Association, the other Owners and the respective officers, directors, shareholders, employees, representatives, lenders and agents of each (the "**Indemnified Parties**") harmless, from and against any and all causes of action, claims, liabilities, losses, costs and expenses (including reasonable attorneys' fees and court costs) damages, arising out of or related to (i) injury to or death of any person or damage to or destruction of any property; (ii) from damage to another Parcel within the Project; (iii) arising out of or resulting from any acts or omissions of, or at the request of, the Owner or its Occupants, agents, employees, representatives, tenants, guests, licensees, invitees, contractors, Permittees or any subcontractors, materialmen and suppliers; or (iv) occurring within an Owner's Parcel, except to the extent items (i) through (iv) above were caused by of the Indemnified Party.

4.2.7. Debris; Excavation. During all construction on a Parcel, the Owner shall keep the construction site and surrounding areas clean and free of construction materials, trash and debris, and shall take appropriate precautions to protect against personal injury and property damage to the other parties and their occupants and invitees. In the event that any loose dust, dirt, trash, construction materials or debris resulting from or attributable to any work on any Parcel (“**Debris**”) accumulates on any other portion of the Project, then the Owner of the Parcel which is the source of the Debris shall, at its own cost and expense, be responsible for removing the same and repairing or restoring the impacted or damaged area to its original condition. In the event the Owner of the Parcel which is the source of Debris fails to commence clean-up of such Debris immediately upon notice, but in no event longer than two (2) days after receipt of notice, then the affected Owner may clean up any Debris on its Parcel, and Declarant or the Association, if any, will assist the affected Owner in seeking reimbursement for the costs incurred to clean the Debris. With regard to excavation, and without limiting any other provision of this Declaration, no excavation shall be made on, and no sand, gravel, soil or other material shall be removed from, the Parcel, except in connection with the construction or alteration of Parcel buildings or improvements approved in the manner set forth in this Declaration, and upon completion of any such operations, exposed openings shall be backfilled and disturbed ground shall be graded, leveled and paved or landscaped in accordance with the approved Plans and Specifications.

4.2.8. Parking Area Use Prior to Development; Erosion Control. Except as provided in Section 5.2, no parking shall be allowed on any Parcel, except by the guests, invitees or tenants of the Parcel Owner, unless otherwise agreed to between the Owners thereof in writing. All Parcels shall be maintained with reasonable dust control measures and in accordance with the City of Pleasant Grove erosion control plan and kept weed free and clean by the Owner.

4.3. Parcel Maintenance. From and after the date construction on a Parcel is completed, and except as contemplated in Section 1.25, the exterior of any Building, all Parking Areas and landscaped areas of the Parcel, and including any Improvements located on the Owner’s Parcel, shall be maintained by the Owner at Owner’s expense and in first class order, condition and repair.

4.4. Damage and Destruction.

(a) If the building(s) or Improvements on the Parcel are damaged or destroyed, the Owner shall be obligated to restore its building(s) and Improvements on the Parcel. In such case such building(s) or Improvements shall be restored to a condition at least as good as of the building(s) or Improvements that which existed immediately prior to such damage or destruction and all such restoration and reconstruction shall be performed in accordance with the following requirements as the same are applicable thereto: (i) no work on the Parcel shall be commenced unless the Owner performing the same has in each instance complied with the appropriate provisions of this Declaration with respect to approval of Plans and Specifications for work performed on the Parcel; and (ii) all work shall be performed in accordance with the requirements of this Declaration.

(b) In the event of damage or destruction to the buildings and/or Improvements on a Parcel (the “**Damaged Parcel**”) amounting to destruction of the buildings and improvements exceeding seventy-five percent (75%) of the replacement cost where (i) the Parcel Owner determines not to rebuild; or (ii) the insurance proceeds, if any, arising from such casualty are assigned to the Parcel Owner’s lender under the loan documents encumbering the Damaged Parcel, and Parcel Owner or the Parcel Owner’s lender determines not to rebuild; or (iii) the Parcel Owner or the Parcel Owner’s lender fails to commit (in writing) to commence to rebuild within one hundred twenty (120) days following the casualty event, the Parcel Owner of the Damaged Parcel will notify Declarant, in writing, that the Parcel Owner or its lender will not rebuild or restore the buildings and improvements on the Damaged Parcel. In such event, subject to such Parcel Owner satisfying each and every one of the conditions below, the Parcel Owner shall not be obligated to rebuild the damaged or destroyed building or improvements on the Damaged Parcel:

(i) Parcel Owner must immediately secure the Damaged Parcel and maintain the damage and destruction in a safe and secure fashion at all times, including an obligation to promptly remove all debris, rubble, waste, damaged improvements, secure and repair live utility lines, and prohibit access to the area.

(ii) Parcel Owner must notify Declarant in writing, of its lender’s decision not to rebuild the buildings and improvements on the Damaged Parcel within ten (10) days following Parcel Owner’s receipt and notice from its lender of such determination.

(iii) Parcel Owner must notify Declarant, in writing, of its intent not to rebuild the buildings and improvements on the Damaged Parcel within ten (10) days of such determination.

(c) If Parcel Owner determines under this Section to rebuild, such Parcel Owner shall deliver to Declarant a notice of intent to rebuild and such Parcel Owner shall have ninety (90) days from the date of such notice to commence to obtain appropriate Governmental Approvals of Plans and Specifications, and to diligently pursue to Governmental Approvals and the rebuilding to completion. In the event of failure of the Declarant to receive a notice of intent to rebuild within one hundred twenty (120) days following the casualty event, or in the event, following a notice of intent to rebuild, the Governmental Approvals and rebuilding is not diligently pursued to completion, Declarant shall have the right to immediately exercise Declarant’s Option (defined below).

(d) If a Parcel Owner’s lender determines not to rebuild, or a Parcel Owner chooses not to rebuild, or either fails to timely commence to rebuild or diligently pursue same to completion, as provided hereunder, Declarant shall have an option to purchase the Damaged Parcel. Each Parcel Owner grants to Declarant an option to repurchase its Damaged Parcel (the “**Option**”), exercisable during the period that commences on the earlier of (i) the date that Declarant receives the notice provided in

subsection (b) above; or (ii) one hundred twenty (120) days after the date of damage or destruction (the “**Option Period**”). The Option shall be exercised by Declarant providing written notice of intent to exercise delivered to the Parcel Owner of the Damaged Parcel within ninety (90) days following commencement of the Option Period.

(e) If Declarant elects to exercise this Option, the sale price shall be the fair market value of the Parcel(s) at the time of exercise of the Option (“**Fair Market Value**”). Fair Market Value shall be determined by appraisal. If Declarant and Parcel Owner cannot agree upon a qualified independent MAI appraiser within fourteen (14) days after Declarant's notice of exercise of the Option, then Declarant and Parcel Owner shall each designate an independent qualified MAI appraiser (with at least 10 years' experience in the Utah County, Utah commercial property market and experience in the valuation of destroyed or condemned properties) within seven (7) days thereafter. Within fifteen (15) days after being selected, each such appraiser shall determine the Fair Market Value. If the two appraisals differ by ten percent (10%) or less, the appraisals shall be averaged to determine Fair Market Value. If the two appraisals differ by more than ten percent (10%), then the appraisers shall promptly (within 2 business days) select a third qualified independent MAI appraiser, who shall appraise the property within fifteen (15) days after being selected. Thereafter, the two closest appraisals shall be averaged to determine the Fair Market Value. Each party shall pay the costs of its appraiser. If one appraiser is used or a third appraiser is necessary, the Declarant and Parcel Owner shall share such costs equally.

