

PREPARED BY AND WHEN
RECORDED RETURN TO:

8337273
08/29/2002 04:55 PM 44.00
Book - 8640 Pg - 5031-5048
GARY W. OTT
RECORDER, SALT LAKE COUNTY, UTAH
LANDMARK TITLE
BY: EHR, DEPUTY - WT 18 P.

8337273

Victor A. Taylor, Esq.
Parr Waddoups Brown Gee & Loveless
185 South State Street, Suite 1300
Salt Lake City, Utah 84111-1537
telephone: (801) 532-7840
telecopier: (801) 532-7750

DECLARATION OF PARKING, ACCESS AND UTILITY EASEMENTS
AND COVENANTS, CONDITIONS AND RESTRICTIONS

THIS DECLARATION OF PARKING, ACCESS AND UTILITY EASEMENTS AND COVENANTS, CONDITIONS AND RESTRICTIONS (this "Declaration") is entered into as of the 28 day of August, 2002, between HCPI/UTAH, LLC, a Delaware limited liability company ("HCPI"), whose address is c/o Health Care Property Investors, Inc., 4675 MacArthur Court, Suite 900, Newport Beach, California 92660, and BOYER DESERT SPRINGS, L.C., a Utah limited liability company ("Boyer"), whose address is 127 South 500 East, Suite 100, Salt Lake City, Utah 84102. (HCPI and Boyer are referred to in this Declaration collectively as the "Parties" and individually as a "Party.")

IN CONSIDERATION of the mutual benefits to be derived from this Declaration, the Parties agree as follows:

1. Definitions. As used in this Declaration, each of the following terms shall have the meaning indicated:

1.1. "Boyer Parcel" means the real property located in Salt Lake County, Utah, owned by Boyer and described as follows:

Beginning at a point on the West line of FREE COUNTRY ESTATES SUBDIVISION (according to the official plat thereof filed in the Official Records of the Salt Lake County Recorder), which point is South 89°53'25" West 495.00 feet along the Section line and South 0°06'35" East 212.67 feet from the North quarter corner of Section 5, Township 2 South, Range 1 West, Salt Lake Base & Meridian (basis of bearing being along the Section line between the North quarter corner of Section 5 and the Northeast corner of Section 5, Township 2 South, Range 1 West, Salt Lake Base & Meridian, said bearing being North 89°54'40" East), and running thence South 0°06'35" East 446.38 feet along said West line of FREE COUNTRY ESTATES and said line extended to the North line of MEADOW HEIGHTS #5 (according to the official plat thereof filed in the Official Records of the Salt Lake County Recorder); thence due West 207.82 feet; thence due North 446.14 feet; thence North 89°56'02" East 206.97 feet to the point of beginning.

BOOK 8640 PG 5031

1.2. "Buildings" means all buildings located on the Parcels at any time which are intended for permanent use or occupancy, including the area directly below such buildings, all projections and extensions of, and additions to, such buildings and all areas used exclusively by the occupants of such buildings, including, without limitation, trash enclosures and signage affixed to the outside of such buildings. "Building" means any of the Buildings.

1.3. "Common Area" means the Common Utility Facilities, the Landscaping, the Vehicular and Pedestrian Areas and all other parts of the Parcels, except for those parts on which Buildings are constructed or located on or after the date of this Declaration. All portions of the Common Area shall initially be improved and developed by the Owner of the Parcel on which such portions are located and, subject to reimbursement by the Owners in accordance with Paragraph 5, shall be maintained by the Manager pursuant to Paragraph 4.

1.4. "Common Expense Percentage" for any particular Parcel is calculated as follows: (a) divide the Floor Area of the Completed Building(s) located on the Parcel concerned by the total Floor Area of all Completed Buildings located on the Parcels; (b) multiply the resulting quotient by 100; and (c) express the resulting product as a percentage. The Common Expense Percentages of the Parcels shall be adjusted from time to time by written notice given by the Manager to each Owner as of the date on which Completed Buildings are located on any Parcel.

1.5. "Common Expenses" means the actual costs, expenses, fees and other amounts paid or incurred by the Manager in connection with the operation, management, maintenance, repair or replacement of the Common Area and the performance of the Manager's duties and rights under Paragraphs 4 or 5 or any other provision of this Declaration, including, without limitation, the following:

(a) all costs, expenses, fees and other amounts (including, without limitation, those which are properly capitalized under generally accepted accounting principles) relating to utilities, cleaning, sweeping, rubbish removal, landscaping, resurfacing, restriping, replacing damaged or worn-out Improvements (including lighting) located on the Common Area, insurance (including the cost of premiums or any imputed premiums), licenses and permits, supplies, traffic regulation and control, fire, police protection and other security services, personnel (other than managerial personnel) necessary to perform any of the foregoing and depreciation allowance on any machinery or equipment owned by the Manager and used exclusively in connection with such matters;

(b) legal expenses, settlements or awards arising from the Common Area or activities related thereto;

(c) Taxes assessed against or properly allocable to the Common Area;

(d) other charges, surcharges and other levies incurred by reason of any Governmental Requirements; and

(e) managerial, clerical and overhead costs, expenses, fees and other amounts, all of which shall be deemed to be equal to ten percent (10%) of the total of all other Common Expenses.

1.6. "Common Expense Share" means the product obtained by multiplying the Common Expenses for the relevant period by the Common Expense Percentage for the Parcel concerned.

