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**DOC # 20180013607**

Restrictive Page 1 of 20  
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**DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND  
RECIPROCAL EASEMENTS**

THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND RECIPROCAL EASEMENTS (the "Declaration") is made this 27 day of March, 2018, by SG Boulevard Land, LLC, a Utah limited liability company the "Declarant".

**RECITALS**

A. The Declarant is the owner of the following described parcels of land, hereinafter collectively the "Land," which is located in Washington County, State of Utah:

Lot 1 through Lot 4 of City View Final Plat Subdivision – St. George, Utah - according to the official plat thereof on file in the office of the Washington County Recorder.

B. Declarant has executed, acknowledged, and recorded in the office of the County Recorder of Washington County, State of Utah that certain instrument pertaining to the Project entitled "City View Subdivision Plat Map" "Project" shall mean the Land, the Lots and the buildings which will be built thereon and any amendment to this Declaration and the Map.

C. Declarant or its successor intends to construct a building and other improvements for use as hotel on Lot 1 (the "Hotel Lot") as more particularly described on Exhibit "A".

D. Declarant or its successor intends to construct a building for use as apartments, a parking structure and other improvements on Lot 2 ("Apartment Lot #1") and Lot 4 ("Apartment Lot #2") (collectively, the "Apartment Lots") as more particularly described on Exhibit "A".

E. Lot 3 (the "Retail Lot") as more particularly described on Exhibit "A" will be utilized for retail purposes.

F. Lot 5 (the "Pedestrian Lot") as more particularly described on Exhibit "A" will be reserved as a mid-block pedestrian corridor pursuant to that certain Joint Development Agreement between SG Boulevard Land, LLC, the City of St. George, and the Neighborhood Redevelopment Agency of the City of St. George. Lot 5 was transferred to City and is not subject to this Declaration.

G. Each of the Hotel Lot, the Apartment Lots, and the Retail Lot are collectively referred to herein as the "Lots".

H. The owners of the Hotel Lot, the Apartment Lots, and the Retail Lot are collectively referred to herein as the “Owners”.

I. Even though each of the Lots is a separate legal parcel, the Owners desire that the Lots be utilized together for ingress and egress, utilities and drainage on the terms and conditions set forth herein.

J. The Owners desire to establish easements over, under, across and upon all driveways, drive aisles and access ways located from time to time on the Lots for shared access, utilities, and surface and subsurface storm water for the mutual and reciprocal benefit of the Lots and the present and future owners, occupants and invitees thereof on the terms and conditions set forth herein.

K. The Apartment Lot #1 Owner will construct a parking garage (the “Parking Garage”) on Apartment Lot #1 containing parking stalls (the “Parking Spaces”) for use of the tenants, guests and employees of Apartment Lot #1, Apartment Lot #2 and the Hotel Lot. The Parking Garage shall be owned, maintained and managed by the Apartment Lot #1 Owner in accordance with terms of this Declaration and the Parking Charges Agreement (as defined below).

L. The Apartment Lot #1 Owner anticipates that it will enter into separate agreements with the Hotel Lot Owner for the Hotel Lot and the Apartment Lot #2 Owner for Apartment Lot #2 and any other user of the Parking Garage (the “Other Parking Users”) (each a “Parking Charges Agreement” and collectively, the “Parking Charges Agreements”) defining the amounts to be paid by the Hotel Lot Owner and the Other Parking Users with respect to their respective parking spaces in the Parking Garage, which Parking Charges Agreements shall each be deemed supplements to this Declaration as between the Apartment Lot #1 Owner on the one hand, and the Hotel Lot Owner, the Apartment Lot #2 Owner or the Other Parking Users, as applicable, on the other hand, with respect to the matters addressed therein.

NOW, THEREFORE, in consideration of the above premises and of the covenants herein contained, the Owners declare that the Lots and all Permittees (as defined below) of the Lots shall be and hereby are subject to the terms and easements as follows:

1. EASEMENTS.

1.1. Grant of Reciprocal Easements. Subject to any express conditions, limitations or reservations contained herein, the Owners hereby grant, establish, covenant and agree that the Lots, and all present and future owners and Permittees shall be benefited and burdened by the following perpetual and reciprocal easements which are hereby imposed upon the Lots and all present and future owners and Permittees of the Lots:

1.1.1. A non-exclusive easement over and across each Lot, for surface sheet drainage of water across the Lots. The Owners covenant and agree that the rights granted pursuant to this easement shall at all times be exercised in such a manner as not to unreasonably interfere with the normal operation of the Lots and the businesses conducted therein.

1.2. Grant of Parking Easements.

1.2.1. Hotel Parking Rights. The Apartment Lot #1 Owner hereby grants to the Hotel Lot Owner, for the benefit of Hotel Lot, the future owner of Hotel Lot, and its employees, agents, customers, guests, and invitees (collectively, "Hotel Parking Users"): (a) a perpetual non-exclusive easement over Apartment Lot #1 for vehicular and pedestrian ingress and egress, (b) a perpetual exclusive easement to use automobile parking spaces located in the Parking Garage in conformance with the terms of the Parking Charges Agreement between the Hotel Lot Owner and the Apartment Lot #1 Owner for up to Sixty Two (62) parking spaces (the "Hotel Parking Spaces"), and (c) a perpetual non-exclusive easement for additional automobile parking spaces for vehicular parking within the Parking Garage. The Hotel Parking Spaces will be a mix of small and large stalls which meet applicable building and zoning codes and are otherwise consistent with the general mix of stalls in parking facilities in the downtown St. George area, and shall be located in an area of the Parking Garage to be reasonably agreed upon by the Apartment Lot #1 Owner and the Hotel Lot Owner, and will be designated as exclusive Hotel Parking Spaces by appropriate signage or other designation.