(f) The parties shall use commercially reasonable efforts to enter into a purchase and sale agreement within sixty (60) days of the date the Fair Market Value is determined as provided under subsection (e) above. Such agreement shall provide that closing shall occur not more than ninety (90) days following execution of the purchase and sale agreement. Conveyance of the Damaged Parcel shall be by Special Warranty Deed and shall include an assignment of all rights and interests of Owner in the Parcel to Declarant.

## **ARTICLE 5** **EASEMENTS**

### 5.1. Utility Easements.

5.1.1. Grant of Easements. To the extent of its right to do so, Declarant hereby grants to each Owner a non-exclusive and perpetual easement over, through and across the area designated on Plat A and Plat B for public utility easements, for ingress and egress to and from its Parcel. It is contemplated that after installation, any public utility located in a public right of way or public utility easement shall be maintained, serviced and repaired by the respective public utility. The initial location of any Utility Line facilities within a Parcel and installed by an Owner, if any, shall be subject to the prior written approval of Declarant or the Association, as applicable, which approval shall not be unreasonably withheld.

5.1.2. Easement Area and Facilities. All Utility Lines within the Project shall be installed within public utility easement areas, and maintained below ground level, except for (i)

ground-mounted electrical transformers and such other facilities as are required to be above ground by the utility providing such service, and (ii) temporary utility service required during construction, maintenance and repair of the Common Area or of any buildings or improvements located on a Parcel.

5.1.3. Installation and Maintenance. The installation, operation, maintenance, repair and replacement of Utility Lines shall not unreasonably interfere with the use of a Parcel, or with the normal operation of any business in the Project.

Each Parcel Owner shall maintain, repair and replace Utility Lines installed on their Parcel at Owner's sole cost and expense, except as provided otherwise below. The installation, operation, maintenance, repair and replacement of Utility Lines by a Parcel Owner shall not unreasonably interfere with the use of any other Parcel with the normal operation of any business in the Project. Such Owner shall cause all work in connection therewith (including general clean-up and proper surface and/or subsurface restoration) to be completed as quickly as possible and in a manner so as to minimize interference with the use of any other Parcel.

Upon completion of such work, Owner shall provide to Declarant or the Association, as applicable, as-built plans for all such facilities (as determined by a licensed surveyor), within thirty (30) days after the date of completion of construction. Any party accessing or crossing over any other Parcel for maintaining, installing, or repair of Utility Lines pursuant to the provisions of this Section 5.1.3 shall pay all costs and expenses with respect thereto, ensure no liens are filed with respect thereon, shall cause all work in connection therewith (including general clean-up and proper surface and/or subsurface restoration) to be completed as quickly as possible and in a manner so as to minimize interference with any other Parcel and the use of the Common Area, and shall provide Declarant and/or the Owner of the other Parcel(s), as applicable, with as-built plans for all such facilities, including the location of the easement (as determined by a licensed surveyor), within thirty (30) days after the date of completion of construction.

5.1.4. Relocation of Utility Lines. At any time and from time to time, Declarant or any Owner shall have the right to relocate any Utility Lines installed on its Parcel pursuant to the foregoing grant of easement, provided that such relocation: (i) shall be performed only after sixty (60) days prior written notice of the Declarant or Owner's intention to undertake the relocation shall have been given to the Parcel Owner served by such Utility Lines; (ii) shall not unreasonably interfere with or diminish utility service to the Declarant or other Parcel Owner's Parcel served by such Utility Lines; (iii) shall not reduce or unreasonably impair the usefulness or function of the Utility Lines; (iv) shall be performed without cost or expense to the Parcel Owner served by such Utility Lines; (v) shall be completed using materials of a quality and design standards which equal or exceed those originally used; (vi) shall have been approved by the service provider and any appropriate governmental agencies having jurisdiction thereof; (vii) shall provide for the original and relocated area to be restored to the original specifications; and (viii) shall not unreasonably interfere with the conduct or operation of the business of any occupant of the Parcel served by such Utility Lines. The Parcel Owner performing such relocation shall provide as-built plans for all such relocated utility lines and facilities to the Parcel Owner served by such Utility Lines within thirty (30) days after the date of completion of such relocation.



5.1.5. Additional Easements. Each Owner agrees to grant such additional easements as are reasonably required by any public or private utility for the purpose of providing the Utility Lines for the benefit of the other Owners and their Occupants, provided such easements meet the requirements of this Declaration are not otherwise inconsistent with the provisions of this Declaration.

5.1.6. Term. The terms and provisions of this Section 5.1 shall survive the expiration or earlier termination of this Declaration.

5.2. Shared Parking/Shared Access. Except for a license arrangement that may be entered into between the owner of Lot 2 and Lot 3, there will be no shared parking between Lots within the Project.

5.3. Pedestrian Access Easements.

5.3.1. Declarant as grantor, hereby grants to the other Owners and their respective Permittees for the benefit of each Parcel belonging to the other Owners, as grantees, a nonexclusive easement for pedestrian ingress and egress over and across any sidewalks and pedestrian access facilities located within the Common Area, except for those areas devoted to Service Facilities or drive-up or drive through customer service facilities. The reciprocal rights of ingress and egress set forth in this Section 5.3.1 shall apply to the Common Area in favor of each Parcel.

5.3.2. Declarant reserves the right to close off any portion of the Common Area for such reasonable period of time as may be legally necessary, in the opinion of Declarant's legal counsel, to prevent the acquisition of prescriptive rights by anyone; provided, however, that prior to closing off any portion of the Common Area as herein provided, unless an emergency situation so requires, Declarant shall give five (5) days prior written notice to the other Owners of its intention to do so, and shall attempt to coordinate such closing with the other Owners so as to avoid unreasonable interference;

5.3.3. Each Owner reserves the right at any time and from time to time to exclude and restrain anyone who is not a Permittee from using or accessing its Parcel.

5.4. Landscaping. The Owners shall each be responsible, at its cost, for the proper installation, irrigation, maintenance and replacement of landscaping on any portions of its Parcel designated as landscape areas on the approved Plans and Specifications for the Parcel, and for the irrigation, maintenance and replacement of landscaping on the park strip land lying adjacent to the Parcel and within the public right of way of any adjacent road or roads (collectively the "**Parcel Landscaping**"), all of which Parcel Landscaping shall be maintained in compliance with the requirements of all applicable Governmental Regulations including without limitation, those enforced by Utah County, UDOT, the State of Utah, Pleasant Grove City. If the Owner fails or refuses to undertake its responsibilities described in this Section 5.4 with respect to such Parcel Landscaping, then Declarant or the Association, following the delivery not less than ten (10) days prior written notice to the Owner to perform such Parcel Landscaping responsibilities, may perform such landscape work on the Parcel as may be reasonably necessary to comply with such requirements, and within ten (10) days after demand by Declarant or the Association, the

Owner shall reimburse Declarant or the Association for all costs and expenses incurred by Declarant or the Association in connection with such Parcel Landscaping responsibilities, together with a management fee equal to five percent (5%) of all such costs and expenses.