1.7. "Common Utility Facilities" means all pipes, lines, wires, conduits and related facilities and improvements for electricity, natural gas, other fuels or power sources, telephone, data, video, telecommunication and similar uses, sewer, storm drainage and all types of water that are intended, designed or used for the benefit of the Common Area or more than one Parcel. The Common Utility Facilities shall be used for the purposes set forth in Paragraph 3.2 and, subject to reimbursement by the Owners in accordance with Paragraph 5, shall be maintained by the Manager pursuant to Paragraph 4.

1.8. "Completed Building" means a Building as of the date either of the following has first occurred: (a) a certificate of occupancy has first been issued for all or a portion of such Building by the appropriate governmental authority; or (b) all or a portion of such Building is first used or occupied.

1.9. "Floor Area" means the gross area of each Building concerned, measured from the exterior surface of the exterior walls of such Building, including all levels of any multi-floor Building, including any basement space or equipment penthouses.

1.10. "Governmental Requirements" shall mean all applicable laws, rules, regulations, orders, ordinances and other requirements of any governmental department or agency having jurisdiction over the Parcels.

1.11. "HCPI Parcel" means the real property located in Salt Lake County, Utah, owned by HCPI and described as follows:

Beginning at a point on the South line of 4100 South Street and the West line of FREE COUNTRY ESTATES SUBDIVISION (according to the official plat thereof filed in the Official Records of the Salt Lake County Recorder), which point is South 89°53'25" West 495.00 feet along the Section line and South 0°06'35" East 53.00 feet from the North quarter corner of Section 5, Township 2 South, Range 1 West, Salt Lake Base & Meridian (basis of bearing being along the Section line between the North quarter corner of Section 5 and the Northeast corner of Section 5, Township 2 South, Range 1 West, Salt Lake Base & Meridian, said bearing being North 89°54'40" East), and running thence South 0°06'35" East 606.05 feet along said West line of FREE COUNTRY ESTATES and said line extended to the North line of MEADOW HEIGHTS #5 (according to the official plat thereof filed in the Official Records of the Salt Lake County Recorder); thence due West 666.64 feet (prior deeds = 660.80) along said North

line and said line extended to the East line of a Utah Department of Transportation Highway Project No. 1005 commonly known as the Bangerter Highway; thence along said East line the following two (2) courses and distances: North 0°04'40" West 582.71 feet (to a point designated Point "B" in that certain Warranty Deed recorded August 22, 1991 as Entry No. 5115421 in Book 6348 at Page 2055 of the Official Records of the Salt Lake County Recorder) and North 44°57'53" East 31.25 feet to the South line of 4100 South Street (said point being a point designated Point "A" in that certain Warranty Deed recorded August 22, 1991 as Entry No. 5115421 in Book 6348 at Page 2055 of the Official Records of the Salt Lake County Recorder); thence along said South line North 89°53'25" East 644.18 feet to the point of beginning. LESS AND EXCEPTING the Boyer Parcel.

1.12. "Improvements" means all Buildings, Common Utility Facilities, Landscaping, parking areas, roads, driveways, walkways, curbs, gutters, medians, flower boxes, sidewalks, exterior lighting, fences, walls, signs, utility systems and facilities and other improvements located on the realty concerned. "Improvement" means any of the Improvements.

1.13. "Landscaping" means all outdoor areas on the Parcels landscaped with lawn, flowers, ground cover, shrubbery, trees, ponds, fountains, gardens or similar improvements.

1.14. "Manager" means the HCPI Parcel Owner.

1.15. "Mortgage" means a mortgage or a deed of trust recorded in the Official Records.

1.16. "Mortgagee" means the mortgagee under a mortgage or the beneficiary under a deed of trust recorded in the Official Records.

1.17. "Occupant" shall mean an Owner, lessee, subtenant or any other Person entitled to occupy on an exclusive basis any portion of any particular Building Area.

1.18. "Official Records" means the official records of the Salt Lake County, Utah Recorder.

1.19. "Owner" means the fee owner of record in the Official Records of the Parcel concerned. Notwithstanding any applicable theory relating to a Mortgage, the term "Owner" shall not mean a Mortgagee unless and until such Mortgagee has acquired title to the realty concerned pursuant to foreclosure or any arrangement or proceeding in lieu of foreclosure.

1.20. "Parcels" means the HCPI Parcel and the Boyer Parcel, together with all Improvements located thereon.

1.21. "Permittees" or "Users" shall mean any Owner or Occupant and their respective partners, officers, directors, employees, agents, patrons, customers, agents, guests,

invitees, contractors, visitors, licensees, representatives and concessionaires, insofar as their activities relate to use of the Parcels.

1.22. "Person" shall include all individuals, partnerships, firms, associations, trusts, corporations and any other form of business entity, and the singular shall include the plural.

1.23. "Qualified Mortgage" means a Mortgagee of which the Manager and each Owner has been given written notice (but not any consent rights), including such Mortgagee's name and address.

1.24. "Restrictions" shall mean all terms, conditions, covenants, restrictions and other provisions contained in this Declaration.

1.25. "Rules and Regulations" shall mean such reasonable rules and regulations for use and enjoyment of the Common Area as established by the Manager from time to time; provided, that the same are not inconsistent with any other Restrictions in this Declaration.

1.26. "Taxes" means all taxes, assessments, charges and fees imposed, assessed or levied by any governmental or other public authority on or against the realty concerned.

1.27. "Vehicular and Pedestrian Areas" means all areas located on the Parcels at the time concerned that are designed to be used for the parking of motor vehicles or for pedestrian or vehicular movement, including, without limitation, parking areas, roads, driveways, walkways and sidewalks.