1.2.2. Parking Rights Not Limited to Certain Days or Hours. It is expressly understood and agreed that the Hotel Parking Users shall have vehicular and pedestrian access to the Parking Garage and the Parking Spaces therein twenty-four (24) hours a day, seven days a week, subject to the Hotel Parking Charges Agreement and the Apartment Lot #1 Owner's right to temporarily close portions of the Parking Garage for force majeure events, emergencies and repairs pursuant to Section 2.

1.3. Grant of Utility Easements. The Apartment Lot Owner hereby grants to the Hotel Lot Owner, the Apartment Lot #2 Owner and the Retail Owner for the benefit of each of those Lots, utility easements as depicted on the City View Subdivision Plat Map.

1.4. Permittees. As used herein, the term "Permittees" means the current and future owners, tenants, subtenants, and occupants of any Lot, and their respective employees, agents, customers, guests, invitees, licensees, concessionaires, and contractors.

1.5. Reasonable Use of Easements.

1.5.1. The easements granted herein shall be used and enjoyed by each Owner and its Permittees in such a manner so as not to unreasonably interfere with, obstruct or delay the conduct and operations of the business of any other Owner or its Permittees at any time conducted on its Lot.

1.5.2. Once commenced, any construction, maintenance, repair or replacement undertaken in reliance upon an easement granted herein shall be diligently prosecuted to completion, so as to minimize any interference with the business of any other Owner and its Permittees. Except in cases of emergency, the right of any Owner to enter upon a Lot of another Owner for the exercise of any right pursuant to the easements set forth herein, or to prosecute work on such Owner's own Lot if the same interferes with easements of ingress, egress or access to or in favor of another Owner's Lot, shall be undertaken only in such a manner so as to minimize any interference with the business of any other Owner and their Permittees.

and only following reasonable notice under the circumstances to any other Owner and its Permittees. The Owner performing any such construction, maintenance, repair or replacement shall have the obligation at its own expense to promptly restore the other Owner's Lot to the same condition as was present prior to such construction, maintenance, repair or replacement.

1.6. Maintenance of Easements.

1.6.1. Parking Garage Maintenance. In addition to the obligations set forth in Section 2 below, the Apartment Lot #1 Owner, at its sole cost and expense, shall operate, maintain, repair, clean, and provide security for the Parking Garage, including the Hotel Parking Spaces, in a first class manner suitable for parking facilities similar to the Parking Garage. The Apartment Lot #1 Owner is hereby authorized to contract with, in its discretion, any responsible person to perform its management and maintenance responsibilities hereunder. The obligation of the Apartment Lot #1 Owner to operate, maintain, repair, clean, insure, provide security for, restore and replace the Parking Garage shall include, but not be limited to, the following:

a. Paved Areas. Maintaining all paved surfaces and curbs of the Parking Garage in a smooth and evenly covered condition, which maintenance work shall include, without limitation, restriping, repairing and resurfacing of the Parking Garage, using surfacing material of a quality equal or superior to the original surfacing material.

b. Removal and Refuse. Removal of all papers, debris, filth and refuse, and sweeping the Parking Garage to the extent necessary to keep it in a clean and orderly condition.

c. Signs and Markers. Placing, keeping in repair, replacing and repainting any appropriate directional signs, markers and lines.

d. Parking Area Lighting. Operating, keeping in repair, cleaning and replacing when necessary such lighting improvements within the Parking Garage as may be reasonably required.

e. Utilities. Maintaining, cleaning and repairing any and all utility lines, systems and services located in the Parking Garage.

f. Obstructions. Keeping the Parking Garage free from obstructions not permitted hereunder.

g. Governmental Requirements. Complying with all applicable requirements of governmental authorities pertaining to the Parking Garage, including, without limitation, any alterations or additions required to be made to, or safety appliances and devices required to be maintained in or about, the Parking Garage under any laws, ordinances, rules, regulations or orders now or hereafter adopted, enacted or made and applicable to the Parking Garage.

1.6.2. Failure to Maintain the Parking Easements. If the Apartment Lot #1 Owner defaults under its obligations as described in Section 1.6.1, above, then the Hotel Lot Owner may give the Apartment Lot #1 Owner written notice of the claimed default, and the

Apartment Lot #1 Owner shall have ten (10) days following the receipt of such written notice to cure such default. If the default remains uncured following the ten (10) day period, or has not diligently prosecuted the cure to a conclusion, or if such default is not curable within the ten (10) day period and the Apartment Lot #1 Owner has failed to begin to cure such default within the ten (10) day period, the Hotel Lot Owner may, but shall not be required to, cure the default itself, and then bill the Apartment Lot #1 Owner for the reasonable costs incurred in curing such default. Each such bill shall contain an itemized description of the work performed and the total costs and expenses incurred for such work. The Apartment Lot #1 Owner shall pay all such bills within thirty (30) days after receipt of the bill. In the event the Apartment Lot #1 Owner fails to timely pay any bill, the unpaid amount shall bear interest at the rate of ten percent (10%) per annum from the due date until the date such amount is paid in full. Additionally, in the event that the Apartment Lot #1 Owner's failure to pay a bill continues beyond sixty (60) days after it is due, then the Hotel Lot Owner shall be entitled to record a Notice of Lien against the defaulting Apartment Lot #1 Owner's Lot in the total amount due and owing. Said Notice of Lien may be foreclosed by suit, power of sale or in any other manner permitted by applicable law including, without limitation, power of sale foreclosure. Notwithstanding the foregoing, if the defaulting Apartment Lot #1 Owner gives written notice, prior to the expiration of such sixty (60) day period, that it is contesting the amount or payment of the bill in question, and provided that the defaulting Apartment Lot #1 Owner also either posts a bond in favor of the Hotel Lot Owner or pays into escrow the amount being contested pending resolution, then the Hotel Lot Owner shall not be entitled to record a Notice of Lien against Apartment Lot #1. The defaulting Apartment Lot #1 Owner and/or its agents shall be permitted, upon seventy-two (72) hours advance written notice to review the records and supporting documentation for any bill submitted to the defaulting Apartment Lot #1 Owner pursuant to this Section 1.6.2.