5.5. Drainage Easement. Declarant hereby grants to each Owner, and each Owner hereby grants to Declarant, a non-exclusive easement over and under the parking areas of its Parcel and outside of any building footprint, for surface water drainage over and through the drainage patterns and storm water drainage systems that are established from time to time among the Parcels and approved by Declarant as part of the Owner's Plans and Specifications. Nothing herein shall prevent an Owner from relocating the drainage patterns established upon such Owner's Parcel, provided such relocation does not unreasonably interfere with the surface water drainage of any other Parcels (including the Common Area) nor interfere with the orderly discharge of surface water from such other Parcels.

5.6. No Merger. Notwithstanding Declarant's ownership of more than one Parcel, the easements granted hereunder shall burden and benefit each Parcel individually, without merger as a result of such common ownership, and upon conveyance of a Parcel so that such Parcel ceases to be under common ownership, neither the Owner conveying said Parcel nor the Owner acquiring said Parcel shall need to execute additional documentation to evidence the existence of said easements, and said easements shall relate back to and shall be deemed to have been created as of the date hereof.

## ARTICLE 6 PARKING

### 6.1. Parking.

6.1.1. Parking Requirements. Each Parcel shall satisfy all parking requirements imposed by applicable Governmental Regulations on its Parcel.

6.2. Parking. The Owners shall each be responsible, at its cost, for the proper maintenance of vehicle parking and related access areas of its Parcel beginning at the inside of the curb on a Lot (collectively the "**Parcel Parking Area**"). If the Owner fails or refuses to undertake its responsibilities described in this Section 6.2 with respect to such Parcel Parking Area, then Declarant or the Association, following the delivery not less than ten (10) days prior written notice to the Owner to perform such Parcel Parking Area responsibilities, as may be reasonably necessary to comply with such requirements, and within ten (10) days after demand by Declarant or the Association, the Owner shall reimburse Declarant or the Association for all costs and expenses incurred by Declarant or the Association in connection with such Parcel Parking Area responsibilities, together with a management fee equal to five percent (5%) of all such costs and expenses.

6.2.1. Condemnation. In the event of a condemnation of part of a Parcel or sale or transfer in lieu thereof that reduces the number of usable parking spaces below that which is required in this Section 6.1, then the Owner whose Parcel is so affected shall use commercially reasonable efforts (including using proceeds from the condemnation award or settlement) to restore and/or substitute parking spaces in order to comply with the parking requirements set

forth in this Section 6.1. If such compliance is not possible, then the Owner shall not be deemed in default hereunder, but such Owner shall not be permitted to expand the amount of Floor Area located upon its Parcel. If such Floor Area is thereafter reduced other than by casualty, then the Floor Area on such Parcel may not subsequently be increased unless the parking requirement is satisfied.

## ARTICLE 7 HAZARDOUS MATERIALS

7.1. Restriction on Hazardous Materials. No Hazardous Material (as defined in Section 7.4 below) shall be brought upon, kept, used, generated or stored in or around a Parcel, except with the prior written consent of Declarant, and any such permitted Hazardous Materials shall be in compliance with all applicable Environmental Regulations (as defined in Section 7.4 below). Notwithstanding the foregoing, Declarant's consent shall not be required for the storage, use or disposal of common household cleansers and degreasers in the ordinary course of business on a Parcel, provided that such storage, use and disposal is in compliance with all applicable Environmental Regulations. No underground storage tanks shall be permitted on any Parcel. Any above ground storage tanks shall require Declarant's prior written approval, and if permitted must have adequate secondary containment, including but not limited to a double-wall containment system. Declarant's approval of any method of use or storage of Hazardous Materials on the Parcel shall in no way limit Declarant's rights and remedies under this Section 7.1, nor create any liability on the part of Declarant. Without limiting the foregoing, in the event of a violation of any Environmental Regulation on a Parcel, the Owner of such Parcel shall promptly take all actions at its sole expense as are necessary to correct such violation to the satisfaction of the regulatory authority with jurisdiction and the reasonable satisfaction of Declarant

7.2. Indemnity. If an Owner breaches its obligations under Section 7.1 above, or if a Hazardous Material is at any time caused by, released originates from on any Parcel (except to the extent caused by Declarant), then the Owner of such Parcel shall indemnify, defend, protect and hold Declarant and any other Parcel Owner, and their officers, directors, shareholders, employees and agents, harmless from and against any and all causes of action, claims, liabilities, losses, damages, costs and expenses (including reasonable attorneys' fees and court costs) arising out of such breach or the existence of such Hazardous Material, including, without limitation, (i) diminution in value of the Hotel Parcel, (ii) damages for the loss or restriction on use of rentable or usable space or of any improvement on the Hotel Parcel, (iii) sums paid in settlement of, payment of, or in order to comply with any claims, suits, actions, judgments, proceedings or investigations, (iv) reasonable consultants' fees, experts' fees and incidental costs incurred in connection with any of the above, and (v) reasonable costs of any investigation of site conditions or any cleanup, remediation, removal or restoration work required by any governmental, regulatory authority with jurisdiction. The obligation to indemnify, defend, protect and hold Declarant and any other Parcel Owner harmless as set forth herein shall survive the expiration of this Declaration.

7.3. Groundwater Testing. Without limiting the foregoing, Declarant shall have the right upon reasonable suspicion or notice of an event affecting the Project, including a release or existence of contamination, at any time and from time to time, to cause not more than three (3)

testing wells to be installed on a Parcel in locations reasonably approved by the Owner of such Parcel and, at Declarant's option, may cause the groundwater under such Parcel to be tested for the presence of Hazardous Material not more than once in any twelve (12) month period (unless there is an investigation which requires more frequent testing) by the use of such tests as are then customarily used for such purposes. If the Owner of a Parcel so requests in writing, Declarant shall supply such Owner with copies of such test results. The testing described in this Section 7.3 shall be a Common Area Expense, unless Owner is obligated to indemnify Declarant against such costs pursuant to Section 7.2 above. Notwithstanding the foregoing, this Section 7.3 is not intended to and does not limit or abridge Declarant's legal rights, if any, to recover these expenses from the Owner.

7.4. Definitions. As used herein, the term "**Hazardous Material**" means: (i) any waste, material or substance (whether in the form of a liquid, a solid or a gas and whether or not air-borne), which is deemed to be a pollutant or a contaminant, or to be hazardous, toxic, ignitable, reactive, corrosive, dangerous, harmful or injurious to public health or to the environment, and which is or may become regulated by or under the authority of any applicable local, state or federal laws, judgments, ordinances, orders, rules, regulations, codes or other governmental restrictions or requirements, any amendments or successor(s) thereto, replacements thereof or governmental publications promulgated pursuant thereto (collectively "**Environmental Regulations**" and individually, an "**Environmental Regulation**"); (ii) petroleum and hydrocarbons, whether crude or refined, and any fraction or mixture thereof; (iii) asbestos; (iv) polychlorinated biphenyls; and (v) any radioactive material. The term "Environmental Regulations" means local, state and federal laws, judgments, ordinances, orders, rules, regulations, codes and other governmental restrictions and requirements, any amendments and successors thereto, replacements thereof and governmental publications promulgated pursuant thereto, which deal with or in any manner relate to Hazardous Material.

