

When recorded mail to:  
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Carlsbad, CA 92008  
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Attn: Bill Grosse

7211796  
01/05/99 4:01 PM 68.00  
NANCY WORKMAN  
RECORDER, SALT LAKE COUNTY, UTAH  
METRO NATIONAL TITLE  
REC BY: R JORDAN DEPUTY - WI

7211796

DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS  
AND RECIPROCAL EASEMENTS

THIS DECLARATION OF COVENANTS, CONDITIONS,  
RESTRICTIONS AND RECIPROCAL EASEMENTS ("Declaration") is  
made of December 29th, 1998 by Jordan Landing LLC, a Delaware Limited  
Liability Company, ("Declarant"), supercedes and replaces this  
DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS  
AND RECIPROCAL EASEMENTS recorded on the 13th of November in  
the Salt Lake County Recorders Office as entry 7153061, book 8160 and  
page 2638.

BK 8220 P80652

DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS  
AND RECIPROCAL EASEMENTS

THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS  
AND RECIPROCAL EASEMENTS ("Declaration") is made as of 12-29, 1998  
by Jordan Landing LLC, a Delaware Limited Liability Company, ("Declarant").

ARTICLE 1

RECITALS

1.1 This Declaration is made with reference to the facts set forth in this  
Article.

1.2 Declarant is or will be the owner of that certain real property situated in  
the City of West Jordan (the "City"), County of Salt Lake, State of Utah, more  
particularly described in Exhibit "A" attached hereto and incorporated herein (the  
"Property").

1.3 Declarant desires that the Property be developed as an integrated  
retail/entertainment shopping center in accordance with the Site Plan attached as Exhibit  
"B" (the "Shopping Center"), notwithstanding that the property is divided and may be  
further divided into multiple lots that may be held by different owners. The design and  
development of the Shopping Center shall be subject to this Declaration which is for the  
purpose of enhancing, maintaining, protecting and improving the value and amenities of  
the Shopping Center. To that objective, Declarant desires to provide for the  
establishment of reciprocal access and parking easements, impose upon the Property  
maintenance obligations with respect to the access and parking easements and subject the  
Property to certain conditions, covenants and restrictions, upon and subject to which all  
the Property shall now and hereafter be held, improved and conveyed, in order to  
establish a general plan for the improvement and development of the Property for the  
benefit of the Property and all of the owners of any lots within the Property.

ARTICLE 2

DEFINITIONS

Unless the context otherwise specifies, each term defined in this Article 2 shall,  
for all purposes of this Declaration, have the meaning herein specified.

2.1 Application. The term "**Application**" shall mean and refer to all documents required to be submitted to the Declarant pursuant to the provisions of this Declaration.

2.2 Architectural Guidelines. The term "**Architectural Guidelines**" shall have the meaning set forth in Section 9.6.

2.3 Building Area. The term "**Building Area**" shall mean and refer to the areas depicted on Exhibit "B" attached hereto as "Building Area". When a building is constructed upon Building Area, Building Area with respect to such building shall mean and refer to the area upon which such building is constructed.

2.4 Common Area. The term "**Common Area**" shall mean and refer to all areas other than "Building Area".

2.5 Declarant. The term "**Declarant**" shall mean Jordan Landing LLC, a Delaware Limited Liability Company ("Declarant"), its successors and assigns if such successors and assigns acquire or hold title to any or all of Declarant's interests in the Property, or any portion thereof, and are expressly named successor Declarant in a document executed by Declarant, or a successor Declarant, and recorded with the County Recorder of Salt Lake County assigning the rights and duties of Declarant to such successor Declarant, with such successor Declarant accepting and assuming the assignment of such rights and duties. A successor Declarant shall also be deemed to include the beneficiary under any deed of trust securing an obligation from a then existing Declarant encumbering all or any portion of the Property, which beneficiary has acquired any such property by foreclosure, power of sale or deed in lieu of such foreclosure or sale.

2.6 Declaration. The term "**Declaration**" shall mean this Declaration of Covenants, Conditions, Restrictions and Reciprocal Easements as it may from time to time be amended or supplemented.

2.7 Easement Areas. The term "**Easement Areas**" shall mean and refer to those areas of each Lot designated in Section 4.1 below for parking and vehicular and pedestrian access.

2.8 Established Drainage Ways. The term "**Established Drainage Ways**" shall mean and refer to the Declarant's plan for drainage as shown on the Declarant's grading plan for the Property and any drainage improvements installed by the Declarant or any Owner pursuant to such grading plans or any Government Regulation.

2.9 Floor Area. "Floor Area," means Landlord's estimate of the total number of square feet of ground floor area of a building therein, measured from the exterior faces of all exterior walls, service corridor and fire walls, and from the center line of the common demising walls separating such building from other spaces, provided, however, that Floor Area shall not include any mechanical penthouse, truck parking, or unloading areas, mezzanine area not used for retail sales, the upper levels of any multiple-deck storage area, trash storage areas or sidewalk area. No deduction shall be made for columns or interior construction or equipment.

2.10 Government Regulations. The term "Government Regulations" shall mean all present and future governmental laws, statutes, codes and ordinances, rules, regulations, limitations, restrictions, orders, judgments and other governmental requirements applicable to the Property.

2.11 Improvements. The term "Improvements" shall mean all structures and appurtenances thereto of every type and nature including, but not limited to, buildings, garages, irrigation, and drainage devices or systems, fences, screening walls, retaining walls, parking areas, loading areas, roads, stairs, poles, light standards, signs and Landscape Improvements.

2.12 Landscape Improvements. The term "Landscape Improvements" shall refer to any plantings, ground cover, trees and shrubbery existing on a Lot, now or in the future, together with any alterations, systems, and equipment installed in order to maintain such plantings, ground cover, trees and shrubbery.

2.13 Lot. The term "Lot" shall mean and refer to each legal parcel within the Property as described on Exhibit "A".

2.14 Manager. The term "Manager" shall mean and refer to the person or entity designated pursuant to the provisions of Section 6.2 below to perform the maintenance obligations hereof with respect to the Common Area.

2.15 Maintenance Assessments. The term "Maintenance Assessments" shall mean the maintenance assessments described in Section 6.5 below for payment of costs related to the maintenance of the Common Area.

2.16 Mortgage and Mortgagee. The term "Mortgage" shall mean any duly recorded mortgage or a deed of trust encumbering a Lot within the Property. The term "Mortgagee" shall mean a beneficiary under, or a holder of, a Mortgage.

2.17 Owner. The term "**Owner**" shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to any Lot, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

2.18 Perimeter Landscaping. The term "**Perimeter Landscaping**" shall mean and refer to the interior slope areas and parking area landscape borders, as well as the landscape setbacks along the perimeter of the Property.

2.19 Property. The term "**Property**" shall mean and refer to all of the real property described on Exhibit "A" of this Declaration, and the Improvements situated thereon.

2.20 Restrictions. The term "**Restrictions**" shall mean and refer to the covenants, conditions, restrictions, liens, charges, rules and regulations now or hereafter established or imposed by or pursuant to this Declaration.