2. Duties of Each Lot Owner. In addition to the duty to maintain the easements granted hereunder located on each respective Lot, each Lot Owner shall use commercially reasonable efforts to cause its Permittees to comply with the terms of this Declaration.

3. Parking Charges Agreements.

3.1. Each of the Hotel Lot Owner and the Other Parking Users must enter into a Parking Charges Agreement with the Apartment Lot #1 Owner on reasonable commercial terms and pay "Parking Charges" as determined in the respective Parking Charges Agreement. In the event of any inconsistency between the terms of this Declaration and the terms of a Parking Charges Agreement, the terms of this Declaration shall control. If a dispute arises out of or relates to what are commercially reasonable terms for the Parking Charges Agreements, and if the dispute cannot be settled through negotiation, the parties agree first to try in good faith to settle the dispute by mediation by an unrelated third party mediator mutually agreed upon by the parties before resorting to arbitration, litigation, or some other dispute resolution procedure.

3.2. Each of the Hotel Lot Owner and the Other Parking Users shall pay their respective Parking Charges monthly, in advance, in good and sufficient funds without prior notice and without right of offset and if not timely paid, interest and late charges will be assessed as provided for in the applicable Parking Charges Agreement. It is expressly agreed that each Owner shall be obligated to pay any Parking Charges pursuant to the terms of the

applicable Parking Charges Agreements, and each Owner hereby assumes all risk of collection with respect thereto.

3.3. The breach of a Parking Charges Agreement by the Hotel Lot Owner shall not operate to terminate the parking easements granted by this Declaration. Rather, in addition to the obligations to pay interest and late charges in accordance with the terms of the applicable Parking Charges Agreement, a breach shall result in a Notice of Lien on the Hotel Lot for the duration of the breach in accordance with Section 11.

4. No Right to Assign Parking Rights. Notwithstanding any other provision in this Declaration, the Hotel Lot Owner shall not have the right to assign, license or transfer the right to use any of the Parking Spaces in the Parking Garage to any other Person or Persons, except the Hotel Lot Owner can (i) assign rights to individual Parking Spaces to its Permittees during the period of time it is actually the Owner of the Hotel Lot, and (ii) assign all of its rights and obligations under this Declaration and its Parking Charges Agreement to a successor Owner of the Hotel Lot. As used in this Declaration, "Person" shall mean a natural person or an association, relationship or artificial person through or by means of which an enterprise or activity may be lawfully conducted, including, without limitation, a domestic or foreign corporation, nonprofit corporation, limited liability company, general partnership, limited partnership, business trust, association, trust, estate, joint venture, cooperative or governmental unit.

5. Term; Modification and Termination.

5.1. Term. This Declaration, as amended from time to time, shall run with the Lots and benefit and burden each of the Lots, and shall bind and inure to the benefit of each Owner thereof, and every person having any fee, leasehold or other interest therein and shall inure to the benefit of the Owners and their respective successors, assigns, heirs, and personal representatives, for a term beginning on the date this Declaration is recorded in the official records of Washington County, Utah ("Recorded") and continuing through and including the last day of the thirtieth (30th) full calendar year following the date this Declaration is Recorded ("Term"), provided that the Term shall automatically be extended thereafter for successive periods of ten (10) years each unless, prior to said date or the expiration of the 10-year extension period then in effect, an instrument executed and duly acknowledged by all of the Owners and their mortgagees hereunder is Recorded stating that this Declaration is terminated. If any of the interests, privileges, covenants or rights created by this Declaration shall be unlawful, void or voidable for a violation of the rule against perpetuities or any related rule, then such provision shall continue until 21 years after the death of the survivor of the descendants of the current and former Presidents of the United States living on the date this Declaration is Recorded.

5.2. Amendment. This Declaration may be amended or terminated before the end of the Term only by an instrument that is duly executed by all of the Owners and their mortgagees and Recorded. Provided, however, any amendment that modifies easements or access not impacting the Pedestrian Lot may be amended and an instrument that is duly executed by all of the Owners and their mortgagees and Recorded.

6. Insurance.

6.1. Casualty Insurance. The Apartment Lot #1 Owner shall, at its expense, maintain fire and property damage insurance for the Parking Garage (on an "all risk" basis for full replacement value, excluding foundations, and with a reasonable deductible).

6.2. Liability Insurance of the Apartment Lot #1 Owner. The Apartment Lot #1 Owner shall maintain (or cause to be maintained) at all times during the Term reasonable and customary (compared to other first class parking garages in Washington County, Utah similar to the Parking Garage) levels of comprehensive general liability and garage keeper's legal liability insurance with respect to its operation of the Parking Garage. The Hotel Lot Owner shall be named as an additional insured on each such policy.

6.3. Liability Insurance of the Hotel Lot Owner. The Hotel Lot Owner shall maintain (or cause to be maintained) at all times during the Term reasonable and customary levels of comprehensive general liability insurance with respect to its operation of the Hotel Lot and use of the Parking Garage by the Hotel Lot Owner and its Permittees, and shall cause the Apartment Lot #1 Owner to be named as an additional insured party under each such policy.