## **ARTICLE 8**

### **MAINTENANCE; TAXES; INSURANCE.**

8.1. Parcel Maintenance. Except as otherwise provided in this Declaration, each Owner shall have the obligation to maintain or cause to be maintained, in a safe, clean, attractive and tenable condition, all Buildings, Parking Areas and other Improvements located on its Parcel(s), and including, without limitation, screening from view all garbage receptacle areas.

8.2. Maintenance. In addition to the obligation of a parcel Owner to maintain its Parcel, Declarant, or if requested by Declarant, the Association shall have the obligation to maintain or cause to be maintained, the Parking Areas as contemplated in Section 1.25. It is understood and agreed that Declarant or the Association shall have the right to come onto any Parcel to provide the maintenance and repair of Parking Areas as contemplated in Section 1.25 and receive reimbursement for the costs of such service, plus a management fee, and Late Fee, as applicable, as contemplated in Section 8.5.

8.3. Maintenance Standards. Each Owner shall bear the costs to maintain the Parking Areas within its Parcel as contemplated in Section 1.25 in a good and clean condition and repair, said maintenance to include, without limitation, the following:

(a) Maintaining, repairing and resurfacing, when necessary, all paved surfaces in a level, smooth and evenly covered condition with the type of surfacing material originally installed or such substitute as shall in all respects be equal or superior in quality, use and durability, and restriping when necessary;

(b) Removing all ice and snow, papers, debris, filth and refuse and thoroughly sweeping the area to the extent reasonably necessary to keep the area in a clean and orderly condition and keeping the Common Area free from any obstructions including those caused by snow and ice and the sale or display of merchandise;

(c) Maintaining, repairing, restriping and replacing, when necessary, all traffic directional signs, markers and lines in the Parking Areas.

8.4. Each Owner shall be responsible for the maintaining its Parcel in a good and clean condition and repair, to include without limitation, the following:

(a) Keeping their Parcel lighted as required in this Declaration;

(b) Maintaining, repairing and replacing all Parcel landscaped areas; operating, maintaining, repairing and replacing, when necessary, automatic sprinkler systems and water lines; and replacing shrubs and other landscaping as necessary;

(c) Maintaining, repairing and replacing, when necessary, all walls located on their Parcel, including, without limitation, any screening walls serving buildings or retaining walls within a Parcel;

(d) Maintaining, repairing, cleaning and replacing, when necessary within the Parcel, all Utility Lines not conveyed to any public or private utility and Parcel lighting facilities, including light standards, wires, conduits, lamps, ballasts, and lenses, time clocks and circuit breakers to the extent same are reasonably required;

(e) Maintaining, repairing and replacing, when necessary, any of the Owner's signs on its Parcel;

(f) Sharing in the cost of the Association, the Declarant and any third party or parties performing any of the services described herein in accordance with the terms of this Declaration and for the performance of any such third party or parties under any such contract or contracts; and

(g) Maintaining liability insurance on the Parcel in compliance with this Declaration.

The foregoing obligations shall include any repairs or replacements which may become necessary due to damage or destruction of the Improvements on or related to the Parcel.

8.5. Reimbursement; Lien. In the event Declarant or the Association is performing or hiring third parties to perform the maintenance, pay taxes, lighting and other utility expenses and/or carrying liability and other insurance as contemplated in this Declaration then each Owner

shall reimburse Declarant or the Association, as applicable, the costs incurred by Declarant or the Association in connection therewith (collectively, the “**Maintenance Expenses**”), within thirty (30) days after receipt of Declarant’s or Association’s invoice therefor. The percentage allocation of such costs among Parcels as of the date of this Declaration is as follows, which percentage allocation of such costs among the Parcels may change from time to time as a result of changes in the boundary lines, change in the subdivision or project plat, or for other reasons:

Lot 1, The Void Plat A	17.17%
Lot 1, The Void Plat B	17.39%
Lot 2, The Void Plat B	35.89%
Lot 3, The Void Plat B	17.03%
Lot 4, The Void Plat B	12.52%

If the Owner fails to pay when due its share of any invoice for the Maintenance Expenses (including the management fee described herein), or any other sums which may be due and owing from the Owner to Declarant or the Association under this Declaration, then, following any cure period provided in Section 9.3, such failure shall constitute a default under this Declaration and Declarant or the Association as applicable may thereafter institute legal action against the Owner for reimbursement, plus interest and a Late Fee thereon, from the date said bill was due and payable to and including the date said bill is paid, at Default Rate. Furthermore, Declarant and the Association, as applicable, shall have a lien on the Parcel for the amount of said Maintenance Expenses and accrued interest and applicable Late Fee as set forth above. The lien provided for in this Section 8.5 shall only be effective when filed for record by as a claim of lien against the Parcel in the office of the Utah County Recorder, signed and acknowledged, which shall contain at least: (i) an itemized statement of all amounts due and payable pursuant hereto; (ii) a description sufficient for identification of the Parcel which is the subject of the lien; (iii) the name of the owner or reputed owner of the Parcel; and (iv) the name and address of Declarant or the Association, as applicable. The lien, when so filed for record against the Parcel described in the lien, shall be prior and superior to all right, title, interest, lien or claim which may be or has been acquired or attached to the Parcel after the time of filing the lien. The lien shall be for the use and benefit of Declarant or the Association, as applicable, and may be enforced and foreclosed, at the option of Declarant or the Association, as applicable, either under the law governing a power of sale foreclosure for deeds of trust, or by judicial foreclosure by initiating a suit or action in any court of competent jurisdiction.

8.6. Lighting. The lighting for a Parcel shall be illuminated each day from dusk until Midnight, or as required under city ordinance, only as consistent with the street lighting practices, at a lighting level of one and one-half (1.5) foot candles. Security lighting for the Common Area shall remain on each day from 11:00 p.m. until 6:00 a.m. To the extent the City does not bear the expense and cost, the electrical service for all of the lighting for the Parcel shall be separately metered for such Parcel and shall be an expense paid by the Owner of such Parcel. The Hotel shall be allowed to maintain the foot candles as required by common hotel practices or the Hotel Franchisor, as applicable.

8.7. Taxes and Assessments. Each Owner shall pay or cause to be paid, prior to delinquency all taxes and assessments levied with respect to its Parcel and the buildings, Improvements and any personal property located thereon and owned or leased by the Owner. If

a tax or assessment may be paid in installments, the Owner may pay such tax or assessment in installments, as and when the same becomes due and payable. Nothing contained in this Section shall prevent the Owner from contesting, at its sole cost and expense, any taxes and assessments with respect to its Parcel, so long as such contest is prosecuted in good faith and with all due diligence. At the time that such contest is concluded (including any appeal(s) that may be necessary and appropriate), the Owner shall promptly pay all such taxes and assessments determined to be owing, together with all interest, penalties and costs thereon.