2.21 Site Plan. The term "**Site Plan**" shall mean the Site Plan attached hereto as Exhibit "B" showing among other things, the principal improvements, if any, which currently comprise the Shopping Center, as well as those additional improvements which Landlord currently contemplates constructing in the Shopping Center. Notwithstanding anything to the contrary contained in this Declaration, subject to restrictions contained in tenant leases, Landlord, at any time, may change the shape, size, location, number and extent of the improvements shown on Exhibit "B" and eliminate, add or relocate any improvements to any portion of the Shopping Center including, without limitation, buildings, parking areas (including parking structures), roadways, curb cuts, temporary or permanent kiosks, displays or stands and may add land to and/or withdraw land from the Shopping Center.

2.22 Theatre. The term "**Theatre**" shall mean the Theatre Area shown on the Site Plan attached as Exhibit "B".

2.23 Theatre Lease. The term "**Theatre Lease**" shall mean that certain lease to be entered into between Declarant and the Theatre Tenant, as it may be amended from time to time.

2.24 Theatre Tenant. The term "**Theatre Tenant**" shall mean Cinemark USA, Inc., or its successor during the term of the Theatre Lease.

### ARTICLE 3

## PROPERTY SUBJECT TO THIS DECLARATION

3.1 Establishment of Restrictions. Declarant hereby declares that the Property and every part thereof is and shall be owned (legally and beneficially), hypothecated, encumbered, leased, transferred, developed, improved, built upon or otherwise used, subject to this Declaration. This Declaration is declared and agreed to be in furtherance of an overall plan by Declarant for access to and from the Lots, for maintenance of certain areas within the Property and for development, improvement, sale and use of the Property, and is further declared and agreed to be established for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property and every part thereof.

3.2 Covenants Running With The Land. Declarant hereby declares that the Property is now held, and shall hereafter be held, conveyed, leased, occupied, operated and used, subject to the easements, Restrictions, and agreements herein set forth, each and all of which are for, and shall inure to, the benefit of and pass with each and every part of the Property and shall apply to and bind the heirs, successors and assigns of any Owner or lessee of a Lot thereof, and each of which shall constitute covenants running with the land between the respective Owners of such parts, and create privity of contract and of estate between all grantees of the Property, and the heirs, successors and assigns of each and all of them.

3.3 Splits or Resubdivision of Lots. No splits or resubdivision of any of the Lots contained in the description set forth in Exhibit "A" shall be permitted without the prior written consent of the Declarant. In the event a split or resubdivision of one or more Lots is so approved, each of the Lots created as a result of the Lot split or resubdivision shall be subject to and bound by this Declaration and existing Government Regulations.

## ARTICLE 4 ESTABLISHMENT OF RECIPROCAL ACCESS AND PARKING EASEMENTS

4.1 Reciprocal Access and Parking Easements. There shall hereby be created for the benefit of the Declarant and all future Owners of the Lots within the Property, the following easements which shall terminate concurrently with the termination or expiration of this Declaration:

4.1.1 a non-exclusive, reciprocal easement on, over, through and across any of the paved portions of any of the Lots for the purpose of (i) vehicular ingress and egress to any other Lot and to adjoining streets and driveways in any portion of the

Lots designated from time to time for such ingress and egress, and (ii) parking on any portion of the Lots designated from time to time for vehicular parking, except that it is expressly agreed that there may be up to eighty (80) parking spaces designated as "customer pickup" spaces for the exclusive use of specific tenants of the Shopping Center in the areas so designated from time to time by Declarant; and

4.1.2 a non-exclusive, reciprocal easement for pedestrian access on, over, and through and across the sidewalks, walkways, exits and entrances situated from time to time on such Lot.

4.2 Character of Easement. The easements created or granted in this Article 4 shall exist during the term of this Declaration and shall be appurtenant to each of the Lots for the benefit of all of the other Lots.- The easements herein granted shall be non-exclusive (subject to Section 4.1.1 hereof) and shall be for the use and benefit of the Lots and the Owners, their successors-in-interest, assignees, tenants, customers and business invitees and the customers, employees and business invitees of their tenants, superior to all other encumbrances applied against or in favor of any portion of the Property. Individual deeds to Lots may, but shall not be required to, set forth the easements specified in this Article 4.

4.3 Restriction on Construction on Easement Areas. No building or other structure shall be erected or maintained over or upon any portion of the Easement Areas without the prior written consent of the Declarant, and no use shall be made of such Easement Areas which is inconsistent with or detrimental to the use of said Easement Areas for the purpose of gaining access to and from each of the Lots.

4.4 Location of Easement Areas. The location of the Easement Areas is established as of the recordation date of this Declaration and the location of said Easement Areas shall be as shown in the Site Plan and shall not be materially varied without the prior written consent of Declarant and the Owner of each Lot on which is located Easement Areas being varied.

4.5 Compliance with Laws And Regulations. Each Owner shall comply with all laws, rules, regulations and requirements of all public authorities regulating or affecting the Easement Areas, and shall use due diligence to ensure such Owner's customers, tenants and business invitees comply with all laws, rules, regulations and requirements affecting the Easement Areas.

4.6 Parking Requirements. The Shopping Center shall contain, at a minimum the number of automobile parking spaces required by Government Regulations. No Owner will take any action to reduce the parking below the requirement set forth

above. Except as set forth in Section 4.1.1 hereof, without limitation of Section 4.1 above, all parking spaces for the Shopping Center shall be used for the non-exclusive benefit of Owners, their successors-in-interest, assignees, tenants, customers and business invitees and the customers, employees and business invitees of their tenants at the Shopping Center. No Owner, tenant or other party with an interest in all or any part of the Shopping Center shall charge or exact any fee or other compensation in connection with parking at the Shopping Center by Owners, their successors-in-interest, assignees, tenants, customers and business invitees and the customers, employees and business invitees of their tenants unless required by Government Regulations. Parking at the Shopping Center shall be subject to such further rules and regulations (to the extent consistent with operation of a first-class shopping center) concerning parking at the Shopping Center as the Manager shall promulgate from time to time.

4.7 Taxation. The Owner of each Lot shall be responsible for paying all real estate taxes and assessments on the Owner's Lot, subject only to the right to defer payment in a manner provided by law and/or in connection with a bona fide contest of such tax or assessment in the amount thereof, so long as the rights of any of the Owners shall not be jeopardized by such deferring of payment.

4.8 Insurance. Each Owner of each Lot shall, at all times, maintain public liability insurance covering the Easement Areas on the Owner's Lot in amounts which are commercially reasonable, and shall be responsible for paying all insurance premiums on such Lot.

## ARTICLE 5

### ESTABLISHMENT OF ADDITIONAL EASEMENTS

5.1 Nature of Easements. Each of the easements reserved or granted in this Article 5 shall exist in perpetuity, except that the easement set forth in Section 5.5 (for performance and discharge of rights and duties) shall exist during the term of this Declaration, and shall be appurtenant to each of the Lots for the benefit of all other Lots. The easements granted herein shall be deemed to be established upon the recordation of this Declaration and shall thenceforth be deemed to be covenants running with the land for the use and benefit of the Lots and the Owners, their successors-in-interest, assignees, tenants, customers and business invitees, and the customers, employees and business invitees of their tenants.

5.2 Easement for Encroachments. Each Lot is hereby declared to have an easement over all adjoining property (including Lots) for the purpose of accommodating minor encroachments due to original engineering or surveying errors,



errors in original construction of Improvements, errors in reconstruction or repair of Improvements in accordance with plans and specification approved by Declarant, or settlement, shifting or movement of an Improvement, so long as such encroachment exists. However, no such easement for encroachment exists if an encroachment occurred due to the willful conduct of the Owner of the Lot containing the encroaching Improvement.