2. Maintenance of Improvements. Each Owner shall maintain in good and attractive order, condition and repair all Improvements situated on such Owner's Parcel which are not required by this Declaration to be maintained by the Manager, including all Landscaping, sidewalks, walkways and staircases immediately adjacent to any Building on such Parcel. No provision of this Declaration shall be construed to mean that any Building cannot be razed or removed at any time or must be restored or reconstructed if damaged or destroyed. However, if an Owner razes or removes any Building, or if any Building is damaged or destroyed, within a reasonable time after such occurrence the Owner of the Parcel on which such Building is or was located shall either cause such Building to be replaced or restored or cause all debris to be removed and the site of such Building to be left in a level, clean and slightly condition pending construction of another Building. All repairs, alterations, replacements or additions to Buildings or Common Area shall be at least equal to the original work in class and quality. Each Owner shall also be responsible at all times for determining that the Common Area and the plans and specifications therefor shall conform and comply in all respects with these Restrictions, all other restrictions of record, all Governmental Requirements, and all exterior architectural design, location and color specifications contained therein. Notwithstanding anything in this Declaration to the contrary, in no event shall the Floor Area of the Building on the Boyer Parcel at any time exceed thirty thousand (30,000) square feet. With respect to the Boyer Parcel, the obligations in this Paragraph 2 shall be subject to the provisions of Paragraph 10.

BOOK 8640PG5035

3. Common Area Easements.

3.1. Access Easement. Subject to applicable Rules and Regulations and all other provisions of this Declaration, each Parcel shall have appurtenant thereto and be benefited by, and the Vehicular and Pedestrian Areas shall be subject to and be burdened by, a perpetual, nonexclusive right-of-way and easement for vehicular and pedestrian ingress and egress and vehicular parking (without charge) on, over and across those areas designed for such use. The use of such right-of-way and easement shall be limited to parking for Owners and their Permittees, which shall include reasonable and customary deliveries. Once constructed, no Vehicular and Pedestrian Areas shall be reconfigured so as to eliminate or substantially impair the right-of-way and easement created pursuant to this Paragraph 3.1 without the prior written approval of the Manager, such approval not to be unreasonably withheld. Notwithstanding anything to the contrary in this Declaration, for purposes of determining compliance of the HCPI Parcel with all applicable Governmental Requirements relating to parking, not less than five hundred ten (510) parking stalls located on the Vehicular and Pedestrian Areas shall be allocated to the HCPI Parcel.

3.2. Utility Easement. Subject to applicable Rules and Regulations and all other provisions of this Declaration, each Parcel shall have appurtenant thereto and be benefited by, and the Common Area shall be subject to and be burdened by, a perpetual, nonexclusive right-of-way and easement for the laying, construction, installation, operation, inspection, servicing, maintenance, repair, removal, alteration, enlargement, relocation and replacement of underground utility pipes, lines, wires, conduits and related facilities (including, without limitation, any underground Common Utility Facilities and, whether or not the same are part of the Common Utility Facilities, underground pipes, lines, wires, conduits and related facilities for electricity, natural gas, other fuels or power sources, telephone, data, video, telecommunication and similar uses, sewer, storm drainage and all types of water) under, through and across the Common Area. Prior to installation, the location of such pipes, lines, wires, conduits and related facilities must be approved by the Owner of the Parcel which will be burdened by such right-of-way and easement, such approval not to be unreasonably withheld. All utilities existing as of the date of this Declaration are deemed approved. If the rights provided for in this Paragraph 3.2 are exercised, the Owner intended to be served by the easement concerned shall pay the cost involved with such exercise, shall maintain appropriate liability insurance in connection with the exercise of such rights, naming the other Owner(s) as additional insured(s), conduct all work in a diligent, timely and good and workmanlike manner and, at such Owner's sole cost, restore to their previous condition any Improvements which may be damaged as a result of such exercise. In no event shall the exercise of any rights hereunder damage any Buildings. Each utility pipe, line, wire, conduit and related facility located on the Parcels shall be located underground to the extent reasonably possible.

3.3. No Obstruction. Except to the extent approved by the Manager, no Owner shall permit to be constructed or placed on any portion of the Common Area any fence, wall, barricade or other obstruction, whether temporary or permanent in nature, which materially limits or impairs vehicular and pedestrian traffic over any part of the Parcels, or shall otherwise obstruct or interfere with the free flow of such traffic, except as may be reasonably necessary or appropriate during periods that construction activities are ongoing or to the extent that the

Manager reasonably deems it necessary to do so temporarily to prevent a public dedication of, or the accrual of any rights of the public in, the Common Area. Any obstruction or interference permitted under this Paragraph 3.3 shall be done in a manner reasonably calculated to minimize its impact on businesses on the Parcels.

4. Manager's Rights and Duties Regarding Common Area.

4.1. Generally. The Manager shall timely perform or cause to be performed (for example, through subcontractors, including affiliates of the Manager) the duties set forth in this Paragraph 4, for which the Manager shall be reimbursed in accordance with this Declaration. All actual costs, expenses, fees and other amounts incurred or payable by the Manager in connection with the duties set forth in this Paragraph 4, whether or not such costs, expenses, fees or other amounts are properly capitalized under generally accepted accounting principles, are part of the Common Expenses payable by the Owners under Paragraph 5. The Manager shall have no obligation to perform, and no liability for failure to perform, any obligation set forth in this Declaration, the cost of which is to be reimbursed (in whole or in part) by the Owners, if the funds to pay for such obligation are not timely received by the Manager pursuant to this Declaration.