#### 8.8. Insurance.

8.8.1. Liability Insurance. Each Owner shall, at its sole cost and expense, maintain the following policies of insurance in full force and effect:

(a) Commercial general liability insurance with broad form coverage endorsement (including broad form property damage endorsement) insuring against claims on account of loss of life, personal injury or property damage that may arise from, or be occasioned by the condition, use or occupancy of the Owner's building, the Improvements on the Owner's Parcel, and including the Service Facilities on the Parcel, and its Occupants (the "**Owner's Liability Insurance**"). The insurance required pursuant to this Section 8.8.1 shall include the following provisions: (i) shall provide that the policy may not be canceled or reduced in amount or coverage below the requirements of this Declaration, without at least thirty (30) days prior written notice by the insurer to each insured and to each additional insured; (ii) shall provide for severability of interests; (iii) shall provide that an act or omission of one of the insureds or additional insureds which would void or otherwise reduce coverage, shall not reduce or void the coverage as to the other insureds; (iv) shall provide for contractual liability coverage, naming the Declarant, Association and all other Owners as additional insureds, endorsed to cover said Owner's agreement to indemnify as set out in Section 8.9 below and elsewhere in this Declaration; and (v) shall be primary and non-contributory. The Owner agrees to furnish Declarant a certificate affirming that: (i) such insurance is in full force and effect; (ii) the premiums have been paid in full; (iii) the appropriate parties are designated as additional insureds as required by this Declaration; (iv) the policy contains any required waiver of subrogation; and (v) such insurance may not be canceled or coverage reduced below the levels required to be maintained hereunder without at least thirty (30) days prior written notice to all insureds and additional insureds.

(b) The Owner's Liability Insurance shall be carried by an insurance company or companies qualified to do business in the State in which the Project is located, reasonably acceptable to Declarant, and having limits for bodily injury to or personal injury to or death of any person, or more than one (1) person, or for damage to property, in an amount of not less than Three Million and No/100 Dollars (\$3,000,000.00) per occurrence/aggregate, such coverage to be in a commercial general liability form or combination of general liability and umbrella/excess liability insurance form with at least the following endorsements: (i) deleting any employee exclusion on personal injury coverage; (ii) including coverage for injuries to or caused by employees; (iii) providing for blanket contractual liability coverage (including an Owner's indemnity obligations contained in this Declaration), broad form property damage coverage and

products completed operations, owner’s protective and personal injury coverage; (iv) providing for coverage of employers automobile non-ownership liability; and (v) if the use of the Parcel includes the sale of alcoholic beverages, including coverage for employer’s liability, host liquor liability, liquor liability and so-called “dram shop” liability coverage with a combined single limit of not less than Two Million and No/100 Dollars (\$2,000,000.00) per occurrence. The Owner’s Liability Insurance shall be made on an “occurrence” basis and not on a “claims made” basis. The insurance referenced in this Section 8.8 may be provided under (i) an individual policy covering this location, (ii) a blanket policy or policies which includes other liabilities, properties and locations of such Owner, so long as the amount and coverage of insurance required to be carried hereunder is not diminished, or (iii) a combination of the foregoing insurance programs. To the extent any deductible is permitted or allowed as a part of any insurance policy carried by the Owner in compliance with this Section 8.8, the Owner shall be deemed to be covering the amount thereof under an informal plan of self-insurance; provided, however, that in no event shall any deductible exceed \$25,000.00.

8.8.2. Insurance Coverage During Construction. Prior to commencing any construction activities within the Parcel, the Owner shall obtain or require its contractor to obtain and thereafter maintain so long as such construction activity is occurring, at least the minimum insurance coverages set forth below:

(a) Workers’ Compensation. Workers’ compensation and employer’s liability insurance:

- (i) Worker’s compensation insurance as required by any applicable law or regulation.
- (ii) Employer’s liability insurance in the amount of \$1,000,000 each accident for bodily injury, \$1,000,000 policy limit for bodily injury by disease and \$1,000,000 each employee for bodily injury by disease.

(b) General Liability Insurance. During construction, specific to such construction, Commercial General Liability insurance covering all operations by or on behalf of the general contractor, which shall include the following minimum limits of liability and coverages:

- (i) Required coverages:
  - i. Premises and operations;
  - ii. Products and Completed Operations;
  - iii. Contractual Liability, insuring the indemnity obligations assumed by Contractor under the Contract Documents;
  - iv. Broad Form Property Damage (including Completed Operations);



v. Explosion, Collapse and Underground Hazards;  
and

vi. Personal Injury Liability.

(ii) Minimum limits of liability:

i. \$2,000,000 each occurrence (for bodily injury and property damage)

ii. \$1,000,000 for Personal Injury Liability,

iii. \$2,000,000 aggregate for Products and Completed Operations (which shall be maintained for a three (3) year period following final completion of the work),

iv. \$2,000,000 general aggregate applying separately to this Project.

(c) Automobile Liability Insurance. Any automobile liability insurance (bodily injury and property damage liability) including coverage for owned, hired, and non-owned automobiles, shall have limits of liability of not less than \$1,000,000 combined single limit each accident for bodily injury and property damage combined. The general contractor shall require each of its subcontractors to include in their liability insurance policies coverage for Automobile Contractual Liability.

(d) Umbrella/Excess Liability Insurance During construction on a Parcel, the general contractor and/or construction manager shall also carry umbrella/excess liability insurance with liability limits of not less than \$3,000,000. If there is not per project aggregate coverage under the Commercial General Liability policy, the liability limits shall be not less than \$5,000,000.

(e) If the construction activity involves the use of another Owner's Parcel, then the Owner of such Parcel shall be an additional insured and such insurance shall provide that the insurance shall not be canceled, or reduced in amount or coverage below the requirements of this Declaration, without at least thirty (30) days prior written notice to the additional insureds and each additional insured. If such insurance is canceled or expires then the construction Owner shall immediately stop all work on or use of the other Owner's Parcel until either the required insurance is reinstated or replacement insurance obtained. The general contractor shall supply each Owner Certificates with respect to all insurance required by this Section 8.8.2. Effective upon the commencement of construction of any building on its Parcel and so long as such building exists, the Owner shall carry, or cause to be carried, property insurance with "all-risk" coverage, in the amount of 100% of full insurable replacement cost thereof (excluding footings, foundations or excavations).

8.8.3. Property Insurance. The Owner shall cause to be carried 100% full insurable replacement cost fire and extended coverage "all risk" property insurance on all buildings and improvements (including Improvements) on the Parcel in amounts at least sufficient to raze and demolish all the buildings and improvements located on the Parcel and maintain such coverage as long as Owner holds title to the Parcel. Any such insurance shall otherwise conform to the provisions with respect to insurance required under this Section 8.8.

8.9. Indemnification by Owner. Each Owner shall defend, indemnify and hold the Declarant, the Association and other Owners and its Permittees harmless for, from and against any and all damages, liabilities, losses, actions, claims, costs and expenses (including reasonable attorneys' fees and court costs and reasonable attorneys' fees and court costs on appeal) (i) in connection with the loss of life, personal injury and/or damage to property arising from or out of any occurrence in or upon the indemnifying Owner's Parcel, or occasioned wholly or in part by any grossly negligent or willful act or omission of the Owner or its Occupants; (ii) occurring in the interior of any building constructed on the indemnifying Owner's Parcel, unless caused by the grossly negligent or willful act or omission of the indemnified Owner or its Permittees; (iii) in connection with the failure to comply with the provisions of this Declaration; (iv) in connection with any act or omission of such Owner or its Permittees. If Declarant or the Association shall, without fault, be made a party to any litigation commenced by or against the Owner or its Permittees, or if Declarant or the Association shall, in its reasonable discretion, determine that it must intervene in such litigation to protect its interest hereunder, then the Owner shall defend Declarant and the Association using attorneys reasonably satisfactory to Declarant and the Association and shall pay all costs, expenses and reasonable attorneys' fees and costs in connection with such litigation. Declarant and the Association shall have the right to engage its own attorneys in connection with any of the provisions of this Section 8.9 or any of the provisions of this Declaration, including, but not limited to, any defense of or intervention by Declarant or the Association, notwithstanding any contrary provisions of the laws or court decisions of the state in which the Project is located.

