

19

DOC # 20210080452

Restrictive Page 1 of 19
Gary Christensen Washington County Recorder
12/22/2021 10:33:09 AM Fee \$ 40.00
By SOUTHERN UTAH TITLE CO



When Recorded Return to:
Douglas D. Terry, Esq.
DOUGLAS D. TERRY & ASSOC, PLLC
132 W. Tabernacle, Bldg. B
St. George, Utah 84770
(435) 628-4411

**DECLARATION OF COVENANTS, CONDITIONS
AND
RESTRICTIONS
FOR THE
COMMERCE AND HOSPITALITY CENTER
AT
WASHINGTON COMMONS**

A Commercial Development

TABLE OF CONTENTS

RECITALS	2
ARTICLE I: DEFINITIONS	3
ARTICLE II: NATURE AND INCIDENTS OF OCCUPANCY	6
ARTICLE III: ASSESSMENTS	6
ARTICLE IV: ARCHITECTURAL CONTROL COMMITTEE	8
ARTICLE V: MAINTENANCE AND REPAIR	10
ARTICLE VI: INSURANCE	11
ARTICLE VII: EASEMENTS	12
ARTICLE VIII: USE RESTRICTIONS	12
ARTICLE IX: RESERVED RIGHTS OF DECLARANT	16
ARTICLE X: GENERAL PROVISIONS	17

THIS DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS for THE COMMERCE AND HOSPITALITY CENTER AT WASHINGTON COMMONS, "Declaration" is made this 10 day of DEC 2021, 2021 by Dean T. Terry Investments, LLC, a Utah limited liability company, (hereinafter referred as "Declarant").

RECITALS

A. Declarant is the fee owner of that certain real property located in Washington City, State of Utah and more particularly described in Exhibit A, attached hereto and made a part hereof.

B. Declarant desires to create within and upon the Property a business and commercial complex to be known as THE COMMERCE AND HOSPITALITY CENTER AT WASHINGTON COMMONS (hereinafter may be referred to as the "Project").

C. Declarant desires to establish for its own benefit and for the mutual benefit of all future occupants of the Project certain covenants, conditions, restrictions, easements, rights, privileges, assessments, and liens as set forth herein, which shall run with and be a burden upon the Property.

D. Declarant will hereafter hold title, and convey leasehold interests or title, to all of the Property subject to the protective covenants, conditions and restrictions hereinafter set forth.

NOW, THEREFORE, pursuant to the foregoing, Declarant does hereby declare that the Property, as defined and described herein, shall be held, conveyed, transferred, leased, subleased, used and occupied subject to the easements, covenants, conditions and restrictions set forth herein and which easements, covenants, conditions and restrictions shall run with the Property and all portions thereof and shall be binding upon all parties having or acquiring any right, title or interest in and to all or any portion of the Property, and the respective heirs, successors and assigns of such Parties.

ARTICLE I: DEFINITIONS

1.1 "Architectural Control Committee" or "Committee" shall mean the committee provided for in Article IV.

1.2 "Assessment" shall mean the amount that is to be levied and assessed against each Occupant and the Occupant's Lot as provided in Article III.

1.3 "Building" shall mean any structure which is permanently affixed to the land and has one or more floors and a roof. For the purpose of this Declaration, "Building" will also include the area within the fence-line of any outdoor swimming pool or facility, including all patio, decking, aquatic features, equipment and storage areas etc. appurtenant thereto.

1.4 "City" shall mean Washington City, Utah, a municipal corporation of the State of

Utah.

1.5 "Common Area" shall mean and include the streets and roadways, curbs and gutters, within the boundaries of the Property as depicted in the final design documents for the Project or a portion thereof. Common Area shall also include areas that are necessary for water drainage and water detention/retention on the Project and expressly excludes drive-thru lanes and trash corral areas.

1.6 "Common Expenses" shall mean and refer to all costs and expenses, of any kind or nature, which are paid or incurred consistent with this Declaration relative to the operation, repair, replacement, maintenance, and/or management of the Common Area of the Project, and the performance of those acts described in Article V. Declarant reserves the right to waive Common Expenses that would otherwise apply to any Lot, Parcel, Occupant, or Owner, as Declarant, in its sole discretion, may determine, and as set forth in the Lease Agreement or instrument of conveyance associated with the Lot, Parcel, Occupant or Owner, which shall be controlling.

1.7 "Declarant" shall mean those entities identified in the first paragraph of this document, its successors and assigns, if any, as owner and developer of the Project, and any Manager hired by the Declarant.

1.8 "Declaration" shall mean and refer to this Declaration of Covenants, Conditions and Restrictions pertaining to the Project, as such Declaration may hereafter be supplemented or amended in accordance with the provisions hereof.

1.9 "Design Standards" shall mean the standards to be set forth and adopted for the commercial parcel described as Washington Commons Phase I, as amended or restated, and such other guidelines as may be promulgated or adopted by the Declarant, Manager, setting forth certain architectural standards and specifications regarding the location and design of improvements, construction materials, lighting, landscaping, signage and other matters relating to Improvements on the Property, including, where applicable, standards and restrictions set forth in the State of Utah School and Institutional Trust Lands Administration (SITLA) Agreement dated April 14, 2005.

1.10 "Hazardous Materials" shall mean all hazardous or toxic materials, substances, pollutants, contaminants, or wastes currently identified as a hazardous substance or waste in the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (commonly known as "CERCLA"), as amended, the Superfund Amendments and Reauthorization Act (commonly known as "SARA"), the Resource Conservation and Recovery Act (commonly known as "RCRA"), or any other federal, state or local legislation or ordinances applicable to the Property.