4.2. Maintenance of Common Area. After the Common Area is initially improved and developed, the Manager shall keep the Common Area in a reasonably clean, orderly, lighted and usable condition and in a good state of maintenance and repair, consistent with a first-class commercial development (except that as regards the Common Utility Facilities, the Manager shall be obligated to accomplish the foregoing only to the extent that such matters are not the responsibility of or accomplished by the respective utility companies involved); provided, however, that each Owner shall be solely responsible to provide and pay for the watering, maintenance and repair of all Landscaping, sidewalks, walkways and staircases immediately adjacent to any Building located on such Owner's Parcel. The foregoing shall include, without limitation, maintenance, repair and replacement, as necessary and appropriate, of all other Landscaping and other Improvements located on the Common Area, including, without limitation, maintaining, repairing and replacing asphalt, parking lot lighting and parking medians and keeping the Common Area reasonably free of rubbish.

4.3. Insurance on Common Area. The Manager shall maintain commercial general liability insurance insuring all Owners and such other Occupants of a Parcel who are designated as a named insured in a writing delivered to the Manager by the Owner of such Parcel, as their respective interests may appear, against all claims for bodily injury, death or property damage occurring on the Common Area. Such insurance shall be carried with a company having a rating of not less than A-:7 in the most recent issue of Best's Key Rating Guide, Property-Casualty and shall afford at least the coverage provided by a "combined single limit" of not less than \$1,000,000 per occurrence, and not less than \$2,000,000 in the aggregate, for bodily injury, death and property damage, which may be increased by the Manager in its reasonable discretion from time to time.

4.4. Damage of Common Area. If all or any part of the Common Area is damaged or destroyed through casualty, the Manager shall, as soon as reasonably possible,

BOOK 8640 PAGE 037

rebuild and restore the same to substantially the same condition as existed prior to the damage or destruction concerned. Prior to such rebuilding and restoration, each Owner shall, within thirty (30) days after notice of the amount due, contribute an amount equal to the product obtained by multiplying the Common Expense Percentage of such Owner by the projected cost of such rebuilding and restoration (net of any insurance proceeds or recoveries from Persons causing such damage actually received by the Manager). Appropriate additional payments by, or refunds to, each Owner shall be made on completion of such rebuilding or restoration. Alternatively, the Manager may collect the actual or projected cost of such rebuilding or restoration following commencement or completion of such rebuilding or restoration.

4.5. Condemnation of Common Area. If all or any part of the Common Area is taken through condemnation or is conveyed to a condemning authority under threat of condemnation, the entire condemnation award or proceeds shall be paid to the Manager, except for any portion of such award or proceeds for the value of the land (as opposed to any Improvements on the land), which portion shall be paid to the Owner of such land. The Manager shall, as soon as reasonably possible, restore the remaining Improvements in compliance with all Governmental Requirements. Such restoration shall be of equal or better quality in materials and workmanship as the original Improvements, and the cost of such restoration, in excess of the condemnation award and proceeds available, shall constitute Common Expenses. Any condemnation award or proceeds for the Improvements remaining after such restoration shall be distributed to each Owner on the basis of such Owner's Common Expense Percentage.

4.6. Control and Change of Common Area. Subject to the other provisions of this Declaration, the Manager shall have the sole and exclusive control of the use and operation of the Common Area. The Manager's rights shall include, but are not limited to, the rights to do the following:

(a) take all appropriate action to prohibit or restrain the unauthorized use or occupancy of any Common Area by any unauthorized Persons;

(b) cause any Occupant to remove or restrain Persons from any unauthorized use of the Common Area by reason of that Occupant's presence on the Parcels;

(c) temporarily close any portion of the Common Area for repairs, improvements or alterations, or to discourage noncustomer use, to prevent dedication to, prevent an easement by prescription or for any other reason deemed sufficient in the Manager's reasonable judgment; and

(d) determine and change the shape, size, nature, extent, alignment or configuration of the Common Area and add, eliminate or relocate Improvements, alterations or additions to the Common Area, including but not limited to any surface parking areas, roads, driveways, entrances, exits, prohibited access areas, curb cuts and direction and flow of traffic.

4.7. Limitations on Rights to Change. No actions under Paragraph 4.6 shall (a) unreasonably interfere with the operation of business or the Building on a Parcel, or the access to or from, or parking with respect to, any Building on a Parcel, or (b) reduce the parking available to the Boyer Parcel.

4.8. Certain Matters Relating to Parking.

(a) Notwithstanding any other Restrictions, all Occupants and Permittees of each Parcel shall park their vehicles only in those portions of the Vehicular and Pedestrian Areas from time to time reasonably designated for that purpose by the Manager, in a commercially reasonable and non-discriminatory manner. Subject to all Governmental Requirements and any further written agreements between the Owners, Occupants or other Persons from time to time, the Manager may also designate, segregate or approve specific portions of any Vehicular and Pedestrian Areas for the exclusive use of any Parcel or Permittees, provided that both Parcels are treated fairly on a proportionate basis; provided, however, that in no event shall the HCPI Parcel be entitled to more than four hundred fifty (450) reserved spaces nor shall the Boyer Parcel be entitled to more than ninety (90) reserved spaces, unless otherwise approved in writing by the Owners.

(b) Each Owner shall furnish the Manager with a list of the vehicle license numbers of its employees, and of the Occupants of any Building(s) on its Parcel, upon written request from the Manager. Thereafter, each such Owner shall notify the Manager of any change in that list within twenty (20) days after the change occurs. The Manager at any time may also (i) impose parking fines or penalties, (ii) tow any vehicle belonging to any Person parked in violation of these provisions, (iii) attach devices immobilizing such vehicle without causing undue injury thereto, (iv) attach violation stickers or notices to the vehicle, and/or (v) implement other reasonable enforcement measures.

