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 Book - 10018 Pg - 2672-2685  
 Gary W. Ott  
 Recorder, Salt Lake County, UT  
 MERIDIAN TITLE  
 BY: eCASH, DEPUTY - EF 14 P.

AFTER RECORDING, PLEASE RETURN TO:

Lamont Richardson, Esq.  
 Parr Brown Gee & Loveless  
 185 South State Street, Suite 800  
 Salt Lake City, Utah 84111

### DECLARATION OF COVENANTS AND RESTRICTIONS

THIS DECLARATION OF COVENANTS AND RESTRICTIONS (this "**Declaration**"), dated as of the 16<sup>th</sup> day of May, 2012, is executed by ARBOR GARDNER BINGHAM JUNCTION HOLDINGS, L.C., a Utah limited liability company (the "**Declarant**").

#### RECITALS:

A. Declarant owns the following tracts of real property located in Salt Lake County, State of Utah:

(1) Certain parcels of real property the legal description of which is set forth on Exhibit "A" attached hereto and made a part hereof (individually, a "**Burdened Lot**" and collectively, the "**Burdened Lots**").

(2) A certain parcel of real property the legal description of which is set forth on Exhibit "B" attached hereto and made a part hereof (the "**Benefitted Lot**").

B. Declarant desires to establish with respect to the Burdened Lots, for the benefit of the Benefitted Lot, certain building height restrictions, all on the terms and conditions set forth in this Declaration.

NOW, THEREFORE, for the foregoing purposes, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, Declarant makes the following declarations and establishes the following covenants and restrictions on the Burdened Lots for the benefit of the Benefitted Lot.

1. Definitions. Certain terms which are used in this Declaration are defined in this Declaration prior to this Section. In addition to those previously defined terms, the following terms shall have the meanings indicated.

(a) "**Building or Related Improvement**" means a building or other principal above-ground structure on a Lot (including, without limitation, all extensions or projections thereof, all structures or facilities accessory or integral thereto, and any garages, platforms or docks, storage tanks, canopies or overhangs, porches, enclosed malls, and similar items), but excluding any above ground utility structures pursuant to easements existing on the date hereof, or landscaping.

- (b) **“Burdened Lot Owner”** shall mean an Owner of a Burdened Lot.
- (c) **“Burdened Lot Owners”** shall mean, collectively, all of the Owners of the Burdened Lots.
- (d) **“Four Story Restricted Area”** means the area on the Burdened Lots which are more particularly described on Exhibit “C” attached hereto as the Four Story Restricted Area.
- (e) **“Lot”** means a Burdened Lot or the Benefitted Lot.
- (f) **“Lots”** means the Burdened Lots and the Benefitted Lot.
- (g) **“Mortgage”** means a recorded mortgage, deed of trust or other security agreement creating a lien on an Owner’s interest in a Lot or a portion of a Lot as security for the payment of indebtedness.
- (h) **“Mortgagee”** means the mortgagee, beneficiary or other secured party under a Mortgage.
- (i) **“One Story Restricted Area”** means the area on the Burdened Lots which are more particularly described on Exhibit “C” attached hereto as the One Story Restricted Area.
- (j) **“Owner”** means the Person that, at the time concerned, is the owner of record in the office of the County Recorder of Salt Lake County, Utah, of a fee interest in any Lot or portion of any Lot. In the event that, at any time, more than one Person owns the fee interest in a Lot, they shall constitute one (1) Owner, and liability of each such Person for performance or compliance with the applicable provisions of this Declaration shall be joint and several. Notwithstanding any applicable theory relating to a mortgage, deed of trust, or like instrument, the term “Owner” shall not mean or include a Mortgagee unless and until such Person has acquired fee title to the Lot encumbered by a Mortgage pursuant to foreclosure, trustee’s sale or any arrangement or proceeding in lieu thereof.
- (k) **“Person”** means a natural person or a legal entity.
- (l) **“Restricted Areas”** means, collectively, One Story Restricted Area, the Four Story Restricted Area and the Six Story Restricted Area.
- (m) **“Savage Companies”** means Savage Companies, a Utah corporation, or its affiliated persons or entities.
- (n) **“Six Story Restricted Area”** means the area on the Burdened Lots which are more particularly described on Exhibit “C” attached hereto as the Six Story Restricted Area.