1.11 "Improvements" shall mean any object, thing or activity of any kind installed, located or occurring on the Property which changes the external appearance of any portion of the Property, of any Lot or of any structure or thing affixed on the Property or any Lot, from its external appearance as it existed immediately prior to the installation, location or occurrence of the object, thing, or activity. Improvements include, but are not limited to, all buildings, structures, landscaping and lawns, trees, shrubs, ground cover, exterior walkways, roadways, parking areas, drives and truck loading areas, signs, fences, poles, walls, utility lines, lighting, excavations, grading, berms, drainage facilities,

repairs, alterations, painting and all other structures or objects of any type of kind installed or constructed on the Property.

1.12 "Lot" or "Parcel" shall mean a separately numbered and individually described plot of land shown on the Plat designated for private ownership in fee simple or occupied under a lease agreement.

1.13 "Lot Area" or "Parcel Area" shall mean the gross area of any Lot or Parcel and shall be determined from the Plat creating such Lot.

1.14 "Manager" shall mean and refer to any person, entity or agency selected by Declarant to manage the affairs of the Project. In the event a Manager is hired by the Declarant, such Manager's rights, duties and power shall be the same as the Declarant, as set forth herein.

1.15 "Mortgage" shall mean any unreleased mortgage or deed of trust or other similar instrument of record, given voluntarily by an Occupant, encumbering his Lot to secure the performance of an obligation or the payment of a debt, which will be released and reconveyed upon the completion of such performance or payment of such debt.

1.16 "Mortgagee" shall mean any Person named as the mortgagee or beneficiary under a Mortgage or any successor in interest to such Person.

1.17 "Occupant" shall mean any Person, including the Declarant, which has leased or Purchased or has otherwise legally acquired the right to occupy and use a Lot or Parcel in the Project.

1.18 "Owner" shall mean and refer to the person, persons or entity owning record title to a Lot or Parcel. The Declarant shall be deemed to be the Owner of all mapped but unsold Lots or Parcels. Owner shall not include a Person who holds an interest in a Lot or Parcel merely as security for the performance of an obligation.

1.19 "Person" shall mean a natural person, corporation, limited liability company, partnership, trust or any other entity recognized as a person under the laws of the State of Utah.

1.20 "Plat" means the subdivision or commercial Plat(s) to be recorded on the Property or any replacements thereof, or additions thereto.

1.21 "Project" shall mean the Property, together with the Improvements which are located upon or may in the future be located upon the Property.

1.22 "Property" shall mean the real property described in Recital A above and described more particularly on Exhibit A attached hereto and such additions thereto as may hereafter be subjected to this Declaration, less any portion thereof that shall be deeded or otherwise dedicated to the City for public use.

1.23 "Public Records" shall mean and refer to the Office of the Washington County Recorder, St. George, Utah.

1.24 "Rules and Regulations" shall mean and refer to the Rules and Regulations authorized to be promulgated to Occupants from time to time by the Declarant.

1.25. "Tenant" shall mean and include all tenants and sub-tenants occupying portions of the Property pursuant to a lease or license from Declarant.

ARTICLE II: NATURE AND INCIDENTS OF OCCUPANCY

2.1 Duty of Occupant to Pay Taxes on Lot Occupied. Each Occupant shall pay before delinquency all taxes, assessments, license fees, and other charges that are levied or assessed against, or based upon the value of, such Occupant's personal property installed or located in or on such Occupant's Parcel including, without limitation, trade fixtures, furnishings, equipment, and inventory (collectively, "Occupant's Personal Property"). Each Occupant shall also pay such portion of the real property taxes attributable to the Occupant's Lot as may be required by the lease agreement associated with said lot.

2.2 Assessments and Rules Observance. Each Lot Occupant is responsible for the prompt payment of any Assessments and charges levied by the Declarant as set forth in this Declaration, and for the observance of the Rules and Regulations promulgated by the Declarant.

ARTICLE III: ASSESSMENTS

3.1. Agreement to Pay Assessments. Except as otherwise expressly provided herein, each Occupant shall be deemed to covenant and agree with all other Occupants to pay any Assessments, together with late payment fees, interest, and costs of collection if and when applicable.

3.1.1 All such Assessments, late payment fees, interest and costs of collection shall be, constitute, and remain:

3.1.1.1 a charge and continuing lien upon the Lot with respect to which the Assessment is made until fully paid; and

3.1.1.2 the personal, joint and several obligation of the Occupant of such Lot at the time the Assessment falls due.

No Lot Occupant may exempt himself or his Lot from liability for payment of Assessments by abandonment of his Lot.

3.1.2 Assessments shall be paid on a schedule to be determined by the Declarant, but not more frequently than quarterly.

3.2 Purpose of Assessments. Assessments levied shall be used exclusively in the maintenance and operation of the Common Area. Maintenance and operations shall include keeping the Common Area in a clean and safe condition, as well as keeping the Common Area in good repair. Declarant shall be responsible for the maintenance and operation of the Common Areas, subject to Declarant contracting such work to be done as Declarant chooses. Lots and Occupants shall be subject to assessments for the maintenance and operation of the Common Areas whether such services are performed by the Declarant or its assigns.