(c) If the Manager is required by applicable Governmental Requirements to implement any program related to parking or transportation facilities, including but not limited to any program of parking charges or limits, parking validation, meters or other forms of assessment, tram or employee shuttle transportation, rapid transit, flexible or staggered work hours, free or reduced cost transportation, or any other program to limit, control, enhance, regulate or assist parking or transportation by Permittees of the Project, each Owner shall participate in such program and shall pay its proportionate share of the costs of the program under Rules and Regulations from time to time required to be established by the Manager.

4.9. Default of Manager. If the Manager fails to perform any obligation under this Paragraph 4 and such failure continues for a period of thirty (30) days after written notice of such failure is given to the Manager by any Owner or Qualified Mortgagee, or if the performance of such obligation would reasonably require more than thirty (30) days, if the Manager fails to commence such performance within such thirty (30) day period or thereafter diligently prosecute such performance to completion, the Owner or Qualified Mortgagee giving such notice may, on written notice to the Manager and each other Owner, perform such obligation in the stead of the Manager. Such Owner or Qualified Mortgagee shall be reimbursed for such performance by all Owners in accordance with each Owner's Common Expense Percentage in the same manner as if such obligation had been performed by the Manager.

5. Common Expenses.

5.1. Budget. At least annually, the Manager shall submit to each Owner a proposed budget for the Common Expenses for the following year. No Owner shall

unreasonably withhold or delay its approval of such budget. Each Owner shall give the Manager written notice of its approval or disapproval of such budget within thirty (30) days after receipt. If any Owner fails to give such notice within such thirty (30) day period, such Owner shall be deemed to have approved such budget. Any disapproval of such budget shall be accompanied by a reasonably detailed explanation for such disapproval. If the Owners approve or are deemed to have approved such budget, such budget shall be deemed to be approved. If the Owners do not approve or are not deemed to have approved such budget, the Manager and the disapproving Owner shall reasonably cooperate to address and resolve the reasons for such disapproval as soon as reasonably possible so as to arrive at a budget which is approved or deemed approved by the Owners. Whenever a budget is revised as a result of Owner disapproval, the Manager shall submit such revised budget to each Owner, and the foregoing process shall be repeated, having the same time periods for approval and disapproval.

5.2. Collection. The Manager is expressly authorized by each Owner to incur all costs, expenses, fees and other amounts included within the definition of "Common Expenses" set forth in Paragraph 1, and each Owner shall contribute such Owner's Common Expense Share in the manner described in this Paragraph 5. The Manager shall make reasonable, good faith efforts to collect from each Owner such Owner's Common Expense Share and may, at its option, do either of the following: (a) invoice each Owner for such Owner's Common Expense Share on a monthly, quarterly or other periodic basis as the actual amount of the Common Expense Share becomes known (in which event the Common Expense Share shall be due and payable within thirty (30) days after the delivery of such invoice); or (b) invoice each Owner in advance based on the Manager's reasonable estimate of the Common Expense Share for the period concerned, which estimate shall be provided to each Owner at least annually. If the Manager adopts the second alternative, each Owner shall pay such Owner's Common Expense Share in equal installments on the first day of each month, and within ninety (90) days after the end of each calendar year, the Manager shall furnish each Owner with a reasonably detailed final statement of the actual amount of such Owner's Common Expense Share for such calendar year. If such final statement reveals that the monthly installments made by an Owner aggregate less than such Owner's Common Expense Share for such calendar year, such Owner shall pay the amount owing to the Manager within thirty (30) days after such final statement is furnished. If such final statement reveals that an Owner's payments aggregate more than such Owner's Common Expense Share for such calendar year, the excess amount shall, at the option of the Manager, either be returned to such Owner or be applied by the Manager to amounts next due from such Owner under this Paragraph 5. Any amount required to be paid under this Paragraph 5 which is not timely paid shall accrue interest on and after the date due until paid in full, before and after judgment, at the rate of fourteen percent (14%) per annum. In addition, a late charge of five percent (5%) of such payment may be charged by the Manager for any payment not made within ten (10) days after the date due. Such late charge is payable not as a penalty, but in order to compensate the Manager for the additional expense involved in handling the delinquent payment. The acceptance by the Manager of any payment that is less than the entire amount then due shall be on account only and shall not constitute a waiver of the obligation to pay such entire amount. All records and accounts maintained by the Manager which relate to the Common Expenses shall be open to examination and audit by any Owner on at least ten (10) days' prior written notice to the Manager.

BOOK 8640PG5040

5.3. Default. If any Owner fails to perform any obligation under this Declaration and such failure continues for a period of thirty (30) days after written notice of such failure is given to such Owner by the Manager, or if the performance of such obligation would reasonably require more than thirty (30) days, if such Owner fails to commence such performance within such thirty (30) day period or thereafter diligently prosecute such performance to completion, the Manager may, on written notice to such Owner, perform such obligation in the stead of such Owner, or exercise any other right or remedy existing at law or in equity. The Manager shall be reimbursed by such Owner on demand for all costs and expenses (including attorneys' fees) incurred in connection with such performance, with interest on such costs and expenses, both before and after judgment, at the rate of fourteen percent (14%) per annum.