5.3 Utility Easements. The Declarant hereby reserves, together with the right to grant and transfer the same, such rights of way and easements over the Property as may be necessary or convenient for the purpose of erecting, constructing, repairing, maintaining, replacing and operating utility services over, across, under and through the Property, including without limitation, cables, wires, poles, pipes and conduits for lighting, power, television, telephone and other communication facilities, gas, water, storm sewers, sanitary sewers, and other utility lines. For purposes hereof, "utilities" shall include electricity, gas mains and lines, water distribution lines, storm water sewers, sanitary sewers, telephone and telegraph cables and lines, and other similar or related facilities commonly regarded as utilities, including without limitation, any cable and other lines to and from the Theater as may be reasonably necessary in connection with one or more ticket booths located or to be located on the Property. Upon the laying, repair, maintenance or replacement of any such lines, wires, pipes, conduits or sewers, the Property shall be restored to the same condition it was in prior to the doing of such work.

5.4 Slope and Drainage Easements. The Declarant hereby reserves for itself and each future Owner, easements to allow the drainage of water under, upon and across each Lot in the Established Drainage Ways existing on each Lot.

5.5 Easement for Performance and Discharge of Rights and Duties. The Declarant hereby reserves for itself and its agents, together with the right to grant and transfer the same, a non-exclusive easement for ingress and egress over, through, under and across the Property and each Lot thereof for the purpose of permitting the Declarant, the Manager, and their agents to discharge and/or enforce their rights, powers and obligation as described in this Declaration.

5.6 Rights and Duties of Owners. The rights and duties of the Owners of the Lots with respect to sanitary sewer and water, electricity, gas, telephone lines and drainage facilities and other utility lines or services shall be governed by the following:

5.6.1. Wherever sanitary sewer connections and/or water connections or electricity, gas or telephone lines, or drainage facilities are installed within the Property, which connections, lines or facilities or any portion thereof, lie in or upon Lots owned by other than the Owner of a Lot served by said connections, the Owners of any Lot served

by said connections, lines or facilities shall have the right, and are hereby granted an easement to the full extent necessary therefor, to enter upon the Lots or to have utility companies enter upon the Lots within the Property in or upon which said connections, lines or facilities, or any portion thereof, lie to repair, replace and maintain said connections.

5.6.2. Whenever sanitary sewer connections and/or water connections or electricity, gas, telephone lines or drainage facilities are installed within the properties, which connections serve more than one Lot, the Owner of each Lot served by said connections shall be entitled to the full use and enjoyment of such portions of said connections as service its Lot.

5.7 Termination of Easements. Upon termination of this Declaration as provided in Section 10.1 below, all easements granted under this declaration shall automatically terminate and be of no further force and effect without the necessity of further action or recordation of any instrument.

## ARTICLE 6

### MAINTENANCE OF COMMON AREA

6.1 Maintenance Obligation. Subject to the provisions of Section 6.2 below regarding the managed maintenance of Common Area, each Owner of each Lot shall have the responsibility and obligation for maintaining all Common Area located in the Owner's Lot. Each Owner shall have the obligation and responsibility to maintain and repair such portions of their Lot in a good condition, in conformation with all covenants, conditions and restrictions affecting the Property and all Government Regulations, and in a manner which is not inconsistent with the terms and provisions of this Declaration. Such maintenance obligations shall include, but not be limited to the following:

6.1.1. Maintaining the surfaces at such grades and levels so that the same may be used and enjoyed as contiguous and homogenous common areas, and maintaining said surfaces in a level, smooth and evenly-covered condition with the type of surfacing material originally installed, or of equal or better quality, use and durability;

6.1.2. Removing all papers, debris and refuse and thoroughly sweeping the areas to the extent reasonably necessary to keep said areas in a neat, clean and orderly condition;

6.1.3. Placing, keeping in repair, and replacing any necessary or appropriate directional signs, striping markers and lines; and operating, keeping in repair,

and replacing when necessary, such artificial lighting facilities as shall be reasonably required;

6.1.4. Maintaining any perimeter walls in good condition and state of repair; and

6.1.5. Maintaining all areas of Perimeter Landscaping, making such replacements of shrubs and other landscaping as is necessary and keeping said areas at all times adequately weeded, fertilized and watered.

In performing the maintenance obligations required hereunder, an Owner shall not substantially or totally interfere with access to or from a Lot, or prevent parking on a Lot for an unreasonable period of time and shall perform such maintenance and construction activities on the Common Area located on its Lot in conformance with any covenants, conditions and restrictions of record (including leases of which such owner has constructive notice) and other Governmental Regulations.

6.2 Managed Maintenance: Designation and Succession of Maintenance Manager. Notwithstanding Section 6.1 above, and in order to facilitate the performance of the Owner's maintenance obligations thereunder, a maintenance "Manager" shall be designated for the purpose of coordinating the performance and discharge of such maintenance obligations. Declarant shall initially serve as Manager and shall continue to serve in such a capacity so long as Declarant or a successor-in-interest to Declarant is the Owner of any of the Lots; provided, however, that Declarant shall have the right, at its own discretion at any time, to cease serving in the capacity of Manager. If Declarant or any successor-in-interest to Declarant ceases to be an Owner of any of the Lots, or if Declarant elects to cease serving in the capacity of Manager, the successor Manager shall be any person or entity appointed by the vote of the Owners owning not less than seventy-five percent (75%) of the gross acreage of the Lots. In the event the duties, obligations, rights and remedies of the Manager are at any time assumed by a successor Manager, such assuming Manager shall be deemed to be the "Manager" for all purposes herein and the Manager being so replaced shall cooperate fully with such assuming Manager so that the transition between Managers shall be accomplished in a timely and efficient manner. If, at any time, neither Declarant nor any person or entity appointed by the Owners is functioning as Manager, each Owner shall be responsible for maintaining the Common Area located on the Owner's Lot.

6.3 Removal of Maintenance Manager. The right to remove the Manager shall be and is hereby vested solely in Declarant until such time as Declarant is no longer the Owner of any of the Lots. Thereafter, the Manager shall be removed by the vote of the Owners owning not less than seventy-five percent (75%) of the gross acreage of the Lots.

6.4 Rights and Duties of Maintenance Manager. The Manager shall be responsible for coordinating the maintenance of the Common Area and collecting the Maintenance Assessments (as hereinafter defined). In performing these obligations, the Manager has the right and authority to enter into contracts with one or more property management companies to perform any or all of the services required to be rendered hereunder with respect to the Common Area, to engage contractors, gardeners or other service providers to perform the same, to employ and pay wages to agents and/or employees for performances of any or all of said maintenance services and to enter upon each Lot for the purpose of performing and discharging its maintenance duties pursuant to the easement granted in section 5.5 above. The Manager shall have the right and authority to incur costs in connection with the maintenance of the Common Area, including the cost of insurance for the Common Area, and to assess maintenance fees with respect to said costs in accordance with Section 6.5 below. The Manager shall also have the right and authority to record liens for delinquent payments of Maintenance Assessments, which liens shall attach and be enforced as provided in Article 11 below.