3.3 Calculation of Assessment: Each Lot shall be assessed under this Article according to a ratio of the total cost for the Project to maintain and operate the Common Area, determined by dividing the total square footage of that portion of each Lot within the Common Area by the total

square footage of all of the Lots within the Common Area. The foregoing notwithstanding, Declarant, in its sole discretion, reserves the right to waive the assessment, or any portion thereof, attributable to any Lot or Occupant.

3.4 Effect of Nonpayment; Remedies. Any Assessment not received within ten (10) days of the date on which it, or any installment thereof, becomes due shall be subject to a late charge ("Enforcement Costs") equal to 5% thereof, which, together with interest and costs of collection, shall be, constitute, and remain a continuing lien on the affected Lot.

3.4.1 If any Assessment is not received within ten (10) days after the date on which it becomes due, the amount thereof shall also bear interest from the due date at the rate of two percent (2%) per month; and the Declarant, may bring an action against the Occupant who is personally liable therefore, or may prepare and record in the Public Records its lien against the Occupant's Lot and thereafter foreclose the same pursuant to the provisions of the Utah Code, applicable to the exercise of powers of sale in deeds of trust, by foreclosure as a mortgage, or in any other manner permitted by law.

3.4.2 Any judgment obtained in connection with the collection of delinquent Assessments and related charges shall include reasonable attorney's fees, court costs and every other expense incurred by the Declarant in enforcing the Declarant's rights.

3.5 No Abatement or Offsets. All Assessments shall be payable in the amounts specified by the Declarant and no abatement or offsets against such amount will be permitted for any reason including, without limitation, a claim that the Declarant is not properly exercising its duties under this Declaration; inconvenience, annoyance or discomfort resulting from construction (or lack thereof) within the Project; the making of any repairs or improvements to, or the maintenance of any Common Area, or any part thereof; or any action taken to copay with the provisions of this Declaration or with the laws, ordinances, regulations, rules or orders of any governmental authority. Furthermore, no Occupant may exempt itself from personal liability for Assessments nor release its Parcel from the lien and charge of such Assessments by waiver of its rights of use and enjoyment of the Common Area.

3.6 Collection of Assessments. The right to collect and enforce the lien of the Assessments is vested in the Declarant acting for and on behalf of the Project. The Declarant can enforce the obligations of the Occupants to pay Assessments provided for in this Declaration by commencement and maintenance of a suit at law or in equity, or the Declarant may foreclose, by judicial proceedings or through the exercise of the power of sale pursuant to this Declaration, the lien rights created by this Declaration.

3.6.1 If there is a delinquency in the payment of any Assessment assessed against a Parcel, any amounts that are delinquent, together with all costs, fees (including attorneys' fees), charges, and expenditures which may be incurred by the Declarant in the process of collecting such delinquent Assessment ("Enforcement Costs") will be a lien against such Parcel upon the recordation in the Official Records of Washington County, Utah, of a "Notice of Lien" as provided in Title 57 of the Utah Code.

3.6.2 The Notice of Lien may not be recorded unless and until the Declarant has sent the delinquent Occupant written notice of such default and a demand for

payment at least 15 days prior to such recordation and such Occupant has failed to cure such delinquency within such 15-day period.

3.6.3 The Declarant is hereby granted a statutory power of sale and can record a Notice of Default with respect to any Parcel which has had a Notice of Lien recorded against it and can cause the Parcel with respect to which such Notice of Default has been recorded to be sold in the same manner as a sale is conducted under a power of sale pursuant to Title 57 of the Utah Code or, in Declarant's discretion through the same process as judicial foreclosure of a mortgage.

3.6.4 In connection with any sale under Title 57 of the Utah Code, the Declarant is authorized to appoint any party qualifying under Title 57 of the Utah Code as trustee for purposes of conducting such sale.

3.6.5 If any such delinquency is cured before the completion of any such foreclosure or trustee's sale (including payment of all Enforcement Costs), the Declarant shall cause a "Notice of Satisfaction of Payment" to be recorded in the Official Records of Washington County, Utah, evidencing the cure of such delinquency.

3.6.6. The Declarant shall have the power to bid upon the Parcel at any such foreclosure or trustee's sale and to acquire, hold, lease, mortgage, and convey such Parcel in the same manner as any third party could do so.

3.7 Limitation on Effect. Nothing in this Article V shall be deemed to diminish or impair the terms and provisions of any lease which Declarant has executed with a tenant prior to the date of this Declaration. In the event of any conflict or inconsistency between this Article V and any such lease, then as between Declarant and any such tenant, the terms and provision of such lease shall govern and control over this Article V.

ARTICLE IV: ARCHITECTURAL CONTROL COMMITTEE

4.1 Declarant Exemption. The Declarant shall not be required to comply with any affirmative duties placed upon an Occupant under the provisions of this Article.

4.2 Declarant Constitutes Committee. The Declarant, or it's assigns shall constitute the Architectural Control Committee, unless the Declarant expressly consents to the creation or appointment of a separate Architectural Control Committee.

4.3 Submission of Plans. No Improvement or addition, extension or expansion of any Improvement, shall be commenced, erected or maintained upon a Lot until the plans and specifications showing the nature, kind, shape, height, materials, colors and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the Architectural Control Committee.

4.4 Action by Committee. The Architectural Control Committee shall respond to a request for approval within twenty (20) days after receipt of the necessary plans and all other materials. However, if additional materials are needed in order to review the request, the

Committee shall so advise the applicant, and the time for review of the request by the committee shall be postponed until all materials requested by the Committee are submitted to it. The Committee shall not unreasonably withhold, condition or delay its approval of any proposals submitted to it. It is acknowledged and understood that the Project shall be an integrated project, and the style, design, exterior surfaces, construction materials, colors and amenities of each part and parcel shall, insofar as practical, harmonize with all other parts. The action of the Architectural Control Committee on a request for approval shall be in writing and shall be delivered to the applicant as set forth herein.