6.4. Certificates of Insurance. Upon the written request of an Owner, each other Owner shall furnish an ACORD form certificate of insurance to the requesting Owner reflecting the limits and endorsements required herein. Each policy shall require notice of non-renewal to the additional insured Owner and shall further provide that it may not be altered or cancelled without thirty (30) days' notice being first given to any additional insured Owner.

6.5. Waiver of Subrogation. Without affecting any other rights or remedies, each of the Owners hereby release and relieve each of the other, and waive their entire right to recover damages against the other, for loss of or damage to its property arising out of or incident to the perils required to be or actually insured against herein. The effect of such releases and waivers is not limited by the amount of insurance carried or required, or by any deductibles applicable hereto. The Parties agree to have their respective property damage insurance carriers waive any right to subrogation that such companies may have against any other Owner, as the case may be, so long as the insurance is not invalidated thereby.

6.6. Indemnity. In no event shall the Hotel Lot Owner have any claim or cause of action of any kind against the Apartment Lot #1 Owner with respect to any damage to or loss of any vehicles and other personal property of Permittees located in or on the Parking Garage and/or death or injury to any Permittees, except the extent arising from the Apartment Lot #1 Owner's gross negligence or willful misconduct. The Hotel Lot Owner shall indemnify and defend the Apartment Lot #1 Owner for any claim, liability or cause of action of any kind asserted against the Apartment Lot #1 Owner by any of their respective Permittees, except to the extent such claim, liability or cause of action arises out of the gross negligence or willful misconduct of the Apartment Lot #1 Owner.

6.7. Additional Insured Endorsements. Upon the written request of an Owner, any other Owner shall furnish an endorsement that the requesting Owner be insured on a

“Primary” and “Non-Contributory” basis, and this endorsement shall also include a complete waiver of subrogation.

7. Condemnation.

7.1. Total Taking. If the Parking Garage in its entirety is taken for any public or quasi-public use or improvement by virtue of eminent domain or conveyance in lieu thereof (a “Taking”), this Declaration shall terminate as of the earlier to occur of: (i) the date of the actual commencement of the physical taking of the Parking Garage; or (ii) the date title thereto becomes vested in the condemning authority, and the Parking Charges shall be abated during the unexpired Term of this Declaration, effective on such date.

7.2. Partial Taking. Except as otherwise provided below, if there is only a partial Taking of the Parking Garage, this Declaration shall remain in effect as to the portion of the Parking Garage not taken (unless so much of the Parking Garage shall be so taken as to render the balance of the Parking Garage unsuitable for use by the Hotel Lot Owner for the uses and purposes contemplated herein, in which event this Declaration shall terminate effective as provided in Section 7.1).

7.3. Rebuild. In the event of any partial Taking and this Declaration is not terminated pursuant to Section 7.2, the Apartment Lot #1 Owner shall, at its sole cost and expense, rebuild, repair, or restore the Parking Garage to the extent feasible under the circumstances, in which event the Apartment Lot #1 Owner shall be entitled to the use of all of the awards made or damages granted to the Apartment Lot #1 Owner with respect to the Parking Garage.

7.4. Temporary Taking. In the event of a temporary Taking of all or part of the Parking Garage, this Declaration shall not terminate.

7.5. Awards. In the event of any taking or condemnation herein described of all or part of the Parking Garage, the Apartment Lot #1 Owner and the Hotel Lot Owner shall receive the present value of its respective interests in the easement and parking rights to the Parking Garage, the land on which the Parking Garage is constructed, and the Parking Garage improvements, together with interest thereon from the date of taking to the date of payment at the rate paid on the award, and attorney’s fees and other costs to the extent awarded. The present values of the Apartment Lot #1 Owner’s and the Hotel Lot Owner’s respective interests shall be established by the same court of law or other trier of fact that establishes the amount of the condemnation award. Such value shall be determined without regard to any early termination of this Declaration due to any taking or condemnation and shall assume that all renewal periods have been, and will continue to be exercised, understanding that the perpetual easement to use the Hotel Parking Spaces under this Declaration would be at all times subject to a Parking Charges Agreement.

7.6. Notice. The Apartment Lot #1 Owner shall promptly notify the Hotel Lot Owner in writing in the event that the Apartment Lot #1 Owner has knowledge or receives notice of any pending or proposed Taking affects all or any portion of the Parking Garage.



8. Casualty.

8.1. Casualty Event. In the event of a total or partial damage or destruction to the Parking Garage, this Declaration shall not terminate and the Apartment Lot #1 Owner shall be entitled to the use of all of the insurance proceeds available for such rebuilding, repair and restoration. Following the completion of such rebuilding, repair and restoration, the Hotel Lot Owner shall again be entitled to use the number of Parking Spaces allocated to the Hotel Lot Owner immediately prior to the occurrence of the casualty event.

8.2. Rebuild Obligation. In the event of a casualty loss to the Parking Garage as described in Section 8.1, the Apartment Lot #1 Owner shall, within a reasonable period of time (as determined by the circumstances) from the date of such casualty event, commence to rebuild, restore or repair the Parking Garage (and thereafter diligently pursue such repair, rebuilding or restoration efforts to completion) to substantially the same condition as it existed prior to the casualty loss in question, or, in any event, to a sufficient size to allow the Apartment Lot #1 Owner to make available to the Hotel Lot Owner the then applicable number of Parking Spaces allocated to the Hotel Lot Owner pursuant to this Declaration. Notwithstanding the foregoing, if the Parking Garage is destroyed or damaged by a casualty loss to an extent of more than seventy percent (70%) of the then replacement cost, the Apartment Lot #1 Owner shall have the right to elect not to restore the Parking Garage by giving written notice of such election to the Hotel Lot Owner and the City of St. George within sixty (60) days of the loss. In such event, the provisions of Section 9 shall apply.