8.10. Mutual Release. Each Owner (the "**Releasing Party**") hereby releases and waives for itself, and each Person claiming by, through or under it, the other Owners (the "**Released Party**") from any liability for any loss or damage to all property of such Releasing Party located upon any portion of the Project, which loss or damage is of the type covered by the insurance required to be maintained under Sections 8.8.1 through 8.8.3 above, irrespective either of any negligence on the part of the Released Party which may have contributed to or caused such loss, or of the amount of such insurance required or actually carried, including any deductible or self-insurance reserve. Each Owner agrees to use its reasonable efforts to obtain, if needed, appropriate endorsements to its policies of insurance with respect to the foregoing release; provided, however, that failure to obtain such endorsements shall not affect the release hereinabove given. Each Owner ("**Indemnitor**") covenants and agrees to indemnify, defend and hold harmless the other Owner ("**Indemnitee**") from and against all claims asserted by or through any Permittees of the Indemnitor's Parcel for any loss or damage to the property of such Permittee located upon the Indemnitor's Parcel, which loss or damage is covered by the insurance required to be maintained under this Article 8, irrespective of any negligence on the part of the Indemnitee which may have contributed to or caused such loss.

8.11. Waiver of Subrogation. The Owners and Occupants each hereby waive any rights one may have against the other on account of any loss or damage occasioned to an individual Owner or Occupant, or its respective property, either real or personal, arising from any risk generally covered by fire and extended coverage insurance and from any risk covered by insurance then in effect. In addition, the Owners and Occupants, for themselves and on behalf of their respective insurance companies, waive any right of subrogation that any insurance company may have against the Owners and Occupants. The foregoing waivers of subrogation shall be operative only so long as available in the State where the Project is situated and provided further that no policy of insurance is invalidated thereby.

## **ARTICLE 9**

### **GENERAL PROVISIONS**

9.1. Successors and Assigns; Covenants Running with the Land. This Declaration shall inure to the benefit of and be binding upon the Declarant, Association, the Parcels, Owners of Parcels in the Project and the respective portions thereof, their heirs, personal representatives, successors and assigns, and each Owner shall be liable for the performance of all covenants, obligations and undertakings herein set forth with respect to the Parcel owned by it which accrue during the period of such ownership. Each term, covenant, condition and agreement contained herein respecting a Parcel shall be a burden on that Parcel, shall be appurtenant to and for the benefit of the Declarant, Association, other Parcels and each part thereof and shall run with the land.

9.2. Term. Except as otherwise provided in this Declaration with respect to certain easements and other obligations which are to survive the expiration of this Declaration, this Declaration shall terminate and be of no further force or effect on that date which is sixty-five (65) years from the date set forth in the initial paragraph of this Declaration.

9.3. Default.

9.3.1. Notice and Cure Period. In the event any party fails to perform any provision of this Declaration, which failure continues for a period of ten (10) days after receipt of written notice specifying the particulars of such failure, such failure shall constitute a default under this Declaration and Declarant, Association, if any may thereafter institute legal action against the defaulting party for specific performance, declaratory or injunctive relief, monetary damages or any other remedy provided by law; provided, however, that the defaulting party shall not be deemed to be in default if such failure to perform cannot reasonably be rectified within said ten (10) day period and such party is diligently proceeding to rectify the particulars of such failure. The foregoing shall be in addition to any other remedies expressly provided for in this Declaration. Each Owner agrees by acquiring a Parcel that the violation of any of the covenants, conditions or restrictions in this Declaration may result in damages which are difficult or impossible to determine in amount, and therefore equitable remedies to enjoin the violation hereof may be appropriate. Therefore, in addition to any other remedies set forth herein, Declarant, or the Association, shall be entitled to seek temporary and permanent injunctions against the breach of any of the provisions hereof. It is expressly agreed that no breach of or default under this Declaration shall entitle any party to terminate this Declaration, but such limitation shall not affect in any manner any other rights or remedies which the Declarant, or the

Association may have hereunder or by reason of any breach of or default under this Declaration or at law or in equity.

9.3.2. Self-Help. In the event an Owner fails to perform any term or provision of this Declaration, then, upon the expiration of the cure period provided in Section 9.3.1 (provided, however, that in an emergency no notice shall be required), and upon an additional ten (10) days' prior written notice, Declarant and the Association shall have the right, but not the obligation, to enter upon the Parcel to cure such default for the account of and at the expense of the Owner, unless the Owner commences to cure such default within such ten (10) day period and thereafter diligently pursues such cure. If Declarant or the Association exercises its self-help right, then, within ten (10) days after receipt of an invoice from Declarant or Association, the Owner shall reimburse to Declarant or Association all costs reasonably incurred by Declarant or Association in curing such default, plus an administrative fee equal to fifteen percent (15%) of such costs. The foregoing shall be in addition to all other remedies provided for in this Declaration or under applicable law. No breach of or default under this Declaration shall entitle a party to terminate this Declaration, but such limitation shall not affect in any other manner any other rights or remedies which Declarant or the Association may have hereunder or at law or in equity.

9.4. Amendment; Termination. This Declaration may not be modified or terminated in any respect whatsoever by the Owners. As long as Declarant (or any successor to Declarant) is an Owner or owns any of the land in the Project, Declarant may modify or terminate this Declaration by written instrument duly, duly recorded in the office of the recorder of the county in which the Parcels are located. In the event Declarant (or any successor to Declarant) conveys all of its rights to land in the Project, to any unaffiliated partnership, limited liability company, individual or individuals, corporation or corporations, then and in such event, the Association (or if there is none, the collective remaining Owners) may agree to amend this Declaration.

9.5. Multiple Owners. If a Parcel is owned by more than one Person, then all of such Persons shall agree among themselves by a fifty-one percent (51%) majority of ownership interests (using the percentages set forth in Section 8.5) and designate in writing to the other parties a single person or entity which is entitled to act as the Owner. If the owners of the Parcel cannot agree who shall be entitled to act as the Owner, or if the owners fail to designate the single person or entity entitled to act as the "party" for the Parcel within thirty (30) days after receipt of a request to do so from Declarant or the Association, then Declarant or the Association shall designate one of the owners to act as the "representative agent" for the Parcel.