4.5 Notice of Completion. Upon completing an Improvement, or any part for which evidence of compliance is sought, the applicant shall give notice of completion to the Architectural Control Committee, and the Committee shall have the Improvement inspected and give notice to the applicant of any failure to properly install the Improvement in accordance with the approved plans. Such notice shall be given to applicant within thirty (30) days after the Architectural Control Committee receives the notice of completion. Any notice of improper installation shall specify the particulars of the noncompliance and shall require the applicant to take the necessary action to remedy the noncompliance within a reasonable time set forth in the notice.

4.6 Correction of Noncompliance. If the Committee gives written notice of noncompliance to an applicant, the applicant shall remedy and/or remove the same within the period provided in the notice of noncompliance. If the applicant fails to do so, the Committee may record a notice of noncompliance in the Public Records. The Committee may remove the non-compliant Improvement or otherwise remedy the noncompliance, and the applicant shall be required to reimburse the Committee upon demand for all expenses so incurred. If such expenses are not promptly repaid to the Committee, the Committee shall be entitled to recover the expense, together with reasonable attorneys' fees incurred, by action at law or in equity. In addition, the Committee may levy an Assessment against the Lot of the non-complying Occupant in order to enforce payment of the amount owing, and such lien may be enforced as provided in Article III.

4.7 Non-Liability for Committee Action. No member of the Architectural Control Committee nor any designated representative of the Committee shall be liable for any loss, damage or injury arising out of or in any way connected with the performance of the duties of the Architectural Control Committee, unless the damage or injury is due to the willful misconduct or bad faith of the party held to be liable. In reviewing any matter, the Committee shall not be responsible for reviewing, nor shall its approval of any improvement on any Lot be deemed to be an approval, from the standpoint of safety, whether structural or otherwise, of conformance with any building codes or other governmental requirements. If after approval is granted, any notice of failure to meet any governmental requirements is received by the Committee, the Committee, despite having given previous approvals, may still require compliance with any governmental requirements as a standard to meeting architectural compliance, including the prior consent of any and all Occupants or Owners of the project at the time of recording of this Declaration.

4.8 Location of Roads. Anything in this Agreement to the contrary notwithstanding, the Declarant shall be the final arbiter and decision maker with respect to the location and placement of all Common Roads within the Project and no road may be constructed, expanded or extended within the Project, except by the Declarant. However, in no event shall Declarant locate or relocate any common road in such a way that would affect any Occupant's private drives, or ingress or egress to or upon said Occupant's lot without the

prior consent of the Occupant, including the prior consent of any Occupant's of the Project at the time of recording of this Declaration.

ARTICLE V: MAINTENANCE AND REPAIR

5.1 Occupant's Maintenance Obligations. Each Occupant shall maintain, or shall cause to be maintained, in a safe, clean, first-class, and tenantable condition, and in good order and repair (including making all necessary capital improvements), the Building(s) and other structural improvements located on such Occupant's Parcel including, without limitation, patios, covered walkways, awnings, and any other structures or amenities specific to the operation of a specific Occupant in accordance with this Declaration, the Rules and Regulations, and the Design Standards. Such obligation will include the obligation to keep each such Occupant's Parcel swept and free from accumulations of debris and trash, and to otherwise keep such Parcel, and the Building(s) and improvements located thereon, in conformance with the Rules.

5.2 Damage or Destruction. If any Building (or other improvement) on a Parcel is damaged or destroyed during the Term of this Declaration, then the Occupant of such Parcel will promptly rebuild such damaged or destroyed Building (or other improvement), or cause such damaged or destroyed Building (or other improvement) to be completely removed from such Parcel and such Parcel to be left in a clean and graded (and, if appropriate, paved or landscaped) condition. Such work shall be undertaken by the affected Occupant in a manner which minimizes or eliminates, to the extent reasonably possible, the disruption to the other Occupants and their Related Parties. No portion of the Common Area may be used as a construction zone, staging area, or storage area in connection with such reconstruction or clearing work.

5.3 Failure to Maintain. In the event any Occupant fails to maintain, repair, and/or rebuild its Parcel and the Building(s) (and improvements) on such Parcel in the condition required by this Article, the Declarant may give written notice to such Occupant identifying the work which needs to be performed on such Occupant's Parcel to bring it into compliance with this Article. Such Occupant will have 30 days from the date of such notice to commence such work and diligently complete such work thereafter. If such Occupant fails to promptly commence such work, or fails to diligently prosecute such work to a prompt completion, the Declarant may, after the expiration of such 30-day period, pursue all legal remedies to enforce the provisions of this Article, including, but not limited to, damages, orders of compliance, declaratory relief, and all legal costs associated therewith. The above provision shall not apply to Lot 5 of the Project.

5.4 Standards for Maintenance During Construction.

5.4.1 Throughout the period of construction on a Lot, the Occupant of such Lot shall keep the Lot and all streets used by construction equipment or trucks in a clean and safe condition, shall remove daily all trash, rubbish, debris, mud and dirt therefrom, shall take all measures necessary and appropriate to control dust, blowing sand and erosion, whether by wind or water, on the Lot and shall so conduct all construction so as to not interfere with free and ready access to existing Buildings and neighboring Lots, and shall comply with all City, County, and State standards regarding the same.