9. Alternative Parking. In the event the Apartment Lot #1 Owner elects not to rebuild, restore or repair the Parking Garage in accordance with Section 8.2 above, then, except for as otherwise provided for in the respective Parking Charges Agreement or other written agreement, the Apartment Lot #1 Owner shall, at its sole cost and expense, provide to the Hotel Lot Owner the Parking Spaces allocated to the Hotel Lot Owner under this Declaration by constructing surface parking on Apartment Lot #1 (the "Surface Spaces"). The Apartment Lot #1 Owner shall provide such Surface Spaces to the Hotel Lot Owner as soon as is reasonably practicable under the circumstances, and all Parking Charges shall be abated from the date of the casualty to the date such Surface Spaces are provided to the Hotel Lot Owner. Notwithstanding the foregoing, however, if and when the Parking Garage is subsequently rebuilt, repaired or restored, the Hotel Lot Owner shall again have the right to use the Parking Spaces in the Parking Garage pursuant to this Declaration. Notwithstanding anything to the contrary in this Declaration, any change to parking rights of any Lot hereunder must be preapproved by the City.

10. Sale of Interest in Parking Garage or Hotel Lot

10.1. Sale of Apartment Lot #1 by the Apartment Lot #1 Owner. The Apartment Lot #1 Owner, and each of its successors, shall have the right to transfer, sell and convey Apartment Lot #1 without the consent of the Hotel Lot Owner, but such conveyance and each successive Owner of Apartment Lot #1 shall be subject to this Declaration, which shall constitute covenants running with the land and shall benefit and burden title to Apartment Lot #1. However, the Owner conveying Apartment Lot #1 shall thereafter be released from any further liabilities or obligations under this Declaration that have not accrued prior to the date of such transfer.

10.2. Sale of Hotel Lot by the Hotel Lot Owner. The Hotel Lot Owner, and each of its successors, shall have the right to sell and convey the Hotel Lot without the consent of the Apartment Lot #1 Owner, but such conveyance and each successive Owner of the Hotel Lot shall be subject to this Declaration, which shall constitute covenants running with the land and shall benefit and burden title to the Hotel Lot. However, the Owner conveying the Hotel Lot shall thereafter be released from any further liabilities or obligations under this Declaration that have not accrued prior to the date of such transfer.

11. Event of Default; Remedies.

11.1. A "Payment Event of Default" shall occur if the Hotel Lot Owner shall default in the payment of any Parking Charges or other sum of money due, or to be paid, by the Hotel Lot Owner pursuant to the Parking Charges Agreement, and such default shall continue for a period of five (5) business days after written notice thereof from the Apartment Lot #1 Owner. A "Non-Payment Event of Default" shall occur if any Owner shall default in the performance or observance of any other term, covenant, agreement or obligation of this Declaration to be performed or observed by such Owner (other than the specific maintenance obligations (Section 1.6) and duties of the each Lot Owner (Section 2)), and such default shall continue for a period of thirty (30) days after written notice thereof by a non-default Owner. "Event of Default" shall mean either a Payment Event of Default or a Non-Payment Event of Default.

11.2. If any Event of Default occurs, each non-defaulting Owner shall have the right (but no obligation) to seek all remedies available under this Declaration or at law or in equity. Without limiting the foregoing, the Owners agree that irreparable harm would occur in the event that any of the agreements and provisions of this Declaration are not performed fully by the Owners in accordance with their specific terms or conditions or are otherwise breached, and that money damages are an inadequate remedy for breach of this Declaration because of the difficulty of ascertaining and quantifying the amount of damage that will be suffered by the parties hereto in the event that this Declaration is not performed in accordance with its terms or conditions or is otherwise breached. It is accordingly hereby agreed that the Owners shall be entitled to an injunction or injunctions to restrain, enjoin, and prevent breaches of this Declaration by the other parties and to enforce specifically such terms and provisions of this Declaration, such remedy being in addition to and not in lieu of, any other rights and remedies to which the other parties are entitled to at law or in equity.

11.3. If any Payment Event of Default occurs, then the Apartment Lot #1 Owner shall have, in addition to any other remedies available at law, without further notice to the defaulting Owner, and without barring later election of any other remedy, any one or more of the following remedies as the Apartment Lot #1 Owner's damages:

11.3.1. The unpaid amount shall bear interest at the rate of twelve percent (12%) per annum from the due date until the date such amount is paid in full. Additionally, in the event that the defaulting Hotel Lot Owner's failure to pay a bill continues beyond sixty (60) days after it is due, then the Apartment #1 Owner shall be entitled to record a Notice of Lien against the defaulting Hotel Lot Owner's Lot in the total amount due and owing. Said Notice of Lien may be foreclosed by suit, power of sale or in any other manner permitted by applicable law including, without limitation, power of sale foreclosure. Notwithstanding the foregoing, if the

defaulting Hotel Lot Owner gives written notice, prior to the expiration of such sixty (60) day period, that it is contesting the amount or payment of the bill in question, and provided that the defaulting Hotel Lot Owner also either posts a bond in favor of the Apartment #1 Owner or pays into escrow the amount being contested pending resolution, then the Apartment #1 Owner shall not be entitled to record a Notice of Lien against the defaulting Hotel Lot Owner's Lot. The defaulting Hotel Lot Owner and/or its agents shall be permitted, upon seventy-two (72) hours advance written notice to review the records and supporting documentation for any bill submitted to the defaulting Owner pursuant to this Section 11.3.1.