9.6. Notices. All notices given pursuant to this Declaration shall be in writing and shall be given by personal delivery, or by United States mail (certified, return receipt requested), or by United States express mail or other established express delivery service (such as Federal Express and United Parcel Service), postage or delivery charges prepaid, addressed to the person and address specified below or, in the absence of such designation, to the person and address shown on the then current real property tax rolls in the county in which the Parcels are located. All notices shall be addressed (with proof of receipt), or by electronic mail, as follows:

Declarant: KPB Land, LLC  
126 South 140 West  
Lindon, UT 84042  
Email: [ken@kpbequities.com](mailto:ken@kpbequities.com)  
Attn: Ken Bretschneider

With a copy to: GBR Investments 5, LLC  
GBR Investments 6, LLC  
PG Investments 1, LLC  
5320 Wells Park Rd Suite 4  
West Jordan, UT 84081  
Email: [jgardner@gbrcapital.com](mailto:jgardner@gbrcapital.com)  
Attn: Jonathan S. Gardner

With a copy to: Elan Real Property Partners, LLC  
450 South 850 East Suite C1  
Lehi, UT 84043  
Email: [kevinbradburn@mac.com](mailto:kevinbradburn@mac.com)  
Attn: Kevin C. Bradburn

Hotel Owner: Sequoia Development, Inc.  
9055 S 1300 E Suite 104  
Sandy, UT 84094  
Email: [Kevin@sequoiadevelopment.com](mailto:Kevin@sequoiadevelopment.com)  
Email: [Mark@sequoiadevelopment.com](mailto:Mark@sequoiadevelopment.com)  
Attn: Kevin L. Ludlow or Mark Stoker

with a copy to: Jonathan K. Butler  
c/o Parsons Behle and Latimer  
201 South Main Street, Suite 1800  
Salt Lake City, UT 84111  
Email: [jonbutler@parsonsbehle.com](mailto:jonbutler@parsonsbehle.com)

Owner (unless Declarant): To the address for mailing tax bills set forth in the latest real property tax rolls available at the time notice is given.

Each party may change the person and address to which notices are to be given, upon written notice to the other parties. All notices given pursuant to this Declaration shall be deemed given upon receipt. For the purpose of this Declaration, the term "receipt" shall mean the earliest of any of the following: (i) the date of delivery to the address specified pursuant to this section as shown on the return receipt; (ii) the date of actual receipt by the person or entity specified pursuant to this section; or (iii) in the case of refusal to accept delivery or inability to deliver, the earlier of (A) the date of the attempted delivery or refusal to accept delivery, (B) the date of the postmark on the return receipt, or (C) the date of receipt of notice of refusal or notice of nondelivery by the sending party.

9.7. Waiver. The failure of a party to insist upon strict performance of any of the terms, covenants, conditions or agreements contained herein shall not be deemed a waiver of any rights or remedies that said party may have, and shall not be deemed a waiver of any subsequent breach or default in the performance of any of the covenants, conditions and restrictions contained herein by the same or any other person or entity.

9.8. Attorneys' Fees. If any party initiates or defends any legal action or proceeding to enforce or interpret any of the terms of this Declaration, the prevailing party in any such action or proceeding shall be entitled to recover from the losing party its reasonable costs and attorneys' fees (including costs and attorneys' fees on any appeal).

9.9. Partial Invalidity. If any term or provision of this Declaration or the application hereof to any person or circumstance shall to any extent be invalid or unenforceable, then the remainder of this Declaration and the application of such term or provision to other persons or circumstances shall be unaffected thereby, and each term and provision of this Declaration shall be valid and enforceable to the fullest extent permitted by law.

9.10. No Partnership. The provisions of this Declaration are not intended to create, nor shall they in any way be interpreted or construed to create, a joint venture, partnership or any other similar relationship between the parties. Each party shall be considered a separate party and no party shall have the right to act as agent for another, unless expressly authorized to do so herein or by separate written instrument signed by the party to be charged.

9.11. Captions. The captions and headings in this Declaration are for reference only and shall not be deemed to define or limit the scope or intent of any of the terms, covenants, conditions or agreements contained herein.

9.12. Entire Agreement. This Declaration contains the entire agreement, and supersedes all prior agreements (either oral or written), with respect to the covenants, conditions and restrictions affecting the Project and reciprocal easements therefor.

9.13. Interpretation. Whenever the context requires in construing the provisions of this Declaration, the use of a gender shall include both genders, the use of the singular shall include the plural, and the use of the plural shall include the singular. The word "including" shall be construed inclusively, and not in limitation, whether or not the words "without limitation" or "but not limited to" (or words of similar import) are used with respect thereto. The provisions of this Declaration shall be construed as a whole and not strictly for or against any party. Unless otherwise provided, references to Articles and Sections refer to the Articles and Sections of this Declaration.

9.14. Joint and Several. If any party hereto is composed of more than one person or entity, then the obligations of such party shall be joint and several.

9.15. Recording. This Declaration shall be recorded in the office of the recorder of the county in which the Parcels are located.

9.16. Time of Essence; Force Majeure. Time is of the essence with respect to the performance of each obligation of this Declaration. Whenever performance is required by any

person or entity hereunder, such person or entity shall use all due diligence to perform and take all necessary measures in good faith to perform; provided, however, that if completion of performance shall be delayed at any time by reason of acts of God, war, civil commotion, riots, strikes, picketing or other labor disputes, unavailability of labor or materials, damage to work in progress by reason of fire or other casualty, or any other cause beyond the reasonable control of such person or entity, then the time for performance as herein specified shall be extended by the amount of the delay actually so caused. Notwithstanding the foregoing, the provisions of this section shall not operate to excuse any person or entity from the prompt payment of any monies required by this Declaration to be paid.

9.17. Mortgagee Protection. Notwithstanding anything in this Declaration to the contrary, no breach of this Declaration shall defeat or render invalid the lien of any Mortgage made in good faith and for value, but this Declaration shall be binding upon and effective against any party hereto whose title is acquired by foreclosure, trustee's sale, deed or conveyance in lieu of foreclosure or otherwise. Notwithstanding anything to the contrary contained in this Declaration, in order to preserve the rights and interests of any "Institutional Lender" (as defined below), if a lien is placed on the Parcel pursuant to Section 8.5, such lien shall be subordinate and inferior to the lien of any Institutional Lienholder now or hereafter placed upon the Parcel, except that upon foreclosure (or deed or conveyance in lieu of foreclosure) or termination of the lease under a sale/leaseback by an Institutional Lienholder, any lien recorded pursuant to Section 8.5 prior to such foreclosure or termination, and any post-foreclosure or post-termination lien, shall be and become the obligation of the person or entity acquiring title to the Parcel by such foreclosure (or deed or conveyance in lieu of foreclosure). In any event, the interest of any Institutional Lienholder in the Parcel, and any assignee or successor-in-interest of such Institutional Lienholder, shall be subject to all the covenants, terms and conditions contained in this Declaration. As used herein, "Institutional Lienholder" means any mortgagee under a mortgage or beneficiary under a deed of trust or lessor under a sale and leaseback or secured party under any security agreement constituting a lien on the fee or leasehold interest in the Parcel or any portion thereof, which lienholder is a bank, savings and loan association, insurance company, pension fund, real estate investment trust, credit union or other institutional lender.

9.18. Variances. Where appropriate, Declarant may, grant variances to the provisions hereof.

IN WITNESS WHEREOF, THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS FOR THE VOID PLAT A AND THE VOID PLAT B BEEN EXECUTED AS OF THE DAY AND YEAR FIRST ABOVE WRITTEN.