5.4.2 Occupant shall use designated constructions entrances when the same are made available by Declarant, for moving materials and construction equipment on and off site. Each Occupant shall be responsible for all damage occurring to any public or private street, curb or sidewalk as a result of construction equipment or materials being moved on or off site.

5.5 Obligation to Complete Construction. Any Occupant of any Lot who intends to construct improvements on said lot shall first submit to the Architectural Control Committee a construction schedule, including dates of commencing construction, completing construction, and opening for business. The Occupant shall adhere to said schedule without undue delay, and shall open for business according to said schedule. Any construction commenced shall be pursued to completion in a reasonable and workmanlike manner without undue periods of delay.

ARTICLE VI: INSURANCE

6.1. Occupant's Insurance. By virtue of taking title to, or occupancy of, a Lot, each Occupant covenants and agrees to carry:

6.1.1 Property insurance for the full replacement cost of all insurable improvements on its Lot, less a reasonable deductible (which they may) but are not obligated to do hereunder).

6.1.2 Commercial general liability insurance on the Common Area of its Lot, including one-half of any street which is part of said Lot, insuring the Occupant and Declarant for the damage or injury caused by the negligence of the Occupant. If generally available at reasonable cost, the commercial general liability coverage (including primary and any umbrella coverage) shall have a limit of at least \$1,000,000.00 per occurrence with respect to bodily injury, personal injury, and property damage.

6.1.3 If any Occupant does not purchase the insurance referred to in this Article, the Declarant may, but neither is obligated to, purchase the insurance. If the Declarant assumes responsibility for obtaining any insurance coverage on behalf of the Occupants or elects to do so in any year in which the Occupant has failed to purchase insurance, the premiums for such insurance shall be levied as an Assessment against the benefited Lot and the Occupant thereof pursuant to Article III.

6.1.4 Each Occupant further covenants and agrees that in the event of damage to or destruction of structures on or comprising its Lot, the Occupant shall proceed promptly to repair or to reconstruct in a manner consistent with the original construction or such other plans and specifications as are approved in accordance with Article IV. Alternatively, the Occupant shall clear the Lot and maintain the Lot in a neat and attractive, landscaped condition consistent with the Design Standards. The Occupant shall pay any costs which are not covered by insurance proceeds.

6.1.5 Nothing contained in this Article shall be deemed to prevent or prohibit an Occupant from self-insuring its property, so long as the right of self-insurance is set forth in the lease agreement or instrument of conveyance of the subject Lot(s).

ARTICLE VII: EASEMENTS

7.1 **Access Easement.** An irrevocable non-exclusive right-of-way easement is created as shown on the Plat and is hereby granted over the Common Area for vehicular and pedestrian ingress, egress, and access to, from and between each of the lots.

7.2 **Drainage Easement.** An irrevocable non-exclusive easement is created over the Common Area for storm water drainage and water detention/retention.

7.3 **Repair of Common Area.** The Declarant shall have the irrevocable right to have access to each Lot and to all Common Area from time to time during such reasonable hours as may be necessary for the maintenance, repair or replacement of any of the Common Area.

7.4 **Municipal/Governmental Services.** The City, Washington County and any other government or quasi-governmental body having jurisdiction over the Property and Project shall enjoy access and rights of ingress and egress over and across any Common Area for the purpose of providing police and fire protection or any other governmental or municipal services.

7.5 **Utility Services.** There is hereby created an easement upon, across, over and under the Common Area for ingress, egress, installation, replacing, repairing and maintaining all public and private utilities, including but not limited to, water, sewer, gas, telephone, electricity, internet, cable, and other utility services, as set forth in the Deed of Conveyance for any Lots which are sold, or in the Lease Agreements of Lots which are leased. All Common Area shown on the Plat are subject to public utilities and drainage easements for installation and maintenance of improvements and such easements.

7.6 **Additional Reservations of Easements.** Declarant hereby expressly reserves nonexclusive easements over any portion of any Common Area deemed to be part of a Lot, for the support, control, maintenance and repair of the Occupant's Lot and the utilities serving such Lot. Declarant further expressly reserves, for the benefit of the real property in the Project, and for the benefit of all of the Lots, and the Occupants, reciprocal, nonexclusive easements over all Lots and the Common Area, for the control, installation, maintenance and repair of utility services and drainage facilities serving any portion of the Project, for drainage of water resulting from the normal use thereof, and for painting, maintenance and repair of any Lot or portion thereof pursuant to the Declaration.

ARTICLE VIII: USE RESTRICTIONS

8.1 **General.** This Article sets forth restrictions on the use of the Property. Such restrictions shall apply to uses on all of the property contained within the Project, including all streets, common areas, and on all Lots within the Project.

8.2 **Business and Commercial Use.** All Lots within the Project shall be devoted to hospitality, food service, retail, business, commercial and office uses, and such ancillary uses as may be consistent therewith. No Occupant shall store or carry any merchandise or substance or perform any activity, in relation to the use of a Lot, which would either:

8.2.1 cause or threaten the cancellation of any insurance covering the Lot or any other portion of the Project, or

8.2.2 increase the insurance rates applicable to any portion of the Project.