6.5 Establishment of Maintenance Assessment. Declarant, so long as it owns any of the Lots, hereby covenants, and each Owner of such Lots by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay Maintenance Assessments for the purpose of maintaining the Common Area. The Maintenance Assessments levied hereunder, together with interest, costs, and reasonable attorney's fees, shall be a charge on the land and shall be a continuing lien upon the Lot against which each such Maintenance Assessment is made, which lien shall attach and be enforced as provided in Article 11 below. Each such Maintenance Assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the Owner of such Lot at the time when the Maintenance Assessment fell due. If more than one person or entity was the Owner of a Lot, the personal obligation to pay such Maintenance Assessment shall be both joint and several.

6.6 Purpose of Maintenance Assessment. The Maintenance Assessments levied by the Manager shall be used exclusively to pay all costs incurred by the Manager in connection with the maintenance of the Common Area, including, but not limited to: costs associated with any property management company employed to supervise the maintenance of the Common Area and to collect the Maintenance Assessments hereunder (which property management company may be affiliated with Declarant or any other Owner); wages and expenses of any agent or employee hired by the Manager to supervise or maintain the Common Area; costs incurred in purchasing any equipment or supplies required to perform such supervision or maintenance; any costs incurred in collecting Maintenance Assessments or enforcing liens related thereto; expenses incurred in maintaining the books and records with respect to the maintenance of the Common Area

as required by Section 6.1 above ; and any insurance costs incurred by the Manager relating to the Common Area.

6.7 Payment of Maintenance Expenses. At least every six (6) months, but no more frequently than once a month, the Manager shall send to each of the Owners a statement setting forth the actual cost and expenses paid by the Manager for the operation and maintenance of the Common Area and such Owner's pro rata share of such maintenance cost. Manager shall also have the right to submit monthly statements based upon estimated amounts, subject to annual reconciliations. Each owner shall submit its share of the maintenance costs within ten (10) days after receipt of such statement. If, after receipt of such billing statement, any Owner shall fail to pay when due the amounts specified in such statement, the Manager shall deliver to such non-paying Owner, a second copy of such billing statement, together with a written notice stating that the billing amount is unpaid and that interest will begin to accrue unless payment is made within ten (10) days after the effective date of such notice. If, at the end of ten (10) days after the effective date of such written notice, the billing amount or a portion thereof remains unpaid, the Manager shall be entitled to interest on such unpaid amount at the lesser of five percent (5%) over the rate of the Federal Reserve Bank of San Francisco on the twenty-fifth (25<sup>th</sup>) day of the month prior to the date said unpaid amount was due or the maximum rate allowed by law, commencing on the date of the original billing statement and continuing until paid. Any such unpaid amount, together with interest on the outstanding amounts, shall be a lien against the Lot, which lien shall attach and be enforced as provided in Article 11 below.

6.8 Management Fee. The Manager may charge a management fee to cover its own or other expenses not to exceed fifteen percent (15%) of the cost of expenses incurred in operating and maintaining the Common Area, except the cost and expenses paid by the Manager to a third party management company in performing the Manager's administrative obligations hereunder.

6.9 Allocation of Maintenance Fees. An Owner's pro rata share of the Maintenance Assessments shall be fixed based upon the proportion of Floor Area of Improvements actually built within the land owned by each Owner in relationship to the total Floor Area of Improvements actually built on all of the Lots. In the event of the re-subdivision of any Lot, the Maintenance Assessments shall be allocated to such re-subdivided Lot based upon the number of square feet of Floor Area of the Lots.

6.10 Liability. The Manager shall not be liable to any Owner or to any other party for any damage, loss or liability suffered or claimed on account of any act, omission or negligence of the Manager with respect to any such person or entity so long as the Manager has acted in good faith without intentional misconduct or fraud on its part.

## ARTICLE 7

### MAINTENANCE OF INDIVIDUAL LOTS

7.1 Personal Obligation. Declarant, for each Lot owned by Declarant within the Property hereby covenants, and each Owner, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree, to comply with all of the terms and provisions of this Declaration including, but not limited to, the maintenance obligations set forth herein.

7.2 Owner's Obligation for Property Maintenance and Repair of Improvements. All Lots and Improvements, whether occupied or unoccupied, shall at all times be maintained in such a manner as to prevent their becoming unsightly by reason of unattractive growth or the accumulation of rubbish or debris thereon. No Lot or Improvement located within the Property shall be permitted by its Owner, or any lessee or occupant thereof to fall into disrepair. Each such Lot and Improvement situated thereon shall at all times be kept in good condition and repair and all Improvements shall be adequately painted or otherwise finished. In performing the maintenance obligations required hereunder, an Owner shall not substantially or totally interfere with access to or from a Lot, or prevent parking on a Lot for an unreasonable period of time, and shall perform such maintenance activities in conformance with any covenants, conditions, and restrictions of record (including leases of which such owner has constructive notice) and other Government Regulations.

7.3 Drainage. No Owner shall interfere with or obstruct the Established Drainage Ways over any Lot, unless an alternative provision is made for proper drainage and is first approved in writing by Declarant. Any alteration of the Established Drainage Ways must at all times comply with applicable Government Regulations. Water from any Lot may drain into adjacent streets and onto adjacent Lots pursuant to the Established Drainage ways.

7.4 Lateral Support. Each owner shall maintain its Lot with sufficient landscaping and plantings so as to prevent erosion that will result in damage to that Lot or to any adjacent Lot. No Owner shall perform any excavation upon its Lot that will result in damage to any adjacent Lot due to lack of lateral support.

7.5 Damage and Destruction affecting Lots-Duty to Rebuild. If all or any portion of a Lot or any Improvement thereon is damaged or destroyed by fire or other casualty, it shall be the duty of the Owner of such Lot to (i) raze and remove the damaged Improvements, restoring the Lot to substantially its original unimproved condition (or

restoring Common Area Improvements), or (ii) rebuild, replace and repair the damaged Improvements, all in a manner satisfactory to the Declarant. The Owner of any Lot upon which damaged Improvements are located shall be obligated to proceed with all due diligence hereunder.

## ARTICLE 8

### PERMITTED USES AND RESTRICTIONS

8.1 Permitted Operations and Uses. Subject to Sections 8.2 and 8.12, all Lots within the Property shall be used exclusively for the construction, operation and maintenance of retail mercantile (including retail selling of goods, wares, merchandise and services), entertainment businesses (including theater, restaurant and other entertainment use), business and professional offices common to shopping centers, financial institutions and related facilities common to shopping centers, or other similar or accessory uses incidental thereto, provided said similar or accessory uses shall have been expressly approved by the Declarant.

8.2 Prohibited Operations and Uses. The Shopping Center and any portion thereof shall not be used for warehousing (other than the temporary storage of fixtures and equipment by an occupant of the Shopping Center), industrial, manufacturing, wholesaling or residential purposes. No portion of the Shopping Center shall be used for a bingo parlor, bar or lounge (except as part of a restaurant which derives at least fifty percent (50%) of its sales from the sale of food), flea market, popcorn vendor or pool hall (except as part of an upscale restaurant), a massage parlor, pornographic book store or for a store selling or renting pornographic films or videos, a facility for the sale of paraphernalia for use with illicit drugs, an off-track betting parlor, a facility for the sale of new or used motor vehicle trailers or mobile homes, or other place of public amusement, reading room, beauty school, barber college, or other place of instruction or any other operation catering primarily to students or trainees rather than to customers (but this shall not prevent training classes which are incidental to an operation permitted hereunder). In no event shall any portion of the Shopping Center be used or operated for any purpose which is not consistent and compatible with a first class retail/entertainment shopping center. The foregoing shall not be construed to prohibit any use of the Theatre which is permitted by the Theatre Lease.