5.4. Lien. If not paid when due, the amounts payable under this Paragraph 5 and any other amounts payable to the Manager under this Declaration may be secured by a lien against the delinquent Owner's Parcel. Such lien shall be evidenced by a notice of lien recorded by the Manager in the Official Records. A copy of such notice of lien shall be given to the delinquent Owner and any Mortgagee holding a Mortgage covering such Owner's Parcel within ten (10) days following recordation. Such notice of lien shall set forth the unpaid amount, the date such amount was due, the name of such Owner and a description of the property subject to such lien, and shall be signed and acknowledged by the Manager. Any such lien may be foreclosed in the same manner as is provided under applicable law for the foreclosure of mortgages covering real property, and shall be subject and subordinate to (a) each Mortgage recorded at the time such notice of lien is recorded, (b) this Declaration, (c) each (recorded or unrecorded) utility right-of-way and easement existing at the time such notice of lien is recorded, (d) the interests of each tenant under each lease (whether recorded or unrecorded) existing at the time such notice of lien is recorded, and (e) the lien for general taxes and other governmental assessments, but shall be prior and superior to all other interests, whether recorded or unrecorded at the time such notice of lien is recorded.

5.5. Certain Obligations and Rights. The obligations of each Owner under Paragraph 5.2 and all other provisions of this Declaration are the personal obligations of such Owner and may be enforced by the Manager or, on written notice to the Manager and each Owner, by any other Owner. No Owner may avoid or diminish the personal nature of such obligations by waiver of the use and enjoyment of the Common Area, by abandonment of such Owner's Parcel or any Improvements on such Owner's Parcel or by waiver of any of the services or amenities provided for in this Declaration. Suit to recover a money judgment for any amount due may be maintained without foreclosing or waiving the lien described in Paragraph 5.4. All remedies set forth in this Paragraph 5 are cumulative and are in addition to any remedies otherwise available at law or in equity, which shall include the right to restrain by injunction any violation or threatened violation of this Declaration and to compel by decree specific performance, it being agreed that the remedy at law for any breach may be inadequate.

6. Taxes. Subject to each Owner's obligation to pay its Common Expense Share of Taxes assessed against the Common Area, each Owner shall pay, prior to delinquency, all Taxes on such Owner's Parcel, unless the collection of such Taxes and any sale or forfeiture of such Parcel for nonpayment of such Taxes is prevented or suspended through appropriate legal

proceedings. If any Parcel is not assessed and taxed as an independent parcel for tax purposes, the Taxes allocable to such Parcel shall be an equitable proportion of the Taxes for all of the land and Improvements included within each relevant tax parcel assessed, such proportion to be reasonably determined by the Manager from the respective valuations assigned in the assessor's work sheets or such other information as may be reasonably available.

7. Insurance. Each Owner shall maintain commercial general liability insurance providing coverage against bodily injury, death and property damage occurring, or by reason of activities, on or about the Parcels. Such insurance shall be carried with a responsible company, shall afford at least the coverage provided by a "combined single limit" of not less than \$1,000,000 per occurrence, and not less than \$2,000,000 in the aggregate, for bodily injury, death and property damage, and shall name the Manager as an additional insured. With the prior written approval of the Manager, any Owner may comply with the requirements of this Paragraph by the purchase of blanket coverage, and may elect such deductible provisions as are consistent with good business practices. Each Owner shall, on request, furnish the Manager with a certificate issued by its insurer evidencing that insurance is in force which complies with the requirements of this Paragraph.

8. Indemnification. Each Owner shall indemnify, defend and hold harmless the Manager and each other Owner from and against all losses, damages, claims, causes of action, demands, obligations, suits, controversies, costs, expenses (including, without limitation, litigation expenses and attorneys' fees, whether incurred with or without the filing of suit, on appeal or otherwise), liabilities, judgments and liens, of whatever kind or character, which are caused by the indemnifying Owner, including, without limitation, those caused by the use, deposit, storage, disposal, transportation or release of any hazardous substances, hazardous wastes, pollutants or contaminants on any part of the Parcels by (a) the indemnifying Owner, (b) any Person leasing or occupying the Parcel owned by the indemnifying Owner, or (c) any agent, employee, contractor, invitee or licensee of either the indemnifying Owner or any Person leasing or occupying the Parcel owned by the indemnifying Owner.

9. Title and Mortgage Protection. Except as set forth in Paragraph 5.4, breach of this Declaration shall not result in any forfeiture or reversion of title or of any other interest in any part of the Parcels, and shall not defeat, impair or render invalid the lien of, or other rights under, any Mortgage covering any part of the Parcels.

10. Architectural Approval.

10.1. Exterior Improvements. Prior to (a) making any exterior replacements, alterations or restorations, or (b) building or rebuilding any exterior improvements on the Boyer Parcel, Boyer (or its successors and assigns) shall submit any plans, specifications, architectural renderings, preliminary elevations, exterior paint colors and samples of exterior materials (collectively, the "Renderings") to HCPI for HCPI's prior written approval, which shall not be unreasonably withheld.

10.2. Nonliability for Approval of Renderings. The approval by HCPI of any Renderings shall be approval only as to style, exterior design, appearance and location, and shall

not be deemed approval for architectural or engineering design, for compliance with zoning and building ordinances, health and safety matters or other Governmental Requirements, or easements, deed restrictions and any other rights and obligations affecting the Parcels, nor shall such approval be deemed a representation or warranty as to the adequacy or sufficiency of such Renderings or the construction contemplated thereby for any use or purpose. By approving such Renderings, HCPI assumes no liability or responsibility therefor or for any defect in any structure constructed from such plans and specifications. HCPI hereby approves of the Architectural Site Plan for the Wasatch Surgical Center, dated October 30, 2001, prepared by Dixon & Associates.