2. Restrictive Covenants. So long as Savage Companies is the Owner of the Benefited Lot, in order to preserve the view from the Benefited Lot, all Building or Related Improvements located in the Restricted Areas shall not exceed the following height limitations:

(a) No Building or Related Improvement shall be constructed in the One Story Restricted Area if such Building or Related Improvements exceeds thirty feet (30') in height measured at the natural grade of the land on which such Building or Related Improvement is constructed.

(b) No Building or Related Improvement shall be constructed in the Four Story Restricted Area if such Building or Related Improvements exceeds seventy-two feet (72') in height measured at the natural grade of the land on which such Building or Related Improvement is constructed.

(c) No Building or Related Improvement shall be constructed in the Six Story Restricted Area if such Building or Related Improvements exceeds one hundred feet (100') in height measured at the natural grade of the land on which such Building or Related Improvement is constructed.

3. Reservation of Rights. Except for those liens, right and interests that have been expressly subordinated to this Declaration pursuant to the Consent and Subordination of Lienholder attached hereto and made a part hereof by this reference, the restrictive covenants imposed on the Restricted Areas in Section 1 of this Declaration shall not affect, limit, impede, impair or otherwise modify the rights of any Person, other than Declarant, having an interest in the Burdened Property as shown in the Salt Lake County Recorder's Office prior to the recording of this Declaration.

4. Title and Mortgage Protection.

(a) No amendment to this Declaration shall in any way affect the rights of any Mortgagee pursuant to a Mortgage that is recorded at the time of the recordation of the amendment, or the rights of any successor in interest or title to such Mortgagee, either before or after such Mortgagee or its successor enters into possession or acquires title pursuant to foreclosure, trustee's sale or any arrangement or proceeding in lieu thereof, unless such Mortgagee has consented in writing to such amendment.

(b) A breach of any of the covenants, provisions, or requirements of this Declaration shall not result in any forfeiture or reversion of title or of any other interest in a Lot. A breach of any of the covenants, provisions, or requirements of this Declaration shall not defeat, impair or render invalid the lien of or other rights under any Mortgage. Unless and until it enters into possession or acquires title pursuant to foreclosure, trustee's sale or any arrangement or proceeding in lieu thereof, a Mortgagee shall have no obligation to take any action to comply with, and may not be compelled to take any action to comply with, any of the covenants, provisions, or requirements of this Declaration.

5. Amendment or Termination; Duration of Declaration. In the event Savage Companies ceases to be the Owner of the Benefitted Parcel, this Declaration shall automatically

terminate and shall be of no further force and effect. In all other events, this Declaration may be amended, but only by an instrument filed for record in the office of the County Recorder of Salt Lake County, Utah that is executed by all of the Owners of the Lots. In all other events, this Declaration may be terminated by an instrument filed for record in the office of the County Recorder of Salt Lake County, Utah that is executed by the Owner of the Benefited Lot. This Declaration shall be and remain in force and effect until amended or terminated pursuant to this Section.

6. Covenants to Run with Land. This Declaration and the covenants created by this Declaration are intended by the Declarant to be and shall constitute covenants running with the land as to each of the Lots, and shall be binding upon each Owner and any Person who acquires or comes to have any interest in any Lot, and their respective grantees, transferees, lessees, heirs, devisees, personal representatives, successors, and assigns. Each Owner shall comply with, and all interests in all Lots shall be subject to, the terms of this Declaration. By acquiring, in any way coming to have an interest in, or occupying a Lot, the Person so acquiring, coming to have such interest in, or occupying Lot, shall be deemed to have consented to, and shall be bound by, each and every provision of this Declaration.