8.3 Nuisance and Waste. No noxious or offensive trades, services or activities shall be conducted within the Project, nor shall anything be done within the Project Tenants by reason of unsightliness or the excessive emission of fumes, odors, glare, vibration, gases, radiation, dust, liquid waste, smoke, burning of refuse causing smoke, or noise. Each Occupant and Tenant shall keep its premises, Buildings, Improvements and appurtenances in a safe, clean, neat and wholesome condition, and shall comply in all respects with all government, health and police requirements. The above notwithstanding, normal noises, such as outdoor or drive-thru speakers, and normal odors associated with certain businesses, such as restaurants, shall not be deemed a nuisance. During construction on any Lot, the Occupant of said Lot shall ensure, to the extent it is possible to do so, that all construction work be done during normal business hours so as not to disturb the quiet enjoyment of other Lot Occupants, or their customers or guests, during non-business hours.

8.4 Animals. No animals, birds, reptiles, fowl, poultry or livestock shall be maintained or kept on any Lot or on any other portion of the Project, other than service animals or as expressly authorized by this Declaration.

8.5 Diseases and Insects. No Occupant shall permit anything or condition to exist upon the Project which could induce, breed or harbor infectious plant diseases or noxious insects. Each Occupant shall perform such pest control activities in the Occupant's Lot as may be necessary to prevent insects, rodents and other pests from being present on the Lot.

8.6 Motor Vehicles. Except for repairs or maintenance being made by a motor vehicle repair garage within the Project for emergency repairs, no automobile, motorcycle, motorbike, van, sport utility vehicle, truck or other motor vehicle shall be constructed, reconstructed, serviced or repaired on any portion of the Project, and no inoperable vehicle may be stored or parked on any portion of the Project. No automobile, motorcycle, motorbike, van, sport utility vehicle, truck or other motor vehicle shall be parked upon any part of the Project, except in designated Parking Spaces.

8.7 Trash Containers and Collection. No garbage or trash shall be placed or kept on the Project except in covered containers of a type, size and style, which are approved by the Manager. The Declarant shall have the right to adopt and promulgate rules regarding garbage, trash, trash containers and collection. The Declarant shall have the right to require all Occupants to place trash and garbage in containers located in areas designated by the Declarant. No incinerators shall be kept or maintained in any Lot.

8.8 Machinery and Equipment. No machinery or equipment of any kind shall be placed, operated or maintained upon the Project except such machinery or equipment as is usual and customary in connection with the use, maintenance or construction of the Buildings, Improvements or other structures which are within the uses permitted by this Declaration, and except that which Declarant may require for the construction, operation and maintenance of the Common Area.

8.9 Towing of Vehicles. The Declarant shall have the right to have any automobile, sport utility vehicle, van, truck, recreational vehicle, golf cart, motorcycle, motorbike, or other motor vehicle parked, kept, maintained, constructed, reconstructed or repaired in violation of this Declaration, towed away at the sole cost and expense of the owner of the vehicle. Any cost and expense incurred in connection with the towing of any vehicle shall be

collectible as an Assessment as provided in Article III.

8.10 Signs. No free-standing sign shall be installed or erected on any portion of the project without the written consent and approval of the Declarant, which consent and approval shall not be unreasonably withheld. Declarant's approval shall take into account the signage requirements and standards of nationally branded Occupants of a Lot.

8.10.1 The Declarant, shall have the power and authority to grant licenses or easements to Lot Occupants for the installation, maintenance, repair or replacement of panels on a monument sign or signs located in the Common Area for such consideration and upon such terms and conditions as the Declarant may determine to be reasonable and prudent.

8.11 Lawful Use. No immoral, improper, offensive, or unlawful use shall be made of any part of the Project. All valid laws, zoning ordinances, and rules and regulations of all governmental bodies having jurisdiction over the Project shall be observed. Any violation of such laws, zoning ordinances or rules and regulations shall be a violation of this Declaration.

8.12. Compliance with Laws. All Buildings and Improvements, including, but not limited to all Private roads and the Improvements to a Lot improved for vehicular parking, shall be constructed and maintained in compliance with all applicable laws, ordinances, rules and regulations of governmental bodies having jurisdiction over the Project.

8.13 Prohibited Operations. No Occupant shall use or permit the use of his Lot for any activity in violation of any governmental law, ordinance, rule or regulation, or public policy of any governmental authority having jurisdiction over the Project, or any activity which Declarant determines would impair the reputation of the Project. Additionally, the following shall apply:

8.13.1 Promotions. Without the written permission of the Declarant, no portion of any Building or the Common Area shall be used for any "sidewalk sales," or other promotions, nor shall any temporary advertising, announcements, or other identifying materials be displayed on any Building or in the Common Area.

8.13.2 Intended Use. No portion of the Common Area shall be used for any purpose other than those consistent with the purposes for which it was designed.

8.13.3 Adult Use. No Lot shall ever be used or caused to be used or allowed or authorized to be used in any way, directly or indirectly, for an adult bookstore, motion picture theater, arcade, or for any other sexually oriented enterprise or establishment.

8.14 Rental of Units. Any lease of any Lot, or portion of any Lot, must be in writing and must provide that the terms of the lease or license are subject in all respects to the provisions of this Declaration and the Rules and Regulations and that any violation of this Declaration or the Rules and Regulations by the Tenant or Occupant who will occupy the Lot during the rental term shall be a default under the lease or license. Any Occupant who leases or licenses his Lot must provide the Tenant and Occupant who will occupy the Lot during the term of the lease or license with copies of this Declaration and the Rules and Regulations. The Lot Occupant shall be liable for any violation of this Declaration or the Rules and Regulations by the Tenants or Occupants occupying the Lot and their invitees and in the event of any such violation, the Lot Occupant, shall immediately take all necessary actions to

correct any such violation. The above notwithstanding, a Franchise Agreement, or the occupancy of a Lot by virtue of a Franchise Agreement, shall not be deemed a lease or rental agreement and shall not be subject to this Section. Further, Declarant reserves the right to waive the requirements of this Section in any Lease Agreement for any Lot.