8.3 Limitation on Noise. Loud Speakers or devices for the production or projection of sound or noise are not permitted, and all noise generated by any use of the Lot shall be confined within such lot. Normal noises, that do not exceed local or state ordinances or laws shall not be deemed objectionable,

8.4 Temporary Structures. No structure of a temporary character, trailer, camper, boat or similar equipment (unless used in connection with construction which has been approved by the Declarant) shall be permitted to remain upon the Property or any part thereof without the prior written approval of the Declarant.

8.5 Electronic Antennae. No television, radio or other electronic antennae or device of any type shall be erected, constructed, placed or permitted to remain on any of the Lots unless they are in furtherance of public utility operations and until the same shall have been approved in writing by the Declarant.

8.6 Limitations on Improvements. All limitations contained herein are supplemental to controls established by zoning, building, fire or other jurisdictional codes and regulations or other Government Regulations and the more restrictive provisions shall apply.

8.7 Signs. Except for signs which shall be permitted to be installed by Declarant, no sign, billboard, or other advertising shall be erected, placed or maintained within the Property without specific written approval by the Declarant. Said approval by the Declarant shall be denied for any proposed sign which:

8.7.1. is not in accordance with applicable Government Regulations;

8.7.2. makes identification other than the name, business and logo of the person or firm occupying the premises or those offering the premises for sale or for lease; or

8.7.3. does not conform to the theme, size, style and location as set forth in the Shopping Center sign criteria established from time to time by Declarant, or as approved by the Declarant.

8.8 Landscaping. Every Lot on which a building is constructed shall be landscaped by the Owner, or any lessee, licensee or occupant thereof in accordance with an Application to be submitted to and approved by the Declarant pursuant to provision 5 of Article 9 of this Declaration.

8.9 Exterior Lighting. Exterior lighting shall conform to Government Regulations, and shall not overwash property lines unless approved by the Declarant, nor be of such intensity, size, color or location as to be a nuisance to other Owners.

8.10 Refuse Collection Areas. All rubbish, trash and garbage shall be regularly removed from the Property and shall not be allowed to accumulate thereon. All outdoor



refuse collection areas shall be appropriately located in each Lot, and shall be completely enclosed and screened in accordance with plans approved by the Declarant.

8.11 Storage and Loading Areas. Loading doors, docks, facilities or other service areas shall be adequately screened with landscaping, fencing or concrete walls to minimize the effect of their appearance from any street, freeway, expressway or neighboring property.

8.12 Restrictions Benefiting the Theatre. No premises (nor any part thereof) in the Shopping Center (other than the premises subject to the Theatre Lease) shall be used for the operation of a motion picture theater. In addition, no premises (nor any part thereof) in the area designated on the Site Plan as "Phase I Shopping Center Area" shall be used for a liquor store, a "bulk candy" store, a post office operated by the United States Postal Service, or an arcade, except for one (1) arcade of a quality similar to Sega Gameworks. Furthermore, no premises (nor any part thereof) in the area designated as "Entertainment Village Area" on the Site Plan shall be leased for the sale or rental of video tapes and no premises (nor any part thereof) within five hundred (500) feet of the Theatre shall be used for a bowling alley.

8.13 Building Restrictions.

8.13.1. Any buildings constructed, reconstructed, or replaced in the following Building Areas shall have the following maximum heights: With the sole exception of the Theater and the building to be located on the pad designated on the Site Plan as "E-5," all buildings constructed within the area designated on the Site Plan as "Phase 1 Area" shall be one (1) story and shall not exceed twenty-four (24) feet in height, provided that mechanical equipment penthouses, screens to hide the mechanical equipment and entrance structure cupolas, and architectural elements and canopies on all buildings may extend beyond the height limitation described above; and provided further, however, that the building to be located on the pad designated as "E-5" on the Site Plan may be more than one story, but not more than twenty six (26) feet in height.

8.13.2. If any permit, approval, or action, such as a zone change, conditional use permit, planned development permit, variance, zoning plan approval, environmental impact report or similar report, parcel map or tract map is proposed to be obtained or amended by any Owner in connection with or as a prerequisite to any further construction in the Shopping Center, all such applications and submissions thereof, including all exhibits thereto, shall be submitted to Declarant for Declarant's review and approval. The Owner shall, with respect to all conditions of any such governmental action, cause every such condition to be fully observed and performed.

8.14 Variances, Other Operation and Uses. Declarant is hereby authorized and empowered to grant variances for uses within the Property in addition to those listed in Section 8.1 and to further grant reasonable variances from the provisions of this Declaration or any portion hereof, in order to overcome practical difficulties and to prevent unnecessary hardship in the application of the provisions contained herein; provided, however, that no variance shall be granted by the Declarant unless the Owner seeking such variance has obtained all required governmental approvals and the variance does not materially injure any of the Lots or Improvements with the Property or fail to conform with applicable Government Regulations, including, but not limited to, zoning regulations of any governmental agency or political entity having jurisdiction over the Property. If any such variance is granted, no violation of the Restrictions shall be deemed to have occurred with respect to the matter for which the variance was granted. The granting of a variance hereunder shall not operate to waive any of the terms and provisions of this Declaration for any purpose except as to a particular Lot and particular provision hereof covered by such variance, nor shall it affect in any way the Owner's obligation to comply with all Government Regulations affecting the Owner's use of the Lot.

## ARTICLE 9

### PLAN APPROVAL

9.1 Approval Required. No Improvements shall be constructed, erected, placed, altered, maintained or permitted to remain on the Property unless they conform with Government Regulations and the Application for said Improvements which shall include, but not be limited to, site plans, floor plans, exterior elevations, sections, materials, colors, landscaping, irrigation, signage, exterior lighting and any other information needed to accurately describe the exterior appearance or functional characteristics of said Improvements, and unless the Application has been submitted to and approved in writing by the Declarant. All Applications shall be prepared by an architect and/or engineer licensed to practice in the State of Utah and shall be submitted in writing over the signature of the Owner or its authorized agent. Without limitation of the foregoing, the exterior of all buildings within the Shopping Center shall be architecturally compatible.

9.11 Filing Fee. As a means of defraying its expenses, the Declarant may institute and require a filing fee of Five Hundred and NO/100 Dollars (\$500.00) to accompany any Application submitted to the Declarant from time to time. The schedule of filing fees may be modified from time to time by the Declarant to reflect changed circumstances such as inflation.

9.1.2 Basis for Approval. The Declarant shall have the right to disapprove any Application submitted to it in the event any part of it (i) is not in accordance with this Declaration, and/or Architectural Guidelines; and/or (ii) is incomplete; and/or (iii) is not in compliance with the relevant Government Regulations; and/or (iv) is deemed by the Declarant to be contrary to the best interest of the Property of the Owners. The Declarant may base its approval or disapproval of any Application on, among other things, the compliance with all terms and conditions of the Theatre Lease; the adequacy of site dimensions; the adequacy of structural design; the conformity and harmony of external design with the neighboring structures; the effect of location and use of Improvements on other Lots and their neighboring operation and uses; the relation of the topography, grade and finished ground elevation of the Lot being improved to that of the neighboring Lots; the proper facing of elevations with respect to nearby streets; and the conformity of the Application to the Government Regulations and the purpose, general plan and intent of this Declaration. The decision of the Declarant shall be final.