7. Enforcement and Remedies. The Owner of Lot or any portion of a Lot shall have the right to enforce, through any permitted proceeding at law or in equity, the terms, provisions, restrictions and requirements of this Declaration. Any failure to insist upon the strict performance of or compliance with any of the terms, provisions, covenants and requirements of this Declaration shall not result in or be construed to be an abandonment or termination of this Declaration or any waiver of the right to insist upon such performance or compliance with the terms of this Declaration in the future. If any action or proceeding is brought because of a breach of the provisions of, or to enforce or interpret any of the covenants, provisions, or requirements of, this Declaration the Owner prevailing in such action shall be entitled to recover from the unsuccessful Owner reasonable attorneys' fees (including those incurred in connection with any appeal), the amount of which shall be fixed by the court and made a part of any judgment rendered.

8. Effective Date. This Declaration, any amendment or termination hereof, and any supplement hereto shall take effect upon its being filed for record in the office of the County Recorder of Salt Lake County, Utah.

9. Titles, Captions and References. All Section titles or captions in this Declaration are for convenience only, shall not be deemed part of this Declaration and in no way define, limit, extend or describe the scope or intent of any provisions of this Declaration. When this Declaration refers to a Section by number or other designation, such reference shall be deemed to be to the correspondingly numbered Section of this Declaration unless the context refers to another agreement, document or instrument.

10. Pronouns and Plurals. Whenever the context may require, any pronoun used in this Declaration shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns, pronouns and verbs shall include the plural and vice versa.

11. Applicable Law. This Declaration shall be construed in accordance with and governed by the laws of the State of Utah, without reference to its choice of law rules.

12. Counterparts. This Declaration may be executed in any number of counterparts. Each such counterpart of this Declaration shall be deemed to be an original instrument, and all such counterparts together shall constitute but one agreement.

13. Exhibits. All exhibits annexed to this Declaration are expressly made a part of and incorporated in this Declaration as fully as though completely set forth in this Declaration.


*(Signatures begin on following page)*

EXECUTED the day and year first above written.

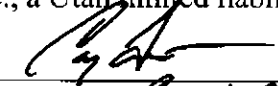
“Declarant”

ARBOR GARDNER BINGHAM JUNCTION  
HOLDINGS, L.C., a Utah limited liability  
company, by its Managers

By: KC Gardner Company, L.C.,  
a Utah limited liability company

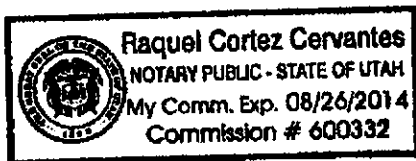
By:   
Print Name: Christina Gardner  
Its: Manager

By: Arbor  Commercial Real Estate  
L.L.C., a Utah limited liability company

By:   
Print Name: Cory Gust  
Its: Manager

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

On this 16<sup>th</sup> day of May, 2012, personally appeared before me Christian Gardner, the person who executed the within instrument as the Manager on behalf of KC GARDNER COMPANY, L.C., a Utah limited liability company, which is a manager of ARBOR GARDNER BINGHAM JUNCTION HOLDINGS, L.C., a Utah limited liability company, and acknowledged to me ARBOR GARDNER BINGHAM JUNCTION HOLDINGS, L.C. executed the within instrument.



Raquel Cortez Cervantes  
Notary Public

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

On this 16 day of May, 2012, personally appeared before me Cory Gust, the person who executed the within instrument as the Manager on behalf of ARBOR COMMERCIAL REAL ESTATE L.L.C., a Utah limited liability company, which is a manager of ARBOR GARDNER BINGHAM JUNCTION HOLDINGS, L.C., a Utah limited liability company, and acknowledged to me ARBOR GARDNER BINGHAM JUNCTION HOLDINGS, L.C., executed the within instrument.



Constance Miller  
Notary Public

EXHIBIT "A"

TO

DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS

Legal Description of Burdened Lots

Parcel 1

ALL OF LOT 1 OF THE BINGHAM JUNCTION SAVAGE SUBDIVISION ACCORDING TO THE OFFICIAL PLAT THEREOF RECORDED IN THE OFFICE OF THE SALT LAKE COUNTY RECORDER.