11.3.2. Other Remedies. Pursue any other remedy now or hereafter available to the Apartment Lot #1 Owner under the laws or judicial decisions of the State in which the Parking Garage is located, including but not limited to the right to assess against the defaulting Owner an amount equal to the attorneys' fees incurred by the Apartment Lot #1 Owner in collecting any parking charges or other payment due hereunder, which amount shall be due in full within ten (10) days of the defaulting Owner's receipt of the assessment by the Apartment Lot #1 Owner.

11.3.3. No Right to Terminate. The provisions of this Section shall be in addition to any other rights and remedies of the Apartment Lot #1 Owner under this Declaration or at law or in equity in the Event of a Default by an Owner under the Parking Charges Agreements, except that (a) this Section shall govern the suspension of parking rights with respect to specific Parking Spaces as herein provided, and (b) in no event may the parking easements granted hereunder be terminated unless an instrument executed and duly acknowledged by the Apartment Lot #1 Owner and Hotel Lot Owner, as applicable, is Recorded to such effect.

11.4. No Waiver. The failure by an Owner to enforce a breach of this Declaration shall not be construed as a waiver of the right to enforce such breach at a later time or to enforce any other breach, and any waiver must be expressly evidenced in writing by the part against which the waiver is claimed.

11.5. Limitation on Liability. Notwithstanding anything to the contrary in this Declaration, it is understood and agreed that the recourse of any Owner, or their successors or assigns, against any other Owner with respect to an alleged breach by an Owner under this Declaration shall extend only to such Owner's interest in the Parking Garage and the rents, revenues, casualty and insurance proceeds derived therefrom, and not to any other real property, personal property, or other assets of any kind or nature of such Owner, or its current or former members, or any of the current or former directors, officers, employees, agents, members, or partners thereof, and, except to the extent of such Owner's interest in its Lot and the rent, revenues, casualty and insurance proceeds derived therefrom, no personal liability of any sort with respect to any of its obligations under this Declaration or any alleged breach hereof is assumed by, or shall be asserted or enforceable against, such Owner or any current or former members thereof, or any of the respective current or former directors, officers, employees, agents, members, or partners thereof.

11.6. Mortgagee Protection Provisions. The following definitions apply to this Section 11.6. "Mortgage" shall mean any mortgage, deed of trust, or other security instrument

that at any time is granted by the Hotel Lot Owner creating a lien or security interest against all or any part of its Lot. "Mortgagee" shall mean the holder, mortgagee, and/or trustee of any liens or security interests securing any Mortgage granted by the Hotel Lot Owner.

**11.6.1. Right to Cure Defaults.** The Apartment Lot #1 Owner, when giving notice to the Hotel Lot Owner with respect of any Event of Default, shall also give a copy of such notice to any Mortgagee of the delinquent Owner of whom the Apartment Lot #1 Owner has been notified in writing which such notice shall be sent to the last address for such Mortgagee previously furnished to the Apartment Lot #1 Owner in writing. Any such Mortgagee of the delinquent Owner shall have the same period after receipt of a copy of any Event of Default notice to cure such Event of Default as is given to such delinquent Owner under this Declaration. The Hotel Lot Owner irrevocably directs that the Apartment Lot #1 Owner accept, and the Apartment Lot #1 Owner agrees to accept, performance by any such Mortgagee of any term, covenant, agreement, provision, condition or limitation on the delinquent Owner's part to be performed as though performed and observed by such delinquent Owner, provided such performance by said Mortgagee shall occur within the time prescribed therefor in this Declaration.

**11.6.2. No Obligation to Cure Certain Defaults.** Nothing herein contained shall require any Mortgagee or its designee, as a condition to its exercise of any right under this Declaration, including, but not limited to, its right to cure defaults by the delinquent Owner or its right to obtain a New Parking Charges Agreement pursuant to subsection 11.6.3 below, to cure any non-monetary default of the delinquent Owner which is not reasonably susceptible of being cured by such Mortgagee.

**11.6.3. New Parking Charges Agreement.** In the event of the termination of this Declaration for any reason, including, without limitation, any disaffirmance of this Declaration by any trustee of the delinquent Owner in bankruptcy, the Apartment Lot #1 Owner shall, in addition to providing the notices of default and termination as otherwise required by this Declaration, provide each Mortgagee with written notice of such termination, together with a statement of all sums which would at that time be due under this Declaration from the applicable Owner but for such termination, and of all other defaults of the applicable Owner, if any, then known to the Apartment Lot #1 Owner. The Apartment Lot #1 Owner agrees to enter into a "New Parking Charges Agreement" with a Mortgagee or its designee for the remainder of the Term, effective as of the date of termination, at the Parking Charges rates in the former prior Parking Charges Agreement, and upon the terms, covenants and conditions of this Declaration, provided:

a. Such Mortgagee shall make written request upon the Apartment Lot #1 Owner for such New Parking Charges Agreement within thirty (30) days after the date such Mortgagee receives the Apartment Lot #1 Owner's written notice of termination of this Declaration.

b. Such Mortgagee or its designee shall agree to remedy any of the delinquent Owner's defaults of which said Mortgagee was notified of pursuant to the default notice provisions in this Declaration and which are reasonably susceptible of being so cured by Mortgagee or its designee.

c. Such Mortgagee or its designee shall be liable to perform the obligations imposed on the delinquent Owner by such New Parking Charges Agreement only during the period such person has ownership of the Lot owned by the delinquent Owner.

11.6.4. Additional Modifications. The Owners agree to modify this Declaration from time to time for the purpose of incorporating herein such additional Mortgagee protective provisions as may be reasonably required by any Mortgagee so long as such modifications are reasonably satisfactory to the other Owners and are not inconsistent with any of the terms and conditions of this Declaration in any material respects.