9.2 Procedure for Review and Approval. All Applications shall be submitted to the Declarant for review and approval in accordance with the procedures established from time to time by the Declarant pursuant to Section 9.8 below.

9.3 Estoppel Certificate. The Declarant shall provide to any Owner an estoppel certificate within thirty (30) days of receipt of a written request for same which is accompanied by an ALTA or certified as-built survey of the Lot if the Declarant does not have an as-built survey in its files. Such estoppel certificate shall certify that as of the date hereof (i) all Improvements made or work done on or within a Lot comply with this Declaration, or (ii) such Improvements or work do not so comply, in which event the certificate shall identify the non-complying Improvements and shall set forth the cause or causes for such non-compliance. Any lessee, purchaser or encumbrancer in good faith for value shall be entitled to rely on such certificate with respect to the matters set forth therein, such matters being conclusive as between the Declarant and all subsequent parties in interest.

9.4 Liability. Neither Declarant nor any member, manager, employee or agent thereof, shall be liable for any damage, loss or prejudice suffered or claimed by any Owner, lessee, licensee or occupant of a lot who submits an Application, and such person or entity who submits an Application shall forever indemnify, defend and hold the Declarant, the members, managers, employees and agents thereof, harmless from all damage, loss or prejudice suffered or claimed by any third party on account of (i) any defects in any plans, drawings, specifications or other documentation submitted in any Application, revised or approved in accordance with the foregoing provision, or for any structural or other defects in any work done according to such plans, drawings, specifications or other documentation; (ii) the approval or disapproval of any Application,

whether or not defective; (iii) the construction or performance of any work, whether or not pursuant to an approved Application; or (iv) the development of any Lot within the Property.

9.5 Conflict. In the event there is any conflict between the requirements or actions of the Declarant and the mandatory regulations or ordinances of any Government Regulation, the Government Regulation shall control and the Declarant shall modify its requirements or actions to conform to the Government Regulation; provided, however, that if the Government Regulations are less restrictive, the provisions of this Declaration shall nonetheless apply.

9.6 Architectural Guidelines. The Declarant may, from time to time, and in its sole discretion, adopt and/or amend, by majority vote, rules and regulations, to be known as Architectural Guidelines. Said Architectural Guidelines shall interpret and implement the provisions hereof by setting forth (a) the standards and procedures for Declarant's review, and (b) guidelines for the architectural design of Improvements and site plans, floor plans and exterior elevations for Improvements, landscaping designs and irrigation plans, color schemes, signage and exterior lighting finishes and materials for use in the Property.

9.7 Governmental Regulation Requests. Notwithstanding anything herein to the contrary, approval by the Declarant is not exclusive and all plans and specifications required to be approved by the City of West Jordan whether through the building permit process or otherwise, shall be so approved prior to the commencement of construction.

## ARTICLE 10

### DURATION, MODIFICATION AND REPEAL

10.1 Duration of Covenants. This Declaration shall continue and remain in full force and effect at all times with respect to the Property and each part thereof, now or hereafter made subject thereto, for a period commencing on the date of the recordation of this Declaration and continuing for a term of sixty (60) years thereafter unless sooner terminated as set forth in Section 10.2

10.2 Termination and Modification. This Declaration, or any provisions hereof, may be terminated, extended, modified or amended, only by the vote or written consent of the Owners owning not less than seventy-five percent (75%) of the gross acreage of the Lots; provided, however, that so long as Declarant owns any part of the Property, no such termination, extension, modification or amendment shall be effective without the written approval of Declarant thereto. No such termination, extension,

modification or amendment shall be effective until a written instrument setting forth the terms thereof is duly recorded.

## ARTICLE 11

### ENFORCEMENT

#### 11.1 Enforcement Remedies.

11.1.1 Preventive Remedies. Declarant or any Owner may proceed at law or in equity to prevent the violation of any of the Restrictions, to cause any violation to be remedied and to recover damages for said violation.

11.1.2. Entry and Correction of Violations. Declarant and its duly authorized agents shall have the right, upon violation or breach of any restriction set forth herein, if such violation or breach continues for a period of fifteen (15) days after written notice thereof, to enter upon the Lot where such violation or breach exists and correct the violation, including, but not limited to, performing any maintenance obligations not performed by the defaulting Owner and/or remove at the expense of the Owner, any structure, thing or condition that may be or exist thereon contrary to the intent and meaning of the provisions hereof. Thereafter, the violating Owner shall be responsible for any costs incurred in correcting the violation together with an administrative charge equal to fifteen percent (15%) of any costs incurred. Any amounts due hereunder shall be due within ten (10) days of receipt of written notice therefor. In the event any amounts are not paid when due, then such amounts shall bear interest at the rate of five percent (5%) over the rate of the Federal Reserve Bank of San Francisco on the twenty-fifth (25<sup>th</sup>) day of the month prior to the date said amounts are due, but in no event shall the interest rate exceed the maximum amount allowed by law.

11.1.3 Creation of Lien: Notice of Default: Foreclosure. If an Owner fails to pay any amounts owed to Declarant or the Manager pursuant to the provisions of Section 6.7 and Section 11.1.2 hereof, with respect to Maintenance Assessments and corrections of violations, respectively, then the party to whom said amounts are owed shall deliver written notice to the defaulting Owner specifying that said amounts are delinquent. If, within thirty (30) days after the delivery of said notice, the defaulting Owner fails to make payment, then any amounts that are delinquent, together with any interest charge and all costs incurred in the collection of said amounts, including reasonable attorneys' fees and costs, shall be a lien, with power of sale, against the defaulting Owner's Lot upon the recordation in the Office of the County Recorder of Salt Lake County of a notice of delinquency. The notice of delinquency shall include at least

the following: (i) the name of the claimant; (ii) a statement concerning the basis of the claim of lien; (iii) the last known name and address of the Owner or reputed Owner of the Lot against which the lien is claimed; (iv) a description of the Lot against which the lien is claimed; (v) a description of the work performed or payment due which has given rise to the claim of lien hereunder and a statement itemizing the amount thereof; and (vi) a statement that the lien is claimed pursuant to the provisions of this Declaration. The notice of delinquency shall be duly verified, acknowledged and contain a certificate that a copy thereof has been served upon the Owner against whom the lien is claimed, either by personal service or by mailing (first-class, certified, return receipt requested), to the defaulting Owner at the address for mailing of tax statements with respect to the Lot against which the lien is claimed. The lien so claimed shall attach from the date of recordation solely in the amount claimed thereby, and may be enforced in any manner allowed by law for the foreclosure of liens, including, without limitation, foreclosure by nonjudicial foreclosure sale in accordance with Utah law. Upon payment by the delinquent Owner of the sums specified as unpaid in the notice of delinquency, the party filing said notice of delinquency shall cause to be recorded a further notice stating the satisfaction or release thereof, upon payment by the defaulting Owner of the costs for preparing and filing or recording such release. Not more than one (1) year nor less than fifteen (15) days after the recording of the notice of delinquency, the party filing the notice of delinquency can record as notice of default and can cause the Lot with respect to which said notice of default has been recorded to be sold in the same manner as a nonjudicial foreclosure sale conducted under Utah law or through judicial foreclosure. However, as a condition precedent to the holding of any nonjudicial foreclosure sale under Utah law appropriate publication as required by law shall be made. In connection with any sale under a nonjudicial foreclosure the party filing the notice of default is authorized to appoint its attorney, any officer or director, or any title insurance company authorized to do business in Utah as trustee (the "Trustee") for purposes of conducting the sale. If the lien is paid in full and satisfied before the conclusion of the nonjudicial foreclosure sale in accordance with Utah law, or before completing a judicial foreclosure, the party filing the notice of default shall cause to be recorded in the Office of the County Recorder of Salt Lake County, a certificate setting forth the satisfaction of such claim and release of such lien upon payment by the delinquent Owner of actual expenses incurred, including reasonable attorneys' fees. On becoming delinquent in the payment of any amounts due hereunder, each delinquent Owner shall be deemed to have absolutely assigned all rents, issues and profits of such Owner's Lot to the party filing the notice of default and shall further be deemed to have consented to the appointment of a receiver (which appointment may, at the election of the party filing the notice of default be enforced through specific performance). The party filing the notice of default shall have the power to bid upon the Lot at foreclosure sale and to acquire, hold, lease mortgage and convey the Lot. Trustee, without notice to or demand upon such Owner except as otherwise may then be required by law, shall sell the Lot at the time and place of sale