Parcel 2

Beginning at a point at a point on the Southerly Right-of-Way Line of 7200 South Street, said point being North  $00^{\circ}17'30''$  East 1,377.88 feet along the Section Line and West 683.11 feet from the East Quarter Corner of Section 26, Township 2 South, Range 1 West, Salt Lake Base and Meridian; and running thence South  $35^{\circ}49'15''$  East 16.64 feet; thence South  $07^{\circ}48'12''$  West 45.68 feet; thence Southeasterly 170.75 feet along the arc of a 333.00 foot radius curve to the left (center bears South  $82^{\circ}11'48''$  East and the chord bears South  $06^{\circ}53'09''$  East 168.88 feet with a central angle of  $29^{\circ}22'42''$ ); thence South  $21^{\circ}34'30''$  East 79.54 feet; thence Southeasterly 101.90 feet along the arc of a 267.00 foot radius curve to the right (center bears South  $68^{\circ}25'30''$  West and the chord bears South  $10^{\circ}38'30''$  East 101.28 feet with a central angle of  $21^{\circ}52'00''$ ); thence South  $00^{\circ}17'30''$  West 302.35 feet; thence Southwesterly 28.27 feet along the arc of a 18.00 foot radius curve to the right (center bears North  $89^{\circ}42'30''$  West and the chord bears South  $45^{\circ}17'30''$  West 25.46 feet with a central angle of  $90^{\circ}00'00''$ ); thence South  $00^{\circ}17'30''$  West 36.00 feet; thence South  $89^{\circ}42'30''$  East 10.00 feet; thence South  $00^{\circ}17'30''$  West 30.00 feet; thence South  $00^{\circ}17'30''$  West 434.63 feet to the Northerly Right-of-Way Line of the Utah Transit Authority Corridor; thence South  $83^{\circ}51'00''$  West 1,014.92 feet along said Northerly Right-of-Way Line to the Easterly Right-of-Way Line of Bingham Junction Boulevard; thence North  $06^{\circ}11'37''$  West 169.67 feet along said Easterly Right-of-Way Line; thence northerly 912.01 feet along the arc of a 1,327.00 foot radius curve to the right (center bears North  $83^{\circ}48'23''$  East and the chord bears North  $13^{\circ}29'43''$  East 894.17 feet with a central angle of  $39^{\circ}22'41''$ ) along said Easterly Right-of-Way Line; thence North  $33^{\circ}11'04''$  East 524.28 feet along said Easterly Right-of-Way Line; thence North  $76^{\circ}55'32''$  East 37.21 feet along said Easterly Right-of-Way Line to the Southerly Right-of-Way Line of 7200 South Street; thence Southeasterly 465.31 feet along the arc of a 1,335.74 foot radius curve to the left



(center bears North 29°38'34" East and the chord bears South 70°20'12" East  
462.96 feet with a central angle of 19°57'32") along said Southerly Right-of-Way  
Line to the point of beginning.

Contains 1,207,952 square feet or 27.731 acres

EXHIBIT "B"

TO

DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS

Legal Description of Benefitted Lot

ALL OF LOT 2 OF THE BINGHAM JUNCTION SAVAGE SUBDIVISION ACCORDING TO THE OFFICIAL PLAT THEREOF RECORDED IN THE OFFICE OF THE SALT LAKE COUNTY RECORDER.

EXHIBIT "C"