11.7. No Termination for Default. No default hereunder shall entitle any Owner to cancel, rescind, or otherwise terminate this Declaration. No breach hereunder shall defeat or render invalid the lien of any Mortgage upon any Lot made in good faith for value, but the provisions hereof shall be binding upon and effective against any Owner of such Lot covered hereby whose title thereto is acquired by foreclosure, trustee's sale, or otherwise.

12. Notices. Any notices shall be in writing and shall be given to an Owner at the Owner's addresses set forth on the signature page of this Declaration, which each such Owner may change by giving written notice as herein provided to any other Owners. Notice shall be deemed given one (1) day after the notice is sent to the party to be notified by overnight express courier such as "Federal Express," or such other similar carrier guaranteeing next day delivery. Refusal of an Owner to accept a notice shall not affect the giving of the notice.

13. Right to Estoppel Certificates. Each Owner, within ten (10) days after written notice from any other Owner, shall execute and deliver to the requesting Owner a certificate in substantially the form attached hereto as Exhibit "B" stating that this Declaration is unmodified and in full force and effect, or in full force and effect as modified and stating the modifications and specifying the existence or absence of any event of default hereunder. This certificate shall also state the current amount of Parking Charges under the respective Parking Charges Agreement, and any other matters reasonably requested by the requesting Owner.

14. Rules and Regulations. Each Owner shall faithfully observe and comply with reasonable rules and regulations that the Apartment Lot #1 Owner shall from time to time promulgate and/or modify with respect to the Parking Garage ("Rules and Regulations"). The Rules and Regulations shall be binding upon an Owner upon delivery of a copy of them to such Owner. The Apartment Lot #1 Owner shall not be responsible to any Owner for the nonperformance of any Rules and Regulations by any other Owners or their Permittees. In the event that the Apartment Lot #1 Owner becomes aware of any transgression by an Owner of the Rules and Regulations then the Apartment Lot #1 Owner shall notify such Owner. If such Owner does not cure the offense within 15 days of such notice, then such Owner shall pay to the Apartment Lot #1 Owner fines as provided for in the Rules and Regulations.

15. Miscellaneous.

15.1. Binding on Successors. This Declaration shall bind and inure to the benefit of the parties and their respective successors and assigns as set forth herein.

15.2. Invalid Provision/Severability. Each provision of this Declaration and the application thereof to the Lots are hereby declared to be independent of and severable from the remainder of this Declaration. If any provision contained herein shall be held to be invalid or to be unenforceable or not to run with the land, such holding shall not affect the validity or enforceability of the remainder of this Declaration. Provided, however, each of the Owners agree to work together in good faith to either amend this Declaration or enter into a separate agreement so that the purposes, benefits and burdens of this Declaration are not frustrated. In the event the validity or enforceability of any provision of this Declaration is held to be dependent upon the existence of a specific legal description, the parties shall promptly cause such legal description to be prepared. Ownership of all of the Lots by the same person or entity shall not terminate this Declaration nor in any manner affect or impair the validity or enforceability of this Declaration.

15.3. Governing Law. This Declaration shall be governed in all respects, whether as to validity, construction, capacity, performance, enforcement, or otherwise, by the laws of the State of Utah. Venue for enforcement of this Declaration shall lie exclusively in Washington County, Utah, and the Owners waive the right to sue or be sued in any other place.

15.4. Rule of Construction. The judicial rule of construction requiring or allowing a document to be construed to the detriment or against the interests of the document's maker or drafter shall not apply to this Declaration. Each provision of this Declaration shall be construed as a whole according to its fair meaning, and not strictly for or against any Owner.

15.5. Entire Agreement. This Declaration constitutes the entire agreement of the parties, all prior negotiations and agreements, whether written or oral, having been merged into this Declaration.

15.6. Computation of Time. In computing a time period described in this Declaration, the date of the act or event shall not be counted. All subsequent days, including intervening weekend days and legal holidays recognized by the State of Utah, shall be counted in the period (unless the time period involves "business days"; in which event weekend days and such legal holidays shall be excluded). The last day of the period so computed is to be included unless it is a weekend day or a legal holiday under Utah law, in which case the period is to be extended to the next day that is not a weekend day or legal holiday.

15.7. Exhibits. All exhibits attached hereto are hereby incorporated as part of this Declaration.

15.8. Review by Counsel. Each Owner has had the opportunity to have this Declaration reviewed by independent counsel before signing it.

15.9. Authority to Sign. Each Person signing this Declaration in a representative capacity on behalf of a party warrants and represents to the other party that (a) the Person executing this Declaration has the actual authority and power to sign, and to bind the Person's respective principal to the provisions of this Declaration; and (b) all action necessary for the making of this Declaration has been duly taken.

15.10. No Third Party Beneficiaries. It is expressly understood and agreed that no Permittee or any other Person granted parking rights by or through any Owner shall constitute a third party beneficiary of this Declaration; the only Persons with privity of contract under this Declaration shall be the Apartment Lot #1 Owner and Hotel Lot Owner.

15.11. Time of the Essence. Time is of the essence with respect to this Declaration.

15.12. No Public Dedication. Nothing contained herein shall be construed as creating any rights in the general public or as dedicating for public use any portion of the Lots 1-4. No easements, except those expressly set forth in Section 1, shall be implied by this Declaration.

15.13. Joint and Several Obligations. If at any time two or more Persons are Owners of the Parking Garage or the Hotel Lot Owner, then the obligation of such Owner(s) under this Declaration shall be joint and several.

15.14. No Partnership. Nothing contained in this Declaration shall create any partnership, joint venture, co-tenancy, or similar arrangement between the Apartment Lot #1 Owner and the Hotel Lot Owner. This Agreement does not create any partnership, joint venture, undertaking, business arrangement, or other arrangement, between any Owner and St. George City.