fixed by it in the notice of sale as required by law, at public auction to the highest bidder for cash, in lawful money of the United States, or other form of payment acceptable to Trustee, payable at the time of sale. Trustee may postpone any such sale by public announcement at the time and place fixed by the notice of sale, and may thereafter continue such postponement by like announcements at the time and place fixed by the preceding postponement, at the direction of the party recording the notice of default and without necessity of additional notices of sale.

11.1.4 Notice of Claim of Breach. The Declarant may, at any time that it deems a non-monetary breach of these conditions and restrictions to have occurred, execute, acknowledge and record in the Office of the County Recorder of Salt Lake County, a notice of claim of breach ("Notice of Claim of Breach"), setting forth the facts of such breach, describing the Lot or Lots upon which such breach occurred and setting forth the name of the Owner or Owners thereof. Such Notice of Claim of Breach upon being recorded shall constitute notice to all persons of such breach, provided an action has been commenced within one hundred twenty (120) days after the recording of such Notice of Claim of Breach to establish such breach; and if such action has not commenced within said one hundred twenty (120) day period, then such Notice of Claim of Breach shall be of no force and effect whatsoever and the breach set forth in said Notice of Claim of Breach shall be presumed to have been remedied.

11.1.5. Declarant's Rights. During reasonable hours, Declarant or its authorized representative, shall have the right to enter upon and inspect any Lot and the Improvements thereon for the purpose of ascertaining whether the provisions of this Declaration have been or are being complied with, and shall not be deemed guilty of trespass by reason of such entry.

11.1.6. Other Parties' Rights. After request upon Declarant to prevent any violation of this declaration and failure to act by Declarant within thirty (30) days after such request, any Owner shall have the Notice of Claim of Breach enforcement right provided for in Section 11.1.4 above. In addition, any Owner and any other party to whose benefit this Declaration inures shall have the right in the event of violation or breach of this Declaration, to prosecute a proceeding at law or in equity against the person or persons who have violated or are attempting to violate this Declaration, to enjoin or prevent them from doing so, to cause said violation to be remedied and to recover damages for said violation.

11.1.7. Cumulative Remedies. The remedies hereby specified are cumulative, and this specification shall not be deemed to preclude any aggrieved person's resort to any other remedy at law, in equity or under any statute.

11.2 Deemed To Constitute A Nuisance. The result of every action or omission whereby the provisions of this Declaration are violated in whole or in part is hereby declared to constitute a nuisance, and every remedy allowed by law or equity against any Owner, or lessee, licensee or occupant of a Lot shall be applicable in respect to every such result and may be exercised by Declarant or any Owner or lessee to whose benefit this Declaration inures.

11.3 Attorneys' Fees. In any legal or equitable proceeding to determine the rights of the parties to enforce or restrain the violation of this Declaration, the losing party or parties, as determined by the hearing officer or tribunal for this purpose, shall pay the reasonable attorneys' fees, legal costs and expenses of the prevailing party or parties.

11.4 Failure to Enforce Not a Waiver of Rights. No delay or failure on the part of an aggrieved party to invoke any available remedy in respect to a violation of any provision of this Declaration shall be held to be a waiver by the party of (or an estoppel of that party to assert) any right available to him upon the recurrence or continuance of said violation or the occurrence of a different violation, nor shall there be construed upon Declarant, a duty to take any action to enforce the provisions of this Declaration.

## ARTICLE 12

### GENERAL PROVISIONS

12.1 Constructive Notice and Acceptance. The Owners, or any lessee, licensee or occupant of a Lot, by acceptance of a deed conveying title to any part of the Property, or the execution of a contract for the purchase thereof, or the acceptance of a lease or license therefor, or the taking possession thereof, whether from Declarant or a subsequent Owner or lessee of a Lot, shall accept such deed, contract, lease, license or possession upon and subject to each and all of the provisions of this Declaration and to the rights and powers of Declarant and its successors and assigns, and by such acceptance shall for himself, his heirs, personal representatives, successors and assigns, covenant, consent and agree to and with Declarant, its successors and assigns, and by such acceptance shall for himself, his heirs, personal representatives, successors and assigns, covenant, consent and agree to and with Declarant, its successors and assigns, and to and with the other Owners and Lessees to keep, observe, comply with and perform the provisions of this Declaration whether or not any reference to this Declaration is contained in the instrument by which such person or entity acquired said real property. Every person or other entity who now or hereafter owns or acquires any right, title or interest in or to any portion of the Property is and shall be conclusively deemed to have consented and agreed to this Declaration, whether or not any reference to this Declaration is contained in the instrument by which such person or entity acquired the real property. Every person or other entity who now or



hereafter owns or acquires any right, title or interest in or to any portion of the Property is and shall be conclusively deemed to have consented and agreed to this Declaration, whether or any reference to this Declaration is contained in the instrument by which such person or entity acquired an interest in said real property.

12.2 Waiver. Neither Declarant, nor any Owner or lessee of a Lot shall be liable to any other Owner, lessee, licensee or occupant of any real property subject to this Declaration by reason of any mistake in judgment, negligence, nonfeasance, action or inaction in regard to the enforcement or failure to enforce the provisions of this Declaration or any part thereof. Every Owner, lessee, licensee or occupant of a Lot, by acquiring an interest in the Property agrees that he will not bring any action or suit against Declarant, its successors and assigns or any member or manager thereof, from time to time, to recover any such damages or to seek equitable relief. This Section 12.2 shall not prevent the enforcement of any legal or equitable right of one Owner against another.

12.3 Mutuality; Reciprocity; Runs with Land. This Declaration is made for the direct, mutual and reciprocal benefit of each and every Lot of the Property in favor of every other Lot of the Property; shall create mutual, equitable servitudes upon each Lot of the Property in favor of every Lot of the Property; shall create reciprocal rights and obligations between the respective Owners and privity of contract and estate between all grantees of real property in the Property, its heirs, successors and assigns; and shall, as to the Owner of each Lot of the Property, its heirs, successors and assigns; and shall, as to the Owner of each Lot of the Property, its heirs, successors and assigns, operate as covenants running with the land, for the benefit of all other Lots of the Property.