TO

DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS

Description of Restricted Areas

One Story Restricted Area

View Corridor No. 1

Beginning at a point on the Southerly Right-of-Way Line of 7200 South Street, said point being North  $00^{\circ}17'30''$  East 1,962.48 feet along the Section Line and West 1,600.58 feet from the East Quarter Corner of Section 26, Township 2 South, Range 1 West, Salt Lake Base and Meridian; and running thence Southeasterly 7.11 feet along the arc of a 1,369.90 foot radius curve to the right (center bears South  $47^{\circ}30'38''$  West and the chord bears South  $42^{\circ}20'26''$  East 7.11 feet with a central angle of  $00^{\circ}17'51''$ ) along said Southerly Right-of-Way Line; thence South  $42^{\circ}11'31''$  East 73.27 feet along said Southerly Right-of-Way Line; thence South  $18^{\circ}21'05''$  West 509.05 feet; thence North  $56^{\circ}55'12''$  West 1.56 feet; thence Northwesterly 69.25 feet along the arc of a 500.00 foot radius curve to the left (center bears South  $33^{\circ}04'48''$  West and the chord bears North  $60^{\circ}53'15''$  West 69.19 feet with a central angle of  $07^{\circ}56'06''$ ); thence North  $64^{\circ}51'18''$  West 0.52 feet; thence North  $18^{\circ}21'05''$  East 535.19 feet to the point of beginning.

Contains 36,488 Square Feet or 0.838 Acres

View Corridor No. 2

Beginning at a point being North  $00^{\circ}17'30''$  East 1,206.81 feet along the Section Line and West 674.96 feet from the East Quarter Corner of Section 26, Township 2 South, Range 1 West, Salt Lake Base and Meridian; and running thence Southeasterly 57.82 feet along the arc of a 333.00 foot radius curve to the left (center bears North  $78^{\circ}22'25''$  East and the chord bears South  $16^{\circ}36'03''$  East 57.75 feet with a central angle of  $09^{\circ}56'56''$ ); thence South  $21^{\circ}34'30''$  East 15.09 feet; thence South  $88^{\circ}18'07''$  West 770.43 feet to the Easterly Right-of-Way Line of Bingham Junction Boulevard; thence North  $33^{\circ}11'04''$  East 85.33 feet along said Easterly Right-of-Way Line; thence North  $88^{\circ}18'07''$  East 701.64 feet to the point of beginning.

Contains 51,436 Square Feet or 1.181 Acres

### **Four Story Restricted Area**

#### View Corridor No. 3

Beginning at a point being North  $00^{\circ}17'30''$  East 1,123.19 feet along the Section Line and West 1,132.88 feet from the East Quarter Corner of Section 26, Township 2 South, Range 1 West, Salt Lake Base and Meridian; and running thence South  $18^{\circ}32'52''$  West 425.31 feet; thence North  $69^{\circ}00'29''$  West 297.70 feet; thence North  $30^{\circ}21'58''$  East 335.35 feet; thence North  $88^{\circ}18'07''$  East 243.81 feet to the point of beginning.

Contains 97,896 Square Feet or 2.247 Acres

### **Six Story Restricted Area**

#### View Corridor No. 4

Beginning at a point being North  $00^{\circ}17'30''$  East 1,575.41 feet along the Section Line and West 1,309.91 feet from the East Quarter Corner of Section 26, Township 2 South, Range 1 West, Salt Lake Base and Meridian; and running thence South  $33^{\circ}11'04''$  West 306.99 feet; thence North  $56^{\circ}55'12''$  West 255.68 feet; thence North  $18^{\circ}21'05''$  East 388.33 feet; thence South  $42^{\circ}11'35''$  East 114.45 feet; thence Southeasterly 247.78 feet along the arc of a 1,397.90 foot radius curve to the left (center bears North  $47^{\circ}20'26''$  East and the chord bears South  $47^{\circ}44'14''$  East 247.45 feet with a central angle of  $10^{\circ}09'20''$ ) to the point of beginning.

Contains 100,244 Square Feet or 2.301 Acres

#### View Corridor No. 5

Beginning at a point being North  $00^{\circ}17'30''$  East 1,287.96 feet along the Section Line and West 681.91 feet from the East Quarter Corner of Section 26, Township 2 South, Range 1 West, Salt Lake Base and Meridian; and running thence Southeasterly 81.62 feet along the arc of a 333.00 foot radius curve to the left (center bears South  $87^{\circ}35'00''$  East and the chord bears South  $04^{\circ}36'17''$  East 81.41 feet with a central angle of  $14^{\circ}02'35''$ ); thence South  $88^{\circ}18'07''$  West 660.59 feet; thence North  $30^{\circ}21'58''$  East 278.09 feet; thence North  $33^{\circ}11'04''$  East 17.47 feet; thence South  $67^{\circ}51'20''$  East 356.36 feet; thence South  $83^{\circ}35'13''$  East 174.63 feet to the point of beginning.