11. Permitted Use. The Boyer Parcel shall only be used for medically related purposes, including, but not limited to, doctors' and dentists' offices, a surgical center, and/or medical research laboratories.

12. Mortgagee Protection.

12.1. Obligations of Mortgagee. Unless and until it enters into possession or acquires title pursuant to foreclosure or any arrangement or proceeding in lieu of foreclosure, any Mortgagee interested under any Mortgage affecting any part of the Parcels shall have no obligation to take any action to comply with, and may not be compelled to take any action to comply with, this Declaration (other than those provisions, if any, concerning a consent to be given by a Mortgagee, if a Mortgagee's failure to give such consent is wrongful).

12.2. Notices; Right to Cure. Any Owner, on delivering to any other Owner any notice, demand or other communication pursuant to the provisions of this Declaration, shall at the same time deliver by certified mail, return receipt requested, copies of such notice to each Qualified Mortgagee of such other Owner at the latest address provided to the notifying Owner by such other Owner or such Qualified Mortgagee. Although otherwise effective with respect to the Owner receiving such notice, no notice delivered to any Owner shall affect any rights or remedies of any Qualified Mortgagee unless a copy of such notice has been delivered to such Qualified Mortgagee in accordance with the immediately preceding sentence. Each Qualified Mortgagee shall have the right to remedy a default, or cause the same to be remedied within the time allowed to the defaulting Owner plus, in the case of monetary defaults, an additional fifteen (15) days and, in the case of non-monetary defaults, an additional thirty (30) days; provided, however, that if a non-monetary default reasonably requires more than thirty (30) days to cure, each Qualified Mortgagee shall have the right to remedy such default if such Qualified Mortgagee commences such cure within such thirty (30) day period and thereafter diligently prosecutes such cure to completion.

12.3. Performance. Each Qualified Mortgagee shall have the right to act for and in the place of the Owner of the Parcel covered by its Mortgage, to the extent permitted by the applicable Mortgage or otherwise agreed to by such Owner in writing. Any Owner shall accept performance by or on behalf of any Qualified Mortgagee as if the same had been performed by the other Owner. Such acceptance shall not create any additional rights as against such Owner in such Qualified Mortgagee, nor shall such Qualified Mortgagee be subrogated to any interest or right of such Owner. Each Qualified Mortgagee shall have the right, to the extent the Owner of

the Parcel covered by the Mortgage concerned agrees in writing, to appear in a legal action or proceeding on behalf of such Owner in connection with the Parcel.

12.4. Recognition. On request, the Manager agrees to execute, acknowledge and deliver to any Qualified Mortgagee an instrument prepared by the Qualified Mortgagee concerned, acknowledging that such Qualified Mortgagee is a "Qualified Mortgagee" entitled to the benefits of this Paragraph 12.

12.5. Estoppel. The Manager shall, within fifteen (15) days after the request of any Owner, execute and deliver to the requesting Owner an estoppel certificate in favor of the requesting Owner and such other Persons as the requesting Owner shall designate setting forth the following:

(a) that, to the knowledge of the Manager, such Owner is not in default under this Declaration or, in the alternative, that such Owner is in default under this Declaration, setting forth in reasonable detail the nature of such default;

(b) that, to the knowledge of the Manager, this Declaration is in full force and effect and has not been modified or amended, except as may be set forth in such estoppel certificate;

(c) any reasonably requested information regarding Common Expenses and liens recorded pursuant to Paragraph 5.4, to the extent that the Common Expenses and such liens relate to such Owner's Parcel; and

(d) such other information as the requesting Owner may reasonably request.

The requesting Owner's Mortgagees and purchasers shall be entitled to rely on any estoppel certificate executed by the Manager pursuant to this Paragraph 12.5.

13. Covenants to Run with Land. Each provision of this Declaration shall constitute a covenant running with the land, and shall be binding on and shall inure to the benefit of the Manager and each Owner and their respective successors and assigns, all of which Persons may enforce any obligation created by this Declaration. This Declaration shall be binding on each part of the Parcels, and all interests in any part of the Parcels shall be subject to this Declaration. The interests in and rights concerning any portion of the Parcels held by or vested in the Parties or any other Person on or after the date of this Declaration shall be subject and subordinate to this Declaration, and this Declaration shall be prior and superior to such interests and rights. By in any way coming to have any interest in or occupying any part of the Parcels, the Person so coming to have such interest or occupying agrees to be bound by this Declaration; provided, however, that no such Person shall have any right or liability under this Declaration as an Owner until such Person becomes an "Owner," as defined in Paragraph 1, nor shall such Person have liability under this Declaration for any acts committed prior to the time such Person became an Owner.

BOOK 8640 PG 5044

14. Amendment. This Declaration may be amended only by an instrument recorded in the Official Records, executed by each Owner. No other Person (including, without limitation, any Person holding an interest in or occupying any Parcel, whether as a tenant under a lease or otherwise) needs to execute such amendment in order to make such amendment in all respects effective, valid, binding and enforceable; provided, however, that no amendment to this Declaration shall affect the rights of any Mortgagee holding a Mortgage which constitutes a lien on the realty directly involved in such amendment (if such lien is recorded prior to the recordation of such amendment) unless such Mortgagee consents to such amendment in writing. All requisite parties to an amendment shall not withhold, condition or delay the approval or execution of such amendment in a manner which is unreasonable.

15. Attorneys' Fees. If any action is brought because of a default under or to enforce or interpret this Declaration, in addition to the relief to which such Party is entitled, the Party prevailing in such action shall be entitled to recover from the unsuccessful Party reasonable attorneys' fees (including those incurred in connection with any appeal), the amount of which shall be fixed by the court and made a part of any judgment rendered.