8.14.1 At least ten (10) days before commencement of the rental term, the Lot Occupant shall provide the Declarant with the following information:

8.14.1.1 the commencement date and expiration date of the rental term;

8.14.1.2 the names of each of the Tenants and each of the Occupants who will use or occupy the Lot during the rental term;

8.14.1.3 the address and telephone number at which the Lot Occupant can be contacted during the rental term.

8.15. Hazardous Materials. No Occupant shall release, generate, use, store, dump, transport, handle or dispose of any Hazardous Material within the Project or otherwise permit the presence of any Hazardous Material on, under, or about the Property, or transport any Hazardous Material to or from the Property except in strict accordance with all applicable laws, ordinances, rules and regulations now or hereafter promulgated by any governmental authority having jurisdiction thereof

8.16 Amendments Regarding Use Restrictions. Declarant hereby reserves the right, in its sole discretion, to unilaterally amend and/or supplement any of the provisions of this Article by recording a Supplemental Declaration, provided that no such Supplemental Declaration shall prohibit any operation or use which is properly in effect prior to the recording of such Supplemental Declaration, nor affect the respective rights, duties or obligations of any Lease Agreement in effect at the time of recording of any Supplemental Declaration.

8.17 Further Subdivision. No Lot shall be further subdivided or partitioned and no two or more Lots may be combined in any manner, unless the prior written approval of the Declarant has been obtained.

8.18 Declarant Exemption. Notwithstanding any other provision in this Declaration, each Lot owned by Declarant shall be exempt from the provisions of this Article, and activities of Declarant reasonably related to Declarant's development, construction, advertising, marketing and sales efforts, shall be exempt from the provisions of this Article.

8.19 Parking on Streets Prohibited. Parking on any street or roadway within the Project is prohibited. This restriction shall apply to mobile homes, travel trailers, tent trailers, trailers, detached campers, recreational vehicles, boats, boat trailers, or other similar equipment, automobiles, sport utility vehicles, vans, trucks, golf carts, motorcycles, motorbikes, or any other vehicle not specifically named. All Occupants of lots, together with their employees, agents, lessees, tenants, successors and assigns shall provide appropriate and adequate space on their respective property for their customers, clients, guests and business invitees to park. This restriction may be enforced by the towing of any such vehicle at the sole cost and expense of the owner of the vehicle.

ARTICLE IX: RESERVED RIGHTS OF DECLARANT

9.1 Declarant's General Rights and Reservations. The rights of Declarant hereunder shall include, but shall not be limited to, the right to install and maintain such structures, displays, signs, billboards, flags, and sales offices as may be reasonably necessary to conduct its business of completing the work and disposing of the Lots by sale, resale, lease, or otherwise. Each Occupant by accepting a deed to a Lot or executing a lease agreement for a Lot hereby acknowledges that the activities of Declarant may temporarily or permanently impair the view of such Occupant and may constitute an inconvenience or nuisance to the Occupants, and hereby consents to such impairment inconvenience or nuisance. Nothing in this Declaration shall limit, and no Occupant shall do anything to interfere with, the right of Declarant to:

9.1.1 Sales and Marketing Rights. Declarant's rights under this Declaration include, but are not limited to, the right to install and maintain such structures, displays, signs, billboards, flags and sales offices as may be reasonably necessary to conduct Declarant's business of completing the work and disposing of the Lots by sale, resale, lease or otherwise.

9.1.2 Amendments. Declarant reserves the right to amend this Declaration from time to time, subject to the prior approval of any Occupant of the Project at the time of the Amendment, which approval shall not be unreasonably withheld.

9.1.3 Easements. Declarant has reserved certain easements, and related rights, as set forth in this Declaration and the official Plat of the Project.

9.1.4 Other Rights. Declarant reserves any other rights, powers, and authority of Declarant set forth in this Declaration.

9.1.5 Exercise of Rights. Each Occupant grants an irrevocable, special power of attorney to Declarant to execute and record all documents and maps necessary to allow Declarant to exercise its rights under this Article.

9.2 Exemption of Declarant. Anything in this Declaration to the contrary notwithstanding, the following shall apply:

9.2.1 Nothing in this Declaration shall limit, and no Occupant shall do anything to interfere with, the right of Declarant to complete excavation and grading and the construction of Improvements to and on any portion of the Project, or to alter the foregoing and Declarant's construction plans and designs, or to construct such additional Improvements as Declarant deems advisable in the course of development of the Project, for so long as any Lot owned by Declarant remains unsold.

9.2.2 This Declaration shall in no way limit the right of Declarant to grant additional licenses, easements, reservations and rights-of-way to itself, to governmental or public authorities (including without limitation public utility companies), or to others, as from time to time may be reasonably necessary to the proper development and disposal of Lots.

ARTICLE X: GENERAL PROVISIONS

10. Any notice required or permitted to be given to the Declarant shall be deemed to have been properly furnished if mailed, postage prepaid, to:

Dean T. Terry Investments, LLC
PO Box 717
St. George, Utah 84771

10.1 Notices. Any notice required or permitted to be given to any Occupant under the provisions of this Declaration shall be deemed to have been properly furnished if delivered or mailed, postage prepaid, to the person named as the Occupant at the address for such person, as reflected in the Deed of Conveyance of Lots purchased, or Lease Agreements for leased Lots. Such notice shall be deemed received on the earlier of the date actually received by the Occupant of three days after being properly deposited in the United States mail.