Contains 94,052 Square Feet or 2.159 Acres

### CONSENT AND SUBORDINATION OF LIENHOLDER

Effective as of the 16<sup>th</sup> day of May, 2012, Wells Fargo Bank, National Association ("Wells Fargo"), as the holder of the liens encumbering the Burdened Lots arising under each of the following documents (including all amendments and/or modifications thereto):

Construction Deed of Trust, dated August 25, 2005, from Arbor Gardner, L.C., a Utah limited liability company, for the benefit of Wells Fargo, and recorded on August 31, 2005 as Entry No. 9478425 in Book 9182 at Page 4552 in the Recorder's Office of Salt Lake County (the "Official Records"), as amended, restated, supplemented or otherwise modified from time to time;

Deed of Trust, dated July 28, 2006, from Arbor/Gardner/Plum Sunset Hills, L.L.C., a Utah limited liability company, for the benefit of Wells Fargo, and recorded on August 3, 2006 as Entry No. 9801582 in Book 9331 at Page 2819 in the Official Records, as amended, restated, supplemented or otherwise modified from time to time;

Construction Deed of Trust, dated August 23, 2006, from Arbor Residential Properties L.C., a Utah limited liability company, for the benefit of Wells Fargo, and recorded on August 30, 2006 as Entry No. 9830013 in Book 9343 at Page 9407 in the Official Records, as amended, restated, supplemented or otherwise modified from time to time;

Construction Deed of Trust, dated January 25, 2006, from Arbor Residential Properties L.C., a Utah limited liability company, for the benefit of Wells Fargo, and recorded on February 28, 2007 as Entry No. 10017060 in Book 9428 at Page 3207 in the Official Records, as amended, restated, supplemented or otherwise modified from time to time;

Construction Deed of Trust, dated March 12, 2007, from Arbor Gardner, L.C., a Utah limited liability company, for the benefit of Wells Fargo, and recorded on April 27, 2007, as Entry No. 10080302 in Book 9455 at Page 8112 in the Official Records, as amended, restated, supplemented or otherwise modified from time to time;

Construction Deed of Trust, dated November 19, 2007, from Arbor Gardner Bingham Junction Holdings, L.C., a Utah limited liability company, for the benefit of Wells Fargo, and recorded on November 20, 2007 as Entry No. 10281128 in Book 9539 at Page 7100 in the Official Records, as amended, restated, supplemented or otherwise modified from time to time; and

Construction Deed of Trust, dated July 19, 2010, from Arbor Gardner Bingham Junction Holdings, L.C., a Utah limited liability company, for the benefit of Wells Fargo, and recorded on August 19, 2010 as Entry No. 11014001 in Book 9850 at Page 6519 in the Official Records, as amended, restated, supplemented or otherwise modified from time to time;

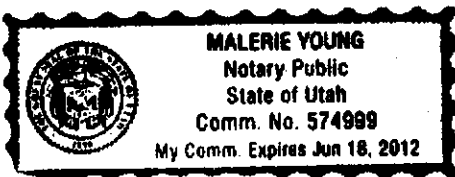
hereby consents to the recording of this Declaration and agrees that the liens evidenced by, and all other rights and interests of Wells Fargo arising under, the foregoing documents shall be and are hereby subordinated to this Declaration.

**Wells Fargo Bank, National Association**

By: [Signature]  
Name: Mike Dulgarian  
Title: Vice President

State of Utah )  
County of Salt Lake ) ss.

The foregoing instrument was acknowledged before me on May 16, 2012, by Mike Dulgarian, the V.P. of Wells Fargo Bank, National Association, by and on behalf of said national association.



[Signature]  
Notary Public