12.4 Multiple Ownership. In the event that any Owner shall transfer or convey its interest in a Lot or any portion of a Lot in such a manner as to vest ownership of the Lot in more than one person, then the persons owning all of such interest in such transferred Lot shall be jointly considered a single Owner and such persons shall designate one of their number to act on behalf of all such persons in the performance of the provisions of this Declaration. Any such designation shall be in writing and shall be served upon all other Owners in accordance with the notice provisions of section 12.10 below. In the absence of any such designation, the acts of the Owner whose interest is so divided with respect to the performance of the provisions of this Declaration shall be binding upon all of the persons then owning any interest in such Lot until such time as the written designation is properly served as provided in this Section 12.4. The exercise or performance of any rights, powers or obligations of an Owner under this Declaration by the person designated to represent such person shall be binding upon all persons having an interest or right in such Lot. So long as such designation remains in effect, all persons having an interest or right in such Lot shall act only through such designated

person and the other Owners shall have the right to deal exclusively with and rely solely upon the acts or omissions of such designated person in the performance of the provisions of this Declaration. Notwithstanding anything to the contrary herein contained, the designation of a person to act on behalf of other persons as provided in this Section 12.4 shall not for any purpose relieve any such persons from the obligations or liabilities created by or arising from this Declaration.

12.5 Leases. Any agreement for the leasing of a Lot or building shall provide that the terms of such lease shall be subject in all respects to the provisions of this Declaration. Any Owner leasing its Lot and/or building shall be deemed to have agreed, in connection with such leasing, that upon being requested to do so by the Declarant, it will immediately take such commercially reasonable action or actions in respect to its lessee as may be necessary or required to cause such Lessee to fully comply with each and all of the terms and provisions of this Declaration.

12.6 Rights of Mortgages. No provision of this Declaration shall in any way defeat or render invalid the lien of any Mortgage or other security instrument entered into in good faith and for valuable consideration, whether presently in existence or hereafter executed upon any part of the Property; provided, however, that if any portion of the Property is purchased in connection with a foreclosure of such Mortgage or security instrument or is conveyed to the party so secured in lieu of foreclosure, and person so acquiring or purchasing the Property and his successors and assigns shall hold any and all real property so purchased or acquired subject to the provisions of this Declaration.

12.7 Retained Rights: Waiver of Compliance. Wherever it appears in this Declaration that the Declarant has the right to waive compliance with certain provisions, the right to approve or deny certain matters or the right to exercise its discretion in various areas, these rights of Declarant are expressly reserved or retained by the Declarant, and all of the provisions of this Declaration are subject to the retained and reserved rights of the Declarant.

12.8 Paragraph Headings. Paragraph headings, where used herein, are inserted for convenience only and are not intended to be a part of this Declaration or in any way to define, limit or describe the scope and intent of the particular paragraphs to which they refer.

12.9 Effect of Invalidation. If any provision of this Declaration is held to be invalid by any court, the invalidity of such provision shall not affect the validity of the remaining provisions of this Declaration and all remaining provisions shall continue unimpaired, in full force and effect.

12.10 Notices. Any and all notices, demands or other communications required or desired to be given hereunder by any party shall be in writing and shall be validly given or made to another party if served either personally or sent via Federal Express or other nationally recognized courier delivery service or if deposited in the United States mail, certified or registered, postage prepaid, return receipt requested. If such notice, demand or other communication be served personally, service shall be conclusively deemed made at the time of such personal service. If such notice, demand or communication be given by mail, or by courier service, such shall be conclusively deemed given upon receipt or first refusal of receipt when addressed to the party to whom such notice, demand or other communication is to be given as hereinafter set forth:

To Declarant: Jordan Landing, L.L.C.  
c/o Russell W. Grosse Development Co., Inc.  
Attention: Russell W. Grosse  
5850 Avenida Encinas, Suite A  
Carlsbad, California 92008

To any Owner: To the last known address of the Owner of the real property this is the subject of the notice.

Declarant may change its address by recordation of a Notice of Change of Address in the Office of the Salt Lake County Recorder, Utah.

12.11 Governing Law. This Declaration shall be governed by and construed in accordance with the laws of the State of Utah.

IN WITNESS WHEREOF, Declarant has executed this Declaration, as of the day and year first above written.

JORDAN LANDING, L.L.C.

By: JL Project, L.L.C.  
Manager of Jordan Landing, L.L.C.

By: Russell W. Grosse Development Co., Inc.  
Manager of JL Project, L.L.C.

By: Gary W. Harrison  
Gary W. Harrison, President

**CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT**

State of CALIFORNIA

County of SAN DIEGO

On December 29, 1998 before me, Joan E. Hendrick, Notary Public

Date

Name and Title of Officer (e.g., "Jane Doe, Notary Public")

personally appeared Gary W. Harrison

Name(s) of Signer(s)

personally known to me - OR -  proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.



WITNESS my hand and official seal.

Joan E. Hendrick  
Signature of Notary Public

**OPTIONAL**

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

**Description of Attached Document**

Title or Type of Document: Declaration of Covenants, Conditions, Restroctions and Reciprocal Easements

Document Date: - Number of Pages: 26 w/2 Exh.

Signer(s) Other Than Named Above: none

**Capacity(ies) Claimed by Signer(s)**

Signer's Name: Gary W. Harrison

- Individual
- Corporate Officer  
Title(s): President
- Partner —  Limited  General
- Attorney-in-Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_

**RIGHT THUMBPRINT OF SIGNER**  
Top of thumb here

Signer Is Representing:  
JL Landing LLC

Signer's Name: \_\_\_\_\_

- Individual
- Corporate Officer  
Title(s): \_\_\_\_\_
- Partner —  Limited  General
- Attorney-in-Fact
- Trustee
- Guardian or Conservator
- Other: \_\_\_\_\_

**RIGHT THUMBPRINT OF SIGNER**  
Top of thumb here

Signer Is Representing:  
\_\_\_\_\_  
\_\_\_\_\_

EXHIBIT "A"

LEGAL DESCRIPTION OF SHOPPING CENTER

JORDAN LANDING PLAZA

Beginning at the center of Section 29, Township 2 South, Range 1 West, Salt Lake Base and Meridian, which point is also the southeast corner of subject property; and running thence N 82° 25' 51" W 1460.42 feet to the east right-of-way of Jordan Landing Boulevard; thence along said east right-of-way:

1. N 24° 56' 01" E 13.44 feet to the beginning of a 1103 foot radius curve to the left;
2. thence along said curve 480.86 feet (chord bears N 12° 26' 40" E 477.06 feet);
3. thence N 00° 02' 41" W 538.91 feet to the point of beginning of a 1377.00 foot radius curve to the right;
4. thence along said curve 2348.38 feet (chord bears N 48° 48' 44" E 2073.95 feet);
5. thence S 82° 19' 51" E 128.99 feet;

thence S 07° 46' 07" W 2581.55 feet to the point of beginning.

Contains a gross acreage of 3,410,575.67 square feet (78.30 acres).

# JORDAN LANDING PLAZA SITE PLAN

BK 8220 PG 0681

'PHASE 1 SHOPPING CENTER AREA' - - - - -

'ENTERTAINMENT VILLAGE AREA'



EXHIBIT B