**KPB Land, LLC, LLC,**  
a Utah limited liability company

By:   
Ken Bretschneider

**GBR Investments 5, LLC**  
a Utah limited liability company

By: Jonathan S. Gardner  
Print Name: Jonathan S. Gardner  
Title: Manager

**GBR Investments 6, LLC**  
a Utah limited liability company

By: Jonathan S. Gardner  
Print Name: Jonathan S. Gardner  
Title: Manager

**PG Investments 1, LLC**  
a Utah limited liability company

By: Jonathan S. Gardner  
Print Name: Jonathan S. Gardner  
Title: Member

**Elan**

Elan Real Property Partners, LLC,  
a Utah limited liability company

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**Sequoia**

Sequoia Development, Inc.,  
a Utah corporation

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_



**GBR Investments 5, LLC**  
a Utah limited liability company

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**GBR Investments 6, LLC**  
a Utah limited liability company

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**PG Investments 1, LLC**  
a Utah limited liability company

By: \_\_\_\_\_  
Print Name : \_\_\_\_\_  
Title: \_\_\_\_\_

**Elan**

**Elan Real Property Partners, LLC,**  
a Utah limited liability company

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**Sequoia**

**Sequoia Development, Inc.,**  
a Utah corporation

By: Kevin C. Ludlow  
Print Name: KEVIN C. LUDLOW  
Title: PRESIDENT

**GBR Investments 5, LLC**  
a Utah limited liability company

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**GBR Investments 6, LLC**  
a Utah limited liability company


By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**PG Investments 1, LLC**  
a Utah limited liability company

By: \_\_\_\_\_  
Print Name : \_\_\_\_\_  
Title: \_\_\_\_\_

**Elan**

Elan Real Property Partners, LLC,  
a Utah limited liability company

By:  \_\_\_\_\_  
Print Name: KEVIN BEADBURN  
Title: PRESIDENT

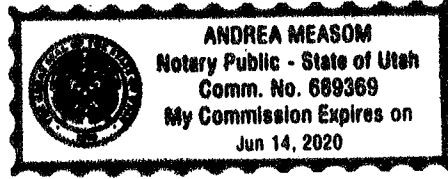
**Sequoia**

Sequoia Development, Inc.,  
a Utah corporation

By: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_



STATE OF UTAH )  
 : ss.  
COUNTY OF UTAH )

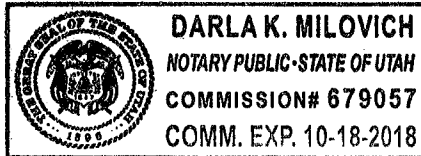


The foregoing instrument was acknowledged before me this 16 day of December, 2016, by Ken Bretschneider, who is the Manager of KPBLand, LLC, LLC.

Andrea Measom  
NOTARY PUBLIC  
Residing at: Utah County, UT

My Commission Expires:  
6/14/2020

STATE OF UTAH )  
 : ss.  
COUNTY OF Salt Lake )

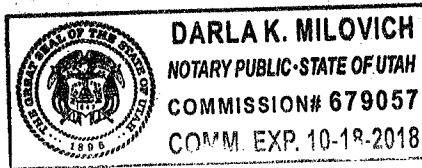


The foregoing instrument was acknowledged before me this 15 day of December, 2016, by Jonathan S. Gardner, who is the Manager of GBR Investments 5, LLC.

[Signature]  
NOTARY PUBLIC  
Residing at: Salt Lake County, UT

My Commission Expires:  
10/18/18

STATE OF UTAH )  
 : ss.  
COUNTY OF Salt Lake )



The foregoing instrument was acknowledged before me this 15 day of December, 2016, by Jonathan S. Gardner, who is the Manager of GBR Investments 6, LLC.

[Signature]  
NOTARY PUBLIC  
Residing at: Salt Lake County, UT

My Commission Expires:  
10/18/18



STATE OF UTAH )  
 : ss.  
COUNTY OF \_\_\_\_\_ )

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2016, by \_\_\_\_\_, who is the Manager of PG Investments 1, LLC.

\_\_\_\_\_  
NOTARY PUBLIC  
Residing at: \_\_\_\_\_

My Commission Expires:  
  
\_\_\_\_\_

STATE OF UTAH )  
 : ss.  
COUNTY OF Utah )

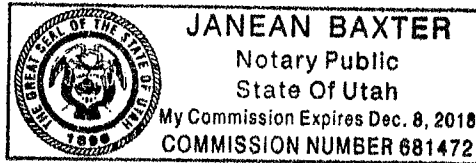
The foregoing instrument was acknowledged before me this 15<sup>th</sup> day of December, 2016, by Kevin Bradburn, who is the Manager of Elan Real Property Partners, LLC.

Janean Baxter  
\_\_\_\_\_  
NOTARY PUBLIC  
Residing at: Utah County

My Commission Expires:

12-8-18  
\_\_\_\_\_

STATE OF UTAH )  
 : ss.  
COUNTY OF Utah )

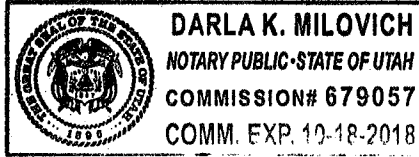


The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2016, by Kevin L. Ludlow, who is the President of Sequoia Development Inc., who duly acknowledged before me that he executed this instrument on behalf of said corporation.

\_\_\_\_\_  
NOTARY PUBLIC  
Residing at: \_\_\_\_\_

My Commission Expires:  
  
\_\_\_\_\_

STATE OF UTAH )  
 : SS.  
COUNTY OF Salt Lake )



The foregoing instrument was acknowledged before me this 15 day of December, 2016, by Jonathan S. Gardner, who is the Manager of PG Investments 1, LLC.

[Signature]  
NOTARY PUBLIC  
Residing at: Salt Lake County, UT

My Commission Expires:  
10/18/18

STATE OF UTAH )  
 : SS.  
COUNTY OF \_\_\_\_\_ )

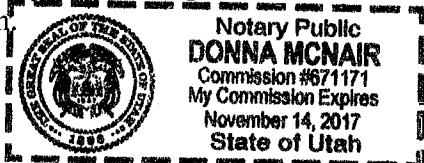
The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2016, by \_\_\_\_\_, who is the Manager of Elan Real Property Partners, LLC.

\_\_\_\_\_  
NOTARY PUBLIC  
Residing at: \_\_\_\_\_

My Commission Expires:  
\_\_\_\_\_

STATE OF UTAH )  
 : SS.  
COUNTY OF SALT LAKE )

The foregoing instrument was acknowledged before me this 15 day of December, 2016, by Kevin L. Ludlow, who is the President of Sequoia Development Inc., who duly acknowledged before me that he executed this instrument on behalf of said corporation.



[Signature]  
NOTARY PUBLIC  
Residing at: Salt Lake County, Utah

My Commission Expires:  
11-14-17

**DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR THE VOID PLAT A AND THE VOID PLAT B**

**Exhibit A**

Certain real estate located in Utah County, Utah and more particularly described as follows:

Lot 1 of Plat A, The Void Plat A Plat recorded on December 20, 2016, as Entry # 127926:2016 of the records of the Utah County Recorder.

Lots 1, 2, 3 and 4 of Plat B, The Void Plat B recorded on December 20, 2016, as Entry # 127927:2016 of the records of the Utah County Recorder.