16. Release On Transfer. On and after the date an Owner transfers (other than merely for purposes of security) or is otherwise divested of such Owner's ownership interest in any Parcel, such Owner shall be relieved of all liabilities and obligations under this Declaration related to such Parcel, except for such liabilities or obligations as may have accrued as of the date of such transfer or divestiture.

17. No Merger. The easements, covenants, restrictions and other provisions contained in this Declaration shall remain in full force and effect despite the fact that all or a part of the Parcels may be owned by the same Person from time to time, it being the intention of the Parties to create a common scheme for the development and operation of the Parcels which will not be terminated by the doctrine of merger or otherwise, unless this Declaration is terminated in accordance with Paragraph 20.

18. Force Majeure. The Manager and any Owner or other Person obligated under this Declaration shall be excused from performing any obligation set forth in this Declaration, except the payment of money, for so long as (but only for so long as) the performance of such obligation is prevented or delayed by an act of God, weather, avalanche, fire, earthquake, flood, explosion, act of the elements, war, invasion, insurrection, riot, malicious mischief, vandalism, larceny, inability to procure or general shortage of labor, equipment, facilities, materials or supplies in the open market, failure of transportation, strikes, lockouts, order of government or civil defense authorities or any other cause reasonably beyond the control of the Manager, the Owner or other Person prevented or delayed.

19. Certain Agreements. The purpose of this Declaration is to create certain easements, covenants, restrictions and other provisions which are to apply among the Parcels and which are to define and govern the rights and obligations as between those Persons interested in a given Parcel, on the one hand, and those Persons interested in other Parcels, on the other. Accordingly, this Declaration shall not alter any agreements which allocate rights and obligations of Persons having an interest in the same Parcel among such Persons or third parties,

BOOK 8640 PAGE 045

but such agreements shall not limit the liability or obligation of any Person under this Declaration.

20. Effective Dates and Duration. This Declaration and any amendment to this Declaration shall take effect as of the date on which it is recorded in the Official Records. This Declaration shall remain effective until terminated and extinguished by an instrument recorded in the Official Records and executed by each Owner of the Parcels and the Mortgagee under each Mortgage then affecting the Parcels.

21. Notices. Any notice or demand to be given by the Manager to any Owner or by any Owner to the Manager or another Owner shall be given in writing by personal service, telecopy (provided that a hard copy of any such notice has been dispatched by one of the other means for giving notice within twenty-four (24) hours after telecopying), express mail, Federal Express, DHL or any other similar form of courier or delivery service, or mailing in the United States mail, postage prepaid, certified and return receipt requested, and addressed to such Owner at the address set forth for such Owner in the Official Records or in the taxing records or, if different, at another address provided by such Owner. Any Owner may change the address at which it desires to receive notice on written notice of such change to the Manager and each other Owner. Any notice or demand given under this Declaration shall be deemed to have been given, and shall be effective, on delivery to the notice address then applicable for the Party to which the notice is directed; provided, however, that refusal to accept delivery of a notice or the inability to deliver a notice because of an address change which was not properly communicated shall not defeat or delay the giving of a notice.

22. Interpretation. This Declaration shall inure to the benefit of, and shall be binding on, the Parties and their respective successors and assigns. Titles and headings of Paragraphs of this Declaration are for convenience of reference only and shall not affect the construction of any provision of this Declaration. This Declaration shall be governed by, and construed and interpreted in accordance with, the laws (excluding the choice of laws rules) of the State of Utah. Whenever possible, each provision of this Declaration shall be interpreted in such manner as to be valid under applicable law; but, if any provision of this Declaration shall be invalid or prohibited under applicable law, such provision shall be ineffective to the extent of such invalidity or prohibition without invalidating the remainder of such provision or the remaining provisions of this Declaration. Except as otherwise provided in this Declaration, no remedy provided in this Declaration shall be exclusive of any other remedy at law or in equity (whether existing on or created after the date of this Declaration), and all remedies under this Declaration may be exercised concurrently, independently or successively from time to time. The failure on the part of any Person to promptly enforce any right under this Declaration shall not operate as a waiver of such right, and the waiver of any default shall not constitute a waiver of any subsequent or other default.

BOOK 8640 PG 5046

State of California)
County of Orange) ss.

The foregoing instrument was acknowledged before me this 20th day of August, 2002, by Edward J. Henning, the Semir VP of Health Care Property Investors, Inc., the managing member of HCPI/Utah, LLC.

(Seal)

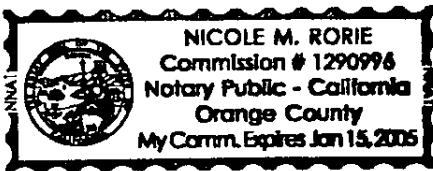
Nicole M. Rorie
Notary Public

My Commission Expires:

Residing at:

1/15/05

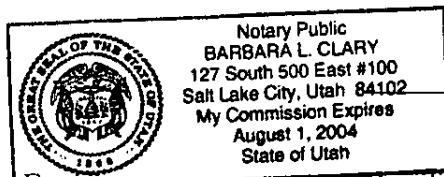
Orange County, California



State of Utah)
County of Salt Lake) ss.

The foregoing instrument was acknowledged before me this 29th day of August, 2002, by Steven B. Oster, the Manager of The Boyer Company, L.C., the manager of Boyer Desert Springs, L.C.

(Seal)



Barbara L. Clary
Notary Public

My Commission Expires:

Residing at:

8/1/04

Salt Lake County