10.2 Constructive Notice and Acceptance. Every Person who owns, occupies or acquires any right, title, estate or interest in or to any Lot or other portion of the Project hereby consents and agrees, and shall be conclusively deemed to have consented and agreed, to every limitation, restriction, easement, reservation, condition and covenant contained herein, whether or not any reference to this Declaration is contained in the instrument by which such Person acquired an interest in the Project, or any portion thereof.

10.3 Amendment. Declarant shall have the right to terminate or modify this Declaration by recordation of a supplement hereto setting forth such termination or modification. Notwithstanding any other provision herein, for so long as Declarant owns a Lot in the Project, Declarant shall have the power from time to time to unilaterally amend this Declaration to correct any clerical errors, to clarify any ambiguous provision, and otherwise to ensure that the Declaration conforms with the requirements of applicable law. The above notwithstanding, any Amendment to the Declaration of Declarant shall require the prior approval of any Occupant of the Project at the time of the Amendment, which approval shall not be unreasonably withheld.

10.4 Declarant's Rights Assignable. All or any portion of the rights of Declarant under this Declaration, or in any way relating to the Property or Project, may be assigned.

10.5 Interpretation. The captions pertaining to the Article and Article numbers of this Declaration are for convenience only and shall in no way affect the manner in which any provision hereof is construed. Whenever the context so requires, the singular shall include the plural, the plural shall include the singular, and any gender shall include all genders. The invalidity or unenforceability of any portion of this Declaration shall not affect the validity or enforceability of the remainder hereof, which shall remain in full force and effect. The laws of the State of Utah shall govern the validity, construction, and enforcement of this Declaration.

10.6 Covenants to Run with Land. This Declaration and all the provisions hereof shall constitute covenants to run with the land, or equitable servitudes, as the case may be, and shall be binding upon and shall inure to the benefit of Declarant, all parties who hereafter

acquire any interest in a Lot, their respective grantees, transferees, heirs, devisees, personal representatives, successors, and assigns. Each Occupant or occupant of a Lot shall comply with, and all interests in all Lots and Common Area shall be subject to, the provisions of this Declaration and of any Rules and Regulations, agreements, instruments, and determinations contemplated by this Declaration. By acquiring any interest in a Lot, the party acquiring such interest consents to, and agrees to be bound by, each and every provision of this Declaration.

10.7 Enforcement. Enforcement of any provision of this Declaration, shall be appropriate proceedings at law or in equity against those Persons violating or attempting to violate any such provision. Such proceedings may be for the purpose of removing a violation, restraining or enjoining a future violation, recovering damages for any violation, foreclosing a lien, obtaining such other and further relief as may be available, or any combination thereof. In the event the Declarant determines it is necessary or desirable to utilize the services of an attorney to enforce the provisions of this Declaration, it shall be entitled to recover its reasonable attorneys' fees so incurred regardless of whether or not suit is initiated, and such attorneys' fees may be assessed against the Lot of the Occupants who violated a provision of this Declaration as an Assessment.

10.7.1 The failure to enforce any provisions of this Declaration shall not preclude or prevent the enforcement thereof for a further or continued violation, whether such violation shall be of the same or of a different provision.

10.7.2 Nothing contained in this Article shall be construed or interpreted to impose any legal duty or obligation on the Declarant or the Architectural Control Committee, to enforce by any proceeding at law or in equity, the easements, covenants, conditions or restrictions, as contained in this Declaration.

10.8 Waiver. No provision contained in this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of time lapse or the number of violations or breaches that may occur.

10.9 Duration. The covenants, conditions and restrictions of this Declaration shall run with Property, shall be binding upon all Lot Occupants, their legal representatives, heirs, successors and assigns, and shall be in effect in perpetuity unless amended or terminated as provided herein.

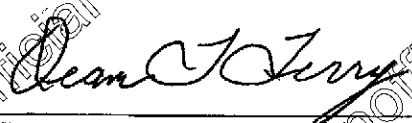
10.10 Severance. In the event that two or more different interpretations of any provision hereof are possible, and one such interpretation would render this Declaration or any provision hereof invalid or unenforceable, an interpretation shall be adopted which tends to render this Declaration and the provisions hereof as fully enforceable as possible. In the event that any provision hereof is nonetheless determined to be a legal or unenforceable, such provision shall be severed and the remainder of this Declaration shall be enforced as fully as possible.

10.11 Effective Date. This Declaration, and any amendment or Supplemental Declaration hereto, shall take effect upon its being filed for record in the Public Records.

EXECUTED by Declarant on the day and year first above written.

DECLARANT:


DEAN T. TERRY INVESTMENTS, LLC, a Utah limited liability company,



By: Dean T. Terry, Manager

STATE OF UTAH)
) ss:
COUNTY OF WASHINGTON)

On the 10 day of December, 2021, personally appeared before me DEAN T. TERRY, who being by me duly sworn, deposes and says that he is the Manager of DEAN T. TERRY INVESTMENTS, LLC, a Utah limited liability company; that he has read the foregoing Declaration of Covenants, Conditions and Restrictions and knows the contents thereof; and that he signed the said document for its intended purpose under the authority given him by the operating agreement of the company or by special resolution of the members of the company.


Notary Public