15.15. Force Majeure. If any Owner is delayed or prevented from the performance of any act required hereunder by reason of acts of God, strikes, lockouts, labor troubles, civil disorder, terrorism, acts of war, severe weather, inability to procure materials, restrictive governmental laws and regulations, or other causes without fault, and beyond the reasonable control of such Owner (financial inability excepted), performance of such act shall be excused for the period of delay. However, nothing in this Section shall excuse Hotel Lot Owner from the prompt payment of any Parking Charges and other sums due under the Parking Charges Agreements.

15.16. Bankruptcy. In the event of any bankruptcy affecting any Owner or occupant of any Lot, this Declaration shall, to the maximum extent permitted by law, be considered a Declaration that runs with the affecting Lot(s) land and that is not rejectable, in whole or in part, by the bankrupt person or entity.

15.17. Depiction of Parking Garage and Alterations. The parties agree that any depiction of the Parking Garage does not constitute a representation, covenant or warranty of any kind by the Apartment Lot #1 Owner; provided, however, that the Parking Garage in all events shall provide not fewer than Sixty Two (62) code-compliant automobile parking spaces for the benefit of the Hotel Lot.

15.18. Indemnity. Each Owner shall indemnify and hold each other Owner free and harmless from and against all losses, liabilities, damages, claims, actions, causes of action, debts, costs and expenses (including reasonable attorneys' fees) incurred or suffered by each Owner arising out of, relating to, or in any way connected with a breach or default by such Owner of any of its obligations or other undertakings under this Declaration EXCEPT TO THE

EXTENT SUCH LOSSES, LIABILITIES, DAMAGES, CLAIMS, ACTIONS, CAUSES OF ACTION, DEBTS, COSTS AND EXPENSES RESULT FROM THE GROSS NEGLIGENCE OR WILLFUL MISCONDUCT OF SUCH OTHER OWNER.

15.19. Further Assurances. Each Owner shall, at the request of any other Owner, execute, acknowledge (if appropriate) and deliver such other documents and instruments and perform such other acts as may be reasonably necessary or appropriate to carry out the purposes and intent of this Declaration, provided however that the cooperating Owner shall not be obligated to incur any out-of-pocket expenses in so cooperating.

[SIGNATURES FOLLOW ON NEXT PAGES]





**EXHIBIT "A"**

(Legal Description of Hotel Lot)

Lot 1, City View Final Plat Subdivision, St. George, Utah, according to the Official Plat thereof on file and of record in the Washington County Recorder's Office, Utah.

(Legal Description of Apartment Lot #1)

Lot 2, City View Final Plat Subdivision, St. George, Utah, according to the Official Plat thereof on file and of record in the Washington County Recorder's Office, Utah.

(Legal Description of Apartment Lot #2)

Lot 4, City View Final Plat Subdivision, St. George, Utah, according to the Official Plat thereof on file and of record in the Washington County Recorder's Office, Utah.

(Legal Description of Retail Lot)

Lot 3, City View Final Plat Subdivision, St. George, Utah, according to the Official Plat thereof on file and of record in the Washington County Recorder's Office, Utah.

**EXHIBIT "B"**

Form of Estoppel Certificate

[OWNER]

Re: Confirmation of Agreement and Easement Granting Parking Rights

Ladies and Gentlemen:

The undersigned hereby certifies to [OWNER], its successors and assigns and its lenders, as follows, with the understanding that such persons and entities will rely on such information:

1. Reference is made to that certain Declaration of Reciprocal Easements and Parking Agreement dated \_\_\_\_\_, 2018 (the "Agreement"), recorded as instrument number \_\_\_\_\_ in the Official Records of Washington County, Utah, which Agreement relates to the use of that certain parking garage more fully described in the Agreement (the "Parking Garage"). The Agreement has not been amended, modified, and/or assigned, except for the following:

2. The Agreement has not been assigned and there have not been any amendments or modifications to the Agreement which are not described above.

3. The Agreement is in full force and effect. Other than as set forth in the Agreement and the applicable "Parking Charges Agreement(s)" referred to therein, there is no other agreement (except for the agreements contained herein) between the Owners (as defined in the Agreement) with respect to the Parking Garage and other matters contained therein.

4. Neither the undersigned nor, to the knowledge of the undersigned, [OTHER OWNERS], are in default under the Agreement. There is no defense, offset, claim or counterclaim by or in favor of the undersigned against [OTHER OWNERS] under the Agreement or against the obligations of the undersigned under the Agreement. As of the date of this Estoppel Certificate, the undersigned has no knowledge that any passage of time or the giving of notice, or both, will constitute a default under the Agreement by either the undersigned or [OTHER OWNERS].

5. The undersigned acknowledges that the Parking Charges Agreement between SG Boulevard Hotel, LLC, or its successor or assign and [APPLICABLE OWNER] is in effect and no party is in default under the Parking Charges Agreement and that the current Parking Charges payable under the Parking Charges Agreement are as follows: \_\_\_\_\_ . A true and complete copy of the Parking Charges Agreement, including all amendments thereto, is attached hereto as Exhibit "A."

6. The undersigned's current address for notice under the Agreement is the address of the undersigned as set forth in the Agreement, except as otherwise set forth below:

Executed this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

“ \_\_\_\_\_ OWNER”

By:  
Its:  
Address:

STATE OF UTAH )

: ss

COUNTY OF UTAH )

On the \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, personally appeared before me \_\_\_\_\_, the Manager of \_\_\_\_\_ and the signer of the foregoing instrument, who duly acknowledged to me that he executed the same on behalf of said limited liability company for its stated purpose.

\_\_\_\_\_  
Notary Public of the State of Utah

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